

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Attorney’s Office for the District of Arizona and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) and the Office of Personnel Management (“OPM”) (collectively “the United States”); Carondelet Health Network, Carondelet St. Mary’s Hospital, and Carondelet St. Joseph’s Hospital (collectively “Carondelet”); and Jacqueline Bloink (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Carondelet Health Network is an Arizona non-profit corporation incorporated on or about November 26, 1956, with its principal place of business located at 2202 North Forbes Road, Tucson, Arizona 85745. At all relevant times, Carondelet was doing business as both Carondelet St. Mary’s Hospital, which is located at 1601 West St. Mary’s Road, Tucson, Arizona 85745, and Carondelet St. Joseph’s Hospital, which is located at 350 North Wilmot Road, Tucson, Arizona 85711.

B. On November 15, 2011, Relator filed a *qui tam* action in the United States District Court for the District of Arizona captioned *United States ex rel. Bloink v. Carondelet Health Network, et al.*, bearing case number CV-11-721-TUC-FRZ, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). Relator alleges that Carondelet knowingly caused the submission to Medicare of false claims for payment for inpatient rehabilitation facility services that did not meet

certain Medicare rehabilitation coverage requirements. The United States intends to intervene in the Civil Action.

C. The United States contends that Carondelet submitted or caused to be submitted claims for payment to the Medicare Program (“Medicare”), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1; the Federal Employees Health Benefit Program (“FEHBP”), 5 U.S.C. §§ 8901-8914; and the Arizona Medicaid Program, also known as the Arizona Health Care Cost Containment System (“Medicaid”), 42 U.S.C. §§ 1396-1396w-5.

D. The United States contends that it has certain civil claims against Carondelet arising from bills that Carondelet St. Mary’s Hospital and Carondelet St. Joseph’s Hospital submitted or caused to be submitted to Medicare, FEHBP, and Medicaid from April 7, 2004, through December 31, 2011. More specifically, the United States contends that from April 7, 2004, through December 31, 2011, Carondelet knowingly and falsely billed, or caused to be billed, Medicare, FEHBP, and Medicaid for inpatient rehabilitation facility services that were not properly reimbursable under applicable coverage criteria because the patients were not appropriate for inpatient rehabilitation facility services. The conduct described in this Paragraph is referred to below as “the Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by Carondelet nor a concession by the United States that its claims are not well founded. Carondelet expressly denies the allegations of the United States and the Relator set forth herein and in the Civil Action.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Carondelet shall pay to the United States \$35,000,000.00 ("the Settlement Amount") no later than 20 days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Arizona.

2. Conditioned upon the United States receiving the Settlement Amount from Carondelet, and as soon as feasible after receipt, the United States shall pay \$5,950,000.00 to Relator by electronic funds transfer pursuant to written instructions to be provided by Relator's counsel to the United States Attorney's Office for the District of Arizona.

3. Relator and Carondelet have separately agreed on the amount of full and complete payment of Relator's attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d) incurred in connection with the Civil Action. Payment shall be made within ten (10) days of the date of execution of this Agreement via electronic transfer to a trust account for Relator, through her counsel, in accordance with written instructions to be provided by her counsel. No additional attorneys' fees or costs shall be paid or claimed by Relator or her counsel in connection with the Civil Action.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Carondelet's full payment of the Settlement Amount, the United States releases Carondelet, together with its current or former direct or indirect parent corporations; direct or indirect subsidiaries; direct or indirect brother or sister corporations; divisions; owners; and officers, directors, employees and affiliates; and the successors and assignees of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon Carondelet's full payment of the Settlement Amount, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and discharges Carondelet, together with its current or former direct or indirect parent corporations; direct or indirect subsidiaries; direct or indirect brother or sister corporations; divisions; owners; and officers, directors, employees and affiliates; and the successors and assignees of any of them, from any claims (including civil monetary claims) the Relator could have asserted, or may assert in the future on behalf of herself or the United States against Carondelet, together with its current or former direct or indirect parent corporations; direct or indirect subsidiaries; direct or indirect brother or sister corporations; divisions; owners; and officers, directors, employees and affiliates; and the successors and assignees of any of them, related to the Covered Conduct or the Civil Action.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any administrative liability, including mandatory or permissive exclusion from Federal health care programs or the FEHBP;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. §

3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Carondelet, together with its current or former direct or indirect parent corporations; direct or indirect subsidiaries; direct or indirect brother or sister corporations; divisions; owners; and officers, directors, employees and affiliates; and the successors and assignees of any of them, from any liability to Relator related to or arising from the filing of the Civil Action or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. Carondelet (together with its current or former direct or indirect parent corporations; direct or indirect subsidiaries; direct or indirect brother or sister corporations; divisions; owners; and officers, directors, employees and affiliates; and the successors and assignees of any of them) fully and finally releases, waives, and discharges Relator, her heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Carondelet could have asserted, or may assert in the future against Relator, her heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, related to the Covered Conduct and Relator's and the United States' investigations and prosecution concerning the Civil Action.

