PARTICIPATING PHARMACY AGREEMENT
for Ambulatory and Long Term Care Providers

THE Participating Pharmacy Agreement (hereinafter referred to as the “Agreement”) effective, ____________________ is between Magellan Medicaid Administration, Inc. (hereinafter referred to as “PBM”) and ______________________________________ on behalf of itself as an independent pharmacy or all of its retail pharmacy provider subsidiaries and affiliates as a chain pharmacy, whichever is applicable (hereinafter referred to as the “Pharmacy”).

WHEREAS, PBM is contracted with State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, (hereinafter referred to as TennCare or State) ("TennCare PBM Contract") to be responsible for the financial, clinical and managerial aspects of the TennCare pharmacy program for TennCare Enrollees (hereinafter referred to as “Enrollees”, “Patients” or “Members”); and

WHEREAS, the Pharmacy is an ambulatory pharmacy or long term care pharmacy as defined below and is desirous to participate in contractual prescription filling activities under the TennCare program; and

WHEREAS, PBM provides drug benefit programs to TennCare enrollees through arrangements with regional and statewide pharmacy networks; and

WHEREAS, participating pharmacies are members of PBM’s network, contractually bound to meet TennCare standards, including, but not limited to, emergency services, maintenance and review of patient profiles, patient consultation and medication information and utilization review; and,

WHEREAS, the Pharmacy and PBM desire to promote high standards of pharmaceutical care, on a cost effective basis, through drug utilization review activities.

NOW THEREFORE, in consideration of the premises and the mutual covenants promises made herein and for other good, valuable, and adequate consideration, the Parties agree as follows:

1. DEFINITIONS

1.1 “Ambulatory Pharmacy” A chain drug store or independent pharmacy or any other entity licensed by the Tennessee Board of Pharmacy, or an entity duly licensed by any State Pharmacy Board, to dispense prescriptions directly to outpatient TennCare Enrollees (other than by mail order) in any ambulatory setting. In order to be considered an ambulatory pharmacy, at least 75% of the pharmacy’s prescription volume
must consist of face to face interactions with customers. In addition, NCPDP Dispenser Class and Type 7 (Dispensing Physicians) are not eligible for enrollment.

1.2 “Average Wholesale Price” The average wholesale price (A.W.P.) is a reference amount established by industry-standard drug data compendia such as the Medi-Span Master Drug Database by Wolters Kluwer Health or another nationally recognized price source. The price file shall be updated weekly.

1.3 “Clean Claim” A claim received by the PBM for adjudication, and which requires no further information, adjustment, or alteration by the pharmacy in order to be processed and paid by the PBM.

1.4 “Controlled Substance Database” A database established under authority of TCA §53-10-304 to monitor the prescribing and dispensing of Schedule II, III, IV & V controlled substances. The database is administered by the Tennessee Department of Health. Tennessee law requires that resident and non-resident pharmacies shall have on-site electronic access to the database at all times to review patient utilization and submit the specified information regarding controlled substances prescription at least weekly. See the Department of Health website at: http://health.state.tn.us/boards/controlledsubstance/index.shtml

1.5 “Co-payment” The amount certain TennCare enrollees should pay for certain Pharmaceutical Services in accordance with the TennCare waiver.

1.6 “Covered Services” A medication or service authorized under TennCare Rules 1200-13-13-04 and/or 1200-13-14-04 that has been prescribed for an eligible TennCare enrollee by an authorized prescriber. Reimbursement for covered medications by the TennCare program is contingent upon a prescription issued by a licensed prescriber. A link to the TennCare PDL and TennCare Pharmacy Manual can be found at the website: http://tennessee.gov/tenncare/pro-pharmacy.html.

1.7 “Health Insurance Portability and Accountability Act of 1996 (HIPAA)” Mandates the use of standards for the electronic exchange of health care data; to specify what medical and administrative code sets should be used within those standards; to require the use of national identification systems for health care patients, providers, payers (or plans), and employers (or sponsors); and to specify the types of measures required to protect the security and privacy of individually identifiable health care information

1.8 “The Health Information Technology for Economic and Clinical Health (HITECH) Act” Enacted to improve health care quality, safety, and efficiency through the promotion of health information technology (HIT) and the electronic exchange of health information; to adopt an initial set of standards, implementation specifications, and certification criteria to enhance the interoperability, functionality, utility, and security of health information technology; and, to establish the capabilities and related standards that certified electronic health record (EHR) technology (Certified EHR Technology) shall need to include in order to, at a minimum, support the achievement of the proposed meaningful use by eligible professionals and eligible hospitals.

1.9 “Lock-In Pharmacy” Shall mean the pharmacy that shall be the exclusive provider for certain covered pharmacy services for enrollees chosen and assigned by TennCare.

1.10 “Lock-In” Shall mean the restriction of an enrollee to a specified and limited number of providers as assigned by TennCare.
1.11 “Long Term Care Facility” Long Term Care Facility shall mean, for the purposes of this Agreement, institutional services of a nursing facility or an intermediate care facility for the mentally retarded.

1.12 “Long Term Care Pharmacy Provider” Any entity licensed by the Tennessee Board of Pharmacy or duly licensed by any State Pharmacy board to dispense prescriptions to or for residents of long term care facilities (nursing home or an intermediate care facility for the mentally retarded).

1.13 “Maximum Allowable Cost Limit List (MAC)” The list of certain prescription drugs and their respective ‘MAC’ prices for which reimbursement shall be made to the Pharmacy. MAC Lists are subject to periodic review by TennCare and/or PBM and may be modified from time to time at TennCare and/or PBM discretion. A link to current MAC rates can be found at the website: http://tennessee.gov/tenncare/pro-pharmacy.html

1.14 “National Provider Identifier (NPI)” The National Provider Identifier (NPI) is a Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Standard. The NPI is a unique identification number for covered health care providers. Covered health care providers and all health plans and health care clearinghouses must use the NPIs in the administrative and financial transactions adopted under HIPAA. The NPI is a 10-position, intelligence-free numeric identifier (10-digit number). The NPI must be used in lieu of legacy provider identifiers in the HIPAA standards transactions.

1.15 “Network” The group of contracted pharmacies participating in the TennCare program.

1.16 “Participating Pharmacy Provider Number” Each Pharmacy which signs the Agreement and all other necessary participating pharmacy provider application forms shall always use their assigned NPI number when submitting pharmacy claims to PBM. This number must accompany all claims for reimbursement and all correspondence or communication with PBM.

1.17 “Pharmaceutical Product or Service” A medication or service authorized under TennCare Rules 1200-13-13-04 and/or 1200-13-14-04 that has been prescribed for an eligible TennCare enrollee by an authorized prescriber. A link to the TennCare PDL and TennCare Pharmacy Manual can be found at the website: http://tennessee.gov/tenncare/pro-pharmacy.html.

1.18 “Pharmacy” Any entity licensed by the Tennessee Board of Pharmacy or duly licensed by any State Pharmacy board to dispense prescriptions. For purposes of this agreement there are two types of Pharmacy providers: Ambulatory Pharmacy and Long Term Care.

1.19 “Preferred Drug List (PDL)” TennCare uses a PDL, listing therapeutic categories reviewed by the TennCare Pharmacy Advisory Committee (TPAC). The PDL shall be updated quarterly, at a minimum. Changes to the PDL shall be communicated to prescribers and pharmacists via electronic mail, professional societies and website postings. A link to the current TennCare PDL can be found at the website: http://tennessee.gov/tenncare/pro-pharmacy.html.

1.20 “Prescriber” Prescriber means an individual authorized by law to prescribe drugs for human consumption.

1.21 “Prescription Order or Refill” The authorization for the dispensing of a pharmaceutical product communicated through written, verbal or electronic means by a physician or other health practitioner with prescriptive authority for humans granted by a State licensing board.
1.22 “Protected Health Information (PHI)” Protected Health Information, as defined in HIPAA (45 C.F.R. §§ 160 and 164).

1.23 “Specialty Medication” A medication or a pharmaceutical product which has been prescribed for an eligible TennCare enrollee by an authorized prescriber and meets at least two (2) of the following:

a) The cost of the medication equals or exceeds $500 for a thirty (30) day supply;

b) The medication is only approved to treat limited patient populations, indications, or conditions;

c) The medication is typically injected, infused, or requires close monitoring by a physician or clinically trained individual;

d) The medication has limited availability, special dispensing, and delivery requirements, and/or requires additional patient support – any or all of which make such drugs difficult to obtain through traditional pharmacies

1.24 “Specialty Pharmaceutical Pricing List” The list of reimbursement rates authorized under the TennCare program for specialty medications. A link to the current Specialty Pharmaceutical Pricing List can be found at the website: http://tennessee.gov/tenncare/pro-pharmacy.html. The Specialty Pharmaceutical Pricing List is subject to periodic review by TennCare and/or PBM and may be modified at the discretion of TennCare.

1.27 “Specialty Pharmacy” A pharmacy that is licensed by the Tennessee Board of Pharmacy to dispense prescriptions that is also staffed and equipped to dispense high-cost complex medications and provide therapy management or coordination programs tailored for patients with chronic conditions.

1.28 “Voluntary Dismissal of Patient by Pharmacy” In the event a TennCare Pharmacy Provider determines that he/she cannot establish and/or maintain a professional relationship with a TennCare enrollee, or an enrollee’s representative, and will no longer provide TennCare pharmacy services for either individual, that decision is to be reported directly to the Bureau of TennCare. It is to be reported to the Bureau of TennCare within twenty-four (24) hours of the occurrence. In the event of the date of determination occurring on a weekend (Saturday or Sunday) or a State/Federal holiday, the determination is to be reported to the Bureau of TennCare on the next business day. The report is made by contacting the TennCare Pharmacy Unit at 1-888-816-1680.

2. PROVISION OF PHARMACEUTICAL SERVICES
2.1 Provision of Pharmaceutical Services and Quality of Services. Pharmacy shall provide Pharmaceutical Services to all TennCare enrollees in accordance with all state and federal law, and in a manner so as to assure the quality of those services. PBM shall monitor the quality of services delivered under the Agreement and initiate corrective action where necessary to improve quality of care. The Pharmacy shall provide Pharmaceutical Services without regard to race, religion, sex, color, national origin, age, or physical or mental health status. The Pharmacy may not refuse to provide medically necessary or covered preventive services to a TennCare enrollee based upon non-medical reasons unless pharmacy has already communicated intention of Voluntary Dismissal to TennCare.

2.2 Compliance with the TennCare PDL and TennCare Pharmacy Manual. In providing any pharmaceutical service to a TennCare enrollee, the Pharmacy shall comply with the TennCare PDL. The Pharmacy shall assist PBM in gaining PDL compliance from prescribers. The Pharmacy agrees further that it shall at all times comply with TennCare Pharmacy Manual in providing Pharmaceutical Services to TennCare enrollees. The Pharmacy shall assist TennCare enrollees to comply with the following: TennCare PDL, step-therapy, and prior authorization requirements, resolving point-of-sale (POS) edits and other activities to allow the enrollees to optimize the benefit.

