

PHCS PARTICIPATING PROFESSIONAL GROUP AGREEMENT

This Agreement, which is effective as of the 1st day of May, in the year of 2002 (the "Effective Date"), is entered into by and between Private Healthcare Systems, Inc., a Delaware corporation ("PHCS"), and North Texas Ear, Nose & Throat Associates, P.A., a partnership, professional service corporation, limited liability company or other legally constituted entity of licensed, registered, or certified health care professionals organized to provide health care services ("Group").

In consideration of the promises and the mutual covenants and undertakings set forth in this Agreement, receipt and sufficiency of which is hereby acknowledged, the parties have executed this Agreement through their duly authorized representatives.

<u>NORTH TEXAS EAR, NOSE & THROAT ASSOCIATES, P.A.:</u> By: <u>John M. Moore</u> Print Name: <u>JOHN M. MOORE</u> Title: <u>PRESIDENT</u> Date: <u>6/18/02</u>	<u>PHCS:</u> By: <u>Denise Southall</u> Print Name: <u>Denise Southall</u> Title: <u>Territory Director</u> Date: <u>7/1/02</u>
<u>Group PHCS Product Participation:</u> Preferred Provider Organization ("PPO")	

I. DEFINITIONS. For purposes of this Agreement:

- 1.1 Contract means any insurance policy, benefit plan or other health plan or program that includes Direction (as defined in Section 4.5) to Preferred Providers.
- 1.2 Covered Care means care, treatment, and supplies for which payment is available pursuant to a Contract.
- 1.3 Covered Individual means any individual and/or dependent covered by a Contract.
- 1.4 Participating Professional means a licensed, registered, or certified health care professional (i) who is an employee, member or partner of, or has contracted with, Group; (ii) who PHCS has determined, in its sole discretion, satisfies the applicable credentialing criteria; and (iii) who agrees to provide Covered Care to Covered Individuals within the scope of his or her applicable license, registration, certification, and privileges, and pursuant to this Agreement.
- 1.5 Payor means an insurance company, employer health plan, Taft-Hartley Fund, or other organization liable to pay or arrange to pay for the provision of health care services to Covered Individuals through a PHCS provider network.
- 1.6 PHCS Affiliate(s) means the following entities, or any subsidiary or successor corporation: Central States, Southeast and Southwest Areas Health and Welfare Fund; Connecticut General Life Insurance Company; First Allmerica Financial Life Insurance Company; Fortis, Inc.; GE Group Life Assurance Company; General American Life Insurance Company; The Guardian Life Insurance Company of America; New England Life Insurance Company; Pacific Life & Annuity Company; and Trustmark Insurance Company. PHCS may amend this Section 1.6 by the provision of written notice to Group.
- 1.7 Preferred Payment Rates means the rates paid to Group for Covered Care, as set forth in Exhibit A. Additional Preferred Payment Rate terms, if any, are also set forth in Exhibit A.
- 1.8 Preferred Provider(s) means a licensed facility or licensed, registered, or certified health care professional that agrees to provide health care services to Covered Individuals and has been selected by PHCS for participation in the PHCS provider network. Preferred Providers may be referred to in this Agreement and in the administrative handbook(s) individually as "Preferred Facility" and "Preferred Professional" respectively.

II. TERM AND TERMINATION

- 2.1 Effective Date; Term. This Agreement will become effective on the Effective Date and will continue in effect for a period of twelve (12) months. Unless otherwise terminated as specified in this Agreement, on each anniversary of the Effective Date ("Renewal Date"), this Agreement will automatically extend and continue in effect for successive renewal terms of twelve (12) months each, on the same terms and conditions then in effect.
- 2.2 Discretionary Termination. This Agreement may be terminated, in the sole discretion of either party, by the provision of written notice at least ninety (90) days prior to the Renewal Date.
- 2.3 Termination for Other Reasons. This Agreement may be terminated by PHCS upon written notice to Group if (i) any action is taken which requires Group to provide PHCS with notice under Section 3.7; (ii) in the sole discretion of PHCS, Group or any Participating Professional breaches Section 3.8 or Section 3.9 of this Agreement; or (iii) Group or any Participating Professional fails to comply with any applicable state and/or federal law related to the delivery of health care services.
- 2.4 Termination for Material Breach. In the event that one party commits a material breach of this Agreement (the "Breaching Party"), this Agreement will terminate upon the provision of at least thirty (30) days written notice to the Breaching Party specifying the material breach. The Breaching Party may cure the breach within such thirty (30) day period, provided however, that failure to cure said breach will result in termination as of the date specified in the notice.
- 2.5 Product Participation Termination. Either party may terminate this Agreement as to any of the products for which Group and/or any Participating Professional participates as part of the PHCS provider network (e.g., PPO, Open Access, etc.), by the provision of at least ninety (90) days prior written notice to the other party. Any termination of a product for which Group and/or any Participating Professional participates will not terminate this Agreement as to any other product(s) for which Group and/or any Participating Professional participates as part of the PHCS provider network.
- 2.6 Appeal of Termination. Group may appeal the termination of this Agreement by PHCS by submitting a written request for appeal to PHCS within thirty (30) days of the date of the notice of termination in accordance with the then current PHCS appeal procedure.

