



**NATIONAL ASSOCIATION OF
COMMUNITY HEALTH CENTERS, INC[©]**

ISSUE BRIEF # 16
Systems Development Series

**CONTRACTING WITH A PHARMACY MANAGEMENT SERVICES COMPANY
TO OPERATE A CENTER'S LICENSED, IN-HOUSE PHARMACY**

July, 1999

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Supplementary Information for Issue Brief #16
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Compensation paid by a tax-exempt organization (such as a health center) to a vendor of services must be "reasonable" in amount, i.e. constitute a fair price compared to what similarly qualified vendors charge for similar services in the center's market. In short, for tax purposes, the amount of compensation paid to a vendor is critical, not necessarily the method of payment. Accordingly, any adverse tax consequences that may arise from "percentage of revenue" compensation may be avoided if the compensation to be paid is "capped" at an amount that is "reasonable" under the circumstances.

Issue Brief #16
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*Contracting With a Pharmacy Management
Services Company to Operate a Center's
Licensed,
In-House Pharmacy*

July, 1999

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**CONTRACTING WITH A PHARMACY MANAGEMENT SERVICES COMPANY
TO OPERATE A CENTER'S LICENSED, IN-HOUSE PHARMACY**

I. Introduction

Approximately 350 health centers own and operate their own licensed, in-house pharmacies. Most of these centers employ their own pharmacists and establish their own operating systems. Recently some centers have sought to contract with pharmacy management services firms to operate the center's pharmacy with the center retaining the license. Some centers have requested technical assistance from NACHC relative to the key features needed in such a management contract.

The financial and other benefits that a health center might gain through a pharmacy management contract must be evaluated on a case-by-case basis. However, since pharmacy services are highly regulated under state law and the health center's compliance with the PHS Drug Pricing Program authorized by Section 340B of the Public Health Service Act ("340B") and federal grant requirements must be assured, there are numerous legal issues that must be properly addressed when contracting with an outside vendor for pharmacy management services. NACHC's legal counsel, Feldesman, Tucker, Leifer, Fidell & Bank, has prepared the following list of contract elements that should be present in every pharmacy management services contract negotiated by a health center, and incorporated these into a sample contract. These recommendations are presented only as a technical assistance guide and should not be considered, nor substituted for, specific legal advice. Health centers should have their own qualified counsel review proposed pharmacy management contracts. It should be noted that this Issue Brief does not pertain to health center contracts with local retail pharmacies or retail chains where the center does not own a pharmacy license. Please see NACHC Issue Brief #6 for technical assistance guidance for retail contracts using 340B.

II. Key Elements of a Pharmacy Management Services Contract.

It is important to remember that a health center operating a licensed in-house pharmacy remains legally responsible for the operation of the pharmacy, even if the day-to-day management is

contracted to a pharmacy management services company. Moreover, only the health center, not the pharmacy services manager, is considered a "covered entity" under the 340B program. The health center retains the responsibility for compliance with 340B and other applicable requirements, and the potential liability in the event of non-compliance. Accordingly, pharmacy management services contracts should include specific terms and conditions to protect the health center.

A. Licensure

- As noted above, this Issue Brief pertains to situations where the health center holds the license to operate its own in-house pharmacy. However, the pharmacy services manager, may under state law, be required to hold a license to provide the contracted services. The pharmacy management contractor should warrant that the contractor holds all licenses (federal and state) legally required to perform the management services to be provided under the contract. It is recommended that the warranty include an opinion of the contractor's counsel (who must be licensed to practice law in the state where the services will be provided) that the contractor holds all necessary licenses.
- As the health center holds a state license or permit to operate a pharmacy, the contract should not authorize the contractor to operate the pharmacy under that license (as opposed to merely managing the pharmacy on behalf of the health center) unless the contractor warrants that operation of the pharmacies under the center's license (commonly referred to as an "assignment" of the license) is permitted under state law. In some states, a pharmacy license may not be assigned to another party. Therefore, it is recommended that the contractor's warranty include an opinion of the contractor's counsel that an assignment is permissible in the state.

