

INSTITUTIONAL COMPLIANCE AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
HOWARD UNIVERSITY
ON BEHALF OF ITS COLLEGE OF MEDICINE AND
HOWARD UNIVERSITY HOSPITAL

I. PREAMBLE

Howard University (“HU”) on behalf of its College of Medicine (“COM”) and Howard University Hospital (“HUH”) hereby enters into this Institutional Compliance Agreement (“ICA”) with the Office of Inspector General (“OIG”) of the United States Department of Health and Human Services (“HHS”) to promote compliance by the COM and HUH with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. ' 1320a-7b(f)) (“Federal health care program requirements”). COM and HUH will be referred to collectively herein as “Howard.” The term “Covered Persons” as used herein shall mean all employees, contractors, suppliers, and agents of the HUH and COM except for the following –

- (a) those employees of the HUH or COM listed or defined in Appendix C;
- (b) those contractors, suppliers, or agents of HUH and COM that do not provide or assist, directly or indirectly, in the delivery of patient care items or services, the preparation or submission of claims under Federal health care programs, or the supply of products that are reimbursable under a Federal health care program.

For the purposes of this Agreement, the terms “employees” or “contractors” do not include those individuals who perform less than 160 hours of service for the HUH or COM during Howard’s fiscal year.

Contemporaneously with this ICA, HU is entering into a Settlement Agreement with the United States, and this ICA is incorporated by reference into the Settlement Agreement.

Prior to the execution of this ICA, HU established the HUH Compliance Program. The HUH Compliance Program includes the HU Code of Ethics and Conduct, the HUH Standards of Conduct, and an education and training program for HUH employees. Additionally, HU has established a Compliance Advisory Committee charged with oversight of the HUH Compliance Program. HU agrees to continue the operation of the HUH Compliance Program for the term of this ICA. HU may modify the HUH Compliance Program as appropriate, but at a minimum, HU shall ensure that it complies with the integrity obligations enumerated in this ICA.

II. TERM OF THE ICA

The period of the compliance obligations assumed by HU under this ICA shall be five years from the effective date of this ICA ("Effective Date") (unless otherwise specified). The Effective Date shall be July 1, 2002.

Sections VII, VIII, IX, X, and XI shall expire no later than 120 days after OIG's receipt of: (1) Howard's final annual report; or (2) any additional materials submitted by Howard pursuant to OIG's request, whichever is later.

III. CORPORATE INTEGRITY OBLIGATIONS

Howard shall maintain a Compliance Program that includes the following elements:

A. Compliance Officer and Committee.

1. *Compliance Officer.* HU has represented to OIG that, pursuant to the HUH Compliance Program, it has established the position of Chief Compliance Officer for Health Affairs ("Compliance Officer"). HU has also represented to the OIG that a person is presently serving as Interim Compliance Officer and that HU is currently searching for an individual to serve permanently in that capacity. Within 90 days after the Effective Date, Howard shall either appoint an individual to serve as its permanent Compliance Officer or provide assurances to the OIG that the position remains encumbered by a full time Interim Compliance Officer. The Compliance Officer shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this ICA and with Federal health care program requirements. The Compliance Officer shall be a member of senior management of Howard, report directly to the Dean of the College of Medicine, shall make periodic (at least quarterly) reports regarding compliance matters directly to the Boards of Trustees of HU, and shall be authorized to report on such matters to the Boards

of Trustees at any time. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Howard as well as for any reporting obligations created under this ICA.

Howard shall report to OIG, in writing, any changes in the identity or position description of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this ICA, within 15 days of such a change.

2. *Compliance Committee.* HU has represented to OIG that, pursuant to the HUH Compliance Program, it has established a Compliance Advisory Committee ("Compliance Committee") and appointed individuals to serve on that Committee. The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this ICA (e.g., senior executives of relevant departments, such as billing, clinical, human resources, audit, and operations). The Compliance Officer, the Dean of the COM, or such other senior manager as may be approved by the OIG, shall chair the Compliance Committee and the Compliance Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of the organization's risk areas and shall oversee monitoring of internal and external audits and investigations).

Howard shall report to OIG, in writing, any changes in the composition of the Compliance Committee, or any actions or changes that would affect the Compliance Committee's ability to perform the duties necessary to meet the obligations in this ICA, within 15 days of such a change.

B. Written Standards.

1. *Code of Conduct.* HU has produced to OIG documents entitled "Code of Ethics and Conduct" (the "HU Code") applicable to all HU employees, and "Employee Standards of Conduct" (the "HUH Standards") applicable to all HUH employees. HU has represented to the OIG that both the HU Code and the HUH Standards have been approved by the HU Board of Trustees and distributed to Covered Persons. Within 90 days, Howard shall complete distribution of the HU Code and HUH Standards to all Covered Persons. Howard shall make the promotion of, and adherence to, the HU code and the HUH Standards an element in evaluating the performance of all Covered Persons who are employees of Howard. The HUH Standards set forth, and, at a minimum, shall continue to set forth throughout the term of this ICA, the following:

- a. Howard's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements;
- b. Howard's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Howard's own Policies and Procedures as implemented pursuant to Section III.B (including the requirements of this ICA);
- c. the requirement that all of Howard's Covered Persons shall be expected to report to the Compliance Officer or other appropriate individual designated by Howard suspected violations of any Federal health care program requirements or of Howard's own Policies and Procedures;
- d. the possible consequences to both Howard and Covered Persons of failure to comply with Federal health care program requirements and with Howard's own Policies and Procedures and the failure to report such non-compliance; and
- e. the right of all individuals to use the Disclosure Program described in Section III.E, and Howard's commitment to maintain confidentiality, as appropriate, and non-retaliation with respect to such disclosures.

