

**CORPORATE INTEGRITY AGREEMENT  
BETWEEN THE  
OFFICE OF INSPECTOR GENERAL  
OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
PARK AVENUE MEDICAL ASSOCIATES, P.C.; PARK AVENUE HEALTH  
CARE MANAGEMENT, LLC; AND PARK AVENUE HEALTH CARE  
MANAGEMENT, INC.**

**I. PREAMBLE**

Park Avenue Medical Associates, P.C.; Park Avenue Health Care Management, LLC; and Park Avenue Health Care Management, Inc. (collectively, Park Avenue) hereby enter into this Corporate Integrity Agreement (CIA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS) to promote compliance 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). Contemporaneously with this CIA, Park Avenue is entering into a Settlement Agreement with the United States.

**II. TERM AND SCOPE OF THE CIA**

A. The period of the compliance obligations assumed by Park Avenue under this CIA shall be five years from the effective date of this CIA. The “Effective Date” shall be the date on which the final signatory of this CIA executes this CIA. Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a “Reporting Period.”

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

C. The scope of this CIA shall be governed by the following definitions:

1. “Covered Persons” includes:

- a. all owners, officers, directors, and employees of Park Avenue;
- b. all contractors, subcontractors, agents, and other persons who provide patient care items or services or who perform billing or coding functions on behalf of Park Avenue, excluding vendors whose sole connection with Park Avenue is selling or otherwise providing medical supplies or equipment to Park Avenue and who do not bill the Federal health care programs for such medical supplies or equipment (the employees of any third-party billing company that submits claims to the Federal health care programs on behalf of Park Avenue shall not be considered Covered Persons, provided that Park Avenue and the third-party billing company provide the certifications required by Section III.K); and
- c. all physicians and other non-physician practitioners who are members of Park Avenue’s active medical staff.

Notwithstanding the above, this term does not include part-time or per diem employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to work more than 160 hours per year, except that any such individuals shall become “Covered Persons” at the point when they work more than 160 hours during the calendar year.

2. “Relevant Covered Persons” includes all Covered Persons involved in the preparation or submission of claims for reimbursement from any Federal health care program. Relevant Covered Persons do not include health care providers who are otherwise included in the definition of “Covered Health Care Practitioners.”

3. “Covered Health Care Practitioners” includes all Covered Persons who are physicians or non-physician practitioners.

4. “Covered Behavioral Health Providers” includes all Covered Persons who are psychiatrists, psychologists, licensed clinical social workers, or other non-physician practitioners and who provide psychotherapy on behalf of Park Avenue.

### **III. CORPORATE INTEGRITY OBLIGATIONS**

Park Avenue shall establish and maintain a Compliance Program that includes the following elements:

#### **A. Compliance Officer and Committee**

1. *Compliance Officer.* Park Avenue has appointed a Covered Person to serve as its Compliance Officer and shall maintain a Compliance Officer for the term of the CIA. 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 CIA and with Federal health care program requirements. The Compliance Officer shall be a member of senior management of Park Avenue, shall report directly to the Chief Executive Officer of Park Avenue, shall make periodic (at least quarterly) reports regarding compliance matters directly to the Board of Directors of Park Avenue, and shall be authorized to report on such matters to the Board of Directors at any time. The Compliance Officer shall not be or be subordinate to the General Counsel or Chief Financial Officer. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by Park Avenue as well as for any reporting obligations created under this CIA. Any noncompliance job responsibilities of the Compliance Officer shall be limited and must not interfere with the Compliance Officer’s ability to perform the duties outlined in this CIA.

Park Avenue shall report to OIG, in writing, any change in the identity 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 CIA, within five days after such a change.

2. *Compliance Committee.* Park Avenue has appointed a Compliance Committee and shall maintain the Compliance Committee during the term of the CIA. The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this CIA (e.g., senior executives of relevant departments, 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 (e.g., shall assist in the analysis of Park Avenue's risk areas and shall oversee monitoring of internal and external audits and investigations). The Compliance Committee shall meet at least quarterly.

Park Avenue 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 CIA, within 15 days after such a change.

3. *Board of Directors Compliance Obligations.* The Board of Directors (or a committee of the Board) of Park Avenue (Board) shall be responsible for the review and oversight of matters related to compliance with Federal health care program requirements and the obligations of this CIA.

The Board shall, at a minimum, be responsible for the following:

- a. meeting at least quarterly to review and oversee Park Avenue's Compliance Program, including but not limited to the performance of the Compliance Officer and Compliance Committee; and
- b. for each Reporting Period of the CIA, adopting a resolution, signed by each member of the Board summarizing its review and oversight of Park Avenue's compliance with Federal health care program requirements and the obligations of this CIA.

At minimum, the resolution shall include the following language:

“The Board of Directors has made a reasonable inquiry into the operations of Park Avenue's Compliance Program including the performance of the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, Park Avenue has implemented an effective Compliance Program to meet Federal health care program requirements and the obligations of the CIA.”

