

LONG TERM CARE PHARMACY ALLIANCE
TRANSITIONAL ASSISTANCE BENEFIT CARD PROGRAM
NON-NETWORK PROVIDER AGREEMENT

This NON-NETWORK PROVIDER AGREEMENT ("Agreement") is entered by and between Long Term Care Pharmacy Alliance, a Delaware limited liability company ("LTCPA"), and _____ ("Provider"), a _____ organized under the laws of the State of _____, and shall become effective on the date it is fully executed by both Parties (the "Effective Date").

RECITALS

1. LTCPA will provide and manage, directly and through its contractor partner Affiliated Computer Systems, Inc. (ACS), a Medicare Transitional Assistance Benefit Card Program (the "Card Program") for eligible long term care facility residents, including claims administration, prescription dispensing and other pharmacy management services.
2. Provider wishes to provide services to a long term care facility resident participating in LTCPA's Card Program, but is not a member of LTCPA's pharmacy network, in accordance with and subject to the terms and conditions set forth herein.

TERMS AND CONDITIONS

1. DEFINITIONS For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below:

"AWP" means average wholesale price.

"Card Program " means a Medicare Transitional Assistance Benefit Card program through which prescription drug benefits are available to eligible Medicare beneficiaries residing in long term care facilities.

"Covered Medications" means those prescription drugs, supplies and other items prescribed by an authorized, licensed medical practitioner that are covered by the Card Program.

"Identification Card" means the transitional benefit Medicare card issued to the Member pursuant to the Card Program.

"Member" means a Medicare beneficiary residing in a Long Term Care facility to which transitional assistance is available pursuant to the LTCPA Card Program.

"NCPDP" means the National Council for Prescription Drug Programs.

"Pharmacies" means the pharmacies that are owned (directly or indirectly) or operated by Provider and licensed by the appropriate state board of pharmacy or other applicable regulatory authority, and "Pharmacy" means any such pharmacy. If Provider owns only one Pharmacy, then "Provider" and "Pharmacy" are used interchangeably in this Agreement.

"Prescription Drug Program" means the Card Program provided by LTCPA under the Medicare Statute.

"Usual and Customary Retail Price" means the price that the pharmacy or Provider would charge a customer in the absence of the Card Program.

2. PHARMACY SERVICES

- A. Provider agrees to participate in the Medicare Drug Discount Card Program. As part of that agreement, Provider shall, or shall cause the Pharmacies to, provide the following services in connection with LTCPA's Prescription Drug Program:
1. Verification of Participation. Determine, through reasonable means, that the Member may be eligible for benefits under the Card Program.
 2. Dispensing. Dispense Covered Medications to each Member in accordance with all applicable laws and regulations of the Card Program, and respond to messages such Pharmacy receives from LTCPA or ACS.
 3. Claims. Submit applicable prescription drug claims to ACS, on behalf of LTCPA, or ACS in the most current NCPDP telecommunications format for processing and payment, and include the eleven digit NDC number for the original package size for the Covered Medication. If a claim cannot be transmitted on-line, the dispensing Pharmacy will make reasonable attempts to retransmit the claim. If such retransmission fails, such Pharmacy shall contact ACS as soon as reasonably practicable by telephone to make acceptable alternative arrangements to submit the claim on magnetic tape or NCPDP universal claim form. Provider shall make reasonable efforts to submit each claim within 30 days after the prescription is filled.
 4. Drug Utilization Review (DUR) Services. Provide reasonable DUR services with regard to Covered Medications that the Member is taking. Reasonable DUR services shall include, at a minimum, such services as required under applicable federal or state law or regulation.
- B. Standards of Service. Provider shall, and shall cause its Pharmacies to, perform the services required of it under this Agreement with at least the same standard of

care, skill and diligence that is customarily used by pharmacies in the community and that Provider and its Pharmacies use in serving other customers. Provider agrees that the administrative and billing practices applied and the prices charged for products and services to holders of Identification Cards shall be an amount no greater than the lower of (1) the Usual and Customary Retail Price or (2) the AWP plus six (6) dollars for dispensing charges. The Provider further agrees that it will not charge a Member any additional fees, irrespective of the pricing methodology employed, solely because of participation in the Card Program, nor issue any coupons to any such Member.

