CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
EMERGENCY PHYSICIANS MEDICAL GROUP, P.C.

I. PREAMBLE

Emergency Physicians Medical Group, P.C. ("Emergency Physicians") 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"). For the purposes of this CIA, the scope of the compliance obligations undertaken by Emergency Physicians shall cover the activities of Emergency Physicians itself, as well as any subsidiary of Emergency Physicians, including but not limited to EPMG of Michigan, P.C., EPMG of Ohio, Inc., P.A., EPMG of Pennsylvania, P.C., and Susquehanna Emergency Physician Associates, P.C., which provide services that are reimbursable by Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (hereinafter collectively referred to as the "Federal health care programs"). Emergency Physicians and its subsidiaries which provide services that are reimbursable by any Federal health care program shall hereinafter collectively be referred to as "EPMG." This CIA is intended to ensure compliance 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") by EPMG, its subsidiaries, and their employees, physicians and other health care professionals, as well as all third parties with whom EPMG may choose to engage to act as billing or coding agents or consultants. EPMG's compliance with the terms and conditions in this CIA shall constitute an element of its present responsibility to participate in the Federal health care programs. Contemporaneously with this CIA, Emergency Physicians, EPMG of Michigan, P.C., Susquehanna Emergency Physician Associates, P.C., EPMG of Pennsylvania, P.C. and EPMG of Ohio, Inc., P.A. are entering

into a Settlement Agreement with the United States (the "Settlement Agreement"), and this CIA is incorporated by reference into the Settlement Agreement.

II. TERM OF THE CIA

The period of the compliance obligations assumed by EPMG under this CIA shall be five (5) years from the effective date of this CIA (unless otherwise specified). The effective date of this CIA will be the date on which the final signatory of this CIA executes this CIA.

III. CORPORATE INTEGRITY OBLIGATIONS

EPMG shall establish a Compliance Program that includes the following elements.

A. Compliance Officer and Compliance Committee.

1. *Compliance Officer*. Within 150 days after the effective date of this CIA, Emergency Physicians shall appoint an individual to serve as 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 Emergency Physicians, shall make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of Emergency Physicians, and shall be authorized to report to the Board of Directors at any time. The Compliance Officer shall be responsible for monitoring the day-to-day activities engaged in by EPMG to further its compliance objectives as well as for any reporting obligations created under this CIA. In the event a new Compliance Officer is appointed during the term of this CIA, EPMG shall notify OIG, in writing, within fifteen (15) days of such a change.

2. *Compliance Committee*. Within 150 days of the effective date of this CIA, Emergency Physicians shall appoint a Compliance Committee. The Compliance Committee shall include the Compliance Officer and any other management personnel as necessary to meet the requirements of this CIA within EPMG's corporate structure (e.g., representatives from each Emergency Physicians subsidiary and management representatives of each major department, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities.

B. Written Standards.

1. *Code of Conduct*. Within 150 days of the effective date of this CIA, EPMG shall establish a Code of Conduct. The Code of Conduct shall be distributed to all employees, physicians, contractors, and agents of EPMG (hereinafter referred to as the "Covered Persons") within 150 days of the effective date of this CIA. EPMG shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of managers, supervisors, and all other employees. The Code of Conduct shall, at a minimum, set forth:

a. EPMG's commitment to full compliance with all statutes, regulations, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by appropriate regulatory agencies, e.g., the Health Care Financing Administration ("HCFA"), and/or their agents;

b. EPMG's requirement that all of its Covered Persons shall be expected to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with EPMG's own Policies and Procedures (including the requirements of this CIA);

c. the requirement that all of EPMG's Covered Persons shall be expected to report through the Confidential Disclosure Program suspected violations of any statute, regulation, or guideline applicable to Federal health care programs or of EPMG's own Policies and Procedures;

d. the possible consequences to both EPMG and Covered Persons of failure to comply with all statutes, regulations, and guidelines applicable to Federal health care programs and with EPMG's own Policies and Procedures or of failure to report such non-compliance; and

e. the right of all Covered Persons to use the Confidential Disclosure Program, as well as EPMG's commitment to confidentiality and non-retaliation with respect to disclosures.

