

**CORPORATE INTEGRITY AGREEMENT  
BETWEEN THE  
OFFICE OF INSPECTOR GENERAL  
OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
AND  
MEMORIAL HEALTH, INC.,  
MEMORIAL HEALTH UNIVERSITY MEDICAL CENTER, INC.,  
PROVIDENT HEALTH SERVICES, INC., AND  
MPPG, INC., d/b/a MEMORIAL HEALTH UNIVERSITY PHYSICIANS**

**I. PREAMBLE**

Memorial Health, Inc.; Memorial Health University Medical Center, Inc.; Provident Health Services, Inc.; and MPPG, Inc., d/b/a Memorial Health University Physicians (Memorial Health) hereby enter 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, Memorial Health is entering into a Settlement Agreement with the United States.

Prior to the execution of this CIA, Memorial Health established a voluntary corporate compliance program (Compliance Program). The Compliance Program includes a Compliance Officer and a compliance committee responsible for compliance oversight, a Code of Conduct, written policies and procedures, educational and training initiatives, an audit program, a confidential Disclosure Program that allows for the disclosure and investigation of potential compliance violations, screening measures for Ineligible Persons, and oversight from Memorial Health's Board of Directors. Memorial Health shall continue the Compliance Program throughout the term of this CIA and shall do so in accordance with the terms set forth below. Memorial Health may modify the Compliance Program as appropriate, but, at a minimum, Memorial Health shall ensure that the Compliance Program satisfies the obligations set forth herein during the term of this CIA.

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

A. The period of the compliance obligations assumed by Memorial Health under this CIA shall be five years from the effective date of this CIA. 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. Sections VII, X, and XI shall expire no later than 120 days after OIG’s receipt of: (1) Memorial Health’s final annual report; or (2) any additional materials submitted by Memorial Health pursuant to OIG’s request, whichever is later.

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

1. “Arrangements” shall mean every arrangement or transaction that:
  - a. involves, directly or indirectly, the offer, payment, solicitation, or receipt of anything of value; and is between Memorial Health and any actual or potential source of health care business or referrals to Memorial Health or any actual or potential recipient of health care business or referrals from Memorial Health. The term “source of health care business or referrals” shall mean any individual or entity that refers, recommends, arranges for, orders, leases, or purchases any good, facility, item, or service for which payment may be made in whole or in part by a Federal health care program and the term “recipient of health care business or referrals” shall mean any individual or entity (1) to whom Memorial Health refers an individual for the furnishing or arranging for the furnishing of any item or service, or (2) from whom Memorial Health purchases, leases or orders or arranges for or recommends the purchasing, leasing, or ordering of any good, facility, item, or service for which payment may be made in whole or in part by a Federal health care program; or
  - b. is between Memorial Health and a physician (or a physician’s immediate family member (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to Memorial Health for designated health services (as defined at 42 U.S.C. § 1395nn(h)(6)).

2. “Focus Arrangements” means every Arrangement that:
  - a. is between Memorial Health and any actual source of health care business or referrals to Memorial Health and involves, directly or indirectly, the offer, payment, or provision of anything of value; or
  - b. is between Memorial Health and any physician (or a physician’s immediate family member) (as defined at 42 C.F.R. § 411.351)) who makes a referral (as defined at 42 U.S.C. § 1395nn(h)(5)) to Memorial Health for designated health services (as defined at 42 U.S.C. §1395nn(h))(6)).

Notwithstanding the foregoing provisions of Section II.C.2, any Arrangement that satisfies the requirements of 42 C.F.R. § 411.356 (ownership or investment interests), 42 C.F.R. § 411.357(g) (remuneration unrelated to the provision of designated health services); 42 C.F.R. § 411.357(i) (payments by a physician for items and services); 42 C.F.R. § 411.357(k) (non-monetary compensation); 42 C.F.R. § 411.357(m) (medical staff incidental benefits), 42 C.F.R. § 411.357(o) (compliance training), 42 C.F.R. § 411.357(q) (referral services), 42 C.F.R. § 411.357(s) (professional courtesy), 42 C.F.R. § 357(u) (community-wide health information systems), or any exception to the prohibitions of 42 U.S.C. § 1395nn enacted following the Effective Date that does not require a written agreement shall not be considered a Focus Arrangement for purposes of this CIA.

3. “Covered Persons” includes:
  - a. all owners, officers, directors, and employees of Memorial Health; and
  - b. all contractors, subcontractors, agents, and other persons who furnish patient care items or services or who perform billing or coding functions on behalf of Memorial Health excluding vendors whose sole connection with Memorial Health is selling or otherwise providing medical supplies or equipment to Memorial Health; and
  - c. all physicians and other non-physician practitioners who are members of Memorial Health’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 during a calendar year, except that any such individuals shall become “Covered Persons” at the point when they work more than 160 hours during a calendar year.

4. “Arrangements Covered Persons” includes each Covered Person who is involved with the development, approval, management, or review of Memorial Health’s Arrangements.

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

Memorial Health shall establish and maintain a Compliance Program that includes the following elements:

#### **A. Compliance Officer and Compliance Committee**

1. *Compliance Officer.* Memorial Health has appointed an employee to serve as its Compliance Officer and shall maintain a Compliance Officer for the term of the CIA. The Compliance Officer is and shall continue to be a member of senior management of Memorial Health, shall report directly to the Chief Executive Officer of Memorial Health, and shall not be or be subordinate to the General Counsel or Chief Financial Officer or have any responsibilities that involve acting in any capacity as legal counsel or supervising legal counsel functions for Memorial Health. The Compliance Officer shall be responsible for, without limitation:

- a. 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;
- b. making periodic (at least quarterly) reports regarding compliance matters directly to the Board of Directors (or a committee of the Board) of Memorial Health, and shall be authorized to report on such matters to the Board of Directors at any time. Written documentation of the Compliance Officer’s reports to the Board of Directors shall be made available to OIG upon request; and

- c. monitoring the day-to-day compliance activities engaged in by Memorial Health 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.

Memorial Health shall report to OIG, in writing, any changes in the identity or position description 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 such a change.

2. *Compliance Committee.* Memorial Health has appointed a Compliance Committee and shall maintain a Compliance Committee for the term of this CIA. The 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 Compliance Committee and the Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of Memorial Health's risk areas and shall directly participate in monitoring of internal and external audits and investigations). The Compliance Committee shall meet at least quarterly. The minutes of the Compliance Committee meetings shall be made available to OIG upon request.

Memorial Health shall report to OIG, in writing, any changes in the composition of the Compliance Committee, or any actions or changes that would affect the 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.* The Board of Directors (or a committee of the Board) of Memorial Health (Board) 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 must include independent (i.e., non-executive) members.

