

**CORPORATE INTEGRITY AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
MAXIM HEALTHCARE SERVICES, INC.**

I. PREAMBLE

Maxim Healthcare Services, Inc. (Maxim) hereby enters into this Corporate Integrity Agreement (CIA) with the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS) to promote compliance with the statutes, regulations, and written directives of Medicare, Medicaid, and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) (Federal health care program requirements). Contemporaneously with this CIA, Maxim is entering into a Settlement Agreement with the United States.

II. TERM AND SCOPE OF THE CIA

A. The period of the compliance obligations assumed by Maxim under this CIA shall be (1) five years from the Effective Date of this CIA, or (2) beginning on the CIA Effective Date through the anniversary of the CIA Effective Date following the final payment under the Settlement Agreement between the United States and Maxim, whichever is later, unless otherwise specified. The “Effective Date” shall be the date on which the final signatory of this CIA executes this CIA. Each one-year period, beginning with the one-year period following the Effective Date, shall be referred to as a “Reporting Period.”

B. The requirements set forth in Section III.A through Section III.E will be suspended during the first 24 months of the CIA unless (a) the Deferred Prosecution Agreement with the United States Attorney’s Office for the District of New Jersey (DPA) is no longer in effect; or (b) the OIG lifts the suspension. The date on which the CIA suspension is terminated shall be referred to as the “Suspension Termination Date.” The determination whether or not to lift the suspension of Section III.A through Section III.E shall be made at the sole discretion of the OIG. In the event that any requirements of Section III.A through Section III.E are no longer suspended, Maxim shall within 90 days

implement the requirements of Section III.A through Section III.E. Within 30 days of Maxim's engagement of an IRO, Maxim shall provide the information described in Appendix A regarding the IRO. Within 30 days of Maxim's engagement of a Consultant, Maxim shall provide the information described in Appendix C regarding the Consultant.

C. Sections VII, X, and XI shall expire no later than 120 days after OIG's receipt of: (1) Maxim's final Annual Report; or (2) any additional materials submitted by Maxim pursuant to OIG's request, whichever is later.

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

1. "Owner" means any person or entity (including any trustee of a trust that holds Maxim securities) with the power to vote or control the voting power of five percent or more of a class of equity security of Maxim, whether directly or by proxy. Any person or entity that has transferred such power by proxy shall not be deemed to be an Owner.
2. "Covered Persons" includes:
 - a. all owners, officers, directors, and employees of Maxim;
 - b. all contractors, subcontractors, agents, and other persons who provide patient care items or services or who perform billing or coding functions on behalf of Maxim (other than its Maxim Staffing Solutions division (MSS)), excluding vendors whose sole connection with Maxim is selling or otherwise providing medical supplies or equipment to Maxim and who do not bill the Federal health care programs for such medical supplies or equipment; and
 - c. all physicians and other non-physician practitioners who are members of Maxim's active medical staff.

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

3. “Billing, Coding, and Reimbursement Covered Persons” includes all Covered Persons involved directly, or in a supervisory role, in the preparation or submission of claims for reimbursement from any Federal health care program. Billing, Coding, and Reimbursement Covered Persons also includes those individuals who determine the proper codes and applicable rates.

4. “Clinical Services Covered Persons” includes all Covered Persons who are involved directly or indirectly in the delivery of patient care.

5. “Certifying Employee” includes all Maxim officers, presidents, vice presidents, national and regional directors (other than board directors), and national and regional accounts managers.

6. “Management Covered Persons” means

- a. all Certifying Employees;
- b. all Covered Persons who work for or on behalf of Maxim’s compliance department; and
- c. all employees who provide legal advice to Maxim.

7. “Relevant Covered Persons” means all Billing, Coding, and Reimbursement Covered Persons, Clinical Services Covered Persons, and Management Covered Persons.

8. “MSS Contractors” means all contractors, subcontractors, agents, and other persons who provide patient care items or services or who perform billing or coding functions on behalf of MSS.

9. “Monitor” means the outside independent individual retained by Maxim under the DPA.

10. “Consultant” or “Compliance Consultant” means the outside independent entity retained by Maxim, such as a healthcare or consulting firm, to perform the functions identified in Appendix C.

III. CORPORATE INTEGRITY OBLIGATIONS

Maxim shall establish and maintain a Compliance Program that includes the following elements.

A. Compliance Officer and Committee

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

Maxim shall not assert a privilege to the OIG with respect to legal advice or counsel Maxim obtains after the Effective Date and during the term of the CIA from the Compliance Officer or any employee reporting to the Compliance Officer regarding (a) Federal health care programs, statutes, and regulations, or (b) compliance with the terms of this CIA. The Compliance Officer or any employee reporting to the Compliance Officer may seek legal advice from internal or external attorneys outside the Compliance Department without waiving any applicable privilege.

Maxim shall report to OIG, in writing, any change in the identity of the Compliance Officer, or any actions or changes that would affect the Compliance Officer's ability to perform the duties necessary to meet the obligations in this CIA, within five days after the change.

2. *Corporate Compliance Committee.* Maxim has appointed and shall maintain during the term of this CIA a Corporate Compliance Committee. The Corporate

Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this CIA (e.g., senior executives of relevant departments, such as billing, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Corporate Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of the Maxim's risk areas and shall oversee monitoring of internal and external audits and investigations). The Corporate Compliance Committee shall meet at least monthly.

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

3. *Board of Directors Compliance Obligations.* Maxim has appointed and shall maintain a Compliance Committee of the Board of Directors (the "Board Compliance Committee"). The Board Compliance Committee shall include at least three directors, the majority of whom shall be outside members of the Board. The Board Compliance Committee shall be responsible for the review and oversight of matters related to compliance with Federal health care program requirements and the obligations of this CIA.

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

- a. meeting at least quarterly to review and oversee Maxim's Compliance Program, including but not limited to the performance of the Compliance Officer and Corporate Compliance Committee;
- b. ensuring, through consultation with the Consultant and other means, that Maxim adopts and implements policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and Federal health care program requirements;
- c. reviewing the Compliance Review Reports; and

- d. for each Reporting Period of the CIA, adopting a resolution, signed by each member of the Board Compliance Committee, summarizing its review and oversight of Maxim's compliance with Federal health care program requirements and the obligations of this CIA.

At minimum, the resolution shall include the following language:

“The Board Compliance Committee has made a reasonable inquiry into the operations of Maxim's Compliance Program including the performance of the Compliance Officer and the Compliance Committee. The Board Compliance Committee has also arranged for the Compliance Review, as set forth in Appendix C, of the Company's compliance operations by the Consultant. Based on the Compliance Review, and its own inquiry and review, the Board Compliance Committee has concluded that, to the best of its knowledge, Maxim has implemented an effective compliance program to meet the requirements of the CIA and Federal health care program requirements.”

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

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

4. *Management Accountability and Certifications.* Within 60 days after the Suspension Termination Date, Maxim shall make compliance a component of each employee's performance evaluation. In addition to the responsibilities set forth in this CIA for all Covered Persons, all Certifying Employees are specifically expected to monitor and oversee activities within their areas of authority and shall annually certify in writing or electronically that, to the best of their knowledge, their department or functional area is in material compliance with applicable Federal health care program requirements and the obligations of this CIA.