III. RESPONSIBILITIES OF GROUP

- 3.1 Binding Authority. Group represents that it has the authority to enter into this Agreement and to bind all Participating Professionals to the terms of this Agreement.
- 3.2 Non-Discrimination. Neither Group nor any Participating Professional will differentiate or discriminate against Covered Individuals in the provision of health care services or the termination of a Covered Individual as a patient, and will render health care services to all Covered Individuals in the same manner, in accordance with the same standards, and with the same availability as offered to Group's or Participating Professional's other patients.
- 3.3 Licenses, Certifications and Accreditations. Group and each Participating Professional: (i) possesses, and will maintain in good standing, all licenses, registrations, certifications, and accreditations required by law to render health care services in the state in which Covered Care is rendered; and (ii) will comply with any applicable local, state and/or federal laws or regulations related to the delivery of health care services.
- 3.4 Continuing Obligations. Upon termination of this Agreement for any reason, Group and each Participating Professional will:
 - (a) remain responsible for any obligations or liabilities arising prior to the effective date of termination;
 - (b) continue to provide health care services to Covered Individuals who are receiving treatment on the effective date of termination (i) until the course of treatment is completed; (ii) for a period of ninety (90) days or through the current period of active treatment for those Covered Individuals undergoing active treatment for a chronic or acute medical condition, whichever time period is shorter; (iii) throughout the second and third trimester of pregnancy and/or through postpartum care, if requested by the Covered Individual; or (iv) until Group makes reasonable and medically appropriate arrangements to transfer the Covered Individual to the care of another provider, making such transfer to a Preferred Provider whenever appropriate (except as specified in subsections (ii) and (iii) herein);
 - (c) accept payment made pursuant to Article VII, as payment in full, for Covered Care rendered in accordance with this Section; and
 - (d) inform Covered Individuals seeking health care services that Group is no longer a Preferred Provider.

3.5 Medical and Billing Records.

- (a) Group will prepare and maintain, and cause each Participating Professional to prepare and maintain, as appropriate, pertinent medical and billing information and records for each Covered Individual ("Medical and Billing Records") in accordance with generally accepted medical, accounting, and bookkeeping practices and will maintain such Medical and Billing Records for at least seven (7) years following the furnishing of health care services to Covered Individuals.
- (b) Subject to any applicable legal restrictions and upon request by PHCS and/or Payor, Group or Participating Professional will promptly provide copies of the Medical and Billing Records to PHCS and/or Payor, for those purposes which PHCS and/or Payor deem reasonably necessary, including without limitation, quality assurance, medical audit, credentialing or recredentialing.
- (c) Group and each Participating Professional agree to comply with all state and federal laws and the requirements specified in the administrative handbook(s) pertaining to the confidentiality of Medical and Billing Records, and will keep confidential, and take all precautions to prevent the unauthorized disclosure of any and all Medical and Billing Records.

3.6 On-Site Review. Subject to any applicable legal restrictions, and upon at least ten (10) days prior written notice, Group will permit and arrange for PHCS and/or Payor to conduct an on-site review to validate compliance with the terms of this Agreement by Group and each Participating Professional. All on-site reviews will be conducted during normal business hours.

