INSTITUTIONAL COMPLIANCE AGREEMENT

between the
Office of Inspector General of the Department of Health and Human Services
and
Beth Israel Medical Center

I. Preamble

Beth Israel Medical Center ("Beth Israel") hereby enters into this Institutional Compliance Agreement (the "Agreement") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance with the reimbursement requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs") as they relate to the submission of claims for physician services claimed by Beth Israel and its respective employees.

For the purposes of this Agreement, the term "employee" shall mean: (1) teaching physicians, physician assistants, nurse practitioners, clinical nurse specialists and certified nurse midwives employed by Beth Israel and for whom reimbursement claims are submitted on behalf of Beth Israel; and (2) all other individuals who are employed by Beth Israel who are involved in the generation and submission of reimbursement claims for physician services on behalf of Beth Israel. To the extent provided in this Agreement, the obligations herein shall also apply to all third parties Beth Israel may choose to engage as its billing agents for the generation and/or submission of reimbursement claims for physician services to the Federal health care programs (hereinafter "billing agents"). Finally, this Agreement applies to Beth Israel's medical residents (hereinafter referred to a "residents") as set forth in Section III below.

Prior to the execution of this Agreement, Beth Israel voluntarily established a compliance plan, also known as the "Compliance Program," which provides for integrity policies and procedures and which, as represented by Beth Israel in this Agreement, is aimed at ensuring that its participation in the Federal health care programs (which includes any requests for payments) is in conformity with the statutes, regulations and other directives applicable to the Federal health care programs. Therefore, pursuant to this Agreement, Beth Israel hereby agrees to maintain in full operation the Compliance Program as it relates to the submission of claims for physician services for the term of this Agreement. The Compliance Program may be modified by Beth Israel as appropriate, but at a minimum, shall always comply with the integrity obligations enumerated in this Agreement.

II. Term and Scope of the Agreement

The period of the integrity obligations assumed by Beth Israel under this Agreement shall be five (5) years from the effective date of this Agreement. The effective date of this Agreement shall be the date on which the final signatory of this Agreement executes this Agreement. The obligations imposed upon Beth Israel pursuant to this Agreement relate solely to the provision of, and reimbursement claims for, physician services in connection with Federal health care program patients.

Sections IV, VII, VIII, IX and X shall remain in effect until OIG has completed its review of the final Annual Report and any additional materials submitted by Beth Israel pursuant to OIG's request. However, Sections VII, VIII, IX, X and XII shall expire no later than 120 days from OIG's receipt of (1) Beth Israel's final annual report or (2) any additional materials submitted by Beth Israel pursuant to OIG's request, whichever is later.

III. Integrity Obligations

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

A. Compliance Committee

Beth Israel has represented to OIG that, pursuant to its Compliance Program, it has created a compliance committee known as the Executive Corporate Compliance Committee (hereinafter the "Compliance Committee") to monitor Beth Israel's compliance activities. Pursuant to this Agreement, Beth Israel agrees to charge the Compliance Committee with responsibility for overseeing compliance with the integrity obligations in this Agreement. Accordingly, Beth Israel hereby agrees to charge the Compliance Committee with overall responsibility for the obligations in the Agreement. Beth Israel shall ensure that the Compliance Committee continuously consists of the senior management of Beth Israel as identified in Attachment 3 to this ICA. The Compliance Officer shall chair the Compliance Committee and the Compliance Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of the organization's risk areas and shall oversee monitoring of internal and external audits and investigations). The Compliance Committee must be able to make reports directly to the Board of Trustees of Beth Israel. Any changes in the composition of the Compliance Committee must be reported to OIG within thirty (30) days of such a change.

B. Compliance Officer

Beth Israel has represented to OIG that, pursuant to its Compliance Program, it has a Compliance Officer. 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 Agreement and with Federal health care program requirements. The Compliance Officer shall continue to be a member of senior management of Beth Israel, shall make periodic reports regarding compliance matters directly to the Board of Trustees of Beth Israel, and shall be authorized to report on such matters to the Board of Trustees at any time. The Compliance Officer shall continue to be responsible for monitoring the day-to-day compliance activities engaged in by Beth Israel as well as for any reporting obligations created under this Agreement.

C. Written Standards

1. Code of Conduct. Beth Israel has represented to OIG that it has developed a Code of Conduct by which all employees are expected to abide in connection with the services they render to patients of the Federal health care programs. Accordingly, to the extent it has not already done so, Beth Israel shall distribute the Code of Conduct to all employees and billing agents within sixty (60) days of the effective date of this Agreement. Beth Israel shall maintain the Code of Conduct in effect for the duration of this Agreement. The Code of Conduct shall also be readily accessible to employees, billing agents and residents through means that Beth Israel considers effective. New employees shall receive the Code of Conduct within forty-five (45) days after the commencement of their employment or within ninety (90) days of the effective date of this Agreement, whichever is later. New billing agents shall receive the Code of Conduct prior to the commencement of the billing agent's engagement or contract.