If the Board is unable to provide such a conclusion in the resolution, the Board shall include in the resolution a written explanation of the reasons why it is unable to provide the conclusion and the steps it is taking to implement an effective Compliance Program at Park Avenue.

Park Avenue shall report to OIG, in writing, any changes in the composition of the Board, or any actions or changes that would affect the Board's ability to perform the duties necessary to meet the obligations in this CIA, within 15 days after such a change.

B. Written Standards

1. *Code of Conduct.* Park Avenue has adopted and shall maintain for the term of the CIA a written Code of Conduct. Park Avenue shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

- a. Park Avenue'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. Park Avenue's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Park Avenue's own Policies and Procedures;
- c. the requirement that all of Park Avenue's Covered Persons shall be expected to report to the Compliance Officer, or other appropriate individual designated by Park Avenue, suspected violations of any Federal health care program requirements or of Park Avenue's own Policies and Procedures; and
- d. the right of all individuals to use the Disclosure Program described in Section III.F, and Park Avenue's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Within 90 days after the Effective Date, each Covered Person shall certify, in writing or in electronic form, that he or she has received, read, understood, and shall abide by Park Avenue's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later.

Park Avenue shall periodically review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such review. The Code of Conduct shall be distributed at least annually to all Covered Persons.

2. *Policies and Procedures.* Within 90 days after the Effective Date, Park Avenue shall implement written Policies and Procedures regarding the operation of its compliance program, including

- a. the compliance program requirements outlined in this CIA;
- b. standards and procedures for evaluating the appropriateness of patients with a diagnosis or suspected diagnosis of dementia or other cognitive deficit for psychotherapy, including the use of a Clinical Dementia Rating scale screening or functional equivalent selected and mandated by Park Avenue;
- c. annual auditing and review of the provision of psychotherapy services;
- d. annual auditing and review of the use of CPT codes; and
- e. Park Avenue's compliance with Federal health care program requirements.

Within 90 days after the Effective Date, the Policies and Procedures shall be made available to all Covered Persons. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

At least annually (and more frequently, if appropriate), Park Avenue shall assess and update, as necessary, the Policies and Procedures. Within 30 days after the effective date of any revisions, a description of the revisions shall be communicated to all affected

Covered Persons and any revised Policies and Procedures shall be made available to all Covered Persons.

C. Training and Education

1. *General Training.* Within 90 days after the Effective Date, Park Avenue shall provide at least one hour of General Training to each Covered Person. This training, at a minimum, shall explain Park Avenue's:

- a. CIA requirements; and
- b. Compliance Program, including the Code of Conduct.

New Covered Persons shall receive the General Training described above within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later. After receiving the initial General Training described above, each Covered Person shall receive at least one hour of General Training in each subsequent Reporting Period.

2. *Specific Training for Relevant Covered Persons.* Within 90 days after the Effective Date, each Relevant Covered Person shall receive at least two hours of Specific Training in addition to the General Training required above. This Specific Training shall include a discussion of:

- a. the Federal health care program requirements regarding the accurate coding and submission of claims;
- b. policies, procedures, and other requirements applicable to the documentation of medical records, if applicable;
- 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 violations of the Federal health care program requirements; and
- f. examples of proper and improper claims submission practices.

New Relevant Covered Persons shall receive this training within 30 days after the beginning of their employment or becoming Relevant Covered Persons, or within 90 days after the Effective Date, whichever is later.

After receiving the initial Specific Training described in this subsection, each Relevant Covered Person shall receive at least one hour of Specific Training, in addition to the General Training, in each subsequent Reporting Period.

### 3. *Specific Training for Covered Health Care Practitioners*

Within 90 days after the Effective Date, each Covered Health Care Practitioner shall receive at least two hours of Specific Training in addition to the General Training required above. This Specific Training shall include a discussion of:

- a. the Federal health care program requirements regarding the accurate coding and submission of claims;
- b. policies, procedures, and other requirements applicable to the documentation of medical records;
- c. new and revised CPT codes and any CPT codes that Park Avenue has determined pose a risk of non-compliant activity;
- d. policies, procedures, and other requirements applicable to the documentation of medical records;
- e. the personal obligation of each health care practitioner involved in the treatment process to ensure that coding and medical documentation is accurate and complete;
- f. applicable reimbursement statutes, regulations, and program requirements and directives;

- g. the legal sanctions for violations of the Federal health care program requirements; and
- h. examples of proper and improper coding and medical documentation practices.

New Covered Health Care Practitioners shall receive this training within 30 days after the beginning of their employment or becoming Covered Health Care Practitioners, or within 90 days after the Effective Date, whichever is later.

After receiving the initial Specific Training described in this subsection, each Covered Health Care Practitioner shall receive at least one hour of Specific Training for Covered Health Care Practitioners, in addition to the General Training, in each subsequent Reporting Period.