For each Reporting Period, each Certifying Employee shall certify in writing or electronically that:

“I have been trained on and understand the compliance requirements and responsibilities as they relate to [department or functional area], an area under my supervision. My job responsibilities include ensuring compliance with regard to the [department or functional area]. To the best of my knowledge, except as otherwise described herein, the [department or functional area] of Maxim is in material compliance with applicable Federal health care program requirements and the obligations of the CIA.”

If any Certifying Employee is unable to provide such a conclusion in the certification, the Certifying Employee shall include in the certification a written explanation of the reasons why he or she is unable to provide the conclusion and the steps being taken to address the issue(s) identified in the certification.

B. Written Standards

1. *Code of Conduct.* Within 90 days after the Suspension Termination Date, Maxim shall modify its existing written Code of Conduct and distribute and implement this revised Code of Conduct to all Covered Persons, if Maxim has not already done so after the Effective Date or within one month prior to the Effective Date. Maxim shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

- a. Maxim’s commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with Federal health care program requirements;
- b. Maxim’s requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Maxim’s own Policies and Procedures;
- c. the requirement that all of Maxim’s Covered Persons shall be expected to report to the Compliance Officer, or other appropriate individual designated by Maxim, suspected

violations of any Federal health care program requirements or of Maxim's own Policies and Procedures; and

- d. the right of all individuals to use the Disclosure Program described in Section III.F, and Maxim's commitment to non-retaliation and to maintaining, as appropriate, confidentiality and anonymity with respect to such disclosures.

Within 90 days after the Suspension Termination Date, each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by Maxim's Code of Conduct, if each Covered Person has not already done so after the Effective Date or within one month prior to the Effective Date. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within 30 days after becoming a Covered Person or within 90 days after the Suspension Termination Date, whichever is later.

Maxim shall periodically review the Code of Conduct to determine if revisions are appropriate and shall make any necessary revisions based on such review. Any revised Code of Conduct shall be distributed within 30 days after any revisions are finalized. Each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by the revised Code of Conduct within 30 days after the distribution of the revised Code of Conduct.

2. *Policies and Procedures.* Within 90 days after the Suspension Termination Date, Maxim shall implement written Policies and Procedures regarding the operation of its compliance program, including the compliance program requirements outlined in this CIA, and Maxim's compliance with Federal health care program requirements, if Maxim has not already done so after the Effective Date or within one month prior to the Effective Date. At a minimum, the Policies and Procedures shall address:

- a. ensuring claims are coded correctly, consistent with Federal health care program requirements;
- b. ensuring the preparation and submission of accurate claims consistent with Federal health care program requirements;

- c. ensuring that services are provided in accordance with physician orders, by appropriate staff, and that staff have appropriate licenses, credentials, and certifications;
- d. ensuring that services are appropriately documented in the medical record; and
- e. conducting periodic billing, coding, and clinical systems reviews and audits.

Within 90 days after the Suspension Termination Date, Maxim shall distribute the Policies and Procedures to all Covered Persons, if Maxim has not already done so after the Effective Date or within one month prior to the Effective Date. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures. New Covered Persons shall receive the Policies and Procedures within 30 days after becoming a Covered Person or within 90 days after the Suspension Termination Date, whichever is later.

At least annually (and more frequently, if appropriate), Maxim shall assess and update, as necessary, the Policies and Procedures. Within 30 days after the effective date of any revisions, any such revised Policies and Procedures shall be distributed to all Covered Persons.

C. Training and Education

1. *General Training.* Within 90 days after the Suspension Termination Date, Maxim shall provide at least two hours of General Training to each Covered Person, if Maxim has not already done so within the preceding six months. This training, at a minimum, shall explain Maxim's:

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

New Covered Persons shall receive the General Training described above within 30 days after becoming a Covered Person or within 90 days after the Suspension Termination Date, whichever is later. After receiving the initial General Training

described above, each Covered Person shall receive at least one hour of General Training in each subsequent Reporting Period.

2. *Billing, Coding, and Reimbursement Covered Persons Specific Training.* Within 90 days after the Suspension Termination Date, each Billing, Coding, and Reimbursement Covered Person shall receive at least four hours of Specific Training in addition to the General Training required above, if each Billing, Coding, and Reimbursement Covered Person has not already received such Specific Training within the preceding six months. The Specific Training shall include a discussion of:

- a. the Federal health care program requirements regarding the accurate coding, preparation, and submission of claims;
- b. policies, procedures, and other requirements applicable to the documentation of medical records, including the Federal health care programs' requirement that medical records be maintained in their original state and not be fabricated or improperly altered;
- c. the personal obligation of each individual involved in the claims submission process to ensure that such claims are accurate;
- d. applicable reimbursement statutes, regulations, and program requirements and directives;
- e. the legal sanctions for violations of the Federal health care program requirements;
- f. examples of proper and improper claims submission practices;
and
- g. examples of proper and improper coding practices.

After receiving the initial Specific Training described in this section, Billing, Coding, and Reimbursement Covered Persons shall receive at least two hours of Specific Training in each subsequent Reporting Period.

3. *Clinical Services Covered Persons Specific Training.* Within 90 days after the Suspension Termination Date, each Clinical Services Covered Person shall receive at least two hours of Specific Training in addition to the General Training required above, if each Clinical Services Covered Person has not already received such Specific Training in the preceding six months. The Specific Training shall include a discussion of:

- a. policies, procedures, and other requirements applicable to the documentation of medical records, including the Federal health care programs requirement that medical records be maintained in their original state and not be fabricated or improperly altered;
- b. the personal obligation of each individual involved in patient care to ensure that care is appropriate, delivered in accordance with the physician's order and plan of care, and meets professionally recognized standards of care;
- c. applicable reimbursement statutes, regulations, and program requirements and directives;
- d. the legal sanctions for violations of the Federal health care program requirements; and
- e. examples of proper and improper medical record documentation practices.

After receiving the initial Specific Training described in this section, Clinical Services Covered Persons shall receive at least two hours of Specific Training in each subsequent Reporting Period.

4. *Management Covered Persons Specific Training:* Within 90 days after the Suspension Termination Date, each Management Covered Person shall receive at least two hours of Specific Training in addition to the General Training required above, if each Management Covered Person has not already received such Specific Training in the preceding six months. In the first post-suspension Reporting Period, this training shall include a discussion of:

- a. the role and responsibilities of Management Covered Persons in implementing and effectuating Maxim's Compliance Program; and
- b. findings and recommendations of the Monitor in the prior Reporting Periods or, if no such findings and recommendations exist, the facts that gave rise to this CIA as a case study, focusing on the role of Management Covered Persons in (1) communicating the importance of complying with Federal health care program requirements, (2) providing structures that promote and enhance compliance in day-to-day operations across the company, and (3) identifying and resolving compliance issues.

In subsequent Reporting Periods, Maxim shall develop and provide at least one hour of Management Covered Persons Specific Training based on the findings of the most recent Compliance Review.

5. *New Relevant Covered Persons.* New Relevant Covered Persons shall receive the applicable Specific Training within 30 days after the beginning of their work at Maxim or becoming Relevant Covered Persons, or within 90 days after the Suspension Termination Date, whichever is later.