To the extent not already certified, within 90 days of the Effective Date, each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by the HU Code and the HUH Standards. New Covered Persons shall receive the HU Code and the HUH Standards and shall complete the required certification within 30 days after becoming a Covered Person or within 90 days of the Effective Date, whichever is later.

HU shall periodically review the HU Code and the HUH Standards to determine if revisions are appropriate and shall make any necessary revisions based on such a review. Any such revised HU Code or HUH Standards shall be distributed within 30 days of finalizing such changes. Covered Persons shall certify that they have received, read, understood, and shall abide by the revised HU Code or HUH Standards within 30 days of the distribution of such revisions.

2. *Policies and Procedures.* Within 120 days of the Effective Date, Howard shall implement written Policies and Procedures regarding the operation of HUH's Compliance Program and its compliance with Federal health care program requirements. At a minimum, the Policies and Procedures shall address:

- a. the subjects relating to the HU Code and the HUH Standards identified in Section III.B.1;
- b. regulations regarding the submission of bills for physician services at academic medical centers; and
- c. Areas of OIG concern or risk areas outlined in hospital and physician OIG Model Compliance Program Guidances (available through the Internet at <http://oig.hhs.gov/modcomp/index.htm>).

Within 120 days of the Effective Date, the relevant portions of the Policies and Procedures shall be distributed to all individuals whose job functions are related to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

At least annually (and more frequently, if appropriate), Howard shall assess and update as necessary the Policies and Procedures. Within 30 days of the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be made available to all individuals whose job functions are related to those Policies and Procedures.

C. Training and Education.

Howard shall continue the education and training elements of the HUH Compliance Program as they pertain to all Covered Persons, with the following modifications:

1. *General Training.* Within 120 days of the Effective Date, Howard shall provide at least two hours of general training to each Covered Person. This training, at a minimum, shall explain Howard's:

- a. ICA requirements; and

b. Howard's Compliance Program (including the HU Code and the HUH Standards and the Policies and Procedures as they pertain to general compliance issues)

For those Covered Persons who have already received general training that meets the requirements of Section III.C.1.b. within the six months prior to the Effective Date of this ICA, Howard need only provide appropriate and adequate training that meets the requirements of Section III.C.1.a.

New Covered Persons shall receive the general training described above within 30 days of becoming a Covered Person or within 90 days after the Effective Date, whichever is later. After receiving the initial training described above, each Covered Person shall receive at least one hour of general training annually.

2. *Specific Training.* Within 120 days of the Effective Date, each Covered Person who (i) is involved in the delivery of patient care items or services, (ii) in the preparation or submission of claims for reimbursement from any Federal health care program, or (iii) supervising, administering, or managing the foregoing individuals (hereinafter referred to as "Relevant Covered Persons") shall receive at least six hours of specific training in addition to the general training required above. This specific training shall include a discussion of:

- a. the submission of accurate claims for services rendered to Federal health care program beneficiaries;
- b. policies, procedures, and other requirements applicable to the documentation of medical records;
- c. the personal obligation of each individual involved in the claims submission process to ensure that such claims are accurate;
- d. applicable reimbursement statutes, regulations, and program requirements and directives;
- e. the legal sanctions for improper claims; and
- f. examples of proper and improper claims submission practices.

Persons providing the training shall be knowledgeable about the subject area.

For those Relevant Covered Persons who have already received specific training that meets the requirements of Section III.C.2. within the six months prior to the Effective Date of this ICA, Howard may consider such training as sufficiently meeting the obligations set forth in Section III.C.2.

Relevant Covered Persons shall receive this training within 30 days of the beginning of their employment or becoming Relevant Covered Persons, or within 90 days of the Effective Date, whichever is later. A Howard employee who has completed the specific training shall review a new Relevant Covered Person's work, to the extent that the work relates to the delivery of patient care items or services and/or the preparation or submission of claims for reimbursement from any Federal health care program, until such time as the new Relevant Covered Person completes his or her applicable training.

After receiving the initial training described in this Section, every Relevant Covered Person shall receive at least four hours of specific training annually.

3. *Certification.* Each individual who is required to attend training shall certify, in writing, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer (or designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

D. Review Procedures.

1. *General Description.*

a. Retention of Independent Review Organization. Within 90 days of the Effective Date, Howard shall retain an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform reviews to assist Howard in assessing and evaluating its billing and coding practices and certain other obligations pursuant to this ICA and the Settlement Agreement. Each IRO retained by Howard shall have expertise in the billing, coding, reporting, and other requirements of hospitals, academic medical centers, and physician practices and in the general requirements of the Federal health care program(s) from which Howard seeks reimbursement. Each IRO shall assess, along with Howard, whether it can perform the IRO review in a professionally independent fashion taking into account any other business relationships or other engagements that may exist. The IRO(s) review shall address and analyze Howard’s billing and coding to the Federal health care programs (“Claims Review”) and shall analyze whether Howard sought payment for certain unallowable costs (“Unallowable Cost Review”).

b. Frequency of Claims Review. The Claims Review shall be performed annually and shall cover each of the one-year periods of the ICA beginning with the Effective Date (“Reporting Period”). The IRO(s) shall perform all components of each annual Claims Review. The first Claims Review Report shall be due no later than September 1, 2003.

c. Frequency of Unallowable Cost Review. The Unallowable Cost Review shall be performed by the IRO for the first Reporting Period. The Unallowable Cost Review Report shall be due no later than September 1, 2003.

d. Retention of Records. The IRO and Howard shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Howard) related to the reviews.

