

Addendum

Participating Group Name: Cuyahoga County

Participating Group Address: 1255 Euclid Avenue, Room 310
Cleveland, Ohio 44115

Contact Person: Lisa Durkin

Participating Group Service Commencement Date: January 1, 2012

1. This Addendum ("Addendum") supplements the Prescription Benefit Management Agreement ("Master Agreement") between CaremarkPCS Health, L.L.C. ("Caremark") and Health Action Council Ohio ("HAC") dated as of January 1, 2012, as amended. All capitalized terms used in this Addendum shall have the meaning set forth in the Master Agreement.

2. The undersigned Participating Group ("Participating Group") is a member of HAC. Participating Group has reviewed the Master Agreement and desires that Caremark provide to it the products and services described in the Master Agreement on the terms and conditions set forth in the Master Agreement and this Agreement. By signing this Addendum, Participating Group agrees to the terms and conditions of the Master Agreement, as it may be amended from time to time, as modified herein, and this Addendum. Subsequent amendments to the Master Agreement need be submitted only to HAC for approval.

3. Pricing Model and Services Elections.

Pricing Model

Participating Group hereby elects one (1) of the following pricing options as further described in the Master Agreement:

Check if
Elected:

☐

**Pricing Option A-1 – Pass-through Rebates Pricing Offer
National Retail Network**

**Participating Group hereby acknowledges and agrees that it has elected
Caremark's National Retail Network.**

☐

**Pricing Option A-1 – Pass-through Rebates Pricing Offer – CareChoice
Retail Network (ERISA Plans only)**

**Participating Group hereby acknowledges and agrees that it has elected
Caremark's CareChoice Retail Network. The CareChoice network for HAC
Participating Groups is identical to the National Retail Network, less
Walgreens.**

☐

**Pricing Option A-1 – Pass-through Rebates Pricing Offer – Preferred
Choice Network (ERISA Plans only)**

**Participating Group hereby acknowledges and agrees that it has elected
Caremark's Preferred Choice Network. The Caremark Preferred Choice**

Network for HAC Participating Groups is a limited nationwide network that consists of approximately 40,000 pharmacies.

- ☐ **Pricing Option A-1 – Pass-through Rebates Pricing Offer – Exclusive Choice Network (ERISA Plans meeting criteria for network participation only).**
Participating Group hereby acknowledges and agrees that it has elected Caremark’s Exclusive Choice Network. The Exclusive Choice Network for HAC Participating Groups is a limited nationwide network that consists of CVS and Wal-Mart retail pharmacies.
- ☒ **Pricing Option A-2 – Reinvested Rebates Pricing Offer – National Retail Network**
Participating Group hereby acknowledges and agrees that it has elected Caremark’s National Retail Network.
- ☐ **Pricing Option A-2 – Reinvested Rebates Pricing Offer – CareChoice Retail Network (ERISA Plans only)**
Participating Group hereby acknowledges and agrees that it has elected Caremark’s CareChoice Retail Network. The CareChoice network for HAC Participating Groups is identical to the National Retail Network, less Walgreens.
- ☐ **Pricing Option A-2 – Reinvested Rebates Pricing Offer – Preferred Choice Network (ERISA Plans only)**
Participating Group hereby acknowledges and agrees that it has elected Caremark’s Preferred Choice Network. The Caremark Preferred Choice Network for HAC Participating Groups is a limited nationwide network that consists of approximately 40,000 pharmacies.
- ☐ **Pricing Option A-2 – Reinvested Rebates Pricing Offer – Exclusive Choice Network (ERISA Plans meeting criteria for network participation only).**
Participating Group hereby acknowledges and agrees that it has elected Caremark’s Exclusive Choice Network. The Exclusive Choice Network for HAC Participating Groups is a limited nationwide network that consists of CVS and Wal-Mart retail pharmacies.