- C. Compliance with Applicable Law; Permits and Licenses. Provider shall, and shall cause all Pharmacies to, be bound by and comply with the provisions of all applicable laws, rules and regulations of the state board of pharmacy and other governmental bodies having jurisdiction over Pharmacies and state and Federal privacy and security regulations, including without limitation, those set out in 42 C.F.R. §403.812, and all license and permit requirements that are required to dispense Covered Medications to Members.
- D. Multiple Pharmacies. If Provider owns or controls more than one Pharmacy, then all Pharmacies owned or controlled by Provider shall provide services to Members in accordance with this Agreement unless Provider and LTCPA otherwise agree in writing.
- E. Prohibited Sales. The Provider or Pharmacy shall not seek benefits under the Card Program for the purchase of over the counter drugs or any drugs that are excluded from the definition of “covered drugs” under the Program.
- F. 42 C.F.R. § 403.816(b)(4)(i) Waiver. LTCPA agrees to waive any penalties against long term care pharmacies for submitting late claims to the special endorsed sponsor due to the pharmacy’s coordination of benefits activities;
- G. 42 C.F.R. § 403.816(b)(4)(ii) Requirement: The provision of services under this Agreement shall be limited to only transitional assistance enrollees who reside in a long term care facility serve by the long term care pharmacy.
- H. Out of Network Administrative Fee: Provider agrees to pay LTCPA a fee of five dollars (\$5.00) per year for each Member to whom it administers services under the LTCPA Prescription Drug Program covered by this Agreement. Such payment shall be due within 30 days following the Provider’s utilization of the LTCPA Prescription Drug Program. If a Member is enrolled in LTCPA’s Prescription Drug Program during 2004, and remains enrolled in 2005, such payment shall be made no later than January 30, 2005.

3. LIABILITY INSURANCE; INDEMNITY

- A. Provider shall obtain and maintain, and shall cause the Pharmacies to obtain and maintain, in full force and effect and throughout the term of this Agreement such policies of general liability, professional liability and other insurance of the types and amounts as are reasonably and customarily carried by pharmacies with respect to their operations.
- B. LTCPA shall not be liable or suffer loss for any claim, injury, demand, or judgment of any kind whatsoever arising out of the sale, compounding, dispensing, manufacturing, consultation or use of any prescription drug or any service provided by a Pharmacy or Provider pursuant to this Agreement. Regardless of the insurance coverage required herein above, Provider shall indemnify, defend and hold harmless LTCPA, its officers, directors and employees, against the full amount of any and all loss, expense, claim, or damage (including expert and professional fees and attorneys fees) arising out of or attributable to the sale, compounding, dispensing, manufacturing, consultation or use of any prescription drug or any service provided by a Pharmacy or Provider pursuant to this Agreement.

4. RECORDS

Provider and the Pharmacies shall maintain medical, financial and administrative records relating to Members and their prescriptions for Covered Drugs in accordance with applicable law and as required for quality assurance and peer review programs. The parties agree that such records shall be treated as confidential so as to comply with all applicable state and Federal laws regarding the confidentiality of patient records.

5. ADVERTISING, MARKETING AND RESERVATION OF RIGHTS

LTCPA may use Provider's and any Pharmacy's name, location and description of services for purposes of advertising or marketing prescription drug programs for or related to any communication, application, licensing requirement or other legal requirement mandated by any governmental authority.

6. TERM

- A. The term of this Agreement shall commence on the Effective Date and continue for at least the lifetime of the Card Program, unless terminated or extended as provided in this Section 6.
- B. Notwithstanding any provision to the contrary, the parties hereto agree that in the event either (i) Provider or any Pharmacy, on the one hand, or (ii) LTCPA, on the other, shall default in performance of any of their respective obligations under this Agreement and good faith efforts to cure such default have not begun within 30 days after the receipt of written notice thereof, the nondefaulting party shall have

the right by further written notice to the defaulting party to terminate this Agreement effective as of any future designated date, not less than 30 days from the date of the termination notice. The foregoing sentence shall also give LTCPA the right to terminate any Pharmacy without terminating the Agreement as a whole, in the event that such Pharmacy defaults and fails to cure such default, as provided above.