4. *Specific Training for Covered Behavioral Health Providers.* Within 90 days after the Effective Date, each Covered Behavioral Health Provider shall receive at least one hour of Specific Training for Covered Behavioral Health Providers in addition to the General Training and the Specific Training for Covered Health Care Practitioners required above. This Specific Training shall include a discussion of:

- a. Medicare's rules concerning the provision of psychotherapy;
- b. new and revised CPT codes, including during the first Reporting Period CPT codes 90791 and 90792;
- c. criteria for providing psychotherapy to patients who have a diagnosis or are suspected of dementia or another cognitive deficit, including the use of the appropriate diagnostic tool; and
- d. Park Avenue's policies and procedures for Behavioral Health Providers.

New Covered Behavioral Health Providers shall receive this training within 30 days after the beginning of their employment or becoming Covered Behavioral Health Providers, or within 90 days after the Effective Date, whichever is later.

After receiving the initial Specific Training described in this subsection, each Covered Behavioral Health Provider shall receive at least one hour of Specific Training for Covered Behavioral Health Providers, in addition to the General Training and the Specific Training for Health Care Practitioners, in each subsequent Reporting Period.

5. *Board Member Training.* Within 90 days after the Effective Date, Park Avenue shall provide at least one hour of training to each member of the Board of Directors, in addition to the General Training. This training shall address the responsibilities of board members and corporate governance.

New members of the Board of Directors shall receive the Board Member Training described above within 30 days after becoming a member or within 90 days after the Effective Date, whichever is later.

6. *Certification.* Each individual who is required to attend training shall certify, in writing or in electronic form, 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.

7. *Qualifications of Trainer.* Persons providing the training shall be knowledgeable about the subject area.

8. *Update of Training.* Park Avenue shall review the training annually, and, where appropriate, update the training to reflect changes in Federal health care program requirements, any issues discovered during internal audits or the Audit Review, and any other relevant information.

9. *Computer-based Training.* Park Avenue may provide the training required under this CIA through appropriate computer-based training approaches. If Park Avenue chooses to provide computer-based training, it shall make available appropriately qualified and knowledgeable staff or trainers to answer questions or provide additional information to the individuals receiving such training.

D. Compliance Audit Program.

1. As part of its compliance audit program, Park Avenue conducts and shall continue during the term of the CIA to conduct:
  - a. New provider coding audits;
  - b. Annual coding audits of providers in all provider categories;
  - c. Annual audits of all providers who provide services at any two selected facilities at which Park Avenue provides services;
  - d. Annual focused reviews on areas that Park Avenue's Compliance Program determines are significant risk areas (Focused Reviews), which shall include for the first two Reporting Periods a Focused Review of the use of CPT codes 90791 and 90792; and
  - e. Additional compliance reviews.
2. For the term of the CIA, Park Avenue shall also conduct the following additional reviews:
  - a. Review of new and subsequent addenda for patients receiving psychotherapy;
  - b. Quarterly reviews of data scores by patient for each Covered Psychologist;
  - c. Quarterly reviews of multiple instances of CPT codes 90791 and 90792, including a data review to identify outliers or trends indicating risk; and
  - d. Annual quality assurance audits of a statistically valid random sample of services provided by each Covered Psychologist.

The audits and reviews described in Sections III.D.1 and III.D.2

shall be known as “Park Avenue’s Compliance Audit Program.”

3. Thirty days prior to the end of each Reporting Period, Park Avenue shall provide to the OIG a list of the audits completed since the Effective Date of the CIA or the date the list was submitted for the prior Reporting Period, whichever is later. This list shall include: (1) all annual audits of providers by facility; (2) all Focused Reviews; and (3) all annual quality assurance audits conducted during the period covered by the list. With each list Park Avenue shall provide an explanation of how and why Park Avenue’s Compliance Program identified as a significant risk area the subject of each Focused Review. At OIG’s request, Park Avenue shall provide information about the other audits and reviews conducted during the same time period.
4. Park Avenue shall, at a minimum, maintain the same level of effort during the term of the CIA as allocated to the audits and reviews described in Section III.D.1 in 2012 and shall allocate sufficient additional resources to complete the audits and reviews described in Section III.D.2.

E. Review Procedures

1. *General Description*

- a. *Engagement of Independent Review Organization.* Within 90 days after the Effective Date, Park Avenue shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform the reviews listed in this Section III.E. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference.
- b. *Retention of Records.* The IRO and Park Avenue shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports

(those exchanged between the IRO and Park Avenue) related to the reviews.

2. *Audit Review.* The IRO shall review audits conducted under Park Avenue's Compliance Audit Program (Audit Review) and shall prepare an Audit Review report, as outlined in Appendix B to this CIA, which is incorporated by reference.

3. *Validation Review.* In the event OIG has reason to believe that: (a) Park Avenue's Audit Review fails to conform to the requirements of this CIA; or (b) the IRO's findings or Audit Review results are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the Audit Review complied with the requirements of the CIA and/or the findings or Audit Review results are inaccurate (Validation Review). Park Avenue shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of Reports submitted as part of Park Avenue's final Annual Report shall be initiated no later than one year after Park Avenue's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Park Avenue 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, Park Avenue may request a meeting with OIG to: (a) discuss the results of any Audit Review submissions or findings; (b) present any additional information to clarify the results of the Audit Review or to correct the inaccuracy of the Audit Review; and/or (c) propose alternatives to the proposed Validation Review. Park Avenue agrees to provide any additional information as may be requested by OIG under this Section III.E.3 in an expedited manner. OIG will attempt in good faith to resolve any Audit Review issues with Park Avenue 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.

4. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to Park Avenue a certification that the IRO has: (a) evaluated its professional independence and objectivity with respect to the reviews conducted under this Section III.E; and (b) concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to this CIA.

## F. Disclosure Program

Park Avenue has established and shall maintain for the term of the CIA a Disclosure Program that 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 Park Avenue'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. Park Avenue 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).

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, Park Avenue shall conduct an internal review of the allegations set forth in the 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.

G. Ineligible Persons

1. *Definitions.* For purposes of this CIA:

- a. an “Ineligible Person” shall include an individual or entity who:
  - i. is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or
  - ii. has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.
- b. “Exclusion Lists” include:
  - i. the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov>); and
  - ii. the General Services Administration’s System for Award Management (available through the Internet at <http://www.sam.gov>).

2. *Screening Requirements.* Park Avenue shall ensure that all prospective and current Covered Persons are not Ineligible Persons, by implementing the following screening requirements.

- a. Park Avenue shall screen all prospective Covered Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process, shall require such Covered Persons to disclose whether they are Ineligible Persons.

- b. Park Avenue shall screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on a monthly basis thereafter.
- c. Park Avenue shall implement a policy requiring all Covered Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

Nothing in Section III.G affects Park Avenue's responsibility to refrain from (and liability for) billing Federal health care programs for items or services furnished, ordered, or prescribed by excluded persons. Park Avenue understands that items or services furnished, ordered, or prescribed by excluded persons are not payable by Federal health care programs and that Park Avenue may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether Park Avenue meets the requirements of Section III.G.

3. *Removal Requirement.* If Park Avenue has actual notice that a Covered Person has become an Ineligible Person, Park Avenue shall remove such Covered Person from responsibility for, or involvement with, Park Avenue's business operations related to the Federal health care programs and shall remove such Covered Person from any position for which the Covered Person's compensation or the items or services furnished, ordered, or prescribed by the Covered 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 Covered Person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions.* If Park Avenue has actual notice that a Covered Person is charged with a criminal offense that falls within the scope of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion during the Covered Person's employment or contract term, Park Avenue shall take all appropriate actions to ensure that the responsibilities of that Covered Person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or any claims submitted to any Federal health care program.

#### H. Notification of Government Investigation or Legal Proceedings

Within 30 days after discovery, Park Avenue shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to Park Avenue conducted or brought by a governmental entity or its agents involving an allegation that Park Avenue 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. Park Avenue shall also provide written notice to OIG within 30 days after the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the investigation or proceedings, if any.

I. Repayment of Overpayments

1. *Definition of Overpayments.* For purposes of this CIA, an “Overpayment” shall mean the amount of money Park Avenue has received in excess of the amount due and payable under any Federal health care program requirements.

2. *Repayment of Overpayments*

- a. If, at any time, Park Avenue identifies or learns of any Overpayment, Park Avenue shall repay the Overpayment to the appropriate payor (e.g., Medicare fiscal intermediary or carrier) within 60 days after identification of the Overpayment and take remedial steps within 90 days after 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. If not yet quantified, within 60 days after identification, Park Avenue 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.
- b. 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.

J. Reportable Events

1. *Definition of Reportable Event.* For purposes of this CIA, a “Reportable Event” means anything that involves:

- a. a substantial Overpayment;
- b. 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;
- c. the employment of or contracting with a Covered Person who is an Ineligible Person as defined by Section III.G.1.a; or
- d. the filing of a bankruptcy petition by Park Avenue.

A Reportable Event may be the result of an isolated event or a series of occurrences.

2. *Reporting of Reportable Events.* If Park Avenue determines (after a reasonable opportunity to conduct an appropriate review or investigation of the allegations) through any means that there is a Reportable Event, Park Avenue shall notify OIG, in writing, within 30 days after making the determination that the Reportable Event exists.

3. *Reportable Events under Section III.J.1.a.* For Reportable Events under Section III.J.1.a, the report to OIG shall be made within 30 days of the identification of the Overpayment, and shall include:

- a. a description of the steps taken by Park Avenue to identify and quantify the Overpayment;
- b. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

- c. a description of Park Avenue's actions taken to correct the Reportable Event; and
- d. any further steps Park Avenue plans to take to address the Reportable Event and prevent it from recurring.

Within 60 days of identification of the Overpayment, Park Avenue shall provide OIG with a copy of the notification and repayment to the payor required in Section III.I.2.

4. *Reportable Events under Section III.J.b and c.* For Reportable Events under Section III.J.1.b and III.J.1.c, the report to OIG shall include:

- a. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;
- b. a description of Park Avenue's actions taken to correct the Reportable Event;
- c. any further steps Park Avenue plans to take to address the Reportable Event and prevent it from recurring; and
- d. if the Reportable Event has resulted in an Overpayment, a description of the steps taken by Park Avenue to identify and quantify the Overpayment.

