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SAMPLE PROVIDER CONTRACT FOR
NURSING HOME SERVICES



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SAMPLE CONTRACT BETWEEN PACE PROGRAM AND CONTRACT PROVIDER

NURSING HOME AGREEMENT

This Nursing Home Agreement (this “Agreement”) between (*PACE Program*), a nonprofit corporation, and (*Provider*) will be effective as of the ___ day of _____, 20__ (the “Effective Date”).

WHEREAS, (*PACE Program*) has developed a comprehensive program which is a viable alternative to premature institutionalization for frail elderly in the (*City, State*) area, (*PACE Program*) (a) provides complete medical, restorative, social and supportive care tailored to the specific, changing needs of the frail elderly, (b) emphasizes independence, continued community residence, family support and minimal disruption of the Participants’ lives, (c) maintains continuity of care through an Interdisciplinary Team, and (d) fosters cost control; and

WHEREAS, (*PACE Program*) has entered into agreements with (*State Agency*) and the U.S. Department of Health and Human Services whereby (*PACE Program*) receives capitation payments for the provision of all (*State*) Medicaid state plan services and all Medicare services (“Capitated Services”) to Participants; and

WHEREAS, Provider provides inpatient nursing home services at _____ (*address*) (the “Facility”) and desires to provide such services to certain Participants in (*PACE Program*); and

WHEREAS, (*PACE Program*) and Provider desire to enter into this Agreement in order to set forth the terms and conditions of their relationship;

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement, Provider and (*PACE Program*) agree as follows:

1.0 DEFINITIONS. As used in this Agreement, the following terms shall have the indicated meanings:

- 1.01 “**Contract Services**” shall mean respiratory care for ventilator dependent residents; a room with customary furnishings and equipment (one or more beds per room); meals (including special diets and nutritional supplements as medically necessary); nursing services (including but not limited to basic skin care, assistance with ambulation, and basic maintenance exercises as ordered); non-skilled custodial care; personal care and assistance (including assistance with activities of daily living such as bathing, dressing, and feeding); drugs and biologicals; physical, speech, occupational and respiratory therapy; social services; recreational services; and medical supplies and appliances and diagnostic services (e.g., x-rays and laboratory services) provided to a nursing home resident.
- 1.02 “**Good Standing**” shall mean that (*State Agency*) has neither suspended, denied, terminated or failed to renew the provider’s provider agreement by the issuance of an adjudication order in accordance with the (*State*) Revised Code and the (*State*) Administrative Code, nor has the provider’s agreement with (*State Agency*) been voluntarily or involuntarily terminated, suspended or not renewed as a result of the actions of the Medicaid Fraud Control Unit of the Office of the Attorney General.
- 1.03 “**CMS**” shall mean the Centers for Medicare and Medicaid Services.

- 1.04 **“Medical Director”** shall mean (*PACE Program*)’s medical director.
- 1.05 **“Interdisciplinary Team”** shall mean the (*PACE Program*) team, which is responsible for controlling the delivery, quality, and continuity of care to Participants. The Interdisciplinary Team’s responsibilities include, but are not limited to, assessing a prospective Participant’s level of care needs, developing and implementing a treatment plan for each Participant, and authorizing Contract Services which meet the specific needs of each Participant.
- 1.06 **“State Agency”** shall mean the (*State Agency*).
- 1.07 **“Participant”** shall mean any person who is validly enrolled in (*PACE Program*).
- 1.08 **“Project Manager”** shall mean (*PACE Program*) ‘s project manager.
- 1.09 **“Residents”** shall mean Participants who reside at the Facility.
- 1.10 **“State”** shall mean the State of (*State*).

2.0 PROVIDER’S REPRESENTATIONS AND OBLIGATIONS

- 2.01 Provider represents and warrants that during the term of this Agreement:
- (a) Provider and its employees are and will remain qualified to provide inpatient nursing home services contemplated by this Agreement including, but not limited to, maintaining valid and unrestricted licenses, certificates and/or registrations from appropriate State regulatory authorities;
 - (b) Provider has and will maintain in effect valid, current professional liability insurance coverage at the level required by (*PACE Program*);
 - (c) If Provider is a Medicaid provider, it is and will remain a Medicaid-certified Nursing Facility provider in Good Standing;
 - (d) If Provider is not a Medicaid provider, but once was, Provider must not have been terminated from the Medicaid program for suspected or proven abuse or fraud;
 - (e) Neither Provider nor any of its employees has been excluded from participation in the Medicare or Medicaid programs;
 - (f) Neither Provider nor any of its employees has been convicted of criminal offenses related to involvement in Medicaid, Medicare, other health insurance or health care programs, or social service programs under Title XX of the Social Security Act;
 - (g) Neither Provider nor any of its employees has been convicted of any criminal offense, which could jeopardize the health, safety, or well-being of any Resident, including but not limited to physical, sexual, drug or alcohol abuse;
 - (h) The Facility is and will be (i) accessible to Participants and (ii) located within (*PACE Program*) service area as defined in the (*State Agency*) Agreement;