10. Carondelet waives and shall not assert any defenses Carondelet may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause

in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this Paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Carondelet fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Carondelet has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. Carondelet (a) agrees that the Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), any FEHBP carrier or payer, or any state payer related to the Covered Conduct; (b) agrees not to resubmit to any Medicare contractor, FEHBP carrier or payer, or any state payer any previously denied claims related to the Covered Conduct; and (c) agrees not to appeal any such denials of claims.

13. Carondelet agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the

regulations and official program directives promulgated thereunder) incurred by or on behalf of Carondelet, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Carondelet's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Carondelet makes to the United States pursuant to this Agreement and any payments that Carondelet may make to Relator, including costs and attorneys' fees;

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Carondelet, and Carondelet shall not charge such Unallowable Costs directly or indirectly

to any contracts with the United States or any state Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Carondelet or any of its subsidiaries or affiliates to the Medicare, Medicaid, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Carondelet further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any state Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Carondelet or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Carondelet agrees that the United States, at a minimum, shall be entitled to recoup from Carondelet any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the United States Attorney's Office for the District of Arizona and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Carondelet or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on

Carondelet or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Carondelet's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

14. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 15 (waiver for beneficiaries paragraph), below.

15. Carondelet agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as the Covered Conduct.

16. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a) proposing that the Civil Action be dismissed with prejudice subject to the terms of the settlement.

17. The Parties shall bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. The Parties to this Agreement represent that they freely and voluntarily enters this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Arizona. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the entities indicated below.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Carondelet's successors, transferees, heirs, and assigns.

24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

25. The Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement ("the Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/29/14

BY: 
LON R. LEAVITT
Assistant United States Attorney
District of Arizona

DATED: 7/29/14

BY: 
PAUL A. BULLIS
Assistant United States Attorney
District of Arizona

DATED: _____

BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

DATED: _____

BY: _____
ALAN P. SPIELMAN
Assistant Director of Federal Employee
Insurance Operations
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

LON R. LEAVITT
Assistant United States Attorney
District of Arizona

DATED: _____

BY: _____

PAUL A. BULLIS
Assistant United States Attorney
District of Arizona

DATED: 7/25/14

BY: Robert K. DeConti

ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

DATED: _____

BY: _____

ALAN P. SPIELMAN
Assistant Director of Federal Employee
Insurance Operations
United States Office of Personnel Management

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
LON R. LEAVITT
Assistant United States Attorney
District of Arizona

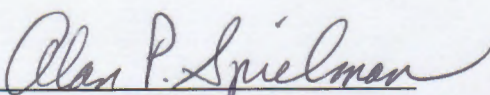
DATED: _____

BY: _____
PAUL A. BULLIS
Assistant United States Attorney
District of Arizona

DATED: _____

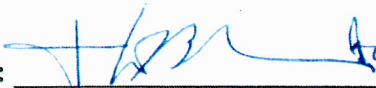
BY: _____
ROBERT K. DECONTI
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services

DATED: 7/23/14

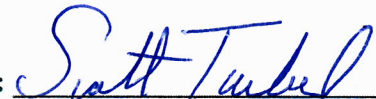
BY: 
ALAN P. SPIELMAN
Assistant Director of Federal Employee
Insurance Operations
United States Office of Personnel Management

CARONDELET HEALTH NETWORK

DATED: 7-24-14

BY: 
JAMES K. BECKMANN
President and Chief Executive Officer

DATED: 7/24/2014

BY: 
SCOTT W. TAEBEL, ESQ.
KATHERINE A. KUCHAN, ESQ.
Hall Render Killian Heath & Lyman, P.C.
Counsel for Carondelet Health Network

JACQUELINE BLOINK

DATED: _____

BY: _____
JACQUELINE BLOINK
Relator

DATED: 7/22/14

BY:  _____
DAVID J. CAPUTO, ESQ.
DAVID C. WILLIAMS, ESQ.
Kline & Specter, P.C.
Counsel for Relator Jacqueline Bloink

DATED: _____

BY: _____
JOSEPH TRAUTWEIN, ESQ.
Joseph Trautwein & Associates, LLC
Counsel for Relator Jacqueline Bloink

JACQUELINE BLOINK

DATED: _____

BY: _____
JACQUELINE BLOINK
Relator

DATED: _____

BY: _____
DAVID J. CAPUTO, ESQ.
DAVID C. WILLIAMS, ESQ.
Kline & Specter, P.C.
Counsel for Relator Jacqueline Bloink

DATED:

7/22/14

BY:



JOSEPH TRAUTWEIN, ESQ.
Joseph Trautwein & Associates, LLC
Counsel for Relator Jacqueline Bloink

JACQUELINE BLOINK

DATED: Tue. July 22, 2014

BY: J. Bloink

JACQUELINE BLOINK
Relator

DATED: _____

BY: _____

DAVID J. CAPUTO, ESQ.

DAVID C. WILLIAMS, ESQ.