

**RECIPIENT COMPLIANCE AGREEMENT
BETWEEN THE
OFFICE OF INSPECTOR GENERAL
OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
BROOKLYN PLAZA MEDICAL CENTER**

I. PREAMBLE

Brooklyn Plaza Medical Center (BPMC), a United States Department of Health and Human Services (HHS) grant recipient, hereby enters into this Recipient Compliance Agreement (RCA) with the Office of Inspector General (OIG) of HHS to promote compliance with Federal award requirements. Contemporaneously with this RCA, BPMC is entering into a Settlement Agreement with OIG.

II. TERM AND SCOPE OF THE RCA

A. The period of the compliance obligations assumed by BPMC under this RCA shall be five years from the effective date of this RCA. The “Effective Date” shall be the date on which the final signatory of this RCA executes this RCA. 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) BPMC’s final Annual Report or (2) any additional materials submitted by BPMC pursuant to OIG’s request, whichever is later.

C. For purposes of this RCA, the term “Covered Persons” includes: (1) all officers, directors, and employees of BPMC; and (2) all contractors, subcontractors, agents, and other persons involved in carrying out any services on behalf of BPMC funded in whole or in part by an HHS Federal award.

D. For purposes of this RCA, the terms “Federal award” and “Federal awarding agency” shall have the meanings as defined in 45 C.F.R. § 75.2.

E. For purposes of this RCA, the term “specified claim” shall have the meaning as defined in 42 U.S.C. § 1320a-7a(r).

F. For purposes of this RCA, the term “Federal award requirements” means the requirements imposed by the terms and conditions outlined in BPMC’s Federal awards (including grant policy terms and conditions outlined in applicable HHS and HHS Operating Division Grants Policy Statements), requirements imposed by program statutes

and regulations and HHS grant administration regulations, and as well as any requirements or limitations in any applicable appropriations acts.

III. RECIPIENT COMPLIANCE AGREEMENT OBLIGATIONS

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

A. Compliance Officer and Committee, Board of Directors, and Management Compliance Obligations

1. *Compliance Officer.* Within 90 days after the Effective Date, BPMC shall appoint a Compliance Officer and shall maintain a Compliance Officer for the term of the RCA. The Compliance Officer shall be an employee and a member of senior management of BPMC, shall report directly to the Chairperson of the Board of Directors of BPMC, and shall not be or be subordinate to the General Counsel, Chief Executive Officer, or Chief Financial Officer or have any responsibilities that involve acting in any capacity as legal counsel or supervising legal counsel functions for BPMC. 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 RCA and with Federal award requirements;
- b. making periodic (at least quarterly) reports regarding compliance matters in person to the Board of Directors of BPMC (Board) and shall be authorized to report on such matters to the Board at any time. Written documentation of the Compliance Officer's reports to the Board shall be made available to OIG upon request; and
- c. monitoring the day-to-day compliance activities engaged in by BPMC as well as any reporting obligations created under this RCA.

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 RCA.

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

2. *Compliance Committee.* Within 90 days after the Effective Date, BPMC shall appoint a Compliance Committee. The Compliance Committee shall, at a minimum, include the Compliance Officer and other members of senior management necessary to meet the requirements of this RCA (e.g., senior leadership of relevant departments, such as accounting, clinical, human resources, audit, and operations). The Compliance Officer shall chair the Compliance Committee and the Compliance Committee shall support the Compliance Officer in fulfilling his/her responsibilities (e.g., shall assist in the analysis of BPMC's risk areas and shall oversee 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.

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

3. *Board Compliance Obligations.* The Board of BPMC shall be responsible for the review and oversight of matters related to compliance with Federal award requirements and the obligations of this RCA. The Board must include independent (i.e., non-employee and non-executive) members.

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

- a. meeting at least quarterly to review and oversee BPMC'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, such as the engagement of an independent advisor or other third-party resources, in its oversight of the compliance program and in support of making the resolution below during each Reporting Period;
- c. for each Reporting Period of the RCA, adopting a resolution, signed by each member of the Board summarizing its review and oversight of BPMC's compliance with Federal award requirements and the obligations of this RCA; and

At minimum, the resolution shall include the following language:

“The Board has made a reasonable inquiry into the operations of BPMC’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, BPMC has implemented an effective Compliance Program to meet Federal award requirements and the obligations of the RCA. Specifically, the Board has concluded that, to the best of its knowledge, BPMC’s Compliance Program includes controls to ensure the following: (1) BPMC’s financial management system traced Federal award funds to a level of expenditures adequate to establish that such funds were used (a) according to Federal statutes, regulations, and the terms and conditions of BPMC’s Federal awards, and (b) in the manner represented by BPMC in any submission to HHS; (2) BPMC’s charges to Federal awards for salaries and wages were supported by records that documented the distribution of an employee’s salary or wages among specific activities or cost objectives; (3) BPMC’s charges to Federal awards were based upon actual costs incurred by BPMC, not budget estimates; and (4) employees are prohibited from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain.”

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 corrective action being taken to address the specific issue(s); and

- d. for each Reporting Period of the RCA, the Board shall review the Compliance Program Review Report described in section III.D as part of its review and oversight of BPMC’s compliance program. 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.

BPMC 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 RCA, within 15 business days after such a change.

4. *Management Certifications.* In addition to the responsibilities set forth in this RCA for all Covered Persons, certain BPMC employees (Certifying Employees) are expected to monitor and oversee activities within their areas of authority and shall annually certify that the applicable BPMC department is in compliance with applicable Federal award requirements and the obligations of this RCA. These Certifying Employees shall include, at a minimum, the following: Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer. 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 award requirements (as that term is defined in the Recipient Compliance Agreement), obligations of the Recipient Compliance Agreement, and BPMC policies, and I have taken steps to promote such compliance. To the best of my knowledge, the [insert name of department] of BPMC is in compliance with all applicable Federal award requirements and the obligations of the Recipient Compliance Agreement.