6. *Board Member Training.* Within 90 days after the Suspension Termination Date, Maxim shall provide at least one hour of training to each member of the Board of Directors, in addition to the General Training, if Maxim has not already done so within the preceding six months. This training shall address the responsibilities of board members and corporate governance.

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

7. *MSS Contractor Training.* To the extent that any MSS Contractor is reasonably expected to work more than 160 hours per year on behalf of MSS only, the MSS Contractor shall receive compliance training either from (a) Maxim, in accordance with the General Training and, if the MSS Contractor would qualify as a Relevant Covered Person if employed by Maxim, the Specific Training, (b) the MSS Contractor's employer, or (c) the health care facility or other entity at which the MSS Contractor provides patient care items or services or billing or coding functions through Maxim. For all MSS Contractors who receive training under subsection 7(b) or 7(c) above, Maxim shall certify in each Annual Report that during that Reporting Period it has reviewed the Compliance Training of the employer, health care facility, or other entity providing the training to ensure that such training satisfies the requirements of this Agreement with respect to the General Training and, if the MSS Contractor would qualify as a Relevant Covered Person if employed by Maxim, the appropriate Specific Training. Maxim also shall provide each MSS Contractor with a current copy of the Code of Conduct and each subsequent revision to the Code of Conduct and shall ensure that all MSS Contractors are informed of the CIA, Maxim's hotline, and their ability to use Maxim's hotline.

8. *Certification.* Each individual who is required to attend training shall certify, in writing, or in electronic form, if applicable, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer (or designee) shall retain the certifications, along with all course materials. The certifications and training materials shall be made available to OIG, upon request.

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

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

11. *Computer-based Training.* Maxim may provide the training required under this CIA through appropriate computer-based training approaches. If Maxim

chooses to provide computer-based training, it shall make available appropriately qualified and knowledgeable staff or trainers either in person or electronically, at reasonable times, to answer questions or provide additional information to the individuals receiving such training.

D. Claims and Unallowable Cost Review Procedures

1. *General Description*

- a. *Engagement of Independent Review Organization.* Within 90 days after the Suspension Termination Date, Maxim shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform reviews to assist Maxim in assessing and evaluating its billing and coding practices and certain other obligations pursuant to this CIA and the Settlement Agreement. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference.
- b. *IRO Reviews.* The IRO shall perform the Claims Review and Unallowable Cost Review, and shall prepare reports, as described in this Section III.D and in Appendix B to this CIA.
- c. *Retention of Records.* The IRO and Maxim shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Maxim) related to the reviews.

2. *Repayment of Identified Overpayments.* Maxim shall repay within 30 days any Overpayment(s) identified in the Discovery Sample or the Full Sample (if applicable), regardless of the Error Rate, to the appropriate payor and in accordance with payor refund policies. Maxim shall make available to OIG all documentation that reflects the refund of the Overpayment(s) to the payor.

3. *Unallowable Cost Review.* For the first Reporting Period of the CIA, the IRO shall conduct a review of Maxim’s compliance with the unallowable cost

provisions of the Settlement Agreement. The IRO shall determine whether Maxim has complied with its obligations not to charge to, or otherwise seek payment from, federal or state payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable federal or state payors any unallowable costs included in payments previously sought from the United States, or any state Medicaid program. This unallowable costs analysis shall include, but not be limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Maxim or any affiliates. To the extent that such cost reports, cost statements, information reports, or payment requests, even if already settled, have been adjusted to account for the effect of the inclusion of the unallowable costs, the IRO shall determine if such adjustments were proper. In making this determination, the IRO may need to review cost reports and/or financial statements from the year in which the Settlement Agreement was executed, as well as from previous years.

4. *Unallowable Cost Review Report.* The IRO shall prepare a report based upon the Unallowable Cost Review performed (Unallowable Cost Review Report). The Unallowable Cost Review Report shall include the IRO's findings and supporting rationale regarding the Unallowable Cost Review and whether Maxim has complied with its obligation not to charge to, or otherwise seek payment from, federal or state payors for unallowable costs (as defined in the Settlement Agreement) and its obligation to identify to applicable federal or state payors any unallowable costs included in payments previously sought from such payor.

5. *Request to Implement Verification Review.* After submitting the first post-suspension Annual Report containing the IRO's Claims Review Report, or after the submission of any subsequent Annual Report, Maxim may submit to the OIG in writing a request to implement the Verification Review provision of the Claims Review set forth at Section A.4 of Appendix B (Verification Review). Maxim's request shall contain (a) a description of its compliance auditing program, (b) a summary of its audit findings from the Effective Date to the date of the request, and (c) a certification by its Compliance Officer that Maxim is able to perform the Verification Review without diminishing the quality or quantity of Maxim's claims reviews that would have been performed under its compliance program absent the Verification Review. OIG will consider Maxim's request and decide whether to implement the Verification Review. The decision to implement the Verification Review shall be at the sole discretion of the OIG.

6. *Validation Review.* In the event OIG has reason to believe that: (a) Maxim's Claims Review or Unallowable Cost Review fails to conform to the

requirements of this CIA; or (b) the IRO's findings or Claims Review or Unallowable Cost Review results are inaccurate, or (c) Maxim's Verification Review findings are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the Claims Review or Unallowable Cost Review complied with the requirements of the CIA, the IRO's findings or Claims Review or Unallowable Cost Review results are inaccurate, and/or Maxim's Verification Review findings or results are inaccurate (Validation Review). Maxim shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of Reports submitted as part of Maxim's final Annual Report shall be initiated no later than one year after Maxim's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Maxim of its intent to do so and provide a written explanation of why OIG believes such a review is necessary. To resolve any concerns raised by OIG, Maxim may request a meeting with OIG to: (a) discuss the results of any Claims Review or Unallowable Cost Review submissions or findings, or of any Verification Review findings; (b) present any additional information to clarify the results of the Claims Review, Unallowable Cost Review, or Verification Review or to correct the inaccuracy of the Claims Review, Unallowable Cost Review, or Verification Review; and/or (c) propose alternatives to the proposed Validation Review. Maxim agrees to provide any additional information as may be requested by OIG under this Section III.D.6 in an expedited manner. OIG will attempt in good faith to resolve any Claims Review, Unallowable Cost Review, or Verification Review issues with Maxim prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

7. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to Maxim a certification or sworn affidavit that it has evaluated its professional independence and objectivity, as appropriate to the nature of the engagement, with regard to the Claims Review and Unallowable Cost Review and that it has concluded that it is, in fact, independent and objective.

E. Compliance Review

1. *General Description*

- a. *Engagement of Consultant.* Within 60 days after the Suspension Termination Date, Maxim shall engage a

Consultant to perform reviews to assist Maxim in assessing and evaluating its compliance and clinical systems. The applicable requirements relating to the Consultant are outlined in Appendix C to this CIA, which is incorporated by reference.

- b. *Compliance Review.* The Consultant shall evaluate and analyze Maxim's compliance program generally and specifically with regard to the provision of clinical services in accordance with the requirements set forth in Appendix C.
- c. *Frequency of Compliance Review.* The Compliance Review shall be performed annually and shall cover each of the Reporting Periods. The Consultant shall perform all components of each annual Compliance Review.
- d. *Retention of Records.* The Consultant and Maxim shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the Consultant and Maxim) related to the reviews.