B. Section 340B Compliance

Section 340B requires that covered entities, such as health centers, be the purchaser and owner of covered drugs, and that covered drugs be dispensed only to patients of the covered entity. Further, health centers, like all other covered entities, are liable to the manufacturer if covered drugs are diverted to an ineligible person. Although boilerplate

contract terms such as "the contractor agrees to comply with applicable federal and state laws" are desirable, those terms alone are not sufficient to adequately protect the health center. The pharmacy management contract should specifically describe (or incorporate by reference a document, e.g. the contractor's bid or proposal that specifically describes) how the contractor will address the following 340B compliance issues:

- Procedures to ensure that 340B drugs are not dispensed to individuals who are not patients of the health center (e.g. a periodic sample comparison of eligible patient prescriptions with the dispensing records and a periodic comparison of purchasing and dispensing records).
- Procedures that ensure proper billing for pharmaceuticals dispensed to patients covered by Medicaid if the health center purchases drugs for Medicaid patients under 340B*. Since drug manufacturers are required to provide a rebate to the state Medicaid agency on outpatient drugs paid for by Medicaid, Section 340B drugs may not be dispensed to Medicaid patients (since that would result in a duplicate discount) unless arrangements to prevent a duplicate discount have been made with the state Medicaid agency. The duplicate discount solution which has been issued by the Office of Drug Pricing (ODP) requires centers purchasing at the 340B price to provide the Medicaid number under which the center bills for Medicaid patient drugs to ODP. This number is given to HCFA and then to the State Medicaid Agency so that the Medicaid Agency can block out these purchases when seeking a rebate. Further, the center is required to bill the state¹ Medicaid agency at actual acquisition cost plus a reasonable dispensing fee for drugs purchased under 340B which were dispensed to Medicaid patients.
- Procedures that ensure that the inventory of 340B drugs can be accounted for. This is particularly important if the pharmacy purchases drugs under group purchase or other discount agreements, in addition to participating in the 340B program.
- The contract should guarantee the health center (or its

* It should be noted that this policy issue regarding "covered entity" flexibility to "carve out" drugs for Medicaid patients from 340B purchases currently is under debate.

authorized representative) and the federal government reasonable access to the pharmacy manager's financial records in order to assure compliance with the contract terms and conditions and should guarantee open access to make periodic checks of the efficacy of the contractor's procedures for complying with 340B requirements.

- The contractor's consent to cooperate fully with an audit initiated by the health center or the federal government, and with a drug manufacturer that exercises its right to audit under the 340B program.
- Procedures that ensure that the health center (not the management contractor) is the purchaser of record for 340B drugs. It is recommended that the contract specifically state that the health center will be the purchaser of record of all 340B drugs.

As further protection, the health center should insist that the pharmacy management contractor indemnify the health center against any claims or losses that the health center may suffer on account of diversion of a 340B drug or other failure to comply with 340B requirements. In addition, any failure of the pharmacy manager to operate in compliance with 340B requirements should be grounds for the health center to terminate the contract immediately. (See below.)

C. Other Pharmaceutical Assistance Programs

Health centers that participate in pharmaceutical assistance programs, like Pfizer's Sharing the Care program, should make sure that the pharmacy management service contract terms are not inconsistent with the terms of the assistance programs. For example, centers that participate in Pfizer's Sharing the Care program may want to ensure that the contract terms are consistent with Pfizer's requirements that the health center "own and operate" its pharmacy.