2. *Claims Review.* The Claims Review shall include a Discovery Sample and, if necessary, a Full Sample. The applicable definitions, procedures, and reporting requirements are outlined in Appendix A to this ICA, which is incorporated by reference.

a. Discovery Sample. The IRO shall randomly select and review a sample of 50 Paid Claims submitted by or on behalf of Howard. The Paid Claims shall be reviewed based on the supporting documentation available at Howard or under Howard's control and applicable billing and coding regulations and guidance to determine whether the claim submitted was correctly coded, submitted, and reimbursed.

i. If the Error Rate (as defined in Appendix A) for the Discovery Sample is less than 5%, no additional sampling is required, nor is the Systems Review required. (Note: The threshold listed above does not imply that this is an acceptable error rate. Accordingly, Howard should, as appropriate, further analyze any errors identified in the Discovery Sample. Howard recognizes that OIG or other HHS component, in its discretion and as authorized by statute, regulation, or other appropriate authority, may also analyze or review Paid Claims included, or errors identified, in the Discovery Sample.)

ii. If the Discovery Sample indicates that the Error Rate is 5% or greater, the IRO shall perform a Full Sample and a Systems Review, as described below.

b. Full Sample. If necessary, as determined by procedures set forth in Section III.D.2.a, the IRO shall perform an additional sample of Paid Claims using commonly accepted sampling methods and in accordance with Appendix A. The Full Sample shall be designed to (1) estimate the actual Overpayment in the population with a 90% confidence level and with a maximum relative precision of 25% of the point estimate and (2) conform with the Centers for Medicare and Medicaid Services' statistical sampling for overpayment estimation guidelines. The Paid Claims shall be reviewed based on supporting documentation available at Howard or under Howard's control and applicable billing and coding regulations and guidance to determine whether the claim submitted was correctly coded,

submitted, and reimbursed. For purposes of calculating the size of the Full Sample, the Discovery Sample may serve as the probe sample, if statistically appropriate. Additionally, Howard may use the Items sampled as part of the Discovery Sample, and the corresponding findings for those 50 Items, as part of its Full Sample. OIG, in its full discretion, may refer the findings of the Full Sample (and any related workpapers) received from Howard to the appropriate Federal health care program payor, including the Medicare contractor (e.g., carrier, fiscal intermediary, or DMERC), for appropriate follow-up by that payor.

c. Systems Review. If Howard's Discovery Sample identifies an Error Rate of 5% or greater, Howard's IRO shall also conduct a Systems Review. Specifically, for each claim in the Discovery Sample and Full Sample that resulted in an Overpayment, the IRO shall perform a "walk through" of the system(s) and process(es) that generated the claim to identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide its observations and recommendations on suggested improvements to the system(s) and process(es) that generated the claim.

d. Repayment of Identified Overpayments. In accordance with Section III.H.1, Howard shall repay any Overpayment(s) identified in the Discovery Sample or the Full Sample (if applicable), regardless of the Error Rate, to the appropriate payor and in accordance with payor refund policies. Howard shall make available to OIG any and all documentation that reflects the refund of the Overpayment(s) to the payor.

3. *Claims Review Report*. The IRO shall prepare a report based upon the Claims Review performed (the "Claims Review Report"). Information to be included in the Claims Review Report is detailed in Appendix A.

4. *Unallowable Cost Review*. The IRO shall conduct a review of Howard's compliance with the unallowable cost provisions of the Settlement Agreement. The IRO shall determine whether Howard has complied with its obligations not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from the United States, or any State Medicaid program. This unallowable cost analysis shall include, but

not be limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Howard or any of its subsidiaries. To the extent that such cost reports, cost statements, information reports, or payment requests, even if already settled, have been adjusted to account for the effect of the inclusion of the unallowable costs, the IRO shall determine if such adjustments were proper. In making this determination, the IRO may need to review cost reports and/or financial statements from the year in which the Settlement Agreement was executed, as well as from previous years.

5. *Unallowable Cost Review Report.* The IRO shall prepare a report based upon the Unallowable Cost Review performed. The Unallowable Cost Review Report shall include the IRO's findings and supporting rationale regarding the Unallowable Costs Review and whether Howard has complied with its obligation not to charge to, or otherwise seek payment from, Federal or State payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable Federal or State payors any unallowable costs included in payments previously sought from such payor.

6. *Validation Review.* In the event OIG has reason to believe that: (a) Howard's Claims Review or Unallowable Cost Review fails to conform to the requirements of this ICA; or (b) the IRO's findings or Claims Review results are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the Claims Review or Unallowable Cost Review complied with the requirements of the ICA and/or the findings or Claims Review results are inaccurate ("Validation Review"). Howard shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents so long as it is initiated within one year after Howard's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Howard of its intent to do so and provide a written explanation of why OIG believes such a review is necessary. To resolve any concerns raised by OIG, Howard may request a meeting with OIG to discuss the results of any Claims Review or Unallowable Cost Review submissions or findings; present any additional or relevant information to clarify the results of the Claims Review or Unallowable Cost Review to correct the inaccuracy of the Claims Review; and/or propose alternatives to the proposed Validation Review. Howard agrees to provide any additional information as may be requested by OIG under this Section in an expedited manner. OIG will attempt in good faith to resolve any Claims Review or Unallowable Cost Review with Howard prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

7. *Independence Certification.* The IRO shall include in its report(s) to Howard a certification or sworn affidavit that it has evaluated its professional independence with regard to the Claims Review or Unallowable Cost Review and that it has concluded that it is, in fact, independent.