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

- a. meeting at least quarterly to review and oversee Memorial Health's compliance program, including but not limited to the

performance of the Compliance Officer and Compliance Committee;

- b. submitting to OIG a description of the documents and other materials it reviewed, as well as any additional steps taken in its oversight of the compliance program and in support of making the resolution below during each Reporting Period; and
- c. for each Reporting Period of the CIA, adopting a resolution, signed by each member of the Board summarizing its review and oversight of Memorial Health's compliance with Federal health care program requirements and the obligations of this CIA.
- d. for the First, Third, and Fifth Reporting Periods of the CIA, the Board shall retain an individual or entity with expertise in compliance with Federal health care program requirements (Compliance Expert) to perform a review of the effectiveness of Memorial Health's Compliance Program (Compliance Program Review). The Compliance Expert shall create a work plan for the Compliance Program Review and prepare a written report about the Compliance Program Review. The written report (Compliance Program Review Report) shall include a description of the Compliance Program Review and any recommendations with respect to Memorial Health's compliance program. The Board shall review the Compliance Program Review Report as part of its review and oversight of Memorial Health's compliance program. A copy of the Compliance Program Review report shall be provided to OIG in each Annual Report submitted by Memorial Health. In addition, copies of any materials provided to the Board by the Compliance Expert, along with minutes of any meetings between the Compliance Expert and the Board, shall be made available to OIG upon request.

At minimum, the resolution shall include the following language:

“The Board of Directors has made a reasonable inquiry into the operations of Memorial Health's Compliance Program including the performance of

the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, Memorial Health has implemented an effective Compliance Program to meet Federal health care program requirements and the obligations of the CIA.”

If the Board is unable to provide such a conclusion in the resolution, the Board 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 Memorial Health.

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

4. *Management Certifications.* In addition to the responsibilities set forth in this CIA for all Covered Persons, certain Memorial Health employees (Certifying Employees) are specifically expected to monitor and oversee activities within their areas of authority and shall annually certify that the applicable Memorial Health department is in compliance with applicable Federal health care program requirements and with the obligations of this CIA. These Certifying Employees shall include, at a minimum, the following: Chief Executive Officer, Chief Operating Officer, Chief Nursing Officer, Chief Medical Officer, Vice President of Finance, and Vice President of Revenue Cycle and Physician Services. For each Reporting Period, each Certifying Employee shall sign a certification that states:

“I have been trained on and understand the compliance requirements and responsibilities as they relate to [insert name of department], an area under my supervision. My job responsibilities include ensuring compliance with regard to the [insert name of department] with all applicable Federal health care program requirements, obligations of the Corporate Integrity Agreement, and Memorial Health policies, and I have taken steps to promote such compliance. To the best of my knowledge, the [insert name of department] of Memorial Health is in compliance with all applicable Federal health care program requirements and the obligations of the Corporate Integrity Agreement. I understand that this certification is being provided to and relied upon by the United States.”

If any Certifying Employee is unable to provide such a certification, the Certifying Employee shall provide a written explanation of the reasons why he or she is unable to provide the certification outlined above.

Within 120 days after the Effective Date, Memorial Health shall develop and implement a written process for Certifying Employees to follow for the purpose of completing the certification required by this section (e.g., reports that must be reviewed, assessments that must be completed, sub-certifications that must be obtained, etc. prior to the Certifying Employee making the required certification).

B. Written Standards

1. *Code of Conduct.* Memorial Health represents that, prior to the Effective Date, Memorial Health developed, implemented, and distributed a written Code of Conduct to all Covered Persons. Memorial Health shall make the performance of job responsibilities in a manner consistent with the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

- a. Memorial Health's commitment to full compliance with all Federal health care program requirements;
- b. Memorial Health's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with Memorial Health's own policies and procedures;
- c. the possible consequences to both Memorial Health and Covered Persons of failure to comply with Federal health care program requirements and with Memorial Health's own Policies and Procedures, as well as the failure to report such noncompliance;
- d. the requirement that all of Memorial Health's Covered Persons shall be expected to report to the Compliance Officer, or other appropriate individual designated by Memorial Health, suspected violations of any Federal health care program requirements or of Memorial Health's own Policies and Procedures; and

- e. the right of all individuals to use the Disclosure Program described in Section III.F, and Memorial Health's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

To the extent not previously accomplished, within 120 days after the Effective Date, Memorial Health shall distribute the Code of Conduct to all Covered Persons. Memorial Health shall review the Code of Conduct at least annually to determine if revisions are appropriate and shall make any necessary revisions based on such review. The Code of Conduct shall be distributed at least annually to all Covered Persons.

2. *Policies and Procedures.* Memorial Health represents that it has developed and implemented a comprehensive set of written Policies and Procedures. Within 120 days after the Effective Date, Memorial Health shall review its written Policies and Procedures regarding the operation of its compliance program, including the compliance program requirements outlined in this CIA and Memorial Health's compliance with Federal health care program requirements (Policies and Procedures). The Policies and Procedures, at a minimum, also shall address:

- a. 42 U.S.C. § 1320a-7b(b) (Anti-Kickback Statute) and 42 U.S.C. § 1395nn (Stark Law), and the regulations and other guidance documents related to these statutes, and business or financial arrangements or contracts that generate unlawful Federal health care program business in violation of the Anti-Kickback Statute or the Stark Law; and
- b. the requirements set forth in Section III.D (Compliance with the Anti-Kickback Statute and Stark Law).

Within 120 days after the Effective Date, the Policies and Procedures shall be distributed to all Covered Persons. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures. Throughout the term of this CIA, Memorial Health shall enforce and comply with its Policies and Procedures and shall make such compliance an element of evaluating the performance of all employees.

At least annually (and more frequently, if appropriate), Memorial Health shall assess and update, as necessary, the Policies and Procedures. Within 30 days after the effective date of any revisions or addition of new Policies and Procedures, a description

of the revisions shall be communicated to all affected Covered Persons and any revised or new Policies and Procedures shall be distributed to all Covered Persons.