In addition, during the Reporting Period, to the best of my knowledge:

(1) BPMC’s financial management system traced Federal award funds to a level of expenditures adequate to establish that such funds were used (a) according to Federal statutes, regulations, and the terms and conditions of BPMC’s Federal awards, and (b) in the manner represented by BPMC in any submission to HHS;

(2) BPMC’s charges to Federal awards for salaries and wages were supported by records that documented the distribution of an employee’s salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity;

(3) BPMC’s charges to Federal awards were based upon actual costs incurred by BPMC, not budget estimates; and

(4) BPMC had in place safeguards to prohibit employees from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain. These safeguards include [describe safeguards].

I understand that the certifications in (1) through (4) above are not an exclusive list of actions that BPMC must take to comply with Federal award requirements and this Recipient Compliance Agreement. I understand that BPMC must comply with all Federal award requirements and I have taken steps to promote such compliance.

I understand that this certification is being provided to and relied upon by OIG.”

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 certifications outlined above.

Within 90 days after the Effective Date, BPMC 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

Within 90 days after the Effective Date, BPMC shall develop and implement written policies and procedures regarding the operation of its compliance program, including the compliance program requirements outlined in this RCA and BPMC’s compliance with Federal award requirements (Policies and Procedures), including but not limited to, policies and procedures that address the following:

1. safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;
2. BPMC’s responsibility to have a financial management system in place capable of tracing Federal award funds to a level of expenditures adequate to establish that such funds were used (i) according to Federal statutes, regulations, and the terms and conditions of BPMC’s Federal awards, and (ii) in the manner represented by BPMC to HHS;
3. BPMC’s responsibility to have a financial management system in place that ensures that charges to Federal awards for salaries and wages are supported by records that document the distribution of an employee’s salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost

activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity; and

4. BPMC's responsibility to charge Federal awards for actual costs incurred by BPMC, not budget estimates.

Throughout the term of this RCA, BPMC shall enforce its Policies and Procedures and shall make compliance with its Policies and Procedures an element of evaluating the performance of all employees. The Policies and Procedures shall be made available to all Covered Persons.

At least annually (and more frequently, if appropriate), BPMC shall assess and update, as necessary, the Policies and Procedures. Any new or revised Policies and Procedures shall be made available to all Covered Persons.

All Policies and Procedures shall be made available to OIG upon request.

C. Training and Education

1. *Covered Persons Training.* Within 90 days after the Effective Date, BPMC shall develop a written plan (Training Plan) that outlines the steps BPMC will take to ensure that all Covered Persons receive at least annual training regarding BPMC's RCA requirements and Compliance Program (including the Policies and Procedures required by Section III.B) and the applicable Federal award requirements, including but not limited to employee timesheet-keeping responsibilities and responsibilities of employees to refrain from using their positions for purposes that constitute or present the appearance of personal or organizational conflict of interest, or personal gain. The Training Plan shall include information regarding the following: training topics, categories of Covered Persons required to attend each training session, length of the training session(s), schedule for training, and format of the training. BPMC shall furnish training to its Covered Persons pursuant to the Training Plan during each Reporting Period.

2. *Board Training.* In addition to the training described in Section III.C.1, within 90 days after the Effective Date, each member of the Board shall receive training regarding 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 Board members of an entity receiving Federal award funds, including the risks, oversight areas, and strategic approaches to conducting oversight of an entity receiving Federal award funds. This training may be conducted by an outside compliance expert hired by the Board and should include a discussion of the OIG's guidance on Board member responsibilities.

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

3. *Training for only the Chief Executive Officer, all Board Members, Chief Operating Officer, Chief Financial Officer, Compliance Officer, accounting staff, and human resources staff.* In addition to the training described in Section III.C.1 and III.C.2, within 90 days after the Effective Date, the Chief Executive Officer, all Board Members, the Chief Operating Officer, Chief Financial Officer, Compliance Officer, accounting staff, and human resources staff shall receive training on the following topics:

- a. BPMC's responsibility to have a financial management system in-place capable of tracing Federal award funds to a level of expenditures adequate to establish that such funds were used (i) according to Federal statutes, regulations, and the terms and conditions of BPMC's Federal awards, and (ii) in the manner represented by BPMC to HHS;
- b. BPMC's responsibility to have a financial management system in-place that ensures that charges to Federal awards for salaries and wages are supported by records that document the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity;
- c. BPMC's responsibility to charge Federal awards for actual costs incurred by BPMC, not budget estimates; and
- d. BPMC's responsibility to have safeguards in-place to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. *Training Records.* BPMC shall make available to OIG, upon request, training materials and records verifying that the training described in Sections III.C.1, III.C.2, and III.C.3 has been provided as required.

D. Review Procedures

1. *Engagement of Independent Review Organization and Compliance Expert.* Within 90 days after the Effective Date, BPMC shall engage an entity (or entities), such as an accounting, auditing, or consulting firm (hereinafter “Independent Review Organization” or “IRO”), to perform the review listed in Section III.D.2 and shall notify OIG of its selection. Within 90 days after the Effective Date, BPMC shall engage an individual or entity, such as a consulting firm, lawyer or law firm (hereinafter “Compliance Expert”) to perform the review listed in Section III.D.3 and shall notify OIG of its selection. The applicable requirements relating to the IRO and the Compliance Expert are outlined in Appendix A to this RCA, which is incorporated by reference.