- (i) In providing services to Residents, Provider’s employees will only act within the scope of their authority to practice;
- (j) Provider and its employees meet and will continue to meet Medicare/Medicaid requirements applicable to the services Provider furnishes to Residents; and
- (k) Provider and its employees meet and will continue to meet the applicable qualifications set out in 42 CFR Part 460.

Upon (*PACE Program*)’s request, Provider shall provide documentary evidence to (*PACE Program*) confirming the aforementioned representations and warranties. Provider agrees to provide (*PACE Program*) with timely written notice of any change in any of the aforementioned representations and warranties.

- 2.02 Provider hereby authorizes its professional liability insurance carrier, licensing bodies, and any other entity having information that is reasonably relevant concerning the representations and warranties made in Section 2.01 of this Agreement to release such information to (*PACE Program*), (*State Agency*) and CMS.
- 2.03 Subject to (*PACE Program*) policies, procedures and rules and in accordance with authorization provided by the Interdisciplinary Team, Provider shall provide Contract Services to Residents. At the recommendation of the Interdisciplinary Team, representatives from Provider may be included in the assessment and treatment and planning process for Residents.
- 2.04 If a Participant requires nursing home services, a (*PACE Program*) nurse or social worker may contact Provider as to the availability of a bed at the Facility and provide information as to the Participant’s diagnosis, treatment plans, and special needs. Before or during admission to Provider, a full written summary with appropriate physician’s orders signed by the Medical Director or a physician member of the Interdisciplinary Team will be provided to Provider by a (*PACE Program*) nurse. Provider shall admit Participants on a first-come, first-served basis.

The Interdisciplinary Team shall maintain a written plan of care for each Resident, and Provider agrees it shall provide services to each Resident in accordance with such plan.

(*PACE Program*) shall make appropriate filings with the PASSPORT administrative agency (“PAA”) for (i) PASRR screening of potential Residents in accordance with OAC 5101:3-3-151 and (ii) pre-admission reviews in accordance with the OAC 5101:3-3-14 or an appropriate exemption.

All (*PACE Program*), (*State Agency*) and CMS staff shall (i) be permitted to visit, to evaluate and to have routine contact with Participants who are residents at the Facility and (ii) have unrestricted access to Residents’ medical charts maintained by Provider.

- 2.05 Provider acknowledges that it has the responsibility to provide appropriate and adequate services to Residents. If representative(s) of Provider believe that the Interdisciplinary Team’s treatment plan for a Resident is unacceptable or unwise under the circumstances, such representative(s) shall immediately report such concern in writing to the Medical Director.

- 2.06 Provider shall maintain all records originated or prepared in connection with Provider’s performance of its obligations under this Agreement (the “Records”) in accordance with applicable federal and State requirements.

Provider shall maintain all Records for a minimum of six (6) years from the date of their preparation, or in the event (*PACE Program*) notifies Provider that State or federal authorities have commenced an audit or investigation of (*PACE Program*), or such Records are subject to litigation or other dispute, such Records shall be retained until such matter under audit, investigation, litigation or dispute has been resolved, whichever is later.

For as long as the Records are to be retained pursuant to this Agreement, (*State Agency*) or its designee, the State auditor’s office, the State Attorney General’s office, (*PACE Program*) or its designee, and CMS shall have the right to access for audit and review of any and all Records. The Records shall be made available at times, places, and in a manner mutually agreed upon by (*PACE Program*) and the entity requesting access.

- 2.07 Provider shall participate in and cooperate with all (*PACE Program*)’s policies, procedures and rules, including but not limited to (*PACE Program*)’s quality assurance program, recordkeeping and auditing requirements, and billing procedures. With respect to Residents, Provider agrees to abide by the decisions of the Interdisciplinary Team, the Medical Director and/or the Project Manager.