D. Scope of Services.

The services to be provided by the pharmacy management contractor should be described in detail. The scope of services to be provided naturally will vary based on a particular health center's needs. However, it is advisable to include the following provisions in all contracts:

- The health center retains (and should exercise) the right to establish the price to be charged and the corresponding schedule of discounts that applies to the patient/customer and the corresponding schedule of discounts that applies for all items sold (i.e. pharmaceuticals, supplies, etc.)
- The health center retains (and should exercise) the right to set and change the hours of operation of the pharmacy, at its discretion.
- The contractor should assure that all pharmacists and other licensed professionals it will use to provide services to the health center are properly licensed and not excluded from participation in the Medicaid and Medicare programs, and that they will remain so (or immediately be replaced by individuals who are properly licensed) during the term of the contract.
- The health center retains the right to approve all contractor staff who will have contact with health center patients or the public (e.g. pharmacists), and have an automatic right to order replacement if the health center is dissatisfied with an individual's performance.

E. Contract Payment Terms.

The price terms of a pharmacy management contract (i.e. the consideration that the pharmacy manager receives for providing the contracted services) may be based on various factors: (1) a per prescription dispensing fee (i.e. a fixed fee for filling a prescription, the cost of which is passed on to the customer or third party payer as part of the charge for the prescription (or to the health center to the extent that it is subsidizing dispensing costs for uninsured patients); (2) a fixed periodic (e.g. monthly) fee, or some combination of price terms. Obviously, the timing of payments, amount of the management fee, and related terms are subject to negotiation.

Fees based on a percentage of revenues of the pharmacy should be avoided for the following reasons:

- The pharmacy manager has less incentive to reduce pharmacy costs if fee is based on a percentage of gross revenue.

- One rationale for health centers being included in the 340B program is that the cost savings in purchasing drugs at a discount for health center patients can be used for other health center services. Paying a pharmacy manager a percentage of revenues (gross or net) effectively transfers some of the benefit of 340B discount pricing to the contractor.
- Paying the pharmacy manager (or any contractor) a percentage of revenues (gross or net) could have adverse federal income tax consequences for the health center in that the IRS may view the transaction as an impermissible sharing of the health center's revenues (i.e. constitute inurement of the health center's assets to the management company) which could jeopardize the center's §501(c)(3) tax exemption.
- In a recent advisory opinion, the Department of Health and Human Services Inspector General (IG) suggested that management services contracts pursuant to which the contractor's compensation is based on a percentage of gross revenues may violate the federal Medicare-Medicaid anti-kickback statute, particularly if the contract includes marketing or other activities that are likely to produce revenue for the client entity. In those cases, the IG advised that the payment of a percentage of gross revenues may constitute a "kickback" for generating business for the entity.

F. Procurement Standards.

If any part of the pharmacy manager's fee will be charged to the health center's grant, the health center must comply with the Federal procurement standards set forth in 45 CFR Part 74. Health centers should pay particular attention to the following requirements (among others) of Part 74:

- Contracts may be made only with "responsible contractors" who possess the potential ability to perform successfully under the contract. 45 CFR § 74.44(d). Accordingly, health centers should review the contractor's past performance for other clients and its financial and technical resources before contracting, and require the

contractor to certify that it has not been debarred from contracting with the federal government or excluded from participating in the Medicaid or Medicare program.

- The procurement must be conducted in a manner to provide, to the maximum extent practical, open and free competition. 45 CFR § 74.43. While competitive bidding is not absolutely required, it certainly is preferred (offering the health center some assurance that it will secure fair payment terms from a qualified firm).
- In all cases, the health center must employ some form of cost or price analysis and document the analysis in the procurement records. 45 CFR § 74.45. Note that, if the cost of the contract is expected to exceed \$100,000 and is to be awarded without competition (or only one bid is received), the health center will be required to provide cost estimates and RFPs (if any) to the Bureau of Primary Health Care for pre-award review, if requested. 45 CFR § 74.44 (e).