Within 150 days of the effective date of the CIA, each Covered Person shall certify, in writing, that he or she has received, read, understands, and will abide by EPMG's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within two weeks after becoming a Covered Person or within 150 days of the effective date of the CIA, whichever is later.

For the purposes of this CIA, the terms "contractor" and "agent" shall, in the case of third party entities, mean the third party entity, group or organization (the "Contracting Entity") and not each individual employee or member of the Contractor Entity. For Contracting Entities, EPMG shall require in its contracts with the Contracting Entity that (1) the Contractor Entity acknowledges EPMG's Compliance Program and Code of Conduct; and (2) the Code of Conduct (including the toll-free telephone number) will be provided (either by EPMG or the Contracting Entity) to all covered individuals who are employees of the Contracting Entity. EPMG shall make a good faith effort to ensure that the above obligations are met by the Contracting Entity. If EPMG meets its obligations set forth above, then the failure of the Contracting Entity to meet the above obligations (set forth in its contract with EPMG) shall not constitute a breach of this CIA by EPMG. If a Contracting Entity is also a Pre-Existing Contractor, then the exceptions for Pre-Existing Contractors, as set forth in section III.C.3, below, may be applied to that Contracting Entity.

EPMG will annually review the Code of Conduct and will 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, understand and will abide by the Code of Conduct.

2. *Policies and Procedures*. Within 150 days of the effective date of this CIA, EPMG shall develop and initiate implementation of written Policies and Procedures regarding the operation of EPMG's compliance program and its compliance with all federal and state health care statutes, regulations, and guidelines, including the requirements of the Federal health care programs. At a minimum, the Policies and Procedures shall specifically address proper billing of the Federal health care programs for emergency services. In addition, the Policies and Procedures shall include disciplinary guidelines and methods for employees to make disclosures or otherwise report on compliance issues to Emergency Physician's management through the Confidential Disclosure Program required by section III.E. EPMG shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. A summary of the Policies and Procedures will be provided to OIG in the Implementation Report. The Policies and Procedures will be available to OIG upon request.

Within 150 days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be distributed to all appropriate Covered Persons. Compliance staff or supervisors should be available to explain any and all Policies and Procedures.

C. Training and Education.

1. *General Training.* Within 150 days of the effective date of this CIA, EPMG shall provide at least two (2) hours of training to each Covered Person (the "General Training"). This General Training shall explain EPMG's:

a. Corporate Integrity Agreement requirements;

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

c. Code of Conduct.

The General Training materials shall be made available to OIG, upon request.

New Covered Persons shall receive the General Training described above within 30 days of becoming a Covered Person or within 150 days after the effective date of this CIA, whichever is later. Each Covered Person shall receive at least one (1) hour of such General Training on an annual basis.

2. *Coding Training.* Within 150 days of the effective date of this CIA, each Covered Person who is involved directly or indirectly in the preparation or submission of claims and/or the assignment of procedure codes (including, but not limited to, coding and billing) for any Federal health care programs shall receive at least three (3) hours of training (the "Coding Training") in addition to the General Training required above. This Coding Training shall include a discussion of:

a. the submission of accurate bills for services rendered to Federal health care program patients;

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

c. applicable reimbursement statutes, regulations, and program requirements and directives;

d. the legal sanctions for improper billings; and

e. examples of proper and improper billing practices.

The Coding Training materials shall be made available to OIG, upon request. Persons providing the Coding Training must be knowledgeable about the subject area.

Affected new Covered Persons shall receive the Coding Training within 30 days of the beginning of their employment or within 150 days of the effective date of this CIA, whichever is later. If a new Covered Person has any responsibility for the preparation or submission of claims and/or the assignment of procedure codes prior to completing this Coding Training, an EPMG employee, contractor or agent who has completed the Coding Training shall review all of the untrained person's work regarding the preparation or submission of claims and/or the assignment of procedure codes.

Every Covered Person involved in the preparation or submission of claims and/or the assignment of procedure codes shall receive at least three (3) hours of such Coding Training on an annual basis.