2. *Compliance Review Report.* The Consultant shall prepare a report based upon the Compliance Review. Information to be included in the Compliance Review Report is described in Appendix C. The Consultant shall deliver each Compliance Review Report simultaneously to Maxim's Chief Compliance Officer, the Chair of the Board of Directors, and OIG.

3. *Independence and Objectivity Certification.* The Consultant shall include in its report(s) to Maxim a certification or sworn affidavit that it has evaluated its professional independence and objectivity, as appropriate to the nature of the engagement, with regard to the Compliance Review Report and that it has concluded that it is, in fact, independent and objective.

F. Disclosure Program

Maxim has established and shall maintain a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose,

to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with Maxim'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. Maxim 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 communications for which appropriate confidentiality shall be maintained. Upon receipt of a disclosure, the Compliance Officer (or designee) shall gather all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary, good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, Maxim shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

The Compliance Officer (or designee) shall maintain a disclosure log, which shall include a record and summary of each disclosure received (whether anonymous or not), the status of the respective internal reviews, and any corrective action taken in response to the internal reviews. The disclosure log shall be made available to OIG upon request.

G. Ineligible Persons

1. *Definitions.* For purposes of this CIA:
 - a. an "Ineligible Person" shall include an individual or entity who:
 - i. is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or

ii. has been convicted of a criminal offense that falls within the scope of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

b. “Exclusion Lists” include:

i. the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.oig.hhs.gov>); and

ii. the General Services Administration’s List of Parties Excluded from Federal Programs (available through the Internet at <http://www.epls.gov>).

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

- a. Maxim shall screen all prospective Covered Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process, shall require such Covered Persons to disclose whether they are Ineligible Persons. With respect to Covered Contractors, Maxim can comply with this provision by including in its contracts a requirement that each Covered Contractor screen its employees against the Exclusions Lists prior to allowing any employee to provide services to Maxim and on an annual basis thereafter.
- b. Maxim shall screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter.
- c. Maxim shall implement a policy requiring all Covered Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

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

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

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

H. Notification of Government Investigation or Legal Proceedings

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

I. Repayment of Overpayments

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

2. *Repayment of Overpayments*

- a. If, at any time, Maxim identifies any Overpayment, Maxim shall repay the Overpayment to the appropriate payor (e.g., Medicare fiscal intermediary or carrier) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from recurring. If not yet quantified, within 30 days after identification, Maxim shall notify the payor of its efforts to quantify the Overpayment amount along with a schedule of when such work is expected to be completed. Notification and repayment to the payor shall be done in accordance with the payor’s policies.
- b. Notwithstanding the above, notification and repayment of any Overpayment amount that routinely is reconciled or adjusted pursuant to policies and procedures established by the payor should be handled in accordance with such policies and procedures.

J. Reportable Events

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

- a. a substantial Overpayment;
- b. a matter that a reasonable person would consider a probable violation of criminal, civil, or administrative laws applicable

to any Federal health care program for which penalties or exclusion may be authorized;

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

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

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

3. *Reportable Events under Section III.J.1.a.* For Reportable Events under Section III.J.1.a, the report to OIG shall be made at the same time as the repayment to the payor required in Section III.I, and shall include:

- a. a copy of the notification and repayment to the payor required in Section III.I.2;
- b. a description of the steps taken by Maxim to identify and quantify the Overpayment;
- c. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;
- d. a description of Maxim's actions taken to correct the Reportable Event; and
- e. any further steps Maxim plans to take to address the Reportable Event and prevent it from recurring.

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

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

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

6. *Reportable Events Involving the Stark Law.* Notwithstanding the reporting requirements outlined above, any Reportable Event that involves only a probable violation of section 1877 of the Social Security Act, 42 U.S.C. §1395nn (the Stark Law) should be submitted by Maxim to the Centers for Medicare & Medicaid Services (CMS) through the self-referral disclosure protocol (SRDP), with a copy to the OIG. The requirements of Section III.I.2 that require repayment to the payor of any identified Overpayment within 30 days shall not apply to any Overpayment that may result from a probable violation of only the Stark Law that is disclosed to CMS pursuant to the SRDP.

IV. CHANGES TO BUSINESS UNITS OR LOCATIONS

A. Change or Closure of Unit or Location. In the event that, after the Effective Date, Maxim changes locations or closes a business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs,

Maxim shall notify OIG of this fact as soon as possible, but no later than within 30 days after the date of change or closure of the location.

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

C. Sale of Unit or Location. In the event that, after the Effective Date, Maxim proposes to sell any or all of its business units or locations that are subject to this CIA, Maxim shall notify OIG of the proposed sale at least 30 days prior to the sale of such business unit or location. This notification shall include a description of the business unit or location to be sold, a brief description of the terms of the sale, and the name and contact information of the prospective purchaser. This CIA shall be binding on the purchaser of such business unit or location, unless otherwise determined and agreed to in writing by the OIG.

V. MONITOR, IMPLEMENTATION, AND ANNUAL REPORTS

A. Monitor Reports.

1. Maxim shall submit to OIG any report or written recommendations produced by the Monitor pursuant to the DPA within five days of Maxim receiving any report or written recommendations from the Monitor.

2. Maxim shall submit to OIG any report Maxim provides to the Monitor pursuant to the DPA at the same time Maxim provides the report to the Monitor.

3. Any written documentation Maxim provides to the Monitor pursuant to the DPA shall be made available to the OIG upon request.

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

1. the name, address, phone number, and position description of the Compliance Officer required by Section III.A, and a summary of other noncompliance job responsibilities the Compliance Officer may have;
2. the names and positions of the members of the Corporate Compliance Committee required by Section III.A;
3. a copy of Maxim's Code of Conduct required by Section III.B.1;
4. a summary of all Policies and Procedures required by Section III.B.2;
5. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions;
6. the following information regarding each type of training required by Section III.C:
 - a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions;
 - b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions;
7. The certification regarding MSS Contractors' training required by Section III.C.7, if applicable;
8. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the IRO has the qualifications outlined in Appendix A to this CIA; (d) a

summary and description of any and all current and prior engagements and agreements between Maxim and the IRO; and (e) a certification from the IRO regarding its professional independence and objectivity with respect to Maxim;

9. the following information regarding the Consultant(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the Consultant has the qualifications outlined in Appendix C to this CIA; (d) a summary and description of any and all current and prior engagements and agreements between Maxim and the Consultant; and (e) a certification from the Consultant regarding its professional independence and objectivity with respect to Maxim;

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

11. a list of all of Maxim's locations (including locations and mailing addresses); the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare and state Medicaid program provider number and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Maxim currently submits claims;

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

13. the certifications required by Section V.E.

C. Implementation Information Not Subject to Suspension: In the Implementation Report or the Annual Report for the first Reporting Period, whichever is submitted earlier, Maxim shall submit the following information:

1. a description of the Disclosure Program required by Section III.F;
2. a description of the process by which Maxim fulfills the requirements of Section III.G regarding Ineligible Persons;

3. a list of all of Maxim's locations (including locations and mailing addresses); the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare and state Medicaid program provider number and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Maxim currently submits claims; and
4. a description of Maxim's corporate structure, including identification of any parent companies, brother and sister companies underneath such parents, subsidiaries, and their respective lines of business.