   Beth Israel shall document the actions taken to distribute the Code of Conduct to all employees. Such documents shall be produced to OIG upon request.

   Beth Israel will annually review the Code of Conduct and will make any necessary revisions. Any material revisions shall be distributed to all employees within thirty (30) days of initiating such a change, unless the nature of the revision is such that it warrants earlier notice.

   Beth Israel shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees and billing agents. At all times, the Code of Conduct shall, at a minimum, set forth:

a. Beth Israel's commitment to full compliance with all statutes, regulations, and guidance applicable to the Federal health care programs, including its commitment to prepare and submit accurate reimbursement claims consistent with the Federal health care program statutes and regulations, as well as guidance otherwise communicated by the Health Care Financing Administration ("HCFA") (or other regulatory agencies that administer the Federal health care programs) and/or its agents;

b. Beth Israel's requirement that all of its employees and billing agents comply with all statutes, regulations, and guidance applicable to Federal health care programs and with Beth Israel's own policies and procedures (including the requirements arising from this Agreement);

c. The requirement that Beth Israel employees and billing agents (as it relates to its contract or engagement with Beth Israel) are expected to report through the Compliance Program any suspected violations of any statute, regulation, or guidelines applicable to the Federal health care programs or of Beth Israel's own policies and procedures;

d. The potential consequences to both Beth Israel and to any employee and billing agent as a result of any failure to comply with the applicable Federal health care program requirements and/or with Beth Israel's own policies and procedures or any failure to report such non-compliance; and

e. The right of all employees and billing agents to use Beth Israel's confidential disclosure mechanisms, as well as Beth Israel's commitment to confidentiality and non-retaliation policy with respect to good faith disclosures.

2. Policies and Procedures. Beth Israel has represented to OIG that it has developed and placed into effect written policies and procedures regarding the operation of its Compliance Program and its overall compliance with all Federal health care program statutes, regulations, and guidance issued by the agency in charge of administering the program and its agents. Within ninety (90) days of the effective date of this Agreement, Beth Israel shall distribute to all employees and billing agents the aforementioned written policies and procedures, to the extent it has not

already done so. Beth Israel shall take actions that it considers reasonable and effective to ensure that these policies are communicated to, and understood by, its employees and billing agents. Compliance staff and/or supervisors should be duly identified and made continuously available to explain any and all policies and procedures.

Beth Israel hereby agrees to maintain its policies and procedures, which at all times shall specifically address: (1) the need for compliance in connection with all submissions for reimbursement for professional services; (2) documentation requirements; and (3) a process for reasonable verification of compliance with these requirements. In addition, the policies and procedures shall include disciplinary guidelines and methods for employees and billing agents to disclose or otherwise report on compliance issues to management and/or supervisors, and through the Confidential Disclosure mechanisms required by Section III.F. Beth Israel shall assess and update the policies and procedures at least annually or more frequently, as appropriate. At a minimum, a summary of the policies and procedures will be provided to OIG in the Implementation Report, as provided in Section V.A. The policies and procedures shall be available to OIG upon request.

D. Training and Education.

1. General Training. Within one hundred and fifty (150) days of the effective date of this Agreement, Beth Israel shall provide at least one hour of general compliance training to its employees. This general training shall explain Beth Israel's:

   a. Institutional Compliance Agreement requirements;

   b. Compliance Program (including the policies and procedures established pursuant to Subsection C.2 above).

   The training materials (including attendance logs) shall be maintained by Beth Israel and made available to OIG, upon request. New employees shall receive the general training described above within forty-five (45) days of commencing employment with Beth Israel, or within ninety (90) days of the effective date of this Agreement, whichever is later. Beth Israel shall also make the general training sessions and materials available to all billing agents and shall encourage their attendance.

2. Specific Training. Within one hundred and fifty (150) days of the effective date of this Agreement, Beth Israel shall continue to provide to

all its employees at least two (2) hours of more intensive training, in addition to the general training required above. At a minimum, this training shall include a discussion of:

a. The submission of accurate requests for reimbursement for physician services rendered to patients of the Federal health care programs;

b. The policies, procedures and other requirements applicable to the documentation of medical records as it pertains to the rendering of physician services;

c. The personal obligation of each individual to ensure that the information documented by the individual, whether relating to actual patient care, the type of services or items delivered or the coding of such services or items is accurate and meets the Federal health care program requirements and Beth Israel's policies;

d. Reimbursement rules and statutes applicable to Beth Israel's participation in the Federal health care programs;

e. The legal sanctions for improper reimbursement submissions (including the submission of false or inaccurate information); and

f. Relevant examples of proper and improper billing practices as they pertain to the rendering of physician services.