C. Training and Education

1. *Training Plan.* Within 120 days after the Effective Date, Memorial Health shall develop a written plan (Training Plan) that outlines the steps Memorial Health will take to ensure that: (a) all Covered Persons receive adequate training regarding Memorial Health's CIA requirements and Compliance Program, including the Code of Conduct (General Training) and (b) all Arrangements Covered Persons receive adequate training regarding: (i) Arrangements that potentially implicate the Anti-Kickback Statute or the Stark Law, as well as the regulations and other guidance documents related to these statutes; (ii) Memorial Health's policies, procedures, and other requirements relating to Arrangements and Focus Arrangements, including but not limited to the Focus Arrangements Tracking System, the internal review and approval process, and the tracking of remuneration to and from sources of health care business or referrals required by Section III.D of the CIA; (iii) the personal obligation of each individual involved in the development, approval, management, or review of Memorial Health's Arrangements to know the applicable legal requirements and Memorial Health's policies and procedures; (iv) the legal sanctions under the Anti-Kickback Statute and the Stark Law; and (v) examples of violations of the Anti-Kickback Statute and the Stark Law.

The Training Plan shall include information regarding the training topics, the identification of Covered Persons and Arrangements Covered Persons required to attend each training session, the length of the training, the schedule for training, and the format of the training. Within 30 days of OIG's receipt of Memorial Health's Training Plan, OIG will notify Memorial Health of any comments or objections to the Training Plan. Absent notification by OIG that the Training Plan is unacceptable, Memorial Health may implement its Training Plan. Memorial Health shall furnish training to its Covered Persons and Arrangements Covered Persons pursuant to the Training Plan during each Reporting Period.

2. *Board Member Training.* Within 120 days after the Effective Date, Memorial Health shall provide at least two hours of training to each member of the Board of Directors. This training shall address Memorial Health's CIA requirements and Compliance Program (including the Code of Conduct), the corporate governance responsibilities of board members, and the responsibilities of board members with respect to review and oversight of the Compliance Program. Specifically, the training shall address the unique responsibilities of health care Board members, including the risks,

oversight areas, and strategic approaches to conducting oversight of a health care entity. This training may be conducted by an outside compliance expert hired by the Board and should include a discussion of OIG's guidance on Board member responsibilities.

New members of the Board of Directors shall receive the Board Member Training described above within 60 days after becoming a member or within 120 days after the Effective Date, whichever is later.

3. *Certification.* Each individual who is required to attend training shall certify, in writing or in electronic form, 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.

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

5. *Update of Training Plan.* Memorial Health shall review the Training Plan annually, and, where appropriate, update the Training Plan to reflect changes in Federal health care program requirements, any issues discovered during internal audits or the Arrangements Review, and any other relevant information. Any updates to the Training Plan must be reviewed and approved by OIG prior to the implementation of the revised Training Plan. Within 30 days of OIG's receipt of any updates or revisions to Memorial Health's Training Plan, OIG will notify Memorial Health of any comments or objections to the revised Training Plan. Absent notification from OIG that the revised Training Plan is unacceptable, Memorial Health may implement the revised Training Plan.

6. *Computer-based Training.* Memorial Health may provide the training required under this CIA through appropriate computer-based training approaches. If Memorial Health chooses to provide computer-based training, it shall make available appropriately qualified and knowledgeable staff or trainers to answer questions or provide additional information to the individuals receiving such training.

D. Compliance with the Anti-Kickback Statute and Stark Law

1. *Focus Arrangements Procedures.* Within 120 days after the Effective Date, Memorial Health shall create procedures reasonably designed to ensure that each existing and new or renewed Focus Arrangement does not violate the Anti-Kickback Statute and/or the Stark Law or the regulations, directives, and guidance related

to these statutes (Focus Arrangements Procedures). These procedures shall include the following:

- a. creating and maintaining a centralized tracking system for all existing and new or renewed Focus Arrangements (Focus Arrangements Tracking System);
- b. tracking remuneration to and from all parties to Focus Arrangements;
- c. tracking service and activity logs to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable);
- d. monitoring the use of leased space, medical supplies, medical devices, equipment, or other patient care items to ensure that such use is consistent with the terms of the applicable Focus Arrangement(s) (if applicable);
- e. establishing and implementing a written review and approval process for all Focus Arrangements, the purpose of which is to ensure that all new and existing or renewed Focus Arrangements do not violate the Anti-Kickback Statute and Stark Law, and that includes at least the following: (i) a legal review of all Focus Arrangements by counsel with expertise in the Anti-Kickback Statute and Stark Law, (ii) a process for specifying the business need or business rationale for all Focus Arrangements, and (iii) a process for determining and documenting the fair market value of the remuneration specified in the Focus Arrangement;
- f. requiring the Compliance Officer to review the Focus Arrangements Tracking System, internal review and approval process, and other Focus Arrangements Procedures on at least an annual basis and to provide a report on the results of such review to the Compliance Committee; and
- g. implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and quantifying and

repaying Overpayments pursuant to Sections III.I and III.J when appropriate.

2. *New or Renewed Focus Arrangements.* Prior to entering into new Focus Arrangements or renewing existing Focus Arrangements, in addition to complying with the Focus Arrangements Procedures set forth above, Memorial Health shall comply with the following requirements (Focus Arrangements Requirements):

- a. Ensure that each Focus Arrangement is set forth in writing and signed by Memorial Health and the other parties to the Focus Arrangement;
- b. Include in the written agreement a requirement that each party to a Focus Arrangement who meets the definition of a Covered Person shall complete at least one hour of training regarding the Anti-Kickback Statute and the Stark Law and examples of arrangements that potentially implicate the Anti-Kickback Statute or the Stark Law. Additionally, Memorial Health shall provide each party to the Focus Arrangement with a copy of its Code of Conduct and Stark Law and Anti-Kickback Statute Policies and Procedures;
- c. Include in the written agreement a certification by the parties to the Focus Arrangement that the parties shall not violate the Anti-Kickback Statute and the Stark Law with respect to the performance of the Arrangement.

3. *Records Retention and Access.* Memorial Health shall retain and make available to OIG, upon request, the Focus Arrangements Tracking System and all supporting documentation of the Focus Arrangements subject to this Section and, to the extent available, all non-privileged communications related to the Focus Arrangements and the actual performance of the duties under the Focus Arrangements.

E. Review Procedures

1. *General Description.*

- a. *Engagement of Independent Review Organization.* Within 120 days after the Effective Date, Memorial Health shall engage an entity (or entities), such as an accounting, auditing,

law, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform the reviews listed in this Section III.E. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference.

- b. *Retention of Records.* The IRO and Memorial Health shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and Memorial Health) related to the reviews.
- c. *Responsibilities and Liabilities.* Nothing in this Section III.E affects Memorial Health’s responsibilities or liabilities under any criminal, civil, or administrative laws or regulations applicable to any Federal health care program including, but not limited to, the Anti-Kickback Statute and/or the Stark Law.

2. *Arrangements Review.* The IRO shall perform an Arrangements Review and prepare an Arrangements Review Report as outlined in Appendix B to this CIA, which is incorporated by reference.