(8) *Internal Billing Review Option.*

a. Subject to approval from OIG and subject to the conditions set forth below, after the IRO has completed the Billing Engagement for the first Billing Engagement Period, Howard may, at its option, conduct an Internal Billing Review in lieu of engaging an IRO for Billing Engagement Periods 2 through 5. If Howard chooses to exercise the Internal Billing Review Options, the results shall be validated by an IRO and shall comply with all of the requirements outlined herein and in section III.D.2 above.

b. Prior to exercising the Internal Billing Review Option, Howard agrees: i) to develop and adopt a written formal audit workplan for Howard consistent with the terms of the ICA and in conjunction with the IRO; ii) to devote sufficient resources and staff to enable it to implement the audit workplan; and iii) that Howard shall assign persons to the Internal Billing Review who are qualified and experienced in accepted auditing and control processes, and who possess expertise in billing, coding, and Federal health care program requirements. In addition, Howard agrees that the persons assigned to implement the Internal Billing Review shall not include persons who were involved in the submission of bills or claims to the Federal health care programs during the period to be audited and shall not include persons who are presently involved in such submissions.

c. Consistent with the requirements of section III.D.2 and Appendix A, the Internal Billing Review shall include a Claims Review and the required report of findings. The Internal Billing Review shall also include a report from an IRO that verifies that the requirements of section III.D.2 have been satisfied. As part of any such verification performed by an IRO under this ICA, the IRO shall conduct a review of at least 10% of the claims reviewed by Howard in each year.

d. In the event that OIG determines, in its sole discretion, that Howard is unable to satisfactorily implement the audit workplan, devote sufficient resources or appropriate qualified staff, or conduct satisfactorily the Internal Billing Review, Howard agrees to engage an IRO to complete all remaining Billing Engagement requirements under this ICA. To the extent that OIG permits Howard to perform Internal Billing Reviews, Howard shall submit all information required in section III.D.2 as well as the results of the IRO's verification. If Howard decides not to exercise its Internal Billing Review Option, the requirements applicable to engagement of an IRO to perform the Billing Engagements shall remain in effect for the term of the ICA.

E. Disclosure Program.

Howard has represented to OIG that it has established a confidential disclosure program, which includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Howard's policies, conduct, practices, or procedures with respect to a Federal health care program, believed by the individual to be a potential violation of criminal, civil, or administrative law. Howard shall appropriately publicize the existence of the disclosure mechanism (e.g., via periodic e-mails to employees or by posting the information in prominent common areas).

During the course of this ICA, Howard shall maintain the confidential disclosure program as described in this Section. The Disclosure Program shall emphasize a nonretribution, nonretaliation policy, and shall include a reporting mechanism for anonymous communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Howard shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The disclosure log shall be available to OIG, upon request.

F. Ineligible Persons.

1. *Definition.* For purposes of this ICA, an “Ineligible Person” shall be any individual or entity who: (a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs; or (b) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, or otherwise declared ineligible.

2. *Screening Requirements.* Howard shall not hire as employees or engage as contractors or grant staff privileges to any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, Howard shall screen all prospective employees and prospective contractors prior to engaging their services and screen physicians prior to granting staff privileges by: (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) appropriately querying the General Services Administration’s List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>) (these lists shall hereinafter be referred to as the “Exclusion Lists”). Nothing in this Section affects the responsibility of (or liability for) Howard to refrain from billing Federal health care programs for services of the Ineligible Person.

3. *Review and Removal Requirement.* Within 90 days of the Effective Date, Howard shall review its list of current employees and contractors against the Exclusion Lists. To the extent that such employees and contractors have been reviewed within the six months preceding the effective date of this ICA, such review will be sufficient to satisfy this requirement. Thereafter, Howard shall review its list of current employees and contractors against the Exclusion Lists annually. In addition, Howard shall require employees and contractors to disclose immediately any debarment, exclusion, or other event that makes the employee an Ineligible Person.

If Howard has actual notice that an employee, contractor, or physician with staff privileges has become an Ineligible Person, Howard shall remove such person from responsibility for, or involvement with, Howard’s business operations related to the Federal health care programs and shall remove such person from any position for which

the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Howard has actual notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract term, Howard shall take all appropriate actions to ensure that the responsibilities of that employee or contractor have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

Within 30 days of discovery, Howard shall notify OIG, in writing, of any ongoing investigation known to Howard or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that Howard has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. Howard shall also provide written notice to OIG within 30 days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

H. Reporting.

1. *Overpayments*

a. Definition of Overpayments. For purposes of this ICA, an "Overpayment" shall mean the amount of money Howard has received in excess of the amount due and payable under any Federal health care program requirements.

b. Reporting of Overpayments. If, at any time, Howard identifies or learns of any Overpayment, Howard shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days of identification of the Overpayment and take remedial steps within 60 days of identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from recurring. Also,

within 30 days of identification of the Overpayment, Howard shall repay the Overpayment to the appropriate payor to the extent such Overpayment has been quantified. If not yet quantified, within 30 days of identification, Howard shall notify the payor of its efforts to quantify the Overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor's policies, and for Medicare contractors, shall include the information contained on the Overpayment Refund Form, provided as Appendix B to this ICA. Notwithstanding the above, notification and repayment of any Overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such policies and procedures.

2. Material Deficiencies.

a. Definition of Material Deficiency. For purposes of this ICA, a "Material Deficiency" means anything that involves:

- i. a substantial Overpayment; or
- ii. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized.