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

Within forty-five (45) days (or within ninety days of the effective date of this Agreement, whichever is later) of the beginning of employment, Beth Israel shall provide all new employees with specific training. If the new employee has any responsibility for the delivery of patient care, the preparation or submission of claims and/or the assignment of procedure codes prior to completing this specific training, a Beth Israel employee who has completed the substantive training shall conduct periodic reviews of the untrained person's work regarding the documentation of services and/or the assignment of billing codes until such time as the new employee is duly trained.

Every employee shall receive refresher information as required on this specific training each year for the duration of this Agreement. The

substance of the training and the identity of the individuals must be documented in accordance with Subsection D.3 below. All specific training sessions and materials shall be made available to billing agents. Beth Israel shall encourage its billing agents' attendance at such training sessions.

Beth Israel recognizes the importance of educating residents concerning the reimbursement requirements of the Federal health care programs and the importance of compliance. To further these objectives, Beth Israel shall encourage residents to attend the specific training described in this subsection III.D.2. Residents will not otherwise be treated as new employees for purposes of this Agreement, but will be required to attend the general training session during the first year of their residency program. Residents will be instructed to document their attendance at the training sessions.

3. Certification. Beth Israel has represented to OIG that it maintains documents that reflect attendance at education and training sessions by employees and billing agents, and the topics covered at each session. Beth Israel hereby agrees to continue the maintenance of such records, including those relating to both the general and specific training sessions pursuant to this Agreement. Beth Israel may choose the exact format of these documents, but it is expected that the materials will include sheets with the signatures of the persons who attended. The Compliance Officer shall retain the attendance logs as well as the course materials. All of these documents shall be available to OIG upon request.

   Beth Israel shall certify that such training has been provided in its Implementation and Annual Reports to OIG, in accordance with Section V below. Information concerning the format, dates, and copies of the materials provided will be available to OIG, upon request.

   For purposes of meeting the obligations under this Subsection D, for the term of the first Annual Report under this Agreement, OIG shall consider Beth Israel's training and education activities carried out pursuant to the Compliance Plan since July 1, 2000.

E. Annual Reviews of Billing Policies, Procedures and Practices

1. Annual Reviews. Beth Israel has developed a protocol, attached hereto as Attachment 1, for reviewing, on an annual basis, a sample of claims for professional services rendered through Beth Israel and/or for which Beth Israel submits reimbursement claims. An objective of the annual review

is to evidence compliance with the reimbursement and billing requirements of the Federal health care programs. Implementation of the agreed-upon procedures set forth in the protocol shall be an element of this Agreement.

Beth Israel represents that it contracts with independent outside consultants (the "Independent Review Organization" or "IRO"), with expertise in the reimbursement requirements of the Federal health care programs applicable to physician services, to perform agreed upon reviews as set forth in Attachment 1. The IRO shall be required to issue a report explaining its procedures and findings.

For the purposes of this Agreement, an "overpayment" shall mean the amount of money Beth Israel has received in excess of the amount due and payable under any Federal health care program requirements. Beth Israel may not subtract any underpayments for the purposes of determining the amount of relevant "overpayments" for Agreement reports. If any of these annual reviews uncovers overpayments, Beth Israel shall notify the entity in charge of processing the claim or reimbursement (such as the Medicare Part B carrier or similar Federal health care program payor) within sixty (60) days of identification of the overpayment and take remedial steps within ninety (90) days of identification (or such additional time as may be agreed to by the payor) to correct the problem. "Correcting" the problem included preventing the underlying problem and overpayments from recurring. Also, within sixty (60) days of identification of the overpayment, Beth Israel shall repay the overpayment to the appropriate payor to the extent such overpayment has been quantified. If not yet quantified, within sixty (60) days of identification, Beth Israel 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. The notice to the payor shall include: (i) a statement that the refund is being made pursuant to this Agreement; (ii) a statement describing Beth Israel's basis for the overpayment; (iii) the methodology by which the overpayment was determined; (iv) the amount of the overpayment; (v) any claim-specific information relating to the overpayment (e.g., beneficiary health insurance numbers, claim numbers, dates of service, amounts claimed, amounts paid and dates of payment, unless the methodology used to determine the overpayment is based on an extrapolation--in which case Beth Israel shall provide the necessary information to enable the appropriate processing of refunds); and (vi) the provider billing number under which the refund is being made.