3.7 Notice of Actions. Group will send written notice to PHCS within ten (10) days of:

- (a) any final legal, governmental, professional, or other action consummated against Group or any Participating Professional, even if such action is being appealed, including, but not limited to, actions related to each of the following:
 - (i) the reduction in, or cancellation of, general and/or professional liability insurance;
 - (ii) the termination, probation, suspension, or any other sanction or action taken by any state or federal government in connection with any Contract, government sponsored health benefit program, or other health benefit plan for any reason, including, without limitation, for billing fraud or abuse;
 - (iii) the termination, probation, suspension, or any other sanction or action taken by a regulatory authority in connection with any license, registration, or certification held by Group or any Participating Professional; and
 - (iv) any termination, probation, suspension or any other disciplinary action taken by a health care facility in connection with a Participating Professional's staff privileges.
- (b) any action initiated or consummated against the Group or any Participating Professional including, without limitation, actions related to each of the following:
 - (i) indictment, arrest, or conviction for any felony or any criminal charge; and
 - (ii) the (1) insolvency of Group or any Participating Professional; (2) general assignment for the benefit of creditors by Group or any Participating Professional; (3) subjection of Group or any Participating Professional to any proceedings under the Federal Bankruptcy Act or any state statute relating to insolvency or the protection of rights of creditors; or (4) appointment of a receiver for Group's or any Participating Professional's business or assets.

Any notice required pursuant to this Section will be provided in accordance with the notice requirements specified in Section 9.8 of this Agreement, except that the address and agent to receive notice shall be as follows: Credentialing Coordinator to the Medical Director, Private Healthcare Systems, Inc., 1100 Winter Street, Waltham MA 02451.

3.8 Product Participation and Requirements. This Agreement may contain references to each of the products offered by PHCS. Upon written notice to Group, PHCS will, in its sole discretion, designate those individual product(s) for which the Group participates as part of the PHCS provider network. Group and each Participating Professional will cooperate and comply with the product specific requirements applicable to Group and each Participating Professional contained in Exhibit B and/or described in the administrative handbook(s). PHCS may, in its sole discretion, modify Exhibit B and/or the administrative handbook(s).

- 3.9 PHCS Programs. Group and each Participating Professional will participate in and observe the protocols of the Payor's utilization management program. Group and each Participating Professional will participate in and observe the protocols of the PHCS programs described in the administrative handbook(s), as may be modified by PHCS from time to time, including, without limitation, the quality management and credentialing/recredentialing program(s).
- 3.10 Provision of Care. Group will, and will ensure that each Participating Professional will, render medical and health care services in a manner which assures availability, adequacy, and continuity of care to Covered Individuals. Group and each Participating Professional will remain solely responsible for the quality of health care services provided by Group and each Participating Professional to Covered Individuals, and will ensure such services are rendered in accordance with generally accepted medical practice and professionally recognized standards. Nothing contained herein will grant PHCS or Payor the right to govern the level of care of a patient. Utilization management decisions will only affect reimbursement of Group for services rendered and will not limit the performance of the services of Group and each Participating Professional or affect professional judgment.
- 3.11 Access. Group will use reasonable efforts to accept all Covered Individuals for treatment in accordance with all terms and conditions of this Agreement. Group will ensure that medical and health care services are available to Covered Individuals 24 hours a day, 7 days a week. Group will provide at least ninety (90) days prior written notice to PHCS whenever Group or any Participating Professional (i) closes or limits their respective practice; and (ii) re-opens or removes any limitation on a closed or limited practice.
- 3.12 Exchange of Provider Professional Data.
- (a) Group will submit to PHCS such information as PHCS may reasonably request (i) to credential each professional employee, member, partner, or contractor of Group applying for participation in the PHCS provider network ("Applicant"), and re-credential each Participating Professional; (ii) for the purpose of complaint resolution; (iii) for the purpose of utilization management; and (iv) for provider listings.
 - (b) Subject to applicable state and federal laws governing the confidentiality of peer review proceedings, Group and each Applicant and Participating Professional hereby consent to PHCS permitting the inspection by Payors, or independent credentialing or accreditation entities, and their respective officers, directors, employees, medical directors, agents and representatives, of the contents of their respective application, credentialing file, the credentialing decisions of PHCS with respect to such Applicant or Participating Professional, and all documents that may be material to an evaluation of the qualifications and competence of the Applicant or Participating Professional. Group and each Applicant and Participating Professional hereby consent to the release of such information to the entities noted in this Section 3.12 (b).
 - (c) Group will indemnify and hold PHCS and its respective directors, officers, agents, employees and representatives, harmless from any and all liability, loss, damage, claim or expense of any kind, including costs and reasonable attorneys' fees, which result from any act or omission by Group or any Participating Professional concerning its representations, duties and obligations under this Section 3.12.
- 3.13 Maintenance of Practice Information. Group will provide to PHCS each practice location and tax identification number utilized by Group and will promptly inform PHCS of (i) any change in the ownership of Group; (ii) the addition of a professional employee, member, partner or contractor to Group; (iii) the departure of any Participating Professional from the Group; (iv) the refusal of any Participating Professional to continue to be a Participating Professional; and (v) any change in practice locations, telephone numbers, billing address or tax identification number. Failure to provide each practice location and tax identification number may result in a delay or error in the payment of claims for Covered Care rendered to Covered Individuals.

