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

I. PREAMBLE

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

SCI has an established corporate compliance program (Compliance Program), which preceded the execution of this CIA. The Compliance Program includes written policies and procedures, numerous education and training programs, ongoing compliance monitoring mechanisms and auditing functions for employees and agents to report incidents of noncompliance in an anonymous and confidential manner, disciplinary actions for individuals violating SCI policies and procedures, and oversight by SCI's Compliance Officer and its Compliance Committee. SCI will continue to operate its Compliance Program throughout the term of this CIA. The Compliance Program may be modified, as appropriate, which modifications shall be consistent with this CIA.

II. TERM AND SCOPE OF THE CIA

A. The period of the compliance obligations assumed by SCI under this CIA shall be 5 years from the effective date of this CIA, unless otherwise specified. The effective date shall be the date on which the final signatory of this CIA executes this CIA (Effective Date). 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, IX, X, and XI shall expire no later than 120 days after OIG's receipt of: (1) SCI's final annual report; or (2) any additional materials submitted by SCI pursuant to OIG's request, whichever is later.

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

1. "Covered Persons" includes:

   a. all owners, (other than shareholders which are corporate entities or individuals who: (1) have an ownership interest of less than 5%; and (2) acquired the ownership interest through public trading), officers, directors, and employees of SCI; and

   b. all contractors, subcontractors, agents, and other persons who provide patient care items or services or who perform billing or coding functions on behalf of SCI, excluding vendors whose sole connection with SCI is selling or otherwise providing medical supplies or equipment to SCI and who do not bill the Federal health care programs for such medical supplies or equipment.

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

2. "Relevant Hospice Benefit Covered Persons" includes all Covered Persons of SCI whose job responsibilities involve (either directly or in a supervisory role) (1) the determination of whether SCI patients meet applicable hospice benefit eligibility requirements at the time of the initial admissions or during subsequent recertification periods; or (2) marketing to physicians, nursing facilities, and skilled nursing facilities concerning the hospice benefit. Relevant Hospice Benefit Covered Persons specifically include (a) Admission Coordinators and their immediate supervisor(s), known as Community Relations Directors with the exception of Alabama, where they are known as Clinical Directors; (b) RN Case Managers and their immediate supervisor(s), known as

Clinical Directors; and (c) Community Relations Specialists and their immediate supervisors, known as Community Relations Directors.

3. "Long Length of Stay" means a SCI patient who during a Reporting Period received uninterrupted services from SCI for 210 days or more.

III. CORPORATE INTEGRITY OBLIGATIONS

SCI has established and shall maintain a Compliance Program that includes the following elements:

A. Compliance Officer and Committee.

1. *Compliance Officer.* SCI shall continue to have a Compliance Officer and shall maintain a Compliance Officer for the term of the CIA. The Compliance Officer shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with Federal health care program requirements. The Compliance Officer shall be a member of senior management of SCI, shall make periodic (at least quarterly) reports regarding compliance matters directly to the Board of Directors of SCI, and shall be authorized to report on such matters to the Board of Directors at any time. The Compliance Officer shall not be or be subordinate to the General Counsel or Chief Financial Officer. The Compliance Officer shall be responsible for monitoring the day-to-day compliance activities engaged in by SCI as well as for any reporting obligations created under this CIA.

SCI 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 15 days after such a change.

2. *Compliance Committee.* To the extent not completed prior to the Effective Date, within 90 days after the Effective Date, SCI shall appoint a Compliance Committee. The Compliance Committee, at a minimum, shall continue to 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 human resources, operations, community relations, and finance). 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 the organization's risk areas and shall oversee monitoring of internal and external audits and investigations).

SCI 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.

B. Written Standards.

1. *Code of Conduct.* To the extent not already completed prior to the Effective Date, within 120 days after the Effective Date, SCI shall develop, implement, and distribute a written Code of Conduct to all Covered Persons. Distribution may include publishing the Code of Conduct on SCI's intranet or other internal web site available to all employees and Covered Persons. If SCI uses such an electronic distribution method, it must notify the individuals of the distribution of the Code of Conduct in that manner and it must monitor the distribution to ensure that all appropriate individuals receive the revised Code of Conduct. SCI shall make the promotion of, and adherence to, the Code of Conduct an element in evaluating the performance of all employees. The Code of Conduct shall, at a minimum, set forth:

a. SCI's commitment to full compliance with all Federal health care program requirements, including its commitment to prepare and submit accurate claims consistent with such requirements;

b. SCI's requirement that all of its Covered Persons shall be expected to comply with all Federal health care program requirements and with SCI's own Policies and Procedures as implemented pursuant to Section III.B (including the requirements of this CIA);

c. the requirement that all of SCI's Covered Persons shall be expected to report to the Compliance Officer, or other appropriate individual designated by SCI, suspected violations of any Federal health care program requirements or of SCI's own Policies and Procedures;

d. the possible consequences to both SCI and Covered Persons of failure to comply with Federal health care program requirements and with SCI's own Policies and Procedures and the failure to report such noncompliance; and