5. *Reportable Events under Section III.J.1.d.* For Reportable Events under Section III.J.1.d, the report to the OIG shall include documentation of the bankruptcy filing and a description of any Federal health care program authorities implicated.

6. *Reportable Events Involving the Stark Law.* Notwithstanding the reporting requirements outlined above, any Reportable Event that involves only a probable violation of section 1877 of the Social Security Act, 42 U.S.C. § 1395nn (the Stark Law) should be submitted by Park Avenue to the Centers for Medicare & Medicaid Services (CMS) through the self-referral disclosure protocol (SRDP), with a copy to the OIG. The requirements of Section III.I.2 that require repayment to the payor of any identified Overpayment within 60 days shall not apply to any Overpayment that may

result from a probable violation of only the Stark Law that is disclosed to CMS pursuant to the SRDP. If Park Avenue identifies a probable violation of the Stark Law and repays the applicable Overpayment directly to the CMS contractor, then Park Avenue is not required by this Section III.J to submit the Reportable Event to CMS through the SRDP.

K. Third-Party Billing

If, prior to the Effective Date or at any time during the term of this CIA, Park Avenue contracts with a third-party billing company to submit claims to the Federal health care programs on behalf of Park Avenue, Park Avenue must certify to OIG that it does not have an ownership or control interest (as defined in 42 U.S.C. § 1320a-3(a)(3)) in the third-party billing company and is not employed by, and does not act as a consultant to, the third-party billing company.

Park Avenue also shall obtain (as applicable) a certification from any third-party billing company that the company: (i) has a policy of not employing any person who is excluded, debarred, suspended or otherwise ineligible to participate in Medicare or other Federal health care programs to perform any duties related directly or indirectly to the preparation or submission of claims to Federal health care programs; (ii) screens its prospective and current employees against the HHS/OIG List of Excluded Individuals/Entities and the General Services Administration's System for Award Management; and (iii) provides training in the applicable requirements of the Federal health care programs to those employees involved in the preparation and submission of claims to Federal health care programs.

If applicable, a copy of these certifications shall be included in Park Avenue's Implementation Report and each Annual Report required by Section V below.

**IV. SUCCESSOR LIABILITY; CHANGES TO BUSINESS UNITS OR LOCATIONS**

A. Sale of Business, Business Unit, or Location

In the event that, after the Effective Date, Park Avenue proposes to sell any or all of its business, business units, or locations (whether through a sale of assets, sale of stock, or other type of transaction) that are subject to this CIA, Park Avenue shall notify OIG of the proposed sale at least 30 days prior to the sale of its business, business unit, or location. This notification shall include a description of the business, business unit, or

location to be sold; a brief description of the terms of the sale; and the name and contact information of the prospective purchaser. This CIA shall be binding on the purchaser of the business, business unit, or location, unless otherwise determined and agreed to in writing by the OIG.

**B. Change or Closure of Business, Business Unit, or Location**

In the event that, after the Effective Date, Park Avenue changes locations or closes a business, business unit, or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, Park Avenue shall notify OIG of this fact as soon as possible, but no later than within 30 days after the date of change or closure of the business, business unit, or location.

**C. Purchase or Establishment of New Business, Business Unit, or Location**

In the event that, after the Effective Date, Park Avenue purchases or establishes a new business, business unit, or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, Park Avenue shall notify OIG at least 30 days prior to such purchase or the operation of the new business, business unit, or location. This notification shall include the address of the new business, business unit, or location; phone number; fax number; the location's Medicare and state Medicaid program provider number and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Park Avenue currently submits claims. Each new business, business unit, or location and all Covered Persons at each new business, business unit, or location shall be subject to the applicable requirements of this CIA, unless otherwise agreed to in writing by the OIG.

**V. IMPLEMENTATION AND ANNUAL REPORTS**

**A. Implementation Report**

Within 120 days after the Effective Date, Park Avenue shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA (Implementation Report). The Implementation Report shall, at a minimum, include:

1. the name, address, phone number, and position description of the Compliance Officer required by Section III.A, and a summary of other noncompliance job responsibilities the Compliance Officer may have;

2. the names and positions of the members of the Compliance Committee required by Section III.A;
3. the names of the Board members who are responsible for satisfying the Board of Directors compliance obligations described in Section III.A.3;
4. a copy of Park Avenue's Code of Conduct required by Section III.B.1;
5. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG upon request);
6. a summary of all Policies and Procedures required by Section III.B (copies of the Policies and Procedures shall be made available to OIG upon request);
7. the following information regarding each type of training required by Section III.C:
  - a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions; and
  - b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be made available to OIG upon request.

8. a description of the Disclosure Program required by Section III.F;
9. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the IRO has the qualifications outlined in Appendix A to this CIA; (d) a summary and description of any and all current and prior engagements and agreements

between Park Avenue and the IRO; and (e) a certification from the IRO regarding its professional independence and objectivity with respect to Park Avenue;

10. a description of the process by which Park Avenue fulfills the requirements of Section III.G regarding Ineligible Persons;

11. a list of all of Park Avenue'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 and state Medicaid program provider number and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Park Avenue currently submits claims;

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

13. a copy of the certifications required by Section III.K, if applicable;  
and

14. the certifications required by Section V.C.

