

APPENDIX A
CERTIFICATION OF COMPLIANCE AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
ASHLAND NURSING & REHAB, LLC D/B/A ASHLAND HEALTHCARE

I. PREAMBLE

Ashland Nursing & Rehab, LLC d/b/a Ashland Healthcare (Ashland) hereby enters into this Certification of Compliance Agreement (CCA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS). Contemporaneously with this CCA, Ashland is entering into a Settlement Agreement with the OIG.

The effective date of this CCA shall be the date on which the final signatory of this CCA executes this CCA (Effective Date). The period of certification obligations assumed by Ashland shall be three years from the Effective Date of this CCA. Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a "Reporting Period."

II. CERTIFICATION REQUIREMENTS

A. Ineligible Person. For the purpose of this CCA, an "Ineligible Person" shall include an individual or entity who: (a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or (b) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

B. Screening. Ashland currently has in place and shall maintain for the duration of this CCA policies and procedures requiring the screening of all current and prospective owners, officers, directors, employees, contractors, and agents prior to engaging their services and screens all physicians prior to granting medical staff or admitting privileges. The policies and procedures include the following elements.

1. To prevent hiring or contracting with any Ineligible Person, Ashland screens all prospective owners, officers, directors, employees, contractors, and agents prior to engaging their services and screens all physicians prior to granting medical staff or admitting privileges by (a) requiring applicants to disclose whether they are Ineligible

Persons; and (b) querying the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://oig.hhs.gov>).

2. Ashland also performs at least quarterly screening of its current owners, officers, directors, employees, contractors, agents, and physicians with staff or admitting privileges to ensure that they are not Ineligible Persons, and has a policy in place that requires an individual to disclose any debarment, exclusion, suspension, or other event that makes the individual an Ineligible Person.

3. If Ashland has actual notice that an owner, officer, director, employee, contractor, or agent has become an Ineligible Person, then Ashland shall remove such person from responsibility for, or involvement with, Ashland's business operations related to the Federal health care programs and remove such person from any position for which the person's compensation or the items or services furnished, ordered, or prescribed by the person are paid in whole or in part, directly or indirectly, by Federal health care programs or otherwise with Federal funds, at least until such time as the person is reinstated into participation in the Federal health care programs.

4. If Ashland has actual notice that an owner, officer, director, employee, contractor, or agent is charged with a criminal offense that falls within the ambit of 42 U.S.C. §§ 1320a-7(a), 1320a-7(b)(1)-(3), or is proposed for exclusion, Ashland shall take all appropriate actions to ensure that the responsibilities of that person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or the accuracy of any claims submitted to any Federal health care program.

5. If a physician with staff or admitting privileges becomes an Ineligible Person, Ashland shall ensure that the physician does not furnish, order, or prescribe any items or services payable in whole or in part by any Federal health care.

C. Training. Ashland currently has in place and shall maintain for the duration of this CCA a policy and procedure requiring the annual training of all owners, officers, directors, employees, contractors, agents, and physicians with staff or admitting privileges

on Ashland's policies and procedures regarding Ineligible Persons. The annual training includes the following elements:

1. Ashland's responsibilities not to hire or contract with Ineligible Persons;
2. Ashland's mandatory disclosure policy regarding ineligibility;
3. The mechanisms for determining whether a person is an Ineligible Person; and
4. The potential consequences to Ashland of hiring or contracting with an Ineligible Person.

D. Annual Certification. Ashland shall certify annually to OIG that Ashland has been in compliance with Sections II.B and II.C above for the preceding Reporting Period (Annual Certification). The first Annual Certification shall be received by OIG no later than 30 days after the end of the first Reporting Period. Subsequent Annual Certifications shall be received by OIG no later than the anniversary date of the due date of the first Annual Certification. A model Certification is attached as Exhibit A to this CCA.

E. Notifications and Submission of Annual Certifications. Unless otherwise specified in writing after the Effective Date, all Annual Certifications required under this CCA shall be submitted to the following addresses:

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

Ashland:

Beth Bowles, Administrator
Ashland Nursing & Rehab, LLC
300 S. Henry Clay
Ashland, MO 65010
Telephone: 573-657-2877
Facsimile: (573) 657-4189

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

F. 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 Ashland's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Ashland's locations for the purpose of verifying and evaluating: (a) Ashland's compliance with the terms of this CCA; and (b) Ashland's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by Ashland 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 Ashland'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. Ashland shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Ashland's employees may elect to be interviewed with or without a representative of Ashland present.

G. Document and Record Retention. Ashland shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CCA, for four years (or longer if otherwise required by law) from the Effective Date.

III. BREACH AND DEFAULT PROVISIONS

Ashland is expected to fully and timely comply with all of the Certification Requirements set forth in this CCA.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Ashland and OIG hereby agree that failure to comply with the Certification Requirements set forth in this CCA 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 \$750 (which shall begin to accrue on the day after the date the obligation became due) for each day Ashland fails to maintain the policies and procedures set forth in Section II.B and II.C of this CCA.

2. A Stipulated Penalty of \$1,000 (which shall begin to accrue on the day after the date the obligation became due) for each day Ashland fails to submit the Annual Certifications to OIG in accordance with the requirements of Section II.D by the stated deadlines for submission.

3. A Stipulated Penalty of \$750 for each day Ashland fails to grant access to the information or documentation as required in Section II.F of this CCA. (This Stipulated Penalty shall begin to accrue on the date Ashland fails to grant access.)

4. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Ashland as part of its Annual Certifications or otherwise required by this CCA.

5. A Stipulated Penalty of \$750 for each day Ashland fails to comply fully and adequately with any obligation of this CCA. OIG shall provide notice (Notice) to Ashland stating the specific grounds for its determination that Ashland has failed to comply fully and adequately with the CCA obligation(s) at issue and steps Ashland shall take to comply with the CCA. (This Stipulated Penalty shall begin to accrue 10 days after the date Ashland 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 1-4 of this Section.

B. Timely Written Requests for Extensions. Ashland may, in advance of the due date, submit a timely written request for an extension of time to perform any act or

file any Annual Report required by this CCA. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act or report, Stipulated Penalties for failure to perform the act or file the report shall not begin to accrue until one day after Ashland 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 report shall not begin to accrue until three business days after Ashland 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 Ashland has failed to comply with any of the obligations described in Section III.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Ashland of: (a) Ashland's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Ashland 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 III.E. In the event Ashland elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Ashland 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 CCA and shall be grounds for exclusion under Section III.D.

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

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

D. Exclusion for Material Breach of this CCA.

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

- a. a repeated or flagrant violation of the obligations under this CCA, including, but not limited to, the obligations addressed in Section III.A; or
- b. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section III.C.

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

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

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Ashland fails to satisfy the requirements of Section III.D.3, OIG may exclude Ashland from participation in the Federal health care programs. OIG shall notify Ashland in writing of

its determination to exclude Ashland (this letter shall be referred to as the “Exclusion Letter”). Subject to the Dispute Resolution provisions in Section III.E, below, the exclusion shall go into effect 30 days after the date of Ashland’s receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Ashland 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 Ashland of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CCA, Ashland 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 CCA. 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 CCA shall be: (a) whether Ashland was in full and timely compliance with the requirements of this CCA for which OIG demands payment; and (b) the period of noncompliance. Ashland 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 CCA and orders Ashland to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Ashland 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.