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

Within 90 days after the Effective Date, each Covered Person shall certify, in writing, that he or she has received, read, understood, and shall abide by SCI's Code of Conduct. New Covered Persons shall receive the Code of Conduct and shall complete the required certification within 30 days after becoming a Covered Person or within 90 days after the Effective Date, whichever is later.

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

2. *Policies and Procedures*. To the extent not already completed prior to the Effective Date, within 120 days after the Effective Date, SCI shall implement written Policies and Procedures regarding the operation of SCI's compliance program and its compliance with Federal health care program requirements. At a minimum, the Policies and Procedures shall address:

a. the subjects relating to the Code of Conduct identified in Section III.B.1;

b. OIG's Compliance Program Guidance for Hospice;

c. hospice eligibility determinations during the initial admission process and recertification process; and

d. measures to ensure that SCI marketing and promotion of the hospice benefit are in compliance with Federal health care program requirements and OIG's Compliance Program Guidance.

Within 90 days after the Effective Date, the relevant portions of the Policies and Procedures shall be made available to all individuals whose job functions relate to those Policies and Procedures. Appropriate and knowledgeable staff shall be available to explain the Policies and Procedures.

At least annually (and more frequently, if appropriate), SCI shall assess and update, as necessary, the Policies and Procedures. Within 60 days after the effective date of any revisions, the relevant portions of any such revised Policies and Procedures shall be made available to all individuals whose job functions relate to those Policies and Procedures.

C. Training and Education.

Prior to the Effective Date, SCI had established compliance training programs for all of its Covered Persons and agrees that it shall continue to conduct appropriate training programs that meet the CIA requirements.

SCI provides training on a regular basis to its employees and medical directors concerning a variety of regulatory and compliance topics. The training required by this CIA need not be separate and distinct from the regular training SCI provides, but instead may be fully integrated into regular training. The Compliance Officer, with prior approval of the OIG, shall be responsible for determining how many hours of regular training shall be credited toward the General Training and Specific Hospice Benefit Training requirements of this CIA.

1. *General Training.* Within 120 days after the Effective Date, SCI shall provide at least two hours of General Training to each Covered Person. This training, at a minimum, shall explain SCI's:

a. CIA requirements; and

b. SCI's Compliance Program (including the Code of Conduct and the Policies and Procedures as they pertain to general compliance issues).

New Covered Persons shall receive the General Training described above within 30 days after becoming a Covered Person or within 120 days after the Effective Date, whichever is later. After receiving the initial General Training described above, each Covered Person shall receive at least one hour of General Training in each subsequent Reporting Period.

Notwithstanding the above, during the first Reporting Period, SCI will not have to provide General Training to Covered Persons who received general compliance training that meets the requirements of this Section III.C.1. within 90 days prior to the Effective Date in the event that (1) SCI distributes to those Covered Persons training materials (e.g., PowerPoint slide presentation) explaining the CIA requirements, which training materials may be made available in written form or on-line; and (2) the Covered Persons certify to the Corporate Compliance Officer that they have reviewed the training materials explaining the CIA requirements.

To the extent a Covered Person is on a leave of absence when the required training is offered, the Covered Person shall receive the training within 30 days of the conclusion of the leave of absence.

2. *Specific Hospice Benefit Training.* Within 90 days after the Effective Date, each Relevant Hospice Benefit Covered Person shall receive at least three hours of Specific Hospice Benefit Training in addition to the General Training required above. This Specific Hospice Benefit Training shall include a discussion of:

a. Federal health care program requirements regarding the hospice benefit, including eligibility, certification, and recertification;

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

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

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

e. the legal sanctions for violations of the Federal health care program requirements; and

f. examples of proper and improper hospice eligibility determinations.

New Relevant Hospice Benefit Covered Persons shall receive this training within 30 days after the beginning of their employment or becoming Relevant Hospice Benefit Covered Persons, or within 120 days after the Effective Date, whichever is later. A SCI employee who has completed the Specific Hospice Benefit Training shall review a new Relevant Hospice Benefit Covered Person's work, to the extent that the work relates to the delivery of patient care items or services, until such time as the new Relevant Hospice Benefit Covered Person completes his or her Specific Hospice Benefit Training.