3. *Validation Review.* In the event OIG has reason to believe that: (a) any Arrangements Review fails to conform to the requirements of this CIA; or (b) the IRO’s findings or Arrangements Review results are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the Arrangements Review complied with the requirements of the CIA and/or the findings or Arrangements Review results are inaccurate (Validation Review). Memorial Health shall pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of an Arrangements Review submitted as part of Memorial Health’s final Annual Report shall be initiated no later than one year after Memorial Health’s final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify Memorial Health in writing of its intent to do so and provide an explanation of the reasons OIG has determined a Validation Review is necessary. Memorial Health shall have 30 days following the date of OIG’s written notice to submit a written response to OIG that includes any additional or relevant information to clarify the results of the Arrangements Review or to correct the inaccuracy of the Arrangements Review and/or propose

alternatives to the proposed Validation Review. The final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

4. *Independence and Objectivity Certification.* The IRO shall include in its report(s) to Memorial Health a certification that the IRO has (a) evaluated its professional independence and objectivity with respect to the reviews required under this Section III.E and (b) concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to this CIA.

F. Risk Assessment and Internal Review Process

Within 120 days after the Effective Date, Memorial Health shall develop and implement a centralized annual risk assessment and internal review process to identify and address risks associated with Arrangements (as defined in Section II.C.1 above). The risk assessment and internal review process should require compliance, legal, internal audit, and department leaders, at least annually, to: (1) identify and prioritize risks, (2) develop internal audit work plans related to the identified risk areas, (3) implement the internal audit work plans, (4) develop corrective action plans in response to the results of any internal audits performed, and (5) track the implementation of the corrective action plans in order to assess the effectiveness of such plans. Memorial Health shall maintain the risk assessment and internal review process for the term of the CIA.

G. Disclosure Program

Memorial Health represents that, prior to the Effective Date, it establish 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 Memorial Health'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. Memorial Health 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 nonretribution, nonretaliation 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, Memorial Health 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 and shall record each disclosure in the disclosure log within two business days of receipt of the disclosure. The disclosure log shall include a 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.

#### H. 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 (LEIE) (available through the Internet at <http://www.oig.hhs.gov>); and
    - ii. the General Services Administration’s System for Award Management (SAM) (available through the Internet at <http://www.sam.gov>).

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

- a. Memorial Health 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.
- b. Memorial Health represents that it has an established process to screen all current Covered Persons against the Exclusion Lists and shall screen against the LEIE on a monthly basis and screen against SAM on an annual basis.
- c. Memorial Health represents that it has and shall maintain 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 this Section III.H affects Memorial Health's responsibility to refrain from (and liability for) billing Federal health care programs for items or services furnished, ordered, or prescribed by an excluded person. Memorial Health understands that items or services furnished, ordered, or prescribed by excluded persons are not payable by Federal health care programs and that Memorial Health may be liable for overpayments and/or criminal, civil, and administrative sanctions for employing or contracting with an excluded person regardless of whether Memorial Health meets the requirements of Section III.H.

3. *Removal Requirement.* If Memorial Health has actual notice that a Covered Person has become an Ineligible Person, Memorial Health shall remove such Covered Person from responsibility for, or involvement with, Memorial Health'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 Memorial Health 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, Memorial Health 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 or the accuracy of any claims submitted to any Federal health care program.

I. Notification of Government Investigation or Legal Proceeding

Within 30 days after discovery, Memorial Health shall notify OIG, in writing, of any ongoing investigation or legal proceeding known to Memorial Health conducted or brought by a governmental entity or its agents involving an allegation that Memorial Health 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. Memorial Health 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 proceeding, if any.

J. Overpayments

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

2. *Overpayment Policies and Procedures.* Within 120 days after the Effective Date, Memorial Health shall develop and implement written policies and procedures regarding the identification, quantification and repayment of Overpayments received from any Federal health care program.

3. *Repayment of Overpayments.*

- a. If, at any time, Memorial Health identifies any Overpayment, Memorial Health shall repay the Overpayment to the appropriate payor (e.g., Medicare contractor) within 60 days after identification of the Overpayment and take remedial steps within 90 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 60 days after identification, Memorial Health 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.

K. 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.H.1.a; or
- d. the filing of a bankruptcy petition by Memorial Health.

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

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

3. *Reportable Events under Section III.K.1.a.* For Reportable Events under Section III.K.1.a, the report to OIG shall be made within 30 days after making the determination that a substantial Overpayment exists and shall include:

- a. a complete description of all details relevant to the Reportable Event, including, at a minimum, the types of claims, transactions, or other conduct giving rise to the Reportable Event; the period during which the conduct occurred; and the names of entities and individuals believed to be implicated, including an explanation of their roles in the Reportable Event;
- b. the Federal health care programs affected by the Reportable Event;
- c. a description of the steps taken by Memorial Health to identify and quantify the Overpayment; and
- d. a description of Memorial Health's actions taken to correct the Reportable Event and prevent it from recurring.

Within 60 days of identification of the Overpayment, Memorial Health shall provide OIG with a copy of the notification and repayment (if quantified) to the payor required in Section III.J.3.

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

- a. a complete description of all details relevant to the Reportable Event, including, at a minimum, the types of claims, transactions or other conduct giving rise to the Reportable Event; the period during which the conduct occurred; and the names of entities and individuals believed to be implicated, including an explanation of their roles in the Reportable Event;
- b. a statement of the Federal criminal, civil or administrative laws that are probably violated by the Reportable Event;

- c. the Federal health care programs affected by the Reportable Event;
- d. a description of Memorial Health's actions taken to correct the Reportable Event and prevent it from recurring; and
- e. if the Reportable Event has resulted in an Overpayment, a description of the steps taken by Memorial Health to identify and quantify the Overpayment.

5. *Reportable Events under Section III.K.1.c.* For Reportable Events under Section III.K.1.c, the report to OIG shall include:

- a. the identity of the Ineligible Person and the job duties performed by that individual;
- b. the dates of the Ineligible Person's employment or contractual relationship;
- c. a description of the Exclusion Lists screening that Memorial Health completed before and/or during the Ineligible Person's employment or contract and any flaw or breakdown in the Ineligible Persons screening process that led to the hiring or contracting with the Ineligible Person;
- d. a description of how the Reportable Event was discovered; and
- e. a description of any corrective action implemented to prevent future employment or contracting with an Ineligible Person.