Although Part 74 requires termination provisions only in contracts that exceed \$100,000, it is good practice to include termination provisions in all pharmacy management contracts. A health center should consider including a provision allowing termination for the convenience of the center (i.e. "without cause") upon notice to the contractor. A termination for convenience clause is particularly important if the contract is a multi-year agreement as business conditions may change during the contract term. Termination clauses should, in all cases, permit the health center to terminate (and in urgent situations, to suspend) the contract if the contractor breaches a performance obligation. It is recommended that, at a minimum, the health center retain the right to terminate the contract if:

- the management contractor fails to maintain the health center's compliance with 340B requirements;
- the pharmacy manager loses a license or permit required to provide the service described in the management contract in the state, is excluded from participating in the Medicaid or Medicare program, or otherwise is debarred from federal contracting.

III. Conclusion.

A health center contracting with an outside vendor to manage its in-house pharmacy should approach the contracting process as it would with any other procurement contract. While this Issue Brief focuses on appropriate contract terms and conditions to be included in pharmacy management contracts, the contractor's ability to perform under the contract is critical, particularly assuring that the pharmacy operates in compliance with 340B drug pricing requirements and other applicable laws and regulations. Accordingly, it would be advisable for a health center to obtain and check references from the contractor's other clients, especially other health centers, before finalizing a contract.

For further information contact Freda Mitchem at NACHC, 202 659-8008 or e-mail: FMitchem@NACHC.com

PHARMACY MANAGEMENT SERVICES AGREEMENT

This Pharmacy Management Services Agreement is entered into by and between _____ ("CHC"), a [state] nonprofit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and _____ ("Manager"), a [state] corporation which is duly licensed, certified, and qualified under applicable federal law and the laws of the State of [state] to provide pharmacy management and administrative services including those services as are more specifically set forth in this Agreement.

WHEREAS, CHC is a community health center receiving federal financial assistance under Section 330 of the Public Health Service Act ("Section 330"); and

WHEREAS, community health centers receiving funds pursuant to Section 330 are required to make pharmacy services available to patients; and

WHEREAS, CHC currently holds valid [state] license(s) to own and operate a pharmacy; and,

WHEREAS, CHC desires to obtain the services of Manager to operate and manage such pharmacy on behalf of CHC; and,

WHEREAS, Manager holds the necessary and appropriate licenses and otherwise is legally authorized to provide CHC with the pharmacy management services more specifically set forth below (hereinafter "pharmacy services");

NOW THEREFORE, in consideration for the mutual promises set forth herein and other good and valuable consideration, and intending to be legally bound, the parties agree as follows:

Section I
Services

1.1 Manager shall provide pharmacy services, including staff appropriately licensed and qualified to provide the pharmacy services required pursuant to this Agreement, necessary and incident to the operation of CHC's pharmacy in accordance with all applicable laws and regulations. Manager will utilize its management information system in connection with the provision of pharmacy services. The pharmacy services to be provided by Manager pursuant to this Agreement include:

[Add or delete services as appropriate.]

a. dispensing pharmaceuticals pursuant to valid prescriptions written by authorized CHC physicians and other CHC health care providers authorized by law to prescribe pharmaceuticals;

b. maintaining an appropriate inventory of pharmaceuticals on behalf of CHC, including ordering stock and paying vendors;

c. billing patients, third-party payers, and CHC, as appropriate, for pharmaceuticals dispensed pursuant to this Agreement in accordance with Section IV of this Agreement.

d. providing general support and consultative services regarding CHC's pharmacy operations, upon request of CHC, which shall include, but not be limited to:

- (1) Pharmacy benefit design;
- (2) Generic drug program design and implementation;
- (3) Drug formulary design and implementation;
- (4) General drug use and cost data reporting;
- (5) Concurrent and retrospective drug utilization review;

(6) Reporting:

(a) Number of prescriptions by CHC provider;

(b) Utilization data by provider;

(c) Utilization data by drug.

(d) Utilization data by patient.

e. providing CHC health care providers with pharmacy in-service programs and clinical pharmacy consultation and review.

f. delivering prescriptions to a patient's home as directed by CHC.

