

CONCILIATION AGREEMENT
Between the
U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

And

VHS Brownsville Hospital Company, LLC dba Valley Baptist Medical Center
1040 W. Jefferson St.
Brownsville, Texas 78520

PART I. PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated VHS Brownsville Hospital Company, LLC dba Valley Baptist Medical Center fka Valley Baptist Medical Center-Brownsville's ("Valley Baptist") facility located at 1040 W. Jefferson St., Brownsville, Texas 78520 and found that Valley Baptist was not in compliance with the Executive Order 11246, as amended ("E.O. 11246") and its implementing regulations at 41 C.F.R. Section(s) 60-1 and 60-2. OFCCP notified Valley Baptist of the specific violations found and the corrective actions required in an Amended Show Cause Notice issued on May 17, 2017.¹ In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Valley Baptist enter this Conciliation Agreement ("Agreement") and agree to all of the terms stated below.

PART II. GENERAL TERMS AND CONDITIONS

1. In exchange for Valley Baptist's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if Valley Baptist violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Valley Baptist agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Valley Baptist will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. Valley Baptist understands that nothing in this Agreement relieves Valley Baptist of any applicable obligation to comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 ("Section 503"), and/or Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 ("VEVRAA") and their implementing regulations, and other applicable equal employment

¹ Notice of Violations issued on June 6, 2014 and a Show Cause Notice on July 22, 2015.

laws.

4. Valley Baptist promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Southwest and Rocky Mountain Region ("the Effective Date").
9. This Agreement will expire sixty (60) days after Valley Baptist submits the final report required in Part IV, below, unless OFCCP notifies Valley Baptist in writing prior to the expiration date that Valley Baptist has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Valley Baptist has met all of its obligations under the Agreement.
10. If Valley Baptist violates this Agreement,
 - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
 - 1) If OFCCP believes that Valley Baptist violated any term of the Agreement while it was in effect, OFCCP will send Valley Baptist a written notice stating the alleged violations and summarizing any support evidence.
 - 2) Valley Baptist will have 15 calendar days from receipt of such notice to demonstrate in writing that it has not violated the Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - 3) If Valley Baptist is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
 - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of the underlying violations resolved by this Agreement.
 - B. Valley Baptist may be subject to the sanctions set forth in Section 209 of the Executive Order, and/or other appropriate relief for violation of this Agreement.

11. This Agreement does not constitute an admission by Valley Baptist of any violation of E.O. 11246 or other laws, nor has there been an adjudicated finding that Valley Baptist violated any laws.

PART III: SPECIFIC VIOLATIONS AND REMEDIES

1. **VIOLATION:** OFCCP alleges that at least as of September 30, 2012, Valley Baptist is not in compliance with 41 CFR 60-1.4(a)(1). Specifically, OFCCP's analyses of Valley Baptist's compensation practices and policies allege that Valley Baptist discriminated against 107 Hispanic employees when compared to Asian employees in the RN Level I, RN Level II, RN Level III, and RN Level IV positions, hereinafter the RN Level position.

OFCCP performed regression analyses based on the information gathered during the compliance review and found a [REDACTED] percent gap in pay for Hispanic employees that is statistically significant at over [REDACTED] standard deviations after controlling for legitimate explanatory factors.

Valley Baptist specifically denies that it has engaged in any wrongdoing or any violation of any law or regulation and enters this agreement purely to avoid litigation.

REMEDY: Valley Baptist will review its compensation practices and/or policies and take the following corrective actions:

- A. **Notice:** Within thirty (30) calendar days of the Effective Date of this Agreement, Valley Baptist must notify the Hispanic class members (Attachment A, "Class Members") of the terms of this Agreement by mailing by certified mail to each individual in the affected class the Notice to Class Member (Attachment B, "Notice"), Information Verification Form (Attachment C, "Verification Form"), a Release of Claims Under Executive Order 11246 Form (Attachment D, "Release"), and a postage paid return envelope. Valley Baptist will notify OFCCP of all letters returned as undeliverable on a weekly basis. In addition, within 45 days after the date of the mailing of the Verification Form and Release, Valley Baptist will provide OFCCP with a list of the individuals in the affected class who have not yet responded to the Notice and/or have not returned a signed Verification Form and Release. OFCCP will then attempt to obtain and provide updated addresses to Valley Baptist within 10 calendar days of receiving the list from Valley Baptist. Valley Baptist agrees to mail by certified mail a second Notice, Verification Form, Release and postage paid return envelope to all individuals for whom updated addresses were obtained within 10 days of receiving the updated addresses.
- B. **Eligibility:** All Class Members, listed separated on Attachment A, who sign and return the Verification Form and Release to Valley Baptist within 120 calendar days of the Effective Date of this Agreement will receive a share of the monetary settlement. If a Class Member receives, but does not return the Verification Form and Release to Valley Baptist within 120 calendar days of the Effective Date of this Agreement, the Class Member will no longer be entitled to any relief pursuant to this Agreement.