IV. RESPONSIBILITIES OF PHCS

- 4.1 Licenses, Registrations, and Certifications. PHCS will comply with all laws and regulations governing its performance under this Agreement, including, but not limited to, obtaining and maintaining in effect all applicable licenses, registrations, and certifications necessary for that purpose. PHCS will require each Payor to comply with all laws and regulations governing the Payor's responsibilities under this Agreement, including but not limited to, obtaining and maintaining in effect all applicable licenses, registrations, and certifications necessary for that purpose.
- 4.2 Payor Acknowledgement. PHCS agrees that it has entered into agreements with Payors for the use of the PHCS provider network ("Payor Acknowledgement"). Each Payor Acknowledgement between PHCS and a Payor will obligate the Payor to pay or arrange to pay for Covered Care rendered to Covered Individuals in accordance with the provisions of Article VII of this Agreement. PHCS is not an insurer, guarantor, or payor of claims and will not be liable for any payment of claims submitted by Group to any Payor or PHCS.

- 4.3 Payor Listing. Upon the Effective Date of this Agreement, PHCS will provide to Group, a list of the Payors that have purchased the PHCS provider network ("Payor Listing"). After the Effective Date of this Agreement, PHCS will provide an updated copy of the Payor Listing to Group, upon request by Group.
- 4.4 Identification and Eligibility. PHCS will require each Payor to furnish Covered Individuals with a means of identifying themselves to Group as covered under a Contract for the provision of the health care services through a PHCS provider network. Such methods of identification may include, but are not limited to, (i) identification cards that indicate an affiliation with PHCS, (ii) affixing the PHCS logo to identification cards, or (iii) a PHCS phone number identifier. In addition, PHCS will require each Payor to use its best efforts to provide the most current eligibility information available on the day of inquiry for those Covered Individuals for whom Payor maintains eligibility information.
- 4.5 Marketing. PHCS will require each Payor to make available and promote Contracts which provide Direction to Preferred Providers. Direction may occur through, but is not limited to, (i) greater plan benefits, (ii) access to lists or directories of Preferred Providers in printed form or by phone or website, or (iii) the provision of financial incentives that provide Covered Individuals with savings when they obtain health care services from Preferred Providers.
- 4.6 Use of Preferred Payment Rates. PHCS will include in its Payor Acknowledgement with Payors, a representation from Payor that Payor will use the Preferred Payment Rates agreed to in this Agreement solely for Covered Care rendered to Covered Individuals covered under a Contract which utilizes the PHCS provider network. In the event that Group believes that any Payor is, or may be, inappropriately accessing the Preferred Payment Rates set forth in this Agreement (e.g., to non-eligible individuals), Group shall notify PHCS immediately in writing. Upon receipt of such notice, PHCS will work in cooperation with the Group and Payor to determine whether such Payor appropriately accessed the Preferred Payment Rates for a Covered Individual covered under a Contract which utilizes the PHCS provider network. In the event that PHCS finds that the Payor intentionally and inappropriately accessed the Preferred Payment Rates agreed to in this Agreement, PHCS will use reasonable efforts to ensure that Payor reimburses Group for the difference between the Preferred Payment Rate and the Group's regular billing rates.
- 4.7 Selection and Termination of Participating Professionals.
- (a) PHCS, in its sole discretion, will designate those health care professionals who satisfy the credentialing criteria of PHCS as Participating Professionals. PHCS reserves the right to re-credential any Participating Professional.
 - (b) PHCS, in its sole discretion, may terminate any Participating Professional upon at least ninety (90) days written notice.
 - (c) In addition to the termination of a Participating Professional as specified in Section 4.7(b), PHCS may terminate the participation of any Participating Professional under this Agreement, upon written notice to the Participating Professional, if Participating Professional (i) engages in any action that requires Group to provide notice to PHCS under Section 3.7 with respect to such Participating Professional; (ii) breaches Section 3.8 or Section 3.9, in the sole discretion of PHCS; (iii) ceases to be an employee, member, partner, or contractor of Group; (iv) fails to comply with any applicable state and/or federal laws related to the delivery of health care services; or (v) fails to comply with any other terms of this Agreement.
 - (d) Group will provide at least ninety (90) days prior written notice to PHCS in the event that Participating Professional voluntarily disenrolls from the Group and/or from the PHCS provider network.
 - (e) Participating Professional may appeal the termination of such Participating Professional by submitting a written request for appeal to PHCS within thirty (30) days of the date of the notice of termination in accordance with the then current PHCS appeal procedure.

