

**CORPORATE INTEGRITY AGREEMENT**  
**BETWEEN THE**  
**OFFICE OF INSPECTOR GENERAL**  
**OF THE**  
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**AND**  
**ATHENA HEALTH CARE ASSOCIATES, INC.**

**I. INTRODUCTION**

Athena Health Care Associates, Inc. d/b/a Athena Health Care Systems (hereinafter collectively referred to as "Athena") hereby enters 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 by Athena, its subsidiaries and affiliates, its directors, officers, employees, contractors, agents, physicians, other health care professionals, and facilities owned, controlled, or managed by Athena, with the 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").

The OIG alleges that Athena furnished or caused to be furnished care of a quality that failed to meet professionally recognized standards of health care with respect to wound care, hygiene and nutrition care, appropriate administration of medications, appropriate staffing, and other care areas to residents at Hillcrest Healthcare Center between January 1, 2002 and July 31, 2004. The conduct described in this paragraph is hereinafter referred to as the "Covered Conduct." Athena denies all of the allegations made by the OIG with respect to the Covered Conduct.

In consideration of the obligations of Athena in this CIA, the OIG agrees to release and refrain from instituting, directing or maintaining any administrative actions seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Athena under 42 U.S.C. § 1320a-7(b)(6)(B) (permissive exclusion for failure to furnish quality care) for the Covered Conduct.

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

A. The period of the compliance obligations assumed by Athena under this CIA shall be five (5) years from the Effective Date of this CIA (unless otherwise

specified). The Effective Date of this CIA shall be the date on which the final signatory executes this CIA (Effective Date). 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, VIII, IX, X, and XI shall expire no later than 120 days after OIG's receipt of: (1) Athena's final annual report; or (2) any additional materials submitted by Athena 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 officers, directors, and employees of Athena, any corporation, subsidiary, affiliate, joint venture or other organization or entity in which Athena or its individual owners own 5% or more or have a controlling interest at any time during the term of the CIA, or which Athena or its individual owners operate or have a management contract or arrangement to provide management and administrative services that give any of them control over the day-to-day operations over the organization or entity at any time during the term of the CIA; and

b. all contractors, subcontractors, agents, and other persons who, on a regular basis on behalf of Athena: (1) perform patient care or resident care duties; (2) make assessments of patients or residents that affect treatment decisions or reimbursement; (3) perform billing, coding, audit or review functions relating to quality of care; (4) make decisions or provide oversight about staffing, patient care, resident care, reimbursement, policies and procedures, or this CIA; or (5) perform any function that relates to or is covered by this CIA, including individuals who are responsible for quality assurance, setting policies or procedures, or making staffing decisions.

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.

Notwithstanding the above, any nonemployee private caregivers and/or attending physicians hired by any resident or the family or friends of any resident of an Athena Facility, as defined below, are not Covered Persons, regardless of the hours worked per year in an Athena Facility.

2. "Athena Facility" includes all nursing facilities that participate in Federal health care programs in which Athena or its individual owners own 5% or more or have a controlling interest at any time during the term of the CIA, or in which Athena or its individual owners operate or have a management contract or arrangement to provide management and administrative services that give any of them control over the day-to-day operations over the facility.

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

Athena shall establish a compliance program that includes the following elements.

#### **A. Compliance Officer, Committees, and Internal Audit or Review Functions.**

1. *Compliance Officer.* Within 90 days after the Effective Date, Athena shall appoint a Compliance Officer, who 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 the requirements of the Federal health care programs. The Compliance Officer shall be a member of senior management of Athena, shall make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of Athena, and shall be authorized to report to the Board of Directors at any time. The Compliance Officer shall not be Athena's general counsel or chief financial officer. Nor shall the Compliance Officer be subordinate to Athena's general counsel or chief financial officer. The Compliance Officer shall be responsible for monitoring the day-to-day activities engaged in by Athena to further its compliance objectives as well as any reporting obligations created under this CIA. The Compliance Officer shall also ensure that quality of care problems are being appropriately addressed and corrected. In the event a new Compliance Officer is appointed during the term of this CIA, Athena shall notify the OIG, in writing, within 15 days of such a change.

2. *Compliance Committee.* To the extent not already established, Athena shall establish a Quality Assurance Compliance Committee (hereinafter "Compliance Committee") within 90 days after the Effective Date. The purpose of this Compliance Committee shall be to address issues concerning quality of care at Athena Facilities. The Board of Directors may determine to appoint itself or a committee of its

members to serve as the Compliance Committee. At a minimum, the Committee shall include the Compliance Officer, representatives from among senior personnel responsible for clinical operations and quality of care, and any other appropriate officers or individuals necessary to thoroughly implement the requirements of this CIA that relate to quality of care in Athena Facilities. For each committee meeting, there shall be senior representatives from Athena Facility, chosen on a rotating basis, to report to the committee on the adequacy of care being provided at their facilities. The Compliance Committee shall meet, at a minimum, every three months.