Services Elections

Participating Group hereby elects the following optional services as further described in the Master Agreement:

Check if Elected:	Program Name:	Program Cost:
√	Additional Health-Related Services as described in Section 2.8(d) of the Master Agreement	Included
√	Prescriber education programs	
√	Health research	
√	Compliance and persistency	
√	Health education or management	

programs for Plan Participants

√

Core Clinical Programs (Safety Programs / Savings Programs / Health Programs)

Included in Base Service Fee

Safety Programs:

- Point of Sale Safety Edits Program
- Retrospective Safety Review Program
- Safety and Monitoring Solution Program
 - Plan Participants identified under the Safety and Monitoring Solution Program will receive correspondence from Caremark suggesting manners by which such Plan Participant may coordinate discussions with their Prescriber.
 - Caremark shall provide written case referral reports to Participating Group regarding specific Plan Participants and Prescribers that include provider, pharmacy and pharmacists comments.
 - Participating Group shall supply ICD-9 codes to Caremark in a format mutually agreed upon by the parties for Plan Participants identified by Caremark based on criteria/parameters provided by Participating Group.

Savings Programs:

- Comprehensive Generics Solutions Programs
 - √ *Value Drug Savings Tool.* At Participating Group's request, Caremark shall provide Plan Participants access to the Value Drug Savings Tool, which provides savings information about preferred Brand Drugs,

Generic Drugs, and over-the-counter products.

- ☐ *Dispense as Written ("DAW") Interventions Program.* Subject to Plan design changes, Participating Group may implement either or both of the following DAW Intervention Programs: (a) DAW 1 Option: In the event a Prescriber has indicated on a Prescription to "dispense as written", Caremark's Mail Service Pharmacy shall contact Prescribers, as appropriate, to determine if a Generic Drug can be substituted for a prescribed Brand Drug; or

- ☐ (b) DAW 2 Option: In the event a Prescriber has authorized a Generic Drug substitution but the Plan Participant has requested the Brand Drug, Caremark's Mail Service Pharmacy shall contact the Plan Participant to determine if a Generic Drug can be substituted for the prescribed Brand Drug.

- Point of Service ("POS") Utilization Management Programs
- POS Preferred Product Messaging
- Physician Profiling Report
- Specialty Guideline Management

Health Programs:

- Adherence to Drug Therapy Program
- Gaps in Care Pharmacy
- Evidence Based Plan Design
- Health Risk Questionnaire
- Face-to-Face Physician Consultation

Enhanced
Clinical
Programs:

Safety Programs:

- ☐ Enhanced Retrospective Safety Review Program Provided in combination with

Drug Savings Review
at no additional charge
for so long as
Participating Group
continues Drug
Savings Review

OR

☐ Enhanced Retrospective Safety Review Program \$0.05 per all Rx
100% ROI over 1 year

Savings Programs:

☐ Prior Authorization Program \$15 per clinical
consultation

☐ Drug Savings Review Program \$0.60 PEP
300% ROI over 1 year

Health Programs:

☐ Enhanced Gaps in Care Pharmacy \$0.15 PEP
200% ROI over Term

☐ Gaps in Care Plus Medical \$0.50 PEP
200% ROI over Term

√ Appeals – 1st Level \$30 per review
√ Appeals – 2nd Level \$375 per review
☐ Appeals – External Review \$375 per review
√ ExtraCare Card See Exhibit A
☐ iBenefit Report See Exhibit A

OR

☐ EOB Report
☐ RxNavigator \$1500 per license per
user per year.
☐ Genetic Benefit Management Program See Exhibit L

4. Performance Guarantee Category Allocations. (Effective 1/1/12) Participating Group may allocate from 0-50% in ten percent (10%) increments of their total penalty amount to a Performance Guarantee Category. The total allocation to performance guarantee categories must equal 100%. Of the seven (7) categories for Account Management, Customer Service, Administration, Financial Management, Generic Dispensing Rate, Implementation and Major Change, and Participating Pharmacy Access, only one of these categories shall be assigned a percentage 50% of the total annual penalty amount available to the Participating Group and the remaining six (6) categories (if selected) shall be assigned a percentage of 20% or less of the total annual penalty amount available to the Participating Group.

Allocate among Performance Guarantee Categories. Participating Group has the right to reallocate annually.