V. PROPRIETARY INFORMATION; TRADEMARKS, ADVERTISING AND PUBLICITY

- 5.1 Proprietary Information. All information and materials provided by PHCS or Payor to Group or any Participating Professional will remain proprietary to PHCS or Payor, as the case may be, including but not limited to, this Agreement and its terms, conditions, and negotiations, any contracts, rate or fee information, Payor client lists, any administrative handbook(s), or other operations manuals. Neither Group nor the Participating Professional will disclose any of such information or materials or use them except as may be required to carry out its respective obligations under this Agreement.

- 5.2 Trademarks, Advertising and Publicity. Except as set forth herein, PHCS, Payors, and Group or Participating Professional will not use the other's name, symbols, trademarks, or service marks, presently existing or later established, in advertising or promotional materials or otherwise without their prior written consent and will cease any such usage immediately upon written notice or upon termination of this Agreement, whichever is sooner. PHCS and Payors may use the name of Group or Participating Professionals as PHCS and Payors may deem reasonably necessary in carrying out the terms of this Agreement, including, without limitation, (i) the distribution of an announcement to the media that Group or Participating Professional participates in a PHCS provider network; and (ii) the creation and/or distribution of provider directories and other promotional materials.

VI. DISPUTE RESOLUTION

- 6.1 Dispute Resolution. In the event of any problems or disputes that may arise under this Agreement, the parties to such problem or dispute will meet and seek resolution in good faith. Except as specified in Sections 2.6 and 4.7(e), any controversy or claim arising out of or relating to this Agreement or the breach thereof, which is not so resolved, will be settled by binding arbitration in accordance with the American Health Lawyers Association Alternative Dispute Resolution Service Rules of Procedure for Arbitration, and judgment on the award by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 6.2 Attorneys' Fees. If Group or PHCS institutes any action, suit, or arbitration proceeding to enforce the provisions of this Agreement, the prevailing party will recover reasonable costs and attorneys' fees.

VII. PAYMENT AND BILLING

- 7.1 Submission of Claims. Group will submit claims for payment within sixty (60) days of furnishing health care services. Group will follow the claims submission procedures contained in the administrative handbook(s).
- 7.2 Payment for Covered Care. Following the receipt of a properly submitted claim, Payor will pay or arrange to pay Group for Covered Care, as full compensation, the Preferred Payment Rate in accordance with Exhibit A and the administrative handbook(s).
- 7.3 Billing of Covered Individuals.
- (a) For Covered Care, Group will bill or collect from a Covered Individual all co-payments, as specified in the Covered Individual's Contract. Following the receipt of an explanation of benefits form from Payor, Group will bill or collect from a Covered Individual: (i) the deductible or co-insurance, if any, as specified in the Covered Individual's Contract; and/or (ii) payment for services, other than Covered Care, for which the Covered Individual's Contract does not provide benefit coverage.
 - (b) Except as permitted by this Section, in no event will Group or Participating Professional bill or require any Covered Individual to tender any payment with respect to Covered Care other than co-payments, deductibles, and co-insurance, if any, as specified in the Covered Individual's Contract. Neither Group nor any Participating Professional will bill or collect from the Covered Individual the difference between the Preferred Payment Rate agreed to in this Agreement and the Group's regular billing rates.
- 7.4 Modification of Preferred Payment Rates and Terms. The Preferred Payment Rates and terms may be modified by PHCS ("Modifications") upon at least ninety (90) days prior written notice to Group. The Modifications will take effect on the effective date specified in the written notice ("Rate Effective Date") unless Group gives written notice to PHCS, within thirty (30) days from the effective date of such notice, rejecting the Modifications. If Group rejects the Modifications, this Agreement will terminate effective on the Rate Effective Date unless PHCS provides written notice to Group withdrawing the Modifications.
- 7.5 Coordination of Benefits. Except as otherwise required by law, if Payor is other than primary under the coordination of benefits rules, Group will accept from Payor, as payment in full, the amount which when added to amounts received by Group from any combination of other sources, equals one hundred percent (100%) of the Preferred Payment Rate. Group and each Participating Professional will cooperate fully with PHCS and/or Payor in providing information in all matters relating to proper coordination of benefits.