A Material Deficiency may be the result of an isolated event or a series of occurrences.

b. Reporting of Material Deficiencies. If Howard determines through any means that there is a Material Deficiency, Howard shall notify OIG, in writing, within 30 days of making the determination that the Material Deficiency exists. The report to OIG shall include the following information:

- i. If the Material Deficiency results in an Overpayment, the report to OIG shall be made at the same time as the notification to the payor required in Section III.H.1, and shall

include all of the information on the Overpayment Refund Form, as well as:

(A) the payor's name, address, and contact person to whom the Overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) by which the Overpayment was repaid/refunded;

ii. a complete description of the Material Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

iii. a description of Howard's actions taken to correct the Material Deficiency; and

iv. any further steps Howard plans to take to address the Material Deficiency and prevent it from recurring.

IV. NEW BUSINESS UNITS OR LOCATIONS

In the event that, after the Effective Date, Howard changes locations or sells, closes, purchases, or establishes new business units related to the furnishing of items or services that may be reimbursed by Federal health care programs, Howard shall notify OIG of this fact as soon as possible, but no later than within 30 days of the date of change of location, sale, closure, purchase, or establishment. This notification shall include the location of the new operation(s), phone number, fax number, Medicare provider number(s) (if any), and the corresponding contractor's name and address that has issued each Medicare provider number. All Covered Persons at such locations shall be subject to the applicable requirements in this ICA (e.g., completing certifications and undergoing training).

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within 120 days after the Effective Date, Howard shall submit a written report to OIG summarizing the status of its implementation of the requirements of this ICA. This Implementation Report shall include:

1. the name, address, phone number, and position description of the Compliance Officer required by Section III.A, and a summary of other non-compliance job responsibilities the Compliance Officer may have;
2. the names and positions of the members of the Compliance Committee required by Section III.A, if changed;
3. a copy of any changes to Howard's Code of Conduct required by Section III.B.1;
4. a copy of all compliance-related Policies and Procedures required by Section III.B.2 and a summary of all other Policies and Procedures required by Section III.B.2;
5. a copy of all training materials used for the training required by Section III.C, a description of such training, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;
6. a certification by the Compliance Officer that:
 - a. the Policies and Procedures required by Section III.B have been developed, are being implemented, and have been distributed to all appropriate Covered Persons;
 - b. all Covered Persons have completed the Code of Conduct certification required by Section III.B.1; and
 - c. all Covered Persons have completed the applicable training and executed the certification(s) required by Section III.C.

The documentation supporting this certification shall be available to OIG, upon request.

7. a description of the Disclosure Program required by Section III.E;
8. the identity of the IRO(s), a summary/description of all engagements between Howard and the IRO, including, but not limited to, any outside

financial audits or reimbursement consulting, and the proposed start and completion dates of the first annual reviews;

9. a certification from the IRO regarding its professional independence from Howard;

10. a summary of personnel actions (other than hiring) taken pursuant to Section III.F.;

11. a list of all of Howard's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Medicare provider identification number(s), and the name and address of the Medicare contractor to which Howard currently submits claims;

12. a description of Howard's corporate structure, including identification of any parent and sister companies, subsidiaries, and their respective lines of business; and

13. the certification required by Section V.C.

B. Annual Reports. Howard shall submit to OIG Annual Reports with respect to the status of, and findings regarding, Howard's compliance activities for each of the five Reporting Periods.

Each Annual Report shall include:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer and any change in the membership of the Compliance Committee described in Section III.A.;

2. a certification by the Compliance Officer that:

a. all Covered Persons have completed any Code of Conduct certifications required by Section III.B.1;

b. all Covered Persons have completed the applicable training and executed the certification(s) required by Section III.C.;

c. Howard has complied with its obligations under the Settlement Agreement: (i) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; (ii) not to charge to or otherwise seek payment from Federal or State payors for unallowable costs (as defined in the Settlement Agreement); and (iii) to identify and adjust any past charges or claims for unallowable costs;

The documentation supporting this certification shall be available to OIG, upon request.

3. a summary of any significant changes or amendments to the Policies and Procedures required by Section III.B and the reasons for such changes (e.g., change in contractor policy) and copies of any compliance-related Policies and Procedures;

4. a copy of all training materials used for the training required by Section III.C (to the extent it has not already been provided as part of the Implementation Report), a description of such training conducted during the Reporting Period, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of when the training sessions were held;

5. a complete copy of all reports prepared pursuant to the IRO's claims review, unallowable cost review, and systems review, if applicable, including a copy of the methodology used, along with a copy of the IRO's engagement letter;

6. Howard's response and corrective action plan(s) related to any issues raised by the IRO(s);

7. a revised summary/description of all engagements between Howard and the IRO, including, but not limited to, any outside financial audits, compliance program engagements, or reimbursement consulting, if different from what was submitted as part of the Implementation Report;

8. a certification from the IRO regarding its professional independence from Howard;

9. a summary of Material Deficiencies (as defined in Section III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Material Deficiencies;
10. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts should be broken down into the following categories: inpatient Medicare, outpatient Medicare, Medicaid (report each applicable state separately, if applicable), and other Federal health care programs. Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report;
11. a summary of the disclosures in the disclosure log required by Section III.E that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;
12. a description of any personnel actions (other than hiring) taken by Howard as a result of the obligations in Section III.F, and the name, title, and responsibilities of any person that falls within the ambit of Section III.F.4, and the actions taken in response to the obligations set forth in that Section;
13. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.G. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;
14. a description of all changes to the most recently provided list (as updated) of Howard's locations (including locations and mailing addresses) as required by Section V.A.11, the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Medicare provider identification number(s), and the contractor name and address that issued each Medicare provider number; and
15. the certification required by Section V.C.