After receiving the initial Specific Hospice Benefit Training described in this Section, each Relevant Hospice Benefit Covered Person shall receive at least two hours of Specific Hospice Benefit Training in each subsequent Reporting Period.

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

4. *Qualifications of Trainer.* Persons providing the training shall be knowledgeable about the hospice benefit.

5. *Update of Training.* SCI shall review the training annually, and, where appropriate, update the training to reflect changes in Federal health care program requirements related to hospice, significant issues discovered during internal audits, issues identified in the Independent Review Organization (IRO) review, and any other relevant information.

6. *Computer-based Training.* SCI may provide the training required under this CIA through appropriate computer-based training approaches. If SCI 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. All applicable references to "hours" in this

section shall mean "normative hours," as that term is used in the computer-based training industry.

D. Review Procedures.

1. *General Description.*

a. *Engagement of Independent Review Organization.* Within 90 days after the Effective Date, SCI shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter "Independent Review Organization" or "IRO"), to perform reviews to assist SCI in assessing and evaluating the eligibility of hospice patients for the hospice benefit (Eligibility Review). Each IRO retained by SCI shall have expertise in the hospice industry and Federal health care program(s) hospice eligibility requirements. The applicable requirements relating to the IRO are outlined in Appendix A to this CIA, which is incorporated by reference. The IRO shall also analyze in the first Reporting Period whether SCI sought payment for certain unallowable costs (Unallowable Cost Review).

b. *Frequency of Eligibility Review.* The Eligibility Review shall be performed annually and shall cover each of the Reporting Periods. The IRO(s) shall perform all components of each annual Eligibility Review.

c. *Frequency of Unallowable Cost Review.* If applicable, the IRO shall perform the Unallowable Cost Review for the first Reporting Period.

d. *Retention of Records.* The IRO and SCI shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and SCI) related to the reviews.

2. *Eligibility Review.* The Eligibility Review shall be conducted to determine whether Medicare and Medicaid beneficiaries meet hospice eligibility criteria.

a. Eligibility Review Procedures.

The Eligibility Review shall be comprised of reviews of two timeframes:1) initial admission and 2) the most recent recertification period for Long Length of Stay patients. The IRO shall randomly select 16 Medicare-certified hospice locations from a universe of all SCI hospice locations. From these 16 Medicare-certified hospice locations, the IRO shall randomly select a Sample of 162 Medicare and Medicaid hospice patients from the universe of all SCI hospice patients, with 81 patients drawn from the initial admission patient population and 81 patients drawn from the Long Length of Stay patient population. If the Error Rate is 5% or greater for the Admissions Review and/or the Long Length of Stay Review, both of which terms are defined immediately below, the IRO shall perform a Systems Review for the particular timeframe review in which a 5% or greater Error Rate was identified.. The applicable definitions, procedures, and reporting requirements are outlined in Appendix B to this CIA, which is incorporated by reference.

i. *Admissions Review*: From the 16 selected hospice facility locations, SCI shall create a list of all Medicare and Medicaid beneficiaries who were admitted to that program in the prior calendar year. The IRO shall then randomly select 81 patients from the Admissions Review lists compiled from 16 selected hospice facility locations. The sampling unit for selected new admission patients is the initial certification.

ii. *Long Length of Stay Review*: From the 16 selected hospice facility locations, SCI shall also create a list of all Medicare and Medicaid beneficiaries who were SCI patients during the Eligibility Review Period and who received uninterrupted services from SCI for 210 days or more. The IRO shall then randomly select 81 patients from the Long Length of Stay Review lists compiled from the 16 selected hospice facility locations. The sampling unit for selected Long Length of Stay Patients is the most recent recertification period.

iii. *Qualification of Reviewers*: The qualifications of Eligibility Reviewers for the Admissions Review and Long Length of Stay Review are outlined in Appendix A to this CIA, which is incorporated by reference.

3. *Eligibility Review Report.* The IRO shall prepare a report based upon the Eligibility Review performed (Eligibility Review Report). Information to be included in the Eligibility Review Report is described in Appendix B to this CIA.

4. *Repayment of Identified Overpayments*. In accordance with Section III.H.1, SCI shall repay within 30 days any Overpayment(s) identified in the Eligibility Review, regardless of the Error Rate, to the appropriate payor and in accordance with payor refund policies. SCI shall make available to OIG all documentation that reflects the refund of the Overpayment(s) to the payor.