2.3 Compliance With TennCare Program Policy on Drug Distribution. In providing pharmaceutical services to a covered enrollee in a long term care facility (nursing home), the Pharmacy agrees to comply with TennCare program standards, as established in the provider manual found at http://tennessee.gov/tenncare/pro-pharmacy.html and the TennCare rules. Additionally, the delivery system must allow the Pharmacy to credit PBM/TennCare for unused, creditable doses on a monthly basis.

2.4 Collection of Co-Payments. The Pharmacy shall collect any Co-payments for Pharmaceutical Services provided by the Pharmacy to TennCare enrollees, as determined by POS claim system. However, as required by federal law, the Pharmacy may not refuse to provide pharmacy services to a TennCare enrollee solely because the enrollee is unable to pay a pharmacy co-payment. Refusal of services due to lack of co-payment shall be grounds for termination of the Agreement. If the enrollee has another primary insurance and the Pharmacy is aware of other insurance, then the Pharmacy must process the transaction in such a manner that TennCare is the “payer of last resort”. Pharmacy shall cooperate and assist enrollees being enrolled in TennCare with a retroactive eligibility date, to provide receipts, and or printed lists of prescriptions paid for by the enrollee, in order to send to TennCare for reimbursement.

2.5 Utilization Management and Quality Assurance. The Pharmacy shall cooperate with all utilization review management, quality assurance, peer review, and other similar programs established by TennCare and or PBM.

2.6 Payment for Zero Balance Claims. PBM requires that the Pharmacy submit all claims for Pharmaceutical Services, even zero balance claims. This information is necessary for PBM’s Drug Utilization Review (DUR) activities and shall be audited by PBM periodically.

2.7 Submission of Claims. Pharmacists should verify TennCare coverage for all prescriptions presented by TennCare enrollees. The Pharmacy shall submit all claims for Pharmaceutical Services provided under the Agreement via the PBM POS on-line pharmacy claims processing system to PBM for adjudication of such claims. All pharmacy claims must be submitted via the online POS pharmacy claims processing system.
Pharmacy claims may be submitted to PBM up to ninety (90) days from the original date of service, unless otherwise approved by PBM.

Pharmacies must bill the specific national drug code (NDC) number for the actual drug dispensed with the actual amount dispensed and maintain invoices of drug purchases that document proof of purchase for quantities of specific drugs reimbursed by TennCare. Pharmacies must reflect purchase dates consistent with dispensing dates. These records should be maintained for a period of five (5) years. Claims identified as having been billed using the wrong NDC or quantity will be subject to recoupment.

All prescriptions must be reversed and returned to stock within (10) business days of dispensing if not picked-up by the patient.

Prescription refills shall be performed and recorded in a manner consistent with existing State and Federal Laws, Rules and Regulations. Automatic refills are not allowed. All prescription refills shall be initiated by a request from the physician, member, or other person acting as an agent of the member, i.e., family member. In the event the member is residing in a Long Term Care Facility or other institution, a nurse or other authorized agent of the facility pursuant to a valid physician’s order may initiate the request for refill.

If a Prescriber does not provide exact directions, or writes “as directed” or “prn”, the pharmacist must call the Prescriber and obtain directions. The Pharmacist must document such directions on the prescription, initial same, and bill TennCare for the exact days supply based on those directions and the quantity prescribed. Both the exact quantity and the days supply must be billed to TennCare based on the metric decimal quantity prescribed and the Prescriber’s exact written directions, valid physician’s order may initiate the request for refill.

  2.8 Non-Exclusivity. The Agreement shall not prohibit any participating Pharmacy from participating with any other third party payers.

  2.9 Prior Authorization and Emergency supply. In circumstances in which prior authorization is required, the pharmacist must attempt to contact the prescriber to advise him/her that the patient shall be unable to fill the full prescription unless: 1) the prescriber changes the prescription to a drug that does not require prior authorization (PA), or 2) prescriber seeks and obtains a PA for the original prescription. If the pharmacist is able to reach the prescriber and resolve the matter, the pharmacist is not required to provide the enrollee with the “Prior Authorization Required” form. In that circumstance, the pharmacist shall either:

  a) Dispense a drug to the enrollee (because the prescriber obtained a PA or made a therapy change to a drug for which no PA was required); or

  b) Inform the enrollee that the prescriber has withdrawn the original medication order.

If the pharmacist is unsuccessful in reaching the prescriber and/or resolving the matter, the pharmacist must provide the enrollee with the “Prior Authorization Required” form. If the pharmacist does reach the prescriber and he/she indicates that he/she shall seek PA (but it hasn't been obtained yet), the pharmacist must still give the enrollee the “Prior Authorization Required” form, but may advise the enrollee that a PA request is pending.

An emergency supply is one that is dispensed in an emergency situation. An emergency situation is a situation that, in the judgment of the dispensing pharmacist, involves an immediate threat of severe adverse consequences to the enrollee, or the continuation of immediate and severe adverse consequences to the enrollee, if an outpatient drug is not dispensed when a prescription is submitted. Pharmacists shall have the discretion to dispense an
emergency supply for either seventy-two (72) hours or three (3) days in the event that medication prescribed requires a prior authorization. Within those three (3) days the prescriber must either make a therapy change to a drug that does not require prior authorization or contact PBM to obtain a prior authorization. If the prescriber does not obtain PA, PBM/TennCare shall not cover the remainder of the prescription for the enrollee.

There are certain exceptions in which a three (3) day emergency supply would not be dispensed:

i) Adult TennCare recipients (>21 years old)
   1. Drugs listed as non-covered (Excluded Products) medications
   2. Prescriptions over the monthly limit (for recipients subject to benefit limits)

ii) All TennCare recipients:
   1. Medications classified as DESI (Drug Efficacy Study and Implementation), LTE (Less than effective), or IRS (Identically related or similar)
   2. Products for which there is no federal financial participation (FFP), also referred to as non-rebatable products

2. Enrollee Lock-In. The Pharmacy may be asked by TennCare to be the exclusive pharmacy for certain enrollees exhibiting overutilization of services as described in rule 1200-13-13-.13. Should the enrollee attempt to fill a restricted prescription at another pharmacy, PBM shall deny coverage because the pharmacy is not the enrollee’s “lock-in” pharmacy. In this case, PBM shall provide appropriate notice to the enrollee, informing him/her of the right to appeal the denial.

2.11 Credentialing/Required for Reimbursement. The Pharmacy shall be obligated to participate in any and all TennCare pharmacy credentialing programs. Failure to participate in or successfully complete this program may result in termination of the Agreement.

2.12 Professional or Technical Expertise. Pharmacy shall be licensed in the jurisdictions in which it practices and shall employ only licensed pharmacists and shall satisfy the credentialing requirements of PBM. Further, by agreeing to be bound by the Agreement, the Pharmacy assures that the functions and/or services it provides are within the scope of its pharmacists’ professional/technical practice.

2.13 Fee Reduction as a Result of Maximum Liability. PBM shall give the Pharmacy prior written notice of a determination that a reduction in the provider fee schedule is necessary to remain with the maximum liability of this Agreement. In such as case, PBM shall give the Pharmacy thirty (30) days prior written notice of said reductions and the Pharmacy provider shall agree to the adjusted rates.

2.14 Reassignment of Processor. In the event that TennCare deems PBM unable to timely process and reimburse claims and requires PBM to submit provider claims for reimbursement to an alternate claims processor to ensure timely reimbursement, the Pharmacy shall agree to accept reimbursement at PBM’s contracted reimbursement rate or the rate established by TennCare, whichever is greater.
3. PAYMENT FOR PHARMACEUTICAL SERVICES

3.1 Payment for Pharmaceutical Services. Pharmacy reimbursement shall be based on rates listed in Attachment A less any co-payment (all as calculated via the electronic Claim submission system).

If the Pharmacy provider is a Public Health Service (PHS) 340B provider then the Pharmacy provider must bill TennCare its PHS 340B acquisition price for TennCare enrollees served through the PHS 340B program (see 59 FR 25112, or Federal Register, Vol. 59, No. 92, Friday, May 13, 1994, page 25112).

3.2 Obligation for Payment. Obligation for payment under the Agreement for any Pharmaceutical Services rendered to a TennCare enrollee is solely that of PBM. In no event shall PBM be obligated to pay any claim from the Pharmacy unless and until sufficient funds have been made available to PBM.

PBM shall only pay the Pharmacy for services (1) provided in accordance with the requirements of the Agreement, PBM’s policies and procedures implementing the Agreement, (posted at: https://TennCare.MagellanHealth.com) and state and federal law, and (2) provided to TennCare enrollees who are enrolled with a managed care contractor (MCC). The Pharmacy is responsible for (1) ensuring that any prior authorization requirements are met and (2) verifying that a person is eligible for TennCare on the date of service.

3.3 Payment in Full. The Pharmacy shall accept as payment in full for Pharmaceutical Services rendered to TennCare enrollees such amounts as are established by the Agreement. In no event shall the Pharmacy bill a TennCare enrollee for the difference between the Pharmacy’s Usual and Customary Charge and the amount PBM has agreed to reimburse the pharmacy. The Pharmacy may collect from a TennCare enrollee Co-payments as permitted under Section 2.4 of this Agreement, or other charges for services not covered under the TennCare waiver.

3.4 TennCare Enrollee Hold Harmless. This Section shall apply only to such TennCare enrollees as may be afforded the protection of this Section by applicable statutes or regulations. To the extent this Section conflicts with any other provisions of the Agreement, including, without limitation, Section 3.3, the terms and conditions of this Section shall apply. The Pharmacy shall accept as payment in full for Pharmaceutical Services rendered to TennCare enrollees such amounts as are paid by PBM pursuant to the Agreement. In no event, including, but not limited to, non-payment by PBM for Pharmaceutical Services rendered to TennCare enrollees by the Pharmacy, insolvency of PBM, or breach by PBM of any term or condition of the Agreement, shall the Pharmacy bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any TennCare enrollee or persons acting on behalf of the TennCare enrollee for Pharmaceutical Services eligible for reimbursement under the Agreement; provided, however, that the Pharmacy may collect from the TennCare enrollee Co-payment (as permitted under Section 2.4 of this Agreement), Co-insurance Charges, Deductibles or other charges for services not covered under the TennCare waiver. The provisions of this Section shall (a) apply to all Pharmaceutical Services rendered while this Agreement is in force; (b) with respect to Pharmaceutical Services rendered while the Agreement is in force, survive the termination of the Agreement regardless of the cause of termination; (c) be construed to be for the benefit of TennCare enrollees; and (d) supersede any oral or written agreement, existing or subsequently entered into, between the Pharmacy and a TennCare enrollee or person acting on a TennCare enrollee’s behalf, that required a TennCare enrollee to pay for Pharmaceutical Services.

3.5 Prompt Payment. A pharmacy shall have no more than ninety (90) calendar days from the date of rendering the service to file an initial claim with PBM except in situations regarding coordination of
benefits, or a subrogation case that the Pharmacy is pursuing for payment from a third party, or if an enrollee is enrolled in the plan with a retroactive eligibility date.

3.6 Time Period for Payment. Upon receipt of a clean claim (into the POS pharmacy claims processing system) properly submitted by the Pharmacy, PBM shall pay the Pharmacy within ten (10) calendar days.

3.7 Acceptance of Surety and TennCare enrollees. The Pharmacy shall accept payment or appropriate denial made by PBM as payment in full for covered services provided and shall not solicit or accept any surety or guarantee of payment from TennCare enrollees. TennCare enrollees shall include the patient, parent(s), guardian, spouse or any other legally responsible person of the patient being served.

3.8 TennCare Reimbursement. The Pharmacy shall be required to accept TennCare reimbursement amounts for services provided under the Participation Agreement between the Pharmacy and PBM to TennCare enrollees, and shall not be required to accept TennCare reimbursement amounts for services provided to persons who are covered by another health plan.

3.9 Non-covered Therapeutic Drugs. Under this Agreement, the Pharmacy shall be reimbursed for covered services if such services are medically necessary and on the TennCare PDL; provided, however, that non-covered therapeutic classes, (e.g., Appetite suppressants, drugs to treat infertility), DESI, LTE and IRS drugs, and products for which there is no federal financial participation (FFP) shall be explicitly excluded. For these purposes, (a) “DESI” means Drug Efficacy Study and Implementation whereby drugs may be found to be LTE or IRS, (b) “LTE” means less than effective as determined by the Food and Drug Administration and (c) “IRS” means identical, related or similar to DESI or LTE. A partial listing of these DESI, LTE and IRS drugs may be found on the CMS website: http://www.cms.hhs.gov/medicaid/drugs/desi.pdf.

Covered services under the Agreement shall include Early and Periodic Screening, Diagnosis and Treatment (“EPSDT”) services as medically necessary in accordance with 42 CFR Part 441 Subpart B and the Omnibus Budget Reconciliation Act of 1989 for children under the age of 21. Such screening shall be done in accordance with the periodicity schedule set forth in, and all components of this program shall be consistent with, the latest “American Academy of Pediatrics Recommendations for Preventative Pediatric Health Care.” Pharmacy shall make all treatment decisions under the Agreement with respect to children under the age of 21 based upon medical necessity in light of such child’s individual medical and behavioral health needs.

3.10 Generic Drugs. The TennCare pharmacy program described in this Agreement uses a maximum allowable cost (MAC) pricing system for multisource generic drugs (as defined in Medispan). MAC prices for generic drugs shall be published and a link to this list shall be available at: http://tennessee.gov/tenncare/pro-pharmacy.html. If the brand name drug has a MAC (maximum allowable cost) and is medically necessary, the prescriber shall be required to contact the clinical call center and obtain a prior authorization.

3.11 Specialty Drugs. The TennCare pharmacy program described in this Agreement uses a rate table for Specialty Medications, defined as the Specialty Pharmaceutical Pricing List. The Specialty Pharmaceutical Pricing List is subject to periodic review by TennCare and/or PBM and may be modified at the discretion of TennCare. A link to the current Specialty Pharmaceutical Pricing List can be found at the website: http://tennessee.gov/tenncare/pro-pharmacy.html.
4. RELATIONSHIP BETWEEN PARTIES

4.1 Relationship between PBM and Pharmacy. The relationship between PBM and the Pharmacy is that of independent entities and nothing in this Agreement or otherwise shall be construed or deemed to create any other relationship, including one of employment, partnership, agency, or joint venture.

4.2 Relationship between Pharmacy and TennCare Enrollees. The relationship between the Pharmacy and TennCare enrollees is that of pharmaceutical provider and patient. Nothing in the Agreement shall be construed to require the Pharmacy to provide any Pharmaceutical Service if in the Pharmacy’s professional judgment such Pharmaceutical Service should not be provided.

4.3 Relationship between Pharmacy and Long Term Care Facility. The relationship between the Pharmacy and the covered facility is that of the Pharmacy. Nothing in the Agreement or otherwise shall be considered or deemed to create a relationship between the Pharmacy and the long-term care facility.

4.4 Restrictions on Change in Relationship between PBM and Pharmacy. The Pharmacy shall not enter into any subsequent agreements or subcontracts for any of the work contemplated under the Agreement without approval of PBM and TennCare.

5. LIABILITY INSURANCE AND INDEMNIFICATION

5.1 Pharmacy Liability Insurance. A participating Pharmacy shall procure and maintain, at the Pharmacy’s sole expense, professional liability and malpractice insurance with limits of no less than One Million Dollars ($1,000,000) for each claim and of no less than Three Million Dollars ($3,000,000) aggregate, as well as comprehensive general liability insurance. The Pharmacy shall also assure that all pharmacists and other health care professionals employed or under contract with the Pharmacy to render Pharmaceutical Services to TennCare enrollees procure and maintain such insurance, unless they are covered under Pharmacy’s insurance policies. The Pharmacy’s and its pharmacists’ and other health care professionals’ professional liability insurance shall be either occurrence or claims made with an extended period reporting option under such terms and conditions as may be reasonably required by PBM. The Pharmacy shall submit to PBM in writing evidence of insurance coverage. Finally, a participating Pharmacy shall maintain and provide written proof upon execution of this Agreement and/or request of the PBM of adequate worker’s compensation insurance.

5.2 Indemnification. The Pharmacy and PBM each agree to indemnify and hold harmless the other party from any and all claims, liabilities, damages, or judgments imposed upon, incurred by or asserted against the other party which arise solely out of or derive solely from the negligence or fault of the first party.

Option 2 for State owned and operated facilities delete 5.1 and 5.2 above and replace with the following:

- The State of Tennessee, including the University of Tennessee, is prohibited by law from agreeing to provide indemnity. In addition, the General Assembly for the State of Tennessee does not authorize the State agencies or employees to provide, carry, or maintain commercial General Liability Insurance or Medical, Professional or Hospital Liability Insurance. Claims against the State of Tennessee, or its employees, for injury, damages, expenses or attorney’s fees are heard and determined by the Tennessee Claims Commission or the Tennessee Board of Claims in the manner prescribed by law. See Tenn. Code Ann. §§ 8-42-101 et seq., 9-8-101 et seq., 9-8-301 et seq., and 9-8-410 et seq.
Option 3 for Municipal or County owned and operated facilities delete 5.1 and 5.2 above and replace with the following:

The Contractor, being a Tennessee local governmental entity (such as a county or municipality), is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101 et seq., for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

Option 4 for FQHC owned and operated facilities delete 5.1 and 5.2 above and replace with the following:

5.1 Pharmacy is a non-profit corporation duly existing and organized under the laws of the State of Tennessee which is a Federally Qualified Health Center as defined in 42 C.F.R. §405.2401. Pharmacy is an entity to which the Federal Tort Claims Act may apply.

5.2 For so long as Pharmacy qualifies as an “employee” in accordance with Section 224 (g) of the Public Health Service Act (“PHS”), located at 42 U.S.C. § 223(g), as amended, Pharmacy shall have its liability limits defined by Section 224(a) of the Federal Tort Claims Act. As an employee under the PHS, Pharmacy carries no professional liability insurance; however, it is insured for general liability. This general liability insurance is for the benefit of the Pharmacy only and provides no indemnification for any other entity whatsoever. The Pharmacy agrees to produce proof of adequate professional liability insurance for the Pharmacy’s professional employees who perform any professional services under this Agreement and are not covered by the Federal Tort Claims Act. In the event that Pharmacy loses its status as an “employee” pursuant to Section 224(g) of the PHS, Pharmacy shall procure liability insurance in such amounts as set out in Section 5.3 of this Agreement.

5.3 Pharmacy agrees to maintain and provide written proof upon execution of this Agreement and/or request of the PBM of adequate worker’s compensation and general liability insurance as well as one or more professional liability (malpractice) insurance policies of at least $1 million per occurrence, $3 million in the aggregate annually covering the acts of its employees and agents. Pharmacy agrees to notify the PBM not less than fifteen (15) days prior to any reduction in coverage, cancellation or nonrenewal of the policy(s). The insurance required by this section shall not relieve or release Pharmacy from, or limit its liability with respect to, any and all obligations under this Agreement.

6. LAWS, REGULATIONS, AND LICENSES

6.1 Laws, Regulations and Licenses. Participating pharmacies shall maintain all federal, state, and local licenses, certifications, and permits, without restriction, required to provide Pharmaceutical Services to TennCare enrollees. Further, the Pharmacy shall comply fully with all applicable laws and regulations including, but not limited to, that a pharmacist shall not fill a written prescription from a Tennessee practitioner unless issued on tamper-resistant prescription paper, except that the pharmacist may provide emergency supplies in accordance with TennCare or other insurance contract requirements. Failure of the Pharmacy to follow this law shall be grounds for termination of this Agreement.

The Pharmacy shall notify PBM in writing, to the attention of the PBM Network Manager, within ten (10) days of any suspension, revocation, condition, limitation, qualification, or other restriction of the Pharmacy’s license by any state in which the Pharmacy is authorized to provide Pharmaceutical Services, which would prohibit the Pharmacy from performing any of its obligations under this Agreement. If requested by PBM, the pharmacy shall comply with a corrective action plan or be subject to recoupment of funds, termination, or other penalties determined by PBM.
6.2 Monthly Screening Requirements and Exclusion from Participation in Government Health Care Programs. For the purpose of the Exclusion and Screening Requirements, the following definitions shall apply:


“Ineligible Persons” means any individual or entity who: (a) is, as of the date such Exclusion Lists are accessed by the Provider, excluded, debarred, suspended or otherwise ineligible to participate in Federal health care programs or in Federal procurement or non-procurement programs; or (b) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320(a)-7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

The Pharmacy shall immediately notify the PBM Project Director, should any pharmacist employed by the Pharmacy be sanctioned by the Federal Office of Inspector General (OIG), the Department of Health and Human Services (HHS) or CMS. No pharmacists who have been excluded from participation in any government health care programs (Medicare, Medicaid, or other state or federal government health care programs) shall be permitted to participate in the TennCare program unless they can document that Federal OIG, CMS or HHS has fully reinstated them as a participating provider. The Pharmacy shall immediately notify PBM if it has been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 or 1156 of the Social Security Act or is otherwise not in good standing with the TennCare Program. Failure to so notify PBM shall constitute a material breach of the Agreement. Failure to provide PBM with this information may also be cause for termination of the Pharmacy from participation in the TennCare program and recoupment of any and all reimbursements made to the Pharmacy during the time period such excluded provider was providing Pharmaceutical Services to TennCare enrollees.

The Pharmacy shall screen its employees, owners, officers and managing agents and contractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, CHIP, or any Federal health care programs (as defined in Section 1128B(f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded. The Pharmacy shall be required to immediately report to PBM any exclusion information discovered. The Pharmacy shall be informed that civil monetary penalties may be imposed against providers who employ or enter into contracts with excluded individuals or entities to provide items or services to TennCare enrollees.

6.3 Compliance with Legal Regulations. Both PBM and the Pharmacy agree to recognize and abide by all state and federal laws, rules, regulations and guidelines applicable to PBM and the Pharmacy. The Agreement incorporates by reference the scope of services provided or anticipated to be provided by the Agreement, including, but not limited to, the Tennessee state plan, 42 CFR § 431.107, 42 CFR 455 subpart B, TCA §53-10-304, and TennCare rules.

6.4 Incorporation by Reference of Federal and State Law/Regulation. By reference, the Agreement incorporates all applicable federal and state laws and regulations and any applicable court orders or consent decrees, and any and all revisions of such laws or regulations court orders or consent decrees shall automatically be incorporated into the Agreement as they become effective.
The Pharmacy shall be compliant with Section 6032 of the Deficit Reduction Act of 2005 (DRA) with regard to policy development, employee training and whistle blower protection related to The False Claims Act, 31 USC § 3729-3733, et seq.

6.5 Non-Discrimination. The Pharmacy agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of the Agreement or in the employment practices of the Pharmacy on the grounds of disability, age, race, color, religion, sex, national origin, economic status, payment source, or any other classification protected by federal, Tennessee State constitutional or statutory laws.

a) The Pharmacy shall upon request by the PBM and/or TennCare show proof of such nondiscrimination compliance in a format approved by TennCare.

b) The Pharmacy shall post notices of nondiscrimination in conspicuous places available to all employees and Enrollees.

c) If providing direct services to Enrollees the Pharmacy shall:

1) Agree to have TennCare approved written policies and procedures that demonstrate nondiscrimination in the provision of its services to Enrollees. The policies and procedures shall include, but are not limited to written policies and procedures that demonstrate nondiscrimination in the provision of its free language assistance services to individuals with limited English proficiency (LEP) and individuals with disabilities and policies and procedures to aid individuals with disabilities who require assistance in order to receive or participate in TennCare services, programs, or activities in accordance with Titles II and III of the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973. The policies and procedures may be documents that TennCare has prior approved for the PBM to provide to its Pharmacies, providers, and subcontractors. Policies and procedures not provided to the Pharmacies, providers, or subcontractor by the PBM shall be prior approved in writing by TennCare.

2) The PBM shall provide to the Pharmacy a toll free number and a Telecommunications Relay Service (TRS) to be used for aiding Enrollees or Enrollees’ representatives who may need language assistance services.

3) The Pharmacy agrees to cooperate with TennCare and the PBM during discrimination complaint investigations.

4) The Pharmacy agrees to assist Enrollees in obtaining discrimination complaint forms and contact information for the PBM’s Nondiscrimination Office.

6.5.1 Complaints of Discrimination. All complaints of discrimination allegedly committed by the Pharmacy under the applicable to the mandatory federal and state civil rights laws statutory law, as listed in Section 6.5., related to the performance of the Agreement shall be investigated by PBM handled pursuant to Section A.14 of the PBM agreement with TennCare and TennCare’s discrimination complaint procedures. The implementation of all discrimination complaint resolution corrective action plans (CAP) of all discrimination complaint shall be the responsibility of PBM, and a CAP could be grounds for termination of this Agreement.

6.6 HIPAA Compliance.
6.6.1 In accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, the Pharmacy shall, at a minimum, comply with the following requirements:

a) As a party to this Agreement, the Pharmacy hereby acknowledges its designation as a covered entity under the HIPAA regulations;

b) The Pharmacy shall comply with the transactions and code set, privacy, and security regulations of HIPAA. Compliance includes meeting all required transaction formats and code sets with the specified data partner situations required under the regulations.

c) The Pharmacy shall transmit/receive from/to its provider, subcontractors, clearinghouses and PBM all transactions and code sets required by the HIPAA regulations in the appropriate standard formats as specified under the law and as directed by PBM so long as PBM direction does not conflict with the law;

d) The Pharmacy shall agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA standards, that it shall be in breach of the Agreement and shall then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements, can bring basic business practices between PBM and the Pharmacy and between the Pharmacy and its providers and/or subcontractors to a halt, if for any reason the Pharmacy cannot meet the requirements of this Section, PBM may terminate this Agreement in accordance with Section 10.2;

e) Protected Health Information (PHI) data exchanged between the Pharmacy and PBM is intended to be used only for the purposes of health care operations, payment and oversight and its related functions. All PHI not transmitted for the purposes of health care operations and its related functions, or for purposes allowed under the HIPAA regulations shall be de-identified to protect the individual enrollee’s PHI under the privacy act;

f) Disclosures of PHI from the Pharmacy to PBM shall be restricted as specified in the HIPAA regulations and shall be permitted for the purposes of: health care operations, payment and oversight, obtaining premium bids for providing health coverage, modifying, amending or terminating the group health plan. Disclosures to PBM from the Pharmacy shall be as permitted and/or required under the law.

g) The Pharmacy shall report to PBM within forty-eight (48) hours immediately upon becoming aware of any use or disclosure of PHI in violation of the Agreement by the Pharmacy, its officers, directors, employees, subcontractors or agents or by a third party to which the Pharmacy disclosed PHI;

h) The Pharmacy shall specify in its agreements with any agent or subcontractor of the Pharmacy that shall have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Pharmacy pursuant to this Section;

i) The Pharmacy shall make available to TennCare enrollees the right to amend their PHI in accordance with the HIPAA regulations. The Pharmacy shall also make information available to enrollees educating them of their rights and necessary steps in this regard in their Notice of Privacy Practices;

j) The Pharmacy shall make an enrollee’s PHI accessible to TennCare immediately upon request by TennCare;

k) The Pharmacy shall make available to PBM within ten (10) days of notice by PBM to the Pharmacy such information as in the Pharmacy’s possession and is required for PBM make the accounting of disclosures required by 45 CFR § 164.528. At a minimum, the Pharmacy shall provide PBM with the following information:
1) The date of disclosure,

2) The name of the entity or person who received the HIPAA protected health information, and if known, the address of such entity or person,

3) A brief description of the PHI disclosed, and

4) A brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

In the event that the request for an accounting of disclosures is submitted directly to the Pharmacy, the Pharmacy shall within two (2) days forward such request to PBM. It shall be PBM’s responsibility to prepare and deliver any such accounting requested. Additionally, the Pharmacy shall institute an appropriate record keeping process and procedures and policies to enable the Pharmacy to comply with the requirements of this Section; 1) The Pharmacy shall make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA regulations upon request;

l) The Pharmacy shall create and adopt policies and procedures to periodically audit adherence to all HIPAA regulations, and for which Pharmacy acknowledges and promises to perform, including, but not limited to, the following obligations and actions: 1) Safeguards. The Pharmacy agrees to use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that the Pharmacy creates, receives, maintains, or transmits on behalf of PBM and/or TennCare. 2) Pharmacy’s Agents. The Pharmacy agrees to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of PBM and/or TennCare agrees to use reasonable and appropriate safeguards to protect the PHI. 3) Notification of Security Incident. The Pharmacy agrees to report to PBM immediately upon becoming aware of any use or disclosure of TennCare enrollee PHI or of any security incident of which Pharmacy becomes aware.

m) The Pharmacy shall implement all appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of the Agreement, including, but not limited to, confidentiality requirements in 45 CFR parts 160 and 164;

n) The Pharmacy shall set up appropriate mechanisms to ensure minimum necessary access of its staff to PHI;

o) The Pharmacy shall create and implement policies and procedures to address present and future HIPAA regulation requirements as needed to include: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollees’ rights to amend, access, request restrictions, and the right to file a complaint;

p) The Pharmacy shall provide an appropriate level of training to its staff and enrollees regarding HIPAA related policies, procedures, enrollee rights and penalties prior to the HIPAA implementation deadlines and at appropriate intervals thereafter;

q) The Pharmacy shall be allowed to use and receive PHI from PBM and /or TennCare where necessary for the management and administration of the Agreement and to carry out business operations;

r) The Pharmacy shall be permitted to use and disclose PHI for the Pharmacy’s own legal responsibilities;
s) The Pharmacy shall adopt the appropriate procedures and access safeguards to restrict and regulate access to, and use by Pharmacy employees and other persons performing work for said Pharmacy to have only minimum necessary access to individually identifiable information within their organization;

t) The Pharmacy shall continue to protect PHI relating to individuals who are deceased;

u) The Pharmacy must make available PHI in accordance with 45 CFR § 164.524;

v) The Pharmacy must make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR §164.526.

6.6.2 In accordance with HIPAA regulations, Pharmacy shall, at a minimum, adhere to the following guidelines:

a) Pharmacy shall make its individually identifiable health information available to enrollees for amendment and access as specified and restricted under the HIPAA regulations;

b) Pharmacy shall adopt and implement policies and procedures for minimum necessary access to individually identifiable health information with its staff regarding plan administration and oversight;

c) Pharmacy shall adopt a mechanism for resolving any issues of non-compliance as required by law; and

d) Pharmacy shall establish similar HIPAA trading partner and business associate agreements with its subcontractors, trading partners, and business associates.

6.7 The Health Information Technology for Economic and Clinical Health Act (HITECH): HITECH Act was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on both covered entities as well as entities acting as covered entities’ business associates with respect to privacy, security, and breach notification.

In accordance with HITECH regulations, Pharmacy shall, following the discovery of a breach of unsecured PHI, as defined in the HITECH Act or accompanying regulations, notify PBM of such breach pursuant to the terms of 45 CFR § 164.410 and cooperate in PBM’s breach analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by Pharmacy as of the first day on which such breach is known to Pharmacy or, by exercising reasonable diligence, would have been known to Pharmacy. Pharmacy shall provide such notification to PBM immediately upon becoming aware of the breach. Such notification shall contain the elements required in 45 CFR § 164.410; and Pharmacy shall, pursuant to the HITECH Act and its implementing regulations, comply with all additional applicable requirements of the Privacy Rule, including those contained in 45 CFR §§ 164.502(e) and 164.504(e)(1)(ii), at such time as the requirements are applicable to Pharmacy. Pharmacy shall not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable individual. Pharmacy shall not engage in any communication which might be deemed to be “marketing” under the HITECH Act. In addition, Pharmacy shall, pursuant to the HITECH Act and its implementing regulations, comply with all applicable requirements of the Security Rule, contained in 45 CFR §§ 164.308, 164.310, 164.312 and 164.316.
7. SYMBOLS AND TRADEMARKS

7.1 Use by Pharmacy. A participating pharmacy shall have the right to designate and make oral or published reference to the Pharmacy as a Participating Pharmacy; provided, however, that the Pharmacy shall not otherwise use PBM’s or TennCare’s name or its trademark for any advertising unless first approved in writing in advance by PBM or TennCare.

7.2 Use by TennCare. PBM and TennCare shall have the right to designate and make oral or published reference to the Pharmacy as a Participating Pharmacy; provided, however, that PBM and TennCare shall not otherwise use the Pharmacy’s name or its trademark for any advertising unless first approved in advance by the Pharmacy.

8. BOOKS AND RECORDS

8.1 Maintenance of Medical Records-Enrollee Access. The Pharmacy shall maintain an adequate record system for recording services, servicing the Pharmacy charges, dates and all other commonly accepted information elements for services rendered to TennCare enrollees pursuant to the Agreement (including, but not limited to, such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the Agreement). This includes the maintenance of a signature log which shall list the recipient’s name, date the prescription(s) is/are picked up, and the prescription number(s). TennCare enrollees and their representatives shall be given access to their medical or pharmacy records, to the extent and in the manner provided by Tenn. Code Ann. §§ 63-2-101 and 63-2-102, and, be given copies thereof upon request.

8.2 Maintenance of Medical Records – Duration. The Pharmacy shall maintain any and all records for a period not less than five (5) years from the termination of the Agreement and shall retain the records further until all evaluations, audits, reviews or investigations or prosecutions are completed for recording enrollee services, servicing providers, charges, dates and all other commonly accepted information elements for services rendered to enrollees pursuant to the Agreement (including, but not limited to, such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the Agreement and administrative, civil or criminal investigations and prosecutions). Said records shall be made available for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring upon request of an authorized representative of PBM and/or TennCare.

8.3 Access To and Release of Books and Records. Subject to applicable confidentiality laws and regulations, during regular business hours and with or without notice and demand, PBM shall have access to all information and records or copies of records maintained by the Pharmacy related to Pharmaceutical Services provided by the Pharmacy under the Agreement or related to analysis of the efficiency of healthcare management techniques by PBM.

As a condition of participation in TennCare, enrollees shall give TennCare, the Office of the Comptroller of the Treasury, and any health oversight agency, such as OIG, TBI MFCU, DHHS Office of Inspector General (DHHS OIG), and DOJ, and any other authorized state or federal agency, access to their records. Said records shall be made available and furnished immediately upon request by the Pharmacy and/or provider for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring as well as for administrative, civil and criminal investigations or prosecutions upon the request of an authorized representative of the PBM, TennCare or
authorized federal, state and Office of the Comptroller of the Treasury personnel, including, but not limited to, the OIG, the TBI MFCU, the DHHS OIG and the DOJ. The Pharmacy shall provide records or copies of records requested by PBM and/or TennCare or their duly authorized agents within thirty (30) days from the date such request is made, or within shorter time [not less than fourteen (14) days] as may be required by applicable laws or regulations.

8.4 Compliance With Laws and Regulations. The federal, state, and local governments and any of their authorized representatives shall have access to, and PBM and the Pharmacy are authorized to release, in accordance with applicable laws and regulations, all information and records, or copies of such, within the possession of PBM or the Pharmacy, which are pertinent to and involve transactions related to the Agreement and access to which is necessary to comply with laws and regulations applicable to PBM and/or TennCare.

8.5 Privacy of TennCare Enrollee’s Records. PBM and the Pharmacy shall maintain the confidentiality of all information regarding TennCare enrollees in accordance with any applicable state and federal laws and regulations, including the standards and requirements of HIPAA and HITECH.

8.6 Confidential Business Information. PBM and the Pharmacy shall take all necessary steps to provide maximum protection to the other party’s trade secrets and other confidential business information, to the extent required under state and federal law.

8.7 Confidentiality of Utilization Review Information. Any records, data or other information imparted to the Pharmacy or any of its employees in connection with utilization review panels established by PBM shall be maintained as strictly confidential. Such information shall be used solely in the exercise of the proper functions of said panel(s). The Pharmacy and its employees shall not disclose said information to any person, firm or entity, and shall notify PBM immediately of any demand or request for any such information from any third party.

8.8 Right to Inspection by Government Entities. Provide that TennCare, DHHS OIG, Office of the Comptroller of the Treasury, OIG, TBI MFCU, and DOJ, as well as any authorized state or federal agency or entity shall have the right to evaluate through inspection, evaluation, review or request, whether announced or unannounced, or other means any records pertinent to the Agreement including, but not limited to, medical records, billing records, financial records, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution and such evaluation, inspection, review or request, and when performed or requested, shall be performed with the immediate cooperation of the Pharmacy. Upon request, the Pharmacy shall assist in such reviews including the provision of complete copies of medical records. HIPAA does not bar disclosure of PHI to health oversight agencies, including, but not limited to, OIG, TBI MFCU, DHHS OIG and DOJ, so long as these agencies operate in compliance with applicable regulations, and provide that any authorized state or federal agency or entity, including, but not limited to TennCare, OIG, TBI MFCU, DHHS OIG, DOJ, Office of the Comptroller of the Treasury, may use these records and information for administrative, civil or criminal investigations and prosecutions within the limitations set forth under HIPAA and HITECH.

8.9 Report Submission. The Pharmacy shall submit all reports and clinical information required by PBM.
8.10  **Safeguarding Information.** Strict standards of confidentiality of records including, but not limited to, patient medical/pharmacy records and other similar records shall be maintained in accordance with all applicable state and federal laws and regulations.

8.11  **Monitoring of Services Rendered.** Whether announced or unannounced, PBM may monitor the services rendered to TennCare enrollees.

8.12  **External Review.** Whether announced or unannounced, the Pharmacy shall participate and cooperate in any internal and external quality review, audit, utilization review, peer review conducted by or in accordance with PBM, TennCare, The Pharmacy Advisory Committee, PBM/TennCare DUR Board, and appeal procedures established by PBM and/or TennCare.

### 9. TERM AND TERMINATION

9.1  **Term.** Unless earlier terminated in the manner provided below, the Agreement shall begin on the start date listed on the first page of the Agreement and shall continue thereafter for successive periods of twelve (12) months until terminated by either party upon written notice to the other party not less than sixty (60) days prior to the initial or any subsequent expiration date.

9.2  **Termination.** The Agreement may be terminated at any time by PBM or Pharmacy, with or without cause, upon thirty (30) days prior written notice; or immediately upon receipt of written notice from PBM for the following breaches of the contract:

a) In the event the Pharmacy willfully refuses to provide Pharmaceutical Services to a TennCare enrollee, except as provided in Section 4.2; or

b) In the event the Pharmacy’s loss or suspension of licensure or loss of liability insurance required under the Agreement; or

c) Following PBM’s receipt from the Pharmacy of an objection to a proposed amendment to the Agreement pursuant to Section 10.1(b); or

d) The Pharmacy has been excluded from participation in the Medicaid/TennCare program by the federal government and/or TennCare: or

e) The Pharmacy has knowingly allowed a pharmacist who has been excluded from participation in the Medicaid/TennCare program by the federal government and/or TennCare to provide pharmaceutical services to TennCare enrollees; or

f) The Pharmacy has not complied with all of the emergency supply provisions and any subsequent agreement amendments or revisions to court order or consent decrees that pertain to the supply of emergency supply dispensing; or

g) The Pharmacy refuses to provide pharmacy services to a TennCare enrollee solely because the enrollee is unable to pay any or all pharmacy co-payments; or

h) Failure to maintain medical records and access as specified; or
i) Failure to display notice of appeal as specified; or

j) Failure to take all reasonable steps to cure the breach or end the violation with respect to noncompliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA and HITECH standards.

9.3 In the event of termination, the Pharmacy shall immediately make available, to PBM, or its designated representative, in a format specified by PBM any or all records, whether medical, pharmacy, or financial, related to the Pharmacy’s activities undertaken pursuant to the Agreement. The provision of such records shall be at no expense to PBM.

9.4 Continuation Provisions. The Pharmacy shall continue as a participating Pharmacy under the Agreement during the notice period specified in Sections 9.2 and 9.3 unless otherwise notified by PBM in writing of the suspension of all or part of its rights and obligations as a participating Pharmacy. Upon termination of the Agreement, the Pharmacy shall continue to perform the obligations of a participating Pharmacy under the Agreement in effect between PBM and the Pharmacy at the time of termination, which provides for a continuation of such obligations, including those relating to continued provision of Pharmaceutical Services to TennCare enrollees, at the rates and for the period specified in such agreement, unless otherwise agreed by PBM.

9.5 Application of the Pharmacy. It is the understanding of the parties that the Agreement shall be executed first by the Pharmacy and upon such execution shall be an application by the Pharmacy to become a party to the Agreement. As part of such application, the Pharmacy shall complete the information in Attachment B (Pharmacy Application). The signing of the Agreement by the Pharmacy shall constitute an offer only, unless and until it is approved by PBM. This application by the Pharmacy shall be accepted by PBM only if the Pharmacy meets all participation criteria established by PBM.

10. MISCELLANEOUS

10.1 Amendment by PBM. The Agreement may be amended by PBM, upon thirty (30) days written notice to Pharmacy. The signed Amendment shall be attached to the original Agreement. If the Pharmacy rejects the Amendment, and the parties cannot agree to a modification, the termination procedures listed above shall be utilized. PBM may amend this Agreement (a) to comply with applicable court orders, consent decrees, laws or regulations or (b) to affect any necessary policy.

10.2 Amendment by TENNCARE. TennCare reserves the right to direct PBM to terminate or modify the Pharmacy Agreement when TennCare determines it to be in the best interest of the State, upon thirty (30) days notice to PBM from TennCare.

10.3 Assignment. PBM may assign all or any of its rights or responsibilities under the Agreement to any entity controlling, controlled by, or under common control with PBM. The Pharmacy acknowledges that persons and entities under contract with PBM may perform certain administrative services under the Agreement. The Pharmacy may not assign any of its rights or responsibilities under the Agreement to any person or entity without the prior written consent of PBM, which consent shall not be unreasonably withheld.

10.4 Dispute Resolution.
a) Disputes on the fees schedule set by TennCare. If the Pharmacy disputes whether or not PBM has applied the fee schedule set by TennCare to a given prescription, provider shall follow the process outlined in the Pharmacy provider manual to resolve this dispute.

b) Disputes other than fee schedule set by TennCare. The parties are free to customize and refine the basic arbitration procedures to meet their particular needs. The parties agree that should any dispute or controversy arise, the following steps toward resolution shall be immediately taken: either party may initiate dispute resolution procedures by sending a certified or registered letter to the other party setting forth the particulars of the dispute, the terms of the Agreement involved, and a suggested resolution of the problem; the recipient of the letter must respond within thirty (30) days with an explanation and response to the proposed solution; if the correspondence does not resolve the dispute, then the parties shall meet on at least one (1) occasion and attempt to resolve the matter. The meeting should be in the county of the Pharmacy; if this step does not produce a resolution then the parties agree to mediate or arbitrate the dispute. Any controversy or claim arising out of or relating to the Agreement, or breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award may be entered in any Court having jurisdiction thereof. In addition, the Provider Independent Review of Disputed Claims process shall be available to providers to resolve claims denied in whole or in part by the PBM as provided at Tenn. Code Ann. § 56-32-126(b).

10.5 Entire Agreement. The Agreement and the TennCare Pharmacy Manual found at: http://tennessee.gov/tenncare/pro-pharmacy.html constitutes the entire Agreement between the parties with respect to its subject matter.

10.6 Severability. If any requirement in this Agreement is determined by TennCare to conflict with the TennCare and PBM Contract, such requirement shall be null and void and all other provisions of this Agreement shall remain in full force and effect.

10.7 Notices. Any notice or other communication required or permitted under the Agreement shall be in writing. The notice or communication shall be deemed to have been given when delivered in person; or if delivered by United States mail, on the date mailed, proper postage prepaid and properly addressed to the address set forth next to the appropriate party’s name at the end of the Agreement or to another more recent address of which the sending party has received written notice. Notices may also be sent via facsimile and through a web-based bulletin board process and e-mail and posted on PBM’s website.

10.8 Notice to TENNCARE of Actions Against PBM. PBM shall give TennCare and the Tennessee Department of Commerce and Insurance, TennCare Division, immediate notification in writing by Certified Mail of any administrative or legal action or complaint filed regarding any claims made against the PBM by a Pharmacy, provider, or enrollee that is related to PBM’s responsibilities under the Agreement, including, but not limited to, notice of any arbitration proceedings instituted between a Pharmacy provider and PBM. PBM shall ensure that all tasks related to the Agreement are performed in accordance with the terms of the Agreement and the TennCare PBM Contract.

10.9 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Pharmacy agrees that it shall be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under the Agreement.
For purposes of any legal action occurring as a result of or under the Agreement between the Pharmacy, PBM, and/or TennCare, the place of proper venue shall be Davidson County, Tennessee.

10.10 **Indemnification – State of Tennessee.** The Pharmacy agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the Pharmacy, its employees, or any other person acting for or on its or their behalf relating to this contract. The Pharmacy further agrees that it shall be liable for the reasonable costs of attorneys for the State in the event such service is necessitated to enforce the terms of this contract or otherwise enforce the obligations of the Pharmacy to the State. In the event of any such suit or claim, the Pharmacy shall give the State immediate notice thereof and shall provide all assistance required by the State in the State’s defense. The State shall give the Pharmacy PBM written notice of any such claim or suit and the Pharmacy shall have the full right and obligation to conduct the Pharmacy’s own defense thereof. Nothing contained herein shall be deemed to accord to the Pharmacy, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tenn. Code Ann. § 8-6-106.

However, if the Pharmacy is a Tennessee governmental entity, it is governed by the provisions of the Tennessee Government Tort Liability Act, Tenn. Code Ann. §§ 29-20-101 et seq., for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly. In the event of any lawsuit or claim arising out of the Agreement, if the Pharmacy is a governmental entity, the Pharmacy shall give the State immediate notice thereof and shall provide all assistance required by the State in the State’s defense. In addition, in the situation where the Pharmacy is a governmental entity, the State shall give the Pharmacy written notice of any such claim or suit and the Pharmacy shall have the full right and obligation to conduct the Pharmacy’s own defense thereof. Nothing contained herein shall be deemed to accord to the Pharmacy, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tenn. Code Ann. § 8-6-106.

10.11 **Compliance with Appeals Process.** The Pharmacy agrees to comply with the appeal process specified in the Grier Revised Consent Decree, including, but not limited to, assisting a TennCare enrollee by providing appeal rights, appeal forms, and contact information, including the appropriate address and fax number for submitting appeals for State level review.

10.12 **Displaying Notice of Appeal.** The Pharmacy agrees to display notices of TennCare enrollee’s right to appeal adverse decisions affecting services and other applicable notices in public areas of their facility(ies) in accordance with TennCare rules, including, but not limited to, TennCare Rules 1200-13-13-.11, and .12 and 1200-13-14-.11 and .12.

10.13 **Emergency Drug Supply.** The Pharmacy shall inform enrollees of their options when a prior authorization has not been obtained. In such circumstances, the Pharmacy shall determine if a seventy-two (72) -hour emergency supply should be dispensed.

10.14 **Fraud Investigations.**
10.14(A) Reporting fraud. The Pharmacy shall report all confirmed or suspected fraud and abuse to the appropriate agency as follows:

(1) Suspected fraud and abuse in the administration of the program shall be reported to the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) and/or the Office of Inspector General (OIG);
(2) All confirmed or suspected provider fraud and abuse shall immediately be reported to TBI MFCU; and,
(3) All confirmed or suspected enrollee fraud and abuse shall be reported immediately to OIG.

The Pharmacy shall use the Fraud Investigation Form in Attachment C, or such other form as may be deemed satisfactory by the agency to which the report is to be made under the terms of the Agreement.

The Pharmacy shall report any suspicion or knowledge of fraud and/or abuse, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return monies allowed or paid on claims known to be false, incorrect, inaccurate or fraudulent. The reporting entity shall not attempt to investigate or resolve the reported suspicion, knowledge or action without informing the PBM Network Manager or the TBI MFCU and must cooperate fully in any investigation by the PBM Network Manager or the TBI MFCU, OIG, or appropriate state and federal authorities or subsequent legal action that may result from such an investigation. The Pharmacy, shall, upon request, make available to the PBM Network Manager or the TBI MFCU any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. Additionally, the PBM Network Manager or the TBI MFCU shall be allowed access to place of business and to all records of the Pharmacy, Subcontractor or any other entity during normal business hours, except under special circumstances when after-hour admission shall be allowed. Special circumstances shall be determined by the PBM Network Manager or the TBI MFCU.

Pursuant to TCA § 71-5-2603(d) the Pharmacy shall be subject to a civil penalty, to be imposed by the OIG, for willful failure to report fraud and abuse by recipients, enrollees, applicants, or providers to OIG or TBI MFCU, as appropriate.

10.14(B) Cooperation. The Pharmacy, Provider, Subcontractor or any other entity shall cooperate fully in any further investigation or prosecution by any duly authorized government agency, whether administrative, civil, or criminal. Such cooperation shall include providing, upon request, information, access to records, and access to interview the Pharmacy, Provider, Subcontractor or any other entity employees and consultants, including, but not limited to, those with expertise in the administration of the program and/or in medical or pharmaceutical questions or in any matter related to an investigation.

10.14(C) Internal Controls. The Pharmacy shall have internal controls and policies and procedures in place that are designed to prevent, detect, and report known or suspected fraud and abuse activities. The Pharmacy shall have adequate staffing and resources to investigate unusual incidents and develop and implement corrective action plans to assist the Pharmacy in preventing and detecting potential fraud and abuse activities. The Pharmacy shall comply with all federal and state requirements regarding fraud and abuse, including, but not limited to, Sections 1128, 1156, and 1902(a)(68) of the Social Security Act.

10.14(D) False claims act certification. The Pharmacy, Provider, Subcontractor or any other entity agrees to abide by the Medicaid laws, regulations and program instructions that apply to the Pharmacy. The Pharmacy, Provider, Subcontractor or any other entity understands that payment of a claim by TennCare or a
TennCare Managed Care Contractor and/or Organization is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and is conditioned on the Pharmacy’s, Provider’s, Subcontractor’s or any other entity’s compliance with all applicable conditions of participation in Medicaid. The Pharmacy, Provider, Subcontractor or any other entity understands and agrees that each claim the Pharmacy, Provider, Subcontractor or any other entity submits to TennCare or a TennCare Managed Care Contractor and/or Organization constitutes a certification that the Pharmacy, Provider, Subcontractor or any other entity has complied with all applicable Medicaid laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), in connection with such claims and the services provided there under.

By submitting claims, the Pharmacy, Provider, Subcontractor or any other entity intends to have those claims paid.

The Pharmacy, Provider, Subcontractor or any other entity shall be compliant with Section 6032 of the Deficit Reduction Act of 2005 (DRA) with regard to policy development, employee training and whistle blower protection related to The False Claims Act, 31 USCA § 3729-3733, et seq.

10.15 Ownership and Financial Disclosure.

10.15(A) The Pharmacy shall comply and submit to PBM disclosure of information in accordance with the requirements specified in 42 CFR Part 455, Subpart B. The Pharmacy shall use the Disclosure of Ownership and Control Forms in Attachment E, or such other form(s) provided by PBM that have been deemed satisfactory by TennCare.

10.15(B) The Pharmacy shall disclose, to PBM, TennCare, and the Comptroller General of the United States or CMS, full and complete information regarding ownership, business transactions and persons convicted of criminal activity related to Medicare, Medicaid, or the federal Title XX programs in accordance with federal and state requirements, Disclosure will be made upon initial credentialing, re-credentialing, or upon request of TennCare.

10.16 Debarment and Suspension. To the best of its knowledge and belief, the entities by their signatures on the Agreement certify that the Pharmacy and its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal or State department or Pharmacy.

The Pharmacy’s signature on the Agreement shall serve as certification of compliance with this policy. If any doubt exists, officials may check a list maintained by the General Services Administration which lists persons who have been debarred, suspended or proposed for debarment under 45 CFR Part 76 or 48 CFR Part 9, Subpart 9.4. The list can be found at: http://epls.arnet.gov/.

If a person is debarred, suspended or proposed for debarment during the term of the Agreement or if the State determines that an agency has misrepresented its status, a decision as to the type of termination action, if any, shall be made after a thorough review to ensure the propriety of the proposed action. In this event, the Agreement shall not be renewed or extended (other than no-cost time extensions).
IN WITNESS WHEREOF, authorized representatives for the PHARMACY and MAGELLAN PHARMACY SOLUTIONS have executed the Agreement intending to be bound by the terms set forth herein.

PARTICIPATING PHARMACY  

Magellan Pharmacy Solutions

Signature

____________________________________

Print Name

____________________________________

Title

____________________________________

NCPDP # / CHAIN CODE(S)

____________________________________

Pharmacy Name

____________________________________

Pharmacy Address

____________________________________

City, State, Zip Code

____________________________________

Phone

____________________________________

FAX

____________________________________

E-Mail Address

____________________________________

Date

Return this fully completed Agreement and all required application forms to:

TennCare Pharmacy Program

To PBM:

Magellan Medicaid Administration

c/o Magellan Pharmacy Solutions, Inc.

11013 West Broad Street

Suite 500

Glen Allen, VA 23060

ATTN: Vice President Pharmacy Network Development

COPY TO: General Counsel
Attachment A

Ambulatory and Long Term Care Network Pharmacy Fee Schedule

A. A participating network pharmacy shall be reimbursed for dispensing pharmaceutical products to TennCare Enrollees as follows unless the covered pharmaceutical product is included in item B of this section:

**Ambulatory pharmacy claims shall be reimbursed the lesser of:**

a. the pharmacy’s usual and customary charge to the general public;
b. A.W.P. minus 13% plus a $2.50 dispensing fee (brand);
c. A.W.P. minus 13% plus a $3.00 dispensing fee (non MAC generic); or
d. MAC plus a $3.00 dispensing fee

e. Federal Upper Limit plus a $3.00 dispensing fee.

**Long term care pharmacy claims with a day’s supply less than 28 shall be reimbursed the lesser of:**

a. the pharmacy’s usual and customary charge;
b. A.W.P. minus 13% plus a $2.50 dispensing fee (brand);
c. A.W.P. minus 13% plus a $3.00 dispensing fee (non MAC generic);
d. MAC plus a $3.00 dispensing fee:
e. Federal Upper Limit plus a $3.00 dispensing fee.

**Long term care pharmacy claims with a day’s supply equal to or greater than 28 shall be reimbursed the lesser of:**

a. the pharmacy’s usual and customary charge;
b. A.W.P. minus 13% plus a $5.00 dispensing fee (brand);
c. A.W.P. minus 13% plus a $6.00 dispensing fee (non MAC generic);
d. MAC plus a $6.00 dispensing fee:
e. Federal Upper Limit plus a $6.00 dispensing fee.

Multi-ingredient compounds shall be reimbursed based on the sum of calculated amounts for each individual ingredient using the lesser of algorithm as above plus up to a $25.00 dispensing fee or the pharmacy’s usual and customary charge. Antibiotics are not subject to the compound dispensing fee and shall pay the standard dispensing fee. Injectable antibiotics added to parenteral fluids are not considered compounds by TennCare (for example, adding vancomycin injection to normal saline for injection).

If the pharmacy provider is a PHS (340B) provider then the pharmacy provider must bill TennCare its PHS (340B) acquisition price for TennCare recipients served through the PHS (340B) program (see 59 FR 25112, or Federal Register, Vol. 59, No. 92, Friday, May 13, 1994, page 25112).

B. For those covered pharmaceutical products included on the Specialty Pharmaceutical Pricing List, a participating network pharmacy shall be required to sign the Specialty Pharmacy Providers agreement and shall be reimbursed the lesser of:

b. the pharmacy’s usual and customary charge
c. MAC plus a $1.50 dispensing fee
d. Federal Upper Limit plus a $1.50 dispensing fee
Attachment B

TENNCARE PARTICIPATING PHARMACY APPLICATION
Ambulatory/LTC Pharmacy Providers

NCPDP# _______________ NPI: _______________ (or) CHAIN CODE(S): _______________

Pharmacy DBA Name: _________________________________________________________________

Pharmacy Address: _________________________________________________________________
(Physical Location) (number and street name)

(city/state) (zip code) (county)

Payment/Remittance Address:
(if different from physical location) (number/street name)

(city/state) (zip code) (county)

Pharmacy Phone #: _________________________ FAX# _________________________________
(area code/number) (area code/number)

Pharmacy E-Mail Address: ____________________________________________________________

DEA#_____________ TAX ID #_____________ PHARMACY STATE LICENSE ________________

Pharmacy Owner Name ______________________________________________________________

Owner Address: _________________________________________________________________
(number/street name) (city/state) (zip code)

340B Pharmacy Status for Outpatient Drugs:
Are any of the pharmacies covered by this contract considered a 340B contracted pharmacy or are contracted to provide 340B dispensed claims for a qualified facility? YES NO

If YES, please describe your 340B status and affiliation to qualified facility: ________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

LTC Pharmacy Services:
Does the LTC pharmacy service Skilled Care Facilities? YES NO What Facilities? ________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________
Does the LTC pharmacy dispense medications that are individually packaged that allow any unused drug to be credited back to TennCare?  YES NO

**Suspensions or Disciplinary Actions:**
Are any of the pharmacies covered by this contract unable to operate due to their license being suspended by a state or federal agency?  YES NO

Are any of the pharmacies covered by this contract currently operating on a probationary status with any sanctions imposed by any third party or licensing authority upon their operation?  YES NO

Have any of the pharmacies covered by this contract had their license suspended by a state or federal agency in the past five years?  YES NO

Have any disciplinary actions been imposed in the past three years by any state/federal agency upon the corporate office, any pharmacy or any employee pharmacist?  YES NO

Are there any pharmacists currently employed that would not be covered by the company’s malpractice insurance policy or their own malpractice insurance policy?  YES NO

If YES, to any of the above questions, explain the circumstances around the response.
____________________________________________________________________________________________________
____________________________________________________________________________________________________
____________________________________________________________________________________________________
____________________________________________________________________________________________________

**Application Surety Statement:**
I certify that the information provided on this application is complete and accurate to the best of my knowledge and that the Pharmacy identified herein will comply with all the requirements set forth in the Participating Pharmacy Agreement and the TennCare Pharmacy Manual.

Signature: __________________________ Date: __________________________

Printed Name: __________________________ Title: __________________________
Request for TennCare Fraud Investigation

Date:

Requestor Information:
Name: ______________________________________________________
NPI / NCPDP: ___________________________
Contact Name: ____________________________________________
Contact Phone: ___________________________

Type of Submission:  
Recipient
Pharmacy
Prescriber

Information Regarding Suspected Fraud:
Recipient / Pharmacy / Provider Name: ______________________________________
Identifier:
- If Recipient, please provide Social Security Number or Member ID: _____________
- If Pharmacy, please provide NPI or NCPDP number: _________________
- If Prescriber, please provide NPI or DEA Number: _________________

Address:  _______________________________________________________________

Summary describing the suspected fraudulent activity (please include applicable dates, drug(s) involved, and any other pertinent information): ___________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

(Include additional pages, if necessary.)
Attachment D

PHARMACY NETWORK APPLICATION AND DISCLOSURE PROCESS

All pharmacies interested in participating in the TennCare Pharmacy Network must submit the following:

- Provider Application and Agreement – Both documents available at: https://TennCare.MagellanHealth.com
- Pharmacy Disclosure Form

Instructions for Completing the Pharmacy Disclosure Form

1. Fill out all sections on the Disclosure of Ownership and Control Interest Statement.

   Note: Each pharmacy participating in Group Purchasing Organization (GPO) or Pharmacy Services Administration Organization (PSAO) MUST fill out its own form. The GPO or PSAO is NOT considered a chain pharmacy by TennCare.

2. Return the completed form to PBM and fax to (888) 656-4139:

   Magellan Medicaid Administration, Inc.
   c/o Magellan Pharmacy Solutions, Inc.
   11013 West Broad Street
   Suite 500
   Glen Allen, VA  23060
   ATTN: Vice President Pharmacy Network Development
   COPY TO: General Counsel

   Should you have any questions or concerns, please contact the PBM Provider Relations Department at the following:

   RxNetworksDept@MagellanHealth.com

   Chris Maahs, VP, Pharmacy Network Development:
   (860) 507-1864
   csmaahs@MagellanHealth.com

   James Schewe, Manager Pharmacy Network Operations:
   (860) 507-1871
   jwschewe@MagellanHealth.com

   Department Fax Number:
   Fax: (888) 656-4139
Instructions and General Information
Pertaining to Criminal Attestation and Disclosure of Ownership and Control Interest Statement

Federal Regulations in 42 USCA 1396a(p) and 42 C.F.R. §438 require that the State plan monitor the payments of Medicaid funds to providers. The Tennessee State plan has chosen to implement this provision by use of this form which is designed to collect the information required in 42 C.F.R. §455. CMS has approved the use of this method of monitoring provider receipt of Medicaid monies. **A full and accurate disclosure of ownership and financial interest is required.** Direct or indirect ownership interest must be reported if it equates to an ownership interest of 5 percent or more in the disclosing entity. **Failure to submit requested information may result in a refusal by the State agency to enter into contract with any such institution or in termination of existing contracts.** This form must be submitted at the time a provider is re-accredited by the pharmacy benefit manager (PBM), or whenever there is a material change in the information required by this form.

Please answer all questions as of the current date. If additional space is needed, please note on the form that the answer is being continued, and attach a sheet referencing the item number that is being continued. (For example: Item II. (a) continued.)

Completely answer the questions that are applicable to your organization/business. Website and email addresses are not acceptable answers to any of the questions and should not be referenced in this statement.

Return the original to the PBM. Please retain a copy for your files.

**DEFINITIONS**

“Provider” means an institution, facility, physician, or other health care practitioner that is licensed or otherwise authorized to provide and receive payment for any covered service furnished to TennCare enrollees. There are two categories of pharmacy providers: 1) individual providers; and 2) disclosing entities.

**Individual pharmacy providers** include practices with only one pharmacy.

**Disclosing entities** refer to pharmacies having more than one pharmacy.

“A “Disclosing entity” means a Medicaid provider or a fiscal agent other than an individual pharmacy provider. 42 C.F.R. §455.101

A “chain affiliate” means a freestanding pharmacy that is owned or operated under lease or contract by an organization of two or more freestanding pharmacies that is under the ownership or control of a common party. Chain affiliates facilities may be public, private, charitable, or proprietary. They also include subsidiary organizations and holding corporations. Provider-based facilities such as hospital-based home health agencies are not considered to be chain affiliates. **List the name, address, and FEIN of the Corporation.**

Person with an “ownership” or “control interest” means a person or corporation that--

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;
(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;
(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;
(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;
(e) Is an officer or director of a disclosing entity that is organized as a corporation; or
(f) Is a partner in a disclosing entity that is organized as a partnership.

“Significant business transaction” means any business transaction or series of transactions that, during any one fiscal year, exceed the lesser of $25,000 and 5 percent of a provider's total operating expenses.
In order to determine percentage of ownership, mortgage, deed of trust, note, or other obligation, the percentage of interest owned in the obligation is multiplied by the percentage of the disclosing entity’s assets used to secure the obligation. For example, if Dr. Smith owns 10 percent of a mortgage secured by 60 percent of Dr. Murray’s assets, Dr. Smith’s interest in Dr. Murray’s assets equates to 6 percent and must be reported. Conversely, if Dr. Brad owns 40 percent of a mortgage secured by 10 percent of Dr. Jolie’s assets, Dr. Brad’s interest in Dr. Jolie’s assets equates to 4 percent and need not be reported. 42 C.F.R. §455.102.

42 C.F.R. §455.101.
“Subcontractor” means:
(a) An individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients; or
(b) An individual, agency, or organization with which a fiscal agent has entered into a contract, agreement, purchase order, or lease (or leases of real property) to obtain space, supplies, equipment, or services provided under the Medicaid agreement.

“Supplier” means an individual, agency, or organization from which a provider purchases goods and services used in carrying out its responsibilities under Medicaid (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).

“Wholly owned supplier” means a supplier whose total ownership interest is held by a provider or by a person, persons, or other entity with an ownership or control interest in a provider.

“Ownership interest” means the possession of equity in the capital, the stock, or the profits of the disclosing entity. 42 C.F.R. §455.101.

“Indirect ownership interest” means an ownership interest in an entity that has an ownership interest in the disclosing entity. This term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity. 42 C.F.R. §455.101.

“Ownership interest” means the possession of equity in the capital, the stock, or the profits of the disclosing entity.
The amount of indirect ownership in the disclosing entity that is held by another entity is determined by multiplying the percentage of ownership interest at each entity. For example, if A owns 10 percent of the stock in a corporation which owns 80 percent of the stock of the disclosing entity, A’s interest equates to an 8 percent indirect ownership interest in the disclosing entity and must be reported. Conversely, if B owns 80 percent of the stock of a corporation which owns 5 percent of the stock of the disclosing entity, B’s interest equates to a 4 percent indirect ownership interest in the disclosing entity and need not be reported. 42 C.F.R. §455.102.

“Other disclosing entity” means another entity that is required to disclose ownership and control information because of participation in any Title V, XVIII, or XX of the Act. For example, hospitals, skilled nursing facilities, home health agencies that participate in Medicare (Title XVIII) and any entity (other than an individual provider or group of providers) that furnishes or arranges for the health related services for which it claims payment under Title V or Title XX of the Act. 42 C.F.R. §420.201.

“Authorized representative” means an individual with designated authority to act on behalf of the group of providers. The authorized representative must be a partner, president, or secretary of the group of providers.

“Agent” means any person who has been delegated the authority to obligate or act on behalf of a provider. 42 C.F.R. §455.101.

“Managing employee” means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operations of a provider. 42 C.F.R. §455.101.
operation of an institution, organization, or agency  42 C.F.R. §455.101.

“Management company” means any organization that operates and names a business on behalf of the owner of that business with the owner retaining ultimate legal responsibility for operation of the facility.

DETAILED INSTRUCTIONS
Please answer each question completely. If a question is not applicable to you, please write “N/A.”

ITEM I - Identifying Information.
(a) Select your provider type (see definitions above).
(b) Identifying Information: Specify the name of your organization/business. Do not include a name of a contact person.
(c) Enter DBA name. This may be the same as (b) above.
(d) Enter address.
(e) Federal Tax Identification Number: Enter provider's nine-digit federal tax identification number.
(f) Specify whether your organization is chain affiliated.