3. *Provider Training.* Within 150 days of the effective date of this CIA, each Covered Person who is involved directly or indirectly with the delivery or documentation of patient care for which reimbursement is requested from any Federal health care program shall receive at least two (2) hours of training (the "Provider Training") in addition to the General Training required above. This Provider Training shall include a discussion of:

a. the submission of accurate bills for services rendered to Federal health care program patients;

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

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

d. the legal sanctions for improper billings; and

e. examples of proper and improper billing practices.

The Provider Training materials shall be made available to OIG, upon request. Persons providing the Provider Training must be knowledgeable about the subject area.

Affected new Covered Persons shall receive the Provider Training within 30 days of the beginning of their employment or within 150 days of the effective date of this CIA, whichever is later. If a new Covered Person has any responsibility for the delivery or documentation of patient care for which reimbursement is requested from any Federal health care program prior to completing this Provider Training, an EPMG employee, contractor or agent who has completed the Provider Training shall review all of the untrained person's work regarding the delivery or documentation of patient care for which reimbursement is requested from any Federal health care program.

Every Covered Person involved in the delivery or documentation of patient care for which reimbursement is requested from any Federal health care program shall receive at least one (1) hour of such Provider Training on an annual basis.

4. *Exception for Pre-Existing Contractors.* The term "Pre-Existing Contractors" shall refer to covered individuals or entities, including clinical personnel, who are independent contractors with whom EPMG has an existing contract on the effective date of this CIA that has not been renewed or modified after the effective date of this CIA. Once EPMG renegotiates, modifies, or renews a contract with an existing contractor, that contractor ceases to be a Pre-Existing Contractor as that term is used for the purposes of this CIA, and EPMG will have full responsibility for the certification and training compliance obligations as pertain to that contractor.

Notwithstanding any other provision of this CIA, the following are EPMG's only obligations hereunder with respect to training and certification for Pre-Existing Contractors. EPMG shall attempt to renegotiate contracts with Pre-Existing Contractors to require such contractors to meet all of the certification and training requirements of this CIA. EPMG shall make the General Training, and the Specific Training, where appropriate, available to all Pre-Existing Contractors, and shall use its best efforts to encourage their attendance and participation. The Compliance Officer shall keep a record of all Pre-Existing Contractors who attend such training.

5. *Certification.* Each Covered Person who is required to attend training shall certify, in writing, that he or she has attended the required training. The certification shall specify the type of training received and the date received. The Compliance Officer shall retain the certifications, along with specific course materials. These shall be made available to OIG upon request.

D. Review Procedures. EPMG shall retain an entity, such as an accounting, auditing or consulting firm (hereinafter "Independent Review Organization"), to perform review procedures to assist EPMG in assessing the adequacy of its billing and compliance practices pursuant to this CIA. The reviews will be performed annually and cover each of the one-year periods beginning on the effective date of this CIA or the anniversary of that date. The Independent Review Organization must have expertise in the billing, coding, reporting and other requirements of the Federal health care programs from which EPMG seeks reimbursement. The Independent Review Organization must be retained to conduct the audit of the first year within 120 days of the effective date of this CIA.

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

1. *Billing Review Engagement.* The Billing Review Engagement shall consist of a review of a statistically valid sample of claims that can be projected to the population of claims submitted to the Federal health care programs during the relevant year covered by the engagement. The sample size shall be determined through the use of a probe sample. The probe sample must contain at least 30 sample units and cannot be used as part of the full sample. The full sample must contain a sufficient number of units so that when the sample results are projected to the population of claims, the projection provides a minimum 90% confidence level and a maximum precision of plus or minus 25% of the point estimate (i.e., the upper and lower bounds of the 90% confidence interval shall not exceed 125% and shall not fall below 75% of the midpoint of the confidence interval, respectively). Both the probe sample and the full sample must be selected through random number sampling. To generate the random sample, EPMG shall use OIG's Office of Audit Services Statistical Sampling Software, also known as "RAT-STATS," which is available through the Internet at "www.hhs.gov/oig/oas/ratstat.html."

Each annual Billing Review Engagement analysis shall include the following components in its methodology:

a. Billing Review Engagement Objective: a clear statement of the objective intended to be achieved by the Billing Review Engagement and the procedure or combination of procedures that will be applied to achieve the objective.

b. Billing Review Engagement Population: the identity of the population, which is the group about which information is needed and an explanation of the methodology used to develop the population and provide the basis for this determination.