Within 10 calendar days after the response deadline set out in the Verification Form,

Valley Baptist will provide OFCCP with a list of the Eligible Class Members (individuals who returned the Verification Form and Release by the deadline), along with a copy of each Verification Form and Release it received. Within 20 calendar days after receiving the list, OFCCP will approve the final list of Eligible Class Members or discuss with Valley Baptist any issues necessary to finalize the list, such as the inclusion or exclusion of certain Eligible Class Members. OFCCP will calculate the total amount owned to each class member located and provide this information to Valley Baptist with the final list. All Eligible Class Members are entitled to their share of the monetary payment discussed in paragraph (C) below.

- C. **Monetary Settlement:** Valley Baptist agrees to distribute a total monetary settlement of \$190,000 (\$165,000 in back wages and \$25,000 in interest) less legal deductions required by law from back pay only (such as federal, state and/or local taxes and the Eligible Class Member's share of FICA taxes), in proportionate shares among all Eligible Class Members on the final approved list. Valley Baptist will pay the Internal Revenue Services ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS forms will be mailed at the end of the year. Valley Baptist will disburse the monetary settlement within 15 calendar days after OFCCP approves the final list of Eligible Class Members.

Within ten calendar days of Valley Baptist's receipt of a check to an Eligible Class Member returned as undeliverable, Valley Baptist will notify OFCCP of this fact via email sent to Compliance Officer (b) (7)(C), (b) (7)(E) at (b) (7)(C), (b) (7)(E)@dol.gov. OFCCP will attempt to locate the Eligible Class Member and if OFCCP obtains an alternate address or confirms the correct mailing address, Valley Baptist will re-mail the check within ten calendar days of receiving an alternate or corrected address. Any check that remains uncashed 120 days after the initial date the check was mailed to the Eligible Class Member will be voided. With respect to any uncashed funds, Valley Baptist will make a second distribution to all Eligible Class Members who cashed their first check if the amount of the un-cashed funds would result in a payment \$20.00 or more to each of the located Eligible Class Members. The second distribution will be made within thirty (30) days of uncashed check becoming void.

- D. **Non-Monetary Remedies:** Valley Baptist will ensure that all employees are afforded equal employment opportunities.
2. **VIOLATION:** OFCCP found that Valley Baptist failed to preserve all personnel and employment records in accordance with the requirements of 41 CFR 60-1.12(a), including but not necessarily limited to records related to rates of pay and/or other terms of compensation.

Specifically, Valley Baptist did not maintain records to evidence the job titles in each of its pay grades which were used to administer pay for employees. Valley Baptist did not maintain Budget Sheets initially given to Directors by Human Resources to assist Directors determine merit increase amounts. These Budget Sheets were used by Directors to make merit increase determinations.

REMEDY: If Valley Baptist has a federal contract or subcontract sufficient to establish coverage under E.O. 11246, then Valley Baptist will ensure that all personnel and employment records are preserved in accordance with the requirements of 41 CFR 60-1.12(a) and ensure that this violation does not recur.

3. **VIOLATION:** OFCCP found that Valley Baptist failed to properly conduct in-depth analyses of its compensation system to determine whether there were gender-, race- or ethnicity-based disparities in pay, in accordance with 41 CFR 60-2.17(b)(3) for its 2012 – 2013 Affirmative Action Program (AAP). Additionally, Valley Baptist did not implement action-oriented programs to correct any problem areas identified pursuant to 41 CFR 60-2.17(b)(3) and to attain established goals and objectives as required by 41 CFR 60-2.17(c). Further, in violation of 41 CFR 60-2.17(c), Valley Baptist failed to attain established goals and objectives of its AAP. Finally, in violation of 41 CFR 60-2.17(d)(1), Valley Baptist failed to develop and implement an auditing system that would measure the effectiveness of its total AAP.