1.2 Manager shall operate CHC's pharmacy so as to insure access to all health care reimbursement and/or drug pricing programs in which CHC has elected to participate, including, but not limited to, discount drug pricing available to CHC pursuant to Section 340B of the Public Health Service Act.

1.3 Manager shall operate CHC's pharmacy within the scope of CHC's pharmacy license and/or certification, and in

compliance with all provisions of applicable federal and state laws, regulations, guidelines and all other requirements of governmental bodies or agencies with the jurisdiction to enforce any of such requirements, and in accordance with:

a. prevailing standards of the pharmacy profession;

b. customary rules of ethics and conduct of the pharmacy profession;

c. standards of applicable professional pharmacy licensure boards, agencies and associations.

1.4 Notwithstanding any other term or condition of this Agreement, CHC shall retain the final authority to:

a. determine the price to be charged for all items sold by CHC's pharmacy and the corresponding schedule of discounts to be applied to CHC's patients/customers.

b. establish, and modify with reasonable notice to Manager, the hours of operation of CHC's pharmacy;

c. approve all Manager staff assigned to CHC pursuant to this Agreement and to order replacement of any

individual whose performance is unsatisfactory.

Section II

Public Health Service Drug Pricing

2.1 Manager acknowledges that CHC is a "covered entity" under Section 340B of the Public Health Service Act and, accordingly, is entitled to purchase outpatient prescription drugs at reduced prices from drug manufacturers that have signed a drug purchasing agreement with the United States Department of Health and Human Services ("DHHS"), and that such drugs must be dispensed only to CHC patients.

2.2 Manager shall ensure that the CHC is the purchaser of record of all drugs purchased at the Section 340B discount.

2.3 Manager shall establish appropriate controls so as to insure that drugs purchased at a discount under Section 340B are not dispensed to individuals who are not patients of CHC. Such procedures shall include, but shall not be limited to, a periodic sample comparison of eligible patient prescriptions with dispensing records and a periodic comparison of purchasing and dispensing records. Manager's control procedures are set forth in Exhibit 1 to this Agreement, which is incorporated herein by reference.

Manager agrees to provide CHC or its designated representatives with periodic access to its staff and/or records to enable CHC to monitor the efficacy of such procedures.

2.4 Manager agrees to establish appropriate controls to insure that drugs purchased at a discount under Section 340B are not used to fill prescriptions paid for by Medicaid, unless arrangements to prevent duplicate discounts have been made with the [state] Medicaid agency.

2.5 Manager agrees that, in the event that Manager dispenses a drug purchased at a discount under Section 340B to an individual who is not a patient of CHC or it fills a prescription paid for by Medicaid using a Section 340B discounted drug, Manager will pay to CHC, as liquidated damages, an amount equal to the price discount that CHC received from the drug manufacturer. CHC's determination of the amount of a discount payable to the manufacturer shall be conclusive.

2.6 Manager shall provide CHC with monthly reports and records necessary to assure compliance with Section 340B requirements.

2.7 Manager agrees to cooperate with any audit of CHC's compliance with Section 340B performed by DHHS or a

drug manufacturer and to comply with any guidelines for such audits published by DHHS.

2.8 Manager agrees to make its financial records pertaining to this Agreement available for inspection by CHC, its authorized representative, and DHHS, at reasonable times during normal business hours in order to assure Manger's compliance with the terms and conditions of this Agreement.

Section III

Payment Terms

3.1 In consideration for the services to be provided pursuant of this Agreement, CHC shall pay Manager a monthly management fee in the amount of \$_____.

3.2 Manager may charge pharmacy customers a dispensing fee in the amount of \$_____ per prescription filled.

Section IV

Reimbursement and Billing

4.1 CHC shall establish the price to be charged for all drugs and pharmaceutical products dispensed by Manager pursuant to this Agreement.

4.2 Manager shall bill patients and third-party payers, as applicable, for drugs and pharmaceutical products dispensed pursuant to this agreement and shall collect payments on behalf of CHC.