- a. *Retention of Records.* The IRO and BPMC shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the IRO and BPMC) related to the reviews performed by the IRO. The Compliance Expert and BPMC shall retain and make available to OIG, upon request, all work papers, supporting documentation, correspondence and draft reports (those exchanged between the Compliance Expert and BPMC) related to the review performed by the Compliance Expert.
- b. *Access to Records and Personnel.* BPMC shall ensure that the IRO and the Compliance Expert have access to all records and personnel necessary to complete the reviews listed in this Section III.D and that all records furnished to the IRO and Compliance Expert are accurate and complete.
- c. *Independence and Objectivity Certification.* The IRO and the Compliance Expert shall include in their report(s) to BPMC a certification that the IRO and the Compliance Expert has (a) evaluated its professional independence and objectivity with respect to the reviews required under this Section III.D and (b) concluded that it is, in fact, independent and objective, in accordance with the requirements specified in Appendix A to this RCA. The certification shall include a summary of all current and prior engagements between BPMC and the IRO or the Compliance Expert.

2. *Drawdown Review.* The IRO shall review specified claims submitted by BPMC to the HHS Payment Management System (PMS) and reimbursed by

Federal awarding agencies to determine whether the specified claims submitted to PMS complied with Federal award requirements (Drawdown Review), and shall prepare a written Drawdown Review Report, as outlined in Appendix B to this RCA, which is incorporated by reference.

3. *Compliance Program Review.* The Compliance Expert shall review the effectiveness of BPMC's Compliance Program (Compliance Program Review) with respect to Federal awards (Compliance Program Review) and shall prepare a written (Compliance Program Review Report), as outlined in Appendix C to the RCA, which is incorporated by reference.

E. Risk Assessment and Internal Review Process

Within 90 days after the Effective Date, BPMC shall develop and implement a centralized annual risk assessment and internal review process to identify and address risks associated with BPMC's administration of Federal awards, including but not limited to the risks associated with BPMC's submission of specified claims to PMS. The Compliance Committee shall be responsible for implementation and oversight of the risk assessment and internal review process. The risk assessment and internal review process shall be conducted at least annually and shall require BPMC 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. BPMC shall maintain the risk assessment and internal review process for the term of the RCA.

F. Disclosure Program

Within 90 days after the Effective Date, BPMC shall 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 BPMC's policies, conduct, practices, or procedures with respect to a Federal award program believed by the individual to be a potential violation of criminal, civil, or administrative law. BPMC 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. The Disclosure Program also shall include a requirement that all of BPMC's Covered Persons shall be expected to report

suspected violations of any Federal award program requirements to the Compliance Officer or other appropriate individual designated by BPMC. 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, BPMC 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 all disclosures, whether or not related to a potential violation of criminal, civil, or administrative law related to the Federal award programs, 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 individual or department responsible for reviewing the disclosure, the status of the review, and any corrective action taken in response to the review.

G. Ineligible Persons

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

- a. an “Ineligible Person” shall include an individual or entity who:
 - i. is currently excluded from participation in any Federal health care program;
 - 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; or
 - iii. is currently debarred, suspended, or otherwise ineligible to participate in Federal procurement or nonprocurement programs.
- b. “Exclusion Lists” means the HHS/OIG List of Excluded Individuals/Entities (LEIE) (available through the Internet at <http://www.oig.hhs.gov>) and the General Services Administration’s System for Award Management (SAM) (available through the internet at <http://www.sam.gov>).

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

- a. BPMC shall screen all prospective Covered Persons against the Exclusion Lists prior to engaging their services and, as part of the hiring or contracting process or medical staff credentialing process, shall require such Covered Persons to disclose whether they are Ineligible Persons.
- b. BPMC shall screen all current Covered Persons against the Exclusion Lists within 90 days after the Effective Date and on a monthly basis thereafter.
- c. BPMC shall implement a policy requiring all Covered Persons to disclose immediately if they become an Ineligible Person.

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

3. *Removal Requirement.* If BPMC has actual notice that a Covered Person has become an Ineligible Person, BPMC shall remove such Covered Person from responsibility for, or involvement with, BPMC's business operations related to the program(s) from which such Covered Person has been excluded, suspended, or debarred, 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 any Federal program(s) from which the Covered Person has been excluded, suspended, or debarred, at least until such time as the Covered Person is reinstated into participation in such Federal program(s). If a physician or other non-physician practitioner with staff privileges at BPMC is determined to be an Ineligible Person, BPMC shall ensure that (i) the medical staff member does not furnish, order, or prescribe any items or services payable in whole or in part by any Federal health care program from which the medical staff member has been excluded; and (ii) the medical staff member is not "on call" at BPMC.

4. *Pending Charges and Proposed Exclusions.* If BPMC 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, BPMC 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.

H. Notification of Government Investigation or Legal Proceeding

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

I. Overpayments

1. *Definition of Overpayment.* An "Overpayment" means any funds that BPMC receives or retains under any Federal award program to which BPMC is not entitled.

2. *Overpayment Policies and Procedures.* Within 90 days after the Effective Date, BPMC shall develop and implement written policies and procedures regarding the identification, quantification, and repayment of Overpayments received from any Federal award.

J. Reportable Events

1. *Definition of Reportable Event.* For purposes of this RCA, 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 award program for which penalties or exclusion may be authorized;
- c. any report submitted pursuant to the mandatory grant disclosure requirements at 45 C.F.R. § 75.113;

- d. imposition of specific award conditions, corrective action plan or other administrative remedies by any HHS awarding agency or operating division;
- e. completion of a single audit conducted in accordance with 45 C.F.R. 75.501;
- f. the employment of or contracting with or having as a member of the active medical staff a Covered Person who is an Ineligible Person as defined by Section III.G.1.a; or
- g. the filing of a bankruptcy petition by BPMC.

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

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

3. *Reportable Events under Section III.J.1.a. and III.J.1.b.* For Reportable Events under Section III.J.1.a and 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 individuals and entities 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, if any;
- c. the Federal awards affected by the Reportable Event;
- d. a description of the steps taken by BPMC to identify and quantify any Overpayments; and
- e. a description of BPMC's actions taken to correct the Reportable Event and prevent it from recurring.

If the Reportable Event involves an Overpayment, within 60 days of identification of the Overpayment or any shorter period required by any applicable Federal award requirement, BPMC shall repay the Overpayment and provide OIG with a copy of the notification and repayment.

