CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
MICHIGAN MASONIC HOME

I. PREAMBLE

Michigan Masonic Home ("MMH") hereby agrees to enter into this Corporate Integrity Agreement ("Agreement") with the Office of Inspector General of the United States Department of Health and Human Services ("OIG") to provide for the establishment of a Corporate Integrity Program to ensure compliance with the billing and reimbursement requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))(hereinafter collectively referred to as the "Federal health care programs") by MMH, its employees, contractors and agents ("Covered Persons") with whom MMH may choose to engage to act as billing or coding consultants for MMH.

The Program shall be maintained so as to ensure that MMH and each of its directors, officers, employees, contractors and agents maintain the business integrity required of a participant in Federal health care programs, and that MMH's billings for medical care and related reimbursable expenses are in effective compliance with all statutes, regulations and guidelines applicable to such programs and with the terms of this Agreement as set forth below. MMH is entering into a settlement agreement with the United States and this Agreement is incorporated into that Settlement Agreement by reference.

Prior to the execution of this Agreement, MMH developed and is in the process of implementing a Corporate Integrity Program ("Program"), which provides for corporate integrity policies and procedures and which, as represented by MMH in this Agreement, is aimed at ensuring that its participation in the Federal health care programs (which includes any requests for payments from Federal health care programs) is in conformity with the statutes, regulations, and other directives applicable to the Federal health care programs. Therefore, pursuant to this Agreement, MMH hereby agrees to maintain in full operation the Program for the term of this Agreement. The Program may be modified by MMH as appropriate, but, at a minimum, shall always comply with integrity obligations enumerated in this Agreement. MMH shall notify OIG of any substantive changes to the

Program within thirty days of making such changes.

II. TERM OF THE AGREEMENT

The period of compliance obligations assumed by MMH under this Agreement shall be three (3) years from the effective date of this Agreement. The effective date will be the date on which the final signatory of this Agreement executes this Agreement ("the effective date").

III. CORPORATE INTEGRITY OBLIGATIONS

Pursuant to this Agreement, and for the duration of this Agreement, MMH will make the following integrity obligations permanent features of its Program, which shall be established in accordance with the provisions below:

A. CORPORATE COMPLIANCE OFFICER

MMH has represented to OIG that, pursuant to its Program, it has provided for the creation of a Compliance Officer position and will appoint an individual within ninety (90) days of the effective date of this Agreement to serve in that capacity. Accordingly, MMH shall formally maintain the appointment of an individual to serve as the Compliance Officer. At a minimum, the Compliance Officer must continuously be charged with the responsibility for the day-to-day compliance activities in furtherance of the integrity obligations assumed herein, as well as for any reporting obligations established under this Agreement. The Compliance Officer must report directly to the Chief Executive Officer ("CEO") of MMH and to the President of MMH's Board of Trustees and shall have unrestricted access to the Board of Trustees for MMH. The Compliance Officer shall be a member of management and shall make regular (at least quarterly) reports regarding compliance matters directly to MMH's CEO and/or to the Board of Trustees of MMH. When the identity of the Compliance Officer changes, MMH shall notify, in writing, the OIG within fifteen (15) days of such change. All other matters affecting the Compliance Officer shall be reported in accordance with Section VI below.

B. COMPLIANCE COMMITTEE

MMH has represented to OIG that, pursuant to its Program, it will create a Compliance Committee and, within ninety (90) days of the effective date of this Agreement, appoint individuals to serve on the Compliance Committee.

Accordingly, MMH shall ensure that the Compliance Committee is continuously composed of representatives of multiple disciplines and segments of MMH's operations. At a minimum, the Compliance Committee shall include the Compliance Officer and any other appropriate officers as necessary to meet the requirements of this Agreement (e.g., senior executives of each major department, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

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 Agreement, must be reported to OIG, in writing, within fifteen (15) days of such a change.