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

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

7. *Validation Review.* In the event OIG has reason to believe that: (a) SCI's Eligibility Review or Unallowable Cost Review fails to conform to the requirements of this CIA; or (b) the IRO's findings or Eligibility Review results or Unallowable Cost Review results are inaccurate, OIG may, at its sole discretion, conduct its own review to determine whether the Eligibility Review or Unallowable Cost Review complied with the requirements of the CIA and/or the findings or Eligibility Review results or Unallowable Cost Review results are inaccurate (Validation Review). SCI shall

pay for the reasonable cost of any such review performed by OIG or any of its designated agents. Any Validation Review of Reports submitted as part of SCI's final Annual Report shall be initiated no later than one year after SCI's final submission (as described in Section II) is received by OIG.

Prior to initiating a Validation Review, OIG shall notify SCI of its intent to do so and provide a written explanation of why OIG believes such a review is necessary. To resolve any concerns raised by OIG, SCI may request a meeting with OIG to: (a) discuss the results of any Eligibility Review or Unallowable Cost Review submissions or findings; (b) present any additional or relevant information to clarify the results of the Eligibility Review or Unallowable Cost Review or to correct the inaccuracy of the Eligibility Review or Unallowable Cost Review; and/or (c) propose alternatives to the proposed Validation Review. SCI agrees to provide any additional information as may be requested by OIG under this Section III.D.7 in an expedited manner. OIG will attempt in good faith to resolve any Eligibility Review or Unallowable Cost Review issues with SCI prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of OIG.

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

E. Disclosure Program.

Prior to the Effective Date, SCI established and shall continue to maintain a Disclosure Program that includes a mechanism (e.g., a toll-free compliance telephone line) to enable individuals to disclose, to the Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with SCI'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. SCI 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, SCI shall conduct an internal review of the allegations set forth in the disclosure and ensure that proper follow-up is conducted.

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

F. Ineligible Persons.

1. *Definitions*. For purposes of this CIA:

a. an "Ineligible Person" shall include an individual or entity who:

i. is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or nonprocurement programs; or

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

b. "Exclusion Lists" include:

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

ii. the General Services Administration's List of Parties

Excluded from Federal Programs (available through the Internet at http://www.epls.gov).

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

a. SCI shall screen all prospective and current 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. SCI shall screen all Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on an annual basis thereafter.

c. SCI shall implement a policy requiring all Covered Persons to disclose immediately any debarment, exclusion, suspension, or other event that makes that person an Ineligible Person.

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

3. *Removal Requirement.* If SCI has actual notice that a Covered Person has become an Ineligible Person, SCI shall remove such Covered Person from responsibility for, or involvement with, SCI'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 SCI 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, SCI shall take all appropriate actions to ensure that the responsibilities of that Covered Person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or any claims submitted to any Federal health care program.

G. Notification of Government Investigation or Legal Proceedings.

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

H. Reporting.

1. *Overpayments*.

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

b. *Reporting of Overpayments*. If, at any time, SCI identifies or learns of any Overpayment, SCI shall notify the payor (e.g., Medicare fiscal intermediary or carrier or the Medicaid fiscal agent) within 30 days after identification of the Overpayment and take remedial steps within 60 days after identification (or such additional time as may be agreed to by the payor) to correct the problem, including preventing the underlying problem and the Overpayment from recurring. Also, within 30 days after identification of the

Overpayment, SCI shall repay the Overpayment to the appropriate payor to the extent such Overpayment has been quantified. If not yet quantified, within 30 days after identification, SCI 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. 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.

2. *Reportable Events.*

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

i. a substantial Overpayment;

ii. 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; or

iii. the filing of a bankruptcy petition by SCI.

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

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

i. If the Reportable Event results in an Overpayment, the report to OIG shall be made at the same time as the

notification to the payor required in Section III.H.1, and shall include all of the information on the Overpayment Refund Form, as well as:

(A) the payor's name, address, and contact person to whom the Overpayment was sent; and

(B) the date of the check and identification number (or electronic transaction number) by which the Overpayment was repaid/refunded;

ii. a complete description of the Reportable Event, including the relevant facts, persons involved, and legal and Federal health care program authorities implicated;

iii. a description of SCI's actions taken to correct the Reportable Event; and

iv. any further steps SCI plans to take to address the Reportable Event and prevent it from recurring.

v. If the Reportable Event involves the filing of a bankruptcy petition, the report to the OIG shall include documentation of the filing and a description of any Federal health care program authorities implicated.

IV. CHANGES TO BUSINESS UNITS OR LOCATIONS

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

B. Purchase or Establishment of New Unit or Location. In the event that, after the Effective Date, SCI purchases or establishes a new business unit or location related to the furnishing of items or services that may be reimbursed by Federal health care programs, SCI shall notify OIG at least 30 days prior to such purchase or the operation of the new

business unit or location. This notification shall include the address of the new business unit or location, phone number, fax number, Medicare provider number and/or supplier number, and the name and address of the contractor that issued each number. Each new business unit or location and all Covered Persons at each new business unit or location shall be subject to the applicable requirements of this CIA.

