CONTRACT

BETWEEN

SOUTH CAROLINA

DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

«ContractorCaps»

FOR THE PURCHASE AND PROVISION OF

THE DEVELOPMENT AND MAINTENANCE OF

MEDICAL HOMES NETWORK

UNDER THE SOUTH CAROLINA MEDICAID PROGRAM

DATED AS OF

APRIL 1, 2007

TABLE OF CONTENTS

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FOR THE PURCHASE AND PROVISION OF THE DEVELOPMENT AND MAINTENANCE OF MEDICAL HOMES NETWORK UNDER THE SOUTH CAROLINA MEDICAID PROGRAM.

This Contract is entered into as of the first day of April 2007 by and between the South Carolina Department of Health and Human Services, Post Office Box 8206, 1801 Main Street, Columbia, South Carolina, 29202-8206, hereinafter referred to as "SCDHHS" and _____ (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, SCDHHS is the single state agency responsible for the administration in South Carolina of a program of Medical Assistance under Title XIX of the Social Security Act.

WHEREAS, the United States Department of Health and Human Services has allocated funds under Title XIX of the Social Security Act to SCDHHS for the Development of Medical Homes Networks.

WHEREAS, the Contractor represents and warrants that it meets applicable standards as a Contractor of the Development of Medical Homes Networks Services as specified by Title XIX of the Social Security Act, federal regulations promulgated pursuant thereto, and the South Carolina State Plan for Medical Assistance.

WHEREAS, the Contractor desires to participate in the provision of the Development of Medical Homes Networks Services under Title XIX of the Social Security Act.

NOW, THEREFORE, the parties to this contract, in consideration of the mutual promises, covenants, and stipulations set forth herein, agree as follows:

1 GENERAL PROVISIONS

1.1 Effective Date and Term

This Contract and its appendices, hereby incorporated, contain all of the terms and conditions agreed upon by the parties. All terms and conditions stated herein are subject to prior approval by CMS. To ensure the availability of Federal Financial Participation (FFP) for the entire contract period, this Contract must be submitted to CMS for prior approval at least forty-five (45) calendar days in advance of the proposed effective date.

This Contract shall be effective no earlier than the date it has been approved by CMS, and signed by the Contractor and SCDHHS, and shall continue in full force and effect from April 1, 2007 through March 31, 2008 unless terminated prior to that date by provisions of this Contract. The documents referenced in this Contract are on file with the Contractor and with SCDHHS, and the Contractor is aware of their content.

1.2 Notices

Whenever notice of contract termination or amendment is required to be given to the other party, it shall be made in writing and delivered to that party. Delivery shall be deemed to have occurred if made in person and a signed receipt is obtained or three (3) calendar days have elapsed after posting if sent by registered or certified mail, return receipt requested. Notices shall be addressed as follows:

In case of notice to Contractor:

_____
_____
_____

In case of notice to SCDHHS:

South Carolina Department of Health and Human Services
Office of the Director
1801 Main Street
Post Office Box 8206
Columbia, South Carolina 29202-8206

cc: Chief, Bureau of Health Services
Chief, Bureau of Administrative Services

Said notices shall become effective on the date specified within the notice. Either party may change its address for notification purposes by mailing a notice stating the change, effective date of change and setting forth the new address. If different representatives are designated after execution of this Contract, notice of the new representative will be rendered in writing to the other party and attached to originals of this Contract.

1.3 Definitions

The terms used in this Contract shall be construed and/or interpreted in accordance with the definitions set forth as follows:

Action: A termination, suspension or reduction (which includes denial of a service based on Office of General Counsel interpretation of CFR 431) of Medicaid eligibility or covered services. It further means determinations by skilled nursing facilities and nursing facilities to transfer or discharge residents and adverse determinations made by a State with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

Beneficiary: A person determined eligible to receive services as provided for in the South Carolina State Plan for Medical Assistance (interchangeable with the term Recipient).

Care Coordination Services Organization (CSO): Experienced, responsive, responsible, and financially sound organizations that provide administrative support to the Medical Homes Network and the participating primary care practices. The CSO shall serve as the designated agent for the Medical Homes Network.

Care Coordination: Activities performed by the Network on behalf of the members to coordinate and monitor their treatment and improve the cost/benefit of services delivered.

Care Coordination Fee: The amount paid to the Contractor per member per month for each MEDICAL HOMES beneficiary who has chosen or has been assigned to the Contractor.

C.F.R: Code of Federal Regulations.

CMS: Centers for Medicare and Medicaid Services.

Cold Call Marketing: Any unsolicited personal contact by the PCCM with a potential member for the purpose of marketing.

Disease Management: Activities performed on behalf of the members to coordinate and monitor their treatment for specific identified chronic diseases and educate the member to maximize appropriate self-management.

Documented Cost Savings: Those cost savings verified by SCDHHS by using an independent actuary to establish the baseline and to conduct periodic reconciliation during the Contract period. The difference between the Medicaid Upper Payment Limit of the Medical Homes Network enrollees as defined/calculated in Appendix B of the Contract and the total amount of covered claim expenditures incurred by Medical Homes Network enrollees (including the prospective per member per month case management/care coordination fee payments) during the contract period.

Eligible Beneficiary: Individuals who have been deemed eligible for Medicaid and may be enrolled in the MEDICAL HOMES program.

Enrollee: A Medicaid beneficiary who is currently enrolled in an MCO, PIHP, PAHP, or PCCM in a given managed care program.

FFP (Federal Financial Participation): Any funds, either title or grant, from the Federal Government.

GAO: General Accounting Office.

Group Practice/Center: A Medicaid participating primary care provider structured as a group practice/center which (1) is a legal entity (e.g., corporation, partnership, etc.), (2) possesses a federal tax identification (employer) number, and (3) is designated as a group by means of a Medicaid Group Provider number.

HIPAA: Health Insurance Portability and Accountability Act of 1996.

Managed Care Organization: An entity that has, or is seeking to qualify for, a comprehensive risk contract that is—(1) A Federally qualified HMO that meets the advance directive requirements of subpart I of 42CFR § 489; or (2) Any public or private entity that meets the advance directives requirements and is determined to also meet the following conditions: (a) Makes the services it provides to its Medicaid members as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid recipients within the area service by the entity; and (b) Meets the solvency standards of 42CFR §438.116. This includes any of the entity's employees, affiliated providers, agents, or contractors.

Managed Care Plan: The term "Managed Care Plan" is interchangeable with the terms "Contractor", "Plan", or "HMO/MCO".

Marketing: Any communication from a PCCM to a Medicaid beneficiary who is not enrolled in that entity, that can reasonably be interpreted as intended to influence the beneficiary to enroll in that particular PCCM's Medicaid product, or either to not enroll in, or to disenroll from, another Medicaid product.

Marketing Materials: Materials that are produced in any medium, by or on behalf of a PCCM and can reasonably be interpreted as intended to market to potential members.

Medical Homes Network: A group of physicians, who are enrolled as Primary Care Case Management (PCCM) providers, any advisory boards, and the Care Coordination Services Organization that provides the infrastructure for the group which accepts the responsibility for providing medical homes for members and for managing members' care.

MEDICAL HOMES Program Policy: All policies and procedures required by this agreement and incorporated herein by reference are published in the **MEDICAL HOMES Policy and Procedure Guide**.

Member: A Medicaid beneficiary who chooses (or is assigned) to a MEDICAL HOMES NETWORK primary care provider.

Member Disenrollment: The deletion of the individual from the monthly list of members furnished by the SCDHHS to the Contractor.

NPI: National Provider Identifier.

Outcomes: Performance measures designed to evaluate the implementation and accomplishment of the MHN providers and the Contractor.

Ownership Interest: The possession of stock, equity in the capital, or any interest in the profits of the Contractor. For further definition see 42 CFR 455.101 (2004, as amended).

Patient Care Coordination: The manner or practice of providing, directing, and coordinating the health care and utilization of health care services of members with regard to those services as defined by MEDICAL HOMES Policy that must be authorized by the primary care provider. If not provided directly, necessary medical services must be arranged through the primary care provider.

Pharmacy Management: Activities designed to monitor and oversee the utilization of medications, prescribed and over-the-counter, by both the Member and the Provider, to improve the cost/benefit of the use of pharmaceuticals.

Policies: The general principles by which SCDHHS is guided in its management of the Title XIX program, as further defined by SCDHHS promulgations and by state and federal rules and regulations.

Potential Enrollee: A Medicaid beneficiary who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet a member of a specific Primary Care Provider.

Preventive Services: Services rendered for the prevention of disease in adults and children as defined by MEDICAL HOMES Policy.

Primary Care: The ongoing responsibility for directly providing medical care (including diagnosis and/or treatment) to a member regardless of the presence or absence of disease. It includes health promotion, identification of individuals at risk, early detection of serious disease, management of acute emergencies, rendering continuous care to chronically ill patients, and referring the member to another provider when necessary.

Primary Care Case Management (PCCM): A system under which a Primary Care Case Manager contracts with the State to furnish case management services (which include the location, coordination and monitoring of primary health care services) to Medicaid beneficiaries.

Primary Care Provider (PCP): The participating physician, physician extender (PA, FNP, CNM), or group practice/center selected by or assigned to the member to manage, provide and coordinate all of the member's health care needs; to initiate and monitor referrals for specialized services when required; to contribute to the development and implementation of the care treatment plan, and participate in quality of care initiatives and reviews.

Program: The method of provision of Title XIX services to South Carolina beneficiaries as provided for in the South Carolina State Plan for Medical Assistance and SCDHHS regulations.

Provider Education: Information and training on, at a minimum, evidence-based medicine and Best Practice protocols delivered to the MHN providers.

Recipient: A person determined eligible to receive services as provided for in the South Carolina State Plan for Medical Assistance (interchangeable with the term Beneficiary).

Social Security Act: Title 42, United States Code, Chapter 7, as amended.

Social Services: Medical assistance, rehabilitation, and other services defined by Title XIX, USDHHS regulations, and SCDHHS regulations.

SCDHHS: South Carolina Department of Health and Human Services.

SCDHHS Appeal Regulations: Regulations promulgated in accordance with the S.C. Code Ann. §44-6-90 at S.C. Code Regs. 126-150 et seq. and S.C. Code Ann. §§1-23-310 et seq. (1976, as amended).

South Carolina State Plan for Medical Assistance: A plan, approved by the Secretary of USDHHS, which complies with 42 U.S.C.A. Section 1396a, and provides for the methodology of furnishing services to beneficiaries pursuant to Title XIX.

Title XIX: Title 42, United States Code, Chapter 7, subchapter XIX, as amended. (42 U.S.C.A. Section 1396 et seq.)

USDHHS: United States Department of Health and Human Services.

1.4 Entire Agreement

The Contractor shall comply with all the provisions of the Contract, including amendments and appendices, and shall act in good faith in the performance of the provisions of said Contract. The Contractor shall be bound by Medicaid policy as stated in applicable provider manuals and in the Medical Homes Network Policy and Procedure Guide. The Contractor agrees that failure to comply with the provisions of this Contract may result in the assessment of liquidated damages, sanctions and/or termination of the Contract in whole or in part, as set forth in this Contract. The Contractor shall comply with all applicable SCDHHS policies and procedures in effect throughout the duration of this Contract period. The Contractor shall comply with all SCDHHS handbooks, bulletins and manuals relating to the provision of services under this Contract. Where the provisions of the Contract differ from the requirements set forth in the handbooks and/or manuals, then the Contract provisions shall control.

SCDHHS, at its discretion, will issue Medicaid bulletins to inform the Contractor of changes in policies and procedures which may affect this

Contract. The SCDHHS is the only party to this Contract which may issue Medicaid bulletins.

1.5 Federal Approval of Contract

The CMS Regional Office shall review and approve all MHN contracts, including those risk and nonrisk contracts that, on the basis of their value, are not subject to the prior approval requirements in §438.806. The CMS has final authority to approve this contract between SCDHHS and the Contractor in which payment hereunder shall exceed one hundred thousand dollars ($100,000.00). If CMS does not approve this Contract entered into under the Terms & Conditions described herein, the Contract will be considered null and void.

1.6 Extension & Renegotiation

This Contract may be extended for a period which may be less than but not exceed one (1) year beyond the initial contract term whenever either of the parties hereto provide the other party with ninety (90) calendar days advance notice of intent to extend and written agreement to extend the Contract is obtained from both parties. Any rate adjustment(s) shall be set forth in writing and signed by both parties. Either party may decline to extend this Contract for any reason. The parties expressly agree there is no property right in this Contract. This contract may be renegotiated for good cause, only at the end of the contract period, and for modification(s) during the contract period, if circumstances warrant, at the discretion of the State.

1.7 Amendments

This Contract may be amended at anytime as provided in this paragraph. This Contract shall be amended whenever required by changes in state and/or federal law or regulations. No modification or change of any provision of the Contract shall be made or construed to have been made unless such modification is mutually agreed to in writing by the Contractor and SCDHHS, and incorporated as a written amendment to this Contract prior to the effective date of such modification or change. Any amendment to this Contract shall require prior approval by SCDHHS, CMS, and CMS Regional Office prior to its implementation.

2 FINANCIAL AND PLAN MANAGEMENT

The Contractor shall be responsible for sound fiscal management of the health care plan developed under this Contract. The Contractor shall adhere to the minimum guidelines outlined below.

2.1 Per Member Per Month Care Coordination Payments

The Contractor agrees to accept the prospective Per Member Per Month (PMPM) Care Coordination payments remitted by SCDHHS to the Contractor as payment in full for all services provided to Medicaid MHN Program members pursuant to this Contract. The PMPM payment is equal to the monthly number of members multiplied by the established

rate. This does not preclude SCDHHS from offering the contractor financial incentives as described in Section 12.2 of this contract.

2.2 Co-payments

Adult Medicaid MHN Program members aged 19 and older are responsible for any co-payments. The Network, at its discretion, may choose to waive the imposition of co-payments on its adult members.

2.3 Return of Funds

The Contractor agrees that all amounts identified as being owed to SCDHHS are due immediately upon notification to the Contractor by SCDHHS unless otherwise authorized in writing by SCDHHS. SCDHHS, at its discretion, reserves the right to collect amounts due by withholding future PMPM payments. SCDHHS reserves the right to collect interest on unpaid balances beginning thirty (30) calendar days from the date of initial notification. The rate of interest charged will be the same as that fixed by the Secretary of the United States Treasury as provided for in 45 CFR 30.13. This rate may be revised quarterly by the Secretary of the Treasury and shall be published by HHS in the Federal Register.

In addition, the Contractor shall reimburse SCDHHS for any federal disallowances or sanctions imposed on SCDHHS as a result of the Contractor's failure to abide by the terms of the Contract. The Contractor will be subject to any additional conditions or restrictions placed on SCDHHS by the United States Department of Health and Human Services (HHS) as a result of the disallowance. Payments of funds being returned to SCDHHS shall be submitted to:

South Carolina Department of Health and Human Services
Department of Receivables
Post Office Box 8355
Columbia, South Carolina 29202-8355

2.4 Third Party Liability (TPL)

If applicable, the Contractor must make all reasonable efforts to collect from any health insurance policy, which covers a Medicaid beneficiary. Any payment from the insurance company must be shown on the Medicaid claim when submitted to SCDHHS or refunded to SCDHHS up to the amount of the payment if already paid. The Contractor shall further contact the Director of Third Party Liability, SCDHHS, if contacted by an attorney for claim information and medical records concerning a Medicaid beneficiary. SCDHHS shall be advised in writing by the Contractor upon receipt, or the potential for receipt, of any income or resources for the beneficiary from any third party payor within ten (10) calendar days of the Contractor acquiring knowledge of such income or resources. SCDHHS or its designee shall have full access to financial records to determine if the third party collections have been refunded to Medicaid in accordance with this Section. Failure by the Contractor to collect available third party payments may result in recoupment of these payments by SCDHHS.