VIII. LIABILITY INSURANCE

- 8.1 Group Insurance. Group will maintain: (i) professional liability insurance at minimum levels of at least \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and (ii) comprehensive general liability insurance at minimum levels of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

- 8.2 Participating Professional Insurance. Group will maintain, or ensure that each Participating Professional maintains: (i) professional liability insurance at minimum levels of \$1,000,000 per occurrence and \$3,000,000 in the aggregate for each individual Participating Professional; and (ii) comprehensive general liability insurance at minimum levels of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate to cover each individual Participating Professional.
- 8.3 PHCS Insurance. PHCS will maintain through a policy of insurance or a self-funded arrangement coverage for: (i) managed care professional liability at minimum levels of \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and (ii) comprehensive general liability at minimum levels of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

IX. GENERAL PROVISIONS

- 9.1 Entire Agreement; Governing Law; Captions; Waiver. This Agreement, together with all Exhibits attached hereto, constitutes the entire agreement between Group and PHCS, and will supersede any prior oral or written agreements between the parties with respect to the terms and provisions contained herein. It will be construed and governed in accordance with the laws of the state in which health care services are rendered hereunder, and any provision herein inconsistent therewith will be of no effect and will be severable without affecting the validity or enforceability of the remaining provisions of this Agreement. The captions contained in this Agreement are for the convenience of the reader only, and will not be used in the interpretation of this Agreement. Waiver of breach of any provision of this Agreement will not be deemed a waiver of any other breach of the same or a different provision.
- 9.2 Amendments. Except as otherwise specified herein, this Agreement may not be modified or amended except by mutual consent in writing signed by the duly authorized representatives of Group and PHCS; provided however, that Group and PHCS will comply with any and all of the amendments contained in Exhibit D.
- 9.3 Coordinating Provisions-State/Federal Laws and Accreditation Standards. Each party shall comply with all applicable state and federal statutes and regulations relating to this Agreement. In addition, Group, Participating Professional and PHCS will comply with the following information contained in Exhibit C: (i) coordinating provisions-State/Federal laws, including, without limitation, the Health Insurance Portability and Accountability Act ("HIPAA") of 1996; (ii) national accreditation standards, including without limitation, the National Committee for Quality Assurance ("NCQA") and the American Accreditation Healthcare Commission/URAC ("AAHC/URAC"); and/or (iii) geographic exceptions approved by PHCS. Exhibit C may be modified by PHCS, from time to time, upon at least thirty (30) days prior written notice to Group. Such modifications will take effect on the effective date specified in the notice.
- 9.4 Assignment and Subcontracting.
- (a) No assignment of this Agreement will be made by any party without the express written approval of the duly authorized representative of the other party; provided however, that:
 - (i) PHCS may assign any or all of its rights and obligations hereunder, without prior written approval of Group, to one or more PHCS Affiliate(s) designated by PHCS or to an entity that directly or indirectly controls, or is controlled by, or is under common control with PHCS. Notwithstanding the issuance by PHCS of one or more of such assignments to a PHCS Affiliate, PHCS may retain its rights and obligations hereunder.
 - (ii) this Agreement will be automatically assigned without prior written approval of Group (and with no further action being required by either PHCS or any of the individual PHCS Affiliate(s) designated by PHCS) to each individual PHCS Affiliate designated by PHCS, in the event that PHCS becomes subject to any proceedings under the Federal Bankruptcy Act or any state statute relating to insolvency or the protection of rights of creditors, or a receiver is appointed for PHCS' business or its assets, and such proceedings or appointment is not dismissed within ninety (90) days following the date of filing or appointment.
 - (b) In the event that PHCS assigns this Agreement as specified in this Section 9.4, each of the PHCS Affiliate(s) to which PHCS issues an assignment will be deemed to hold independent, but identical contracts with Group. As to each PHCS Affiliate to which PHCS issues an assignment, Group acknowledges and agrees that all references to the PHCS provider network will be deemed references to that PHCS Affiliate's provider network.
 - (c) Subsequent to any assignment of this Agreement to a PHCS Affiliate, in the event that such PHCS Affiliate becomes subject to any proceedings under the Federal Bankruptcy Act or any state statute relating to insolvency or the protection of rights of creditors, or a receiver is appointed for such PHCS Affiliate's business or its assets, and such proceedings or appointment is not dismissed within ninety (90) days following the date of filing or appointment, Group may terminate such PHCS Affiliate's Agreement with Group by providing ninety (90) days prior written notice to the PHCS Affiliate.