D. Annual Reports. Maxim shall submit to OIG annually a report with respect to the status of, and findings regarding, Maxim's compliance activities for each of the Reporting Periods (Annual Report).

Each Annual Report shall include (except that Maxim need not include information on any suspended obligations for the time period in which the suspension is in effect), at a minimum:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer and any change in the membership of the Corporate Compliance Committee described in Section III.A;
2. the Board resolution required by Section III.A;
3. the Certifying Employee certifications required by Section III.A;
4. a summary of any significant changes or amendments to the Policies and Procedures required by Section III.B and the reasons for such changes (e.g., change in contractor policy);
5. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions;
6. the following information regarding each type of training required by Section III.C:

- a. a description of the initial and annual training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions; and
 - b. the number of individuals required to complete the initial and annual training, the percentage of individuals who actually completed the initial and annual training, and an explanation of any exceptions;
7. The certification regarding MSS Contractors' training required by Section III.C.7, if applicable;
8. a complete copy of all reports prepared pursuant to Section III.D, and Appendix B along with a copy of the IRO's engagement letter;
9. Maxim's response to the reports prepared pursuant to Section III.D and Appendix B, along with corrective action plan(s) related to any issues raised by the reports;
10. a summary and description of any and all current and prior engagements and agreements between Maxim and the IRO (if different from what was submitted as part of the Implementation Report);
11. a certification from the IRO regarding its professional independence and objectivity with respect to Maxim;
12. a complete copy of the report prepared pursuant to Section III.E and Appendix C, along with a copy of the Consultant's engagement letter;
13. Maxim's response to the report prepared pursuant to Section III.E and Appendix C, along with corrective action plan(s) related to any issues raised by the reports;
14. a summary and description of any and all current and prior engagements and agreements between Maxim and the Consultant (if different from what was submitted as part of the Implementation Report);

15. a certification from the Consultant regarding its professional independence and objectivity with respect to Maxim;
16. a summary of Reportable Events (as defined in Section III.J) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;
17. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall be broken down into the following categories: Medicare, Medicaid (report each applicable state separately, if applicable), and other Federal health care programs. Overpayment amounts that are routinely reconciled or adjusted pursuant to policies and procedures established by the payor do not need to be included in this aggregate Overpayment report;
18. a summary of the disclosures in the disclosure log required by Section III.F that relate to Federal health care programs;
19. any changes to the process by which Maxim fulfills the requirements of Section III.G regarding Ineligible Persons;
20. 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;
21. a description of all changes to the most recently provided list of Maxim's locations (including addresses) as required by Section V.B.11; the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare and state Medicaid program provider number(s) and/or supplier number(s); and the name and address of each Medicare and state Medicaid program contractor to which Maxim currently submits claims; and
22. the certifications required by Section V.E.

The first Annual Report shall be received by OIG no later than 120 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.

E. Certifications. The Implementation Report and each Annual Report shall include a certification by the Compliance Officer that:

1. to the best of his or her knowledge, except as otherwise described in the report, Maxim is in compliance with all of the requirements of this CIA;

2. he or she has reviewed the report and has made reasonable inquiry regarding its content and believes that the information in the report is accurate and truthful; and

3. to the best of his or her knowledge, Maxim has complied with its obligations under the Settlement Agreement: (a) not to resubmit to any Federal health care program payors any previously denied claims related to the Covered Conduct addressed in the Settlement Agreement, and not to appeal any such denials of claims; (b) not to charge to or otherwise seek payment from federal or state payors for unallowable costs (as defined in the Settlement Agreement); and (c) to identify and adjust any past charges or claims for unallowable costs.

F. Designation of Information. Maxim 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. Maxim shall refrain from identifying any information as exempt from disclosure if that information does not meet the criteria for exemption from disclosure under FOIA.

VI. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing after the Effective Date, all notifications and reports required under this CIA shall be submitted to the following entities:

OIG:
Administrative and Civil Remedies Branch
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, S.W.

Washington, DC 20201
Telephone: 202.619.2078
Facsimile: 202.205.0604

Maxim:
Jacqueline C. Baratian
Vice President & Chief Compliance Officer
Maxim Healthcare Services, Inc.
7227 Lee Deforest Drive
Columbia, MD 21046
Telephone: 410.910.6225
Facsimile: 410.872.9417

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt. Upon request by OIG, Maxim may be required to provide OIG with an electronic copy of each notification or report required by this CIA in searchable portable document format (.pdf), either instead of or in addition to a paper copy.

VII. OIG INSPECTION, AUDIT, AND REVIEW RIGHTS

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

VIII. DOCUMENT AND RECORD RETENTION

Maxim shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs and to compliance with this CIA for one year after the end of the last Reporting Period (or longer if otherwise required by law).

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

X. BREACH AND DEFAULT PROVISIONS

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

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

1. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Maxim fails to establish and implement any of the following obligations as described in Section III:

- a. a Compliance Officer;
- b. a Corporate Compliance Committee;
- c. the Board resolution;
- d. the Certifying Employee certifications;

- e. a written Code of Conduct;
- f. written Policies and Procedures;
- g. the training of Covered Persons, Relevant Covered Persons, Board Members, and MSS Contractors;
- h. a Disclosure Program;
- i. Ineligible Persons screening and removal requirements;
- j. notification of Government investigations or legal proceedings; and
- k. reporting of Reportable Events.

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 Maxim fails to engage and use an IRO, as required in Section III.D, Appendix A, and Appendix B or fails to engage and use a Consultant, as required in Section III.E and Appendix C.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Maxim fails to submit any Monitor Reports, the Implementation Report, or any Annual Reports to OIG in accordance with the requirements of Section V by the deadlines for submission.

4. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day Maxim fails to submit any Claims Review Report, Unallowable Cost Review Report, or Compliance Review Report in accordance with the requirements of Sections III.D and III.E and Appendices B and C.

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

6. A Stipulated Penalty of \$5,000 for each false certification submitted by or on behalf of Maxim as part of its Implementation Report, Annual Report, additional documentation to a report (as requested by the OIG), or otherwise required by this CIA.

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

B. Timely Written Requests for Extensions. Maxim may, in advance of the due date, submit a timely written request for an extension of time to perform any act or file any notification or report required by this CIA. Notwithstanding any other provision in this Section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after Maxim fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after Maxim receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties

1. *Demand Letter.* Upon a finding that Maxim has failed to comply with any of the obligations described in Section X.A and after determining that Stipulated Penalties are appropriate, OIG shall notify Maxim of: (a) Maxim's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties. (This notification shall be referred to as the "Demand Letter.")

2. *Response to Demand Letter.* Within 10 days after the receipt of the Demand Letter, Maxim shall either: (a) cure the breach to OIG's satisfaction and pay the applicable Stipulated Penalties or (b) request a hearing before an HHS administrative law

judge (ALJ) to dispute OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in Section X.E. In the event Maxim elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Maxim cures, to OIG's satisfaction, the alleged breach in dispute. Failure to respond to the Demand Letter in one of these two manners within the allowed time period shall be considered a material breach of this CIA and shall be grounds for exclusion under Section X.D.