If any annual review or monitoring reveals that there may be a Material

Billing Deficiency, Beth Israel shall take reasonable steps to determine the extent of the problem, including the amount of overpayments made by any Federal health care program. To determine the amount of a potential overpayment, Beth Israel shall conduct a special review, as set forth in Subsection E.2 below. For the purposes of this Agreement, a "Material Billing Deficiency" shall mean credible evidence of 1) a substantial overpayment or 2) a matter that a reasonable person would consider a potential violation of criminal, civil, or administrative laws applicable to any Federal health care program for which penalties or exclusion may be authorized. A Material Billing Deficiency may be the result of an isolated event or a series of occurrences.

If Beth Israel determines through any means that there is a Material Billing Deficiency, Beth Israel shall notify OIG, in writing, within sixty (60) days of making the determination that the Material Billing Deficiency exists. Beth Israel's report to OIG shall include the following information: (i) if the Material Billing Deficiency results in an overpayment, the report to OIG shall be made at the same time as the notification to the payor, and shall include all of the information reported to the payor as well as: (A) the payor's name, address, and contact person to whom the overpayment was sent; and (B) the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid/refunded; (ii) a complete description of the Material Billing Deficiency, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated; (iii) a description of Beth Israel's actions taken to correct the Material Billing Deficiency; (iv) any further steps Beth Israel plans to take to address the Material Billing Deficiency and prevent it from recurring; and (v) a report on the calculation of the overpayment amounts, as provided in Subsection E.2 below.

2. Special Reviews. In the event that a Material Billing Deficiency is identified, Beth Israel shall conduct a special review in accordance with the guidelines set forth in Attachment 2 to this Agreement.

   a. Reporting Results. Upon completion of each special review, Beth Israel shall prepare a report reflecting adherence to the guidelines set forth in Attachment 2 to this Agreement.

F. Confidential Disclosure

To the extent that it has not already done so, Beth Israel shall within ninety (90) days after the effective date of this Agreement, Beth Israel shall establish a

Disclosure Program, that must include 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 Beth Israel'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. Beth Israel 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 non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communications. 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, Beth Israel shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or his or her 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. The disclosure log shall be available to OIG, upon request.

G. Ineligible Persons

1. Definition. For the purposes of this Agreement, an "Ineligible Person" shall be any individual or entity who: (a) is currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs; or (b) has been convicted of a criminal offense related to the provision of health care items or services, but has not yet been excluded, debarred or otherwise declared ineligible.

2. Screening Requirements. Beth Israel shall not hire as employees or engage as contractors or grant staff privileges to any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, Beth Israel shall

screen all prospective employees and prospective contractors prior to engaging their services, and screen physicians prior to granting staff privileges by: (a) requiring applicants to disclose whether they are Ineligible Persons; and (b) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at http://epls.arnet.gov) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at http://www.hhs.gov/oig) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. Review and Removal Requirement. To the extent that it has not already done so, within ninety (90) days of the effective date of this Agreement, Beth Israel shall review its list of current employees, contractors and physicians with staff privileges against the Exclusion Lists. Thereafter, Beth Israel shall review its list of current employees, contractors and physicians with staff privileges against the Exclusion Lists annually. In addition, Beth Israel shall require employees, contractors and physicians with staff privileges to disclose immediately any debarment, exclusion or other event that makes the person an Ineligible Person.

   If Beth Israel has notice that an employee, contractor and/or physician with staff privileges has become an Ineligible Person, Beth Israel shall remove such person from responsibility for, or involvement with, Beth Israel's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. Pending Charges and Proposed Exclusions. If Beth Israel has notice that an employee, contractor or physician with staff privileges is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, Beth Israel shall take all appropriate actions to ensure that the responsibilities of that employee, contractor or physician with staff privileges have not and shall not adversely affect the quality of care rendered to any beneficiary, patient or resident, or the accuracy of any claims submitted to any Federal health care program.

H. Notification of Government Investigation or Legal Proceeding

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

IV. OIG Inspection, Audit and Review Rights

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

V. Implementation and Annual Reports

A. Implementation Report

Within one hundred and twenty (120) days after the effective date of this Agreement, Beth Israel shall submit a written report to OIG summarizing the status of its implementation of the requirements of this Agreement. This Implementation Report shall include:

1. The names and positions of the members of the Compliance Committee required by Section III.A.

2. The name, address, phone number and position description of the

Compliance Officer required by Section III.B.

3. A copy of Beth Israel's Code of Conduct required by Section III.C.1.

4. A summary of the policies and procedures required by Section III.C.2 or a copy of the policies and procedures.

3. A description of the training programs required by Section III.D, including a description of the targeted audiences, length of sessions, which sessions were mandatory and for whom, percentage of attendance, and a schedule of the dates on which the training sessions were held.