#### B. Annual Reports

Park Avenue shall submit to OIG annually a report with respect to the status of, and findings regarding, Park Avenue's compliance activities for each of the five Reporting Periods (Annual Report). Each Annual Report shall include, at a minimum:

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. the Board resolution required by Section III.A.3;

3. a summary of any changes or amendments to Park Avenue's Code of Conduct required by Section III.B.1 and the reason for such changes, along with a copy of the revised Code of Conduct;

4. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be made available to OIG upon request);

5. 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);

6. the following information regarding each type of training required by Section III.C:

- a. a description of the initial and annual training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions; and
- b. the number of individuals required to complete the initial and annual training, the percentage of individuals who actually completed the initial and annual training, and an explanation of any exceptions.

A copy of all training materials and the documentation to support this information shall be made available to OIG upon request.

7. a complete copy of all reports prepared pursuant to Section III.E, along with a copy of the IRO's engagement letter;

8. Park Avenue's response to the reports prepared pursuant to Section III.E, along with corrective action plan(s) related to any issues raised by the reports;

9. a summary and description of any and all current and prior engagements and agreements between Park Avenue and the IRO (if different from what was submitted as part of the Implementation Report);

10. a certification from the IRO regarding its professional independence and objectivity with respect to Park Avenue;

11. a summary of Reportable Events (as defined in Section III.J) identified during the Reporting Period and the status of any corrective action relating to all such Reportable Events;

12. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall 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;

13. a summary of the disclosures in the disclosure log required by Section III.F that relate to Federal health care programs (the complete disclosure log shall be made available to OIG upon request);

14. any changes to the process by which Park Avenue fulfills the requirements of Section III.G regarding Ineligible Persons;

15. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.H. 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;

16. a description of all changes to the most recently provided list of Park Avenue's locations (including 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 and state Medicaid program provider number(s) and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Park Avenue currently submits claims;

17. a copy of the certifications required by Section III.K, if applicable;  
and

18. the certifications 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 each Annual Report shall include a certification by the Compliance Officer that:

1. to the best of his or her knowledge, except as otherwise described in the report, Park Avenue is in compliance with all of the requirements of this CIA;
2. he or she has reviewed the report and has made reasonable inquiry regarding its content and believes that the information in the report is accurate and truthful; and
3. to the best of his or her knowledge, Park Avenue has complied with its obligations under the Settlement Agreement: (a) 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; (b) not to charge to or otherwise seek payment from federal or state payors for unallowable costs (as defined in the Settlement Agreement); and (c) to identify and adjust any past charges or claims for unallowable costs.

D. Designation of Information

Park Avenue 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. Park Avenue 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 CIA shall be submitted to the following entities:

OIG:

Administrative and Civil Remedies Branch  
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, S.W.  
Washington, DC 20201  
Telephone: 202.619.2078  
Facsimile: 202.205.0604

Park Avenue:

Janet Eberle  
Compliance Officer  
Park Avenue Medical Associates  
3 Barker Avenue, 4<sup>th</sup> Floor  
White Plains, NY 10601  
Telephone: (914) 949-1199  
Facsimile: (914) 949-1245

Unless otherwise specified, all notifications and reports required by this CIA 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. Upon request by OIG, Park Avenue may be required to provide OIG with an electronic copy of each notification or report required by this CIA in searchable portable document format (pdf), in addition to a paper copy.

**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 Park Avenue's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Park Avenue's locations for the purpose of verifying and evaluating: (a) Park Avenue's compliance with the terms of this CIA; and (b) Park Avenue's compliance with the requirements of the Federal health care programs. The

documentation described above shall be made available by Park Avenue 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 Park Avenue'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. Park Avenue shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Park Avenue's employees may elect to be interviewed with or without a representative of Park Avenue present.

#### **VIII. DOCUMENT AND RECORD RETENTION**

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

#### **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 Park Avenue prior to any release by OIG of information submitted by Park Avenue pursuant to its obligations under this CIA and identified upon submission by Park Avenue as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, Park Avenue shall have the rights set forth at 45 C.F.R. § 5.65(d).

#### **X. BREACH AND DEFAULT PROVISIONS**

Park Avenue is expected to fully and timely comply with all of its CIA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations

As a contractual remedy, Park Avenue and OIG hereby agree that failure to comply with certain obligations as set forth in this CIA 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 Park Avenue fails to establish and implement any of the following obligations as described in Section III:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. the Board of Directors compliance obligations;
- d. a written Code of Conduct;
- e. written Policies and Procedures;
- f. the training of Covered Persons, Relevant Covered Persons, Covered Health Care Practitioners, Covered Behavioral Health Providers, and Board Members;
- g. Park Avenue’s Compliance Audit Program;
- h. a Disclosure Program;
- i. Ineligible Persons screening and removal requirements;
- j. notification of Government investigations or legal proceedings;
- k. reporting of Reportable Events; and
- l. copies of certifications from third-party billing companies and Park Avenue.