3. *Board of Directors Committee.* Athena shall create a committee as part of its Board of Directors to provide oversight on quality of care issues (Quality Assurance Monitoring Committee). This committee shall: (a) review the adequacy of Athena's system of internal controls, quality assurance monitoring, and patient care; (b) ensure that Athena's response to state, federal, internal, and external reports of quality of care issues is complete, thorough, and resolves the issue(s) identified; and (c) ensure that Athena adopts and implements policies and procedures that are designed to ensure that each individual cared for at an Athena Facility receives the highest practicable physical, mental, and psychosocial level of care attainable. The individuals who serve on this committee shall be readily available to the Compliance Officer and the Monitors required under this CIA to respond to any issues or questions that might arise. The names of the Board members and the charter for the committee shall be provided to the OIG within 90 days after the Effective Date. When new members are appointed, or the responsibilities or authorities of the Board committee are substantially changed, Athena shall notify the OIG, in writing, within 15 days of such a change.

4. *Internal Audit and Review Functions.* To the extent not already established, Athena shall, within 90 days after the Effective Date, create a program for performing internal quality audits and reviews. The internal audits and reviews shall:

- a. make findings of whether the patients and residents at Athena Facilities are receiving the quality of care and quality of life consistent with basic care, treatment, and protection from harm standards, including but not limited to, 42 C.F.R. Parts 482 and 483 and any other applicable Federal and state statutes, regulations, and directives;
- b. make findings of whether the policies and procedures mandated by this CIA are created, implemented, and enforced;
- c. make findings of whether training is performed in accordance with this CIA;

- d. make findings of whether hotline complaints are appropriately investigated;
- e. make findings of whether the reporting obligations are complied with in accordance with this CIA; and
- f. make findings of whether corrective action plans are timely created, implemented, and enforced.

B. Written Standards.

1. *Code of Conduct.* Within 90 days after the Effective Date, Athena shall establish a Code of Conduct and distribute it to all Covered Persons. Athena shall make adherence to the Code of Conduct an element in evaluating the performance of Covered Persons. The Code of Conduct shall, at a minimum, set forth:

- a. Athena's commitment to full compliance with all statutes, regulations, directives, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by the Centers for Medicare and Medicaid Services (CMS) (or other appropriate regulatory agencies) and/or fiscal intermediaries or carriers;
- b. Athena's requirement that all of its Covered Persons shall be expected to comply with all statutes, regulations, directives, and guidelines applicable to Federal health care programs and with Athena's own policies and procedures (including the requirements of this CIA);
- c. the requirement that all of Athena's Covered Persons shall be expected to report, within thirty (30) days, suspected violations of any statute, regulation, directive, or guideline applicable to Federal health care programs or of Athena's own policies and procedures; if there are credible allegations of patient harm, such report shall be made immediately and shall be complete, full, and honest;

- d. the possible consequences to both Athena and any Covered Person of failure to comply with all statutes, regulations, directives, and guidelines applicable to Federal health care programs and with Athena's own policies and procedures or of failure to report such non-compliance; and
- e. the right of all individuals to use the Disclosure Program, described in Section III.E, as well as Athena's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

Within 90 days after the Effective Date, to the extent not already accomplished, each Covered Person shall certify, in writing, that he or she has received, read, understood, and will abide by Athena's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within two weeks after the commencement of their appointment, employment, or contract or within 90 days after the Effective Date, whichever is later.

Athena shall annually review the Code of Conduct and shall make any necessary revisions. These revisions shall be distributed within 30 days of initiating such a change. Covered Persons shall certify on an annual basis that they have received, read, understood and will abide by the Code of Conduct.