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

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

D. Exclusion for Material Breach of this CIA.

1. *Definition of Material Breach.* A material breach of this CIA means:
 - a. a repeated or flagrant violation of the obligations under this CIA, including, but not limited to, the obligations addressed in Section X.A;
 - b. a failure by Maxim to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Section III.J;
 - c. a failure to engage and use an IRO in accordance with Section III.D, Appendix A, and Appendix B, or to engage and use a Consultant in accordance with Section III.E and Appendix C;
or
 - d. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C.

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

3. *Opportunity to Cure.* Maxim shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate to OIG's satisfaction that:

- a. Maxim is in compliance with the obligations of the CIA cited by OIG as being the basis for the material breach;
- b. the alleged material breach has been cured; or
- c. the alleged material breach cannot be cured within the 30-day period, but that: (i) Maxim has begun to take action to cure the material breach; (ii) Maxim is pursuing such action with due diligence; and (iii) Maxim has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Maxim fails to satisfy the requirements of Section X.D.3, OIG may exclude Maxim from participation in the Federal health care programs. OIG shall notify Maxim in writing of its determination to exclude Maxim. (This letter shall be referred to as the "Exclusion Letter.") Subject to the Dispute Resolution provisions in Section X.E, below, the exclusion shall go into effect 30 days after the date of Maxim's receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, Maxim may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

E. Dispute Resolution

1. *Review Rights.* Upon OIG's delivery to Maxim of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this CIA, Maxim shall be afforded certain review rights comparable to the ones that are provided in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the Stipulated Penalties or exclusion sought pursuant to this CIA. Specifically, OIG's determination to demand payment of Stipulated Penalties or to seek exclusion shall be subject to review by an HHS ALJ and, in the event of an appeal, the HHS Departmental Appeals Board (DAB), in a manner consistent with the provisions in 42 C.F.R. § 1005.2-1005.21. Notwithstanding the language in 42 C.F.R. § 1005.2(c), the request for a hearing involving Stipulated Penalties shall be made within 10 days after receipt of the Demand Letter and the request for a hearing involving exclusion shall be made within 25 days after receipt of the Exclusion Letter.

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether Maxim was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. Maxim shall have the burden of proving its full and timely compliance and the steps taken to cure the noncompliance, if any. OIG shall not have the right to appeal to the DAB an adverse ALJ decision related to Stipulated Penalties. If the ALJ agrees with OIG with regard to a finding of a breach of this CIA and orders Maxim to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Maxim requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

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

- a. whether Maxim was in material breach of this CIA;
- b. whether such breach was continuing on the date of the Exclusion Letter; and

- c. whether the alleged material breach could not have been cured within the 30-day period, but that: (i) Maxim had begun to take action to cure the material breach within that period; (ii) Maxim has pursued and is pursuing such action with due diligence; and (iii) Maxim provided to OIG within that period a reasonable timetable for curing the material breach and Maxim has followed the timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Maxim, only after a DAB decision in favor of OIG. Maxim's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Maxim upon the issuance of an ALJ's decision in favor of OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Maxim may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. Maxim shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Maxim, Maxim shall be reinstated effective on the date of the original exclusion.

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

XI. EFFECTIVE AND BINDING AGREEMENT

Maxim and OIG agree as follows:

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

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

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

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

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

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

ON BEHALF OF MAXIM HEALTHCARE SERVICES, INC.

/W. Bradley Bennett/

9/9/2011

W. BRADLEY BENNETT
Chief Executive Officer

DATE

/Laura Laemmle-Weidenfeld/

9/7/2011

LAURA LAEMMLE-WEIDENFELD
Patton Boggs LLP
Counsel for Maxim Healthcare Services, Inc.

DATE

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

/Gregory E. Demske/

9/9/2011

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

DATE

/Laura E. Ellis/

9/7/2011

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

DATE

APPENDIX A

INDEPENDENT REVIEW ORGANIZATION

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

A. IRO Engagement

1. Maxim shall engage an IRO that possesses the qualifications set forth in Paragraph B, below, to perform the responsibilities in Paragraph C, below. The IRO shall conduct the review in a professionally independent and objective fashion, as set forth in Paragraph D. Within 30 days after OIG receives the information identified in Section V.B.8 of the CIA or any additional information submitted by Maxim in response to a request by OIG, whichever is later, OIG will notify Maxim if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Maxim may continue to engage the IRO.

2. If Maxim engages a new IRO during the term of the CIA, this IRO shall also meet the requirements of this Appendix. If a new IRO is engaged, Maxim shall submit the information identified in Section V.B.8 of the CIA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives this information or any additional information submitted by Maxim at the request of OIG, whichever is later, OIG will notify Maxim if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Maxim may continue to engage the IRO.

B. IRO Qualifications

The IRO shall:

1. assign individuals to conduct the Claims Review and Unallowable Cost Review engagements who have expertise in the billing, coding, reporting, and other requirements of home health and other areas of care provided by Maxim, and in the general requirements of the Federal health care program(s) from which Maxim seeks reimbursement;

2. assign individuals to design and select the Claims Review sample who are knowledgeable about the appropriate statistical sampling techniques;

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

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

C. IRO Responsibilities

The IRO shall:

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

D. IRO Independence and Objectivity

The IRO must perform the Claims Review in a professionally independent and objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or engagements that may exist between the IRO and Maxim.

E. IRO Removal/Termination

1. *Maxim and IRO.* If Maxim terminates its IRO or if the IRO withdraws from the engagement during the term of the CIA, Maxim must submit a notice explaining its reasons for termination or the reason for withdrawal to OIG no later than 30 days after termination or withdrawal. Maxim must engage a new IRO in accordance with Paragraph A of this Appendix and within 60 days of termination or withdrawal of the prior IRO or at least 60 days prior to the end of the current Reporting Period, whichever is earlier.

2. *OIG Removal of IRO.* In the event OIG has reason to believe that the IRO does not possess the qualifications described in Paragraph B, is not independent and/or objective as set forth in Paragraph D, or has failed to carry out its responsibilities

as described in Paragraph C, OIG may, at its sole discretion, require Maxim to engage a new IRO in accordance with Paragraph A of this Appendix. Maxim must engage a new IRO within 60 days of termination of the prior IRO or at least 60 days prior to the end of the current Reporting Period, whichever is earlier.

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

APPENDIX B

CLAIMS REVIEW

A. Claims Review

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

1. *Definitions.* For the purposes of the Claims Review, the following definitions shall be used:

- a. Overpayment: The amount of money Maxim has received in excess of the amount due and payable under any Federal health care program requirements.
- b. Paid Claim: A claim submitted by Maxim and for which Maxim has received reimbursement from the Medicare or Medicaid programs.
- c. Population: The Population shall be defined as all Paid Claims during the 12-month period covered by the Claims Review.
- d. Error Rate: The Error Rate shall be the percentage of net Overpayments identified in the sample. The net Overpayments shall be calculated by subtracting all underpayments identified in the sample from all gross Overpayments identified in the sample. (Note: Any potential cost settlements or other supplemental payments should not be included in the net Overpayment calculation. Rather, only underpayments identified as part of the Discovery Sample shall be included as part of the net Overpayment calculation.)