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

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within 150 days after the Effective Date, SCI 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. a copy of SCI's Code of Conduct required by Section III.B.1;

4. a copy of all Policies and Procedures required by Section III.B.2;

5. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG, upon request);

6. the following information regarding each type of training required by Section III.C:

a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions;

b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

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

8. the following information regarding the IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; and (c) a summary and description of any and all current and prior engagements and agreements between SCI and the IRO;

9. a certification from the IRO regarding its professional independence and objectivity with respect to SCI;

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

11. the name, title, and responsibilities of any person who is determined to be an Ineligible Person under Section III.F; the actions taken in response to the screening and removal obligations set forth in Section III.F; and the actions taken to identify, quantify, and repay any Overpayments to Federal health care programs relating to items or services furnished, ordered or prescribed by an Ineligible Person;

12. a list of all of SCI'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 Medicaid provider number and/or supplier number(s); and the name and address of each Medicare contractor and Medicaid fiscal agent to which SCI currently submits claims;

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

14. the certifications required by Section V.C.

B. Annual Reports. SCI shall submit to OIG annually a report with respect to the status of, and findings regarding, SCI'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 and any change in the membership of the Compliance Committee described in Section III.A;

2. a summary of any significant changes or amendments to the Policies and Procedures required by Section III.B and the reasons for such changes (e.g., change in contractor policy);

3. the number of individuals required to complete the Code of Conduct certification required by Section III.B.1, the percentage of individuals who have completed such certification, and an explanation of any exceptions (the documentation supporting this information shall be available to OIG, upon request);

4. the following information regarding each type of training required by Section III.C:

a. a description of such training, including a summary of the topics covered, the length of sessions, and a schedule of training sessions;

b. the number of individuals required to be trained, percentage of individuals actually trained, and an explanation of any exceptions.

A copy of all training materials and the documentation supporting this information shall be available to OIG, upon request.

5. a complete copy of all reports prepared pursuant to Section III.D, along with a copy of the IRO's engagement letter (if applicable);

6. SCI's response and corrective action plan(s) related to any issues raised by the reports prepared pursuant to Section III.D;

7. a summary and description of any and all current and prior engagements and agreements between SCI and the IRO, if different from what was submitted as part of the Implementation Report;

8. a certification from the IRO regarding its professional independence and objectivity with respect to SCI;

9. a summary of Reportable Events (as defined in Section III.H) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;

10. a report of the aggregate Overpayments that have been returned to the Federal health care programs. Overpayment amounts shall be broken down into the following categories: Medicare and 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;

11. a summary of the disclosures in the disclosure log required by Section III.E that: (a) relate to Federal health care programs; or (b) allege abuse or neglect of patients;

12. any changes to the process by which SCI fulfills the requirements of Section III.F regarding Ineligible Persons;

13. the name, title, and responsibilities of any person who is determined to be an Ineligible Person under Section III.F; the actions taken by SCI in response to the screening and removal obligations set forth in Section III.F; and the actions taken to identify, quantify, and repay any Overpayments to Federal health care programs relating to items or services furnished, ordered or prescribed by an Ineligible Person;

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

15. a description of all changes to the most recently provided list of SCI's locations (including addresses) as required by Section V.A.12; the corresponding name under which each location is doing business; the corresponding phone numbers and fax numbers; each location's Medicare and Medicaid provider number(s) and/or supplier number(s); and the name and address of each Medicare contractor and Medicaid fiscal agent to which SCI currently submits claims; and

16. 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. The Implementation Report and Annual Reports shall include a certification by the Compliance Officer that:

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

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

3. to the best of his or her knowledge, SCI 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 related to the Covered Conduct addressed in the Settlement Agreement; (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. SCI 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. SCI 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

SCI:

Ms. Roberta Wilson
Chief Compliance Officer
SouthernCare, Inc.
2204 Lakeshore Drive
Birmingham, Alabama 35209
Telephone: (205) 868-4400
Fax: (205) 868-4401

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, SCI may be required to provide OIG with an electronic copy of each notification or report required by this CIA in searchable portable document format (pdf), either instead of or in addition to, a paper copy.

VII. OIG INSPECTION, AUDIT, AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s) may examine or request copies of SCI's

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

VIII. DOCUMENT AND RECORD RETENTION

SCI shall maintain for inspection all documents and records relating to reimbursement from the Federal health care programs, or to compliance with this CIA, for six years (or longer if otherwise required 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 SCI prior to any release by OIG of information submitted by SCI pursuant to its obligations under this CIA and identified upon submission by SCI as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, SCI shall have the rights set forth at 45 C.F.R. § 5.65(d).