2.4.1 SCDHHS will share data with the Contractor regarding any insurance coverage it discovers for any covered Medicaid MHN Program member. While SCDHHS will make reasonable efforts to ensure that the shared data is accurate, SCDHHS cannot guarantee the accuracy of the data.

2.4.2 When the Contractor has determined that other insurance coverage exists for which the SCDHHS has not shared data with the Contractor already, the Contractor shall notify SCDHHS of this coverage.

2.4.3 If a Medicaid MHN Program member refuses to cooperate with the Contractor in pursuit of other liable parties, the Contractor will request the assistance of SCDHHS.

2.5 Training

The Contractor shall be responsible for training all of its employees and network providers, and subcontractors to ensure that they adhere to the Medicaid MHN Program policies and procedures and Medicaid regulations. The Contractor shall be responsible for conducting ongoing training on Medicaid MHN Program policies and distribution of updates for its network providers/subcontractors. SCDHHS reserves the right to attend any and all training programs and seminars conducted by the Contractor. The Contractor shall provide SCDHHS a list of the training dates, time and location, at least fifteen (15) calendar days prior to the actual date of training.

2.6 Liaisons

The Contractor shall designate an employee of its' administrative staff to act as liaison between the Contractor and SCDHHS for the duration of the Contract. SCDHHS's Department of Managed Care will be the Contractor's point of contact and shall receive all inquiries regarding this Contract and all required reports unless otherwise specified in this Contract. The Contractor shall also designate a member of its senior management who shall act as a liaison between the Contractor's senior management and SCDHHS when such communication is required.

If different representatives are designated after execution of this Contract, notice of the new representative shall be rendered in writing to the other party and attached to originals of this Contract.

2.7 Material Changes

The Contractor shall notify SCDHHS immediately of all material changes affecting the delivery of care or the administration of its health care plan under this Contract. Material changes include, but are not limited to, changes in: composition of the provider network, subcontractor network, Contractor's complaint and grievance procedures; health care delivery systems, services, changes to expanded services; benefits; geographic service area or payments; enrollment of a new population; procedures for obtaining access to or approval for health care services; and the Contractor's ability to meet enrollment levels. In addition, all changes, as

required under S.C. Code Ann. §38-33-30(c)(Supp. 2000, as amended), must be approved in writing by SCDHHS and copy of appropriate changes shall be issued to Medicaid MHN Program members prior to implementation of the change as required under S.C. Code Ann § 38-33-30(c)(Supp. 2000, as amended), at least 30 days before the intended effective date of the change. SCDHHS shall make the final determination as to whether a change is material.

2.8 Incentive Plans

The Contractor's incentive plans or its network providers/subcontractors shall be in compliance with 42 CFR 434 (2004, as amended), 42 CFR 417.479 (2004, as amended), 42 CFR 422.208 and 42 CFR 422.210 (see **MHN Policy and Procedure Guide**). The Contractor shall submit any information regarding incentives as may be required by SCDHHS.

2.9 Notification of Legal Action

The Contractor shall give SCDHHS immediate notification in writing by certified mail of any administrative legal action or complaint filed and prompt notice of any claim made against the Contractor by a subcontractor or member which may result in litigation related in any way to this Contract with SCDHHS.

2.10 Cost Report

The Contractor is required to submit an original and one copy of an actual cost report to include actual cost and service delivery information. DHHS Form 137 must be completed and mailed to SCDHHS within ninety (90) days after the contract expires or within ninety (90) days after the end of the Contractor's fiscal year if the contract is written for a period greater than one year. The cost report shall be mailed to:

Division of Ancillary Reimbursements
South Carolina Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8206.

2.11 Business Relationships

The Contractor shall refrain from knowingly engaging in a relationship with the following:

- An individual who is debarred, suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549;

- An individual who is an affiliate, as defined in the Federal Acquisition Regulation.

Relationship is described as follows:

- As a director, officer, partner of the Contractor,
- A person with beneficial ownership of more than five percent (5%) or more of the Contractor's equity; or,
- A person with an employment, consulting or other arrangement with the Contractor for the provision of items and services that are significant and material to the Contractor's contractual obligation with the SCDHHS.

3 SCDHHS CONTRACT MANAGEMENT RESPONSIBILITIES

For and in consideration of the promises herein made by the Contractor, SCDHHS agrees to the following:

3.1 SCDHHS will provide the Contractor with a monthly list of members for the purpose of managing their health care needs.

3.2 SCDHHS will provide training and technical assistance regarding the MEDICAL HOMES program, as necessary.

3.3 SCDHHS will provide the **MHN Policy and Procedure Guide**.

3.4 SCDHHS will provide the Network with the **MEDICAL HOMES Medicaid Managed Care Beneficiary Handbook**, in both English and Spanish, that contains program information including member rights and protections, program advantages, member responsibilities, complaint and grievance instructions for distribution to all members and potential members.

3.5 SCDHHS will notify members in writing of any significant change in the **MEDICAL HOMES** Program.

3.6 SCDHHS will make a good faith effort to notify members in writing of the termination of a contracted Contractor within fifteen (15) days after receipt or issuance of the termination notice.

3.7 SCDHHS will assign each MHN a unique identifier. The current practice and/or Provider number assigned to member practices/physicians shall serve as the unique identifier for the member practices.

3.8 SCDHHS will work with the Network to determine information necessary to manage members' care and provide information that is feasible.

3.9 SCDHHS will work with the Network (the Care Coordination Services Organization and any governing/advisory Board) to establish outcome measures for each year of the contract.

4 SCOPE OF SERVICES

The Contractor shall possess the expertise and resources to ensure the delivery of quality health care services to Medicaid MHN Program members in accordance with the Medicaid program standards and the prevailing medical community standards. The Contractor shall adopt practice guidelines that:

- Are based on valid and reliable clinical evidence or a consensus of health care professionals in the particular field
- Consider the needs of the members.
- Are adopted in consultation with contracting health care professionals.
- Are reviewed and updated periodically as appropriate.

The Contractor shall disseminate the guidelines to all affected providers and, upon request, to members and potential members. Decisions for utilization management, member education, coverage of services and other areas to which guidelines apply are consistent with the guidelines.

The Contractor's approved application is incorporated herein by reference as if stated fully herein. Any changes to approved protocols and cost-sharing methodology must be approved by SCDHHS. The Contractor must comply with all the terms and conditions contained in the **Medical Homes Network** Standards, which are incorporated herein and attached to this contract as Appendix A.

4.1 Components and Core Services of the South Carolina Medicaid MHN Program

The Contractor shall be responsible for the following components and core services:

4.1.1 In conjunction with the Network's Board of Directors and/or any Advisory Board, establishing best practices.

4.1.2 Monitoring overall quality of care within the Network.

4.1.3 Monitoring overall Network costs to Medicaid.

4.1.4 Utilization of data management to improve healthcare for Network members and for the State.

4.1.5 Formal Care Coordination and Case Management.

4.1.6 Service Utilization Management and tracking of services provided to members.

4.1.7 Member Education.

4.1.8 Disease Management.

4.1.9 Provider Education and Training on evidence-based medicine and Best Practice Protocols.

4.1.10 Provider Education and Training on use of Care Coordination/Case Management, Prior Authorization procedures, Enrollment/Disenrollment, etc. with member practices and Network referral partners.

4.1.11 Pharmacy Management to include, but not limited to, Benefit Management Oversight, and Clinical Risk Identification.

4.1.12 Exception and performance tracking and reporting.

4.1.13 Outcomes measurement and data feedback.

4.1.14 Distribution of any Per Member Per Month care coordination fee to the participating physicians using an incentive-based formula.

4.1.15 Distribution of any cost savings.

4.2 Required Functions

The Contractor agrees to perform the following functions:

4.2.1 Recruit, screen and approve practices for participation. Screening will include, but not be limited to, verifying that potential participating provider practices have not been excluded from participating in Medicaid, Medicare, and/or SCHIP. Federal Financial Participation (FFP) is not available for reimbursement to providers excluded by Medicare, Medicaid or SCHIP except for emergency services.

4.2.2 Assure that participating practices meet the participation criteria as outlined below and in the **MHN Policy and Procedure Guide**:

4.2.2.1 The practices must provide primary care and patient care coordination services to each member.

4.2.2.2 The practices must provide or arrange for Primary Care coverage for services, consultation or referral, and treatment for emergency medical conditions, twenty-four (24) hours per day, seven (7) days per week.

4.2.2.3 There must be prompt (within one hour) access to a qualified medical practitioner who is able to provide medical advice, consultation, and authorization for service when appropriate. PCPs must have at least one telephone line that is answered by office staff during regular office hours. (Use of an automated system to answer the phone is acceptable as long as patients are able to access a live person through one of the automated options.)

4.2.2.4 PCPs must provide members with an after-hours telephone number. The after-hours number may be the PCP's home telephone number, an answering service, etc. The after-hours telephone number must be listed in the member's

handbook. Changes to the after hours number should be reported to the Care Coordination Services Organization.

4.2.2.5 The practices must provide preventive services as defined by the network.

4.2.2.6 The practices must offer general patient education services to all members and potential members as well as disease management services to members for whom the services are appropriate.

4.2.2.7 MHN PCPs must establish and maintain hospital admitting privileges or enter into an arrangement with another physician or group practice for the management of inpatient hospital admissions of MHN members.

4.2.2.8 The practices will assist the member by providing systematic, coordinated care and will be responsible for all referrals for additional medically necessary care to other health care providers to ensure that services under the contract can be furnished to enrollees promptly and without compromise to the quality of care.

4.2.2.9 The practices will be required to follow the recommended Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screening and immunization schedules, as required by the Centers for Medicare and Medicaid Services (CMS).

4.2.3 Ensure that participating practices follow agreed-upon criteria for enrolling Medicaid eligible beneficiaries in the Medical Homes program as outlined in the **MHN Policy and Procedure Guide**.

4.2.4 Provide management of the medical and health care needs of members to assure that all medically necessary services are made available in a timely and cost efficient/effective manner.

4.2.5 Establish patient care coordination services to members of the **MEDICAL HOMES** Program.

4.2.6 Establish a plan to ensure regular evening and weekend hours within the Network to accommodate the needs of the members.

4.2.7 Develop a plan to enroll Medicaid patients who do not already have a medical home with network physicians. Priority will be given to patients who use the Emergency Room for non-emergency care.

4.2.8 Determine the priorities for disease management, patient education and care coordination that ensure these management services are provided. Patient education topics shall include, but not be limited to, child development, childhood diseases, diabetes, high blood pressure, and other chronic diseases.

4.2.9 Ensure that enrollees receive all information regarding their membership in the Network within a reasonable time after the Contractor received notice of enrollment.

4.2.10 Ensure that all materials designed for members' use easily understood language and formats. Ensure that members receive notification that information is available in alternative formats and how to access them. Written material will be available in alternative formats and in an appropriate manner that takes into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency.

4.2.11 Ensure that interpretive services related to health care issues are provided, as needed, to the members. Make oral interpretation services available free of charge to each potential member and existing member. This applies to all non-English languages. Ensure that members receive notification of the availability of these services and how to access them.

4.2.12 Conduct Marketing activities in accordance with **§7** of this Contract and in the **MHN Policies and Procedures Guide**.

4.2.13 Ensure that the enrollment and disenrollment of beneficiaries is conducted in accordance with **§6** of this Contract and the **MHN Policy and Procedure Guide**.

4.2.14 Work with SCDHHS to establish outcome measures for each year of the contract.

4.2.15 The Contractor shall agree to external quality assurance evaluation, review of quality assurance meeting minutes and annual medical audits by DHHS' External Quality Review Organization (EQRO) in accordance with standards contained in the **MHN Policy and Procedure Guide**.

4.2.16 Demonstrate budget neutrality or costs savings for services to beneficiaries in the plan.

4.2.17 Implement and operate an Information Technology System that meets the SCDHHS Information Technology standards for MHN programs.

4.2.18 Establish a Board of Directors or Advisory Boards that are geographically/regionally based to ensure that meetings are equally accessible to all Network practices.

4.2.19 Insure that individually identifiable health information must be protected in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

4.2.20 The Contractor shall provide each member and potential enrollee with clear, accurate and truthful information (oral and written) about the Contractor's health plan to ensure that the potential enrollee received the information necessary to make an informed decision on enrollment and to ensure compliance with this Contract and with state and federal laws and regulations. The Contractor shall be responsible for developing and distributing its own member specific marketing, and educational materials. The Contractor shall not cause or knowingly permit the use of advertising, which is untrue, misleading or deceptive. The information must include a statement that enrollment in the Contractor's Plan by a Medicaid applicant/eligible shall be voluntary. The Contractor shall inform the members that enrollment shall be for a period of twelve (12) months contingent upon their continued Medicaid eligibility and that the member may request disenrollment without cause at any time during the 90 days following the date of the member's initial enrollment with the MHN.

4.2.21 All written material shall be written at a grade level no higher than the fourth (4th) grade, or as determined appropriate by SCDHHS. The Contractor shall ensure that where ten percent (10%) of the resident population of a county is non-English speaking and speaks a specific foreign language, materials shall be made available in that specific language to assure a reasonable chance for all potential members to make an informed choice of managed care plans. All beneficiary-related materials must be made available in Spanish and must be certified by a translation service.

4.3 Emergency Medical Services

The Contractor shall insure that emergency and post-stabilization services be rendered without the requirement of prior authorization of any kind; and shall advise all Medicaid MHN Program members of the provisions governing the use of emergency services. The Contractor shall not limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms. The Contractor shall submit for prior approval by SCDHHS, a copy of its written emergency services definitions and any protocols.

4.4 Medical Services for Special Populations

The Contractor shall implement mechanisms to assess each member identified by the State and identified to the Contractor by the State as having special health care needs in order to identify any ongoing special condition of the member that requires a course of treatment or regular

care monitoring. The assessment mechanism must use appropriate health care professionals. The Contractor must have a mechanism in place to allow members to directly access a specialist as appropriate for the member's condition and identified needs (for example, through the standard referral or an approved number of visits).

The Contractor shall determine the need for any enhanced services that may be necessary for these populations to maintain their health and well being. **MHN Policy and Procedure Guide** outlines the best practices and procedures that the Title XIX SC State Medicaid Plan uses to serve the designated special populations.

Children with chronic/complex health care needs and all infants of high-risk mothers are defined as special populations in the Title XIX SC State Medicaid Plan. The special populations are identified as individuals that may require additional health care services that should be incorporated into a health management plan which guarantees that the most appropriate level of care is provided for these individuals.

4.5 Care Coordination

The Contractor shall ensure that each member has an ongoing source of primary care appropriate to his or her needs and a person or entity formally designated as primarily responsible for coordinating the health care services furnished to the member. The Contractor shall be responsible for the planning, directing and coordinating of health care needs and services for Medicaid MHN Program members in conjunction with the Primacy Care Physician through care coordination, increased accessibility of services and promoting prevention. The Contractor's care coordination and referral activities should incorporate and identify appropriate methods of assessment and referral for Members.