REMEDY: If Valley Baptist has a federal contract or subcontract sufficient to establish coverage under E.O. 11246, then Valley Baptist will develop and implement an auditing system wherein analyses are performed that will allow Valley Baptist to properly determine whether there are gender-, race-, or ethnicity-based disparities in pay in order to implement action-oriented programs and identify if there are impediments to equal employment opportunities in its compensation system and ensure that this violation does not recur.

Part IV: REPORTS REQUIRED:

1. Valley Baptist must submit the documents and reports described below to: Dinorah S. Boykin, District Director of OFCCP, 615 E. Houston St., Ste. 340, San Antonio, Texas 78205.
 - A. Within the prescribed timeframes, Valley Baptist must submit all documents and information referenced in paragraphs (a), (b), and (c) of Remedy 1. Such documentation and information include, but are not necessarily limited to, letters returned as undeliverable, a list of Eligible Class Members who have not responded to or returned a Verification Form and Release within 45 days after the date of the mailing of the Verification Form and Release, a list of Eligible Calls Members who have returned a signed Verification Form and Release within 120 calendar days of the Effective Date.
 - B. Valley Baptist must submit a progress report covering each six month period this Agreement is in effect. The first progress report will be due seven months after the Effective Date of this Agreement and must cover the six-month period beginning with the Effective

Date.

- 1) Documentation of monetary payments to all Eligible Class Members as specified in paragraphs (c) of Remedy I. The documentation must include the names of Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. Valley Baptist must provide OFCCP with copies of all canceled checks upon request; and
2. Valley Baptist will retain all records and data pertinent to the violations resolved by this Agreement and/ or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later (or "whichever time period is longer").

Attachments:

- Attachment A, Class Members
- Attachment B, Notice to Class Members
- Attachment C, Verification Form
- Attachment D, Release of Claims Under Executive Order 11246

PART V: SIGNATURES

This Conciliation Agreement is hereby executed by and between the OFCCP and Valley Baptist.

(b) (6), (b) (7)(C)

Leslie Bingham
Chief Executive Officer
VHS Brownsville Hospital Company, LLC
dba Valley Baptist Medical Center
Brownsville, Texas

DATE: 1/18/2019

(b) (7)(C), (b) (7)(E)

Compliance Officer
San Antonio District Office, OFCCP
Southwest and Rocky Mountain Region

DATE: 23 January 2019

(b) (6), (b) (7)(C)

Dinorah S. Boykin
District Director
San Antonio District Office, OFCCP
Southwest and Rocky Mountain Region

DATE: 01/23/2019

(b) (6), (b) (7)(C)

Melissa L. Speer
Regional Director
Southwest and Rocky Mountain Region
OFCCP

DATE: 1-23-2019

Attachment A
Class Members

Count	Employee Number	Last Name, First Name	Race	Gender
1	(b) (6), (b) (7)(C)			
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36	(b) (6), (b) (7)(C)
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75	(b) (6), (b) (7)(C)
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Attachment B
Notice to Class Members

You may be eligible to get money because of a legal settlement between Valley Baptist Medical Center-Brownsville and the U.S. Department of Labor.

We are writing to provide information about a legal settlement between the U.S. Department of Labor and Valley Baptist Medical Center-Brownsville ("Valley Baptist") that may benefit you. This settlement involves claims of alleged disparate pay practices in the base hourly wage rate for the RN Level I, II, III, and IV ("RN Level") positions, and our records show that you may be one of the individuals covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages from Valley Baptist.

ARE YOU AFFECTED?

Hispanic employees in RN Level positions at Valley Baptist as of September 30, 2012 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") conducted an audit of Valley Baptist's pay practices as of September 30, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP alleged that Valley Baptist's pay practices in the base hourly wage rate for RN Level positions discriminated against Hispanic employees at its Brownsville, Texas facility.

Valley Baptist fully disputes and denies that it engaged in any discrimination. The matter was not adjudicated or decided by any Court. To avoid further dispute and litigation, we have agreed to resolve the issue through a Conciliation Agreement. A Conciliation Agreement is a legal document that is an agreement to settle a compliance evaluation.

As part of the settlement, Valley Baptist must pay money to Hispanic employees who were employed in RN Level positions as of September 30, 2012.