X. BREACH AND DEFAULT PROVISIONS

SCI 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, SCI 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 SCI fails to establish and implement any of the following obligations as described in Section III:

a. a Compliance Officer;

b. a Compliance Committee;

c. a written Code of Conduct;

d. written Policies and Procedures;

e. the training of Covered Persons and Relevant Hospice Benefit Covered Persons;

f. a Disclosure Program;

g. Ineligible Persons screening and removal requirements; and

h. notification of Government investigations or legal proceedings.

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 SCI fails to engage an IRO, as required in Section III.D and Appendix A.

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 SCI 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 SCI fails to submit any Eligibility Review Report or Unallowable Cost Review Report in accordance with the requirements of Section III.D and Appendix B.

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

fails to grant access.)

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

7. A Stipulated Penalty of $1,000 for each day SCI fails to comply fully and adequately with any obligation of this CIA. OIG shall provide notice to SCI stating the specific grounds for its determination that SCI has failed to comply fully and adequately with the CIA obligation(s) at issue and steps SCI shall take to comply with the CIA. (This Stipulated Penalty shall begin to accrue 10 days after SCI 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. SCI 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 SCI fails to meet the revised deadline set by OIG. Notwithstanding any other provision in this Section, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until three business days after SCI receives OIG's written denial of such request or the original due date, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

C. Payment of Stipulated Penalties.

1. *Demand Letter.* Upon a finding that SCI 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 SCI of: (a) SCI's failure to comply; and (b) OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is referred to as the "Demand Letter").

2. *Response to Demand Letter.* Within 10 days after the receipt of the

Demand Letter, SCI 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 SCI elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until SCI 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 SCI 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 SCI to report a Reportable Event, take corrective action, and make the appropriate refunds, as required in Section III.H;

b. a repeated or flagrant violation 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.D.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by SCI constitutes an independent basis for SCI's exclusion

from participation in the Federal health care programs. Upon a determination by OIG that SCI has materially breached this CIA and that exclusion is the appropriate remedy, OIG shall notify SCI of: (a) SCI's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion (this notification is hereinafter referred to as the "Notice of Material Breach and Intent to Exclude").

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

a. SCI is in compliance with the obligations of the CIA cited by OIG as being the basis for the material breach;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the 30-day period, but that: (i) SCI has begun to take action to cure the material breach; (ii) SCI is pursuing such action with due diligence; and (iii) SCI has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, SCI fails to satisfy the requirements of Section X.D.3, OIG may exclude SCI from participation in the Federal health care programs. OIG shall notify SCI in writing of its determination to exclude SCI (this letter shall be referred to hereinafter 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 SCI's receipt of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and nonprocurement programs. Reinstatement to program participation is not automatic. After the end of the period of exclusion, SCI 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 SCI 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, SCI shall be afforded certain review rights comparable to

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

2. *Stipulated Penalties Review.* Notwithstanding any provision of Title 42 of the United States Code or Title 42 of the Code of Federal Regulations, the only issues in a proceeding for Stipulated Penalties under this CIA shall be: (a) whether SCI was in full and timely compliance with the obligations of this CIA for which OIG demands payment; and (b) the period of noncompliance. SCI 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 SCI to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless SCI requests review of the ALJ decision by the DAB. If the ALJ decision is properly appealed to the DAB and the DAB upholds the determination of OIG, the Stipulated Penalties shall become due and payable 20 days after the DAB issues its decision.

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

a. whether SCI was in material breach of this CIA;

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

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

breach and SCI has followed the timetable.

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

SCI and OIG agree as follows:

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

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

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

D. OIG may agree to a suspension of SCI's obligations under the CIA in the event of SCI's cessation of participation in Federal health care programs. If SCI ceases participating in Federal health care programs and is relieved of its CIA obligations by OIG, SCI shall notify OIG at least 30 days in advance of SCI's intent to resume participating as a provider or supplier with any Federal health care program. Upon receipt of such notification, OIG shall evaluate whether the CIA should be reactivated or

modified.

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

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 SCI

/Michael Pardy/

1/9/09

MICHAEL PARDY DATE
President
SouthernCare, Inc.
2204 Lakeshore Drive
Birmingham, Alabama 35209

/Rebekah N. Plowman/

1/12/09

REBEKAH N. PLOWMAN Date
Epstein, Becker & Green, P.C.
Resurgens Plaza
945 East Paces Ferry Road
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Counsel for SouthernCare, Inc.