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

7. *Reportable Events Involving the Stark Law.* Notwithstanding the reporting requirements outlined above, any Reportable Event that involves solely a probable violation of section 1877 of the Social Security Act, 42 U.S.C. §1395nn (the Stark Law) should be submitted by Memorial Health to the Centers for Medicare & Medicaid Services (CMS) through the self-referral disclosure protocol (SRDP), with a

copy to OIG. The requirements of Section III.J.3 that require repayment to the payor of any identified Overpayment within 60 days shall not apply to any Overpayment that may result from a probable violation of solely the Stark Law that is disclosed to CMS pursuant to the SRDP. If Memorial Health identifies a probable violation of the Stark Law and repays the applicable Overpayment directly to the CMS contractor, then Memorial Health is not required by this Section III.J to submit the Reportable Event to CMS through the SRDP.

#### **IV. SUCCESSOR LIABILITY; CHANGES TO BUSINESS UNITS OR LOCATIONS**

##### **A. Sale of Business, Business Unit or Location.**

In the event that, after the Effective Date, Memorial Health proposes to sell any or all of its business, business units or locations (whether through a sale of assets, sale of stock, or other type of transaction) that are subject to this CIA, Memorial Health shall notify OIG of the proposed sale at least 30 days prior to the sale of its business, business unit or location. This notification shall include a description of the business, 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 the business, business unit or location, unless otherwise determined and agreed to in writing by OIG.

##### **B. Change or Closure of Business, Business Unit or Location**

In the event that, after the Effective Date, Memorial Health changes locations or closes a business, business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, Memorial Health shall notify OIG of this fact as soon as possible, but no later than 30 days after the date of change or closure of the business, business unit or location.

##### **C. Purchase or Establishment of New Business, Business Unit or Location**

In the event that, after the Effective Date, Memorial Health purchases or establishes a new business, business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, Memorial Health shall notify OIG at least 30 days prior to such purchase or the operation of the new business, business unit or location. This notification shall include the address of the new business, 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 Memorial Health currently submits claims. Each new business, business unit or location and all Covered Persons at each new business, business unit or location shall be subject to the applicable requirements of this CIA, unless otherwise agreed to determined and in writing by OIG.

## **V. IMPLEMENTATION AND ANNUAL REPORTS**

### **A. Implementation Report**

Within 150 days after the Effective Date, Memorial Health 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 Compliance Committee required by Section III.A;
3. the names of the Board members who are responsible for satisfying the Board of Directors compliance obligations described in Section III.A.3;
4. the names and positions of the Certifying Employees required by Section III.A.4;
5. a copy of the written process for Certifying Employees to follow for the purpose of completing the certification required by Section III.A.4;
6. a copy of Memorial Health's Code of Conduct required by Section III.B.1;
7. a summary of all Policies and Procedures required by Section III.B (copies of the Policies and Procedures shall be made available to OIG upon request);
8. the Training Plan required by Section III.C.1 and a description of the Board of Directors training required by Section III.C.2 (including a summary of the topics covered, the length of the training, and when the training was provided);

9. a description of (a) the Focus Arrangements Tracking System required by Section III.D.1.a, (b) the internal review and approval process required by Section III.D.1.e; and (c) the tracking and monitoring procedures and other Focus Arrangements Procedures required by Section III.D.1;

10. 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 Memorial Health and the IRO; and (e) a certification from the IRO regarding its professional independence and objectivity with respect to Memorial Health;

11. a description of the risk assessment and internal review process required by Section III.F;

12. a description of the Disclosure Program required by Section III.G;

13. a certification that Memorial Health has implemented the screening requirements described in Section III.H regarding Ineligible Persons, or a description of why Memorial Health cannot provide such a certification;

14. a copy of Memorial Health's policies and procedures regarding the identification, quantification and repayment of Overpayments required by Section III.J;

15. a list of all of Memorial Health'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(s) and/or supplier number(s), and the name and address of each Medicare and state Medicaid program contractor to which Memorial Health currently submits claims;

16. a description of Memorial Health's corporate structure, including identification of any individual owners, parent and sister companies, subsidiaries, and their respective lines of business; and

17. the certifications required by Section V.C.

## B. Annual Reports

Memorial Health shall submit to OIG annually a report with respect to the status of, and findings regarding, Memorial Health's compliance activities for each of the five Reporting Periods (Annual Report). Each Annual Report shall include, at a minimum:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer; any change in the membership of the Compliance Committee described in Section III.A, any change in the Board members who are responsible for satisfying the Board of Directors compliance obligations described in Section III.A.3, and any change in the group of Certifying Employees described in Section III.A.4;
2. the dates of each report made by the Compliance Officer to the Board (written documentation of such reports shall be made available to OIG upon request);
3. the Board resolution required by Section III.A.3 and a description of the documents and other materials reviewed by the Board, as well as any additional steps taken, in its oversight of the compliance program and in support of making the resolution;
4. the Compliance Program Review Report required by Section III.A.3;
5. a copy of any changes or amendments to the written process for Certifying Employees to follow for the purpose of completing the certification required by this Section III.A.4;
6. a summary of any changes or amendments to Memorial Health's Code of Conduct or the Policies and Procedures required by Section III.B and the reasons for such changes (e.g., change in contractor policy);
7. a copy of Memorial Health's Training Plan developed under Section III.C and the following information regarding each type of training required by the Training Plan: a description of the training, including a summary of the topics covered; the length of sessions, a schedule of training sessions, a general description of the categories of individuals required to complete the training, and the process by which Memorial Health ensures that all designated employees receive appropriate training. A copy of all training materials and the documentation to support this information shall be made available to OIG upon request.

8. a description of (a) any changes to the Focus Arrangements Tracking System required by Section III.D.1.a; (b) any changes to the internal review and approval process required by Section III.D.1.e; and (c) any changes to the tracking and monitoring procedures and other Arrangements Procedures required by Section III.D.1;

9. a complete copy of all reports prepared pursuant to Section III.E, along with a copy of the IRO's engagement letter and Memorial Health's response to the reports, 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 Memorial Health and the IRO (if different from what was submitted as part of the Implementation Report) and a certification from the IRO regarding its professional independence and objectivity with respect to Memorial Health;

11. a description of the risk assessment and internal review process required by Section III.F., a summary of any changes to the process and a description of the reasons for such changes;

12. a summary of all internal audits performed pursuant to Section III.F during the Reporting Period and any corrective action plans developed in response to those internal audits. Copies of the internal audit reports and corrective actions plans shall be made available to OIG upon request;

13. a summary of the disclosures in the disclosure log required by Section III.G that: (a) relate to Federal health care programs; or (b) involve allegations of conduct that may involve illegal remuneration or inappropriate referrals in violation of the Anti-Kickback Statute or Stark law (the complete disclosure log shall be made available to OIG upon request);

14. a certification that Memorial Health has completed the screening required by Section III.H regarding Ineligible Persons;

15. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.I. 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;

16. a description of any changes to the Overpayment policies and procedures required by Section III.K, including the reasons for such changes;

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: inpatient Medicare, outpatient 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 Reportable Events (as defined in Section III.K) identified during the Reporting Period and the status of any corrective action relating to all such Reportable Events;

19. a description of all changes to the most recently provided list of Memorial Health's locations (including addresses) as required by Section V.A.15; and

20. the certifications required by Section V.C.