- 9.5 Third Party Beneficiaries. Nothing contained in this Agreement will be construed to make PHCS or Group, and their respective directors, officers, employees, agents, and representatives liable to persons or entities not parties hereto in situations in which they would not otherwise be subject to liability, provided however, that PHCS and Group agree that Payor is a third party beneficiary to this Agreement. Except as provided in the preceding sentence and in Section 9.4, nothing contained herein will be construed as, or be deemed to create, any rights or remedies in any party other than PHCS or Group.
- 9.6 Independent Contractors. Group and each Participating Professional, and PHCS are independent entities. Nothing in this Agreement will be construed as, or be deemed to create, a relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement.
- 9.7 Precedence of Exhibits. In the event of any conflict between the terms and conditions specified in the Exhibits to this Agreement, and any terms and conditions contained elsewhere in this Agreement, the following order of precedence will govern the applicable terms and conditions agreed upon by the parties: (i) Exhibit C- Coordinating Provisions- State/Federal Laws and Accreditation Standards; (ii) Exhibit D- Amendments; (iii) Exhibit A- Preferred Payment Rates; (iv) Exhibit B- Product Specific Requirements; and (v) the base Agreement.
- 9.8 Notices. Unless otherwise specified in this Agreement, any notice required or permitted to be given pursuant to the terms and provisions of this Agreement will be in writing, postage prepaid, to Group at the address(es) below, and to PHCS at the address(es) listed below. Any such notice will be effective on the date the notice was mailed. The following address(es) or agent to receive notice may be changed by the provision of notice pursuant to this Section.

To PHCS:

Attn: Territory Director
Private Healthcare Systems, Inc.
1501 LBJ Parkway, Suite 650
Dallas, TX 75234-6800

To GROUP:

Attn: Anthony Wax, Executive Director
North Texas Ear, Nose & Throat Associates, P.A.
4333 N. Josey Lane, Suite 100
Carrollton, TX 75010

With a copy to:

Attn: Contracts Administration
Private Healthcare Systems, Inc.
1100 Winter Street
Waltham, MA 02451

- 9.9 Survival of Rights and Obligations. Upon the termination of this Agreement by either party for any reason, all rights and obligations hereunder shall cease, except (i) those rights and obligations provided in Section 3.12, Article V and Article VI; and (ii) those rights and obligations which shall have accrued prior to the termination of this Agreement.
- 9.10 Open Communication. Neither Group nor any Participating Professional will be prohibited from, or penalized by Payor and/or PHCS for, (i) communicating with patients regarding the appropriate treatment alternatives available to the patient; or (ii) protesting or expressing disagreement with a utilization management determination or utilization management policy of Payor and/or PHCS. In addition, neither Payor nor PHCS will penalize the Group or any Participating Professional if the Group or Participating Professional, in good faith, reports to state or federal authorities any act or practice by the Payor and/or PHCS that jeopardizes a patient's health or welfare.

EXHIBIT A
PARTICIPATING PROFESSIONAL GROUP REIMBURSEMENT
PREFERRED PAYMENT RATES

PREFERRED PROVIDER ORGANIZATION ("PPO") PREFERRED PAYMENT RATES:

For Covered Care rendered to Covered Individuals covered under a Preferred Provider Organization Contract, the Preferred Payment Rate will be the lesser of:

- 1) The maximum *PPO Reimbursement Schedule fee for the particular service as determined by PHCS, or
- 2) the Group's regular billing rates,

less any deductible, co-payment, encounter fee or co-insurance amount as specified in the Covered Individual's Contract.

In the event that Group does not participate in the PHCS Open Access network, Group and/or each Participating Professional will accept the PPO Preferred Payment Rate specified in this Exhibit A for Covered Care rendered to Covered Individuals covered under an Open Access Contract. Group and/or each Participating Professional will comply with the billing requirements specified in Section 7.3 of this Agreement.