C. WRITTEN STANDARDS

1. *Code of Conduct.* MMH has represented to OIG that it is in the process of adopting its Code of Conduct and is implementing its Program. Accordingly, MMH shall formally adopt the written Code of Conduct and implement its Program within ninety (90) days of the effective date of this Agreement. MMH is implementing and shall maintain a Program which shall at a minimum set forth:

a. MMH's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements;

b. MMH's requirement that all of its employees, contractors or agents shall be expected to comply with all Federal health care program requirements and with MMH's own policies and procedures (including the requirements of this Agreement);

c. the requirement that all of MMH's Covered Persons shall be expected to report to the Compliance Officer or other individual designated by MMH suspected violations of any Federal health care program requirements or of MMH's own policies and procedures;

d. the possible consequences to both MMH and to any Covered Persons of failure to comply with all Federal health care program requirements and with MMH's own policies and procedures or of failure to report such non-compliance; and

e. the right of all individuals to use the confidential disclosure program as described in section III.F, and MMH's commitment to maintain confidentiality, as appropriate, and non-retaliation with respect to disclosures.

Compliance staff or supervisors should be available to explain any and all of the Code of Conduct. MMH shall distribute any changes to its Code of Conduct to all Covered Persons with whom MMH may choose to engage to act as billing or coding agents or consultants for MMH whose positions are impacted by the changes.

Within ninety (90) days of the effective date of the Agreement, a summary of MMH's Program shall be distributed by MMH to all Covered Persons with whom MMH may engage to act as billing or coding agents or consultants for MMH. Each employee shall certify, in writing, on an annual basis, that he or she has read, understands, and will abide by MMH's Program. New employees shall receive a summary of MMH's Program within one week after commencement of their employment. Within thirty (30) days of the beginning of their employment, these individuals shall certify, in writing, that they have read, understand and will abide by MMH's Program.

At least annually (and more frequently if appropriate), MMH 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 distributed to all individuals whose job functions are related to those policies and procedures.

2. *Policies and Procedures*. Within ninety (90) days of the effective date of this Agreement, MMH shall develop and initiate implementation of written Policies and Procedures regarding the operation of MMH's compliance program and its compliance with all Federal health care program requirements. The Policies and Procedures shall incorporate the following requirements:

a. The requirement that MMH staff follow proper billing procedures for Medicare Part B supplies;

b. The requirement that all copayments will be collected in accordance with applicable Medicare rules and regulations; and

c. The requirement that the Policies and Procedures shall include disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues to MMH management through the Confidential Disclosure Program required by section III.F.

Within ninety (90) days of the effective date of the Agreement, the relevant portions of the Policies and Procedures shall be made available to all Covered Persons. Compliance staff or supervisors should be available to explain any and all policies and procedures.

MMH shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. Within thirty (30) days of the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be distributed to all individuals whose job functions are related to those Policies and Procedures. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report. The Policies and Procedures will be available to OIG upon request.

D. TRAINING AND EDUCATION

1. *General Training.* Within ninety (90) days of the effective date of this Agreement, MMH shall provide at least one (1) hour of general training to each Covered Person. This training shall explain MMH's:

a. Agreement requirements; and

b. Compliance Program (including the Code of Conduct and the Policies and Procedures as they pertain to general compliance issues).

All training materials shall be made available to OIG, upon request.

New Covered Persons shall receive the general training described above within thirty (30) days of becoming a Covered Person or within ninety (90) days after the effective date of this Agreement, 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 ninety (90) days of the effective date of this Agreement, each Covered Person who is involved in the submission of claims for reimbursement from any Federal health care program (hereinafter referred to as "Relevant Covered Persons") shall receive at least three (3) 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 bills for services rendered to Federal health care program patients;

b. policies, procedures and other requirements applicable to the documentation of medical records;

c. the personal obligation of each individual involved in the billing process to ensure that such billings are accurate;

d. applicable reimbursement rules and statutes;

e. the legal sanctions for improper billings;

f. examples of proper and improper billing practices;

g. guidance on Federal health care program regulations involving submitting bills for supplies; and

h. applicable Federal health care program regulations concerning the collection of co-payment amounts related to services or supplies MMH provides or for which MMH serves as the billing agent.

All training materials shall be made available to OIG, upon request. Persons providing the training must be knowledgeable about the subject area.

Relevant Covered Persons shall receive this training within thirty (30) days

of the beginning of their employment or becoming Relevant Covered Persons or within ninety (90) days of the effective date of this Agreement, whichever is later. A MMH 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 in the preparation or submission of claims for reimbursement from any Federal health care program, until such time as the new Relevant Covered Person completes applicable training.

After receiving the initial training described in this section, every Relevant Covered Person shall receive at least three (3) hours of specific training annually.

3. *Certification.* Each individual who is required to attend training shall certify, in writing, or in electronic form, if they have computerized training 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 his or her designee) shall retain the certifications, along with all course materials. These shall be made available to OIG, upon request.

E. REVIEW PROCEDURES

MMH shall retain an entity, such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization"), to perform review procedures to assist MMH in assessing the adequacy of its billing and compliance practices pursuant to this Agreement. This shall be an annual requirement and shall cover a twelve (12) month period. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs from which MMH seeks reimbursement. The Independent Review Organization must be retained to conduct the audit of the first year within ninety (90) days of the effective date of this Agreement.

The Independent Review Organization will conduct two separate engagements. One will be an analysis of MMH's billing to the Federal health care programs to assist MMH and OIG in determining compliance with all applicable statutes, regulations, and directives/guidance ("billing engagement"). The second engagement will determine whether MMH is in compliance with this Agreement ("compliance engagement").

1. *Billing Engagement.* The billing engagement shall consist of a review of a statistically valid sample of claims that can be projected to the population of claims for the relevant period. The sample size shall be determined through the use of a probe sample. At a minimum, the full sample must be within a ninety (90) percent confidence level and a precision of twenty-five (25) percent. The probe sample must contain at least thirty (30) sample units and cannot be used as part of the full sample. Both the probe sample and the sample must be selected through random numbers. MMH shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "http://www.hhs.gov/progorg/oas/ratstat.html".

Each annual billing engagement analysis shall include the following components in its methodology:

a. Billing Engagement Objective: A statement stating clearly the objective intended to be achieved by the billing engagement and the procedure or combination of procedures that will be applied to achieve the objective.

b. Billing Engagement Population: Identify the population, which is the group about which information is needed. Explain the methodology used to develop the population and provide the basis for this determination.

c. Sources of Data: Provide a full description of the source of the information upon which the billing engagement conclusions will be based, including the legal or other standards applied, documents relied upon, payment data, and/or any contractual obligations.

d. Sampling Unit: Define the sampling unit, which is any of the designated elements that comprise the population of interest.

e. Sampling Frame: Identify the sampling frame, which is the totality of the sampling units from which the sample will be selected.

The billing engagement shall provide:

a. findings regarding MMH's billing and coding operation

(including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, effectiveness of the system);

b. findings regarding whether MMH is submitting accurate claims for services billed to the Federal health care programs;

c. findings regarding MMH procedures to correct inaccurate billings to the Federal health care programs;

d. findings regarding MMH's collection of the co-payment amount related to Federal health care program services or supplies MMH provides or for which MMH serves as the billing agent;

e. findings regarding MMH's billing to Federal health care programs for supplies; and

f. findings regarding the steps MMH is taking to bring its operations into compliance or to correct problems identified by the audit.

2. *Compliance Engagement.* An Independent Review Organization shall also conduct a compliance engagement, which shall provide findings regarding whether MMH's program, policies, procedures, and operations comply with the terms of this Agreement. This engagement shall include section by section findings regarding the requirements of this Agreement. Based on the results of the first Compliance Engagement and on the results of the Billing Engagement for the first year of the term of this Agreement, OIG may, at its sole discretion, relieve MMH of its obligation to retain an IRO to conduct a Compliance Engagement for the second and third years of this Agreement.

A complete copy of the Independent Review Organization's billing and compliance engagement shall be included in each of MMH's Annual Reports to OIG.

3. *Verification/Validation.* In the event that the OIG determines that it is necessary to conduct an independent review to determine whether or the extent to which MMH is complying with its obligations under this Agreement, MMH agrees to pay for the reasonable cost of any such review or engagement by the OIG or any of its designated agents.