The first Annual Report shall be received by OIG no later than 60 days after the end of the first Reporting Period. Subsequent Annual Reports shall be received by OIG no later than the anniversary date of the due date of the first Annual Report.

### C. Certifications

1. *Certifying Employees.* In each Annual Report, Memorial Health shall include the certifications of Certifying Employees as required by Section III.A.4;

2. *Compliance Officer and Chief Executive Officer.* The Implementation Report and each Annual Report shall include a certification by the Compliance Officer and Chief Executive Officer that:

- a. to the best of his or her knowledge, except as otherwise described in the report, Memorial Health is in compliance with all of the requirements of this CIA;
- b. to the best of his or her knowledge, Memorial Health has implemented procedures reasonably designed to ensure that all Focus Arrangements do not violate the Anti-Kickback Statute and Stark Law, including the Focus Arrangements Procedures required in Section III.D of the CIA;

- c. to the best of his or her knowledge, Memorial Health has fulfilled the requirements for New and Renewed Focus Arrangements under Section III.D.2 of the CIA; and
- d. 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.

3. *Vice President of Finance.* The first Annual Report shall include a certification by the Vice President of Finance that, to the best of his or her knowledge, Memorial Health 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.

D. Designation of Information

Memorial Health 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. Memorial Health 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

Memorial Health:

Jeffrey S. Wilson  
General Counsel  
4700 Waters Avenue  
Savannah, GA 31404  
Telephone: (912) 350-6544

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, Memorial Health 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), 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 and/or request copies of Memorial Health's books, records, and other documents and supporting materials and/or conduct on-site reviews of any of Memorial Health's locations for the purpose of verifying and evaluating: (a) Memorial Health's compliance with the terms of this CIA; and (b) Memorial Health's compliance with the requirements of the Federal health care programs. The documentation described above shall be made available by Memorial Health to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, and/or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of Memorial Health's Covered Persons and any of Memorial Health'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. Memorial Health shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. Memorial Health's employees may elect to be interviewed with or without a representative of Memorial Health present.

## **VIII. DOCUMENT AND RECORD RETENTION**

Memorial Health shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs and to compliance with this CIA for six years (or longer if otherwise required by law) from the Effective Date.

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

## **X. BREACH AND DEFAULT PROVISIONS**

Memorial Health 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, Memorial Health 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 Memorial Health fails to establish and implement any of the following obligations as described in Sections III and IV:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. the Board of Directors compliance obligations and the engagement of a Compliance Expert, the performance of a Compliance Program Review, and the preparation of a

Compliance Program Review Report, as required by Section III.A.3;

- d. the management certification obligations;
- e. a written Code of Conduct;
- f. written Policies and Procedures;
- g. the development and/or implementation of a Training Plan for the training of Covered Persons, Arrangements Covered Persons, and Board Members;
- h. the Focus Arrangements Procedures and/or Focus Arrangements Requirements described in Sections III.D.1 and III.D.2;
- i. a risk assessment and internal review process as required by Section III.F;
- j. a Disclosure Program;
- k. Ineligible Persons screening and removal requirements;
- l. notification of Government investigations or legal proceedings;
- m. policies and procedures regarding the repayment of Overpayments;
- n. the repayment of Overpayments as required by Section III.J and Appendix B;
- o. reporting of Reportable Events; and
- p. disclosure of changes to business units or locations.

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 Memorial Health fails to engage and use an IRO, as required by Section III.E, Appendix A, or Appendix B.

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 Memorial Health fails to submit 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 Memorial Health fails to submit any Arrangements Review Report in accordance with the requirements of Section III.E and Appendix B.

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

6. A Stipulated Penalty of \$50,000 for each false certification submitted by or on behalf of Memorial Health as part of its Implementation Report, any Annual Report, additional documentation to a report (as requested by OIG), or otherwise required by this CIA.

7. A Stipulated Penalty of \$1,000 for each day Memorial Health fails to comply fully and adequately with any obligation of this CIA. OIG shall provide notice to Memorial Health stating the specific grounds for its determination that Memorial Health has failed to comply fully and adequately with the CIA obligation(s) at issue and steps Memorial Health shall take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after the date Memorial Health 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

Memorial Health 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 Memorial Health 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 days after Memorial Health 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 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 Memorial Health 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 Memorial Health of: (a) Memorial Health'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, Memorial Health 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 Memorial Health elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until Memorial Health 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.c, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for OIG's decision that Memorial Health 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 failure by Memorial Health to report a Reportable Event, take corrective action, or make the appropriate refunds, as required in Section III.K;
- b. repeated violations or a flagrant violation of any of the obligations under this CIA, including, but not limited to, the obligations addressed in Section X.A;
- c. a failure to respond to a Demand Letter concerning the payment of Stipulated Penalties in accordance with Section X.C; or
- d. a failure to engage and use an IRO in accordance with Section III.E, Appendix A, or Appendix B.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by Memorial Health constitutes an independent basis for Memorial Health's exclusion from participation in the Federal health care programs. The length of the exclusion shall be in OIG's discretion, but not more than five years per material breach. Upon a determination by OIG that Memorial Health has materially breached this CIA and that exclusion is the appropriate remedy, OIG shall notify Memorial Health of: (a) Memorial Health'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.* Memorial Health shall have 30 days from the date of receipt of the Notice of Material Breach and Intent to Exclude to demonstrate that:

- a. the alleged material breach has been cured; or
- b. the alleged material breach cannot be cured within the 30-day period, but that: (i) Memorial Health has begun to take action to cure the material breach; (ii) Memorial Health is pursuing

such action with due diligence; and (iii) Memorial Health has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, Memorial Health fails to satisfy the requirements of Section X.D.3, OIG may exclude Memorial Health from participation in the Federal health care programs. OIG shall notify Memorial Health in writing of its determination to exclude Memorial Health. (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 Memorial Health’s receipt of the Exclusion Letter. The exclusion shall have national effect. Reinstatement to program participation is not automatic. At the end of the period of exclusion, Memorial Health 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 Memorial Health 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, Memorial Health 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. The procedures relating to the filing of a request for a hearing can be found at <http://www.hhs.gov/dab/divisions/civil/procedures/divisionprocedures.html>.