Providers’ quality assurance program shall include, but not be limited to, the following activities: (i) include and notify (*PACE Program*) staff at least five (5) working days prior to all Resident case conferences, (ii) documentation of assessment and intervention of Resident falls/incidents in charts, (iii) share statistics regarding Resident falls, unusual incidences, skin breakdown, complaints and grievances with (*PACE Program*) staff at least quarterly, and (iv) immediately report Resident falls and unusual incidences to (*PACE Program*) staff.

- 2.08 Provider shall not discriminate in the delivery of services based on the Resident’s race, color, religion, sex, sexual orientation, age, disability, national origin, Vietnam-era veteran’s status, ancestry, health status, or need for health services.

- 2.09 Provider shall comply with (a) all applicable federal and State laws and regulations governing Provider’s operations and/or (*PACE Program*)’s operations, including but not limited to the requirements in 42 CFR Part 460 regarding service delivery, Participant rights, and quality assessment and performance improvement activities and (b) the terms of the (*State Agency*) Agreement.

- 2.10 Provider shall submit reports required by (*PACE Program*).

- 2.11 Provider shall use best efforts to submit a claim for payment to the following address within thirty (30) days of the end of the month in which the applicable services were provided to Residents:

(Insert Address)

Claims that are received by (*PACE Program*) more than sixty (60) days from the end of the month in which the applicable services were provided to Residents shall be denied for payment.

Provider shall submit claims for services on forms, which have been approved in writing by (*PACE Program*).

3.0 (PACE PROGRAM)'S DUTIES.

- 3.01 (*PACE Program*) shall comply with all applicable federal and State laws and regulations governing (*PACE Program*) operations and the terms of the (*State Agency*) Agreement.
- 3.02 (*PACE Program*) shall provide to Provider copies of (a) all of (*PACE Program*)'s policies, procedures, and rules and (b) the (*State Agency*) Agreement.
- 3.03 (*PACE Program*) shall designate an official liaison to coordinate activities between (*PACE Program*) and (*PACE Program*)'s contracted providers.

4.0 RELATIONSHIP BETWEEN (PACE PROGRAM) AND PROVIDER

The relationship between (*PACE Program*) and Provider is that of independent contractors. None of the provisions of this Agreement is intended to create or to be construed as creating any agency, partnership, joint venture or employee-employer relationship between the parties.

5.0 PAYMENT FOR SERVICES

- 5.01 Provider shall accept the amounts specified on Schedule A attached hereto and made a part hereof as payment in full for all Contract Services Provider provides to Residents.

Provider hereby acknowledges that failure to have proper authorizations from the Interdisciplinary Team may result in nonpayment for Capitated Services rendered by Provider to Participants.

Provider shall not bill Residents, CMS, (*State Agency*), or private insurers for Capitated Services provided to Residents. Provider shall hold harmless CMS, (*State Agency*) and Residents in the event that (*PACE Program*) cannot or will not pay for Capitated Services provided to Residents by Provider.

- 5.02 Provider shall refund to (*PACE Program*) any excess payments made to Provider in the event that (*PACE Program*) makes an overpayment or otherwise incorrectly or inadvertently makes a payment to Provider. Provider shall refund said monies to (*PACE Program*) within twenty-one (21) days of the discovery thereof by Provider or upon written notice by (*PACE Program*). (*PACE Program*) may, at its option, deduct said monies from future payments to Provider.

6.0 USE OF NAME

Provider and (*PACE Program*) each reserves the right to control the use of any of their respective copyrighted materials, symbols, trademarks, and service marks; however, Provider shall permit (*PACE Program*) to use Provider's name, business telephone number and address, and a description of its services in marketing, descriptive and other information.

7.0 **TERM, TERMINATION AND RIGHTS UPON TERMINATION**

- 7.01 The term of this Agreement commences on the Effective Date and continues through the next 30th day of June. Thereafter, this Agreement will automatically renew each July 1st for an additional one (1) year term, unless either party gives written notice of nonrenewal to the other party within sixty (60) days prior to the expiration of the then existing term or unless terminated as provided in this Section 7.0.
- 7.02 In addition to any other termination rights set forth in this Agreement, the following shall be grounds for termination of this Agreement:
- (a) Failure of Provider to meet any of the criteria described in Section 2.01 of this Agreement;
 - (b) Provider's activities create a substantial likelihood of injury or damage to the health of any Participant (e.g., quality of care concerns);
 - (c) Adverse finding by a regulatory agency related to Provider's operations; or
 - (d) The (*State Agency*) Agreement terminates.