The first Annual Report shall be received by OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that: (1) to the best of his or her knowledge, except as otherwise described in the applicable report, Howard is in compliance with all of the requirements of this ICA; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

D. Designation of Information. Howard shall clearly identify any portions of its submissions that it believes are trade secrets, or information that is commercial or financial and privileged or confidential, and therefore potentially exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Howard shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this ICA shall be submitted to the following entities:

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Phone: 202.619.2078
Fax: 202.205.0604

Howard:

Michaele Nesbitt-Johnson
Interim Chief Compliance Officer for Health Affairs
Howard University Hospital
2041 Georgia Ave., N.W.

Washington, DC 20060
Phone: (202) 865-5266
Fax: (202) 865-6262

Dawn Crumel
Senior Associate General Counsel for Health Affairs
Howard University
Office of the General Counsel
2400 6th Street, NW
Washington, DC 20059
Phone: (202) 806-2650
Fax: (202) 806-6357

Unless otherwise specified, all notifications and reports required by this ICA may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of Howard's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Howard's locations for the purpose of verifying and evaluating: (a) Howard's compliance with the terms of this ICA; and (b) Howard's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Howard to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Howard's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the individual and OIG. Howard shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Howard's employees may elect to be interviewed with or without a representative of Howard present. Nothing in this ICA or any other communication or report made pursuant to this ICA, shall constitute a waiver of Howard of Howard's attorney-client, attorney work-product, or other applicable privileges. Notwithstanding that fact, the existence of any such privilege shall not be used by Howard to avoid its obligations to comply with the provisions of this ICA.

VIII. DOCUMENT AND RECORD RETENTION

Howard shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this ICA, for six years (or longer if otherwise required by law).

IX. DISCLOSURES

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify Howard prior to any release by OIG of information submitted by Howard pursuant to its obligations under this ICA and identified upon submission by Howard as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Howard shall have the rights set forth at 45 C.F.R. § 5.65(d). Howard shall refrain from identifying any information as exempt from release if that information does not meet the criteria for exemption from disclosure under FOIA.

X. BREACH AND DEFAULT PROVISIONS

Howard is expected to fully and timely comply with all of its ICA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Howard and OIG hereby agree that failure to comply with certain obligations set forth in this ICA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Howard fails to have in place any of the obligations described in Section III:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. a written Code of Conduct;
- d. written Policies and Procedures;

- e. a requirement that Covered Persons be trained; and
- f. a Disclosure Program.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Howard fails to retain an IRO, as required in Section III.D.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Howard fails to meet any of the deadlines for the submission of the Implementation Report or the Annual Reports to OIG.

4. A Stipulated Penalty of \$2,000 (which shall begin to accrue on the date the failure to comply began) for each day Howard employs or contracts with or grants staff privileges to an Ineligible Person and that person: (i) has responsibility for, or involvement with, Howard's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds (the Stipulated Penalty described in this Paragraph shall not be demanded for any time period during which Howard can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in Section III.F) as to the status of the person).

5. A Stipulated Penalty of \$1,500 for each day Howard fails to grant access to the information or documentation as required in Section VII. (This Stipulated Penalty shall begin to accrue on the date Howard fails to grant access.)

6. A Stipulated Penalty of \$1,000 for each day Howard fails to comply fully and adequately with any obligation of this ICA. In its notice to Howard, OIG shall state the specific grounds for its determination that Howard has failed to comply fully and adequately with the ICA obligation(s) at issue and steps Howard shall take to comply with the ICA. (This Stipulated Penalty shall begin to accrue 10 days after Howard receives notice from OIG of the failure to comply.) A Stipulated Penalty as described in this Paragraph shall not be demanded for any violation for which OIG has sought a Stipulated Penalty under Subsections 1-5 of this Section.

B. Timely Written Requests for Extensions. Howard may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this ICA. Notwithstanding any other provision in

this Section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Howard fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Howard receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that Howard has failed to comply with any of the obligations described in Section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Howard of: (a) Howard's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days of the receipt of the Demand Letter, Howard shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E. In the event Howard elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Howard cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this ICA and shall be grounds for exclusion under Section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to: "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in Section VI.

4. *Independence from Material Breach Determination.* Except as set forth in Section X.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Howard has materially breached this ICA, which decision shall be made at OIG's discretion and shall be governed by the provisions in Section X.D, below.

D. Exclusion for Material Breach of this ICA.

1. *Definition of Material Breach.* A material breach of this ICA means:

- a. a failure by Howard to report a Material Deficiency, take corrective action, and make the appropriate refunds, as required in Section III.H;
- b. a repeated or flagrant violation of the obligations under this ICA, including, but not limited to, the obligations addressed in Section X.A;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C; or
- d. a failure to retain and use an IRO in accordance with Section III.D.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this ICA by Howard constitutes an independent basis for Howard's exclusion from participation in the Federal health care programs. Upon a determination by OIG that Howard has materially breached this ICA and that exclusion should be imposed, OIG shall notify Howard of: (a) Howard's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

3. *Opportunity to Cure.* Howard shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Howard is in compliance with the obligations of the ICA cited by OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Howard has begun to take action to cure the material breach; (ii) Howard is pursuing such action with due diligence; and (iii) Howard has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Howard fails to satisfy the requirements of Section X.D.3, OIG may exclude Howard from participation in the Federal health care programs. OIG shall notify Howard in writing of its determination to exclude Howard (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. Reinstatement to program participation is not automatic. If, at the end of the period of exclusion, Howard wishes to apply for reinstatement, Howard shall submit a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Howard of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this ICA, Howard shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this ICA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days of receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days of receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this ICA shall be: (a) whether Howard was in full and timely compliance with the obligations of this ICA for which OIG demands payment; and (b) the period of noncompliance. Howard shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this ICA and orders Howard to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Howard requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of

OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

3. *Exclusion Review.* Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this ICA shall be:

- a. whether Howard was in material breach of this ICA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and
- c. whether the alleged material breach could not have been cured within the 30-day period, but that: (i) Howard had begun to take action to cure the material breach within that period; (ii) Howard has pursued and is pursuing such action with due diligence; and (iii) Howard provided to OIG within that period a reasonable timetable for curing the material breach and Howard has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Howard, only after a DAB decision in favor of OIG. Howard's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Howard upon the issuance of an ALJ's decision in favor of OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Howard may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. Howard shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Howard, Howard shall be reinstated effective on the date of the original exclusion.