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 Memorial Health was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. Memorial Health 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 Memorial Health to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless Memorial Health 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 whether Memorial Health was in material breach of this CIA and, if so, whether:

- a. Memorial Health cured such breach within 30 days of its receipt of the Notice of Material Breach; or
- b. the alleged material breach could not have been cured within the 30 day period, but that, during the 30 day period following Memorial Health's receipt of the Notice of Material Breach: (i) Memorial Health had begun to take action to cure the material breach; (ii) Memorial Health pursued such action with due diligence; and (iii) Memorial Health provided to OIG a reasonable timetable for curing the material breach.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Memorial Health, only after a DAB decision in favor of OIG. Memorial Health's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude Memorial Health 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 Memorial Health 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. Memorial Health 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 Memorial Health, Memorial Health 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**

Memorial Health and OIG agree as follows:

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

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

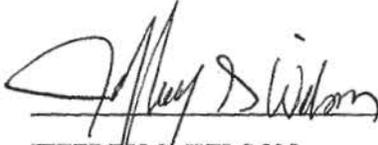
C. OIG may agree to a suspension of Memorial Health's obligations under this CIA based on a certification by Memorial Health that it is no longer providing health care items or services that will be billed to any Federal health care program and it does not have any ownership or control interest, as defined in 42 U.S.C. §1320a-3, in any entity that bills any Federal health care program. If Memorial Health is relieved of its CIA obligations, Memorial Health shall be required to notify OIG in writing at least 30 days in advance if Memorial Health 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.

D. All requirements and remedies set forth in this CIA are in addition to and do not affect (1) Memorial Health's responsibility to follow all applicable Federal health care program requirements or (2) the government's right to impose appropriate remedies for failure to follow applicable Federal health care program requirements.

E. The undersigned Memorial Health 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.

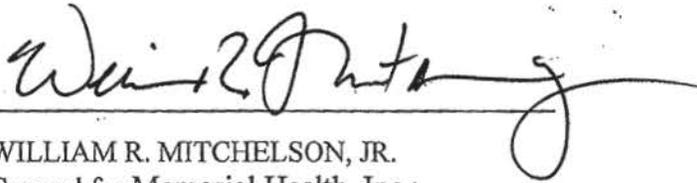
F. This CIA may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same CIA. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this CIA.

ON BEHALF OF MEMORIAL HEALTH, INC.,  
MEMORIAL HEALTH UNIVERSITY MEDICAL CENTER, INC.,  
PROVIDENT HEALTH SERVICES, INC., AND  
MPPG, INC., d/b/a MEMORIAL HEALTH UNIVERSITY PHYSICIANS



JEFFREY S. WILSON  
General Counsel for Memorial Health, Inc.;  
Memorial Health University Medical Center, Inc.;  
Provident Health Services, Inc.; and MPPG, Inc.,  
d/b/a Memorial Health University Physicians

12-21-15  
DATE



WILLIAM R. MITCHELSON, JR.  
Counsel for Memorial Health, Inc.;  
Memorial Health University Medical Center, Inc.;  
Provident Health Services, Inc.; and MPPG, Inc.,  
d/b/a Memorial Health University Physicians

December 21, 2015  
DATE

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

Robert K. DeConti

ROBERT K. DECONTI  
Assistant Inspector General for Legal Affairs  
Office of Inspector General  
U. S. Department of Health and Human Services

12/22/15

DATE

Katie Rose Fink

KATIE ROSE FINK  
Senior Counsel  
Office of Inspector General  
U.S. Department of Health and Human Services

12/22/2015

DATE

Sarah K. Kessler

SARAH K. KESSLER  
Senior Counsel  
Office of Inspector General  
U.S. Department of Health and Human Services

12/22/2015

DATE

## APPENDIX A

### INDEPENDENT REVIEW ORGANIZATION

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

#### A. IRO Engagement

1. Memorial Health 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.A.10 of the CIA or any additional information submitted by Memorial Health in response to a request by OIG, whichever is later, OIG will notify Memorial Health if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Memorial Health may continue to engage the IRO.

2. If Memorial Health engages a new IRO during the term of the CIA, that IRO must also meet the requirements of this Appendix. If a new IRO is engaged, Memorial Health shall submit the information identified in Section V.A.10 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 Memorial Health at the request of OIG, whichever is later, OIG will notify Memorial Health if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, Memorial Health may continue to engage the IRO.

#### B. IRO Qualifications

The IRO shall:

1. assign individuals to conduct the Arrangements Review who are knowledgeable in the requirements of the Anti-Kickback Statute and the Stark Law and the regulations and other guidance documents related to these statutes; and

2. 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 Arrangements Review in accordance with the specific requirements of the CIA;
2. respond to all OIG inquiries in a prompt, objective, and factual manner; and
3. 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 Arrangements Review in a professionally independent and objective fashion, as defined in the most recent Government Auditing Standards issued by the U.S. Government Accountability Office.

E. IRO Removal/Termination

1. *Memorial Health and IRO.* If Memorial Health terminates its IRO or if the IRO withdraws from the engagement during the term of the CIA, Memorial Health must submit a notice explaining (a) its reasons for termination of the IRO or (b) the IRO's reasons for its withdrawal to OIG, no later than 30 days after termination or withdrawal. Memorial Health must engage a new IRO in accordance with Paragraph A of this Appendix and within 60 days of termination or withdrawal of the IRO.

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 objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG shall notify Memorial Health in writing regarding OIG's basis for determining that the IRO has not met the requirements of this Appendix. Memorial Health shall have 30 days from the date of OIG's written notice to provide information regarding the IRO's qualifications, independence or performance of its responsibilities in order to resolve the concerns identified by OIG. If, following OIG's review of any information provided by Memorial Health regarding the IRO, OIG determines that the IRO has not met the requirements of this Appendix, OIG shall notify Memorial Health in writing that Memorial Health shall be required to engage a new IRO in accordance with Paragraph A of this Appendix. Memorial Health must engage a new IRO within 60 days of its receipt of OIG's written notice. The final determination as to whether or not to require Memorial Health to engage a new IRO shall be made at the sole discretion of OIG.