4.5.1 Continuity of Care

The Contractor shall develop and maintain effective continuity of care activities which seek to ensure a holistic approach to treating and providing health care services to Medicaid MHN Program members. In addition to ensuring appropriate referrals, monitoring, and follow-up to providers within the network, the Contractor shall ensure appropriate linkage and interaction with providers. The Contractor's continuity of care activities should seek to provide processes by which Medicaid MHN Program members and provider interactions can effectively occur and identify and address problems when those interactions are not effective or do not occur.

In order to provide a holistic approach to managing the needs of the member, the Contractor shall provide effective continuity of care activities that seek to ensure that the appropriate personnel, including the Primary Care Provider, are kept informed of the member's treatment needs, changes, progress or problems. The Contractor shall ensure that service delivery is properly monitored to identify and overcome barriers to primary and preventive care that the Medicaid MHN Program member may encounter.

The Contractor shall honor any prior authorization for ongoing covered Medicaid services to a Medicaid MHN Program member until the Contractor's primary care provider assigned to that member reviews the member's treatment plan.

4.5.2 School-Based Services

School-based services are those Medicaid services provided in school districts to Medicaid eligible children under the age of 21. The Contractor shall at a minimum have written procedures for promptly transferring medical and developmental data needed for coordinating ongoing care with school-based services.

4.5.3 Women, Infant, and Children (WIC) Program Referral

The Contractor shall be responsible for ensuring that coordination exists between the WIC Program and network providers. Coordination shall include referral of potentially eligible women, infants and children and reporting of appropriate medical information to the WIC Program. The South Carolina Department of Health & Environmental Control (DHEC) administers the WIC Program. A sample referral/release of information form is found in **MHN Policy and Procedure Guide,** WIC Referral Form.

4.6 Family Planning and Communicable Disease Services

4.6.1 Family Planning Services

Family planning services are available to help prevent unintended or unplanned pregnancies. Family planning services include examinations, assessments, and traditional contraceptive devices. The Contractor should agree to make available all family planning services to Medicaid MHN program members as specified in **MHN Policy and Procedure Guide.** Medicaid MHN program members shall have the freedom to receive family planning services outside the Contractor's provider network by appropriate Medicaid providers without any restrictions. Medicaid MHN program members should be encouraged by the Contractor to receive family planning services through the Contractor's network of providers to ensure continuity and coordination of a member's total care.

4.6.2 Communicable Disease Services

Communicable disease services are available to help control and prevent diseases such as tuberculosis (TB), sexually transmitted diseases (STD), and Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS) infection. The Contractor shall make available communicable disease services to Medicaid MHN program members as specified in **MHN Policy and Procedure Guide.** Medicaid MHN Program Members shall have the freedom to receive TB, STD, and HIV/AIDS services outside the Contractor's provider network by the state public health agency without any restrictions. Medicaid MHN program members should be encouraged by the Contractor to receive TB, STD, and

HIV/AIDS services through the Contractor's network of providers to ensure continuity and coordination of a member's total care.

4.6.2.1 Prompt Reporting of South Carolina Reportable Diseases, and Access to Clinical Records of Patients with Reportable Diseases.

The Contractor or its network providers shall comply with S.C. Code Ann. Sections 44-1-80 through 44-1-140 and Sections 44-29-10 through 44-29-90 by reporting all cases of TB, STD and HIV/AIDS infection to the state public health agency within 24 (twenty-four) hours of notification by provider or from date of service. Refer to the annual March - April 1999 issue of "Epi-Notes", the Department of Health and Environmental Control's (DHEC) Disease Prevention and Epidemiology Newsletter for the list of reportable conditions by physicians and health care institutions required under State law and listed in **MHN Policy and Procedure Guide**. Specifically, for all diseases "reportable by health care workers," reporting shall be by the Contractor staff providing services to the patient, regardless of whether the case is also reportable by laboratories.

4.6.2.2 Control and Prevention of Communicable Diseases

DHEC is the state public health agency responsible for promoting and protecting the public's health and has the primary responsibility for the control and prevention of communicable diseases such as TB, STD, HIV/AIDS infection and vaccine preventable diseases. DHEC provides a range of primary and secondary prevention services through its local health clinics to provide and/or coordinate communicable disease control services.

Due to the specialized knowledge and expertise required to treat TB cases and prevent its spread, all TB cases at risk for noncompliance with treatment or primary drug resistance are reported to DHEC for treatment. As a result, 95% of TB cases in South Carolina are treated in DHEC clinics.

TB suspects and cases must be referred to DHEC by the Contractor and/or its network provider for clinical management and treatment and directly observed therapy. This care will be coordinated with the Contractor's PCP.

4.6.2.3 Patient Confidentiality

The public state health agency will promote coordination of care while ensuring patient confidentiality. Notwithstanding **§4.10.2** of this Contract, in compliance

with S.C. Code Ann. §44-29-135 (Supp. 2000, as amended), for Medicaid MHN Program members who choose diagnosis and treatment for TB, STD and HIV/AIDS infection in the state public health clinics, information regarding their diagnosis and treatment will be provided to the Contractor's primary care provider assigned to that member only with the written consent of the member, unless otherwise provided by law.

4.7 Manner of Service Delivery and Provision

In establishing and maintaining the service delivery network, the Contractor must consider the following:

- The anticipated Medicaid enrollment.
- The expected utilization of services, taking into consideration the characteristics and health care needs of specific Medicaid populations represented by the Contractor.
- The number of network providers who are not accepting new Medicaid patients.
- The geographic location of providers and Medicaid members; considering distance travel time, means of transportation ordinarily used by Medicaid members, and whether the location provides physical access for Medicaid members with disabilities.

The Contractor shall provide female members with direct access to a women's health specialist within the network for covered care necessary to provide women's routine and preventive health care services. This is in addition to the members designated source of primary care if that source is not a women's health specialist. The Contractor shall provide a second opinion from a qualified health care professional.

4.7.1 Service Area

The Contractor is authorized to develop MHNs in all counties.

4.7.2 Contractor's Network Composition

The Contractor shall not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable State law, solely on the basis of that license or certification. The Contractor shall not discriminate for the participation, reimbursement, or indemnification of any provider who serves high-risk populations or specializes in conditions that require costly treatment. If the Contractor declines to include individual or groups of providers in its network, it must give the affected providers written notice of the reason for it decision.

4.7.3 Primary Care Providers (PCP)

A PCP in the Medicaid MHN Program must be a physician or network provider/subcontractor who provides or arranges for the delivery of medical services, including case management, to assure

that all services that are found to be medically necessary are made available in a timely manner as outlined in **§ 4** of this Contract. The PCP may practice in a solo or group setting or may practice in a clinic (i.e., Federally Qualified Health Center or Rural Health Center) or outpatient clinic. The Contractor shall agree to provide at least one (1) full time equivalent (FTE) PCP per two thousand five hundred (2,500) members (Medicaid MHN Program members and existing commercial members).

The Medicaid MHN program member has the freedom to request a change of primary care provider within the time frames and guidelines established by the Contractor. The time frames and guidelines established by the Contractor must not conflict with the Federal rules and regulations governing time frames.

The Contractor shall identify to SCDHHS or its designee monthly any PCP approved to provide services under this Contract who will not accept new patients.

The PCP shall serve as the member's initial and most important point of interaction with Contractor's provider network. The PCP responsibilities shall include, at a minimum:

4.7.3.1 Managing the medical and health care needs of members to assure that all medically necessary services are made available in a timely manner;

4.7.3.2 Monitoring and follow-up on care provided by other medical service providers for diagnosis and treatment, to include services available under Medicaid fee-for-service;

4.7.3.3 Providing the coordination necessary for the referral of patients to specialists and for the referral of patients to services that may be available through fee-for-service Medicaid; and

4.7.3.4 Maintaining a medical record of all services rendered by the PCP and other referral providers.

4.8 Service Accessibility Standards

The Contractor and its network providers/subcontractors shall provide or arrange for Primary Care coverage services, consultation or referral, and treatment of emergency medical conditions, twenty-four hours per day, seven days per week as defined in the **MHN Policy and Procedure Guide**. Automatic referral to the hospital emergency department for services does not satisfy this requirement. Members must be allowed to obtain emergency services outside the Network regardless of whether the PCP referred the member to the provider that furnished the services. The Rights of Members, as detailed in the **MHN Policy and Procedure Guide**, shall always be taken into account when rendering treatment.

The Contractor and its network providers/subcontractors shall ensure access to health care services (distance traveled, waiting time, length of

time to obtain an appointment, after-hour care) in accordance with the prevailing medical community standards in the provision of services under this Contract. The SCDHHS will monitor the Contractor's service accessibility. The Contractor shall provide available, accessible and adequate numbers of service locations, service sites, professional, allied and para-medical personnel for the provision of primary care services on a 24-hour-a-day, 7-days-a week basis, as described in **the Medical Homes Network Standards** and the **MHN Policy and Procedure Guide**, and shall take corrective action if there is failure to comply by any provider. At a minimum, this shall include:

4.8.1 Twenty-Four (24) Hour Coverage

The Contractor shall ensure that all medically necessary primary medical care is available on a twenty-four (24) hours a day, seven (7) days a week basis through its network providers, and shall maintain, twenty-four (24) hours per day, seven (7) days per week telephone coverage to instruct Medicaid MHN Program members on where to receive emergency and urgent health care.

The Contractor's network provider/subcontractor may elect to provide 24 hour coverage by direct access or through arrangement with a triage system. The triage system arrangement must be prior approved by SCDHHS.

4.8.2 Scheduling/Appointment Waiting Times

The Contractor shall ensure that its subcontractors/network providers have an appointment system for primary care medical services which are in accordance with prevailing medical community standards but shall not exceed the following requirements:

4.8.2.1 Routine well visits scheduled within 45 days of presentation or notification, 15 days if member is pregnant;

4.8.2.2 Routine sick visits scheduled within three (3) days of presentation or notification;

4.8.2.3 Urgent, non-emergency visits within forty-eight (48) hours;

4.8.2.4 Emergent or emergency visits immediately upon presentation at a service delivery site; and

4.8.2.5 Waiting times should not exceed forty-five (45) minutes for scheduled appointment of a routine nature.

Walk-in patients with non-urgent needs should be seen if possible or scheduled for an appointment consistent with written scheduling procedures.

Walk-in patients with urgent needs should be seen within forty-eight (48) hours.

The Contractor's network providers/subcontractors shall not use discriminatory practices with regard to members such as separate waiting rooms, separate appointment days, or preference to private pay patients.

4.9 Authorization and Referral System

The Contractor shall have a referral system for Medicaid MHN Program members requiring specialty health care services. The Contractor shall provide monitoring and follow-up on care provided by other medical service providers for diagnosis and treatment, to include externally referred services.

There must be written evidence of the communication of the patient results/information to the referring physician by the specialty health care provider or continued communication of patient information with the primary care provider.

4.10 Cultural Considerations

The Contractor shall promote the delivery of services in a culturally competent manner to all members, including those with limited English proficiency and diverse cultural and ethnic backgrounds.

When the Contractor identifies Medicaid members who have visual and/or hearing impairments, an interpreter must be made available for the South Carolina Medicaid MHN Program member(s).

5 SUBCONTRACTS

The Contractor shall provide or assure the provision of all covered services specified in **§4** of this Contract. The Contractor may provide these services directly or may enter into subcontracts with providers who will provide services to the members in exchange for payment by the Contractor for services rendered. Subcontracts are required with all providers of services unless otherwise approved by SCDHHS. The Contractor shall remain responsible for all contractual requirements including those performed by the subcontractor(s). Any plan to delegate responsibilities of the Contractor to a subcontractor shall be approved by SCDHHS.

Model subcontracts, including provider per member per month care coordination fee rates, shall be submitted in advance to SCDHHS and shall include a copy of and specify that the subcontractor adhere to the Quality Assurance Requirements specified by SCDHHS contained in **MHN Policy and Procedure Guide,** Quality Assurance and Utilization Review Requirements. The Contractor shall submit to SCDHHS for review and approval, prior to execution, any subcontract, including provider rates, that is materially different from the model subcontract for that provider type. The SCDHHS shall have the right to review any and all subcontracts entered into for the provision of any services under this contract.

Notification of amendments or changes to any subcontract which, in accordance with **§2.7** of this Contract, materially affects this Contract shall be provided to SCDHHS prior to the execution of the amendment in accordance with **§1.7** of this Contract. The Contractor shall not execute subcontracts with providers who

have been excluded from participation in the Medicare and/or Medicaid program pursuant to §§ 1128 (42 U.S.C. 1320a-7) (2001, as amended) or 1156 (42 U.S.C. 1320 c-5) (2001, as amended) of the Social Security Act or who are otherwise barred from participation in the Medicaid and/or Medicare program. The Contractor shall not enter into any relationship (See § 1.3 – Definitions) with anyone debarred, suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from non-procurement activities under regulations issued under Executive Orders. In the event of non-renewal of a subcontractor's agreement, the Contractor shall inform SCDHHS of the intent to terminate the subcontract ninety (90) calendar days prior to the effective date of termination of said subcontract. If the Contractor terminates the subcontract for cause, the Contractor shall notify SCDHHS thirty (30) calendar days prior to the termination. If the subcontract is terminated for any material breach, the Contractor shall give the subcontractor thirty (30) calendar days written notice and shall notify SCDHHS of the termination thirty (30) calendar days prior to the termination of said subcontract. The Contractor must make a good faith effort to give written notice of termination of a contracted provider, within fifteen (15) days after receipt of issuance of the termination notice, to each enrollee who received his or her primary care from or was seen on a regular basis by the terminated provider.

5.1 Subcontract Requirements

All subcontracts executed by the Contractor pursuant to this section shall, at a minimum, include the requirements listed below. No other terms or conditions agreed to by the Contractor and subcontractor shall negate or supersede the following requirements.

5.1.1 Be in writing and signed by the Contractor and subcontractor.

5.1.2 Specify the effective dates of the subcontractor agreement.

5.1.3 Specify in the subcontractor agreement that the subcontractor agreement and its appendices contain all the terms and conditions agreed upon by the parties. Require that no modification or change of any provision of the subcontract shall be made unless such modification is incorporated and attached as a written amendment to the subcontract and signed by the parties.

5.1.4 Assure that the subcontractor shall not enter into any subsequent agreements or subcontracts for any of the work contemplated under the subcontractor agreement without approval of the Contractor.

5.1.5 Specify that the services covered by the subcontractor agreement must be in accordance with the Title XIX SC State Medicaid Plan and require that the subcontractor shall provide these services to members through the last day that the subcontract is in effect, all final Medicaid benefit determination are within the sole and exclusive authority of SCDHHS or its designee.

5.1.6 Specify that the subcontractor may not refuse to provide medically necessary or covered preventive services to Medicaid MHN

program members covered under this Contract for non-medical reasons.

5.1.7 Require that the subcontractor be currently licensed and/or certified under applicable state and federal statutes and regulations and shall maintain throughout the term of the subcontract all necessary licenses, certifications, registrations and permits as are required to provide the health care services and/or other related activities delegated by the Contractor.

5.1.8 Specify the amount, duration and scope of services to be provided by the subcontractor.

5.1.9 Provide that emergency services be rendered without the requirement of prior authorization of any kind.

5.1.10 If the subcontractor performs laboratory services, the subcontractor must meet all applicable state and federal requirements.

5.1.11 Require that an adequate record system be maintained for recording services, service providers, charges, dates and all other commonly accepted information elements for services rendered to members 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 this Contract). Medicaid MHN program members and their representatives shall be given access to and requested copies of the members medical records, to the extent and in the manner provided by S.C. Code Ann. §44-115-10 et. seq., (Supp. 2000) as amended and subject to reasonable charges.

5.1.12 Require that any and all member records—financial, medical, etc.—be retained for a period of three (3) years after the last payment was made for services provided to a member and retained further if the records are under review or audit until the review or audit is complete. This requirement pertains to the retention of records for Medicaid purposes only; other state or federal rules may require longer retention periods. Current State law (SC ST SEC 44-115-120) requires physicians to retain their records for at least ten (10) years for adult patients and at least thirteen (13) years for minors. These minimum record keeping periods begin to run from the last date of treatment. After these minimum record-keeping periods, state law allows for the destruction of records. Said records shall be made available for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring upon request of authorized representative of SCDHHS.

5.1.13 Provide that SCDHHS, U.S. Department of Health and Human Services (HHS), CMS, Office of Inspector General Comptroller, State Auditor's Office, and the South Carolina Attorney General's Office shall have the right to evaluate through inspection, or other means, whether announced or unannounced, any records pertinent to this Contract including quality, appropriateness and timeliness of

services and such evaluation, and when performed, shall be performed with the cooperation of the Contractor. Upon request, the Contractor shall assist in such reviews.

5.1.14 Whether announced or unannounced, provide for the participation and cooperation in any internal and external quality assurance review, utilization review, peer review and grievance procedures established by the Contractor and/or SCDHHS or its designee.

5.1.15 Specify that the subcontractor shall monitor the quality of services delivered under the agreement and initiate corrective action where necessary to improve quality of care, in accordance with that level of care which is recognized as acceptable professional practice in the respective community in which the Contractor/subcontractor practices and/or the standards established by SCDHHS or its designee.

5.1.16 Require that the subcontractor comply with corrective action plans initiated by the Contractor and/or required by SCDHHS.

5.1.17 Provide for submission of all reports and clinical information required by the Contractor, including EPSDT (if applicable).

5.1.18 Require safeguarding of information about Medicaid MHN program members according to applicable state and federal laws and regulations and as described in **§13.22 and §13.29** and of this Contract.

5.1.19 Provide the name and address of the official payee to whom payment shall be made.

5.1.20 Make full disclosure of the method and amount of compensation or other consideration to be received from the Contractor.

5.1.21 Provide for prompt submission of information needed to make payment.

5.1.22 Specify that the subcontractor shall accept payment made by the Contractor as payment-in-full for covered services provided and shall not solicit or accept any surety or guarantee of payment from the member. Member shall include the patient, parent(s), guardian, spouse or any other legally responsible person of the member being served.

5.1.23 Specify that at all times during the term of the agreement, the subcontractor shall indemnify and hold SCDHHS harmless from all claims, losses, or suits relating to activities undertaken pursuant to the Contract between SCDHHS and the Contractor, unless the subcontractor is a state agency. For subcontractors that are not state agencies, the indemnification may be accomplished by incorporating **§13.26** of this Contract in its entirety in the subcontractor's agreement or by use of other language developed by the Contractor and approved by SCDHHS. For state agencies, the liability protection may be accomplished by incorporating

language developed by the state agency and approved by SCDHHS.

5.1.24 Require the subcontractor to secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect the plan's members and the Contractor under the agreement. The subcontractor shall provide such insurance coverage at all times during the agreement and upon execution of the subcontract agreement furnish the Contractor with written verification of the existence of such coverage.

5.1.25 Specify that the subcontractor agrees to recognize and abide by all state and federal laws, regulations and guidelines applicable to the provision of services under the Medicaid MHN Program.

5.1.26 Provide that the agreement incorporates by reference all applicable federal and state laws or regulations, and that revisions of such laws or regulations shall automatically be incorporated into the agreement as they become effective. In the event that changes in the agreement as a result of revisions and applicable federal or state law materially affect the position of either party, the Contractor and subcontractor agree to negotiate such further amendments as may be necessary to correct any inequities.

5.1.27 Specify procedures and criteria for any alterations, variations, modifications, waivers, extension of the agreement termination date, or early termination of the agreement and that such change shall only be valid when reduced to writing, duly signed and attached to the original of the agreement.

5.1.28 Specify that the Contractor and subcontractor recognize that in the event of termination of this Contract between the Contractor and SCDHHS for any of the reasons described in this Contract, the Contractor shall immediately make available, to SCDHHS, or its designated representative, in a usable form, any and all records, whether medical or financial, related to the Contractor's and subcontractor's activities undertaken pursuant to the Contractor/subcontractor agreement. The provision of such records shall be at no expense to SCDHHS.

5.1.29 That the Contractor and subcontractor shall be responsible for resolving any disputes that may arise between the two (2) parties, and that no dispute shall disrupt or interfere with the provisions of services to the Medicaid MHN program member.

5.1.30 Include a conflict of interest clause as stated in **§13.33** of this Contract between the Contractor and SCDHHS.

5.1.31 Specify that the subcontractor must adhere to the Quality Assurance and Utilization Management requirements as outlined in **MHN Policy and Procedure Guide**. The Quality Assurance and Utilization Management Requirements shall be included as part of the subcontract between the Contractor and the subcontractor.

5.1.32 All subcontractors shall give the Contractor immediate notification in writing by certified mail of any administrative legal action or complaint filed and prompt notice of any claim made against subcontractor by a subcontractor, or member which may result in litigation related in any way to this Contract with SCDHHS. The Contractor shall assure that all responsibilities related to the subcontract are performed in accordance with the terms of this Contract.

5.1.33 Contain no provision which provides incentives, monetary or otherwise, for the withholding of medically necessary care. See **MHN Policy and Procedure Guide,** Incentive Plans.

5.1.34 Specify that the subcontractor shall not assign any of its duties and/or responsibilities under this Contract without the prior written consent of the Contractor.

5.1.35 Specify that Contractor shall not prohibit or otherwise restrict a network provider/subcontractor from advising a member about the health status of the member or medical care or treatment for the member's condition or disease, regardless of whether benefits for such care or treatment are provided under the contract, if the network provider/subcontractor is acting within the lawful scope of practice.

5.1.36 In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.) (2001, as amended) and its implementing regulation at 45 C.F.R. Part 80 (2001, as amended), the Provider must take adequate steps to ensure that persons with limited English skills receive free of charge the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this agreement.

5.1.37 Contain no provision which restricts a network provider/subcontractor from contracting with another managed care entity.

6 EDUCATION, SELECTION AND ENROLLMENT PROCESS

The South Carolina Department of Health and Human Services (SCDHHS) determines eligibility for Medicaid for all coverage groups except for Supplemental Security Income (SSI). The Social Security Administration (SSA) determines eligibility for SSI. Once SCDHHS or SSA determines an applicant eligible for Medicaid, the pertinent eligibility information is entered in the Medicaid Eligibility Determination System (MEDS). The rights afforded to potential MHN members are detailed in **MHN Policy and Procedure Guide**, **Members' Bill of Rights.**

6.1 Informing Medicaid Eligibles about Available Health Care Benefits

Contractor shall develop an informational package describing, at a minimum, the services covered and the steps which must be followed to access the services. This package shall include instruction on how to contact the Contractor in the event the member needs to access health

care services prior to being contacted by the Contractor. The informational package must be submitted to SCDHHS for approval.

6.2 Enrolling Eligibles in the Contractor's Plan

If an eligible elects to enroll in a managed care program, the SCDHHS or its designee will enter the enrollment information as provided in **§6.3** of this Contract. SCDHHS or its designee will provide the Contractor notification of the Medicaid eligibles who are enrolled, re-enrolled, or disenrolled from their managed care plan as specified in **§6.8**. The Contractor shall contact the members as required in **§8** of this Contract. SCDHHS or its designee will notify the eligibles of their enrollment and of their rights to change providers or to disenroll from the plan for cause.

The Contractor shall not discriminate against Medicaid MHN program members on the basis of their health history, health status or need for health care services or adverse change in health status and shall accept eligibles in the order in which they apply. This applies to enrollment, re-enrollment or disenrollment from the Contractor's plan. The Contractor shall provide services to all eligible Medicaid MHN program members who select the Contractor's plan.

6.3 Enrollment Period

The Medicaid MHN program members shall be enrolled for a period of twelve (12) months contingent upon their continued Medicaid eligibility. The member may request disenrollment without cause at any time during the 90 days following the date of the member's initial enrollment with the MHN. A member shall remain in the Contractor's plan unless the member submits a written or oral request to disenroll, to change managed care plans for cause or unless the member becomes ineligible for Medicaid and/or MHN enrollment. Oral requests to disenroll shall be confirmed in writing. If a member's request to disenroll is not acted on within sixty (60) days, it shall be considered approved. The following are considered cause for disenrollment by the member:

- The member moves out of the MHN's service area;
- The plan does not, because of moral or religious objections, cover the service the member seeks;
- The member needs related services (for example, a cesarean section and a tubal ligation) to be performed at the same time; not all related services are available within the network; and the member's PCP or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or
- Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the member's health care needs.

Annually, SCDHHS or its designee will mail a re-enrollment offer to Medicaid MHN members to determine if they wish to continue to be enrolled with the Contractor's plan no less than 60 days prior to the start of the re-enrollment period. The re-enrollment notice shall inform the MHN members of their disenrollment rights. Unless the member becomes ineligible for the Medicaid MHN Program or provides written notification that they no longer wish to be enrolled in the Contractor's plan, the member will remain enrolled with the Contractor.

A Medicaid MHN program member who becomes disenrolled due to loss of Medicaid eligibility and submits a new enrollment form and becomes enrolled in the Contractor's plan within sixty (60) calendar days from the effective date of disenrollment may re-enroll with the Contractor's plan without going through the education process again. See **§6.7** for additional information on re-enrollment.

6.4 Effective Date of Enrollment

The SCDHHS or its designee will enter all enrollment information and updates within three (3) working days of receipt of a processable enrollment form/spreadsheet. A processable enrollment form/spreadsheet is one that does not need to be returned to the recipient for further information and one that passes front end edits when keyed. (Examples of front-end edits include, but are not limited to: Recipient Medicaid number must be valid and recipient must be eligible for Medicaid.)

For enrollment forms/spreadsheets received by the 3rd Wednesday of the month, enrollment of eligibles shall be guaranteed to be no later than the first day of the following month, provided no request for change of enrollment has been received by SCDHHS.

These same time frames shall be used for changes in enrollment and disenrollment. If a member's request to be disenrolled or change MHN plans is received by SCDHHS by the third Wednesday of the month, the change will be effective on the last day of the month. If the member's request is received after that date, the effective date of the change will be no later than the last day of the month following the month the disenrollment form is received.

6.5 Member Initiated Disenrollment and Change of Managed Care Plans

The Contractor may conduct an initial follow up for all voluntary disenrollees. These members will be identified on the member listing file with a special indicator. The Contractor may contact the member upon receipt of the monthly member listing file. However, follow up must be within the guidelines outlined in **MHN Policy and Procedure Guide,** Marketing, Member Education and Enrollment. A new enrollment form will have to be completed and submitted to SCDHHS for processing. The effective date of enrollment will be as specified in section **6.4** of the contract.

6.6 Contractor Initiated Member Disenrollment of Participation

The Contractor may request to disenroll a Medicaid MHN program member based upon the following reasons:

- Contractor ceases participation in the Medicaid MHN program or in the Medicaid MHN program member's service area;
- Medicaid MHN program member dies;
- Becomes an inmate of a Public Institution;
- Moves out of State;
- Becomes institutionalized in a Long Term Care Facility/Nursing Home for more than thirty (30) days;
- Enters the Medically Fragile Children's Program; or
- Fails to follow the rules of the managed care plan.

The Contractor's request for member disenrollment must be made in writing to SCDHHS using the SCDHHS Form 295 in the **MHN Policy and Procedure Guide** and the request must state the detailed reason for disenrollment. SCDHHS will determine if the Contractor has shown good cause to disenroll the member and SCDHHS will give written notification to the Contractor and the member of its decision. The Contractor and the member shall have the right to appeal any adverse decision.

The Contractor shall not terminate a member's enrollment because of any adverse change in the member's health except when the member's continued enrollment in the Plan seriously impairs the Contractor's ability to furnish services to either this particular member or other members.

If the Contractor ceases participation in the eligible's service area or ceases participation in the Medicaid MHN program, the Contractor shall notify SCDHHS in accordance with the termination procedures in **§13.2.8** of this Contract. SCDHHS or its designee will notify MHN program members and offer them the choice of regular fee for service Medicaid or another managed care plan in their service area. If there are no other managed care options, they will remain on regular Medicaid. The Contractor shall assist the SCDHHS in transitioning Medicaid MHN program members to another managed care plan or to the Medicaid fee-for-service delivery system to ensure access to needed health care services.

6.7 SCDHHS Initiated Member Disenrollment

The SCDHHS will notify the Contractor of the member's disenrollment due to the following reasons:

- Loss of Medicaid eligibility or loss of Medicaid MHN program eligibility;
- Death of a Member;
- Intentional Submission of Fraudulent Information;
- Becomes an inmate of a Public Institution;
- Moves out of State;
- Becomes institutionalized in a Long Term Care Facility/Nursing Home for more than thirty (30) days;
- Enters the Medically Fragile Children's Program;

- Loss of Contractor's Participation; or
- Enrollment in another Medicaid managed care plan.

The Contractor shall immediately notify SCDHHS when it obtains knowledge of any Medicaid MHN program member whose enrollment should be terminated prior to SCDHHS' knowledge. See **MHN Policy and Procedure Guide.**

The Contractor shall have the right to contact MHN members who have been disenrolled when the reason for disenrollment is "ineligible for Medicaid". This means that Medicaid eligibility has been terminated. These members will be identified on the member listing file with a special indicator. The Contractor may contact the member upon receipt of the monthly member listing file to assist the member in taking any possible actions to continue or regain eligibility. If the member regains Medicaid eligibility, within 60 days of the disenrollment date, the member will be automatically re-enrolled with the Contractor. If eligibility is regained after 60 days of the disenrollment date, the member will need to contact SCDHHS to initiate re-enrollment.

Automatic re-enrollment will only occur in cases where the Medicaid MHN Program Member has not submitted a written request to disenroll from the Contractor's plan.

In an effort to minimize the number of disenrollments due to loss of Medicaid eligibility, DHHS or its designee will provide the Contractor with a monthly listing of Medicaid MHN program members who were mailed an Eligibility Redetermination/Review Form during the month. The Contractor may use this information to assist its members in taking appropriate action to maintain Medicaid eligibility.

6.8 Notification of Membership to Managed Care Plan

SCDHHS or its designee will notify each Contractor at specified times each month of the Medicaid eligibles who are enrolled, re-enrolled, or disenrolled from their managed care plan for the following month. The Contractor will receive this notification through electronic media. See **MHN Policy and Procedure Guide** for record layout.

SCDHHS or its designee will use its best efforts to ensure that the Contractor receives timely and accurate enrollment and disenrollment information. In the event of discrepancies or unresolvable differences between the SCDHHS and the Contractor, regarding enrollment, disenrollment and/or termination, SCDHHS will be responsible for taking the appropriate action for resolution.

6.9 Toll Free Telephone Number

SCDHHS or its designee will maintain a toll free telephone number for Medicaid applicants and eligibles to call and ask questions or obtain information about the managed care plans available to them, including but not limited to, the enrollment process.

6.10 Tracking Slot Availability

The Contractor shall identify the maximum number of Medicaid MHN Program members it is able to enroll and maintain under this Contract. The Contractor shall accept Medicaid eligibles as Medicaid MHN program members in the order in which they apply as determined by SCDHHS up to the limits specified in **MHN Policy and Procedure Guide.** The Contractor agrees to provide services to Medicaid MHN program members up to the maximum enrollment limits indicated by the Contractor in **MHN Policy and Procedure Guide.**

6.11 Medicaid Cards

Each MHN member should have a plastic South Carolina Partners for Health Medicaid card. This new card allows the provider to verify eligibility utilizing the automated IVRS System at 1-888-809-3040, the Web Tool, or software installed in his/her office. As a part of the eligibility verification, the provider is informed of client enrollment in a Medicaid MHN.

6.12 Billing and Reconciliation

If the Contractor desires a reconciliation of the enrollment, re-enrollment, and disenrollment data received from SCDHHS, the Contractor shall be responsible for that reconciliation. In the event of discrepancies, the Contractor shall notify SCDHHS or its designee immediately of the discrepancy.

7 MARKETING

Marketing is defined as any activity conducted on behalf of the Contractor that explicitly or implicitly refers to the Contractor's Medicaid participation, S.C. Medicaid MHN Program or Title XIX, and is targeted in anyway toward Medicaid eligibles for the sole purpose of providing information regarding the contractor's plan. Activities involving distribution and completion of the MHN enrollment form during the course of marketing activities is an enrollment function and is considered separate and distinct from marketing.

Under the S.C. Medicaid MHN Program, SCDHHS or its designee will perform all direct marketing to eligibles or potential eligibles. The Contractor shall not market directly to Medicaid applicants/recipients (including direct mail advertising, door-to-door, telephonic, or other "cold call" marketing). The Contractor shall not implement any marketing activities relative to this Contract without making full disclosure to and obtaining prior written approval from SCDHHS or its designee for each event.

SCDHHS may impose sanctions against the Contractor if SCDHHS determines that the Contractor distributed directly/indirectly or through any agent or independent contractor marketing materials and/or MHN enrollment forms in violation of federal law.

SCDHHS intends to implement an auto-assignment enrollment process throughout the state. Newly eligible Medicaid beneficiaries and beneficiaries going through the yearly eligibility redetermination process will be counseled on

their various managed care choices and given a specified time period in which to choose a plan. If the beneficiary does not choose within the specified time period, the beneficiary will be auto-assigned to a plan. As the auto-assignment process rolls out across the state, the Enrollment Process may change. The Contractor will be notified of changes as they occur.

7.1 Information Provided for Enrollment Process

The Contractor shall provide each member with clear, accurate and truthful information about the Contractor's health plan to ensure compliance with this Contract and with state and federal laws and regulations. The Contractor shall be responsible for developing and distributing its own member specific marketing, educational and enrollment materials including but not limited to, evidence of coverage and other materials designed for member education. All written material shall be written at a grade level no higher than the fourth (4th) grade, or as determined appropriate by SCDHHS. The Contractor shall not cause or knowingly permit the use of advertising which is untrue, misleading or deceptive. The information must include a statement that enrollment in the Contractor's Plan by a Medicaid applicant/eligible shall be voluntary.

The Contractor shall inform the members that enrollment shall be for a period of twelve (12) months contingent upon their continued Medicaid eligibility and that the member may request disenrollment without cause at any time during the 90 days following the date of the member's initial enrollment with the MHN.

7.2 Marketing Plan and Materials

The Contractor shall develop and implement a marketing plan for participation in the SC Medicaid MHN Program. The Contractor shall describe the marketing activities it will undertake during the Contract period. The Contractor's marketing plan shall take into consideration the projected enrollment levels. The Contractor shall obtain prior approval from SCDHHS for each community event designed to increase community awareness of their participation in the Medicaid MHN Program. At such events, the Contractor is allowed to present enrollment materials and perform direct enrollment activities, except in counties in which auto-assignment has been implemented. Only written materials describing the Contractor's plan, as approved by SCDHHS, can be distributed at such events. All marketing activities shall comply with **MHN Policy and Procedure Guide,** Marketing and Member Education Policies and Procedures.

Materials used for the purpose of marketing to Medicaid MHN program members must be prior approved by SCDHHS and meet the standards for marketing materials outlined in **MHN Policy and Procedure Guide**. The Contractor shall ensure that where ten percent (10%) of the resident population of a county is non-English speaking and speaks a specific foreign language, materials shall be made available in that specific language to assure a reasonable chance for all potential members to make an informed choice of managed care plans. The Contractor is

required to provide all materials designed for beneficiaries in Spanish. The Contractor is prohibited from offering or giving any form of compensation or reward as an inducement to enroll in the Contractor's plan.

7.3 Approval of Marketing Plan and Materials

The Contractor shall submit to SCDHHS or its designee for approval all marketing plans and written materials directed at Medicaid eligibles or potential eligibles. These materials include, but are not limited to, materials produced for marketing, member education, evidence of coverage, and grievance procedures. Marketing materials include all types of media including brochures, leaflets, newspapers, magazines, radio, television, billboard and yellow page advertisements directed at Medicaid eligibles or potential eligibles.

For each new Contract period (or extension of existing Contract), the Contractor shall submit no later than sixty (60) calendar days prior to Contract renewal, and for any changes during the contract period no later than sixty (60) calendar days prior to implementation, its marketing plan and materials, including, but not limited to, enrollment/education materials, brochures, fact sheets, posters and lectures to SCDHHS for written approval.

The SCDHHS or its designee shall review marketing materials and determine whether to grant approval. In the event SCDHHS or its designee does not respond within thirty (30) working days after the Contractor submits such materials for approval, the Contractor shall notify SCDHHS or its designee for further action.

8 POST ENROLLMENT PROCESS

The post enrollment process for the Medicaid MHN program shall be as follows:

8.1 Member Services Availability

The Contractor shall maintain an organized, integrated member/patient services function, to be operated during regular business hours, within the plan to assist members in selection of a primary care provider, provide explanation of the Contractor's policies and procedures, (re: access and availability of health services) provide additional information about the primary care providers and/or specialist(s), facilitate referrals to specialists, and assist in the resolution of service and/or medical delivery problems and member complaints.

The Contractor shall agree to maintain a toll-free telephone number for Medicaid MHN program members' inquiries. The toll-free telephone number shall be required to provide prior authorization/access and information of services during evenings and weekends.

8.2 Member Education

The Contractor shall educate members regarding the appropriate utilization of services, access to specialized care, emergency care and the process for prior authorization of services. Such education shall be provided no later than fourteen (14) calendar days from receipt of enrollment data from SCDHHS or its designee, and as needed thereafter. The Contractor shall identify and educate members who access the system inappropriately and provide continuing education as needed.

The Contractor shall ensure that where at least ten percent (10%) or more of the resident population of a county is non-English speaking and speaks a specific foreign language, then materials must be made available in that specific language to assure a reasonable chance for all members to understand how to access the plan and use services appropriately. The Contractor is required to provide all materials designed for beneficiaries in Spanish.

The Contractor shall have written policies and procedures for educating Medicaid MHN program members about their benefits.

The Contractor shall coordinate with SCDHHS or its designee member education activities as outlined in **MHN Policy and Procedure Guide** to meet the health care educational needs of the Medicaid MHN program members.

The Contractor shall not discriminate against Medicaid MHN members on the basis of their health history, health status or need for health care services. This applies to enrollment, re-enrollment or disenrollment from the Contractor's plan.

8.2.1 Enrollment Materials

The Contractor's written enrollment materials shall be governed by the requirements and limitations described in **MHN Policy and Procedure Guide**. The enrollment materials must be approved by SCDHHS or its designee prior to distribution or use by the Contractor. All materials shall be written at a grade level no higher than fourth grade, “or as determined appropriate by SCDHHS”, and contain the minimum information as outlined in the **MHN Policy and Procedure Guide**.

The Contractor shall include the names, locations, telephone numbers of and non-English languages spoken by current contracted providers in the enrollee’s service area, including the identification of providers that are not accepting new patients. The Contractor shall make clear any restrictions on the enrollee’s freedom of choice among network providers.

8.2.2 Member Handbook

SCDHHS shall provide the Contractor with an electronic version of the MHN Member Handbook in both English and Spanish. The

Contractor shall provide each member with a member handbook and other written materials information.

8.3 Member's Rights and Responsibilities

The Contractor shall furnish Medicaid MHN program members with both verbal and written information about the nature and extent of their rights and responsibilities as a member of the Contractor's plan. The rights afforded to current members are detailed in **MHN Policy and Procedure Guide,** Members' Bill of Rights**.** The written information shall be written at a reading comprehension level no higher than fourth (4th) grade, "or as determined appropriate by SCDHHS." The minimum information shall include: the member's rights to receive written information about the Contractor's managed care plan including information on the structure and operation of the Plan; the network providers/subcontractors providing the member's health care, including information on any providers who are non-English speaking; information about the amount, duration, and scope of benefits available and how to obtain these benefits; confidentially of patient information; the right to file grievances or complaints about the Contractor and/or care provided; any restrictions on the member's freedom of choice among network providers; the extent to which, and how, after-hours and emergency coverage are provided; and any other information that affects the member's enrollment into the Contractor's plan. The Contractor shall notify the Medicaid MHN program members at least annually following initial enrollment of their right to request and receive this information.

The Medicaid MHN program members' responsibilities shall include but are not limited to: informing the Contractor of the loss or theft of their ID card; presenting their ID card when using health care services; to be familiar with the plan's procedures to the best of the member's abilities; and/or to call or contact the Contractor to obtain information and have questions clarified; to provide participating network providers with accurate and complete medical information; follow the prescribed treatment of care recommended by the provider or let the provider know the reasons the treatment cannot be followed, as soon as possible; and make every effort to keep any agreed upon appointments, and follow-up appointments and to access preventive care services.

9 GRIEVANCE AND APPEAL PROCEDURES

The Contractor shall establish and maintain a procedure for the receipt and prompt internal resolution of all grievances and appeals in accordance with S.C. Code Ann. §38-33-110 (Supp. 2002) as amended and 42 C.F.R. Section 438.400, et seq. The Contractor's grievance and appeals procedures and any changes thereto must be approved in writing by SCDHHS prior to their implementation and must include at a minimum the requirements set forth herein. The Contractor shall refer all Medicaid MHN program members who are dissatisfied with the Contractor or its subcontractor in any respect to the Contractor's designee authorized to require corrective action. In all cases, where the member has a grievance about treatment by the Contractor, or its subcontractor, the member must exhaust the Contractor's internal grievance/appeal procedures prior to accessing the State's Fair Hearing process.

If the member is grieving a disenrollment issue, the Contractor's grievance process must be completed in time to permit the disenrollment, if approved, to be effective in accordance with the timeframe specified in 42CFR 438.56(e)(1). If as a result of the grievance process the Contractor approves the disenrollment, the State shall not be required to make a determination.

9.1 Notice of Grievance and Appeal Procedures

The Contractor shall ensure that all Medicaid MHN program members are informed of the State's Fair Hearing process and of the Contractor's grievance and appeal procedures. The Contractor shall provide to each member a member handbook that shall include descriptions of the Contractor's grievance and appeal procedures. Forms on which members may file grievances, appeals, concerns or recommendations to the Contractor shall be available through the Contractor, and must be provided upon request of the member.

9.2 Grievance/Appeal Records and Reports

A copy of an oral grievances log and records of disposition of written appeals shall be retained for three (3) years and in accordance with the provisions of the S.C. Code Ann. § 38-33-110 (2)(a) (Supp. 2002) as amended. If any litigation, claim negotiation, audit, or other action involving the documents or records has been started before the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of issues which arise from it or until the end of the regular five-year period, whichever is later.

The Contractor shall provide to SCDHHS on a monthly basis a written report of the grievances/appeals, to include: member's name and Medicaid number, summary of grievances and appeals; date of filing; current status; resolutions and resulting corrective action. The Contractor will be responsible for promptly forwarding any adverse decisions to SCDHHS for further review/action upon request by SCDHHS or the Medicaid MHN Program member. The SCDHHS may submit recommendations to the Contractor regarding the merits or suggested resolution of any grievance or appeal. See **MHN Policy and Procedure Guide**.

9.3 Requirements for State Fair Hearings.

9.3.1 Availability: If the member has exhausted the Contractor level appeal procedures, the member may request a State Fair Hearing within thirty (30) days from the date of the Contractor's notice of resolution.

9.3.2 Parties: The parties to the State Fair Hearing include the Contractor as well as the member and his or her representative or the representative of a deceased member's estate.

9.4 Information About the Grievance System to Providers and Subcontractors

The Contractor must provide the information specified at 42 C.F.R. Section 438.10(g)(1) about the grievance system to all providers and subcontractors at the time they enter into a contract.

9.5 Recordkeeping and Reporting Requirements

Reports of grievances and resolutions shall be submitted to SCDHHS as specified in **§§8.3, 9 and 10.2** of this Contract. The Contractor shall not modify the grievance procedure without the prior written approval of SCDHHS.

10 REPORTING REQUIREMENTS

The Contractor is responsible for complying with all the reporting requirements established by SCDHHS. The Contractor shall provide SCDHHS test media of all required electronic files prior to Contract execution for prior approval. The requirements for electronic files can be found in **MHN Policy and Procedure Guide.** The Contractor shall provide to SCDHHS and any of its designees copies of agreed upon reports generated by the Contractor concerning Medicaid MHN program members and any additional reports as requested in regard to performance under this Contract. SCDHHS will provide the Contractor with the appropriate reporting formats, instructions, submission timetables, and technical assistance when required. All reporting periods shall be based upon the calendar year unless otherwise specified. All reports shall be submitted in accordance with the schedule outlined in **§13.3,** Deliverables of this Contract.

The following reports are required by SCDHHS. The Minimum Data Elements and required formats for these reports are outlined in **MHN Policy and Procedure Guide.** The Contractor shall certify all submitted data, documents and reports. The certification must attest, based on best knowledge, information, and belief (1) to the accuracy, completeness and truthfulness of the data; and (2) to the accuracy, completeness and truthfulness of all documents and reports required by SCDHHS. The data shall be certified by one of the following: (1) the Contractor's Chief Executive Officer (CEO); (2) the Contractor's Chief Financial Officer (CFO); or (3) an individual who has the delegated authority to sign for, and who reports directly to the CEO or CFO. Certification shall be submitted concurrently with the certified data.

10.1 Contractor's Network Providers and Subcontractors

The Contractor shall furnish to SCDHHS or its designee a report of all network providers and subcontractors enrolled in the Contractor's plan. SCDHHS will provide the Contractor with Medicaid provider identification numbers. It shall be the Contractor's responsibility to assure confidentiality of the Medicaid Providers' identification number and indemnity of SCDHHS in accordance with **§ 13.26** of this Contract. This information shall be provided to SCDHHS on a continuing, updated basis. The SCDHHS is to be provided advance copies of all updates not less than ten (10) working days in advance of distribution. Any provider no longer taking new patients must be clearly identified. Any age restrictions

for a provider must be clearly identified. The Minimum Data Elements and required format for this listing may be found in the **MHN Policy and Procedure Guide.**

10.2 Grievance/Appeal Log Summary Reporting

The Contractor shall report grievance/appeal information regarding all active and resolved grievances/complaint/appeals on a monthly basis. The Contractor shall report grievance information regarding all adverse grievances which have not been resolved to the satisfaction of the complainant, after the complainant has utilized the full grievance procedure of the Contractor, on the date of disposition. The Minimum Data Elements and required format are identified in the **MHN Policy and Procedure Guide.**

10.3 Disenrollment Reporting

The Contractor shall submit to SCDHHS disenrollment requests for approval in accordance with **§§6.5 - 6.7.** The Contractor shall immediately notify SCDHHS when it obtains knowledge of any Medicaid MHN program member whose enrollment should be terminated. See **MHN Policy and Procedure Guide** for a sample form. SCDHHS will furnish forms to the Contractor upon request.

10.4 Quality Assurance

The Contractor shall submit reports of quality assurance (QA) activities, including, QA Plan, QA Corrective Action Plan, and Quality Indicators documentation in accordance with the periodicity contained in **§ 11** and **MHN Policy and Procedure Guide** of this Contract.

10.5 Medicaid Enrollment Capacity by Practice Report

Monthly and upon request, the Contractor shall submit a Medicaid Enrollment Capacity by practice report. The Minimum Data Elements' and required format are identified in the **MHN Policy and Procedure Guide.**

10.6 Additional Reports

The Contractor shall prepare and submit any other reports as required and requested by SCDHHS, any of SCDHHS designees, and/or CMS, that is related to the Contractor's duties and obligations under this Contract. Information considered to be of a proprietary nature shall be clearly identified as such by the Contractor at the time of submission.

10.7 Ownership Disclosure

Federal laws require full disclosure of ownership, management, and control of Medicaid prepaid health plans (42 CFR 455.100-455.104 (2004, as amended)). Form CMS 1513, Ownership and Control Interest Statement, is to be submitted to SCDHHS with this Contract; then resubmitted prior to implementation for each Contract period or when any change in the Contractor's management, ownership or control occurs. The Contractor agrees to report any changes in ownership and disclosure

information to SCDHHS within thirty (30) calendar days prior to the effective date of the change.

10.8 Information Related to Business Transactions

The Contractor agrees to furnish to SCDHHS or to HHS information related to significant business transactions as set forth in 42 CFR 455.105 (2004, as amended). Failure to comply with this requirement may result in termination of this Contract.

10.9 Information on Persons Convicted of Crimes

The Contractor agrees to furnish SCDHHS or HHS information related to any person convicted of a criminal offense under a program relating to Medicare (Title XVIII) and Medicaid (Title XIX) as set forth in 42 CFR 455.106 (2004, as amended). Failure to comply with this requirement may lead to termination of this Contract.

11 QUALITY ASSURANCE, MONITORING AND REPORTING

11.1 Quality Assurance

The Contractor shall establish and implement a system of quality Assurance and Peer Review as required by federal and state regulations to ensure that acceptable medical practices are being followed. This system shall provide for review by appropriate health professionals of the processes followed in the delivery of health care services. The Contractor shall adopt and implement a Quality Assurance Plan through which it will establish standards and protocols of practice, verify the provision of services by its subcontractors, analyze utilization of services, evaluate performance and patient outcomes and implement needed changes. The Contractor will submit its Quality Assurance Plan to SCDHHS for initial review and approval. Any subsequent changes or revisions must be submitted to SCDHHS for approval prior to implementation. The Contractor shall utilize a Continuous Quality Improvement (CQI) model in supporting practitioner changes in practice patterns and administrative process. The full scope of Quality Assurance and Utilization Management requirements is outlined in the **MHN Policy and Procedure Guide,** Quality Assurance and Utilization Management Requirements.

The Contractor shall agree to external quality assurance evaluation, review of quality assurance meeting minutes and annual medical audits to ensure that it provides quality and accessible health care to Medicaid MHN program members, in accordance with standards contained in the **MHN Policy and Procedure Guide** and under the terms of this Contract. Such audits shall allow SCDHHS or its duly authorized representative to review individual medical records, identify and collect management data, including but not limited to survey and other information concerning the use of services and the reasons for disenrollment.

It is agreed that the standards by which the Contractor will be surveyed and evaluated will be SCDHHS Quality Assurance Requirements and the Medicaid Managed Care External Review Services, developed by SCDHHS, as amended. If deficiencies are identified, the Contractor must

formulate a Corrective Action Plan incorporating a timetable within which it will correct deficiencies identified by such evaluations and audits. SCDHHS must prior approve the corrective action plan and will monitor the Contractor's progress in correcting the deficiencies in accordance with the approved plan and timetable for implementation.

If SCDHHS determines, in its sole discretion, that the Contractor is not making adequate progress in correcting the deficiencies identified, then SCDHHS may, after consultation with the Contractor, require that the Contractor contract at its' own expense with a SCDHHS approved peer review or accreditation organization for the oversight and implementation of the Corrective Action Plan. This action shall be in addition to any other remedies available to SCDHHS under this Contract.

11.2 Inspection, Evaluation and Audit of Records

At any time during normal business hours, HHS, the State Auditor's Office, the Office of the Attorney General, General Accounting Office (GAO), Comptroller General, SCDHHS, and/or any of the designees of the above, and as often as they may deem necessary during the contract period and for a period of five (5) years from the expiration date of this Contract (including any extensions to the Contract), shall have the right to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services provided under the terms of this Contract. The Contractor shall make all program and financial records and service delivery sites open to the representative or any designees of the above. HHS, SCDHHS, GAO, the State Auditor's Office, the Office of the Attorney General, and/or the designees of any of the above shall have the right to examine and make copies, excerpts or transcripts from all records, contact and conduct private interviews with Contractor clients and employees, and do on-site reviews of all matters relating to service delivery as specified by this Contract.

The Contractor and all of its subcontractors shall make office work space available for any of the above mentioned entities or their designees when the entities are inspecting or reviewing any records related to the provisions of services under this Contract. If any litigation, claim, or other action involving the records has been initiated prior to the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is later. This provision is applicable to any subcontractor and must be included in all subcontracts. SCDHHS shall also have the right to:

11.2.1 Inspect and evaluate the qualifications and certification or licensure of Contractor's subcontractors;

11.2.2 Evaluate, through inspection of Contractor and its subcontractor's facilities or otherwise, the appropriateness and adequacy of equipment and facilities for the provision of quality health care to members;

11.2.3 Evaluate the Contractor's performance for the purpose of determining compliance with the requirements of the Contract;

11.2.4 Audit and inspect any of Contractor's or its subcontractor's records that pertain to health care or other services performed under this Contract, determine amounts payable under this Contract, or the capacity of the Contractor to bear the risk of financial losses; and

11.2.5 Request, and Contractor agrees to provide, all necessary assistance in the conduct of the evaluations, inspections, and audits.

The Contractor agrees that all statements, reports and claims, financial and otherwise, shall be certified as true, accurate, and complete, and the Contractor shall not submit for payment purposes those claims, statements, or reports which it knows, or has reason to know, are not properly prepared or payable pursuant to federal and state law, applicable regulations, this Contract, and SCDHHS policy.

11.3 Changes Resulting from Monitoring and Audit

The Contractor shall be responsible for assuring corrective action is taken when a Contractor or subcontractor's quality of care is inadequate. SCDHHS reserves the right to suspend enrollment in the plan if it is determined that quality of care is inadequate.

In the event the Contractor fails to complete the actions required by the corrective action plan within the time frame specified, the Contractor may be subject to the sanctions specified in **§13.5**.

11.4 Medical Records Requirements

The Contractor shall require network providers/subcontractors to maintain up-to-date medical records at the site where medical services are provided for each Medicaid MHN program member enrolled under this Contract. These records shall include, at a minimum, medical charts, prescription orders, diagnoses for which medications were administered or prescribed, documentation of orders for laboratory, radiological, EKG, and other tests and the results of such tests and other documentation sufficient to disclose the quality, quantity, appropriateness, and timeliness of services performed or ordered. Each member's record must be legible and maintained in detail consistent with good medical and professional practice which permits effective internal and external peer review and/or medical audit and facilitates an adequate system of follow-up treatment.

The Contractor shall ensure within its own provider network that SCDHHS representatives or its designee shall have immediate and complete access to all records pertaining to the health care services provided to Medicaid MHN program members. The Contractor shall also require its network providers/subcontractors to make work space available for SCDHHS staff or its designee to review and inspect these records. Medical record requirements are further defined in **MHN Policy and Procedure Guide**.

11.5 Record Retention

All records originated or prepared in connection with Contractor's performance of its obligations under this Contract, including but not limited to, working papers related to the preparation of fiscal reports, medical records, progress notes, charges, journals, ledgers, computer tapes, and computer discs will be retained and safeguarded by the Contractor and its subcontractors in accordance with the terms and conditions of this Contract.

The Contractor further agrees to retain all financial and programmatic records, supporting documents, statistical records and other records of members relating to the delivery of care or service under this Contract, and as further required by SCDHHS, for a period of five (5) years from the expiration date of the Contract, including any Contract extension(s). If any litigation, claim, or other actions involving the records have been initiated prior to the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is later. If the Contractor stores records on microfilm or microfiche, Contractor hereby agrees to produce at Contractor's expense, legible hard copy records upon the request of state or federal authorities, within fifteen (15) calendar days of the request.

This provision is applicable to any subcontractor and must be included in all subcontracts.

12 SCDHHS RESPONSIBILITIES

12.1 SCDHHS Contract Management

The SCDHHS will be responsible for the administrative oversight of the Medicaid MHN Program. As appropriate, SCDHHS will provide clarification of Medicaid MHN Program and Medicaid policy, regulations and procedures. The SCDHHS will be responsible for management of this Contract. All Medicaid policy decision making or Contract interpretation will be made solely by SCDHHS. The management of this Contract will be conducted in the best interests of SCDHHS and the Medicaid MHN Program members. See **§3** of this Contract for more detailed information on SCDHHS' contract management responsibilities.

Whenever SCDHHS is required by the terms of this Contract to provide written notice to the Contractor, such notice will be signed by the Director of SCDHHS or his designee.

12.2 Method of Reimbursement

SCDHHS will pay the Contractor a prospective case management/care coordination fee of Ten Dollars ($10.00) per member per month (PMPM) as payment in full for the services described for the period. Any Care Coordination PMPM fee that the CSO chooses to pay to the participating practices shall be paid from this prospective PMPM. Any merit-based bonuses, not dependent on cost savings that the CSO chooses to pay to the participating practices shall be paid from this prospective PMPM. Any

merit bonus or incentive payment made to participating practices must be in accordance/compliance with the requirements set forth in **42CFR §§ 422.208** and **422.210**. Detailed information on Physician Incentive Plan requirements may be found in the **MHN Policy and Procedure Guide**.

SCDHHS will share documented cost savings with the Network as an incentive. If the Network fails to achieve cost savings, SCDHHS will impose a penalty and a portion, if not all of the prospective care coordination fee payments must be refunded to the SCDHHS. SCDHHS will conduct periodic cost reconciliation. At a minimum, cost reconciliation shall be conducted semi-annually. A detailed description of the shared savings formula is attached as Appendix B.

12.3 Payment in Full

Payment by SCDHHS for services to a beneficiary under this contract, plus any co-payment required by SCDHHS to be paid by the beneficiary, shall constitute payment in full to the Contractor and the Contractor shall not bill, request, demand, solicit or in any manner receive or accept payment or contributions from the beneficiary or any other person, family member, relative, organization or entity for care or services to a beneficiary except as may otherwise be allowed under federal regulations or in accordance with SCDHHS policy. Any collection of payment or deposits in violation of this Section shall be grounds for termination of this contract and reimbursement for any services to beneficiaries made after such collection or attempt to collect may be denied by SCDHHS and shall be subject to recoupment for any beneficiary payment made.

12.4 Notification of Medicaid MHN Program Policy and Procedures

SCDHHS will provide the Contractor with updates to appendices, information and interpretation of all pertinent federal and state Medicaid regulations, Medicaid MHN Program policies, procedures and guidelines affecting the provision of services under this Contract. When necessary, the Contractor shall submit a written request to SCDHHS for additional clarification. The SCDHHS will contact other appropriate agencies in responding to the request. Provision of such information does not relieve the Contractor of its obligation to keep informed of applicable federal and state laws related to its obligations under this Contract.

12.5 Provider Participation

SCDHHS will notify the Contractor in writing, of providers who have been suspended or terminated from participation in the Medicaid/Medicare Program. SCDHHS or its designee may request copies of the Contractor's network listing, as specified under the reporting requirements of this Contract. Once a month SCDHHS will notify the Contractor of current Medicaid providers to assist the Contractor in care coordination and encounter data reporting. See the **MHN Policy and Procedure Guide,** SCDHHS Member Listing File/Provider Information Record Layout.

12.6 Quality Assurance and Monitoring Activities

SCDHHS is responsible for monitoring the Contractor's performance to assure the Contractor is in compliance with the Contract provisions and protocol. This includes the responsibility of verifying that all data is collected and maintained as required and that the reports are submitted accurately and within the required timeframe. SCDHHS or its designee shall coordinate with the Contractor to establish the scope of review, the review site, relevant time frames for obtaining information, and the criteria for review.

SCDHHS or its designee will at least annually monitor the operation of the Contractor for compliance with the provisions of this Contract and applicable federal and state laws and regulations. Inspection shall include the Contractor's facilities, auditing and/or review of all records developed under this Contract including periodic medical audits, grievances, enrollments, disenrollments, termination, utilization and financial records, review of the management systems and procedures developed under this Contract and any other areas or materials relevant or pertaining to this Contract.

12.6.1 Quality Indicators

The Contractor is required to conduct quality of care studies which include indicators for prenatal care, newborns, childhood immunizations and EPSDT services. The **MHN Policy and Procedure Guide,** Quality Indicators, lists the SCDHHS quality indicators, for: prenatal care, childhood immunizations, and EPSDT services. These reports are required quarterly. If the quality of care is not acceptable pursuant to the contractual requirements, SCDHHS may impose liquidated damages, sanctions and/or restrict enrollment pending attainment of acceptable quality of care.

12.6.2 Request for Corrective Action

The SCDHHS shall monitor the Contractor's quality assurance activities and corrective actions taken as specified in the Medicaid MHN Program Quality Assurance Plan in the **MHN Policy and Procedure Guide**.

The SCDHHS shall monitor enrollment and termination practices and ensure proper implementation of the Contractor's grievance procedures, in compliance with 42 CFR 434.63 (2004, as amended). SCDHHS and its designee shall have access to all information related to complaints and grievances filed by Medicaid MHN Program members. The Contractor shall make provisions for prompt response to any detected deficiencies or contract violations and for the development of corrective action initiatives relating to this contract.

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12.6.3 External Quality Review

The SCDHHS will perform periodic medical audits through contractual arrangements to determine if the Contractor furnished

quality and accessible health care to Medicaid MHN program members in compliance with this contract and with the regulations pertaining to Primary Care Case Management programs found in 42 CFR 438. SCDHHS will contract with an External Quality Review Organization (EQRO) to perform the periodic medical audits and external independent reviews. The **MHN Policy and Procedure Guide** and the Medicaid Managed Care External Review Services lists SCDHHS external quality assurance evaluation requirements. If the medical audit indicates that quality of care is not acceptable pursuant to the contractual requirements, SCDHHS may impose liquidated damages, sanctions, and/or restrict the Contractor's enrollment activities pending attainment of acceptable quality of care. The audits will be performed by SCDHHS and any of its designees. The audits will:

12.6.3.1 Be conducted at least once a year;
12.6.3.2 Identify and collect management data for use by medical audit personnel; and
12.6.3.3 Provide that the data includes, but is not limited to, information on use of services, enrollment, disenrollment, reasons for termination and quality indicators.

The annual external quality assurance evaluation requirements shall include, but are not limited to:

12.6.3.4 Evaluation of internal peer review and utilization review;
12.6.3.5 Quality of care studies and quality indicators;
12.6.3.6 Service access studies;
12.6.3.7 Medical record survey; and
12.6.3.8 MHN administrative survey.