4. *Reportable Events under Section III.J.1.c.* For Reportable Events under Section III.J.1.c, BPMC shall make available a copy of any documents and materials submitted pursuant to the mandatory grant disclosure requirements.

5. *Reportable Events under Section III.J.1.d.* For Reportable Events under Section III.J.1.d, BPMC shall make available a copy of any notification of specific award conditions, corrective action plan, or administrative remedies.

6. *Reportable Events under Section III.J.1.e.* For Reportable Events under Section III.J.1.e, BPMC shall make available a copy of the audit report and any response(s) from BPMC.

7. *Reportable Events under Section III.J.1.f.* For Reportable Events under Section III.J.1.f, 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 or medical staff membership;
- c. a description of the Ineligible Person screening that BPMC completed before and/or during the Ineligible Person's employment or contract or medical staff membership and any flaw or breakdown in the screening process that led to the hiring or contracting with or credentialing the Ineligible Person;
- d. a description of how the Ineligible Person was identified; and
- e. a description of any corrective action implemented to prevent future employment or contracting with or credentialing an Ineligible Person.

8. *Reportable Events under Section III.J.1.g.* For Reportable Events under Section III.J.1.g, the report to OIG shall include documentation of the bankruptcy filing and a description of any Federal award program requirements implicated.

IV. SUCCESSOR LIABILITY

In the event that, after the Effective Date, BPMC proposes to (a) sell or otherwise transfer any or all of its business, business units, or locations (whether through a sale of assets, sale of stock, or other type of transaction) relating to activities intended to carry out Federal awards; or (b) purchase or establish a new business, business unit, or location relating to activities intended to carry out Federal awards, the RCA shall be binding on the purchaser or transferee of any business, business unit, or location and any 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 RCA, unless otherwise determined and agreed to in writing by OIG. BPMC shall give notice of such sale, purchase, or transfer to OIG within 30 days following the closing of the transaction.

If, in advance of a proposed sale, purchase, or transfer, BPMC wishes to obtain a determination by OIG that the proposed purchaser or transferee or the proposed acquisition will not be subject to the requirements of the RCA, BPMC must notify OIG in writing of the proposed sale, purchase, or transfer at least 30 days in advance. This notification shall include a description of the business, business unit, or location to be sold, purchased, or transferred, a brief description of the terms of the transaction and, in the case of a proposed sale or transfer, the name and contact information of the prospective purchaser, or transferee.

V. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report

Within 120 days after the Effective Date, BPMC shall submit a written report to OIG summarizing the status of its implementation of the requirements of this RCA (Implementation Report). The Implementation Report shall, at a minimum, include:

1. the name, business address, business 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 compliance obligations described in Section III.A.3;
4. the names and positions of the Certifying Employees required by Section III.A.4 and a copy of the written process for Certifying Employees to follow in order to complete the certification required by Section III.A.4;

5. a copy of the written process BPMC shall implement in order to complete the certifications required by Section III.A.4.
6. a list of the Policies and Procedures required by Section III.B;
7. the Training Plan required by Section III.C.1 and a description of the Board 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);
8. the following information regarding the Compliance Expert(s) and IRO(s): (a) identity, address, and phone number; (b) a copy of the engagement letter; (c) information to demonstrate that the Compliance Expert and IRO has the qualifications outlined in Appendix A to this RCA; and (d) a certification from the Compliance Expert and IRO regarding its professional independence and objectivity with respect to BPMC that includes a summary of all current and prior engagements between BPMC and the Compliance Expert or IRO;
9. a description of the risk assessment and internal review process required by Section III.E;
10. a description of the Disclosure Program required by Section III.F;
11. a description of the Ineligible Persons screening and removal process required by Section III.G;
12. a copy of BPMC's policies and procedures regarding the identification, quantification and repayment of Overpayments required by Section III.I;
13. a description of BPMC's corporate structure, including identification of any parent and sister companies, subsidiaries, and their respective lines of business;
14. a list of all of BPMC's locations (including locations and mailing addresses), the corresponding name under which each location is doing business, and the location's Medicare and state Medicaid program provider number and/or supplier number(s);
15. a list identifying by agency, operating division, and award number all federal awards awarded to BPMC in the preceding 12 months and all federal awards from which BPMC has drawn down funds in the preceding 12 months; and
16. the certifications required by Section V.C.

B. Annual Reports

BPMC shall submit to OIG a written report on its compliance with the RCA requirements for each of the five Reporting Periods (Annual Report). Each Annual Report shall include, at a minimum, the following information:

1. any change in the identity, position description, or other noncompliance job responsibilities of the Compliance Officer; a current list of the Compliance Committee members, a current list of the Board members who are responsible for satisfying the Board compliance obligations, and a current list of the Certifying Employees, along with the identification of any changes made during the Reporting Period to the Compliance Committee, Board, and Certifying Employees;
2. a description of any changes to the written process followed in order to complete the certification required by Section III.A.4;
3. 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);
4. 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;
5. a list of any new or revised Policies and Procedures developed during the Reporting Period;
6. a description of any changes to BPMC's Training Plan developed pursuant to Section III.C, and a summary of any Board training provided during the Reporting Period;
7. a complete copy of all reports prepared pursuant to Section III.D and BPMC's response to the reports, along with corrective action plan(s) related to any issues raised by the reports;
8. a certification from the IRO and Compliance Expert regarding their professional independence and objectivity with respect to BPMC, including a summary of all current and prior engagements between BPMC and the IRO or Compliance Expert;
9. a description of any changes to the risk assessment and internal review process required by Section III.E, including the reasons for such changes;
10. a summary of the following components of the risk assessment and internal review process during the Reporting Period: (a) work plans developed, (b)

internal audits performed, (c) corrective action plans developed in response to internal audits, and (d) steps taken to track the implementation of the corrective action plans. Copies of any work plans, internal audit reports, and corrective action plans shall be made available to OIG upon request;