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 Park Avenue fails to engage and use an IRO, as required in Section III.E, Appendix A, and Appendix B.

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 Park Avenue fails to submit the Implementation Report or any Annual Reports to OIG in accordance with the requirements of Section V by the deadlines for submission.

4. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Park Avenue fails to submit any Audit Review Report in accordance with the requirements of Section III.E and Appendix B.

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

6. A Stipulated Penalty of \$50,000 for each false certification submitted by or on behalf of Park Avenue as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the OIG), or otherwise required by this CIA.

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

#### B. Timely Written Requests for Extensions

Park Avenue 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 CIA. 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 Park Avenue 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 Park Avenue 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 Park Avenue 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 Park Avenue of: (a) Park Avenue's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties. (This notification shall be referred to as the "Demand Letter.")

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Park Avenue 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 Park Avenue elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Park Avenue 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 CIA and shall be grounds for exclusion under Section X.D.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by electronic funds transfer to an account specified by OIG in the Demand Letter.

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 Park Avenue has materially breached this CIA, 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 CIA

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

- a. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in Section X.A;
- b. a failure by Park Avenue to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Section III.J;
- 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 engage and use an IRO in accordance with Section III.E, Appendix A, and Appendix B.

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

3. *Opportunity to Cure.* Park Avenue 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. Park Avenue is in compliance with the obligations of the CIA 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) Park Avenue has begun to take action to cure the material breach; (ii) Park Avenue is pursuing such action with due diligence; and (iii) Park Avenue has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30 day period, Park Avenue fails to satisfy the requirements of Section X.D.3, OIG may exclude Park Avenue from participation in the Federal health care programs. OIG shall notify Park Avenue in writing of its determination to exclude Park Avenue. (This letter shall be referred to 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 Park Avenue’s receipt of the Exclusion Letter. The exclusion shall have national effect. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Park Avenue may apply for reinstatement by submitting 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 Park Avenue of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, Park Avenue 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 CIA. 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 after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether Park Avenue was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. Park Avenue 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 CIA and orders Park Avenue to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Park Avenue 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 Title 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this CIA shall be:

- a. whether Park Avenue was in material breach of this CIA;
- 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) Park Avenue had begun to take action to cure the material breach within that period; (ii) Park Avenue has pursued and is pursuing such action with due diligence; and (iii) Park Avenue provided to OIG within that period a reasonable timetable for curing the material breach and Park Avenue 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 Park Avenue, only after a DAB decision in favor of OIG. Park Avenue's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Park Avenue 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 Park Avenue 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. Park Avenue 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 Park Avenue, Park Avenue 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 CIA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this CIA.

## **XI. EFFECTIVE AND BINDING AGREEMENT**

Park Avenue and OIG agree as follows:

A. This CIA shall become final and binding on the date the final signature is obtained on the CIA.

B. This CIA constitutes the complete agreement between the parties and may not be amended except by written consent of the parties to this CIA.

C. OIG may agree to a suspension of Park Avenue's obligations under this CIA based on a certification by Park Avenue that it is no longer providing health care items or services that will be billed to any Federal health care program and that it does not have any ownership or control interest, as defined in 42 U.S.C. § 1320a-3, in any entity that bills any Federal health care program. If Park Avenue is relieved of its CIA obligations, Park Avenue will be required to notify OIG in writing at least 30 days in advance if Park Avenue plans to resume providing health care items or services that are billed to any Federal health care program or to obtain an ownership or control interest in any entity that bills any Federal health care program. At such time, OIG shall evaluate whether the CIA will be reactivated or modified.

D. The undersigned Park Avenue signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatories represent that they are signing this CIA in their official capacities and that they are authorized to execute this CIA.

E. This CIA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same CIA. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this CIA.

**ON BEHALF OF PARK AVENUE HEALTH CARE MANAGEMENT, LLC  
AND PARK AVENUE HEALTH CARE MANAGEMENT, INC.**

/Brad Markowitz/

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7/1/13

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Brad Markowitz, President  
Park Avenue Health Care Management, LLC  
Park Avenue Health Care Management, Inc.

DATE

**ON BEHALF OF PARK AVENUE MEDICAL ASSOCIATES, PC**

/Mitch Kaplan, MD/

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7/1/13

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Mitch Kaplan, MD, President  
Park Avenue Medical Associates, PC

DATE

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

/Robert K. DeConti

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7/8/13

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

DATE

/Laura E. Ellis/

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7-3-13

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LAURA E. ELLIS  
Senior Counsel  
Office of Inspector General  
U.S. Department of Health and Human Services

DATE

## APPENDIX A

### INDEPENDENT REVIEW ORGANIZATION

This Appendix contains the requirements relating to the Independent Review Organization (IRO) required by Section III.D of the CIA.