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

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

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

The Billing Review Engagement shall further provide:

a. findings regarding EPMG's billing and coding operation (including, but not limited to, the operation of the billing system, strengths and weaknesses of this system, internal controls, effectiveness of the system);

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

c. findings regarding EPMG's procedures to correct inaccurate billings or codings to the Federal health care programs;

d. findings regarding whether EPMG's programs, policies, operations, and procedures comply with the applicable statutes, regulations, and other requirements of the Federal health care programs from which EPMG seeks reimbursement; and

e. findings regarding the steps EPMG is taking to bring its operations into compliance or to correct problems identified by the Billing Engagement Review.

A complete copy of the Independent Review Organization's Billing Review Engagement report shall be included in each of EPMG's Annual Reports to OIG.

2. *Compliance Engagement.* An Independent Review Organization shall also conduct a Compliance Engagement, that shall provide findings regarding whether EPMG is in compliance with the terms of this CIA. This Compliance Engagement shall include findings, on a section by section basis, regarding the requirements of this CIA.

A complete copy of the Independent Review Organization's Compliance Engagement report shall be included in each of EPMG's Annual Reports to OIG.

3. *Verification/Validation.* In the event that OIG has reason to believe that EPMG's Billing Review Engagement fails to conform to its obligations under the CIA or indicates improper billings not otherwise adequately addressed in the audit report, and OIG thus determines that it is necessary to conduct an independent review to determine whether or the extent to which EPMG is complying with its obligations under this CIA, EPMG agrees to pay for the reasonable cost of any such review or engagement by OIG or any of its designated agents that is initiated within one year after the final submission is provided to OIG by EPMG. Prior to conducting such an independent review, OIG will notify EPMG of its intent to do so and provide EPMG the opportunity to discuss the basis for, and expected parameters of, the review. The decision whether to conduct an independent review shall remain in the sole discretion of OIG.

E. Confidential Disclosure Program. Within 150 days after the effective date of this CIA, EPMG shall establish a Confidential Disclosure Program, which must include measures (e.g., a toll-free compliance telephone line) to enable employees, contractors, agents or other individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with EPMG's the policies, practices or procedures with respect to a Federal health care program, believed by the individual to be inappropriate. EPMG shall publicize the existence of the hotline (e.g., e-mail to employees or post hotline number in prominent common areas).

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a disclosure, the Compliance Officer (or designee) shall

gather the information in such a way as to elicit 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, EPMG 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 shall maintain a Confidential Disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation.

F. Ineligible Persons.

1. *Definition.* For purposes of this CIA, 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.* EPMG shall not hire or engage as contractors any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, EPMG shall screen all prospective employees and prospective contractors prior to engaging their services by (i) requiring applicants to disclose whether they are Ineligible Persons, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at http://www.arnet.gov/epls) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at http://www.dhhs.gov/oig) (these lists will hereinafter be referred to as the "Exclusion Lists").

3. *Review and Removal Requirement.* Within 150 days of the effective date of this CIA, EPMG will review its list of current employees and contractors against the Exclusion Lists. Thereafter, EPMG will review the list annually. If EPMG has notice that an employee, agent, or physician has become an Ineligible Person, EPMG will remove such person from responsibility for, or involvement with, EPMG'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 EPMG has notice that an employee or contractor is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, EPMG shall take all appropriate actions to ensure that the responsibilities of that employee or contractor do not adversely affect the quality of care rendered to any patient or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Proceedings. Within 30 days of discovery, EPMG 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 EPMG has committed a crime or has engaged in fraudulent activities or any other knowing misconduct. 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. EPMG shall also provide written notice to OIG within 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.

H. Reporting.

1. *Reporting of Overpayments*. If, at any time, EPMG identifies or learns of any billing, coding or other policies, procedures and/or practices that result in an overpayment from a Federal health care program, EPMG shall notify the payor (e.g., Medicare fiscal intermediary or carrier) within 30 days of discovering the overpayment and take remedial steps within 60 days of discovery (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the overpayments from recurring. Notification to the contractor should be done in accordance with the contractor policies for overpayment repayments.