12.7 Marketing

SCDHHS, and/or its designee shall have the right to approve, disapprove or require modification of all marketing plans, materials, and activities, enrollment and member handbook materials developed by the Contractor under this Contract and prior to implementation/distribution by the Contractor.

12.8 Grievance/Appeals

SCDHHS shall have the right to approve, disapprove or require modification of all grievance procedures submitted with this Contract. SCDHHS requires the Contractor to meet and/or exceed the Medicaid MHN Program grievance standards as outlined in **§9**.

In the event of unresolvable differences between the member and the Contractor, SCDHHS will receive and review all second level grievances for resolution.

SCDHHS or its designee shall monitor the Contractor's internal grievance procedures and request corrective action as deemed appropriate.

12.9 Training

SCDHHS will conduct provider training and workshops on Medicaid MHN Program policy and procedures as deemed appropriate for MHN Contractors. The SCDHHS shall notify all Contractors of the time, location and date of the training session(s). Training materials shall be made available at the training session(s). Information on updates to the Contractors program policies will be included in the training session(s).

13 TERMS AND CONDITIONS

The Contractor agrees to comply with all state and federal laws, regulations, and policies as they exist or as amended that are or may be applicable to this Contract, including those not specifically mentioned in this section. Any provision of this Contract which is in conflict with Federal statutes, regulations, or CMS policy guidance is hereby amended to conform to the provisions of those laws, regulations, and Federal policy. Such amendment of the Contract will be effective on the effective date of the statutes, regulations, or policy statement necessitating it, and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. The Contractor may request SCDHHS to make policy determinations required for proper performance of the services under this Contract. The Contractor shall be entitled to rely upon and act in accordance with such policy determinations when such determinations are made in writing and signed by the Director, SCDHHS.

13.1 Applicable Laws and Regulations

The Contractor agrees to comply with all applicable federal and state laws and regulations including Constitutional provisions regarding due process and equal protection under the laws and including but not limited to:

13.1.1 Title 42 Code of Federal Regulations (CFR) Chapter IV, Subchapter C (Medical Assistance Programs);

13.1.2 S.C. Code Ann. § 38-33-10 et. seq. (Supp. 2000, as amended) and 25 S.C. Code Ann. Regs. 69-22 (Supp. 2000, as amended);

13.1.3 All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 as amended (42 U.S.C. 7401, et seq.) and 20 USC §6082(2) of the Pro-Children Act of 1994, as amended (P.L. 103-227);

13.1.4 Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d) and regulations issued pursuant thereto, 45 CFR part 80; In accordance with Title VI of the Civil Rights Act of 1964 (42U.S.C. 2000d et seq.) and its implementing regulation at 45 C.F.R. Part 80, the Provider must take adequate steps to ensure that persons with limited English skills receive free of charge the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this agreement.

13.1.5 Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e) in regard to employees or applicants for employment;

13.1.6 Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto, 45 CFR Part 84;

13.1.7 The Age Discrimination Act of 1975, as amended, 42 U.S.C 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance;

13.1.8 The Omnibus Budget Reconciliation Act of 1981, as amended, P.E.97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance;

13.1.9 The Balanced Budget Act of 1997, as amended, P.L. 105-33 and the Balanced Budget Refinement Act of 1999, as amended, H.R. 3426;

13.1.10 Americans with Disabilities Act, as amended, 42 U.S.C. §12101 et seq., and regulations issued pursuant thereto, 28 CFR Parts 35, 36;

13.1.11 Sections 1128 and 1156 of the Social Security Act, as amended, relating to exclusion of Contractors for fraudulent or abusive activities involving the Medicare and/or Medicaid Program;

13.1.12 Drug Free Workplace Acts, S.C. Code Ann. §§44-107-10 et seq. (Supp. 2000, as amended), and the Federal Drug Free Workplace Act of 1988 as set forth in 45 CFR Part 76, Subpart F (2004, as amended);

13.1.13 Debarment/Suspension, as contained in 45 CFR Part 76.100 -76.410 (2004, as amended);

13.1.14 Title IX of the Education Amendments of 1972 regarding education programs and activities.

13.2 Termination

This Contract shall be subject to the following termination provisions. SCDHHS or its designee will give the Contractor written notice that the Contractor has failed to perform its contractual undertakings and may, at the discretion of SCDHHS, give the Contractor a specific time period in which to correct the deficiencies, unless other provisions in this section demand otherwise, before an actual notice of termination is issued. If SCDHHS determines that the Contractor has satisfactorily implemented

corrective action, a notice of termination will not be issued. If SCDHHS determines that the Contractor has not satisfactorily corrected the problem(s), a notice of termination will be issued. SCDHHS will provide Contractor with a written Notice of Intent to Terminate the contract between SCDHHS and the Contractor. The Notice of Intent to Terminate will include the date, time and location of a fair hearing before the SCDHHS Division of Appeals and Hearings. In the event of such termination, it is agreed that neither party shall be relieved from any financial obligations each may owe to the other. SCDHHS or its designee will assume responsibility for informing all affected members of the reasons for their termination from the Contractor.

13.2.1 Termination Under Mutual Agreement

Under mutual agreement, SCDHHS and the Contractor may terminate this Contract for any reason if it is in the best interest of SCDHHS and the Contractor. Both parties will sign a notice of termination which shall include, the date of termination, conditions of termination, and extent to which performance of work under this Contract is terminated.

13.2.2 Termination by SCDHHS for Breach

In the event that SCDHHS determines that the Contractor, or any of the Contractor's subcontractors fails to perform its contracted duties and responsibilities in a timely and proper manner, or if the Contractor shall violate any of the terms of this Contract, SCDHHS may terminate this Contract upon thirty (30) calendar days notice to the Contractor. Such notice will specify the manner in which the Contractor or its subcontractor(s) has failed to perform its contractual responsibilities. If SCDHHS determines that the Contractor and/or its subcontractor(s) have satisfactorily implemented corrective action within the thirty (30) calendar day notice period, the notice of termination may be withdrawn at the discretion of SCDHHS.

SCDHHS may terminate this Contract immediately if it is determined that actions by the Contractor or its subcontractor(s) pose a serious threat to the health of Medicaid MHN Program members enrolled in the Contractor's plan.

The Contractor will be paid for any outstanding monies due less any assessed damages. If damages exceed monies due, collection can be made from the Contractor's Fidelity Bond, Errors and Omissions Insurance, or any insurance policy or policies required under this Contract. The rights and remedies of the SCDHHS provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

13.2.3 Termination for Unavailability of Funds

In the event that federal and/or state funds to finance this Contract become unavailable after the effective date of this Contract, or prior

to the anticipated contract expiration date, SCDHHS may terminate the Contract without penalty. This notification will be made in writing. Availability of funds shall be determined solely by SCDHHS.

13.2.4 Termination for Contractor Insolvency, Bankruptcy, Instability of Funds

The Contractor's insolvency or the filing of a petition in bankruptcy by or against the Contractor shall constitute grounds for termination for cause. If the SCDHHS determines the Contractor has become financially unstable, SCDHHS will immediately terminate this Contract upon written notice to the Contractor effective the close of business on the date specified.

13.2.5 Termination for Convenience

SCDHHS may terminate this Contract for convenience and without cause upon thirty (30) calendar days written notice. Said termination shall not be a breach of contract by SCDHHS and SCDHHS shall not be responsible to the Contractor or any other party for any costs, expenses, or damages occasioned by said termination, i.e., without penalty.

13.2.6 Termination by the Contractor

The Contractor shall give SCDHHS written notice of intent to terminate this Contract ninety (90) calendar days prior to the date of receipt of written notice by SCDHHS. Such written notice may be either hand-delivered to SCDHHS or may be mailed by certified mail, return receipt requested. The ninety (90) calendar days written notice shall specify the last date of operation, such date being at least ninety (90) calendar days termination from documented receipt of the notice of termination. The Contractor shall comply with all terms and conditions stipulated in this Contract during the close out period.

13.2.7 Termination for Noncompliance with the Drug Free Workplace Act

In accordance with S.C. Code Ann §44-107-60 (Supp. 2000, as amended), this Contract is subject to immediate termination, suspension of payment, or both if the Contractor fails to comply with the terms of the Drug Free Workplace Act.

13.2.8 Termination Procedures

The party initiating the termination shall render written notice of termination to the other party by certified mail, return receipt requested, or in person with proof of delivery. The notice of termination shall specify the provision of this Contract giving the right to terminate; the circumstances giving rise to termination; and the date on which such termination shall become effective. When applicable, SCDHHS shall proceed with termination in accordance with **§ 13.2** and **§ 13.5.10** of this Contract.

Upon receipt of notice of termination, and subject to the provisions stated herein, on the date and to the extent specified in the notice of termination, the Contractor shall:

13.2.8.1 Stop work under the Contract, but not before the termination date;

13.2.8.2 Terminate all marketing procedures and subcontracts related to marketing;

13.2.8.3 Assign to SCDHHS in the manner and extent directed by SCDHHS all the rights, title and interest of the Contractor for the performance of the subcontracts to be determined as needed in which case SCDHHS shall have the right, in its discretion, to resolve or pay any of the claims arising out of the termination of such agreements and subcontracts. The Contractor shall supply all information necessary for the reimbursement of any outstanding Medicaid claims;

13.2.8.4 Complete the performance of such part of the Contract which shall have not been terminated under the notice of termination;

13.2.8.5 Take such action as may be necessary, or as SCDHHS may direct, for the protection of property related to this Contract which is in possession of the Contractor in which SCDHHS has or may acquire an interest;

13.2.8.6 In the event the Contract is terminated by SCDHHS, the Contractor shall continue to serve or arrange for provision of services to the members of the Contractor until the effective date of termination. During this transition period, SCDHHS shall continue to pay the applicable capitation rate(s). Members shall be given written notice of the State's intent to terminate the contract and shall be allowed to disenroll immediately without cause;

13.2.8.7 Provide all necessary assistance to SCDHHS in transitioning members out of the Contractor's plan to the extent specified in the notice of termination. Such assistance shall include, but not be limited to, the forwarding of all medical or financial records; facilitation and scheduling of medically necessary appointments for care and services; and identification of chronically ill, high risk, hospitalized, and pregnant members in their last four (4) weeks of pregnancy. The transitioning of records, whether medical or financial, related to the Contractor's activities undertaken pursuant to this Contract shall be in a form usable by SCDHHS or any party acting on behalf of SCDHHS and shall be provided at no expense to SCDHHS or another Contractor acting on behalf of SCDHHS;

13.2.8.8 Not receive its prepaid payment for any requests for payment submitted after the aforesaid Contract ends. Any payments due under the terms of this Contract

may be withheld until SCDHHS receives from the Contractor all written and properly executed documents as required by the written instructions of SCDHHS.

13.3 Deliverables

The Contractor shall submit all deliverables or reports required by this Contract and detailed in the MHN Policy and Procedure Guide, **Index Of Required Reports And Forms**, at the frequency established by SCDHHS.

Deliverables	**Date Agreed Upon**
Daily Reports	Within two (2) working days.
Weekly Reports	Wednesday of the following week.
Monthly Reports	15th of the following month.
Quarterly Reports	30th of the following month.
Annual Reports	Ninety (90) calendar days after the end of the year.
On Request/Additional Reports	Within three (3) working days from the date of request unless otherwise specified by SCDHHS.

13.4 Use of Data

SCDHHS shall have unlimited rights to use, disclose, or duplicate, for any purpose, all information and data developed, derived, documented, or furnished by the Contractor resulting from this Contract.

13.5 Sanctions

If SCDHHS determines that the Contractor has violated any provision of this Contract, or the applicable statutes or rules governing Medicaid prepaid health plans, the SCDHHS may impose, against the Contractor, sanctions. SCDHHS shall notify the Contractor and CMS in writing of its intent to impose sanctions and explain the Contractor's due process rights. Sanctions shall be in accordance with 42 CFR 434.67 (2004, as amended §1932 of the Social Security Act (42 USC 1396v) (2001, as amended) and 42 CFR §438.700-730 (2004, as amended) and may include any of the following sanctions:

13.5.1 Suspension of the Contractor's acceptance of applications for Medicaid enrollment;

13.5.2 Suspension or revocation of payments to the Contractor for Medicaid beneficiaries/eligibles enrolled during the sanction period;

including default of the enrollment of Medicaid members. This violation may result in recoupment of capitated payment;

13.5.3 Suspension of all marketing activities permitted under this Contract;

13.5.4 Imposition of a fine of up to Ten Thousand Dollars ($10,000.00) for each marketing/enrollment violation, in connection with any one audit or investigation;

13.5.5 Termination pursuant to **§13.2.2** of this Contract;

13.5.6 Non-renewal of the Contract pursuant to **§13.7** of this Contract;

13.5.7 Appointment of temporary management in accordance with § 1932(e)(2)(B) of SSA (42 U.S.C. 1396u-2) (2001, as amended) and 42 CFR §438.702. If the State finds that the MHN has repeatedly failed to meet substantive requirements in §1903(m) or §1932 of the Social Security Act (42 USC 1396v) (2001, as amended), the State must impose temporary management and grant members the right to terminate enrollment without cause, notifying the affected members of their right to terminate enrollment;

13.5.8 Civil money penalties in accordance with §1932 of the Social Security Act (42 USC 1396v) (2001, as amended);

13.5.9 Permit individuals enrolled in the Contractor's plan to be disenrolled without cause. SCDHHS may suspend or default all enrollment of Medicaid beneficiaries after the date the Secretary or SCDHHS notifies the Contractor of an occurrence under §1903(m) or section 1932(e) of the Social Security Act;

13.5.10 Terminate contract if the Contractor has failed to meet the requirements of section 1903(m), 1905(t)(3) or 1932(e) of the Social Security Act and offer the Contractor's Medicaid members an opportunity to enroll with other Contractors to allow members to receive medical assistance under the State Plan. SCDHHS shall provide the Contractor a hearing before the SCDHHS Division of Appeals and Hearings before termination occurs. SCDHHS will notify the Medicaid members enrolled in the Contractor's plan of the hearing and allow the Medicaid eligibles to disenroll, if they choose, without cause;

13.5.11 Imposition of a fine of up to Twenty-five Thousand Dollars ($25,000) for each occurrence of the Contractor's failure to substantially provide medically necessary items and services that are required to be provided to a member covered under the contract;

13.5.12 Imposition of a fine of up to Fifteen Thousand Dollars ($15,000) per individual not enrolled and up to a total of One Hundred Thousand Dollars ($100,000) per each occurrence, when the Contractor acts to discriminate among members on the basis of their health status or their requirements for health care services.

Such discrimination includes, but is not limited to, expulsion or refusal to re-enroll an individual, except as permitted by Title XIX, or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the entity by eligible individuals whose medical condition or history indicates a need for substantial future medical services;

13.5.13 Imposition of a fine as high as double the excess amount charged to the Medicaid members by the Contractor for premiums or charges in excess of the premiums or charges permitted under Title XIX;

13.5.14 SCDHHS may impose sanctions as outlined in the **MHN Policy and Procedure Guide** if the Contractor fails to comply with the Physician Incentive Plan requirements;

13.5.15 SCDHHS may impose sanctions as outlined above if the Contractor misrepresents or falsifies information that it furnishes to CMS, to the State or to a member, potential member or health care provider;

13.6 Duration of the Sanction

Unless the duration of a sanction is specified, a sanction will remain in effect until SCDHHS is satisfied that the basis for imposing the sanction has been corrected. SCDHHS will notify CMS when a sanction has been lifted.

13.7 Non-Renewal

This Contract shall be renewed only upon mutual consent of the parties. Either party may decline to renew the Contract for any reason. The parties expressly agree there is no property right in this Contract.