6. A certification by the Corporate Compliance Officer that, to the best of the her/his knowledge and, upon reasonable efforts and inquiry, the actions described in Sections III.C and III.D.1 of this Agreement have taken place. The documentation supporting this certification shall be available to OIG, upon request.

7. A description of the confidential disclosure mechanisms required by Section III.F.

8. The certification required by Section V.C.

B. <u>Annual Report</u>

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

Each Annual Report shall include:

1. In the first Annual Report, copies of the document or documents that comprise Beth Israel's Compliance Program, as adopted by Beth Israel and implemented by the Compliance Committee and the Corporate Compliance Officer. For subsequent years, Beth Israel shall note in the Annual Report any amendments or revisions to the Compliance Program documents made during the period covered by the Annual Report.

2. Any change in the identity, position or duties of the Corporate Compliance Officer, and/or any changes in the positions that comprise the Compliance Committee, as set forth in Sections III.A and III.B.

3. Copies of any revisions or amendments made to the Code of Conduct or

the policies and procedures used or followed in the generation of claims submitted to the Federal health care programs during the period covered by the Annual Report pursuant to Section III.C.

4. A description of the Training and Education activities engaged in pursuant to Section III.D of this Agreement and a summary of the activities undertaken to implement this program, including schedules, topic outlines of the training sessions, and lists of the participants organized by department or division. Additionally, Beth Israel shall include a certification by the Corporate Compliance Officer that, to the best of her/his knowledge and, upon reasonable efforts and inquiry, the education and training activities required under this Agreement have taken place.

5. A summary of the findings made during the reviews conducted pursuant to Section III.E.1 of this Agreement relating to the year covered by the Annual Report; copies of any disclosures or notice documents prepared by Beth Israel pursuant to that section; a copy of the IRO's report required under Section III.E.1; a copy of any special review reports described in Section III.E.2; and a description of the corrective steps and proof of refund to the pertinent payor (where applicable).

6. A summary of all Material Billing Deficiencies reported during the Reporting Period pursuant to Section III.E.

7. A summary of communications (including the number of disclosures by employees and the dates of disclosure) received through the mechanisms established pursuant to Section III.F, as well as any follow-up on such disclosures.

8. A written description of any personnel action (other than hiring) and/or any activity carried out by Beth Israel as a result of the requirements in Section III.G and the identities of the individuals subjected to such an action or activity.

9. 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.

10. The certification required by Section V.C.

The first Annual Report shall be received by OIG no later than ninety (90) days after the end of the first Reporting Period. Subsequent Annual Reports shall be

received by OIG no later than the anniversary date of the due date of the first Annual Report.

C. Certifications

The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that: (1) except as otherwise described in the applicable report, Beth Israel is in compliance with the requirements of this Agreement, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the applicable report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

D. Designation of Information

Beth Israel 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. Beth Israel 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 of this Agreement, all notifications and reports required under this Agreement shall be submitted to the following entities:

OIG:
Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Cohen Building, Room 5527
Washington, DC 20201
Ph. 202-619-2078
Fax 202-205-0604

BETH ISRAEL:
Louis I. Schenkel
Corporate Compliance Officer
Continuum Health Partners, Inc.
555 West 57th Street, 18th Floor
New York, New York 10019
Ph. 212-523-2162
Fax 212-523-3935

VII. Document and Record Retention

Beth Israel shall maintain for inspection documents and records relating to its compliance with the obligations in this Agreement, as well as those relating to the reimbursement claims submitted to the Federal health care programs, for a period of six (6) years following the execution of this Agreement or one (1) year longer than the duration of this Agreement.

VIII. Breach and Default

Beth Israel's compliance with the terms and conditions in this Agreement shall constitute an element of Beth Israel's present responsibility with regard to participation in the Federal health care programs. Full and timely compliance by Beth Israel shall be expected throughout the duration of this Agreement with respect to all of the obligations herein agreed to by Beth Israel. As stated below in Section X of this Agreement, any and all modifications to this Agreement (including changes to dates on which an obligation is due to be met) shall be requested in writing and agreed to by OIG in writing prior to the date on which the modification is expected to take effect.

A. Stipulated Penalties for Failure to Comply with Certain Obligations

As a contractual remedy, Beth Israel and OIG hereby agree that failure to comply with certain obligations set forth in this Agreement may lead to the imposition of specific monetary penalties (hereinafter referred to as "stipulated penalties") in accordance with the following provisions.

