

**CONTRACT BETWEEN
THE DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES
AND
MEDICARE PART D
PRESCRIPTION DRUG PLAN**

THIS CONTRACT is entered into between the State of Delaware, Department of Health and Social Services (the Department), Division of Medicaid & Medical Assistance (the Division) and the Medicare Part D Prescription Drug Plan (PDP) identified on the signature page of this Contract. The Contract is effective as of January 1, 2006, upon the completion of signatures by both parties.

RECITALS

The Delaware Prescription Assistance Program (DPAP) and the Delaware Chronic Renal Disease Program (CRDP) are designed to subsidize certain costs associated with participating in Medicare Part D for eligible individuals. The subsidy provided to Medicare Part D enrollees by the DPAP and CRDP qualifies both programs as State Pharmaceutical Assistance Programs (“SPAPs”) pursuant to the Centers for Medicare & Medicaid Services (“CMS”) Guidance. In order to maintain those qualifications, at its inception, the DPAP Program and the CRDP Program will assist members who enroll in Medicare Part D by subsidizing their basic level plan premium payments. Under existing program requirements, DPAP and CRDP members with Medicare A or B must select and enroll in a PDP of their choice and apply for the Part D low-income subsidy as conditions of eligibility.

MUTUAL COVENANTS

In consideration of the mutual promises and covenants herein, and intending to be bound hereby, the Parties hereto contract and agree as follows:

1. DEFINITIONS

- a. “PDP” means a Medicare Part D Prescription Drug Plan under contract with the Centers for Medicare & Medicaid Services to deliver prescription drug benefits to Part D enrolled Medicare beneficiaries.
- b. “Confidential Information” means any proprietary material or data, whether in tangible or intangible form, that is not generally known to the public and that is acquired, developed, compiled, or prepared by or for the benefit of a party to this Contract, including, but not limited to: client information and identification; service provider information and identification; DPAP and CRDP member information and identification; methods; systems; practices; plans; programs; products in development; reports; financial data and all of other similar information which is not

available to the public. Confidential information may only be used by the receiving party in connection with the tasks described in this Contract and may not be copied or reproduced without the disclosing party's prior written consent.

- c. "CMS" means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.
- d. "Low-Income subsidy" means the subsidy available to partial or full subsidy eligible individuals under Part D of the Medicare Modernization Act.
- e. "HIPAA" means the federal Health Insurance Portability Act of 1996 and its associated regulations.
- f. "Member" means an individual eligible and enrolled in the Delaware Prescription Assistance Program or the Chronic Renal Disease Program.
- g. "DPAP" means the Delaware Prescription Assistance Program
- h. "CRDP" means the Chronic Renal Disease Program.
- i. "SPAP" means the State Pharmacy Assistance Programs, DPAP and CRDP.
- j. "Part D eligible individual" means an individual who meets the requirements at CFR §423.30(a).
- k. "State" means the State of Delaware.

2. MEDICARE PART D PRESCRIPTION DRUG PLAN RESPONSIBILITIES

The Prescription Drug Plan named on the signature page of the Contract agrees to accept the prospective premium payments and premium payment reconciliations made by the Department on behalf of its DPAP or CRDP members who have selected and enrolled in the PDP. The PDP agrees to hold harmless the DPAP or CRDP members for the basic level premiums for those months when the DPAP or CRDP members are covered by the Delaware Prescription Assistance Program or the Chronic Renal Disease Program. The PDP also agrees to reimburse any DPAP or CRDP member for any premiums paid by the members which are covered under the terms of this contract. The tasks to be performed under this Contract include, but may not be limited to:

- a) Coordinating with the DPAP and CRDP Programs in identifying Member Enrollees;
- b) Accepting and reconciling the monthly prospective premium subsidy payments that the DPAP and CRDP Programs agree to make on behalf of Member Enrollees;

- c) Accepting and reconciling the premium payment reconciliations made on behalf of Member Enrollees who are added or terminated during the contract period;
- d) Accounting for any Part D low-income subsidy eligibility and applying the DPAP or CRDP premium payment subsidy to the Member Enrollee's total premium costs;
- e) Separately billing Member Enrollees for any premium owed in excess of the premium subsidy paid by the DPAP or CRDP Programs;
- f) Accounting for the subsidies received from the DPAP or CRDP Programs;
- g) Sharing or exchanging utilization data and enrollment information as mutually agreed to by the PDP and the Department;
- h) Providing documentation that the PDP has a valid and current contract with CMS to provide prescription drug benefits to Part D enrolled Medicare beneficiaries.
- i) Providing, at the request of the Department, timely restitution of overpayments made on behalf of DPAP or CRDP members who may be added or terminated during the contract period. Credits against future premium payments may be used alternatively.
- j) Providing any records necessary to the Department to substantiate Part D eligibility and premium payment obligations related to the terms and purpose of this contract. The Department will provide prior notice to all requests for records.