- C. LTCPA may immediately terminate this Agreement, with respect to Provider or a Pharmacy, respectively, upon written notice in the event that (i) Provider or such Pharmacy ceases to be licensed by the appropriate licensing authority, (ii) Provider or such Pharmacy submits a fraudulent prescription drug claim or any information in support thereof, (iii) any representation to LTCPA or any response to a question set forth on the Provider Certification is untrue, or (vi) there is a change in ownership of Provider (unless Provider is a public company) without LTCPA's prior consent, which consent cannot be unreasonably withheld.

7. MISCELLANEOUS

- A. Any notice required to be given pursuant to the terms hereof shall be in writing and sent by ordinary or express mail to the other party at the address listed below or to the last reported address of such party:

If to: LTCPA
Attn: Paul Baldwin
Address: 1025 Connecticut Ave., N.W.
Washington, D.C. 20006

If to a Pharmacy, to the address set forth hereto, or the last known address.

- B. Any reference to the parties in this Agreement shall include, apply to, bind and benefit the permitted assigns and successors of the parties and any corporation, partnership, individual, or person acting in a fiduciary capacity on their behalf.
- C. This Agreement, including the Exhibits, constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and, upon execution by the parties, supersedes all prior oral or written agreements between the parties with respect to the subject matter hereof. No modification, alteration or waiver of any term, covenant or condition of this Agreement shall be valid unless agreed to in writing by both parties, except as hereinafter set forth. Notwithstanding the foregoing, Provider and LTCPA agree that LTCPA may amend this Agreement to comply with any changes required or suggested by the appropriate regulatory authorities in the course of discharging their responsibilities under applicable laws and regulations. LTCPA shall furnish Provider with written notice of such amendments. In the event any such amendment constitutes a material change in the terms of the Agreement that is unacceptable to Provider, Provider may elect to

terminate this Agreement by giving written notice of such election to terminate to LTCPA within 20 days of receipt of amendment, and such termination shall be effective no earlier than 60 days after receipt of written notice by LTCPA. If Provider does not so elect to terminate this Agreement within such 20 day period, such amendment will be deemed approved by Provider and LTCPA and shall automatically become a part of this Agreement. Provider further agrees that LTCPA may amend all policies and procedures of LTCPA, in its sole discretion, and such amendment shall not require consent of Provider or a Pharmacy.

- D. Provider and LTCPA acknowledge, Provider on its behalf and on behalf of its Pharmacies, that in the performance of the services to be rendered hereunder, Provider and the Pharmacies will have access to certain confidential business information of the other (collectively, the "Confidential Information"). The parties shall not disclose or use or enable anyone else to disclose or use, in whole or in part, any such Confidential Information other than for the purpose of providing the services to be provided hereunder and shall promptly return all Confidential Information to the other upon termination of this Agreement.
- E. This Agreement shall be construed and governed in all respects according to the internal laws in the State of New York, and all actions or disputes arising out of this Agreement shall be resolved in binding arbitration under the rules of the American Arbitration Association, with such proceeding to be conducted in Washington, D.C.
- F. The relationship created hereunder is that of independent contractors and nothing herein shall create or be deemed to create an agency, partnership or joint venture relationship between the parties. No provision of this Agreement shall be construed to require any pharmacist to dispense any Covered Medication to any Member if, in the pharmacist's reasonable professional judgment, such Covered Medication should not be dispensed to such person. In such event, Provider agrees to notify LTCPA of the circumstances of the decision not to dispense such Covered Medication.
- G. No waiver of a breach of any covenant or condition shall be construed to be a waiver of any subsequent breach. No act, delay or omission done, suffered, or permitted by the parties shall be deemed to exhaust or impair any right, remedy or power of the parties hereunder.
- H. Should any provision of this Agreement be held or ruled unenforceable or ineffective under the law, such a ruling will in no way affect the validity or enforceability of any other clause or provision contained herein.
- I. This Agreement shall not be assigned, in whole or in part, by either party without the prior written consent of the other.

J. The persons signing below represent that they have the legal authority to bind the entity for whom they are signing.

IN WITNESS WHEREOF, the undersigned have executed this Pharmacy Provider Agreement as of the day and year first above written.

LONG TERM CARE PHARMACY ALLIANCE

By: Paul Baldwin
Title: Executive Director

NAME OF PHARMACY

By:
Title: