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SAMPLE PROVIDER CONTRACT FOR

PODIATRIC SERVICES



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SAMPLE CONTRACT FOR PODIATRY SERVICES BETWEEN SPONSOR/PACE PROGRAM AND CONTRACT PROVIDER

PODIATRY AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT, is made and entered into this _____ day of _____, 20__ (the “Effective Date”), by and between (*Sponsor*) as owner and operator of (*PACE Program*) and (*Podiatry Provider*) - hereinafter referred to as “Provider”.

RECITALS

WHEREAS, the (*Sponsor*) acts through (*PACE Program*) to participate in the Program of All-inclusive Care for the Elderly (PACE) which is designed to provide community-based, comprehensive, integrated acute and long-term care healthcare for certain members of the frail elderly population;

WHEREAS, (*PACE Program*) operates as a Program of All-inclusive Care for the Elderly (“PACE”)/Long Term Care Capitated Assistance Program (LTCCAP) provider under the terms of the PACE Program Agreement with the Centers for Medicare and Medicaid Services (CMS) and the (*State*) Department of Public Welfare (the Department) and the LTCCAP Provider Agreement with the Department (“the PACE Agreement”);

WHEREAS, Provider owns, employs, and/or contracts with duly licensed health facilities, health care professionals, community living support services, and/or home health agencies; WHEREAS, (*PACE Program*) and Provider desire to enter into a contract for the provision of Provider’s services to individuals enrolled in (*PACE Program*) pursuant to the PACE Agreement.

NOW THEREFORE, in consideration of the mutual promises and other consideration contained herein, the parties agree as follows:

1. DEFINITIONS

- 1.1 Capitated Services means those Covered Services, which are the financial responsibility of (*PACE Program*) under the PACE Agreement. Except as otherwise provided in this Agreement, Provider shall hold (*PACE Program*) solely responsible for payment for Capitated Services provided to Participants.
- 1.2 Covered Services means those health services and benefits to which Participants are entitled under the terms of the Evidence of Coverage.
- 1.3 Emergency means a sudden onset of a medical condition manifesting itself by acute symptoms of such severity that the absence of immediate medical attention could reasonably be expected to result in a life-threatening dysfunction of, or loss of, any organ/part or death of the individual.
- 1.4 Evidence of Coverage means the coverage document provided to a Participant specifying the services and benefits available to the Participant pursuant to the PACE Agreement.
- 1.5 Medical Assistance means the (*State*) Medicaid Program.

- 1.6 Medically Necessary means a service or supply which is considered by the general medical community as reasonably calculated to diagnose, correct, cure, alleviate, or prevent the worsening of condition(s) that endanger life, or cause or aggravate a handicap, or cause the mal function of an organ or body part, and/or which there is no other recognized effective, more conservative or substantially less costly course of treatment available or suitable for the individual who would receive the service or supply.
- 1.7 Participant means a subscriber enrolled in (*PACE Program*) pursuant to the PACE Agreement and who satisfies the eligibility criteria under the PACE Agreement.
- 1.8 Participating Provider means a physician, hospital, skilled nursing facility, home health agency or any other duly licensed institution or health professional employed by or under contract with (*PACE Program*) to provide health services to Participants. As needed, current list of Participating Providers shall be provided to Provider by (*PACE Program*) which list may be periodically updated by (*PACE Program*).
- 1.9 Pre-certification Form means a form approved by (*PACE Program*) which the Interdisciplinary Team uses to authorize the provision of Covered Services to a Participant.
- 1.10 Primary Care Provider means a health care provider who is a Participating Provider and to whom a Participant has been assigned by (*PACE Program*) as the Participant's Primary Care Provider.
- 1.11 Provider Facility means a health care facility and agency owned or operated by Provider and that has agreed to provide Covered Services to Participants.
- 1.12 Provider Staff means those health care professionals or other health care provider or supplier who are employed by or under contract with Provider or a Provider Facility to provide Covered Services to Participants.
- 1.13 Service Area means the areas of (*area*) (*zip codes*).
- 1.14 Interdisciplinary Team means the team of health care professionals and other providers designated by (*PACE Program*) that is responsible for supervising, coordinating and authorizing the provision of Covered Services to Participants.

2. OBLIGATIONS OF (*PACE Program*)

- 2.1 Administrative Procedures. (*PACE Program*) shall make available to Provider information regarding its and the Department's administrative procedures (including any subsequent amendments thereto that may be made by either) in the areas of record keeping, reporting, and other administrative duties of the Provider under this Agreement.
- 2.2 Compensation. For all Capitated Services provided to Participants by Provider, which meet the requirements of this Agreement, (*PACE Program*) shall pay to Provider the compensation set forth in the attached. (*PACE Program*) shall pay Provider within ninety (90) days of (*PACE Program*)'s receipt of Provider's claim which satisfies the requirements of Section 3.8 below. (*PACE Program*) shall provide Provider with applicable billing information for all Covered Services at the time Provider seeks pre-certification for such services.
- 2.3 Monitoring. (*PACE Program*) shall monitor the quality of services delivered to Participants and shall initiate corrective action where necessary to improve quality of care, in accordance with standards established pursuant to the PACE Agreement.

2.4 Confidentiality. (*PACE Program*) shall safeguard information about Participants according to applicable state and federal laws and regulations.

2.5 Identification Stickers. (*PACE Program*) shall issue identification stickers to Participants to affix to their Medical Assistance cards to identify them as Participants in LTCCAP. Upon Provider's request, (*PACE Program*) will confirm whether an individual is an Participant.

3. OBLIGATIONS OF PROVIDER

3.1 Provision of Covered Services.

3.1.1 Provider agrees to arrange for the provision of Covered Services identified in Attachment A hereto. Provider acknowledges and agrees that (*PACE Program*) is only responsible to pay Provider for Covered Services, which have been set forth in a Pre-certification Form and pre-approved by (*PACE Program*) Interdisciplinary Team. Notwithstanding the foregoing, in an Emergency, the Provider should render Covered Services to the Participant. (*PACE Program*) shall compensate Provider for such services if Provider notifies (*PACE Program*) within twenty-four (24) hours of the provision of the Emergency service or by the next business day. Provider agrees to notify (*PACE Program*) of Participants who request service without pre-certification.

3.1.2 Referrals. Admissions, additional consultations, diagnostic studies, and other selected clinical management decisions will be made in consultation with, and with the approval of, (*PACE Program*). Provider will make recommendations for the above to (*PACE Program*). Referrals and diagnostic studies that are not available through Provider Staff or Provider Facilities will only be ordered from Participating Providers designated by (*PACE Program*). All prescriptions ordered by a member of Provider Staff must be filled through a (*PACE Program*) pharmacy, except for prescriptions filled at a pharmacy that is under contract with a Provider Facility.

3.1.3 Providers' Staff and Facilities. Provider shall require Provider Staff and Provider Facilities to abide by the terms of this Agreement. (*PACE Program*) reserves the right to terminate the participation hereunder of a member of the Provider Staff or a Provider Facility if such Provider Staff or Provider Facility violates any term of this Agreement, fails to satisfy the criteria for a subcontractor under the PACE Agreement, or if (*PACE Program*) determines that the continued participation of such provider may negatively impact patient care.

3.1.4 Availability of Covered Services. Provider shall ensure that the Covered Services set forth in Attachment A shall be available to Participants on a twenty-four (24) hours per day, seven (7) day per week basis. Provider shall give (*PACE Program*) no less than sixty (60) days prior written notice of any changes in Provider Staff or Provider Facilities.

3.1.5 Quality of Service. Provider agrees that all health care services performed hereunder shall be consistent with proper practice, and that such duties shall be performed in accordance with the customary rules of ethics and conduct of the applicable state and professional licensure boards and agencies.

3.1.6 Provision of Non-Covered Services. In the event that Provider provides non-Covered Services to a Participant, Provider shall be solely financially responsible for those

services. In addition, Provider agrees that it shall be solely financially responsible for any health care services rendered which were not set forth on the Pre-certification Form, except as otherwise provided in Section 3.1.1. (*PACE Program*) shall have no financial responsibility for charges arising from such services, and payments made by (*PACE Program*) for such services, in addition to other remedies available to (*PACE Program*), may be deducted by (*PACE Program*) from payments otherwise due by (*PACE Program*) to Provider.

- 3.2 Referrals. Provider shall not make referrals of Participants except in an emergency or when authorized by the Interdisciplinary Team. In the event of a referral, Provider will furnish any such referral physician and provider complete information on treatment procedures and diagnostic tests performed prior to such referral.
- 3.3 Provider's Participants. Provider shall neither refuse to accept as a patient nor seek to transfer a Participant on the basis of the health status or medical condition of such Participant without authorization by (*PACE Program*). Provider shall not discriminate in the treatment of Participant or in the quality of services delivered to Participants on the basis of race, sex, sexual orientation, age, religion, place of residence, health status or source of payment. Provider agrees to observe, protect and promote the rights of Participants as patients. Provider shall comply with federal requirements regarding advance directives as described in applicable federal regulations and as stipulated by the Participant.
- 3.4 Charges to Participants and Others. Provider shall promptly submit all information needed to make payment. Except as otherwise provided herein, Provider shall accept as payment in full, for Covered Services provided to Participants, the compensation specified in Attachment B. Except as otherwise provided in the PACE Agreement, Provider agrees that in no event including, but not limited to, nonpayment by (*PACE Program*), (*PACE Program*) insolvency, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an Participant, the Centers for Medicare and Medicaid Services (CMS), the State Medicaid Agency, any private insurer, or any persons or entities other than (*PACE Program*) acting on a Participant's behalf for Covered Services that are Capitated Services. This provision shall not prohibit collection of special fees made in accordance with the terms of the Evidence of Coverage or as otherwise permitted in Section 3.8. Provider further agrees that: (a) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the Participant; and (b) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Provider and Participant, or persons acting on their behalf.
- 3.5 Records and Reports.
- 3.5.1 Provider shall maintain or shall cause to be maintained such records and provide such medical, financial and administrative information to (*PACE Program*) and state and federal government agencies as may be necessary for compliance by (*PACE Program*) with state and federal law, the PACE Agreement, as well as for (*PACE Program*) program management purposes. (*PACE Program*) shall have access (including the right to receive copies of such records at no charge to (*PACE Program*) or the Participant) at reasonable times, upon request, to the medical, billing and financial records of Provider relating to the health care services provided Participants, and to information on the cost of such services, and on special fees received by Provider from Participants for Covered Services.

- 3.5.2 Provider shall maintain or cause to be maintained an adequate system for recording services, charges, dates and all other commonly accepted information elements relating to services rendered to Participants under this Agreement. For each Participant who receives services under this Agreement, Provider shall maintain on-site an up-to-date medical record, which shall include, at a minimum, patient charts and other documentation sufficient to disclose the quality, quantity, appropriateness, and timeliness of services performed under this Agreement. Each Participant record must be legible and maintained in detail consistent with all laws and good medical and professional practice, which permits effective internal and external peer review and/or medical audit and facilitates an adequate system of follow-up treatment. Patient records of Participants shall be treated as confidential so as to comply with all federal and state laws and regulations regarding the confidentiality of patient records.
- 3.5.3 Provider shall maintain or cause to be maintained all records related to this Agreement for a period of not less than seven (7) years following final payment and retained further if the records are under review or audit until the review or audit is complete. Said records shall be made available for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring upon request of authorized representatives of (*PACE Program*), the Department or CMS.
- 3.5.4 The Department, the United States Department of Health and Human Services, and Office of the Inspector General shall have the right to evaluate through inspection or other means any records pertinent to Provider's provision of services to Participants, including quality, appropriateness and timeliness of services performed with the cooperation of Provider. Upon request, Provider shall assist in such reviews.
- 3.5.5 Provider agrees to submit such reports as required by (*PACE Program*). All required reports and documentation must be received by (*PACE Program*) in order for invoices to be processed for payment.

3.6 Credentialing Requirements.

- 3.6.1 Provider warrants and represents that all Provider Staff and Provider Facilities are fully licensed in the State of (*State*) and shall maintain good professional standing at all times. Evidence of such licensing shall be submitted to (*PACE Program*) upon request. In addition, Provider, Provider Staff and provider Facilities shall be duly qualified providers under the Medicare and Medicaid programs. Provider warrants that neither it nor any of its employees providing Covered Services under this Agreement, either directly or indirectly or through subcontractors, have been suspended, excluded from participation in or penalized by Medicaid, Medicare or any other state or federal reimbursement program. Provider agrees to notify (*PACE Program*) the next business day in the case of suspension or revocation, or initiation of any proceeding that could result in suspension or revocation, of licensure, Medicare or Medicaid qualification, or certification status. In addition, Provider shall notify (*PACE Program*) immediately of the filing of any malpractice claim against Provider, Provider Staff or Provider Facility.
- 3.6.2 Provider, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, the following insurance coverages:
- (a) A policy of Worker's Compensation insurance, in amounts required by law,

covering all officers, employees and agents of Provider and Employer's Liability insurance in the amount of *(amount)* (\$).

- (b) A policy of comprehensive general liability insurance with broad form property damage endorsement, with such policy to afford protection to the limit of *(amount)* (\$) with respect to bodily injury or death of any number of persons in any one occurrence and *(amount)* (\$) with respect to the property of any one owner for one occurrence.
- (c) A policy of comprehensive automobile liability coverage covering the operation of all automobiles, whether owned or not by Provider, used in connection with the performance of this Agreement with such policy to afford protection to the limit of *(amount)* (\$) with respect to bodily injury or death of any number of persons in any one occurrence and *(amount)* (\$) with respect to damage to property of any one owner from one occurrence.

Each of these insurance policies shall be issued by insurance companies licensed to conduct business in the Commonwealth of (State), shall name the *(Sponsor)* as an Additional Insured except for Worker's Compensation and Professional Liability, and shall be written as primary coverage and not contributing with or in excess of any coverage that the *(Sponsor)* may carry. Prior to the execution of this Agreement, and before the expiration of any certificate previously furnished, the Provider shall furnish to the *(Sponsor)*'s a certificate of insurance for each of the above-mentioned policies. Each insurance policy required to be carried hereunder by the contractor shall provide (and any certificate evidencing the existence of each such policy shall certify) that such insurance policy shall not be canceled unless the *(Sponsor)* shall have received at least twenty (20) days prior written notice of cancellation. The Provider shall provide immediate notice to the Office of Risk Management of any significant change in the aforementioned coverage or limits.

3.7 Administration.

- 3.7.1 Provider agrees to cooperate with and participate in all administrative policies and procedures that may be established by *(PACE Program)* and/or the Department including, but not limited to, internal and external quality management/quality improvement, utilization review programs and administrative and grievance procedures. Provider shall comply with all corrective action plans initiated by *(PACE Program)* and any final determinations rendered through the above programs.
- 3.7.2 Provider agrees that *(PACE Program)* may use the name, address, telephone number, and type of practice, of Provider, Provider Staff and Provider Facilities in *(PACE Program)*'s roster of Participating Providers and other *(PACE Program)* materials. Provider shall not reference *(PACE Program)* or *(Sponsor)* in any publicity, advertisements, notices, or promotional material or in any announcement or communication to the Participants without prior review and written approval of *(PACE Program)*.
- 3.7.3 Provider agrees to abide by *(PACE Program)*'s coordination of benefits, duplicate coverage, and subrogation policies and procedures.
- 3.7.4 Provider warrants and represents that all information and statements given to *(PACE Program)* in securing or maintaining this Agreement are true, accurate and complete.

Any inaccurate or incomplete information or misrepresentation of information given by Provider may result in the immediate termination of this Agreement by *(PACE Program)*.

- 3.7.5 Provider shall cooperate with *(PACE Program)* in complying with applicable state and federal laws and regulations and the PACE Agreement. Provider will accept and abide by the *(PACE Program)* Participant Rights and Responsibilities.
- 3.7.6 Provider shall require that all individuals providing Covered Services that involve direct patient care shall provide at least two (2) weeks prior notice of termination and Provider shall promptly advise *(PACE Program)* of same.
- 3.7.7 Provider shall designate an employee with sufficient authority who shall act as liaison between Provider and *(PACE Program)*, shall act as Provider's liaison with *(PACE Program)*. *(PACE Program)*'s Executive Director, or designee, shall act as liaison between Provider and *(PACE Program)*.

3.8 **Billing:**

- 3.8.1 For all Covered Services that have been pre-certified by the Interdisciplinary Team, Provider may bill *(PACE Program)* according to the established fee schedule set forth.
- 3.8.2 Provider shall submit to *(PACE Program)* bills for Covered Services that are the financial responsibility of *(PACE Program)* within ninety (90) days of service. Provider agrees to send all claims, payment requests, and other material directly to *(PACE Program)* (except as specified above). In no case shall Provider request payment directly from the Participant. In case of a dispute regarding payment or non-payment of a claim, Provider agrees to deal directly and solely with *(PACE Program)* and shall at no time contact the Participant.
- 3.8.3 Provider shall submit bills to *(PACE Program)* according to a mutually agreed upon format and process. Information will be provided in accordance with DataPACE and LTCCAP reporting requirements, and other CMS, Department and PACE requirements.

- 3.9 **Indemnification.** Provider shall indemnify and hold harmless *(PACE Program)*, including, without limitation, *(PACE Program)*'s agents, directors, officers, employees, invitees, or guests, and any of *(PACE Program)*'s other contractors, from and against all claims, losses, costs, damages, and expenses (including, reasonable attorneys' fees) relating to injury to or death of any person or damage to real or personal property that results from or arises in connection with (i) any breach by Provider, a member of the Provider Staff or a Provider Facility of any provision of this Agreement; (ii) the negligent provision of medical services by Provider, a member of Provider Staff or a Provider Facility or failure to take certain actions in connection with the provision of medical services including, without limitation, any negligence in failing to seek advice of a physician or to facilitate necessary transfer to an acute care hospital; or (iii) any other negligent act or omission by Provider, a member of Provider Staff or a Provider Facility, their agents, directors, officers, employees, invitees, or guests, or any other parties involved in the performance of services under this Agreement.

4. MISCELLANEOUS

- 4.1 Modifications of this Agreement. Except as otherwise provided herein, this Agreement may be amended or modified in writing as mutually agreed upon by the parties. Provider and (*PACE Program*) agree to renegotiate any provision of this Agreement that CMS finds in contravention of federal law or regulation, that the State of (*State*) finds in contravention of the PACE Agreement or associated licensing standards or other regulation, or that is in conflict with evolving standards of relevant accrediting bodies.
- 4.2 Interpretation. This Agreement shall be governed in all respects by the laws of the State of (*State*). The invalidity or unenforceability of any terms or conditions hereof shall in no way affect the validity or enforceability of any other terms or provisions. 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.
- 4.3 Compliance with Applicable Laws. Provider and (*PACE Program*) agree to recognize and abide by all state and federal laws, regulations and guidelines applicable to the PACE Agreement and to LTCCAP.
- 4.4 Assignment. This Agreement shall not be assigned, sublet, delegated or transferred by Provider without the prior written consent of (*PACE Program*).
- 4.5 Notice. Any notice required to be given pursuant to the terms and provisions hereof shall be sent by certified mail, return receipt requested, postage prepaid, as follows:

to (*PACE Program*) at: (*Address*)

and to Provider at: (*Address*)

Notice shall be deemed to be effective when received, but notice of change of address shall be effective upon receipt.