1. A stipulated penalty of $2,500 for each day Beth Israel fails to comply with any of the following, which stipulated penalty shall begin to accrue one day after the date the obligation becomes due:

    a. Submission of the complete Annual Report, in accordance with the requirements in Section V.B, by the due date established in Section V.B;

    b. Confirmation of the existence of a Compliance Officer in the Implementation Report as required under Section V.A;

    c. Confirmation of the existence of a Compliance Committee in the Implementation Report as required under Section V.A;

    d. Maintenance of a toll-free telephone line pursuant to Section III.F.

2. A stipulated penalty of $2,500 for each day Beth Israel fails to comply by

having in force during the term of this Agreement any of the following, which stipulated penalty shall begin to accrue on the date of receipt of OIG's notice of noncompliance, in accordance with Section VIII.B below:

a. The Compliance Program adopted pursuant to this Agreement;

b. The Compliance Committee and the Compliance Officer discharging their respective duties, as required under Sections III.A and III.B of this Agreement;

c. The Training and Education activities required under Section III.D of this Agreement;

d. The Confidential Disclosure requirements under Section III.F of this Agreement.

3. A stipulated penalty of $2,000 for each day Beth Israel fails to grant access to the information or documentation necessary for OIG to exercise its inspection, audit and review rights set forth in Section IV of this Agreement, which stipulated penalty shall begin to accrue on the date Beth Israel fails to grant access.

4. A stipulated penalty of $2,000 (which shall begin to accrue on the date the failure to comply began) for each day Beth Israel:

a. hires or enters into a contract with an Ineligible Person after the date upon which that person has been listed on the Exclusion Lists by a Federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Federal health care programs; this stipulated penalty shall not be demanded for any time period during which Beth Israel can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in Section III.G) as to the status of the person;

b. continues to employ or contract with a person who becomes an Ineligible Person and that person: (i) has responsibility for, or involvement with, Beth Israel's business operations related to the Federal health care programs; or (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds; this stipulated penalty shall not be demanded for

any time period during which Beth Israel can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in Section III.G) as to the status of the person; or

c. fails to take action or engage in the required activities in accordance with subsection III.G.4 above; this stipulated penalty shall not be demanded for any time period during which Beth Israel can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in Section III.G) as to the status of the person.

5. A stipulated penalty of $1,000 (which shall begin to accrue ten (10) days after the date that OIG provides notice to Beth Israel of the failure to comply) for each day Beth Israel fails to comply with any other requirement in this Agreement, which is not covered by provisions 1, 2, 3 and 4 of this Section VIII.A. In its notice to Beth Israel, OIG shall state the specific grounds for its determination that Beth Israel has failed to comply fully and adequately with the Agreement obligation(s) at issue and steps Beth Israel must take to comply with the Agreement.

B. Timely Written Requests for Extensions

Beth Israel may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this Agreement. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act, notification, or report, stipulated penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Beth Israel 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 (3) business days after Beth Israel receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties

1. Demand Letter. Upon a finding that Beth Israel has failed to comply with any of the obligations described in Section VIII.A and after determining that stipulated penalties are appropriate, OIG shall notify Beth Israel of:

(a) Beth Israel's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the stipulated penalties (this notification is hereinafter referred to as the "Demand Letter").

2. Response to Demand Letter. Within ten (10) days of the receipt of the Demand Letter, Beth Israel 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 VIII.E. In the event Beth Israel elects to request an ALJ hearing, the stipulated penalties shall continue to accrue until Beth Israel cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this Agreement and shall be grounds for exclusion under section VIII.D.

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

4. Independence From Material Breach Determination. Except as set forth in Section VIII.D.1.c, these provisions for payment of stipulated penalties shall not affect or otherwise set a standard for OIG's decision that Beth Israel has materially breached this Agreement, which decision shall be made at OIG's discretion and shall be governed by the provisions in Section VIII.D, below.

D. Exclusion for Material Breach of this Agreement

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

a. a failure by Beth Israel to report a Material Billing Deficiency, take corrective action and make the appropriate refunds, as required in Section III.E;

b. a repeated or flagrant violation of the obligations under this Agreement, including, but not limited to, the obligations addressed in Section VIII.A;

c. a failure to respond to a Demand Letter concerning the payment of

stipulated penalties in accordance with Section VIII.C; or

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

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

3. Opportunity to Cure. Beth Israel shall have thirty (30) days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

a. Beth Israel is in compliance with the obligations of the Agreement cited by the 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) Beth Israel has begun to take action to cure the material breach; (ii) Beth Israel is pursuing such action with due diligence; and (iii) Beth Israel has provided to OIG a reasonable timetable for curing the material breach.