The Error Rate is calculated by dividing the net Overpayment identified in the sample by the total dollar amount associated with the Paid Claims in the sample.

2. *Selection of Offices for Review.* The IRO shall utilize RAT-STATS to select a random sample of 12 percent of Maxim homecare offices. In selecting these facilities, the IRO shall randomly select an equal number of the offices from each region. In the event that Maxim reorganizes its structure to add or subtract regions, the sample of

offices selected shall be distributed evenly across the regions. The sample of offices from a region shall comprise an Office Set.

3. *Discovery Samples.* For each Office Set, the IRO shall randomly select and review a sample of 60 Paid Claims selected from the aggregate population of Paid Claims for that Office Set's Discovery Sample. The Paid Claims shall be reviewed based on the supporting documentation available at Maxim's office or under Maxim's control and applicable billing and coding regulations and guidance to determine whether the claim was correctly coded, submitted, and reimbursed.

If the Error Rate (as defined above) for a Discovery Sample is less than 5%, no additional sampling is required, nor is a Systems Review required. (Note: The guidelines listed above do not imply that this is an acceptable error rate. Accordingly, Maxim should, as appropriate, further analyze any errors identified in any Discovery Sample. Maxim recognizes that OIG or other HHS component, in its discretion and as authorized by statute, regulation, or other appropriate authority may also analyze or review Paid Claims included, or errors identified, in any Discovery Sample or any other segment of the universe.)

4. *Verification Review.* In lieu of performing each entire Discovery Sample, for the first Claims Review performed under this provision the IRO shall randomly select 20% of the Paid Claims in each Discovery Sample for review by Maxim's compliance audit program (Maxim's Review Set). For each subsequent Claims Review, the IRO shall increase by an incremental 20% the number of Paid Claims in Maxim's Review Set (*i.e.*, 20% of each discovery Sample in the first Verification Review's Claims Review, 40% in the second, etc.). Maxim shall perform its review in accordance with the requirements of this Appendix. After Maxim has completed its review, the IRO shall randomly select half of Maxim's Review Set and verify Maxim's review. The IRO shall independently review all Paid Claims in the Discovery Samples that are not part of Maxim's Review Set. For all Paid Claims that the IRO reviews, whether initially or as a verification of Maxim's review, the IRO's determination shall serve as the basis for determining the Error Rate for each Discovery Sample.

5. *Full Sample.* If a Discovery Sample indicates that the Error Rate is 5% or greater, the IRO shall select an additional sample of Paid Claims (Full Sample) from the same Office Set using commonly accepted sampling methods. The Full Sample shall be designed to: (1) estimate the actual Overpayment in the population with a 90% confidence level and with a maximum relative precision of 25% of the point estimate; and (2) conform to the Centers for Medicare and Medicaid Services' statistical sampling for overpayment estimation guidelines. The Paid Claims selected for the Full Sample shall be reviewed based on supporting documentation available at Maxim or under Maxim's control and applicable billing and coding regulations and guidance to determine whether the claim was correctly coded, submitted, and reimbursed. For purposes of

calculating the size of the Full Sample, a Discovery Sample may serve as the probe sample, if statistically appropriate. Additionally, the IRO may use the Paid Claims sampled as part of a Discovery Sample, and the corresponding findings for those Paid Claims, as part of its Full Sample, if: (1) statistically appropriate and (2) the IRO selects the Full Sample Paid Claims using the seed number generated by the Discovery Sample. OIG, in its sole discretion, may refer the findings of the Full Sample (and any related workpapers) received from Maxim to the appropriate Federal health care program payor, including the Medicare contractor (e.g., carrier, fiscal intermediary, or DMERC), for appropriate follow-up by that payor.

6. *Systems Review.* If a Discovery Sample identifies an Error Rate of 5% or greater, Maxim's IRO shall also conduct a Systems Review for that region. The Systems Review shall consist of the following:

- a. a review of Maxim's billing and coding systems and processes relating to claims submitted to Federal health care programs (including, but not limited to, the operation of the billing system, the process by which claims are coded, safeguards to ensure proper coding, claims submission and billing; and procedures to identify and correct inaccurate coding and billing);
- b. for each claim in the Discovery Sample and Full Sample that resulted in an Overpayment, the IRO shall review the system(s) and process(es) that generated the claim and identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide its observations and recommendations on suggested improvements to the system(s) and the process(es) that generated the claim.

7. *Other Requirements*

- a. Supporting Documentation. The IRO shall request all documentation and materials required for its review of the Paid Claims selected as part of the Discovery Samples or Full Samples (if applicable), and Maxim shall furnish such documentation and materials to the IRO, prior to the IRO initiating its review of the Discovery Samples or Full Samples (if applicable). If the IRO accepts any supplemental documentation or materials from Maxim after the IRO has completed its initial review of the Discovery Samples or Full Samples (if applicable) (Supplemental Documentation), the

IRO shall identify in the Claims Review Report the Supplemental Documentation, the date the Supplemental Documentation was accepted, and the relative weight the IRO gave to the Supplemental Documentation in its review. In addition, the IRO shall include a narrative in the Claims Review Report describing the process by which the Supplemental Documentation was accepted and the IRO's reasons for accepting the Supplemental Documentation.

- b. Paid Claims without Supporting Documentation. Any Paid Claim for which Maxim cannot produce documentation sufficient to support the Paid Claim shall be considered an error and the total reimbursement received by Maxim for such Paid Claim shall be deemed an Overpayment. Replacement sampling for Paid Claims with missing documentation is not permitted.
- c. Use of First Samples Drawn. For the purposes of all samples (Discovery Sample(s) and Full Sample(s)) discussed in this Appendix, the Paid Claims selected in each first sample shall be used (i.e., it is not permissible to generate more than one list of random samples and then select one for use with the Discovery Sample or Full Sample).

B. Claims Review Report. The IRO shall complete a Claims Review Report as described in this Appendix for each Claims Review performed. If the Discovery Samples portion of the Claims Review is performed under the Verification Review provision at Section A.4 above, Maxim shall contribute the information pertaining to its review. The following information shall be included in the Claims Review Report for each Discovery Sample and Full Sample (if applicable).

- 1. *Claims Review Methodology*
 - a. Claims Review Population. A description of the Population subject to the Claims Review.
 - b. Claims Review Objective. A clear statement of the objective intended to be achieved by the Claims Review.
 - c. Source of Data. A description of the specific documentation relied upon by the IRO when performing the Claims Review (e.g., medical records, physician orders, certificates of medical necessity, requisition forms, local medical review

policies (including title and policy number), program memoranda (including title and issuance number), carrier or intermediary manual or bulletins (including issue and date), other policies, regulations, or directives).

- d. Review Protocol. A narrative description of how the Claims Review was conducted and what was evaluated.
- e. Supplemental Documentation. A description of any Supplemental Documentation as required by A.7.a., above.

2. *Statistical Sampling Documentation*

- a. A copy of the printout of the random numbers generated by the “Random Numbers” function of the statistical sampling software used by the IRO.
- b. A copy of the statistical software printout(s) estimating how many Paid Claims are to be included in the Full Sample, if applicable.
- c. A description or identification of the statistical sampling software package used to select the sample and determine the Full Sample size, if applicable.