4. *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this ICA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this ICA.

XI. EFFECTIVE AND BINDING AGREEMENT

Consistent with the provisions in the Settlement Agreement pursuant to which this ICA is entered, and into which this ICA is incorporated, Howard and OIG agree as follows:

A. This ICA shall be binding on the successors, assigns, and transferees of Howard;

B. This ICA shall become final and binding on the date the final signature is obtained on the ICA;

C. Any modifications to this ICA shall be made with the prior written consent of the parties to this ICA;

D. OIG may agree to a suspension of Howard's obligations under the ICA in the event of Howard's cessation of participation in Federal health care programs. If Howard withdraws from participation in Federal health care programs and is relieved from its ICA obligations by OIG, Howard shall notify OIG at least 30 days in advance of Howard's intent to reapply as a participating provider or supplier with the Federal health care programs. Upon receipt of such notification, OIG shall evaluate whether the ICA should be reactivated or modified.

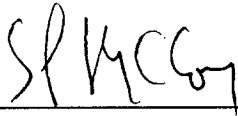
E. The undersigned Howard signatories represent and warrant that they are authorized to execute this ICA. The undersigned OIG signatory represents that he is signing this ICA in his official capacity and that he is authorized to execute this ICA.

ON BEHALF OF HOWARD



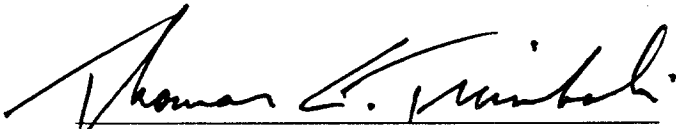
Floyd J. Malveaux, M.D., Ph.D.
Vice Provost for Health Affairs
Dean, College of Medicine
Howard University

6/26/02
DATE



Sherman P. McCoy
Executive Director, CEO
Howard University Hospital

6/26/02
DATE



Thomas A. Trimboli
Deputy General Counsel
Howard University

June 26, 2002
DATE

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

DATE

ON BEHALF OF HOWARD

Floyd J. Malveaux, M.D., Ph.D.
Vice Provost for Health Affairs
Dean, College of Medicine
Howard University

DATE

Sherman P. McCoy
Executive Director, CEO
Howard University Hospital

DATE

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Deputy General Counsel
Howard University

DATE

ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Lewis Morris

LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

June 28, 2002

DATE

APPENDIX A

A. Claims Review.

1. **Definitions.** For the purposes of the Claims Review, the following definitions shall be used:

- a. Overpayment: The amount of money Howard has received in excess of the amount due and payable under any Federal health care program requirements.
- b. Item: Any discrete unit that can be sampled (e.g., code, line item, beneficiary, patient encounter, etc.).
- c. Paid Claim: A code or line item submitted by Howard and for which Howard has received reimbursement from the Medicare program.
- d. Population: All Items for which Howard has submitted a code or line item and for which Howard has received reimbursement from the Medicare program (i.e., a Paid Claim) during the 12-month period covered by the Claims Review. To be included in the Population, an Item must have resulted in at least one Paid Claim.
- e. Error Rate: The Error Rate shall be the percentage of net Overpayments identified in the sample. The net Overpayments shall be calculated by subtracting all underpayments identified in the sample from all gross Overpayments identified in the sample. (Note: Any potential cost settlements or other supplemental payments shall not be included in the net Overpayment calculation. Rather, only underpayments identified as part of the Discovery Sample or Full Sample (as applicable) shall be included as part of the net Overpayment calculation.)

The Error Rate is calculated by dividing the net Overpayment identified in the sample by the total dollar amount associated with the Items in the sample.

2. **Other Requirements.**

- a. Paid Claims without Supporting Documentation. For the purpose of appraising Items included in the Claims Review, any Paid Claim for which

Howard cannot produce documentation sufficient to support the Paid Claim shall be considered an error and the total reimbursement received by Howard for such Paid Claim shall be deemed an Overpayment. Replacement sampling for Paid Claims with missing documentation shall not be permitted.

b. Use of First Samples Drawn. For the purposes of all samples (Discovery Sample(s) and Full Sample(s)) discussed in this Appendix, the Paid Claims associated with the Items selected in each first sample (or first sample for each strata, if applicable) shall be used. In other words, it is not permissible to generate more than one list of random samples and then select one for use with the Discovery Sample or Full Sample.

B. Claims Review Report. The following information shall be included in the Claims Review Report for each Discovery Sample and Full Sample (if applicable).

1. Claims Review Methodology.

a. Sampling Unit. A description of the Item as that term is utilized for the Claims Review.

b. Claims Review Population. A description of the Population subject to the Claims Review.

c. Claims Review Objective. A clear statement of the objective intended to be achieved by the Claims Review.

d. Sampling Frame. A description of the sampling frame, which is the totality of Items from which the Discovery Sample and, if any, Full Sample has been selected and an explanation of the methodology used to identify the sampling frame. In most circumstances, the sampling frame will be identical to the Population.

e. Source of Data. A description of the documentation relied upon by the IRO when performing the Claims Review (e.g., medical records, physician orders, certificates of medical necessity, requisition forms, local medical review policies, CMS program memoranda, Medicare carrier or intermediary manual or bulletins, other policies, regulations, or directives).

f. Review Protocol. A narrative description of how the Claims Review was conducted and what was evaluated.