4. Exclusion Letter. If at the conclusion of the 30-day period, Beth Israel fails to satisfy the requirements of Section VIII.D.3, OIG may exclude Beth Israel from participation in the Federal health care programs. OIG will notify Beth Israel in writing of its determination to exclude Beth Israel (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section VIII.E, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Beth Israel wishes to apply for reinstatement, Beth Israel must submit a written request for reinstatement in accordance

with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. Review Rights. Upon OIG's delivery to Beth Israel of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this Agreement, Beth Israel shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the stipulated penalties or exclusion sought pursuant to this Agreement. Specifically, OIG's determination to demand payment of stipulated penalties or to seek exclusion shall be subject to review by an 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 ten (10) days of the receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within twenty-five (25) days of receipt of the Exclusion Letter.

2. Stipulated Penalties Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for stipulated penalties under this Agreement shall be: (a) whether Beth Israel was in full and timely compliance with the obligations of this Agreement for which OIG demands payment; and (b) the period of noncompliance. Beth Israel shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ agrees with OIG with regard to a finding of a breach of this Agreement and orders Beth Israel to pay stipulated penalties, such stipulated penalties shall become due and payable twenty (20) days after the ALJ issues such a decision unless Beth Israel requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the stipulated penalties shall become due and payable twenty (20) days after the DAB issues its decision.

3. Exclusion Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of this Agreement shall be:

   a. whether Beth Israel was in material breach of this Agreement;

b. whether such breach was continuing on the date of the Exclusion Letter; and

c. whether the alleged material breach could not have been cured within the 30-day period, but that:

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

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

(iii) Beth Israel provided to OIG within that period a reasonable timetable for curing the material breach and Beth Israel has followed the timetable.

For the purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Beth Israel, only after a DAB decision in favor of OIG. Beth Israel's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Beth Israel 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 twenty (20) days after the ALJ issues such a decision, notwithstanding that Beth Israel may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect twenty (20) days after the DAB decision. Beth Israel agrees to waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB.

4. Finality of Decision. The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statutes or regulations. Consequently, the parties to this Agreement agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this Agreement.

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 Beth Israel prior to any release by OIG of information submitted by Beth Israel pursuant to its obligations under this Agreement and identified upon submission by Beth Israel as trade secrets, or information that is commercial or

financial and privileged or confidential, under the FOIA rules. With respect to such releases, Beth Israel shall have the rights set forth at 45 C.F.R. § 5.65(d). Beth Israel shall refrain from identifying any information as exempt from release if that information does not meet the criteria for exemption from disclosure under FOIA.

X. Effective and Binding Agreement

Consistent with the provisions in the Stipulation and Order of Settlement pursuant to which this Agreement is entered, and into which this Agreement is incorporated by reference, Beth Israel and OIG agree as follows:

1. This Agreement shall be binding on the successors, assigns and transferees of Beth Israel that assume responsibility for submitting claims to the Federal health care programs for professional services rendered by physicians and other health care providers who, for purposes of providing such professional services, are employed by Beth Israel or who are independent contractors with Beth Israel. This Agreement shall also be binding on any entity owned or controlled by Beth Israel that assumes responsibility for billing for professional services rendered by Beth Israel's physician faculty members.

2. This Agreement shall become final and binding only upon signing by each respective party hereto;

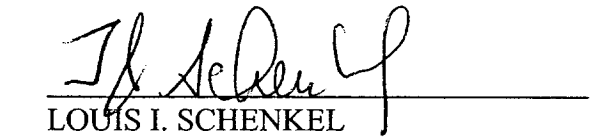
3. Any modifications to this Agreement may be made only by a writing signed by the parties to this Agreement; and

4. The undersigned Beth Israel signatories represent and warrant that they are authorized to execute this Agreement on behalf of The Beth Israel Medical Center. The undersigned OIG signatory represents that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement on behalf of OIG.

ON BEHALF OF BETH ISRAEL MEDICAL ~~SCHOOL~~ CENTER

MATTHEW FINK
President and Chief Executive Officer
Beth Israel Medical Center

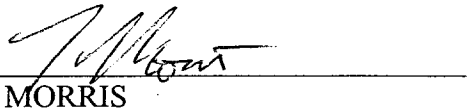
6/26/01
DATE



LOUIS I. SCHENKEL
Corporate Compliance Officer
Beth Israel Medical Center

6/26/01
DATE

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



LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Counsel to the Inspector General
Office of Inspector General
U. S. Department of Health and Human Services

7/2/01
DATE

BETH ISRAEL MEDICAL CENTER

Attachment 1

Beth Israel Medical Center has established a Corporate Compliance Program which includes a Physician Billing Compliance Plan. One aspect of the Physician Billing Compliance Plan is to routinely conduct physician pre-billing reviews.