2. *Reporting of Material Deficiencies*. If EPMG determines that there is a material deficiency, EPMG shall notify OIG within 30 days of making the determination that the material deficiency exists. The report to OIG shall include the following information:

a. If the material deficiency results in an overpayment, the report to OIG shall be made at the same time as the report to the payor

required by section III.H.1, and shall include all of the information on the Overpayment Refund Form, as well as:

i. the payor's name, address, and contact person where the overpayment was sent; and

ii. the date of the check and identification number (or electronic transaction number) on which the overpayment was repaid.

b. a complete description of the material deficiency, including the relevant facts, persons involved, and legal and program authorities;

c. EPMG's actions to correct the material deficiency; and

d. any further steps EPMG plans to take to address such material deficiency and prevent it from recurring.

3. *Definition of "Overpayment."* For purposes of this CIA, an "overpayment" shall mean the amount of money the provider has received in excess of the amount due and payable under the Federal health care programs' statutes, regulations or program directives, including carrier and intermediary instructions.

4. *Definition of "Material Deficiency."* For purposes of this CIA, a "material deficiency" means anything that involves:

a. a substantial overpayment relating to any Federal health care program; or

b. a matter that a reasonable person would consider a potential violation of criminal, civil, or administrative laws applicable to any Federal health care program.

A material deficiency may be the result of an isolated event or a series of occurrences.

IV. NEW BUSINESS UNITS OR LOCATIONS

In the event that after the effective date of this CIA EPMG purchases or establishes new business units that seek payment or reimbursement from any Federal health care program, EPMG shall notify OIG of this fact within 30 days of the date of

purchase or establishment. This notification shall include the location of the new operation(s), telephone number, facsimile number, Federal health care program provider number(s) (if any), and the corresponding payor(s) (contractor specific) that has issued each provider number. All Covered Persons at such locations shall be subject to the requirements in this CIA that apply to new Covered Persons (e.g., completing certifications and undergoing training).

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within 180 days after the effective date of this CIA, EPMG shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of the Compliance Officer required by section III.A;

2. the names and positions of the members of the Compliance Committee required by section III.A;

3. a copy of EPMG's Code of Conduct required by section III.B.1;

4. the summary of the Policies and Procedures required by section III.B.2;

5. a description of the training programs required by section III.C including a description of the targeted audiences and a schedule of when the training sessions were held;

6. a certification by the Compliance Officer that:

   a. the Policies and Procedures required by section III.B have been developed, are being implemented, and have been distributed to all pertinent Covered Persons;

   b. all Covered Persons have completed the Code of Conduct certification required by section III.B.1; and

   c. all Covered Persons have completed the training and executed the certification required by section III.C.

7. a description of the Confidential Disclosure Program required by section III.E;

8. the identity of the Independent Review Organization(s) and the proposed start and completion date of the first Billing Review Engagement and the first Compliance Engagement;

9. a summary of personnel actions taken pursuant to section III.F.; and

10. a list of all of EPMG's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's Federal health care program provider identification number(s) and the payor (specific contractor) that issued each provider identification number.

B. Annual Reports. EPMG shall submit to OIG Annual Reports with respect to the status and findings of EPMG's compliance activities.

Each Annual Report shall include:

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

2. a certification by the Compliance Officer that:

   a. all annual Code of Conduct certifications have been completed as required by section III.B.1;

   b. all training and certifications have been completed as required by section III.C; and

3. notification of any changes or amendments to the Policies and Procedures required by section III.B and the reasons for such changes (e.g., change in contractor policy);

4. a complete copy of the report prepared pursuant to the Independent Review Organization's Billing Review Engagements and

Compliance Engagements, including a copy of the methodology used;

5. EPMG's response/corrective action plan to any issues raised by the Independent Review Organization;

6. a summary of material deficiencies identified and reported throughout the course of the previous twelve (12) months pursuant to III.H;

7. a report of the aggregate overpayments that have been returned to the Federal health care programs that were discovered as a direct or indirect result of implementing this CIA. Overpayment amounts should be broken down into the following categories: Medicare, Medicaid (report each applicable state separately) and other Federal health care programs;

8. a copy of the Confidential Disclosure log required by section III.E;

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

10. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that EPMG has committed a crime or has engaged in fraudulent activities, which have been reported pursuant to section III.G. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information;

11. a corrective action plan to address all material deficiencies (as defined in section III.H) identified over the previous 12 months; and

12. a description of all changes to the most recently provided list (as updated) of EPMG's locations (including mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, each location's

Federal health care program provider identification number(s), and the payor (specific contractor) that issued each provider identification number.