3. DEPARTMENT OF HEALTH AND SOCIAL SERVICES, DIVISION OF MEDICAID & MEDICAL ASSISTANCE RESPONSIBILITIES

The Department of Health and Social Services, Division of Medicaid & Medical Assistance will prospectively pay an amount equal to the basic plan level monthly premium for each DPAP or CRDP member enrolled in the PDP minus any applicable low-income subsidy for which the member may qualify. Where a DPAP or CRDP member selects an enhanced Part D plan, the member is responsible for paying the difference between the basic level plan and the enhanced premium rate. The Department will assure payment of monthly premiums for DPAP or CRDP enrolled individuals only. The Department will not reimburse the PDP for any individual not eligible for DPAP or CRDP at the time a prescription service is rendered. The tasks to be performed under this contract include but may not be limited to:

- a) Issuing prospective premium payments in a timely manner.
- b) Issuing premium payment subsidies for the basic level PDP plan or the Regional LIS premium amount where no basic plan exists.
- c) Participating in the CMS-sponsored SPAP data exchange in order to provide DPAP and CRDP member information to the PDP.
- d) Providing DPAP and CRDP member information in any other mutually agreed upon data exchange.
- e) Sharing or exchanging utilization data and enrollment information as mutually agreed to by the Department and the PDP.

4. CHANGES TO THE CONTRACT

Any changes needed to reflect the changing nature of the Part D Medicare Prescription Drug program or the changing scope of tasks to be performed under this contract shall be made according to a fully executed Contract Amendment between the parties.

5. CONFIDENTIAL INFORMATION

The Parties acknowledge that, during the course of this Contract, Confidential Information will be exchanged. Each Party, for itself and each of its officers, directors, employees, and agents, agrees to hold the Confidential Information in the strictest confidence and to take all reasonable precautions necessary to assure that Confidential Information is not disclosed to third-parties, other than those expressly identified in the Contract. No Party shall use, sell, transfer, publish, re-disclose, display, or otherwise make Confidential Information available to third parties without the express written consent of the other Party. Upon request, each Party will return any Confidential Information received or, alternatively, confirm in writing that it has destroyed all such Confidential Information.

6. RECORDS AND AUDIT

Audits. The PDP will maintain records to substantiate the PDP's premium charges and receipts under the Contract for a period of five (5) years following the termination of this Contract. The Department will have access to such records for purposes of audit, either through its own representatives, State or federal representatives, or through an accounting firm selected by the Department. The Department will provide prior notice for all requests for records. Notwithstanding the terms of the audit requirements, the Department shall not be given access to: (i) the proprietary information of other PDP customers or contracts; (ii) PDP locations that are not related to the Department or the services covered under this contract; or (iii) the PDP's internal costs.

Cooperation. The PDP will reasonably cooperate in audits and reviews and furnish requested information on a timely basis.

Loss of Data. The PDP shall take all commercially reasonable steps to retain and secure all records subject to audit and all work papers and material owned by the Department, including the use of commercially acceptable, electronic storage, retrieval and recovery systems. In the event of loss of any Department data or records by the PDP (or its employees, agents or subcontractors), the PDP will be responsible for recreating such lost data at its expense.

7. INDEMNIFICATION

General Indemnification. The PDP shall indemnify, defend and hold harmless the Department, its affiliates, any State Program affiliated or administered by the

Department, and their respective officers, directors, employees, agents, members, successors and assigns, or any employee of the State from and against liability for any third-party suits, actions or claims:

(a) of any nature arising from or relating to any harm allegedly resulting solely from the negligent act or omission or willful misconduct of the PDP or a subcontractor or assignee of the PDP in the performance of, or the failure to perform, its obligations under this Contract or services under the summary, including the PDP's breach of its obligations with respect to the Department's Confidential Information; and

(b) relating to or arising out of any theft or other misappropriation of the Department's tangible or intangible property or funds by PDP or any of PDP's employees, subcontractors, or authorized agents.