F. CONFIDENTIAL DISCLOSURE PROGRAM

Within ninety (90) days after the effective date of this Agreement, MMH shall establish a Confidential Disclosure Program ("CDP"), which must include measures (e.g., a toll-free compliance telephone line) to enable employees, contractors, agents or other individuals to disclose, to the Compliance Officer or some other person who is not in the reporting individual's chain of command, any identified issue or questions associated with MMH's policies, practices or procedures with respect to Medicare, Medicaid, or any other Federal health care program, alleged by the individual to be inappropriate.

MMH's CDP shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. MMH's Compliance Officer upon receipt of a complaint shall gather information in such a way as to elicit all relevant information from individuals reporting alleged misconduct. The Compliance Officer and/or Compliance Committee shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that it has obtained all of the information necessary to determine whether it should conduct further review. Moreover, MMH shall, as part of its CDP, require the internal review of any disclosure that is sufficiently specific so that it: (1) permits a determination of the appropriateness of the practice alleged to be involved; and (2) reasonably permits corrective action to be taken and ensures that proper follow-up is conducted.

The Compliance Officer also shall maintain a confidential disclosure log, which shall include a record of each allegation received, status of the investigation of the allegation, and any corrective action taken in response to the investigation.

G. INELIGIBLE PERSONS

1. *Definition*. For purposes of this Agreement, an "Ineligible Person" shall be any individual or entity who: (a) is currently excluded, debarred 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 related to the provision of health care items or services, but has not yet been excluded, debarred or otherwise declared

ineligible.

2. *Screening Requirements*. MMH shall not hire or engage as contractors any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, MMH shall screen all prospective employees and prospective contractors prior to engaging their services by: (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) reviewing 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://www.hhs.gov/oig) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement*. Within ninety (90) days of the effective date of this Agreement, MMH shall review its list of current employees and contractors against the Exclusion Lists. Thereafter, MMH shall review the list annually. In addition, MMH shall require employees and contractors to disclose immediately any debarment, exclusion or other event that makes the employee an Ineligible Person.

If MMH has notice that an employee or contractor has become an Ineligible Person, MMH shall remove such person from responsibility for, or involvement with, MMH'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 MMH has 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, the MMH 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.

H. REPORTING

1. *Overpayments*

a. Definition of Overpayments. For purposes of this Agreement, an "overpayment" shall mean the amount of money MMH has received in excess of the amount due and payable under any Federal health care program requirements. MMH may not subtract any underpayments for purposes of determining the amount of relevant "overpayments."

b. Reporting of Overpayments. If, at any time, MMH identifies or learns of any overpayments, MMH shall notify the payor (e.g., Medicare fiscal intermediary or carrier) and repay any identified overpayments within 30 days of discovery and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring. Notification and repayment to the contractor should be done in accordance with the contractor policies, and for Medicare contractors, must include the information contained on the Overpayment Refund Form, provided as Attachment A to this Agreement.

2. *Material Deficiencies.*

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

(i) a substantial overpayment; and

(ii) a matter that a reasonable person would consider a potential 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 MMH determines that

there is a Material Deficiency, MMH shall notify OIG, in writing, within thirty (30) days of making the determination that the Material Deficiency exists. The report to the OIG shall include the following information:

(i) If the Material Deficiency results in an overpayment, the report to the OIG shall be made at the same time as the notification to the payor required in section III.G.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) on 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 MMH's actions taken to correct the Material Deficiency; and

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

I. NOTIFICATION OF GOVERNMENT INVESTIGATION OR LEGAL PROCEEDINGS.

Within thirty (30) days of discovery, MMH shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that MMH 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. MMH shall also provide written notice to OIG within thirty (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.

IV. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, contract or pursuant to this Agreement, OIG or its duly authorized representative(s) or agents may examine MMH's books, records, and other documents and supporting materials for the purpose of verifying and evaluating: (i) MMH's compliance with the terms of this Agreement; and (ii) MMH's compliance with the requirements of the Medicare, Medicaid and other Federal health care programs. The documentation described above shall be made available by MMH 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 Hospital's employees who consent to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and OIG. MMH agrees to assist OIG in contacting and arranging interviews with such employees upon OIG's request. MMH employees may elect to be interviewed with or without a representative of MMH present.