11. a summary of the disclosures in the disclosure log required by Section III.F that relate to Federal award programs, including at least the following information: (a) a description of the disclosure, (b) the date the disclosure was received, (c) the resolution of the disclosure, and (d) the date the disclosure was resolved (if applicable). The complete disclosure log shall be made available to OIG upon request;

12. a description of any changes to the Ineligible Persons screening and removal process required by Section III.G, including the reasons for such changes;

13. a summary describing any ongoing investigation or legal proceeding required to have been reported pursuant to Section III.H. The summary shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding;

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

15. a summary of Reportable Events (as defined in Section III.J) identified during the Reporting Period;

16. a summary of any audits (including but not limited to A-133 audits) conducted during the applicable Reporting Period by any government entity or contractor involving BPMC's administration or expenditure of Federal award funds and BPMC's response/corrective action plan (including information regarding any Federal award program refunds) relating to the audit findings;

17. a description of all changes to the most recently provided list of BPMC's locations as required by Section V.A.13;

18. a description of any changes to BPMC's corporate structure, including any parent and sister companies, subsidiaries, and their respective lines of business;

19. a list identifying by agency, operating division, and award number all federal awards awarded to BPMC in the preceding 12 months and all federal awards from which BPMC has drawn down funds in the preceding 12 months; 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, BPMC shall include the certifications of Certifying Employees 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, BPMC has implemented and is in compliance with all of the requirements of this RCA;
- b. During the applicable Reporting Period: (1) BPMC's financial management system traced Federal award funds to a level of expenditures adequate to establish that such funds were used (a) according to Federal statutes, regulations, and the terms and conditions of BPMC's Federal awards, and (b) in the manner represented by BPMC to HHS; (2) BPMC's charges to Federal awards for salaries and wages were supported by records that documented the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity; (3) BPMC's charges to Federal awards were based upon actual costs incurred by BPMC, not budget estimates; and (4) BPMC had in place safeguards to prohibit employees from using their positions for a purpose that constituted or presented the appearance of personal or organizational conflict of interest, or personal gain. I understand that the certifications in (1) through (4) above are not an exclusive list of actions that BPMC must take to comply with Federal award requirements and this Recipient Compliance Agreement;

- c. 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
- d. he or she understands that the certification is being provided to and relied upon by the OIG.

D. Designation of Information

BPMC 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. BPMC 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 RCA 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

BPMC:

Philip J. Onorato, Esq.
Acting Chief Executive Officer
Brooklyn Plaza Medical Center
650 Fulton Street

Brooklyn, NY 11217
Telephone: (718) 596-9800; Ext. 204
E-mail: ponorato@brooklynplaza.org

Unless otherwise specified, all notifications and reports required by this RCA may be made by electronic mail, overnight mail, hand delivery, or other means, provided that there is proof that such notification was received. Upon request by OIG, BPMC may be required to provide OIG with an additional copy of each notification or report required by this RCA in OIG's requested format (electronic or paper).

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 conduct interviews, examine and/or request copies of or copy BPMC's books, records, and other documents and supporting materials, and conduct on-site reviews of any of BPMC's locations, for the purpose of verifying and evaluating: (a) BPMC's compliance with the terms of this RCA and (b) BPMC's compliance with the requirements of Federal award programs. The documentation described above shall be made available by BPMC 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 BPMC's officers, employees, contractors, and directors 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. BPMC shall assist OIG or its duly authorized representative(s) in contacting and arranging interviews with such individuals upon OIG's request. BPMC's officers, employees, contractors, and directors may elect to be interviewed with or without a representative of BPMC present.

VIII. DOCUMENT AND RECORD RETENTION

BPMC shall maintain for inspection all documents and records relating to reimbursement from the Federal award programs and to compliance with this RCA 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 BPMC prior to any release by OIG of information submitted by BPMC pursuant to its obligations under this RCA and identified upon submission by BPMC as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, BPMC shall have the rights set forth at 45 C.F.R. § 5.42(a).

X. BREACH AND DEFAULT PROVISIONS

BPMC is expected to fully and timely comply with all of its RCA obligations.

A. Stipulated Penalties for Failure to Comply with Certain Obligations

As a contractual remedy, BPMC and OIG hereby agree that failure to comply with certain obligations as set forth in this RCA 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) per obligation for each day BPMC fails to establish, implement or comply with any of the following obligations as described in Section III:

- a. a Compliance Officer;
- b. a Compliance Committee;
- c. the Board compliance obligations required by Section III.A.3;
- d. the management certification obligations and the development and implementation of a written process for Certifying Employees, as required by Section III.A.4;
- e. written Policies and Procedures;
- f. the development of a written training plan and the training and education of Covered Persons and Board members;
- g. a risk assessment and internal review process;
- h. a Disclosure Program;
- i. Ineligible Persons screening and removal requirements;
- j. notification of Government investigations or legal proceedings;
- j. policies and procedures regarding the repayment of Overpayments; and
- l. reporting of Reportable Events.

2. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day BPMC fails to engage and use an IRO or a Compliance Expert, as required by Section III.D, Appendix A, Appendix B, or Appendix C.

3. A Stipulated Penalty of \$2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day BPMC fails to timely submit (a) a complete Implementation Report or Annual Report, (b) a certification to OIG in accordance with the requirements of Section V, or (c) a complete response to any request for information from OIG.

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 BPMC fails to submit any Compliance Program Review Report or Drawdown Review Report in accordance with the requirements of Section III.D and Appendix B or fails to repay any Overpayment identified by the IRO, as required by Appendix B.

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

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

7. A Stipulated Penalty of \$2,500 for each day BPMC fails to grant the IRO or Compliance Expert access to all records and personnel necessary to complete the reviews listed in Section III.D, and for each day BPMC fails to furnish accurate and complete records to the IRO or Compliance Expert, as required by Section III.D and Appendix A.