Beth Israel Medical Center is committed to performing reviews of a sample of pre-billing claims for which professional services are rendered by teaching physicians employed by Beth Israel Medical Center. Such reviews shall be performed as follows:

- Selection of departments/physicians for review shall be based on several factors including dollar/volume, number of physicians, and potential issues in relation to the OIG Work Plan.

- Every teaching physician employed by Beth Israel Medical Center shall be reviewed on a cyclical basis of 18-24 months.

- A random sample of services shall be selected. Selection is based on departmental and/or individual physician CPT code utilization.

- Medical Records (inpatient and/or outpatient) shall be reviewed and CPT codes are reassessed and compared with pre-billing information.

- Summary results of the departmental/physician monitoring shall be shared with the Departmental Chairman, Administrator and the individual physician.

- The Director of Professional Billing Compliance shall meet with each physician individually and/or as a group to discuss the results of the monitoring and to give the physician the opportunity to respond to the findings. If, following the meeting, the physician continues to be in "non-compliance", the physician will be required to attend an individualized training session and will be monitored. If monitoring reveals that the billing issues have not been addressed, the physician will be referred to the Corporate Compliance Officer for further corrective action and the physician's billing privileges shall be suspended. All billing for services rendered by the physician will be subject to a pre-billing review until such time that the Corporate Compliance Officer is satisfied with the accuracy of the documentation and coding selection for billing.

Attachment 2: Special review guidelines

A. Basic Information. In documenting the special reviews pursuant to Section III.E. of the Institutional Compliance Agreement, Beth Israel shall provide for the following:

1. Review Objective: A statement clearly articulating the objective of the review and the review procedure or combination of procedures applied to achieve the objective.

2. Review Population: A statement identifying the population, which is the group about which the information is needed. In addition, there should be an explanation of the methodology used to develop the population and the basis for this determination.

3. Sources of Data: A full description of the source of the information upon which the review will be based, including the legal or other standards to be applied, the sources of payment data and the documents that will be relied upon (e.g., employment contracts, compensation packages or formulae).

4. Personnel Qualifications: The names and titles of those individuals involved in any aspect of the review, including statisticians, accountants, auditors, consultants and medical reviewers, and their qualifications.

B. Sample Elements. In documenting the selection and use of samples in the special reviews, Beth Israel shall provide for the following:

1. Sampling Unit: A definition of the sampling unit, which is any of the designated elements that comprise the population of interest.

2. Sampling Frame: Identification of the sampling frame, which is the totality of the sampling units from which the sample will be selected. In addition, the plan should document how the review population differs from the sampling frame and what effect this difference has on conclusions reached as a result of this review.

3. Sample Size: A description of both the probe sample (if one is used) and the full sample, including the sample's level of confidence and precision.

4. Random Numbers: Written assurance that all probe samples and samples used were selected through random numbers. The source of the random numbers used must be described. For this task, OIG strongly recommends the use of its Office of Audit Services' Statistical Sampling Software, also known as "RAT-STATS," which is currently available through the "internet" at *http://www.hhs.gov/progorg/oas/ratstat.html*, free of charge.

5. Sample Design: Unless Beth Israel demonstrates the need to use a different sample design, the review should use simple random sampling. If necessary, Beth Israel may use stratified or multistage sampling. Details about the strata, stages and clusters should be included.

6. Characteristics Measured by the Sample: A statement identifying the characteristics used for testing each sample item. For example, in a sample drawn to estimate the value of overpayments due to duplicate payments, the characteristics under consideration are the conditions that must exist for a sample item to be a duplicate. The amount of the duplicate payment is the measurement of the overpayment. This description must also contain the decision rules for determining whether a sample item entirely meets the criterion for having characteristics or only partially meets the criterion.

7. Missing Sample Items: An explanation of how missing sample items were handled and the rationale.

8. Other Evidence: Although sample results should stand on their own in terms of validity, sample results may be combined with other evidence in arriving at specific conclusions. If appropriate, indicate what other substantiating or corroborating evidence was developed.

9. Estimation Methodology: Because the general purpose of the review is to estimate the monetary losses to the Federal health care programs, the methodology to be used must be variables sampling using the difference estimator. To estimate the amount implicated in the matter discovered, Beth Israel must use the mean point estimate. The use of RAT-STATS to calculate the estimates is strongly recommended.

ATTACHMENT 3

EXECUTIVE CORPORATE COMPLIANCE COMMITTEE

President and CEO
Executive Vice President – Operations
Executive Vice President – Corporate Affairs
Sr. Vice President – Finance
Sr. Vice President – Legal Affairs
Vice President – Medical Affairs and Medical Director
Vice President – Human Resources
Corporate Compliance Officer
Professional Billing Compliance Director
Hospital Billing Compliance Director
Laboratory Compliance Director
Hospice Compliance Director
Internal Audit