13.8 Corrective Action Plan Required (Contract Non-Compliance)

The Contractor and its subcontractors shall comply with all requirements of this Contract. In the event SCDHHS or its designee finds that the Contractor and/or its subcontractors failed to comply with any requirements of this Contract, the Contractor shall be required to submit a Corrective Action Plan to SCDHHS outlining the steps it will take to correct any deficiencies and/or non-compliance issues identified by SCDHHS in the Notice of Corrective Action. SCDHHS shall have final approval of the Contractor's Corrective Action Plan.

The Contractor's Corrective Action Plan shall be submitted to SCDHHS within the time frame specified in the Notice of Corrective Action. The Contractor and/or its subcontractor(s) shall implement the Corrective Action Plan as approved by SCDHHS and shall be in compliance with the Contract requirements noted within the time frame specified in the Notice of Corrective Action. The Contractor and/or its subcontractors shall be available and cooperate with SCDHHS and/or its designee as needed in implementing the approved corrective action plan.

Failure of the Contractor and/or its subcontractor(s) to implement and follow the Corrective Action Plan as approved by SCDHHS shall subject the Contractor to the actions, including but not limited to, in **§§13.2,** including all subsections, **13.3 and 13.5** including all subsections of this Contract.

13.9 Inspection of Records

The Contractor shall make all program and financial records and service delivery sites open to the HHS, SCDHHS, GAO, State Auditor's Office, Office of the Attorney General, Comptroller General, or their designee. HHS, SCDHHS, GAO, the State Auditor's Office, the Office of the Attorney General, the Comptroller General and/or their designees shall have the right to examine and make copies, excerpts or transcripts from all records, contact and conduct private interviews with Contractor clients and employees, and do on-site reviews of all matters relating to service delivery as specified by this Contract.

13.10 Non-Waiver of Breach

The failure of SCDHHS at any time to require performance by the Contractor of any provision of this Contract, or the continued payment of the Contractor by SCDHHS, shall in no way affect the right of SCDHHS to enforce any provision of this Contract; nor shall the waiver of any breach of any provision thereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written agreement of the parties and approval of CMS, if applicable.

Waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

13.11 Non-Assignability

No assignment or transfer of this Contract or of any rights hereunder by the Contractor shall be valid without the prior written consent of SCDHHS.

13.12 Legal Services

No attorney-at-law shall be engaged through use of any funds provided by SCDHHS pursuant to the terms of this Contract. Further, with the exception of attorney's fees awarded in accordance with S.C. Code Ann. §15-77-300 (2000, as amended), SCDHHS shall under no circumstances become obligated to pay an attorney's fee or the costs of legal action to the Contractor. This covenant and condition shall apply to any and all suits, legal actions, and judicial appeals of whatever kind or nature to which the Contractor is a party.

13.13 Venue of Actions

Any and all suits or actions for the enforcement of the obligations of this Contract and for any and every breach thereof, or for the review of a SCDHHS final agency decision with respect to this Contract or audit disallowances, and any judicial review sought thereon and brought pursuant to the S.C. Code Ann. § 1-23-380 (2000, as amended) shall be instituted and maintained in any court of competent jurisdiction in the County of Richland, State of South Carolina.

13.14 Attorney's Fees

In the event that SCDHHS shall bring suit or action to compel performance of or to recover for any breach of any stipulation, covenant, or condition of this Contract, the Contractor shall and will pay to SCDHHS such attorney's fees as the court may adjudge reasonable in addition to the amount of judgment and costs.

13.15 Independent Contractor

It is expressly agreed that the Contractor and any subcontractors and agents, officers, and employees of the Contractor or any subcontractors in the performance of this Contract shall act in an independent capacity and not as officers and employees of SCDHHS or the State of South Carolina. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any subcontractor and SCDHHS and the State of South Carolina.

13.16 Governing Law and Place of Suit

It is mutually understood and agreed that this Contract shall be governed by the laws of the State of South Carolina both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Contract or any provision thereof shall be instituted only in the courts of the State of South Carolina.

13.17 Severability

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both SCDHHS and Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed. In addition, if the laws or regulations governing this Contract should be amended or judicially interpreted as to render the fulfillment of the Contract impossible or economically infeasible, both SCDHHS and the Contractor will be discharged from further obligations created under the terms of the Contract. To this end, the terms and conditions defined in this Contract can be declared severable.

13.18 Copyrights

If any copyrightable material is developed in the course of or under this Contract, SCDHHS shall have a royalty free, non-exclusive, and

irrevocable right to reproduce, publish, or otherwise use the work for SCDHHS purposes.

13.19 Subsequent Conditions

The Contractor shall comply with all requirements of this Contract and SCDHHS shall have no obligation to enroll any MHN program Members into the Contractor's plan until such time as all of said requirements have been met.

13.20 Incorporation of Schedules/Appendices

All schedules/appendices referred to in this Contract are attached hereto, are expressly made a part hereof, and are incorporated as if fully set forth herein.

13.21 Titles

All titles used herein are for the purpose of clarification and shall not be construed to infer a contractual construction of language.

13.22 Safeguarding Information

The Contractor shall establish written safeguards which restrict the use and disclosure of information concerning members or potential members to purposes directly connected with the performance of this Contract. The Contractor's written safeguards shall:

13.22.1 Be comparable to those imposed upon the SCDHHS by 42 CFR Part 431, Subpart F (2004, as amended) and S.C. Code R. 126-170 et seq. (Supp. 2000, as amended);

13.22.2 State that the Contractor will identify and comply with any stricter state or federal confidentiality standards which apply to specific types of information or information obtained from outside sources;

13.22.3 Generally, require the written consent of the member or potential member before disclosure of information about him or her;

13.22.4 Not prohibit the release of statistical or aggregate data which cannot be traced back to particular individuals; and

13.22.5 Specify appropriate personnel actions to sanction violators.

13.23 Release of Records

The Contractor shall release medical records of members, as may be authorized by the member, as may be directed by authorized personnel of SCDHHS, appropriate agencies of the State of South Carolina, or the United States Government. Release of medical records shall be consistent with the provisions of confidentiality as expressed in this Contract.

13.24 Fraudulent Activity

The Contractor shall report to SCDHHS any cases of suspected Medicaid fraud or abuse by its members, employees, or subcontractors. The Contractor shall report such suspected fraud or abuse in writing as soon as practicable after discovering suspected incidents. The Contractor shall report the following fraud and abuse information to SCDHHS:

(a) The number of complaints of fraud and abuse made to SCDHHS that warrant preliminary investigation.

(b) For each case of suspected provider fraud and abuse that warrants a full investigation:
(1) the provider's name and number
(2) the source of the complaint
(3) the type of provider
(4) the nature of the complaint
(5) the approximate range of dollars involved
(6) the legal and administrative disposition of the case

(c) SCDHHS will review 100% of the Contractor's network on an ongoing basis by utilizing the OIG electronic file.

13.25 Integration

This Contract shall be construed to be the complete integration of all understandings between the parties hereto. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendment executed and approved by the parties.

13.26 Hold Harmless

The Contractor shall indemnify, defend, protect, and hold harmless SCDHHS and any of its officers, agents, and employees from:

13.26.1 Any claims for damages or losses arising from services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies for the Contractor in connection with the performance of this Contract;

13.26.2 Any claims for damages or losses to any person or firm injured or damaged by erroneous or negligent acts, including disregard of State or Federal Medicaid regulations or legal statutes, by Contractor, its officers, employees, or subcontractors in the performance of this Contract;

13.26.3 Any claims for damages or losses resulting to any person or firm injured or damaged by Contractor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of

any data processed under this Contract in a manner not authorized by the Contract or by Federal or State regulations or statutes;

13.26.4 Any failure of the Contractor, its officers, employees, or subcontractors to observe the federal or state laws, including, but not limited to, labor laws and minimum wage laws;

13.26.5 Any claims for damages, losses, or costs associated with legal expenses, including, but not limited to, those incurred by or on behalf of SCDHHS in connection with the defense of claims for such injuries, losses, claims, or damages specified above;

13.26.6 Any injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses which may in any manner accrue against SCDHHS or their agents, officers or employees, through the intentional conduct, negligence or omission of the Contractor, its agents, officers, employees or subcontractors.

In the event that, due to circumstances not reasonably within the control of Contractor or SCDHHS, (i.e., a major disaster, epidemic, complete or substantial destruction of facilities, war, riot or civil insurrection), neither the Contractor, SCDHHS, or subcontractor(s), will have any liability or obligation on account of reasonable delay in the provision or the arrangement of covered services; provided, however, that so long as the Contractor's certificate of authority remains in full force and effect, the Contractor shall be liable for the covered services required to be provided or arranged for in accordance with this Contract.

13.27 Hold Harmless as to the Medicaid MHN Program Members

In accordance with the requirements of S.C Code Ann. § 38-33-130(b) (Supp. 2001), as amended, and as a condition of participation as a health care provider, the Contractor hereby agrees not to bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have recourse against, Medicaid MHN program members of Contractor, or persons acting on their behalf, for health care services which are rendered to such members by the Contractor and its subcontractors, and which are covered benefits under the members evidence of coverage. This provision applies to all covered health care services furnished to the Medicaid MHN program member for which the State does not pay the Contractor or the State or the Contractor does not pay the individual or health care provider that furnishes the services under a contractual, referred, or other arrangement during the time the member is enrolled in, or otherwise entitled to benefits promised by the Contractor. The Contractor further agrees that the Medicaid MHN program member shall not be held liable for payment for covered services furnished under a contract, referral, or other arrangement, to the extent that those payments are in excess of the amount that the member would owe if the MHN

provided the service directly. The Contractor agrees that this provision is applicable in all circumstances including, but not limited to, non-payment by Contractor and insolvency of Contractor. The Contractor further agrees that this provision shall be construed to be for the benefit of Medicaid MHN Program members of Contractor, and that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between the Contractor and such members, or persons acting on their behalf.

13.28 Non-Discrimination

The Contractor agrees that no person, on the grounds of handicap, age, race, color, religion, sex, or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor. The Contractor shall upon request show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination. This provision shall be included in all subcontracts.

13.29 Confidentiality of Information

The Contractor shall assure that all material and information, in particular information relating to members or potential members, which is provided to or obtained by or through the Contractor's performance under this Contract, whether verbal, written, electronic file, or otherwise, shall be reported as confidential information to the extent confidential treatment is provided under state and federal laws. The Contractor shall not use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securement of its rights under this Contract.

All information as to personal facts and circumstances concerning members or potential members obtained by the Contractor shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of SCDHHS or the member/potential member, provided that nothing stated herein shall prohibit the disclosure of information in summary, statistical, or other form which does not identify particular individuals. The use or disclosure of information concerning members/potential members shall be limited to purposes directly connected with the administration of this Contract.

13.30 Employment of Personnel

In all hiring or employment made possible by or resulting from this Contract, the Contractor agrees that (1) there shall be no discrimination against any employee or applicant for employment because of handicap, age, race, color, religion, sex, or national origin, and that (2) affirmative action shall be taken to ensure that applicants are employed and that employees are treated during employment without regard to their handicap, age, race, color, religion, sex, or national origin. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of

compensation, and selection for training including apprenticeship. The Contractor further agrees to give public notice in conspicuous places available to employees and applicants for employment setting forth the provisions of this section. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to handicap, age, race, color, religion, sex, or national origin. All inquiries made to the Contractor concerning employment shall be answered without regard to handicap, age, race, color, religion, sex, or national origin. All responses to inquiries made to the Contractor concerning employment made possible as a result of this Contract shall conform to federal, state, and local regulations.

13.31 Political Activity

None of the funds, materials, property, or services provided directly or indirectly under this Contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or otherwise in violation of the provisions of the "Hatch Act".

13.32 Force Majeure

The Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

SCDHHS shall not be liable for any excess cost to the Contractor for SCDHHS's failure to perform the duties required by this Contract if such failure arises out of causes beyond the control and without the result of fault or negligence on the part of SCDHHS. In all cases, the failure to perform must be beyond the control without the fault or negligence of SCDHHS.

13.33 Conflict of Interest

All State employees shall be subject to the provisions of S.C. Code Ann. § 8-13-100 and §8-13-310, et seq. (Supp. 2000, as amended).

The Contractor represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performance of the Contract, no person having any such known interests shall be employed.

13.34 Safety Precautions

SCDHHS and USHHS assume no responsibility with respect to accidents, illnesses, or claims arising out of any activity performed under this Contract. The Contractor shall take necessary steps to ensure or protect its clients, itself, and its personnel. The Contractor agrees to comply with all applicable local, state, and federal occupational and safety acts, rules, and regulations.

13.35 Contractor's Appeal Rights

If any dispute shall arise under the terms of this Contract, the sole and exclusive remedy shall be the filing of a Notice of Appeal within thirty (30) calendar days of receipt of written notice of SCDHHS's action or decision which forms the basis of the appeal. Administrative appeals shall be in accordance with SCDHHS's regulations R. 126-150, et seq., Code of Laws of South Carolina (1976), Volume 27, as amended, and in accordance with the Administrative Procedures Act, §§ 1-23-310, et seq., Code of Laws of South Carolina (1976), as amended. Judicial review of any final SCDHHS administrative decisions shall be in accordance with § 1-23-380, Code of Laws of South Carolina (1976), as amended.

13.36 Loss of Federal Financial Participation (FFP)

The Contractor hereby agrees to be liable for any loss of FFP suffered by SCDHHS due to the Contractor's, or its subcontractors', failure to perform the services as required under this Contract. Payments provided for under this contract will be denied for new enrollees when, and for so long as, payment for those enrollees is denied by CMS in accordance with the requirements in 42 CFR 438.730.

13.37 HIPAA Compliance

The Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the rules and regulations promulgated thereunder (45 CFR Parts 160, 162, and 164). The Contractor shall ensure compliance with all HIPAA requirements across all systems and services related to this contract, including transaction, common identifier, and privacy and security standards, by the effective date of those rules and regulations.

SCDHHS acknowledges that, while Contractor is a Business Associate under this contract, Contractor also separately qualifies as a covered entity as defined in the Privacy Rule. Accordingly, Contractor may use and disclose Protected Health Information for such purposes as are consistent with its status as a separate covered entity under the Privacy Rule.

13.38 National Provider Identifier

The HIPAA Standard Unique Health Identifier regulations (42 CFR 165 Subparts A & D) require that all covered entities (health plans, health care

clearinghouses, and those health care providers who transmit any health information in electronic form in connection with a standard transaction) must use the identifier obtained from the National Plan and Provider Enumeration System (NPPES).

Pursuant to the HIPAA Standard Unique Health Identifier regulations (42 CFR 165 subparts A & D), and if the provider is a covered health care provider as defined in 42 CFR §162.402, the provider agrees to disclose its National Provider Identifier (NPI) to SCDHHS once obtained from the NPPES. Provider also agrees to use the NPI it obtained from the NPPES, if applicable, to identify itself on all standard transactions that it conducts with SCDHHS.

13.39 Employee Education about False Claims Recovery

If the Contractor receives annual Medicaid payments of at least $5,000,000, the Contractor must comply with Section 6032 of the Deficit Reduction Act (DRA) of 2005. Employee Education about False Claims Recovery.

IN WITNESS WHEREOF, SCDHHS and the Contractor, by their authorized agents, have executed this Contract as of the first day of April 2007.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES "SCDHHS"	"CONTRACTOR"
BY: _____	BY: _____
Robert M. Kerr Director	
	_____ Print Name
WITNESSES:	WITNESSES:
_____	_____
_____	_____