2. **Statistical Sampling Documentation.**

a. The number of Items appraised in the Discovery Sample and, if applicable, in the Full Sample.

b. A copy of the printout of the random numbers generated by the “Random Numbers” function of the statistical sampling software used by the IRO.

c. A copy of the statistical software printout(s) estimating how many Items are to be included in the Full Sample, if applicable.

d. A description or identification of the statistical sampling software package used to conduct the sampling.

3. **Claims Review Findings.**

a. Narrative Results.

i. A description of Howard’s billing and coding system(s), including the identification, by position description, of the personnel involved in coding and billing.

ii. A narrative explanation of the IRO’s findings and supporting rationale (including reasons for errors, patterns noted, etc.) regarding the Claims Review, including the results of the Discovery Sample, and the results of the Full Sample (if any) with the gross Overpayment amount, the net Overpayment amount, and the corresponding Error Rate(s) related to the net Overpayment.

b. Quantitative Results.

i. Total number and percentage of instances in which the IRO determined that the Paid Claims submitted by Howard (“Claim Submitted”) differed from what should have been the correct claim (“Correct Claim”), regardless of the effect on the payment.

- ii. Total number and percentage of instances in which the Claim Submitted differed from the Correct Claim and in which such difference resulted in an Overpayment to Howard.
- iii. Total dollar amount of paid Items included in the sample and the net Overpayment associated with the sample.
- iv. Error Rate in the sample.
- v. A spreadsheet of the Claims Review results that includes the following information for each Paid Claim appraised: Federal health care program billed, beneficiary health insurance claim number, date of service, procedure code submitted, procedure code reimbursed, allowed amount reimbursed by payor, correct procedure code (as determined by the IRO), correct allowed amount (as determined by the IRO), and dollar difference between allowed amount reimbursed by payor and the correct allowed amount. (See Attachment 1 to this Appendix.)

4. **Systems Review.** Observations, findings, and recommendations on possible improvements to the system(s) and process(es) that generated the Overpayment(s).

5. **Credentials.** The names and credentials of the individuals who: (1) designed the statistical sampling procedures and the review methodology utilized for the Claims Review; and (2) performed the Claims Review.

OVERPAYMENT REFUND

TO BE COMPLETED BY MEDICARE CONTRACTOR

Date: _____
 Contractor Deposit Control # _____ Date of Deposit: _____
 Contractor Contact Name: _____ Phone # _____
 Contractor Address: _____
 Contractor Fax: _____

TO BE COMPLETED BY PROVIDER/PHYSICIAN/SUPPLIER

Please complete and forward to Medicare Contractor. This form, or a similar document containing the following information, should accompany every voluntary refund so that receipt of check is properly recorded and applied.

PROVIDER/PHYSICIAN/SUPPLIER NAME _____
 ADDRESS _____
 PROVIDER/PHYSICIAN/SUPPLIER # _____ CHECK NUMBER# _____
 CONTACT PERSON: _____ PHONE # _____
 AMOUNT OF CHECK \$ _____ CHECK DATE _____

REFUND INFORMATION

For each Claim, provide the following:

Patient Name _____ HIC # _____
 Medicare Claim Number _____ Claim Amount Refunded \$ _____
 Reason Code for Claim Adjustment: _____ (Select reason code from list below. Use one reason per claim)

(Please list all claim numbers involved. Attach separate sheet, if necessary)

Note: If Specific Patient/HIC/Claim #/Claim Amount data not available for all claims due to Statistical Sampling, please indicate methodology and formula used to determine amount and reason for overpayment:

For Institutional Facilities Only:

Cost Report Year(s) _____
 (If multiple cost report years are involved, provide a breakdown by amount and corresponding cost report year.)

For OIG Reporting Requirements:

Do you have a Corporate Integrity Agreement with OIG? Yes No

Reason Codes:

Billing/Clerical Error	MSP/Other Payer Involvement	Miscellaneous
01 - Corrected Date of Service	08 - MSP Group Health Plan Insurance	13 - Insufficient Documentation
02 - Duplicate	09 - MSP No Fault Insurance	14 - Patient Enrolled in an HMO
03 - Corrected CPT Code	10 - MSP Liability Insurance	15 - Services Not Rendered
04 - Not Our Patient(s)	11 - MSP, Workers Comp.(Including Black Lung	16 - Medical Necessity
05 - Modifier Added/Removed	12 - Veterans Administration	17 - Other (Please Specify)
06 - Billed in Error		
07 - Corrected CPT Code		

APPENDIX C

A. Covered Persons Exceptions.

The following HUH or COM shall be excluded from the definition of Covered Persons as set forth in Section I of the ICA:

1. custodians;
2. environmental service workers (performing physical facilities repair and maintenance);
3. housekeepers;
4. laundry/linen service workers;
5. food service workers;
6. security guards;
7. faculty and non-faculty positions of the COM that do not directly or indirectly involve the following:
 - a. the delivery of patient care items or services;
 - b. preparation or submission of claims for reimbursement under a Federal health care program;
 - c. administration of the COM's physicians' practice plan, if one should be established;
 - d. performance of any research paid in whole or in part with federal financial assistance;
 - e. responsibility for determining or managing departmental budgets; or
 - f. supervision of any employees involved with any of the functions listed in 7.a through 7.f; and
8. clerical and administrative positions (e.g. secretaries, administrative assistants, and administrative aides) whose primary responsibilities are directed by and for those exempt employees described in (1) through (7).