The first Annual Report shall be received by OIG no later than one year and 30 days after the effective date of this CIA. 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 under penalty of perjury, that: (1) EPMG is in compliance with all of the requirements of this CIA, to the best of his or her knowledge; and (2) the Compliance Officer has reviewed the Report and has made reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the entities listed below:

OIG:

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

Emergency Physicians:

John C. Baselle, M.D., FACEP
Emergency Physicians Medical Group, P.C.
2000 Green Road, Suite 300
Ann Arbor, MI 48105-1571
Telephone (734) 995-3764
Facsimile (734) 995-2913

VII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s), may, during the term of this CIA, subject to the attorney-client and other applicable privileges as provided by law, examine at EPMG's workplace EPMG's books, records, and other documents and supporting materials and/or conduct an on-site review of any of EPMG's locations for the purpose of verifying and evaluating: (a) EPMG's compliance with the terms of this CIA; and (b) EPMG's compliance with the requirements of the Federal health care programs in which it participates. The documentation described above shall be made available by EPMG to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit or reproduction. Furthermore, for purposes of this provision, during the term of this CIA, subject to the attorney-client and other applicable privileges as provided by law, OIG or its duly authorized representative(s) may interview any of EPMG'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. EPMG agrees to assist OIG in contacting and arranging interviews with such individuals upon OIG's request. EPMG's employees may elect to be interviewed with or without a representative of EPMG present.

VIII. DOCUMENT AND RECORD RETENTION

EPMG shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs or to compliance with this CIA, for six years (or longer if otherwise required).

IX. DISCLOSURES

Subject to HHS's Freedom of Information Act ("FOIA") procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify EPMG prior to any release by OIG of information submitted by EPMG pursuant to its obligations under this CIA and

identified upon submission by EPMG as trade secrets, commercial or financial information and privileged and confidential under the FOIA rules. EPMG shall refrain from identifying any information as trade secrets, commercial or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

X. BREACH AND DEFAULT PROVISIONS

EPMG is expected to fully and timely comply with all of the obligations herein throughout the term of this CIA or other time frames herein agreed to.

A. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, Emergency Physicians and OIG hereby agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties (hereinafter referred to as "Stipulated Penalties") on Emergency Physicians in accordance with the following provisions.

1. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day, beginning 150 days after the effective date of this CIA and concluding at the end of the term of this CIA, EPMG fails to have in place any of the following:

a. a Compliance Officer;

b. a Compliance Committee;

c. written Code of Conduct;

d. written Policies and Procedures;

e. a training program; and

f. a Confidential Disclosure Program;

2. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day EPMG fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to OIG.

3. A Stipulated Penalty of $2,000 (which shall begin to accrue on the date the failure to comply began) for each day EPMG:

a. hires or enters into a contract with an Ineligible Person after that person has been listed by a federal agency as excluded, debarred, suspended or otherwise ineligible for participation in the Medicare, Medicaid or any other Federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) (this Stipulated Penalty shall not be demanded for any time period during which EPMG can demonstrate that it did not discover the person's exclusion or other ineligibility after making a reasonable inquiry (as described in section III.F) as to the status of the person); or

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

4. A Stipulated Penalty of $1,500 (which shall begin to accrue on the date the EPMG fails to grant access) for each day EPMG fails to grant access to the information or documentation as required in section VII of this CIA.

5. A Stipulated Penalty of $1,000 (which shall begin to accrue 10 days after the date that OIG provides notice to EPMG of the failure to comply) for each day EPMG fails to comply fully and adequately with any obligation of this CIA. In its notice to EPMG, OIG shall state the specific grounds for its determination that EPMG has failed to comply fully and adequately with the CIA obligation(s) at issue.