Responsibility for Claims and Liability. Neither the Department nor the State of Delaware have an obligation to provide legal counsel or a defense or pay any judgment entered against, or the settlement of any claims by or on behalf of the PDP (or any of its employees, agents, subcontractors, successors, or assigns) in connection with any suit, claim or action of any nature is asserted by any person against the PDP (or any of its employees, agents, subcontractors, successors, or assigns) in connection with, or relating to, this Contract. The PDP shall immediately notify the Department of any claim or suit made or filed against the PDP or its subcontractors regarding any matter resulting from or relating to the PDP's obligations under the Contract, and will cooperate, assist, and consult with the Department in the defense or investigation of any claim, suit, or action made or filed against the Department or the State as a result of or relating to the PDP's performance under this Contract.

8. DISPUTES.

Pending resolution of a claim, the PDP shall proceed diligently with the performance of the Contract in accordance with the Department's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the PDP must file a written notice of claim with the Department within thirty (30) calendar days after the basis for the claim is known or should have been known, whichever is earlier.

Contemporaneously with or within calendar thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the PDP must submit to the Department its written claim containing the following information:

(i) An explanation of the claim, including reference to all contract provisions upon which it is based;

(ii) The amount of the claim;

(iii) The facts upon which the claim is based;

(iv) All pertinent data and correspondence that the PDP relies upon to substantiate the claim; and

(v) A certification by a senior official, officer, or general partner of the contractor or the subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the contract adjustment for which the person believes the procurement agency is liable.

A notice of claim or a claim that is not filed within the time prescribed shall be dismissed.

9. REPRESENTATIONS AND WARRANTIES BY PDP

The PDP represents and warrants that it has the power, authority, and legal right to execute and deliver this Contract and to perform its obligations hereunder. The execution and delivery of this Contract and the performance of its obligations hereunder have each been duly authorized by all necessary corporate action. The PDP's obligations under this Contract are legal, valid, and binding obligations.

Neither the execution and delivery of this Contract nor the performance of its obligations hereunder violates, conflicts with, or results in the breach of any term or provision of: (a) any law, ordinance, or governmental rule or regulation; (b) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority of which the PDP is aware and which is applicable to the PDP; (c) The PDP's organizational documents; (d) the PDP's bylaws, or (e) any mortgage, indenture, agreement, contract, commitment, lease, plan, instrument, security agreement, financing agreement, or document or other agreement to which the PDP is subject.

The PDP represents and warrants that no authorization, approval, or consent of any person or entity, which consent has not already been obtained, is necessary or advisable in connection either with the execution and delivery of this Contract or with the performance of its obligations hereunder. No registration or filing with any governmental or regulatory official, body or authority, which registration or filing has not already been accomplished, is required in connection either with the execution and delivery of this Contract by the PDP of its obligations hereunder.

The PDP warrants and represents that it is qualified to do business in the State of Delaware as a licensed entity or has obtained the necessary waiver from CMS to offer prescription drug plans in Delaware and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified. It is not in arrears with respect to the payment of any monies due and owing the State of Delaware, or any department or unit thereof, including but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.

The PDP warrants and represents that it has the resources to perform the tasks required by this Contract with the degree of professional skill, sound practices and judgment normally exercised by recognized professionals with respect to services of a similar nature.

10. SUBCONTRACTING AND ASSIGNMENTS

The PDP may not subcontract any portion of the services under this Contract without providing prior notification to the Department, nor may the PDP assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department. The Department shall not be responsible for the fulfillment of the PDP's obligations to the subcontractors. The PDP may assign monies receivable under a contract after due notice to the Department.

11. TERMINATION

Automatic Termination. The Department may, by written notice of default to the PDP, terminate the whole or any part of this Contract in any one of the following circumstances: (a) If the PDP fails to perform within the time specified herein or any extension thereof; or (b) If the PDP fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 calendar days (or such longer period as the Department may authorize in writing) after receipt of notice from the Department Secretary of the Division Director specifying such failure.

Termination for Convenience. The performance of work under this Contract may be terminated by the Department in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. Any such termination shall be effected by delivery to the PDP of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

Termination for Cause. Any changes in Federal or State Law or regulation that affects any provision or term of the Contract shall automatically become a provision or term of this Contract.