_____ Account Management
_____ Customer Service

_____	Administration
_____	Financial Management
_____	Generic Dispensing Rate
_____	Implementation and Major Change
_____	Participating Pharmacy Access (applicable to Caremark National Network and CareChoice Network only)
_____	TOTAL 100%

5. **Business Associate Relationship.**

In accordance with the Standards for Privacy of Individually Identifiable Health Information (“The Privacy Rule” at 45 CFR part 160 and part 164, subparts A and E) and the Standards for Security of Electronic PHI at 45 CFR parts 160 and 164, subpart C (the “Security Rule”) under HIPAA, to the extent it acts in its capacity as a Business Associate to the Plan, Caremark shall adhere to the applicable requirements established in the Privacy Rule and Security Rules for Business Associates as set forth below. For purposes of this Addendum, “Protected Health Information” and “Electronic Protected Health Information” shall have the meaning given such terms at 45 CFR 160.103, as limited to the information created or received by Caremark in its capacity as a prescription benefit manager (and not as a Mail Service Pharmacy or other health care provider) on behalf of Participating Group and Plan. For purposes of this Agreement, “HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, which is at Section 13400, *et. seq.* of ARRA, as implemented in regulations issued by the Secretary and as of the applicable Compliance Date specified in such regulations. Capitalized terms used but not otherwise defined herein, or in the Agreement, shall have the same meaning as such terms are defined in the Privacy or Security Rule.

5.1 **Obligations and Activities of Caremark.** Caremark agrees:

5.1.1 To not use or disclose Protected Health Information other than as permitted or required by this Addendum or by law.

5.1.2 To use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as permitted by this Addendum.

5.1.3 To mitigate, to the extent practicable, any harmful effect that is known to Caremark of a use or disclosure of Protected Health Information by Caremark in violation of the requirements of this Addendum.

5.1.4 To report to Participating Group, on behalf of the Plan, any use or disclosure of the Protected Health Information not provided for by this Addendum of which it becomes aware.

5.1.5 To ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Caremark in connection with this Addendum agrees to the same restrictions and conditions that apply through this Addendum to Caremark with respect to such information.

5.1.6 To provide access, in the time and manner consistent with the Privacy Rule, to Protected Health Information in a Designated Record Set, as defined at 45 CFR 164.501, to Participating Group, on behalf of the Plan, or, as directed by Participating Group, to an individual in order to meet the requirements under 45 CFR 164.524. Caremark agrees that if it maintains

PHI in an Electronic Health Record, as defined in the HITECH Act, it shall provide such access in electronic format if so requested by Participating Group, to the extent required by and in accordance with Section 13405(e) of the HITECH Act.

5.1.7 To make any amendment(s) to Protected Health Information in a Designated Record Set that Participating Group, on behalf of the Plan, directs or agrees to pursuant to 45 CFR 164.526 at the request of Participating Group on behalf of the Plan, or of an individual, and in the time and manner consistent with the Privacy Rule.

5.1.8 To make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Caremark from Participating Group, on behalf of the Plan, available upon request to the Secretary of the Department of Health and Human Services, at Participating Group's cost and expense, for purposes of determining the Plan's compliance with the Privacy Rule.

5.1.9 To document such disclosures of Protected Health Information and information related to such disclosures as would be required for Participating Group, on behalf of the Plan, to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

5.1.10 To provide to Participating Group, on behalf of the Plan, or an individual, upon request, information collected in accordance with Section 5.1.9 of this Addendum, to permit Participating Group, on behalf of the Plan, to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

5.1.11 Caremark agrees to use commercially reasonable safeguards to protect against use or disclosure of the Protected Health Information not provided for by the Agreement or this Addendum. Caremark also agrees, as of the Compliance Date of the Standards for Security of Electronic Protected Health Information at 45 CFR parts 160, 162 and 164, subpart C (the "Security Rule"), to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives maintains, or transmits on behalf of Participating Group; and (ii) report to Participating Group on behalf of the Plan on a quarterly basis (or such other periodic basis as mutually agreed to by the parties) any Security Incidents of which it becomes aware; and (iii) ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it.