ITEM II – Ownership and Control Information
(a) Who owns you? List the name, title, personal address, and social security number of each office and/or individual, or the TIN for an organization, having any ownership or controlling interest, that amounts to an ownership interest of 5 percent or more in the disclosing entity (your company) submitting this Provider Contract. 42 C.F.R. §455.100; 42 C.F.R. §455.104.
(b) List those persons named in Item II (a) that are related to each other (spouse, parent, child, or sibling). 42 C.F.R. §455.104.
(c) Who do you own? List the name, title, address, and social security number of each person with an ownership or controlling interest in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more. 42 C.F.R. §455.104.
(d) Who do you own? List the name, personal address, and TIN of any other disclosing entity, in which a person with an ownership or controlling interest in the disclosing entity (your company) also has an ownership or control interest of at least 5 percent or more. 42 C.F.R. §455.104.

ITEM III – Business Transaction Information
(a) The disclosing entity must submit, full and complete information about the ownership of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request; and
(b) The disclosing entity must submit, full and complete information about any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request. 42 C.F.R. §455.105.

ITEM IV - Criminal Offenses
If you are filling out this form as an individual pharmacy provider, complete section (A) in its entirety. If you are filling out this form as a disclosing entity, complete section (B) in its entirety.

ITEM V – Status Changes
(a) If there has been a change in ownership within the last year, or a change is anticipated, indicate the date in the appropriate space.
(b) If this facility is operated by a management company or leased in whole or part by another organization, list the name or the management firm and federal tax identification number or the leasing organization.
(c) If your entity is or was a chain affiliate complete this section.

ITEM VI – Board of Directors or Board of Governors
List the name, title, personal address, social security number, and percentage of interest for each member of the Board of Directors or the Board of Governors of the provider.
SIGN & DATE FORM

If this form is being completed for an Individual Provider, the signature above MUST be the written signature of the Individual Provider listed in 1(b) above.

If this form is being completed for a Group of Pharmacy Providers or a Disclosing Entity, the signature above MUST be the written signature of an Authorized Representative, who must be a partner, president or secretary of the Group or Disclosing Entity.
Attachment E
DISCLOSURE OF OWNERSHIP AND CONTROL INTEREST STATEMENT

If this form is being completed for an Individual Provider (pharmacies with only one pharmacist) the signature at the end of the form must be the written signature of the Provider. Otherwise, the signature at the end of the form must be the written signature of an Authorized Representative who must be a partner, president, or secretary of the Disclosing Entity.

Item I. Identifying Information

(a) Do you practice as ☐ an individual pharmacy provider ☐ a disclosing entity
(b) Name of individual, Facility or Organization:
(c) DBA Name:
(d) Address:
(e) Federal Tax Identification Number (TIN) OR Social Security Number:
(f) Is this entity chain affiliated ☐ No ☐ Yes

Item II. Ownership and Control Information. 42 C.F.R. §455.100; 42 C.F.R. §455.104.

(a) List the name, title, address and SSN for each office and/or individual who has any ownership or controlling interest in this provider entity. The office/individual’s ownership or controlling interest is an ownership interest of 5% or more of this provider entity. List the name, Tax ID (TIN), and address of any organization, corporation, or entity having any ownership or controlling interest in this provider entity. The ownership or controlling interest is an ownership interest of 5% or more in this provider entity. Attach additional pages as necessary to list all officers, owners, management, and ownership entities.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Address</th>
<th>SSN/TIN</th>
<th>Percentage</th>
</tr>
</thead>
</table>

(b) List those persons named in Item II (a) that are related to each other (spouse, parent, child, or sibling). 42 C.F.R. §455.104.

<table>
<thead>
<tr>
<th>Name</th>
<th>Relationship</th>
<th>SSN</th>
</tr>
</thead>
</table>

(c) List the name, title, address, and social security number of each person with an ownership or control interest in any subcontractor that this disclosing entity has direct or indirect ownership of 53% or more. 42 C.F.R. §455.104.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Address</th>
<th>SSN/TIN</th>
<th>Percentage</th>
</tr>
</thead>
</table>

(d) List the name, address, and TIN of any other disclosing entity in which a person, with an ownership or controlling interest in this disclosing entity, has an ownership interest of at least 5% or more. 42 C.F.R. §455.105.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Address</th>
<th>SSN/TIN</th>
<th>Percentage</th>
</tr>
</thead>
</table>
Item III. Business Transaction Information. 42 C.F.R. §455.105.
(a) List the ownership of any subcontractor with whom this provider has had business transactions totaling more than $25,000 during the previous 12-month period. 42 C.F.R. §455.105.

(b) List any significant business transactions between this provider and any wholly owned supplier, or between this provider and any subcontractor, during the previous 5-year period. 42 C.F.R. §455.105.

Item IV. Criminal Offenses. 42 C.F.R. §455.100; 42 C.F.R. §455.106.
(A) If you are filling out this form as an individual provider, giving information about yourself, please answer the following questions:
1) (a) Have you personally been convicted of a criminal offense related to that person’s involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs? □ No □ Yes
   (b) Has someone connected with your practice (i.e. an office manager or director) been convicted of a criminal offense related to that person’s involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs? □ No □ Yes
   If you answered yes above please provide the following information for the individual with the criminal conviction.
   Name   Address    Title   SSN (or TIN if an organization)

2) If you answered Item I(a) at the beginning of this form as an individual AND your practice is incorporated please list the names and addresses of the corporation’s Officers and Board of Directors in the spaces below.
   Name   Address    Title   SSN (or TIN if an organization)

   (B) If you are filling this form out as an authorized representative of a Disclosing Entity, providing information about the business entity please answer the following question:
   Have you or any Director Officer, Agent, managing employer, or other individual or organization having an ownership or control interest in this provider been convicted of a criminal offense related to that person’s involvement in any program under Medicare, Medicaid, or the Title XX services program since the inception of those programs? □ No □ Yes
   If yes please list the information requested below for each person convicted of a criminal offense.
   Name   Address    Title   SSN (or TIN if an organization)

Item V. Status Changes – For Disclosing Entities Only
(a) Has there been a change in ownership or control within the last year or is a change of ownership or control anticipated within the year? □ No □ Yes
(b) Is this facility operated by a management company or leased in whole or party by another organization?

☐ No  ☐ Yes

(c) 1. Is this facility chain affiliated?  ☐ No  ☐ Yes
If yes, list name, address of parent corporation and EIN#
Name Address EIN#

2. If you answered 1. Above “no” was this facility ever affiliated with a chain?  ☐ No  ☐ Yes
If yes list names address of parent corporation and EIN#
Name Address EIN#

Item VI. Board of Directors or Board of Governors
List the name, title, address, social security number, and percentage of interest for each of the Board of Directors or Board of Governors of this provider. Use an additional sheet if necessary.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Address</th>
<th>SSN/TIN</th>
<th>Percentage</th>
</tr>
</thead>
</table>

Note; If this form is being completed for an Individual Provider, the signature above MUST be the written signature of the Individual Provider listed in 1(b) above.

If this form is being completed for a Disclosing Entity, the signature above MUST be the written signature of an Authorized Representative, who must be a partner, president or secretary of the Disclosing Entity.

Name of Individual – Printed          Date

Signature of Individual                Date

Name of Authorized Representative – Printed          Date

Signature of Authorized Representative                Date

The State agency or secretary may refuse to enter into, renew or terminate an agreement with this provider if it is determined that this provider did not fully, accurately, and truthfully make the disclosures required by this statement. Additionally, false statements or representations of the required disclosures may be prosecuted under applicable federal or state laws. 42 C.F.R. §455.106.
Attachment F

Pharmacy Payment and Remittance Information

Instructions: Carefully read and complete the entire authorization form and return with contract.

Business Name of Pharmacy: __________________________________________
NCPDP ID or NPI, Chain #: __________________________________________

Payment Type: □ Check □ EFT
* For EFT set-up, please complete Authorization form and sign below:

Remittance Type: □ Paper □ Electronic Remittance Advice (835)
* For Electronic set-up, please complete required information below:

Provide Mailing address if DIFFERENT, this will be used as the pharmacy’s payment address. If the mailing address is the same as the store address, check here: □

Mailing Address:
Mail Address City: ______________ Mailing ST: __________ Mailing Zip: __________
Phone #: __________________ Fax #: __________________
**Electronic Funds Transfer (EFT) Authorization Form**

**Instructions:** Carefully read and complete the entire authorization form and return with contract.

<table>
<thead>
<tr>
<th><strong>Type or print the following information.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BUSINESS NAME OF PHARMACY:</strong></td>
</tr>
<tr>
<td><strong>NCPDP ID OR NPI, TPA (IF CHAIN, NOTATE PAYSITE, IF KNOWN):</strong></td>
</tr>
<tr>
<td><strong>STREET ADDRESS:</strong></td>
</tr>
<tr>
<td><strong>CITY:</strong></td>
</tr>
<tr>
<td><strong>PROVIDER FEIN:</strong></td>
</tr>
<tr>
<td><strong>NAME OF FINANCIAL INSTITUTION:</strong></td>
</tr>
<tr>
<td><strong>ADDRESS OF FINANCIAL INSTITUTION:</strong></td>
</tr>
<tr>
<td><strong>CITY, STATE AND ZIP CODE OF FINANCIAL INSTITUTION:</strong></td>
</tr>
<tr>
<td><strong>CONTACT PERSON:</strong></td>
</tr>
<tr>
<td><strong>CONTACT PHONE NUMBER:</strong></td>
</tr>
<tr>
<td><strong>ACCOUNT TYPE:</strong></td>
</tr>
<tr>
<td><strong>ACCOUNT NUMBER (UP TO 17 CHARACTERS):</strong></td>
</tr>
<tr>
<td><strong>ABA ROUTING NUMBER (9 DIGITS):</strong></td>
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</tbody>
</table>

* At financial institution
** Contact your financial institution for the routing number, if not already known
Authorization

I authorize Magellan Pharmacy Solutions, Inc. to make deposits by electronic transfer to the designated financial institution and account identified above.

I authorize Magellan Pharmacy Solutions, Inc. to collect money that was deposited in my account in error by electronically adjusting my account. I understand I will be notified by Magellan Pharmacy Solutions, Inc. if adjustments are made.

It is my responsibility to complete a new Electronic Funds Transfer form and mail it to the address above if I change financial institutions or account numbers. If I am changing financial institutions or closing my account, I will not close my old account until final payments are successfully deposited into the new account. If multiple account holders are required to authorize a deposit or withdrawal of funds, then all parties must sign this authorization form.

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Electronic Remittance Advice (835) Authorization Form

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<tr>
<td>FEDERAL TAX ID:</td>
</tr>
<tr>
<td>STREET ADDRESS:</td>
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<tr>
<td>CITY:</td>
</tr>
<tr>
<td>CONTACT NAME (INTERNAL TECHNICIAN OR 3RD PARTY VENDOR):</td>
</tr>
<tr>
<td>CONTACT EMAIL ADDRESS:</td>
</tr>
<tr>
<td>CONTACT PHONE NUMBER:</td>
</tr>
</tbody>
</table>

Authorization

_PRINT NAME_  _TITLE_

_ SIGNATURE_  _DATE_