In the event that the Medical Director or Project Manager determines that grounds for termination of this Agreement exist, this Agreement shall terminate immediately.

- 7.03 In the event of a material breach of this Agreement by either party, the nonbreaching party may terminate this Agreement by giving the breaching party sixty (60) days prior written notice of such breach and of the intent to terminate. If the breaching party does not cure such breach within such sixty (60) day period, the nonbreaching party may terminate this Agreement at the end of such period.
- 7.04 Either party may terminate this Agreement by providing the other party with written notice of such termination at least sixty (60) days prior to the effective date of termination.
- 7.05 Upon the termination of this Agreement, Provider shall promptly supply to (*PACE Program*) all of Provider's records necessary for the settlement of Residents' outstanding medical bills.
- 7.06 Upon the termination of this Agreement, (*PACE Program*) shall coordinate the transportation of the Residents to another nursing home. The Provider shall transfer Residents' medical records to new providers specified by (*PACE Program*) within five (5) days of termination of this Agreement.

8.0 **MISCELLANEOUS**

- 8.01 Amendment. This Agreement may be amended at any time by mutual agreement of (*PACE Program*) and Provider, subject to any regulatory approvals as may be required by law and/or the (*State Agency*) Agreement. In order to be valid and binding, any amendment to this Agreement must be in writing and signed by (*PACE Program*) and Provider.
- 8.02 Confidential Information. Provider shall not use any information, systems, or records which are related to (*PACE Program*) and which are made available to Provider for any purpose other

than (a) to fulfill the contractual duties specified in this Agreement or (b) to fulfill requirements under federal or State law. Provider agrees to be bound by the same standards of confidentiality that apply to the employees of (*State Agency*) and the State with respect to fulfilling the terms of this Agreement.

- 8.03 Assignment. Provider shall not assign this Agreement or delegate Provider's duties under this Agreement without (*PACE Program*)'s prior written consent. Any purported assignment by Provider without such consent shall be void. (*PACE Program*) may assign this Agreement to a related entity or organization without Provider's consent but may not assign this Agreement to an unrelated entity or organization without Provider's prior written consent, which consent shall not be unreasonably withheld.
- 8.04 Governing Law. This Agreement will be governed by and construed in accordance with the applicable laws and regulations of the State of (*State*) and will fulfill the requirements of, be governed by, and construed in accordance with, all laws, regulations, and contractual obligations incumbent upon (*PACE Program*).
- 8.05 Severability. In the event any portion of this Agreement is found to be void or illegal, the validity or enforceability of any other portion shall not be affected, unless the void or illegal portion is material to the understanding between (*PACE Program*) and Provider, and in such case, Provider and (*PACE Program*) agree to, in good faith, renegotiate this Agreement.
- 8.06 Entire Agreement. This Agreement, including any schedules attached hereto, constitutes the entire agreement between Provider and (*PACE Program*) with respect to the subject matter and supersedes all prior agreements and understandings, oral and written, between them with respect to the subject matter of this Agreement.
- 8.07 Counterparts. This Agreement may be executed in multiple original counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument.
- 8.08 Third Parties. Except as provided in Section 5.01 of this Agreement, nothing in this Agreement, express or implied, is intended to confer on any person other than (*PACE Program*), Provider, (*State Agency*) and CMS or their respective successors and assigns, any rights, remedies, obligations or liabilities by reason of this Agreement.
- 8.09 Further Assurances. Provider and (*PACE Program*) agree that they will, at any time, and from time to time following the execution of this Agreement, upon the reasonable request of the other party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all acts and instruments as may be reasonably required in conformity with this Agreement.
- 8.10 Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to be duly given when delivered in person or two (2) business days after they are mailed prepaid, certified mail, return receipt requested to the address listed below, unless either party has notified the other in writing of a different address.

- 8.11 Headings. The headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision of this Agreement.
- 8.12 (PACE Program)'s Legal Liability. This Agreement shall not terminate the legal liability of (PACE Program) under the (State Agency) Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

(PACE Program)

(Provider)

By: _____

By: _____

Its: _____

Print Name: _____

Date: _____

Date: _____

Address: _____

Address: _____

SCHEDULE A
(INSERT PAYMENT PROVISIONS)