## APPENDIX B

### ARRANGEMENTS REVIEW

The Arrangements Review shall consist of two components: a systems review and a transactions review. The IRO shall perform all components of each Arrangements Review. If there are no material changes to Memorial Health's systems, processes, policies, and procedures relating to Arrangements, the Arrangements Systems Review shall be performed for the first and fourth Reporting Periods. If Memorial Health materially changes the Arrangements systems, processes, policies and procedures, the IRO shall perform an Arrangements Systems Review for the Reporting Period in which such changes were made in addition to conducting the systems review for the first and fourth Reporting Periods. The Arrangements Transactions Review shall be performed annually and shall cover each of the five Reporting Periods.

A. Arrangements Systems Review. The Arrangements Systems Review shall be a review of Memorial Health's systems, processes, policies, and procedures relating to the initiation, review, approval, and tracking of Arrangements. Specifically, the IRO shall review the following:

1. Memorial Health's systems, policies, processes, and procedures with respect to creating and maintaining a centralized tracking system for all existing and new and renewed Focus Arrangements (Focus Arrangements Tracking System), including a detailed description of the information captured in the Focus Arrangements Tracking System;
2. Memorial Health's systems, policies, processes, and procedures for tracking remuneration to and from all parties to Focus Arrangements;
3. Memorial Health's systems, policies, processes, and procedures for tracking service and activity logs to ensure that parties to the Focus Arrangement are performing the services required under the applicable Focus Arrangement(s) (if applicable);
4. Memorial Health's systems, policies, processes, and procedures for monitoring the use of leased space, medical supplies, medical devices, equipment, or other patient care items to ensure that such use is consistent with the terms of the applicable Focus Arrangement(s) (if applicable);
5. Memorial Health's systems, policies, processes, and procedures for initiating Arrangements, including those policies that identify the individuals with authority to initiate an Arrangement and that specify the business need or business rationale required to initiate an Arrangement;

6. Memorial Health's systems, policies, processes, and procedures for the internal review and approval of all Arrangements, including those policies that identify the individuals required to approve each type or category of Arrangement entered into by Memorial Health, the internal controls designed to ensure that all required approvals are obtained, and the processes for ensuring that all Focus Arrangements are subject to a legal review by counsel with expertise in the Anti-Kickback Statute and Stark Law;

7. the Compliance Officer's annual review of and reporting to the Compliance Committee on the Focus Arrangements Tracking System, Memorial Health's internal review and approval process, and other Arrangements systems, process, policies, and procedures;

8. Memorial Health's systems, policies, processes, and procedures for implementing effective responses when suspected violations of the Anti-Kickback Statute and Stark Law are discovered, including disclosing Reportable Events and quantifying and repaying Overpayments when appropriate; and

9. Memorial Health's systems, policies, processes, and procedures for ensuring that all new and renewed Focus Arrangements comply with the Focus Arrangements Requirements set forth in Section III.D.2 of the CIA.

B. Arrangements Systems Review Report. The IRO shall prepare a report based upon each Arrangements Systems Review performed. The Arrangements Systems Review Report shall include the following information:

1. a description of the documentation (including policies) reviewed and personnel interviewed;

2. a detailed description of Memorial Health's systems, policies, processes, and procedures relating to the items identified in Section A.1-9 above;

3. findings and supporting rationale regarding weaknesses in Memorial Health's systems, processes, policies, and procedures relating to Arrangements described in Section A.1-9 above; and

4. recommendations to improve Memorial Health's systems, policies, processes, or procedures relating to Arrangements described in Section A.1-9 above.

C. Arrangements Transactions Review. The Arrangements Transactions Review shall consist of a review by the IRO of 60 randomly selected Focus Arrangements that were entered into or renewed by Memorial Health during the Reporting Period. The 60 randomly selected Focus Arrangements shall consist of the following two subsets:

(1) 30 randomly selected Focus Arrangements as defined by Section II.C.2.a of the CIA

and (2) 30 randomly selected Focus Arrangements as defined by Section II.C.2.b of the CIA. The IRO shall assess whether Memorial Health has complied with the Focus Arrangements Procedures and the Focus Arrangements Requirements described in Sections III.D.1 and III.D.2 of the CIA, with respect to the selected Focus Arrangements.

The IRO's assessment with respect to each Focus Arrangement that is subject to review shall include:

1. verifying that the Focus Arrangement is maintained in Memorial Health's centralized tracking system in a manner that permits the IRO to identify the parties to the Focus Arrangement and the relevant terms of the Focus Arrangement (i.e., the items/services/equipment/space to be provided, the amount of compensation, the effective date, the expiration date, etc.);
2. verifying that the Focus Arrangement was subject to the internal review and approval process (including both a legal and business review) and obtained the necessary approvals and that such review and approval is appropriately documented;
3. verifying that the remuneration related to the Focus Arrangement is properly tracked;
4. verifying that the service and activity logs are properly completed and reviewed (if applicable);
5. verifying that leased space, medical supplies, medical devices, and equipment, and other patient care items are properly monitored (if applicable); and
6. verifying that the Focus Arrangement satisfies the Focus Arrangements Requirements of Section III.D.2 of the CIA.

D. Arrangements Transaction Review Report. The IRO shall prepare a report based on each Arrangements Transactions Review performed. The Arrangements Transaction Review Report shall include the following information:

1. *Review Methodology*.
  - a. Review Protocol. A detailed narrative description of the procedures performed and a description of the sampling unit and universe utilized in performing the procedures for the sample reviewed.
  - b. Sources of Data. A full description of the documentation and other information, if applicable, relied upon by the IRO in performing the Arrangements Transaction Review.

- c. Supplemental Materials. The IRO shall request all documentation and materials required for its review of the Focus Arrangements selected as part of the Arrangements Transaction Review and Memorial Health shall furnish such documentation and materials to the IRO prior to the IRO initiating its review of the Focus Arrangements. If the IRO accepts any supplemental documentation or materials from Memorial Health after the IRO has completed its initial review of the Focus Arrangements (Supplemental Materials), the IRO shall identify in the Arrangements Transaction Review Report the Supplemental Materials, the date the Supplemental Materials were accepted, and the relative weight the IRO gave to the Supplemental Materials in its review. In addition, the IRO shall include a narrative in the Arrangements Transaction Review Report describing the process by which the Supplemental Materials were accepted and the IRO's reasons for accepting the Supplemental Materials.

2. *Review Findings.* The IRO's findings with respect to whether Memorial Health has complied with the Focus Arrangements Procedures and Focus Arrangements Requirements with respect to each of the randomly selected Focus Arrangements reviewed by the IRO. In addition, the Arrangements Transactions Review Report shall include observations, findings and recommendations on possible improvements to Memorial Health's policies, procedures, and systems in place to ensure that all Focus Arrangements comply with the Focus Arrangements Procedures and Focus Arrangements Requirements.