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

B. Timely Written Requests for Extensions

BPMC 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 RCA. 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 BPMC 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 BPMC 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 BPMC 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 BPMC of: (a) BPMC'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 business days after the receipt of the Demand Letter, BPMC 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 BPMC elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until BPMC 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 RCA 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 BPMC has materially breached this RCA, 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 RCA

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

- a. repeated violations or a flagrant violation of any of the obligations under this RCA, including, but not limited to, the obligations addressed in Section X.A;
- b. a failure by BPMC to report a Reportable Event, take corrective action, or make the appropriate refunds, as required in Section III.J;
- 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 or Compliance Expert in accordance with Section III.D, Appendix A, or Appendix B.

2. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this RCA by BPMC constitutes an independent basis for BPMC's exclusion from participation in the Federal health care programs. The length of the exclusion shall be in the OIG's discretion, but not more than five years per material breach. Upon a determination by OIG that BPMC has materially breached this RCA and that exclusion is the appropriate remedy, OIG shall notify BPMC of: (a) BPMC'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.* BPMC 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) BPMC has begun to take action to cure the material breach; (ii) BPMC is pursuing such action with due diligence; and (iii) BPMC has provided to OIG a reasonable timetable for curing the material breach.

4. *Exclusion Letter.* If, at the conclusion of the 30-day period, BPMC fails to satisfy the requirements of Section X.D.3, OIG may exclude BPMC from participation in the Federal health care programs. OIG shall notify BPMC in writing of

its determination to exclude BPMC. (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 BPMC’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, BPMC may apply for reinstatement by submitting a written request for reinstatement in accordance with the provisions at 42 C.F.R. §§ 1001.3001-.3004.

5. *Referral for Debarment.* Material Breach may result in OIG referring BPMC to the HHS Suspension and Debarment Official.

E. Dispute Resolution

1. *Review Rights.* Upon OIG’s delivery to BPMC of its Demand Letter or of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under this RCA, BPMC 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 RCA. 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 RCA shall be: (a) whether BPMC was in full and timely compliance with the obligations of this RCA for which OIG demands payment; and (b) the period of noncompliance. BPMC 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 RCA and orders BPMC to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable 20 days after the ALJ issues such a decision unless BPMC 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 RCA shall be whether BPMC was in material breach of this RCA and, if so, whether:

- a. BPMC 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 BPMC's receipt of the Notice of Material Breach:
 - (i) BPMC had begun to take action to cure the material breach;
 - (ii) BPMC pursued such action with due diligence;
 - and (iii) BPMC 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 BPMC, only after a DAB decision in favor of OIG. BPMC's election of its contractual right to appeal to the DAB shall not abrogate OIG's authority to exclude BPMC 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 BPMC 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. BPMC 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 BPMC, BPMC 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 RCA agree that the DAB's decision (or the ALJ's decision if not appealed) shall be considered final for all purposes under this RCA.

XI. EFFECTIVE AND BINDING AGREEMENT

BPMC and OIG agree as follows:

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

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

C. OIG may agree to a suspension of BPMC's obligations under this RCA based on a certification by BPMC that it is no longer a recipient of HHS Federal awards and it does not have any ownership or control interest, as defined in 42 U.S.C. §1320a-3, in any entity that receives or applies for HHS Federal awards. If BPMC is relieved of its RCA obligations, BPMC shall be required to notify OIG in writing at least 30 days in advance if BPMC plans to apply for HHS Federal awards or to obtain an ownership or control interest in any entity that receives or applies for HHS Federal awards. At such time, OIG shall evaluate whether the RCA will be reactivated or modified.

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

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

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

ON BEHALF OF BPMC

/Theresa Holmes-Simmons/
Theresa Holmes-Simmons
Chairwoman of the Board of Directors

7/10/2020
DATE

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

/Lisa M. Re/
Lisa M. Re
Assistant Inspector General for Legal Affairs
Office of Inspector General
U.S. Department of Health and Human Services

07/14/2020
DATE

/Michael Torrasi/
Michael R. Torrasi
Senior Counsel
Office of Inspector General
U.S. Department of Health and Human Services

7/10/2020
DATE

/David Traskey/
David M. Traskey
Senior Counsel
Office of Inspector General
U.S. Department of Health and Human Services

7/10/2020
DATE

APPENDIX A

INDEPENDENT REVIEW ORGANIZATION AND COMPLIANCE EXPERT

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

A. Engagement

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

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

B. Qualifications

The IRO shall:

1. assign individuals to conduct the Drawdown Review who have expertise in Federal award requirements applicable to the drawdowns being reviewed; and
2. have sufficient staff and resources to conduct the review required by the RCA on a timely basis.

The Compliance Expert shall have expertise in the Federal award requirements applicable to BPMC's Federal awards and shall have the resources to conduct the review required by the RCA on a timely basis.

C. Responsibilities

The IRO shall:

1. perform each Drawdown Review in accordance with the specific requirements of the RCA;
2. follow all Federal award requirements in making assessments in the Drawdown Review;
3. request clarification from the appropriate authority (e.g., the Health Resources and Services Administration or the Substance Abuse and Mental Health Services Administration), if in doubt of the application of a Federal award requirement, policy or regulation;
4. respond to all OIG inquiries in a prompt, objective, and factual manner; and
5. prepare timely, clear, well-written reports that include all the information required by Appendix B to the RCA.

The Compliance Expert shall:

1. perform the Compliance Program Review in accordance with the specific requirements of the RCA; and
2. prepare timely, clear, well-written reports that include all the information required by Appendix C to the RCA.

D. BPMC Responsibilities

BPMC shall ensure that the IRO and Compliance Expert have access to all records and personnel necessary to complete the reviews listed in III.D of this RCA and that all records furnished to the IRO and Compliance Expert are accurate and complete.

E. Independence and Objectivity

The IRO must perform the Drawdown 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. The Compliance Expert must perform the Compliance Program 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.