#### A. IRO Engagement

1. Park Avenue shall engage an IRO that possesses the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO shall conduct the review in a professionally independent and objective fashion, as set forth in Paragraph D. Within 30 days after OIG receives the information identified in Section V.A.9 of the CIA or any additional information submitted by Park Avenue in response to a request by OIG, whichever is later, OIG will notify Park Avenue if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Park Avenue may continue to engage the IRO.

2. If Park Avenue engages a new IRO during the term of the CIA, this IRO shall also meet the requirements of this Appendix. If a new IRO is engaged, Park Avenue shall submit the information identified in Section V.A.9 of the CIA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives this information or any additional information submitted by Park Avenue at the request of OIG, whichever is later, OIG will notify Park Avenue if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Park Avenue may continue to engage the IRO.

#### B. IRO Qualifications

The IRO shall:

1. assign individuals to conduct the Audit Review who have expertise in: (1) the methodology and practice of designing, conducting, and evaluating an audit and appropriate statistical sampling techniques; (2) billing, coding, medical documentation, reporting, and other requirements of claims for physician or non-physician practitioner services, including but not limited to claims for psychiatry and psychotherapy; (3) medical record reviews; and (4) the general requirements of the Federal health care program(s) from which Park Avenue seeks reimbursement;

2. assign individuals to conduct the coding review portions of the Audit Review who have a nationally recognized coding certification and who have maintained this certification (e.g., completed applicable continuing education requirements); and

3. have sufficient staff and resources to conduct the reviews required by the CIA on a timely basis.

C. IRO Responsibilities

The IRO shall:

1. perform each Audit Review in accordance with the specific requirements of the CIA;
2. follow all applicable Medicare and Medicaid rules and reimbursement guidelines in making assessments in the Audit Review;
3. if in doubt of the application of a particular Medicare or Medicaid policy or regulation, request clarification from the appropriate authority (e.g., Medicare Administrative Contractor);
4. respond to all OIG inquiries in a prompt, objective, and factual manner; and
5. prepare timely, clear, well-written reports that include all the information required by Appendix B to the CIA.

D. IRO Independence and Objectivity

The IRO must perform the Audit Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the United States Government Accountability Office.

E. IRO Removal/Termination

1. *Provider and IRO.* If Park Avenue terminates its IRO or if the IRO withdraws from the engagement during the term of the CIA, Park Avenue must submit a notice explaining its reasons for termination or the reason for withdrawal to OIG no later than 30 days after termination or withdrawal. Park Avenue must engage a new IRO in accordance with Paragraph A of this Appendix and within 60 days of termination or withdrawal of the IRO.

2. *OIG Removal of IRO.* In the event OIG has reason to believe the IRO does not possess the qualifications described in Paragraph B, is not independent and objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG may, at its sole discretion, require Park Avenue to engage

a new IRO in accordance with Paragraph A of this Appendix. Park Avenue must engage a new IRO within 60 days of termination of the IRO.

Prior to requiring Park Avenue to engage a new IRO, OIG shall notify Park Avenue of its intent to do so and provide a written explanation of why OIG believes such a step is necessary. To resolve any concerns raised by OIG, Park Avenue may present additional information regarding the IRO's qualifications, independence, or performance of its responsibilities. OIG will attempt in good faith to resolve any differences regarding the IRO with Park Avenue prior to requiring Park Avenue to terminate the IRO. However, the final determination as to whether or not to require Park Avenue to engage a new IRO shall be made at the sole discretion of OIG.

**APPENDIX B**

**AUDIT REVIEW**

A. Audit Review. The IRO shall perform the Audit Review annually to cover each of the five Reporting Periods. The IRO shall perform all components of each Audit Review.

1. The OIG shall select three audits or reviews performed by Park Avenue.
2. For each of the audits or reviews selected, the IRO shall:
  - a. Review the protocol and methodology of the audit or review to assess whether it was designed in a manner that sufficiently and effectively audits or reviews the issue;
  - b. Review the work papers, including all records and references relied on by Park Avenue, to assess whether Park Avenue relied on the relevant laws, regulations, and program guidance, and whether the work papers, records, and references reviewed support the findings reached by Park Avenue; and
  - c. Provide, to the extent that the IRO finds that Park Avenue's findings are unsupported or incorrect, the IRO's findings and the IRO's support for those findings.

B. Audit Review Report. The IRO shall prepare an Audit Review Report as described in this Appendix. The Audit Review Report shall contain:

1. For each audit or review,
  - a. a description of the audit's or review's objective, protocol, methodology, and results;
  - b. the IRO's assessment of Park Avenue's performance of the audit or review, including the identification of any issues or deficiencies with the protocol and/or methodology, and any unsupported or incorrect findings; and

- c. to the extent Park Avenue's findings are unsupported or incorrect, the IRO's findings and the IRO's justification for those findings.
- 2. The IRO's observations and recommendations concerning:
  - d. the strengths and weaknesses of Park Avenue's performance of the audits and reviews;
  - e. any improvements to Park Avenue's Compliance Audit Program to address the specific problems or weaknesses demonstrated by the Audit Review; and
  - f. other improvements that could strengthen Park Avenue's Compliance Audit Program.
- 3. The names and credentials of the individuals who performed the Audit Review.