3. *Claims Review Findings*

a. Narrative Results

i. A description of Maxim’s billing and coding system(s), including the identification, by position description, of the personnel involved in coding and billing.

ii. A narrative explanation of the IRO’s findings and supporting rationale (including reasons for errors, patterns noted, etc.) regarding the Claims Review, including the results of the Discovery Samples, and the results of the Full Samples (if any).

b. Quantitative Results

i. Total number and percentage of instances in which the IRO determined that the Paid Claims submitted by Maxim

(Claim Submitted) differed from what should have been the correct claim (Correct Claim), regardless of the effect on the payment.

ii. Total number and percentage of instances in which the Claim Submitted differed from the Correct Claim and in which such difference resulted in an Overpayment to Maxim.

iii. Total dollar amount of all Overpayments in the sample.

iv. Total dollar amount of Paid Claims included in the sample and the net Overpayment associated with the sample.

v. Error Rate in the sample.

vi. A spreadsheet of the Claims Review results that includes the following information for each Paid Claim: Federal health care program billed, beneficiary health insurance claim number, date of service, code submitted (e.g., DRG, CPT code, etc.), code reimbursed, allowed amount reimbursed by payor, correct code (as determined by the IRO), correct allowed amount (as determined by the IRO), dollar difference between allowed amount reimbursed by payor and the correct allowed amount.

c. Recommendations. The IRO's report shall include any recommendations for improvements to Maxim's billing and coding system based on the findings of the Claims Review

4. *Systems Review*. The IRO shall prepare a report based on any Systems Review (Systems Review Report) that shall include the IRO's observations, findings, and recommendations regarding:

a. the strengths and weaknesses in Maxim's billing systems and processes;

b. the strengths and weaknesses in Maxim's coding systems and processes; and

c. possible improvements to Maxim's billing and coding systems and processes to address the specific problems or weaknesses that resulted in the identified Overpayments.

5. *Credentials.* The names and credentials of the individuals who: (1) designed the statistical sampling procedures and the review methodology utilized for the Claims Review and (2) performed the Claims Review.

APPENDIX C

COMPLIANCE REVIEW

A. Consultant Engagement

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

2. If Maxim engages a new Consultant during the term of the CIA, this Consultant shall also meet the requirements of this Appendix. If a new Consultant is engaged, Maxim shall submit the information identified in Section V.B.9 of the CIA to OIG within 30 days of engagement of the Consultant. Within 30 days after OIG receives this information or any additional information submitted by Maxim at the request of OIG, whichever is later, OIG will notify Maxim if the Consultant is unacceptable. Absent notification from OIG that the Consultant is unacceptable, Maxim may continue to engage the Consultant. Maxim must make available to the new Consultant the prior Consultant's reports and the Monitor's reports.

B. Consultant Qualifications

The Consultant shall have expertise in health care compliance systems and in evaluating compliance and clinical systems in the areas of care provided by Maxim.

C. Compliance Review

The Consultant shall perform the Compliance Review annually to cover each Reporting Period. The Consultant shall perform all components of each Compliance Review. The Consultant shall assess the effectiveness, reliability, and thoroughness of Maxim's compliance program generally and specifically with regard to the provision of clinical services. To assist the Consultant's review, Maxim shall make available to the Consultant all the Monitor's reports, as described in Section V.A. The Compliance Review shall be undertaken at all relevant levels of the organization, including but not limited to corporate offices and local offices (*i.e.*, local branch offices within each region).. The Compliance Review shall be performed as follows:

1. *Work plan Review.* Within 60 days after the start of each Reporting Period, the Consultant shall provide the OIG with a draft copy of its work plan, including offices to be reviewed. Within 30 days after OIG receives the Consultant's draft work plan or any additional information submitted by the Consultant in response to a request by OIG, whichever is later, OIG will notify the Consultant if the work plan is unacceptable. Absent notification from the OIG that the work plan is unacceptable, the Consultant may proceed with the Compliance Review.

2. *Compliance Review.* As part of the Compliance Review, the Consultant shall conduct site visits to Maxim's corporate headquarters and local offices within each region. The Consultant shall review, at a minimum:

a. Maxim's internal compliance systems, including, but not limited to:

i. whether the systems in place to promote compliance and quality of care, and to respond to issues, are operating in a timely and effective manner;

ii. whether Maxim has an effective medical record review within its compliance audit program;

iii. whether the communication system is effective, allowing for accurate information, decisions, and results of decisions to be transmitted to the proper individuals in a timely fashion; and

iv. whether the clinical training programs are effective, thorough, competency-based, and provided timely.

b. Maxim's response to compliance issues, which shall include an assessment of:

i. Maxim's ability to identify the problem;

ii. Maxim's ability to determine the scope of the problem, including, but not limited to, whether the problem is isolated or systemic;

iii. Maxim's ability to conduct a root-cause analysis;

iv. Maxim's ability to create an action plan to respond to the problem;

- v. Maxim's ability to execute the action plan; and
- vi. Maxim's ability to monitor and evaluate whether the assessment, action plan, and execution of that plan was effective, reliable, and thorough.
- c. Maxim's ability to identify new, emerging, and potential compliance risks and take steps to address such risks proactively.
- d. Maxim's actions to address findings and recommendations made by the Monitor and the Consultant.

D. Compliance Review Report

The Compliance Report for each Compliance Review shall contain the following information:

1. the work plan for the Compliance Review;
2. the Consultant's findings and recommendations;
3. the Consultant's evaluation of the actions Maxim has taken to implement the Monitor's recommendations and, as applicable, the Consultant's previous recommendations; and
4. the names, credentials, expertise, and Compliance Review responsibilities of the individuals who are involved in the Compliance Review.

E. Consultant Independence and Objectivity

The Consultant must perform the Compliance Review in a professionally independent and objective fashion, as appropriate to the nature of the engagement, taking into account any other business relationships or engagements that may exist between the Consultant and Maxim. Maxim shall not assert a privilege to the OIG with respect to any advice, counsel, or work product provided by the Consultant after the Effective Date and during the term of the CIA.

F. Consultant Removal/Termination

1. *Maxim and Consultant.* If Maxim terminates its Consultant or if the Consultant withdraws from the engagement during the term of the CIA, Maxim must

submit a notice explaining its reasons for termination or the reason for withdrawal to OIG no later than 30 days after termination or withdrawal. Maxim must engage a new Consultant in accordance with Paragraph A of this Appendix within 60 days of termination or withdrawal of the prior Consultant or at least 60 days prior to the end of the current Reporting Period, whichever is earlier. Maxim must make available to the new Consultant the prior Consultant's reports and the Monitor's reports.

2. *OIG Removal of Consultant.* In the event OIG has reason to believe that the Consultant does not possess the qualifications described in Paragraph B, is not independent and/or objective as set forth in Paragraph E, or has failed to carry out its responsibilities as described in Paragraphs C and D, OIG may, at its sole discretion, require Maxim to engage a new Consultant in accordance with Paragraph A of this Appendix. Maxim must engage a new Consultant within 60 days of termination of the prior Consultant or at least 60 days prior to the end of the current Reporting Period, whichever is earlier.

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