F. Removal/Termination

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

2. *OIG Removal of IRO or Compliance Expert.* In the event OIG has reason to believe the IRO or Compliance Expert does not possess the qualifications described in Paragraph B, is not independent and objective as set forth in Paragraph E, or has failed to carry out its responsibilities as described in Paragraph C, OIG shall notify BPMC in writing regarding OIG's basis for determining that the IRO or Compliance Expert has not met the requirements of this Appendix. BPMC shall have 30 days from the date of OIG's written notice to provide information regarding the IRO's or Compliance Expert'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 BPMC regarding the IRO or Compliance Expert, OIG determines that the IRO or Compliance Expert has not met the requirements of this Appendix, OIG shall notify BPMC in writing that BPMC shall be required to engage a new IRO or Compliance Expert in accordance with Paragraph A of this Appendix. BPMC must engage a new IRO or Compliance Expert within 60 days of its receipt of OIG's written notice. The final determination as to whether or not to require BPMC to engage a new IRO or Compliance Expert shall be made at the sole discretion of OIG.

APPENDIX B

DRAWDOWN REVIEW

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

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

- a. Overpayment: The amount of money BPMC has received in excess of the amount allowable under Federal award requirements, as determined by the IRO in connection with the Drawdown Review performed under this Appendix B.
- b. Paid Specified Claim: A drawdown made by BPMC on a single day from the HHS Payment Management System (PMS) (or successor payment processing system) related to either BPMC's HRSA Health Center Cluster grant H80CS00410 (or a successor Health Center Cluster grant), BPMC's HRSA Ryan White grant H76HA00173 (or successor Ryan White grant), or BPMC's SAMHSA Medication-Assisted Treatment grant H79TI081589 (or successor grant).
- c. Population: The Population shall be defined as all Paid Specified Claims during the 12-month period covered by the Drawdown Review.

2. *Drawdown Review Sample*. The IRO shall randomly select and review a sample of 12 Paid Specified Claims related to BPMC's Health Center Cluster grant H80CS00410 (or a successor Health Center Cluster grant), three Paid Specified Claims related to BPMC's Ryan White grant H76HA00173 (or successor Ryan White grant), and two Paid Specified Claims related to BPMC's SAMHSA Medication-Assisted Treatment grant H79TI081589 (or successor grant). These 17 Paid Specified Claims are the "Drawdown Review Sample." The Paid Specified Claims shall be reviewed based on the supporting documentation available at BPMC's office or under BPMC's control (including but not limited to accounting ledgers and journals, timesheets, bank records, invoices, and contractual arrangements) and Federal award requirements to determine whether the costs that formed the basis for the Paid Specified Claim were allowable under Federal award requirements and were appropriately documented. For each Paid Specified Claim in the Drawdown Review Sample that results in an Overpayment, the IRO shall review the system(s) and process(es) that generated the Paid Specified Claim and identify any problems or weaknesses that may have resulted in the identified Overpayments. The IRO shall provide its observations and recommendations on

suggested improvements to the system(s) and the process(es) that generated the Paid Specified Claim.

3. *Other Requirements.*

- a. Supplemental Materials. The IRO shall request all documentation and materials required for its review of the Paid Specified Claims in the Drawdown Review Sample and BPMC shall furnish such documentation and materials to the IRO prior to the IRO initiating its review of the Drawdown Review Sample. If the IRO accepts any supplemental documentation or materials from BPMC after the IRO has completed its initial review of the Drawdown Review Sample (Supplemental Materials), the IRO shall identify in the Drawdown 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 Drawdown Review Report describing the process by which the Supplemental Materials were accepted and the IRO's reasons for accepting the Supplemental Materials.
- b. Paid Specified Claims without Supporting Documentation. Any Paid Specified Claim for which BPMC cannot produce documentation shall be considered an error and the total reimbursement received by BPMC for such Paid Specified Claim shall be deemed an Overpayment. Replacement sampling for Paid Specified Claims with missing documentation is not permitted.
- c. Use of First Samples Drawn. For the purposes of the Drawdown Review Sample discussed in this Appendix, the first set of Paid Specified Claims selected 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 Drawdown Review Sample).

4. *Repayment of Identified Overpayments.* BPMC shall repay within 60 days (or any shorter period required by any applicable Federal award requirement) the Overpayment(s) identified by the IRO in the Drawdown Review Sample. BPMC shall make available to OIG all documentation that reflects the refund of the Overpayment(s) to the payor. OIG, in its sole discretion, may refer the findings of the Drawdown Review Sample (and any related work papers) received from BPMC to the appropriate HHS operating division for appropriate follow up.

B. Drawdown Review Report. The IRO shall prepare a Drawdown Review Report as described in this Appendix for each Drawdown Review performed. The following information shall be included in the Drawdown Review Report.

1. *Drawdown Review Methodology.*
 - a. Drawdown Review Population. A description of the Population subject to the Drawdown Review.
 - b. Drawdown Review Objective. A clear statement of the objective intended to be achieved by the Drawdown Review.
 - c. Source of Data. A description of (1) the process used to identify Paid Specified Claims in the Population and (2) the specific documentation relied upon by the IRO when performing the Drawdown Review (e.g., accounting ledgers, timesheets, bank records, BPMC policies, and other policies, regulations, or directives).
 - d. Review Protocol. A narrative description of how the Drawdown Review was conducted and what was evaluated.
 - e. Supplemental Materials. A description of any Supplemental Materials as required by A.3.a., above.
2. *Drawdown Review Findings.*
 - a. Narrative Results.
 - i. A description of the system BPMC utilizes to identify allowable costs to charge to its HHS Federal awards and make appropriate drawdowns from PMS.
 - ii. A description of controls in place at BPMC to ensure that all costs charged to its HHS grants are allowable under 45 C.F.R. 75.
 - iii. A narrative explanation of the IRO's findings and supporting rationale (including reasons for errors, patterns noted, etc.) regarding the Drawdown Review, including the results of the Drawdown Review Sample.
 - b. Quantitative Results.