WHAT DOES THIS MEAN FOR YOU?

Because you were employed in a RN Level position as of September 30, 2012, this settlement may provide you with some specific benefits:

- (1) You may be eligible to receive a payment of at least \$_____ (before taxes). This payment represents your share of back wages and other payments Valley Baptist is making to settle

the lawsuit. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.

- (2) To get these benefits, you will need to release (give up) certain legal claims. A copy of the release for you to sign is included with this Notice.

WHAT IS YOUR NEXT STEP?

You should read this Notice and the Verification Form carefully and any other information you received from the Department of Labor or Valley Baptist. Please do not ignore this Notice or throw it away.

It is very important that you fill out and return the form in this envelope on time. Otherwise, you could miss out on getting money.

To be eligible for a payment, you must complete, sign, and return the enclosed Verification Form **[insert actual date - by 120 days from effective date of Agreement]**. There are instructions on the form about how to mail it in.

The Verification Form must be received by [insert actual date – by 120 days from effective date of Agreement].

You may receive some or all of these benefits only if the information on your Verification Form confirms that you are one of the people covered by the settlement. After you complete and return the document, a final decision will be made about your eligibility.

You must follow all of the instructions in this notice and return all of the documents by the deadline [insert actual date – of 120 days from effective date of Agreement] to receive any money or any other relief provided to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact Compliance Officer **(b) (7)(C), (b) (7)(E)** at 210-472-5835 and/or **(b) (7)(C), (b) (7)(E)**@dol.gov. You can also visit the U.S. Department of Labor website about this case at [class member locator link]

Attachment C
Information Verification Form

Information Verification Form

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS INFORMATION VERIFICATION FORM.

INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR
MONEY (BACK WAGES) FROM THE SETTLEMENT

DEADLINE TO RESPOND IS [insert actual date - by 120 days from effective date of Agreement]

If you complete this Verification Form, you may be eligible for a money payment from the settlement.

To receive an award (such as money), you must complete and return this Verification Form and Release Form postmarked or hand-delivered on or before [Deadline above], to

[Name and Address]

If you do not submit a properly completed Verification Form and Release Form on or before [insert actual date - by 120 days from effective date of Agreement], then your claim will not be on time and **you will not receive any money from this settlement.**

Enclosed is a stamped, pre-addressed envelope you can use.

This Verification Form will only be used for the following purpose:

- (1) To confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment.

Step 1: Please confirm the following contact information to process your payment (print legibly).

Name: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

I confirm that the address on the cover letter is correct.

The address on the cover letter is not correct. My correct address is:

Address: _____

Please verify [or provide] the last four digits of your social security number _____

The last four digits of your Social Security Number are required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address changes within the next three months, or contact us if you have any questions about this Verification Form, the notice, or the settlement.

Name
Address
Phone
Email/website link

Step 2: Sign and return along with the Release Form

I certify the above as true and correct.

Signature

Date

Attachment 4
Release of Claims Under Executive Order 11246

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Valley Baptist Medical Center-Brownsville ("Valley Baptist") paying you money, you agree that you will not file any lawsuit against Valley Baptist for allegedly violating Executive Order 11246 in connection with its compensation procedures for employees in RN Level I, II, III, and IV ("RN Level") positions. It also says that Valley Baptist does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of the payment of at least \$ _____ (less deductions required by law) by Valley Baptist to me, which I agree is acceptable, I _____ agree to the following:
print name

I.

I hereby waive, release and forever discharge Valley Baptist; its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to my compensation as a RN Level employee on the basis of my race, at any time through the effective date of this Release.

II.

I understand that Valley Baptist denies that it treated me unlawfully or unfairly in any way and that Valley Baptist into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve alleged disparities in compensation and to resolve the matter without further legal proceedings in the Compliance Review initiated by OFCCP on November 8, 2012. I further agree that the payment of the aforesaid sum by Valley Baptist to me is not to be construed as an admission of any liability by Valley Baptist.

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

IV.

I understand that if I do not sign this Release and return it to Valley Baptist ON OR BEFORE XX/XX/2019 (WITHIN 120 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS RELEASE WAS POSTMARKED), I will not be entitled to receive the payment (less deductions required by law) from Valley Baptist.

IN WITNESS WHEREOF, I have signed this document on this _____ day of _____, 2019.

Signature