

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT
CONCERNING REGULATORY COOPERATION AND
INFORMATION SHARING
BETWEEN
THE CENTERS FOR MEDICARE & MEDICAID SERVICES
AND THE
[STATE INSURANCE DEPARTMENT]**

1. Purpose

(a) This Memorandum of Understanding and Agreement (Memorandum) is made and entered into as of _____, 2006, between the Centers for Medicare & Medicaid Services (CMS) and the _____ [State Insurance Department] (DOI) of the State of _____ (State). It is subject to, and controlled by, applicable law. The purpose of this Memorandum is to promote cooperation, supervisory coordination, and the sharing of information between CMS and the DOI concerning the conduct of companies and persons engaged in Medicare Managed Care and the Medicare Prescription Drug Benefit. This Memorandum does not cover any information on the performance of companies and persons in the Medicare Part A or B program.

(b) The parties agree to share, in the manner described below, certain Confidential Information and non-confidential information concerning the conduct of companies and persons engaged in Medicare Managed Care and the Medicare Prescription Drug Benefit as it relates to the Agencies' regulatory responsibilities, and to only use information received under this Memorandum for purposes relevant to the regulation of Regulated Entities or Persons. Each Responding Agency retains the discretion to release this information to the Requesting Agency. Nothing in this Memorandum limits the ability of the Agencies to exchange non-Confidential Information if permitted by applicable law.

2. Defined Terms

As used throughout this Memorandum, the following terms have the meaning set forth below:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company or is a downstream subcontracted entity. Companies or entities are "affiliated" if they have an Affiliate relationship with each other

(b) *Agency* or *Agencies* means CMS or the DOI, individually or collectively.

(c) *Confidential Information* means: (i) for CMS, all exempt information, as defined in the Freedom of Information Act at 5 U.S.C. 552(b); (ii) for the DOI, information confidential by law or privilege, including, draft examination reports, examination work papers, analyses of financial condition, reports of fraudulent activity, and [insert additional categories recognized under specific state laws];

(iii) any consumer complaint described in this Memorandum; (iv) any information protected or prohibited from disclosure under applicable federal or state law (including, without limitation, federal or state statutes, rules, case law, and privileges); and (v) any other information either Agency determines to be non-public in nature.

(d) *Medicare Managed Care* is defined as programs which offer managed care services to Medicare enrollees through one of the following: Medicare Advantage Health Maintenance Organizations (HMO), Cost Plans, Demonstration Projects, Private Fee for Service, Preferred Provider Organizations (PPO), Regional Preferred Provider Organizations (R-PPO), Special Needs Plans (SNP), Medical Savings Accounts (MSA), Program for the All-Inclusive Care for the Elderly (PACE), Provider Sponsored Organization (PSO) and other managed care plans.

(e) *Medicare Prescription Drug Benefit Program* is defined as a program which offers the Part D prescription drug benefit to enrollees through one of the following: stand alone Prescription Drug Benefit plans (PDPs) or any of the above defined “Medicare Managed Care” plans that offer a Part D benefit.

(f) *Regulated Entity (Entities) or Person(s)* means a company or person engaged in insurance activities subject to the regulatory authority of the DOI or CMS, under Medicare Managed Care or Medicare Prescription Drug Benefit or which should be subject to the regulation authority of DOI or CMS given the nature of the activity.

(g) *Requesting Agency* means the Agency seeking information.

(h) *Responding Agency* means the Agency responding to a request for information.

(i) *Responding Agency Confidential Information* means all Confidential Information furnished by, belonging to, or derived directly or indirectly from the Responding Agency.

3. Information Sharing

(a) Routine Compliance Information

(i) The Agencies will give due consideration and promptly respond to requests from one another for routine compliance information, which includes confidential information regarding (1) complaints made by individuals or entities regarding a Regulated Entity or Person, (2) the safety, soundness, or financial condition of a Regulated Entity or Person, (3) other insurance activities of a Regulated Entity or Person and (4) preliminary information such as requests for corrective action. The decision to share this information is at the sole discretion of each Agency.

(ii) Each Agency may also, in its sole discretion and if permitted by applicable law, provide the other Agency other types of information relating to the activities of Regulated Entities or Persons when doing so (1) is necessary or appropriate to permit the other Agency to administer and enforce laws applicable to the Regulated Entities or Persons over which it has jurisdiction, or (2) will promote coordination and general awareness of the respective supervisory policies, positions, and practices of the Agencies.

(iii) The Agencies will request Confidential Information only if it is relevant to their lawful exercise of regulatory authority of a Regulated Entity or Person or an Affiliate of a Regulated Entity or Person, and will use Confidential Information they receive under this Memorandum only for those purposes.

(iv) Requests for information should to the extent practicable be written (requests may be made by e-mail) and, should describe with reasonable particularity the specific information sought, and may cover multiple documents.

(v) The Agencies shall make a good faith effort to communicate information as early as practicable.

(b) Enforcement Activities

(i) CMS, in its sole discretion and if permitted by applicable law, will notify the DOI of any enforcement action CMS takes against a Regulated Entity or Person domiciled or having a resident license in the State if the enforcement action: (1) pertains to a violation of any CMS Rule or Regulation; or (2) might have a material impact on the financial condition or operations of the Regulated Entity or Person the DOI supervises. Specific communications may include: letters regarding the imposition of civil monetary penalties and/or intermediate sanctions (e.g., freezing marketing and enrollment activity), and CMS's intent to terminate or non-renew a Medicare Managed Care plan or Medicare Prescription Drug Benefit plan.