- i. Total number and percentage of instances in which the IRO determined that the drawdowns by BPMC from PMS differed from what should have been drawn down from PMS and in which such difference resulted in an Overpayment to BPMC.
 - ii. Total number and percentage of instances in which the IRO determined that a Paid Specified Claim was not appropriately documented and in which such documentation errors resulted in an Overpayment to BPMC.
 - iii. Total number and percentage of instances in which the IRO determined that a Paid Specified Claim was based upon unallowable costs and resulted in an Overpayment to BPMC.
 - iv. Total dollar amount of all Overpayments in the Drawdown Review Sample.
 - v. Total dollar amount of Paid Specified Claims included in the Drawdown Review Sample.
 - vi. Error Rate in the Drawdown Review Sample. The Error Rate shall be calculated by dividing the Overpayment in the Drawdown Review Sample by the total dollar amount associated with the Paid Specified Claims in the Drawdown Review Sample.
 - vii. A spreadsheet of the Drawdown Review results that includes the following information for each Paid Specified Claim: Federal award billed, date of drawdown, amount drawn down through PMS, correct allowed amount (as determined by the IRO), dollar difference between allowed amount reimbursed by payor and the correct allowed amount, and reason for any difference between the amount drawn down through PMS and the correct allowed amount.
- c. Recommendations. The IRO's report shall include any recommendations for improvements to BPMC's accounting system or to BPMC's controls for ensuring that all amounts drawn down from PMS are allowable under Federal award requirements.

3. *Credentials*. The names and credentials of the individuals who performed the Drawdown Review.

APPENDIX C

COMPLIANCE PROGRAM PREVIEW

I. Compliance Expert Engagement, General Description

As specified more fully below, Brooklyn Plaza Medical Center (BPMC) shall retain a Compliance Expert to perform an engagement to review the effectiveness of BPMC's Compliance Program with respect to Federal awards, by assessing and evaluating BPMC's Compliance Program systems, processes, policies, and procedures, as described more fully below.

The Compliance Expert shall perform the Compliance Program Review outlined in Section II below for each Reporting Period of the CIA.

II. Compliance Program Review

The Compliance Program Review shall be a review of (1) the manner in which BPMC's systems, processes, policies and procedures (including the controls on those systems, processes, policies, and procedures) relating to its Compliance Program are implemented; and (2) BPMC's risk assessment and internal review process.

A. Reviewed Policies and Procedures. The Compliance Expert shall review BPMC's systems, processes, policies, and procedures associated with the following:

1. BPMC's systems, policies and procedures with respect to maintaining a Compliance Officer and Compliance Committee as required by Section III.A.1 and III.A.2 of the CIA;
2. BPMC's systems, policies and procedures with respect to ensuring that the Board of Directors satisfies the Board compliance obligations described in Section III.A.3 of the CIA;
3. BPMC's systems, policies and procedures with respect to the completion of the Management Certifications required by Section III.A.4 of the CIA;
4. BPMC's systems, policies, and procedures with respect to the establishment and maintenance of written policies and procedures regarding the operation of its Compliance Program, as required by Section III.B of the CIA;
5. BPMC's systems, policies, and procedures with respect to the development of a written Training Plan and the steps taken to ensure that Covered Persons and Board Members receive the training required by Section III.C of the CIA;

6. BPMC's systems, policies, and procedures with respect to the risk assessment and internal review process required by Section III.E of the CIA;

7. BPMC's systems, policies and procedures relating to the Disclosure Program requirements of Section III.F of the CIA;

8. BPMC's systems, policies and procedures regarding the screening for Ineligible Persons, as required by Section III.G of the CIA;

9. BPMC's systems, policies and procedures relating to the identification, quantification and repayment of Overpayments received from any Federal award, as required by Section III.I of the CIA;

10. BPMC's systems, policies and procedures for the identification and reporting of Reportable Events as required by Section III.J of the CIA;

11. BPMC's systems, policies, procedures, and practices related to ensuring that BPMC's financial management system traces Federal award funds to a level of expenditures adequate to establish that such funds were used (i) according to Federal statutes, regulations, and the terms and conditions of BPMC's Federal awards, and (ii) in the manner represented by BPMC to HHS;

12. BPMC's systems, policies, procedures, and practices related to ensuring that BPMC's charges to Federal awards for salaries and wages are supported by records that document the distribution of an employee's salary or wages among specific activities or cost objectives if the employee worked on (a) more than one Federal award, (b) a Federal award and a non-Federal award, (c) an indirect cost activity and a direct cost activity, (d) two or more indirect activities which are allocated using different allocation bases, or (e) an unallowable activity and a direct or indirect cost activity;

13. BPMC's systems, policies, procedures, and practices related to ensuring that BPMC's charges to Federal awards are based upon actual costs incurred by BPMC, not budget estimates; and

14. BPMC's systems, policies, procedures, and practices related to ensuring that BPMC has in place safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

B. Compliance Program Review Report. The Compliance Expert shall prepare a report based upon each Compliance Program Review performed. For each of the Reviewed Policies and Procedures identified in Section A above, the report shall include the following items:

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

2. A detailed description of BPMC's systems, policies, processes, and procedures relating to items A.1-14 above;

3. Whether every BPMC site or affiliate was included and integrated into BPMC's Compliance Program;

4. A summary of the Compliance Expert's findings and recommendations regarding: whether BPMC's risk assessment and internal review process identifies and addresses relevant and appropriate risks and results appropriate tracking and monitoring of corrective action plans;

5. A summary of the Compliance Expert's findings and recommendations regarding any weaknesses in BPMC's systems, processes, policies, and procedures relating to items A.1-14 above and any recommendations for improvement in such systems, policies, processes, or procedures; and

6. The name(s) and credential(s) of the individual(s) who performed the Compliance Program Review.