- 4.7 Relationship of Parties. None of the provisions of this Agreement is intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective employees, shall be construed to be the agent, employee or representative of the other, nor will either party have an express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party. Neither Provider nor (*PACE Program*) shall be liable to any other party for any act of, or any failure to act by the other party to this Agreement.
- 4.8 Term and Termination.
- 4.8.1 This Agreement shall take effect on the Effective Date set forth above and shall continue for a period of one year. Thereafter, this Agreement shall automatically renew for successive terms of one year, unless terminated as provided herein. This Agreement may be terminated by either party at any time by written notice given at least ninety (90) days in advance of such termination.
- 4.8.2 Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party in the event of breach hereof by the other party, provided that such breach

is not cured to the non-breaching party's reasonable satisfaction within the thirty (30) days notice period.

- 4.8.3 This Agreement may also be terminated by *(PACE Program)* effective immediately upon written notice if Provider's (or if a member of Provider Staff's or Provider Facility's) license, Medicare or Medicaid participation are suspended, restricted or revoked or if Provider violates Sections 3.4, 3.7.1, or 3.7.4 herein.
- 4.8.4 Upon termination, the rights of each party hereunder shall terminate, provided, however, that such action shall not release the Provider or *(PACE Program)* of their obligations with respect to Section 3.4 and to:
- (a) payments accrued to Provider prior to termination;
 - (b) Provider's agreement not to seek compensation from Participants for Covered Services provided prior to termination; and
 - (c) completion of treatment of Participants then receiving care until continuation of the Participant's care can be arranged by *(PACE Program)* as determined by the Interdisciplinary Team.
- 4.8.5 Provider and *(PACE Program)* recognize that in the event of the Department's termination of the PACE Agreement, this Agreement shall terminate immediately.
- 4.9 No Third Party Rights. The obligations of each party to this Agreement shall inure solely to the benefit of the other party, and no person or entity shall be a third party beneficiary of this Agreement, except to the extent specifically provided herein.
- 4.10 Headings. The headings of the various sections of this Agreement are inserted merely for the purpose of convenience and do not, expressly or by implication, limit, define or extend the specific terms of the section so designated.
- 4.11 Conflict. In the event of a conflict between the terms of this Agreement and the terms of PACE Agreement, the terms of the PACE Agreement shall prevail.

IN WITNESS WHEREOF, the foregoing Agreement is entered into by and between Provider and *(PACE Program)* to be effective on the Effective Date set forth above.

(PACE Program)

(Provider)

By: _____

By: _____

Title: Executive Director, *(PACE Program)*

Title: _____

Date: _____

Date: _____

ATTACHMENT A

Professional Podiatric Services:

Routine examinations and services will be provided at the (*PACE Program*) Center according to a schedule mutually agreed upon by the parties, which schedule may be adjusted from time to time as may be needed to meet the needs of (*PACE Program*) Participants.

Complex/urgent services to be provided based in the provider's customary practice location at the provider's option.

Referrals for routine consultations will be seen within two (2) weeks, and a written report provided to the Interdisciplinary Team within two (2) weeks thereafter.

Referrals for urgent consultations will be seen by the end of the next business day, with a same day verbal report to the Interdisciplinary Team and a written report provided to the Interdisciplinary Team within one (1) week.

Admissions, additional consultations, diagnostic studies and other selected clinical management will be made in consultation with, and the approval of, the Interdisciplinary Team.

ATTACHMENT B

(Insert Fee Schedule)

ATTACHMENT C

(INSERT PARTICIPANT RIGHTS AND RESPONSIBILITIES)