4.3 All revenues derived from the operation of CHC's pharmacy shall be the property of CHC. Manager shall deposit funds collected on behalf of CHC in CHC accounts as directed by CHC.

Section V

Representations and Warranties of Manager

5.1 Manager represents and warrants to CHC that Manager is duly and legally organized and authorized to do business in the State of [state] and that it holds all requisite licenses and approvals necessary in the State of [state] to perform the pharmacy services contemplated in this Agreement. If, and to the extent that, Manager's operations under this Agreement require CHC to assign or otherwise transfer to Manager CHC's pharmacy license, or any of CHC's rights and obligations under such license, Manager warrants that such assignment or transfer is lawful and permissible under the laws of the State of [state] .

5.2 Manager represents and warrants that it is knowledgeable about the laws and all other requirements

referred to in 1.3 and 1.3a, b and c above, has the demonstrated capacity to comply with these laws and requirements and will do so throughout the term of this agreement.

5.3 At all times during the term of this Agreement, Manager shall provide sufficient and appropriately licensed and qualified staff and shall otherwise devote adequate resources, as determined by CHC, to operate CHC's pharmacy as contemplated herein.

5.4 Manager shall ensure that each of Manager's pharmacists or practitioners furnishing services under this Agreement will:

a. remain licensed to practice pharmacy, or remain otherwise qualified to provide pharmacy services, in the State of [state] ;

b. remain eligible to participate in the Medicaid and Medicare programs;

c. be in possession of a valid Drug Enforcement Agency ("DEA") number, if necessary to perform the services required under this Agreement.

5.5 Manager shall immediately report to CHC any of the

following events involving a pharmacist or other health care practitioner employed by or under contract to Manager for purposes of this Agreement if any of the following events are related to the provision of services under this Agreement:

a. any voluntary or involuntary surrender of any state license necessary to provide services under this Agreement or a DEA number;

b. any claim, proceeding or investigation which could adversely affect the individual's participation in Medicaid or Medicare or which otherwise relates to the individual's professional competence or conduct;

c. any criminal action which may affect the individual's ability to perform under this Agreement.

5.6 If any of the foregoing events occurs, CHC shall have the right to take appropriate action, including requiring that the identified individuals immediately cease providing services under this Agreement and that Manager provide an appropriately qualified individual as a replacement.

5.7 Manager guarantees that the average waiting time per prescription filled on CHC's premises will not exceed

_____ minutes.

Section VI

Insurance

During the term of this Agreement, Manager shall maintain, for itself and its employees, general and professional liability insurance throughout the term of its Agreement with limits of no less than one million dollars (\$1,000,000) per claim/three million dollars (\$3,000,000) annual aggregate for claims incurred for damages arising directly or indirectly in connection with Manager's performance of any services under this Agreement, the use of any property or facilities provided by Manager, or its personnel or agents, in connection with this Agreement and shall notify Manager of any material change in such coverage. CHC shall be added as a named insured to such policies. Upon request, Manager shall provide CHC with evidence of such coverage.

Section VII

Records and Reports

7.1 Manager shall cooperate with CHC and submit, on a timely basis, such documentation, information, data and other materials as CHC may request in connection with CHC's compliance with reporting requirements of the Bureau of

Primary Health Care, the Health Care Financing Administration, or any other agents of the federal government or the State of [state] that are duly authorized by applicable law or regulation to require such reports.

7.2 As required by federal law, until the expiration of five (5) years after the furnishing of any services to Medicaid recipients, Manager shall make available, upon written request of the Secretary of the Department of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, for inspection, evaluation, and audit, copies of these terms and conditions and any books, documents, records and other data of Manager pertaining to any aspect of the services provided to Medicaid patients as may be necessary to evaluate the quality, appropriateness and timeliness of such services and certify the nature and extent of costs incurred by CHC and/or Manager for such services.