/Kristen Pollock McDonald/

1/12/09

KRISTEN POLLOCK McDONALD DATE
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Counsel for SouthernCare, Inc.

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

/Gregory E. Demske/

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

1/13/09
DATE

APPENDIX A

INDEPENDENT REVIEW ORGANIZATION

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

A. IRO Engagement.

SCI 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 written notice of the identity of the selected IRO, OIG will notify SCI if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, SCI may continue to engage the IRO.

If SCI engages a new IRO during the term of the CIA, this IRO shall also meet the requirements of this Appendix. If a new IRO is engaged, SCI shall submit the information identified in Section V.A.8 of the CIA to OIG within 30 days of engagement of the IRO. Within 30 days after OIG receives written notice of the identity of the selected IRO, OIG will notify SCI if the IRO is unacceptable. Absent notification from OIG that the IRO is unacceptable, SCI may continue to engage the IRO.

B. IRO Qualifications.

The IRO shall:

1. assign individuals to conduct the Eligibility Review and Unallowable Cost Review engagement who have expertise in the hospice industry and Federal health care program(s) hospice eligibility requirements;

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

3. assign individuals to conduct the Eligibility Review of Patient records who are licensed nurses or physicians ("Eligibility Reviewers") with demonstrated hospice experience or expertise; and

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

C. IRO Responsibilities.

The IRO shall:

1. perform each Eligibility Review and Unallowable Cost review in accordance with the specific requirements of the CIA;

2. follow all applicable Medicare and Medicaid rules and applicable hospice eligibility guidance in making assessments in the Eligibility Review;

3. if in doubt of the application of a particular Medicare and Medicaid policy or regulation, request clarification from the appropriate authority (e.g., fiscal intermediary or carrier or state Medicaid agency);

4. respond to all OIG inquires in a prompt, objective, and factual manner; and

5. prepare timely, clear, well-written reports that include all the information required by Appendix B to the CIA.

D. IRO Independence and Objectivity.

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

E. IRO Removal/Termination.

1. *Provider.* If SCI terminates its IRO during the course of the engagement, SCI must submit a notice explaining its reasons to OIG no later than 30 days after termination. SCI must engage a new IRO in accordance with Paragraph A of this Appendix.

2. *OIG Removal of IRO.* In the event OIG has reason to believe that the IRO does not possess the qualifications described in Paragraph B, is not independent and/or objective as set forth in Paragraph D, or has failed to carry out its responsibilities as described in Paragraph C, OIG may, at its sole discretion, require SCI to engage a new IRO in accordance with Paragraph A of this Appendix.

Prior to requiring SCI to engage a new IRO, OIG shall notify SCI of its intent to do so and provide a written explanation of why OIG believes such a step is necessary. To resolve any concerns raised by OIG, SCI may request a meeting with OIG to discuss any aspect of the IRO's qualifications, independence or performance of its responsibilities

and to present additional information regarding these matters. SCI shall provide any additional information as may be requested by OIG under this Paragraph in an expedited manner. OIG will attempt in good faith to resolve any differences regarding the IRO with SCI prior to requiring SCI to terminate the IRO. However, the final determination as to whether or not to require SCI to engage a new IRO shall be made at the sole discretion of OIG.

APPENDIX B
ELIGIBILITY REVIEW

A. Eligibility Review.

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

a. Overpayment: The amount of money SCI has received in excess of the amount due and payable under any Federal health care program requirements.

b. Patient: A Medicare or Medicaid patient for whom SCI submitted a claim.

c. Paid Claim: A code or line item submitted for a Patient by SCI and for which SCI has received reimbursement from the Medicare and Medicaid programs.

d. Population: For the first Reporting Period, the Population shall be defined as all Patients for whom SCI has submitted claims and for which SCI has received reimbursement from Medicare and Medicaid (i.e., Paid Claim) during the 12-month period covered by the first Eligibility Review.

For the remaining Reporting Periods, the Population shall be defined as all Patients for whom SCI has submitted claims and for which SCI has received reimbursement from Medicare and Medicaid (i.e., Paid Claim) during the 12-month period covered by the Eligibility Review.

To be included in the Population, a Patient must have resulted in at least one Paid Claim.

e. Error Rate: The Error Rate for the Admissions Review shall be the percentage of Admissions Review Patients determined to be ineligible for the hospice benefit. The Error Rate for the Long Length of Stay Review shall be the percentage of Long Length of Stay Patients determined to be ineligible for the hospice benefit.

