COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES
OFFICE OF LONG-TERM LIVING
BUREAU OF FEE FOR SERVICE PROGRAMS

SPECIAL PROVIDER AGREEMENT

WHEREAS, the Department of Human Services administers the Pennsylvania Medical Assistance Program; and

WHEREAS, pursuant to 55 Pa. Code § 1101.43(b)(3)(iii), when a nursing facility changes owners, the new owner cannot be enrolled as the Medical Assistance provider until the former owner (*i.e.*, the seller) has repaid all monies owed by the former owner to the Department of Human Services; and

WHEREAS, an application for enrollment has been made by the below-signing applicant; and

WHEREAS, the below-signing applicant is the new owner of a nursing facility; and

WHEREAS, the former owner enrolled the nursing facility as a nursing facility provider under the Medical Assistance Program; and

WHEREAS, the below-signing applicant desires to enroll in the Medical Assistance Program prior to the former owner meeting the condition of 55 Pa. Code § 1101.43(b)(3)(iii); and

WHEREAS, the Department of Human Services is willing to permit such an exception to its regulations in consideration of the below-signing applicant and former owner entering into this agreement; and

WHEREAS, the former owner and the below-signing applicant desire to enter into this agreement to finalize the transfer of ownership between them and as necessary consideration to their bargain;

NOW, THEREFORE, in consideration of the foregoing and of the following, the former owner and below-signing applicant agree to the following:

1. The Department of Human Services shall not consider 55 Pa. Code § 1101.43(b)(3)(iii) in determining whether the below-signing applicant is eligible for enrollment as a provider; however, all other regulatory criteria will continue to be applicable and the Department may, in its discretion, refuse to enroll the below-signing applicant.

2. The below-signing applicant warrants that it is seeking the enrollment of one specific licensed nursing facility.

3. The below-signing applicant hereby expressly assumes any and all liability and rights of former owner with respect to overpayments made to the former owner by the Department of Human Services for services to Medical Assistance residents; however, the former owner shall continue to have the duty to maintain documents, provide access to documents, and file cost reports, with respect to its period of ownership, and shall remain

liable for any penalties, damages, or fines for any abuse or misconduct during such periods; and the Department shall remit any underpayments only to the order of the former owner.

4. The below-signing applicant hereby expressly assumes any and all liability and rights of former owner with respect to amounts owed by former owner under the Nursing Facility Assessment Law, 62 P.S. § 801-A, *et. seq.* (62 P.S. § 801-A – 815-A), which the below- signing applicant acknowledges and has expressly assumed under its change of ownership transaction with the former owner. Because the below-signing applicant has expressly assumed all outstanding amounts owed by former owner under the Nursing Facility Assessment Law, the below-signing applicant expressly acknowledges that the Department of Human Services may use any and all remedies available to it under state law to recover the liabilities incurred by former owner from the below-signing applicant, including, but not limited to, involuntary offset of any form of Medical Assistance payments owed to the below-signing applicant. To the extent needed to defend against any recovery efforts against the below-signing applicant, former owner shall have a duty to maintain and provide access to documents related to its nursing facility assessment obligations during its period of ownership.

5. The former owner shall hold the below-signing applicant harmless from any liability assumed in Paragraphs 3 and 4, above, including the costs of litigation, and the former owner shall have the right to control the defense against any liability which the Department of Human Services seeks to impose on the below-signing applicant as to periods of operation by the former owner; provided, however, that nothing in this Paragraph shall prevent the Department of Human Services from proceeding with collections against the below-signing applicant for all liabilities assumed in Paragraphs 3 and 4, above.

6. The former owner and below-signing applicant have entered into a payment plan agreement with the Department of Human Services in exchange for resolving appeals taken by the former owner related to outstanding nursing facility assessment payment obligations. The payment plan agreement is attached as Exhibit A and is incorporated by reference into this Special Provider Agreement.

7. The below-signing applicant shall have the right to offset against any amount owed from below-signing applicant to the former owner by the liability assumed by the below-signing applicant under Paragraphs 3 and 4, above, including any costs of litigation incurred by below-signing applicant because of the former owner's unreasonable failure to defend under Paragraph 5, above; provided, however, that nothing in this Paragraph shall prevent the Department of Human Services from proceeding with collections against the below-signing applicant for all liabilities assumed in Paragraphs 3 and 4, above.

8. All audit reports, settlements, and any other documentation related to payments or amounts and liabilities owed, including nursing facility assessment obligations issued hereafter, shall be sent by the Department of Human Services to the below-signing applicant at its latest address of record with the Division of Provider Operations, if and only if it is in fact enrolled as a provider.

9. As a material condition of this agreement and a prerequisite to its continued participation in the Medical Assistance Program, the below-signing applicant shall comply with the Medical Care Availability and Reduction of Error ("MCARE") Act established pursuant to Act 13 of 2002 (40 P.S. § 1303.101 *et seq.*) and all implementing regulations, as amended from time to time (collectively the "MCARE Act").

10. A material failure by the below-signing applicant to comply with the MCARE Act shall constitute a material breach of this agreement and serves as a basis for immediate termination from the Medical Assistance Program.

WHERETO, the former owner and applicant agree this _____day of _____, 20_____

_____

Name of Facility (current/former name)

_____

New Name of Facility (if applicable)

_____ _____

Former Owner Signature | Name of Applicant/Legal Entity

_____ _____

Printed Name/Title of Former Owner | Signature of Applicant (new owner)

_____

Printed Name/Title of Applicant (new owner)

Acknowledged and Processed by:

_____

Office of Long-Term Living - Representative
Bureau of Fee for Service Programs

_____

Date of Office of Long-Term Living Signature