5.1.12 To implement and use appropriate policies and procedures for the identification and notification of Breaches of Unsecured PHI, as defined in 45 C.F.R. Part 164, Subpart D (the "Notification Rule"), and to promptly notify Plan of a Breach of Unsecured PHI in accordance with the Notification Rule.

5.1.13 To mitigate, to the extent practicable, any harmful effect that is or becomes known to Caremark or Plan of any Breach of Unsecured PHI created or received by Caremark from or on behalf of Plan.

5.1.14 In the event, solely as a result of Caremark's failure to implement reasonable and appropriate safeguards as required by this Exhibit and not due to the acts or omissions of Participating Group, of a Breach of Unsecured PHI created or received by Caremark from or on behalf of Plan, Caremark agrees to provide notice to affected individuals (and the media, if required), in a manner that, if done by Plan, would comply with the Notification Rule. Such notice shall be provided by Caremark at its own cost.

5.1.15 **Breach Notification.** Following the discovery by Caremark of any Breach of Unsecured PHI, Caremark agrees to notify Participating Group of such Breach without unreasonable delay. Such notification shall include, to the extent available, the identity of each Individual whose Unsecured PHI has been, or is reasonably believed by Caremark to have been, accessed, acquired, used, or disclosed during the Breach. At the time of notification or promptly thereafter as such information becomes available, Caremark shall also provide Participating Group with such other information as is required for Participating Group to notify an Individual of the Breach as required by 45 CFR 164.404(c). Except for notifications to the Secretary, which must be done by Participating Group, Caremark agrees that to the extent the Breach is solely as a result of Caremark's failure to implement reasonable and appropriate safeguards as required by this Exhibit, and not due in whole or in part to the acts or omissions of Participating Group, Caremark shall provide the notifications required under 45 CFR 164.404 and 45 CFR 164.406, subject to any delay required by law enforcement pursuant to 45 CFR 164.412.

5.1.16 **Security and Privacy Requirements of HITECH Act.** Caremark agrees to comply with Sections 164.308, 164.310, 164.312, and 164.316 of the Security Rule and the additional requirements of the HITECH Act that apply to security and privacy that are made applicable to Covered Entities as required by sections 13401 and 13404(a) respectively of the HITECH Act. Caremark may use and disclose PHI only if such use or disclosure, respectively, is in compliance with the applicable provisions of section 164.504(e) of the Privacy Rule. The parties acknowledge and agree that section 164.504(e)(1)(ii) of the Privacy Rule shall apply to Caremark in the same manner that such section applies to Participating Group with respect to compliance with the standards in section 164.502(e) and 164.504(e) of the Privacy Rule, as required by section 13404(b) of the HITECH Act.

5.2 Permitted Uses and Disclosures by Caremark. Except as otherwise limited in this Addendum, Caremark may use or disclose Protected Health Information:

5.2.1 To perform functions, activities, or services for Participating Group and the Plan, as specified in this Addendum, provided that such use or disclosure would not violate the Privacy Rule if done by the Plan.

5.2.2 For the administration of pharmacy benefit services by Caremark, provided that disclosures are permitted or required by law, or Caremark obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as permitted or required by law or for the purpose for which it was disclosed to the person, and the person notifies Caremark of any instances of which it is aware in which the confidentiality of the information has been breached.

5.2.3 To provide Data Aggregation services to Participating Group, on behalf of the Plan, as permitted by 45 CFR 164.504(e)(2)(i)(B).

5.2.4 To report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

5.3 Obligations of Participating Group, on behalf of the Plan. Participating Group, on behalf of the Plan, shall notify Caremark:

5.3.1 Of any limitation(s) in the notice of privacy practices of Participating Group, on behalf of the Plan, in accordance with 45 CFR 164.520, to the extent that such limitation may affect Caremark's use or disclosure of Protected Health Information.

5.3.2 Of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Caremark's use or disclosure of Protected Health Information.

5.3.3 Of any restriction on the use or disclosure of Protected Health Information that Participating Group, on behalf of the Plan, has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Caremark's use or disclosure of Protected Health Information. Participating Group, on behalf of the Plan, shall not request Caremark to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Plan.

5.4 Termination. Notwithstanding anything to the contrary contained in the Master Agreement, Participating Group may terminate this Addendum:

5.4.1 In the event of any breach by Caremark of any material term of Section 5 of this Addendum if such breach is not cured by Caremark within thirty (30) days after Caremark's receipt of written notice of such breach.

5.4.2 Immediately terminate this Addendum if Caremark has materially breached Section 5 of this Addendum and cure is not possible; or

5.4.3 If neither termination nor cure is feasible, Participating Group shall report the violation to the Secretary.

5.5 Effect of Termination.

5.5.1 Except as provided in Section 5.5.2, upon termination of this Addendum, for any reason, Caremark shall destroy all Protected Health Information received from Participating Group, on behalf of the Plan, or created or received by Caremark in connection with this Addendum. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Caremark. Caremark shall retain no copies of the Protected Health Information unless otherwise required by law.

5.5.2 In the event that Caremark determines that destroying the Protected Health Information is infeasible, Caremark shall provide to Participating Group notification of the conditions that make destruction infeasible. In that event, Caremark may retain Protected Health Information, provided that Caremark shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health

Information to those purposes that make the destruction infeasible, for so long as Caremark maintains such Protected Health Information.

5.6. Transactions Standards. To the extent that Caremark conducts any Transaction (as defined in 45 CFR 160.103) electronically on behalf of the Plan, it will comply with the applicable requirements in the Standards for Electronic Transactions under 45 CFR Parts 160 and 162.

5.7. Regulatory References. A reference in Section 5 of this Addendum to a section in the Privacy or Security Rules means the section as in effect or as amended.

5.8. Amendment. The parties agree to take such action as is necessary to amend this Section 5 from time to time as is necessary to comply with the requirements of the Privacy and Security Rules and HIPAA.

5.9. Interpretation. Any ambiguity in Section 5 of this Addendum shall be resolved to permit the parties to comply with the Privacy and Security Rules and HIPAA.

6. Modifications to the Master Agreement. The parties agree that the following provisions of the Master Agreement shall be amended and restated as follows:

- (a) Section 7.3 of the Master Agreement is hereby deleted and intentionally omitted.
- (b) Section 7.4 of the Master Agreement is hereby deleted and intentionally omitted.
- (c) Section 9.1 of the Master Agreement is hereby deleted in its entirety and replaced with the following:

“9.1 Term. HAC shall provide the services as detailed in the Addendum for the period commencing January 1, 2012 through December 31, 2014. **THE TERM MAY BE RENEWED FOR AN ADDITIONAL ONE (1) YEAR OPTION PERIOD, PROVIDED THE COUNTY SENDS NOTICE OF RENEWAL TO HAC AT LEAST SIXTY (60) DAYS PRIOR TO THE END OF THE ORIGINAL TERM.**”
- (d) Section 11 of the Master Agreement is hereby deleted and intentionally omitted.
- (e) Section 12.6 of the Master Agreement is hereby amended and restated as follows:

“This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.”
- (f) Section 12.7 of the Master Agreement is hereby deleted and intentionally omitted.
- (g) Section 12.14 of the Master Agreement is hereby amended to delete Section 11 (Indemnification).

7. This Addendum, together with the Master Agreement supersedes all prior or contemporaneous understandings or contracts and constitutes the entire agreement existing between the parties regarding the subject matter of the Master Agreement and this Addendum.

Edward FitzGerald, County Executive
CUYAHOGA COUNTY

By: Ed FitzGerald/apk
2012-05-03 14:20:15
Name: _____

Title: _____

Date: _____

CAREMARKPCS HEALTH, L.L.C.

By: [Signature]

Name: Lance Adams

Title: SVP

Date: 10/18/11

DISLEGAL
REVIEW

HEALTH ACTION COUNCIL OHIO

By: Barbara Belovich

Name: Barbara Belovich

Title: Executive Director

Date: 10/6/11