2. *Policies and Procedures.* Within 90 days after the Effective Date, Athena shall develop and implement written Policies and Procedures regarding the operation of Athena's compliance program and its compliance with all federal and state health care statutes, regulations, directives, and guidelines, including the requirements of the Federal health care programs. At a minimum, Athena's Policies and Procedures shall specifically address:

- a. Measures designed to ensure that Athena fully complies with Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and all regulations, directives, and guidelines promulgated pursuant to these statutes, including, but not limited to, 42 C.F.R. Parts 424, 482, and 483, and any other state or local statutes, regulations, directives, or guidelines that address quality of care in nursing homes;
- b. Measures designed to ensure that Athena complies with all requirements applicable to Medicare's Prospective Payment System (PPS) for skilled nursing facilities, including, but not

limited to: ensuring the accuracy of the clinical data required under the Minimum Data Set (MDS) as specified by the Resident Assessment Instrument User's Manual; and ensuring that Athena Facilities are appropriately and accurately using the current Resource Utilization Groups (RUG) classification system;

- c. Measures designed to ensure the coordinated interdisciplinary approach to providing care to nursing home residents, including, but not limited to the following areas addressed in 42 C.F.R. § 483: resident assessment and care planning; nutrition; diabetes care; wound care; infection control; fall prevention, recovery, and assessment; abuse and neglect policies and reporting procedures; protection from harm procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; activities of daily living (ADL) care; therapy services; quality of life, including accommodation of needs and activities; and assessment of resident competence to make treatment decisions;
- d. Measures designed to ensure that Athena has an appropriate and effective protocol designed to prevent falls by patients and residents, including appropriate fall prevention strategies, reporting requirements, and post-fall recovery and reassessment plans;
- e. Measures designed to ensure that staffing needs are decided first and foremost upon achieving the level of care for Athena's patients and residents required by federal and state laws, including, but not limited to, 42 C.F.R. § 483.30 (nursing facilities);
- f. Measures that specify that if the director of nursing (or other person who is making staffing decisions at Athena Facilities) disagrees with a staffing determination that is not in compliance with state or federal regulations or the CIA and that significantly affects patient care made by the Administrator or other individuals at the district, region, or corporate level, and is unable to resolve the issue through the normal chain of responsibility, then that person must immediately call the hotline and the Monitor. Nothing in this subsection prohibits or prevents such person from

contacting the hotline or the Monitor without first going through the normal chain of responsibility;

- g. Measures designed to inform Covered Persons of the staffing requirements of federal and state law;
- h. Measures to inform Covered Persons during orientation and during other training required by this CIA that staffing levels are a critical aspect of patient and resident care, and that if any person has a concern about the level of staffing there are many avenues available to report such concerns, including, but not limited to, the Administrator, the Hotline (as described in Section III.E of the CIA), individuals at the district, regional, or corporate level, or directly to the Compliance Officer or Monitor;
- i. Measures designed to minimize the number of individuals working at any Athena facility who are on a temporary assignment or not employed by Athena or the facility (not including those persons who are included in the definition of Covered Persons) and measures designed to create and maintain a standardized system to track the number of individuals at each facility who fall within this category so that the number/proportion of or changing trends in such staff can be adequately identified by Athena or the Monitor;
- j. Measures designed to ensure that all residents and patients are served in the least restrictive environment and most integrated setting appropriate to their needs;
- k. Measures designed to promote adherence to the compliance and quality of care standards set forth in the applicable statutes, regulations, and the CIA, by including such adherence as a significant factor in determining the compensation to Administrators and Directors of Nursing of the Athena Facilities, and the individuals responsible for such compliance at the district, regional, and corporate level;
- l. Measures designed to ensure cooperation by Athena and its Covered Persons with the Monitor in the performance of his or her duties as set forth *infra*;

- m. Measures designed to ensure that compliance issues are identified internally (*e.g.*, through reports to supervisors, hotline complaints, internal audits, patient satisfaction surveys, CMS quality indicators, facility-specific key indicators, or internal surveys) or externally (*e.g.*, through CMS or state survey agency reports, consultants, or Monitor's Reports) and are promptly and appropriately investigated and, that if the investigation substantiates compliance issues, Athena implements effective and timely corrective action plans and monitors compliance with such plans;
- n. Measures designed to effectively collect and analyze staffing data, including staff-to-resident ratio, staff turnover, and staffing during the periods in which falls occurred;
- o. Measures designed to ensure that contractors, subcontractors and agents that fall within the ambit of Covered Persons are appropriately supervised to ensure that they are acting within the parameters of Athena's Policies and Procedures and the requirements of Federal health care programs;
- p. Measures designed to ensure that appropriate and qualified individuals perform the internal quality audits and reviews;
- q. No retaliation policies and methods for employees to make disclosures or otherwise report on compliance issues through the Disclosure Program required by Section III.E;
- r. Disciplinary guidelines to reflect the Code of Conduct requirements as specified in Section III.B.1; and
- s. Measures designed to ensure that Athena has a system to require and centrally collect reports relating to incidents, falls, accidents, abuse, and neglect. The reports required under this system shall be of a nature to allow the Quality Assurance Committees meaningful information to be able to determine: 1) if there is a quality of care problem; and 2) the scope and severity of the problem.