B. Payment of Stipulated Penalties.

1. *Demand Letter*. Upon a finding that EPMG has failed to comply with any of the obligations described in section X.A and determining that Stipulated Penalties are appropriate, OIG shall notify Emergency Physicians by personal service or certified mail of (a) EPMG'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").

Within fifteen (15) days of the date of the Demand Letter, Emergency Physicians shall either (a) cure the breach to OIG's satisfaction and pay the applicable stipulated penalties; or (b) request a hearing before an HHS administrative law judge ("ALJ") to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section X.D. In the event Emergency Physicians elects to request an

ALJ hearing, the Stipulated Penalties shall continue to accrue until EPMG cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under section X.C.

2. *Timely Written Requests for Extensions.* Emergency Physicians may submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after EPMG 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 two (2) business days after Emergency Physicians receives OIG's written denial of such request. 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.

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 otherwise noted, these provisions for payment of Stipulated Penalties shall not affect the rights of either OIG or EPMG, or otherwise set a standard for any determination that EPMG has materially breached this CIA, which decision shall be governed by the provisions in section X.C, below.

C. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by EPMG constitutes an independent basis for EPMG's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that EPMG has materially breached this CIA and that exclusion should be imposed, OIG shall notify EPMG by certified mail of (a) EPMG'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").

2. *Opportunity to cure.* EPMG shall have thirty five (35) days from the date of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

a. EPMG is in full compliance with this CIA;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the 35-day period, but that: (i) EPMG has begun to take action to cure the material breach, (ii) EPMG is pursuing such action with due diligence, and (iii) EPMG has provided to OIG a reasonable timetable for curing the material breach.

3. *Exclusion Letter.* If at the conclusion of the thirty five (35) day period, EPMG fails to satisfy the requirements of section X.C.2, OIG may give notice of its exclusion of EPMG from participation in the Federal health care programs. OIG will notify Emergency Physicians in writing of its determination to exclude Emergency Physicians (this letter shall be referred to hereinafter as the "Exclusion Letter"). Subject to the Dispute Resolution provisions in section X.D, below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other federal procurement and non-procurement programs. If Emergency Physicians is excluded under the provisions of this CIA, Emergency Physicians may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

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

a. a failure by EPMG to report a material deficiency identified by EPMG, take corrective action and pay the appropriate refunds, as provided in section III.H;

b. repeated or flagrant violations of the obligations under this CIA, including, but not limited to, the obligations addressed in section X.A of this CIA;

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

d. a failure to retain and use an Independent Review Organization for review purposes in accordance with section III.D.

D. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Emergency Physicians of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, EPMG shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving stipulated penalties shall be made within fifteen (15) days of the date of the Demand Letter and the request for a hearing involving exclusion shall be made within 30 days of the date 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 CIA shall be (a) whether EPMG was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. EPMG shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. If the ALJ finds for OIG with regard to a finding of a breach of this CIA and orders EPMG to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision notwithstanding that EPMG may request review of the ALJ decision by the DAB.

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 CIA shall be (a) whether EPMG was in material breach of this CIA; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) whether the alleged material breach could not have been cured within the 35 day period, but that (i) EPMG had begun to take action to cure the material breach within that period, (ii) EPMG has pursued and is pursuing such action with due diligence, and (iii) EPMG provided to OIG within that period a reasonable timetable for curing the material breach. For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to OIG. EPMG's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude EPMG upon the issuance of the ALJ's decision. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days

after the ALJ issues such a decision, notwithstanding that EPMG may request review of the ALJ decision by the DAB.

XI. EFFECTIVE AND BINDING AGREEMENT

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

A. This CIA shall be binding on the successors, assigns, and transferees of EPMG;

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

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

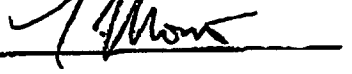
D. The undersigned EPMG signatories represent and warrant that they are authorized to execute this CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

ON BEHALF OF EPMG

JOHN C. BASELLE, M.D., FACEP
President

7/17/2000
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 Inspector General
U. S. Department of Health and Human Services

7/3/00
DATE