12. NOTICES

Any notice, request, demand, waiver, consent, approval, or other communication which is required or permitted under this Contract shall be in writing and shall be hand-delivered or sent by express delivery with signature verification, to the address provided below. Notice shall be deemed to have been given on the date such notice is delivered to the affected party. Notice shall be sent as follows:

If to the Department:

Rosanne Mahaney, Acting Director
Division of Medicaid & Medical Assistance
P.O. Box 906
New Castle, DE 19720

With a copy to:

Laura Scott, TPL Administrator
Division of Medicaid & Medical Assistance
P.O. Box 906
New Castle, DE 19720

If to the PDP: to the principal named on the signature page of this Contract, or designee as assigned by the PDP.

13. HIPAA BUSINESS ASSOCIATES AGREEMENT

In carrying out its HIPAA responsibilities, the PDP, shall not use, and shall ensure that its directors, officers, employees, Contractors and agents and representatives do not use, Protected Health Information (PHI) received from the Department or any of its State Pharmacy Assistance Program plans or other sources in any manner that would constitute a violation of the Health Insurance Portability and Accountability Act (HIPAA), or the Privacy Regulations (Title 45 Code of Federal Regulations parts 160 and 164), if used by the Department or any of its contracting health plans, except that the PDP may use PHI for: (a) the PDP's proper management and administrative services; or (b) to carry out the legal responsibilities of the PDP.

14. GENERAL PROVISIONS

No Joint Venture. Nothing in this Contract will be deemed to create a joint venture or employment relationship between the Parties to this Contract. In the negotiation, execution, and performance of this Contract, each Party (and their respective officers, agents, contractors, and employees) act as independent contractors.

Entire Understanding/Integration. This Contract contains the entire understanding of the Parties hereto with regard to the subject matter of this Contract. This Contract supersedes all prior agreements, understandings, negotiations, and discussions among the Parties concerning any of the matter contained herein. Except as expressly stated in this Contract, neither Party has relied upon any representations, warranties, assumptions nor inducements of any kind whatsoever, whether express or implied, by any other Party or by any third-party in connection with the execution of this Contract.

No Oral Modification. No changes, amendments, modifications, or alterations to this Contract will be effective unless they are in writing and are signed by all affected Parties. With respect to the Department, no modification is effective unless it has been signed by the Department Secretary or the Division Director.

Delaware Law. The validity, effect, construction, interpretation, enforcement, and administration of this Contract, as well as the validity, effect, construction, interpretation, enforcement, and administration of any modification, alteration, or amendment or attempted modification, alteration, or amendment hereto, shall be governed by the substantive law of the State of Delaware, without regard to its choice of law rules, it being the intent of the Parties for Delaware substantive law to apply to any dispute

under this Contract.

Recitals and Exhibits. The Recitals set forth above are not merely explanatory, but are part of the substantive terms of this Contract.

Authority of Signatories. Each person signing this Contract represents that he has the authority to sign on behalf of the entity on whose behalf he has signed.

Invalidity. Should any provision of this Contract subsequently be held to be illegal, invalid, or unenforceable under any present or future laws or judicial decisions, such provision shall be fully severable from the remainder of the Contract, the remainder of the provisions of the Contract shall not be affected thereby and shall continue to be enforceable to the full extent permitted by law, and, in lieu of such illegal, invalid, or unenforceable provision, there shall be added a substitute provision as similar in terms as may be possible that is legal, valid, and enforceable.

Department of Health and Social Services
Division of Medicaid & Medical Assistance

SIGNATURE PAGE

FOR THE PRESCRIPTION DRUG PLAN SIGNATURE

Signature

Date

Type or Print:

Name of the Individual Signing the Contract

Title

Name of the PDP as Indicated on the Enrollment Application

Place of Service Address on the Enrollment Application

DO NOT WRITE BELOW THIS LINE: NOT FOR PDP USE.

FOR THE DIVISION OF MEDICAID & MEDICAL ASSISTANCE SIGNATURE

Signature

Date

Rita Landgraf

DHSS Secretary

(or) Rosanne Mahaney (Designee)

DMMA Acting Director

The State of Delaware/Department of Health and Social Services/Division of Medicaid & Medical Assistance Program

Organization/Company Name

For Office Use Only

Type

Initials

Date

Name of the PDP Applying for DMMA Enrollment