2. *Sample*. The IRO shall randomly select and review a sample of 162 Medicare and Medicaid SCI hospice Patients as described in section III.D.2.a of the CIA. Patients shall be reviewed based on the supporting documentation available at SCI's office or under SCI's control and applicable billing regulations and guidance to determine whether the Patient was eligible for the hospice benefit and whether the claim to Medicare or Medicaid was properly paid.

If the Error Rate (as defined above) for the Sample is less than 5%, a Systems Review is not required. (Note: The guidelines listed above do not imply that this is an acceptable error rate. Accordingly, SCI should, as appropriate, further analyze any errors identified in the Sample. SCI recognizes that OIG or other HHS component, in its discretion and as authorized by statute, regulation, or other appropriate authority may also analyze or review Paid Claims included, or errors identified, in the Sample or any other segment of the universe.)

3. *Referral of Information.* OIG, in its sole discretion, may refer the findings of the Eligibility Review (and any related workpapers) received from SCI to the appropriate Federal health care program payor, including the Medicare contractor (e.g., carrier or fiscal intermediary), for appropriate follow-up by that payor.

4. *Systems Review.* If SCI's Sample for either the Admissions Review or Long Length of Stay Review identifies an Error Rate of 5% or greater, SCI's IRO shall also conduct a Systems Review for the particular Review in which a 5% or greater Error Rate was identified. If a Systems Review is triggered for either the Admissions Review and/or the Long Length of Stay Review, for each claim in that particular Review that resulted in an Overpayment, the IRO shall perform a "walk through" of the system(s) and process(es), that generated the claim to identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide its observations and recommendations on suggested improvements to the system(s) and the process(es) that generated the claim.

5. *Other Requirements.*

a. Paid Claims without Supporting Documentation. For the purpose of appraising Patients included in the Eligibility Review, any Paid Claim for which SCI cannot produce documentation sufficient to support the Paid Claim shall be considered an error and the total reimbursement received by SCI for such Paid Claim shall be deemed an Overpayment. Replacement sampling for Paid Claims with missing documentation is not permitted.

b. Replacement Sampling. Considering the Population shall consist only of Paid Claims and that Patients with insufficient documentation cannot be replaced, there is no need to utilize alternate or replacement sampling units.

c. Use of First Samples Drawn. For the purposes of the Sample discussed in this Appendix, the Paid Claims associated with the Patients selected in each first sample (or first sample for each strata, if applicable) shall be used (i.e., it is not permissible to generate more than one list of random samples

and then select one for use with the Sample).

B. Eligibility Review Report. The following information shall be included in the Eligibility Review Report for the Sample.

1. *Eligibility Review Methodology.*

a. Sampling Unit. A description of the Patient as that term is utilized for the Eligibility Review. For the Admissions Review, the sampling unit is the initial certification. For the Long Length of Stay Review, the sampling unit is the most recent recertification period.

b. Eligibility Review Population. A description of the Population subject to the Eligibility Review.

c. Eligibility Review Objective. A clear statement of the objective intended to be achieved by the Eligibility Review.

d. Sampling Frame. A description of the sampling frame, which is the totality of Patients from which the Sample has been selected and an explanation of the methodology used to identify the sampling frame. In most circumstances, the sampling frame will be identical to the Population.

e. Source of Data. A description of the specific documentation relied upon by the IRO when performing the Eligibility Review (e.g., medical records, physician orders, certificates of medical necessity, requisition forms, local medical review policies (including title and policy number), CMS program memoranda (including title and issuance number), Medicare carrier or intermediary manual or bulletins (including issue and date), other policies, regulations, or directives).

f. Review Protocol. A narrative description of how the Eligibility Review was conducted and what was evaluated.

2. *Statistical Sampling Documentation.*

a. The number of Patients appraised in the Sample.

b. A copy of the printout of the random numbers generated by the "Random Numbers" function of the statistical sampling software used by the IRO.

c. A description or identification of the statistical sampling software package used to select the Sample.

3. *Eligibility Review Findings.*

a. Narrative Results.

i. A description of SCI's hospice eligibility certification and recertification processes, including the identification, by position description, of the personnel involved.

ii. A narrative explanation of the IRO's findings and supporting rationale (including reasons for errors, patterns noted, concerns relating to the eligibility for hospice or appropriateness of hospice, etc.) regarding the Eligibility Review, including the results of the Sample.

b. Quantitative Results.

i. Total number and percentage of instances in which the IRO determined that the Paid Claims submitted by SCI (Claim Submitted) differed from what should have been the correct claim (Correct Claim), regardless of the effect on the payment.

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

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

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

v. Error Rate in the sample.

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

4. *Systems Review*. If required, observations, findings, and recommendations on possible improvements to the system(s) and process(es) that generated the Overpayment(s).

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