7.3 Manager agrees to maintain financial, administrative, and other records related to the services provided under this Agreement in accordance with accepted professional pharmacy standards and to furnish such records, as well as other required reports, upon request, to CHC for monitoring and oversight of the pharmacy operations.

Section VIII

Proprietary and Confidential Information

8.1 All manuals, patient lists, pricing lists, provider lists, and similar documents made available to Manager by CHC pursuant to this Agreement are the sole property of CHC. All such information and documents shall be returned to CHC at the termination of this Agreement or upon the prior request of CHC.

8.2 Manager shall maintain the confidentiality of all patient information it obtains pursuant to this Agreement. Manager may use patient information obtained pursuant to this Agreement solely for the purpose of carrying out its obligations under this Agreement. Patient information shall not be disclosed to any third party without the patient's authorization.

8.3 Except as is necessary in the performance of this Agreement or as authorized in writing by CHC, Manager shall not disclose to any person, institution, entity, company, or other party, any information directly or indirectly related to CHC or CHC's patients, employees, or services that it receives under this Agreement or of which it is otherwise aware. Manager further agrees not to disclose, except to CHC, any proprietary information, professional secrets or

other information obtained in the course of carrying out its responsibilities under this Agreement, unless it receives prior written authorization from CHC to do so.

8.4 Manager agrees that all data and documents produced or obtained by Manager in the course of carrying out its responsibilities under this Agreement, including, but not limited to, drug utilization data, provider prescription profiles, drug formularies, cost and pricing data, are the property of CHC and that, upon expiration or termination of the Agreement or upon the request from CHC, Manager shall promptly turn over to CHC all such materials and related documents as CHC may require.

8.5 The Manager's obligation under the Section VIII shall survive the termination of this Agreement for any reason.

Section IX Non-Discrimination

9.1 Manager agrees not to discriminate in the provision of pharmacy services under this Agreement on any basis, including but not limited to age, sex, race, creed, color, religion, national origin, marital status, economic status, physical or mental handicap, sexual orientation or type of illness or condition, consistent with all state and

federal laws. Manager agrees to comply with the standards of the Americans with Disabilities Act and ? 504 of the Rehabilitation Act of 1973.

9.2 In connection with the delivery of services and products under this Agreement, Manager agrees to comply with the Civil Rights Act of 1964 and all other federal, state or local laws, rules and orders prohibiting discrimination. Consistent with the foregoing, Manager agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations.

9.3 Manager agrees to make positive efforts to use small businesses and women- and minority-owned business sources of supplies and services.

Section X Indemnification

10.1 Each party shall indemnify, defend, and hold harmless the other party from and against all claims, damages, causes of action, costs or expense, including court costs and reasonable attorneys' fees, which may arise as a result of the party's negligent performance of, or failure to perform, any term or condition of this Agreement. [Note: Keep in mind that FTCA coverage is not available for

indemnification of third parties or contracts with other legal entities (e.g. corporations, companies, etc.); therefore, the need for liability coverage would have to be analyzed]

10.2 Manager further agrees to indemnify and hold CHC harmless from and against any costs, damages, or liabilities or penalties arising attributable to Manager's provision of pharmacy services under this Agreement or to Manager's actions hereunder or to any violation by Manager of applicable law.

10.3 The obligation to indemnify shall survive termination of this Agreement regardless of the reason for termination.

Section XI

Term and Termination

11.1 The term of this Agreement shall commence on the effective date below and shall continue in effect for three (3) years from that date unless terminated earlier as provided herein.