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within one-hundred and twenty (120) days after the execution of this Agreement, MMH shall submit a written report to the OIG summarizing the status of implementation of the requirements of this Agreement. This implementation report shall include:

(1) the name, address, phone number and position description of the Compliance Officer as required in III.A.;

(2) the names and positions of the members of the Compliance Committee required by section III.B;

(3) a copy of MMH's Code of Conduct required by section III.C.1;

(4) the summary of the Policies and Procedures required by section III.C.2;

(5) a description of the training required by section III.D, 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.C.2 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.C.1; and

c. all Covered Persons have completed the applicable training and executed the certification(s) required by section III.D.;

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

(7) a description of the Confidential Disclosure Program required by section III.F;

(8) the identity of the IRO(s) and the proposed start and completion dates of the first annual review;

(9) a summary of personnel actions taken pursuant to section III.G.; and

(10) a list of all of MMH'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 contractor's name and address that issued each provider identification number.

B. Annual Reports. MMH shall submit to OIG Annual Reports with respect to the status of and findings regarding of MMH's compliance activities for each of the three one-year periods beginning on the effective date of the Agreement. (The one-year period covered by each Annual Report shall be referred to as "the Reporting Period").

Each Annual Report shall include:

1. any change in the identity or position description of the Compliance Officer and/or members of the Compliance Committee described in sections III.A and III.B;

2. a certification by the Compliance Officer that:

a. all Covered Persons have completed the annual Code of Conduct certification required by section III.C.1;

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

c. MMH 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; and (ii) not to charge to or otherwise seek payment from Federal or state payors for unallowable costs (as defined in the Settlement Agreement) and 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.C.2 and the reasons for such changes (e.g., change in contractor policy);

4. a description of the training required by section III.D 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 billing and compliance engagements, including a copy of the methodology used, along with a copy of the IRO's engagement letter;

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

7. a summary of Material Deficiencies (as defined in III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Material Deficiencies;

8. 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) and other Federal health care programs;

9. a summary of the disclosures in the confidential disclosure log required by section III.F that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;

10. a description of any personnel actions (other than hiring) taken by MMH as a result of the obligations in section III.G, and the name, title, and responsibilities of any person that falls within the ambit of section III.G.4, and the actions taken in response to the obligations set forth in that section;

11. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to section III.I. 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; and

12. a description of all changes to the most recently provided list (as updated) of MMH's locations (including locations and mailing addresses) as required by section V.A.10, the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s), and the contractor name and address that issued each provider identification number.

The first Annual Report shall be received by the OIG no later than one year and sixty (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) except as otherwise described in the applicable report, MMH is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; 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: MMH 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 exempt from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. MMH 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 subsequent to the execution of this Agreement, all notifications and reports required under the terms of this Agreement shall be submitted via certified mail to the entities listed below:

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
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201
Phone 202.619.2078
Fax 202.205.0604

Michigan Masonic Home:

Corporate Compliance Officer
Michigan Masonic Home
1200 Wright Avenue
Alma, Michigan 48801
Phone 517.463.3141
Fax 517.463.1922
Medicare Provider Number

VII. DOCUMENT AND RECORD RETENTION

MMH shall maintain for inspection documents and records relating to reimbursement from the Federal health care programs or with compliance with this Agreement one year longer than the duration of this Agreement or until otherwise required by law to retain such records, whichever is later.

VIII. BREACH AND DEFAULT PROVISIONS

MMH is expected to fully and timely comply with all of its obligations under this Agreement.

A. STIPULATED PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN OBLIGATIONS

As a contractual remedy, MMH and OIG hereby agree that failure to comply with certain obligations set forth in this Agreement 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 MMH fails to have in place any of the following:

   a. a Compliance Officer as described by section III.A.;

   b. a Compliance Committee as described by section III.B;

   c. a written Code of Conduct as described by section III.C.1;

   d. written Policies and Procedures as described by section III.C.2;

   e. a requirement that Covered Persons be trained as described in section III.D; and

   f. a Confidential Disclosure Program as described in section III.F.

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 MMH fails to retain an IRO, as required in section III.E.

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 MMH 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 MMH employs or contracts with an Ineligible Person and that person: (i) has responsibility for, or involvement with, MMH'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 MMH can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.G) as to the status of the person).

5. A Stipulated Penalty of $1,500 for each day MMH fails to grant access to the information or documentation as required in section IV of this Agreement. (This Stipulated Penalty shall begin to accrue on the date MMH fails to grant access.)

6. A Stipulated Penalty of $1,000 for each day MMH fails to comply fully and adequately with any obligation of this Agreement not already covered in paragraphs1-5. In its notice to MMH, OIG shall state the specific grounds for its determination that MMH has failed to comply fully and adequately with the Agreement obligation(s) at issue and steps the MMH must take to comply with the Agreement. (This Stipulated Penalty shall begin to accrue 10 days after the date that MMH receives notice from OIG of the failure to comply.)

B. TIMELY WRITTEN REQUESTS FOR EXTENSIONS.

MMH 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 Agreement. 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 MMH 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 five business days after MMH 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 (5) 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 MMH has failed to comply with any of the obligations described in section VIII.A and after determining that Stipulated Penalties are appropriate, OIG shall notify MMH of: (a) MMH's failure to comply; and (b) the 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 fifteen (15) days of the receipt of the Demand Letter, MMH 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 MMH elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until MMH 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 Agreement and shall be grounds for exclusion under section VIII.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 VIII.D.1.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that MMH has materially breached this Agreement, which decision shall be made at OIG's discretion and shall be governed by the provisions in section VIII.D, below.

D. EXCLUSION FOR MATERIAL BREACH OF THIS AGREEMENT

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

a. a failure by MMH 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 Agreement, including, but not limited to, the obligations addressed in section VIII.A;

c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with section VIII.C; or

d. a failure to retain and use an Independent Review Organization in accordance with section III.E.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this Agreement by MMH constitutes an independent basis for MMH's exclusion from participation in the Federal health care programs. Upon a determination by OIG that MMH has materially breached this Agreement and that exclusion should be imposed, OIG shall notify MMH of: (a) MMH'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.* MMH shall have thirty (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. MMH is in full compliance with this Agreement;

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) MMH has begun to take action to cure the material breach; (ii) MMH is pursuing such action with due diligence; and (iii) MMH has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If at the conclusion of the thirty (30) day period, MMH fails to satisfy the requirements of section VIII.D.3, OIG may exclude MMH from participation in the Federal health care programs. OIG

will notify MMH in writing of its determination to exclude MMH (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section VIII.E, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, MMH wishes to apply for reinstatement, MMH must 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 MMH of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this Agreement, MMH 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 Agreement. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the 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 ten (10) days of the receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within twenty-five (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 Agreement shall be: (a) whether MMH was in full and timely compliance with the obligations of this Agreement for which the OIG demands payment; and (b) the period of noncompliance. MMH shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ agrees with OIG with regard to a finding of a breach of this Agreement and orders MMH to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable twenty (20) days after the ALJ issues such a decision unless MMH 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 twenty (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 Agreement shall be:

a. whether MMH was in material breach of this Agreement;

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 thirty (30) day period, but that:

(i) MMH had begun to take action to cure the material breach within that period;

(ii) MMH has pursued and is pursuing such action with due diligence; and

(iii) MMH provided to OIG within that period a reasonable timetable for curing the material breach and MMH 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 the MMH, only after a DAB decision in favor of OIG. MMH's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude MMH upon the issuance of an ALJ's decision in favor of the OIG. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect twenty (20) days after the ALJ issues such a decision, notwithstanding that MMH 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 twenty (20) days after the DAB decision.

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 Agreement agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this Agreement.

XI. EFFECTIVE AND BINDING AGREEMENT

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

A. This Agreement shall be binding on the successors, assigns, and transferees of MMH;

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

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

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

IN WITNESS WHEREOF, the parties hereto affix their signatures:

MCHIGAN MASONIC HOME

May 24, 2000
Date

Bernard H Zaffern
Bernard H. Zaffern
President of the Board of Trustees
Michigan Masonic Home

JUNE 8, 2000
Date

Gordon J Walker
Gordon Walker
Butzel Long, P.C.
Counsel for Michigan Masonic Home

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

6/13/00
Date

Lewis Morris, Esquire
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