(ii) The DOI, in its sole discretion and if permitted by applicable law, will notify CMS of any enforcement action the DOI takes, or knows has been taken by another DOI, against a Regulated Entity or Person subject to regulation by CMS, or a subsidiary of such an entity, domiciled or having a resident license in the State if the enforcement action: (1) pertains to a violation of any state statute or regulation; or (2) might have a material impact on the financial condition or operations of the Regulated Entity or Person CMS supervises. Specific communications may include: any consumer complaints (including the name of the consumer/individual, name of the health plan or insurance agent, and copies of any correspondence and documents with consumers and insurance companies or agents); copies of adjudicated enforcement actions (e.g., cease and desist orders,

orders of forfeiture, stipulated agreements, imposition of fines or other public disciplinary action); and copies of adopted examination reports of health plans.

c) Consumer Complaints

(i) CMS will, if permitted by applicable law, and at the Agency's discretion promptly forward to the DOI for its attention and handling information pertaining to any consumer complaint it receives from a consumer residing, or receiving services, in the State or relating to the insurance activities of any Regulated Entity or Person the DOI supervises or has the authority to examine. The DOI will, if permitted by applicable law, promptly forward to CMS a copy of any consumer complaint it receives relating to the activities regarding the sale, solicitation, advertising, or offers of any Medicare Managed Care or Medicare Prescription Drug Benefit insurance products to a consumer by a Regulated Entity or Person.

(ii) If the DOI decides to exercise its discretion and investigate or seek resolution of consumer complaints it forwards to or receives from CMS under paragraph 3(c)(i), the DOI will, to the extent practicable, coordinate its efforts with CMS, and will advise CMS of the outcome of those consumer complaints. If CMS decides to exercise its discretion and investigate or seek resolution of consumer complaints it forwards to or receives from the DOI under paragraph 3(c)(i), CMS will, to the extent practicable, coordinate its efforts with the DOI, and will advise the DOI of the outcome.

(iii) Consumer complaints forwarded by the Agencies will be treated with the same confidentiality as other Responding Agency Confidential Information under this Memorandum, however: (1) to the extent permitted by applicable law personally identifiable information about the complainant and other Confidential Information contained in the complaint may be disclosed to the extent necessary to investigate or resolve a complaint; and (2) aggregate information regarding complaints may be disclosed as long as personally identifiable information about the complainant is not revealed.

4. Confidentiality

(a) The Responding Agency will identify any Responding Agency Confidential Information when sharing information under this Memorandum.

(b) All Responding Agency Confidential Information belongs to, and will remain the property of, the Responding Agency. The Requesting Agency will, in accordance with applicable federal or state law, take all actions reasonably necessary to preserve, protect, and maintain the confidentiality of Responding Agency Confidential Information and any privileges associated therewith.

(c) The Requesting Agency will restrict access to Responding Agency Confidential Information to those employees at the Requesting Agency, and agents of the

Requesting Agency under its direct supervision and control (including, for example, outside counsel, accountants, and consultants), who have a need for such information consistent with, and directly related to, the purposes for which the information was requested. However, the DOI may share Confidential Information obtained from CMS under this Memorandum with another state insurance department if: (i) the information is relevant to that department's supervisory or examination responsibilities; (ii) that department has entered into an agreement with CMS substantially similar to this Memorandum or has agreed in writing with the DOI to comply with the confidentiality provisions of this Memorandum; and (iii) CMS consents to the Confidential Information being shared. CMS will share Confidential Information obtained from the DOI with the appropriate federal law enforcement agency if such information potentially implicates federal fraud, waste, and abuse laws or regulations (e.g., the Anti-Kickback Act, the False Claims Act, Stark Law, and Prohibition on Inducements to Beneficiaries). CMS will notify the DOI if this information is shared.

(d) Except as provided in paragraphs 4(f) and 4(g), the Requesting Agency will not, without the express written consent of the Responding Agency, do anything, whether by action or omission, the effect of which would be to limit, waive, or jeopardize the confidentiality of Responding Agency Confidential Information or any privileges associated therewith.

(e) If the Requesting Agency receives a request from a third party for Responding Agency Confidential Information, or testimony related thereto, or is served with a subpoena, order, or other process requiring production of such information or testimony, the Requesting Agency will:

- (1) unless prohibited by law, immediately notify the Responding Agency of such request, subpoena, order, or other process and furnish copies thereof as well as any documents related thereto, as well as the date by which the requesting Agency is expected to produce documents;
- (2) afford the Responding Agency the opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of Responding Agency Confidential Information or any privileges associated therewith;
- (3) cooperate fully with the Responding Agency to preserve, protect, and maintain the confidentiality of Responding Agency Confidential Information and any privileges associated therewith;
- (4) notify the party seeking Responding Agency Confidential Information it was obtained from the Responding Agency and requests for such information must be made directly to the Responding Agency in accordance with applicable federal or state law (including but not limited to, the Freedom of Information Act (5 U.S.C. 552), 45 C.F.R. Part 401, and 45 C.F.R. Parts 2 and 5, with respect to

information under this Memorandum, and will promptly notify the other if there is any change in the designated contacts.

6. Termination

This Memorandum may be terminated by either Agency upon thirty (30) days written notice. Termination will not in any way affect (i) the rights or obligations of either Agency with respect to Responding Agency Confidential Information, (ii) the confidentiality of such information, or (iii) any privileges associated with such information.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding and Agreement to be executed by their duly authorized representatives as of the date first above written.

CENTERS FOR MEDICARE AND
MEDICAID SERVICES (CMS)

[STATE INSURANCE DEPARTMENT]

By:

By:

[Name]
[Title]

[Name]
[Title]