11.2 CHC may terminate or, at its sole discretion, suspend this Agreement immediately at any time upon written notice to Manager in the event that:

a. Any license and/or certification to provide pharmacy services required in order for Manager to perform under this Agreement is suspended, revoked, or limited, or any limitation is placed on Manager's ability to render pharmacy services;

b. Manager no longer maintains the required insurance as set forth in Section VI;

c. Manager is excluded from the Medicaid or Medicare programs or is debarred from participating in federally funded contracts;

d. The omission or the commission by Manager of any act or conduct for which its authority to provide services may be revoked or suspended by any governmental or administrative body (whether or not such suspension or revocation actually occurs);

e. Manager becomes insolvent or bankrupt;

f. Manager acts in a manner that may jeopardize CHC's grant funding or access to Section 330 benefits or its right to participate in the Section 340B drug program is threatened or revoked;

g. The good faith determination by CHC that the

health or welfare of its patients would be jeopardized by the continuation of the Agreement.

11.3 Either party may terminate this Agreement:

a. upon thirty (30) days' notice to the other party if it is determined by the terminating party that either of the parties lacks any federal, state, or local license, permit, or approval, including, without limitation, certificate of need approval required for the services and operations contemplated by this Agreement or that such services and operations or the arrangements set forth in this Agreement may be inconsistent with, or subject a party to, potential negative consequences under and provision of federal or state law regulating the services contemplated by this Agreement or the arrangements between the parties as set forth herein; or

b. in the event of a material breach of the Agreement that is not cured within thirty (30) days' written notice of the breach.

11.4 This Agreement may be terminated by either party without cause upon ninety (90) days' written notice to the other party.

Section XII

Arbitration

12.1 The parties shall attempt to resolve any dispute or claim arising out of the interpretation of or performance under this Agreement through informal discussions. In the event that the matter is not resolved by such discussions, the parties agree to submit the matter to binding arbitration.

12.2 Such arbitration shall be conducted in [state] in accordance with the rules of the American Arbitration Association then in effect, except as otherwise specified herein. The costs of arbitration will be borne equally by the parties to this Agreement, except that each party shall be responsible for its own attorneys' fees and expenses. Claims or disputes involving medical malpractice shall not be subject to arbitration.

Section XIII

General Provisions

13.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of [state] . Any dispute arising under this Agreement shall be resolved in the State of [state] .

13.2 Entire Agreement/Amendments. This Agreement represents the complete understanding of the parties hereto. Any amendment to this Agreement shall be in writing and signed by both parties, except that Manager shall be deemed to have accepted any amendment proposed by CHC in writing if Manager fails to object to such proposed amendment in writing within thirty (30) days of receiving written notice of the proposed amendment. Except for the specific provision of this Agreement which thereby may be amended, this shall remain in full force and effect after such amendment. This Agreement supersedes any other agreement or understandings between the parties, whether oral or written, relating to the this Agreement.

13.3 Assignment. Manager may not assign this Agreement without CHC's prior written consent. CHC may assign this Agreement to an entity related to it by common control or by affiliation with Manager's written consent, which may not be unreasonably withheld, after written notice to Manager of any such proposed assignment.

13.4 Independent Contractor. None of the provisions of this Agreement are intended to create, nor shall they be deemed or construed to create, any relationship between the parties hereto other than that of independent entities contracting solely for the purposes of effecting the provisions of this Agreement. Neither of the parties shall

be construed to be the partner, co-venturer, employee or representative of the other party.

13.5 Employment and Other Taxes. Manager shall be solely responsible for filing and payment of federal, state, and local taxes relating to Manager's staff and to Manager's provision of pharmacy management services. Manager will be responsible for filing and payment of all payroll taxes of the pharmacy staff, social security taxes, Medicare taxes, workers' compensation insurance, SUTA and FUTA taxes.

13.6 Notice. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth on the signature page hereto. Notice shall be effective on the date it is mailed.

13.7 Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

Each party to this Agreement warrants that it has full power and authority to enter into this Agreement and that the person signing this Agreement on behalf of either party warrants that he or she has been duly authorized and empowered to enter into this Agreement.

THIS AGREEMENT IS EFFECTIVE ON: _____

MANAGER

By: _____

Date: _____

Title: _____

Address: _____

CHC

By: _____

Date: _____

Title: _____

Address: _____