*For codes included on the PPO Reimbursement Schedule that do not have a specific fee assigned, including Anesthesiology, the PPO Preferred Payment Rate will be the lesser of (i) 90% of the Group's regular billing rates, or (ii) 90% of usual and customary charges as determined by the Payor.

OPEN ACCESS ("OPEN ACCESS") PREFERRED PAYMENT RATES:

For Covered Care rendered to Covered Individuals covered under an Open Access Contract, the Preferred Payment Rate will be the lesser of:

- 1) The maximum *Open Access Reimbursement Schedule fee for the particular service as determined by PHCS, or
- 2) the Group's regular billing rates,

less any deductible, co-payment, encounter fee or co-insurance amount as specified in the Covered Individual's Contract.

*For codes included on the Open Access Reimbursement Schedule that do not have a specific fee assigned, including Anesthesiology, the Open Access Preferred Payment Rate will be the lesser of (i) 80% of the Group's regular billing rates, or (ii) 80% of usual and customary charges as determined by the Payor.

EXHIBIT B
PRODUCT SPECIFIC REQUIREMENTS

The product specific requirements are included in the administrative handbook(s) except for those product specific requirements stated below:

There are currently no product specific requirements other than those contained in the administrative handbook(s).

EXHIBIT C

COORDINATING PROVISIONS-STATE/FEDERAL LAWS AND ACCREDITATION STANDARDS

The terms and conditions specified in the PHCS Participating Professional Group Agreement are further subject to the state/federal laws and accreditation standards coordinating provisions set forth herein:

FEDERAL LAW COORDINATING PROVISIONS:

Federal Employees Health Benefits ("FEHB"). As applicable, this Agreement is subject to the terms of the laws governing FEHB.

1. Federal Employees Health Benefits ("FEHB") Plan. The parties agree that any and all claims or disputes relating to such benefits under a FEHB Plan will be governed exclusively by the terms of such federal government contract and federal law, whether or not such terms and laws are specified in this Exhibit C or elsewhere in this Agreement.

STATE LAW COORDINATING PROVISIONS:

For any PHCS Participating Professional Group Agreement involving the delivery of Covered Care in the State of Texas, the following shall apply:

1. As required by 3-70-2(B), Texas Insurance Code, delete Section 1.4 in its entirety and replace with the following Section 1.4:

- 1.4 Participating Professional means a licensed, registered, or certified health care professional (i) who is an employee, member or partner of, or has contracted with, Group, (ii) who PHCS has determined, in its sole discretion, satisfies applicable credentialing criteria; and (iii) who agrees to provide Covered Care to Covered Individuals within the scope of his or her applicable license, registration, certification, and privileges, and pursuant to this Agreement.

In addition, for purposes of this Agreement, the term Participating Professional shall also mean the following:

- a. Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";
- b. Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";
- c. Doctor of Dentistry: One licensed by the State Board of Dental Examiner;
- d. Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;
- e. Doctor of Optometry: One licensed by the Texas State Board of Examiners in Optometry;
- f. Doctor of Podiatry: One licensed by the Texas State Board of Podiatric Medical Examiners;
- g. Audiologist: One with a Masters or Doctorate Degree in Audiology from an accredited college or university and who is certified by the American Speech-Language and Hearing Association;
- h. Speech-Language Pathologists: One with a Masters or Doctorate Degree in Speech Pathology or Speech-Language Pathology from an accredited college or university and who is certified by the American Speech-Language and hearing Association; and
- i. Doctor of Psychology: One licensed by the Texas State Board of Examiners of Psychologists and certified as a Health Service Provider.

EXHIBIT C
COORDINATING PROVISIONS-STATE/FEDERAL LAWS AND ACCREDITATION STANDARDS

STATE LAW COORDINATING PROVISIONS Continued

2. As required by Art. 3-70-3C, Texas Insurance Code, Section 4, delete Section 3.4 in its entirety and replace with the following Section 3.4:

3.4 Continuing Obligations. Upon termination of this Agreement for any reason:

- (a) Group and each Participating Professional will remain responsible for any obligations or liabilities arising prior to the effective date of termination;
- (b) Group and each Participating Professional will continue to provide health care services to Covered Individuals with Special Circumstances who are receiving treatment on the effective date of termination: (i) for a period of at least ninety (90) days; (ii) for a period of nine (9) months in the case of Covered Individuals diagnosed with a terminal illness at the time of termination; or (iii) throughout the pregnancy when the termination occurred after the Covered Individual's twenty-fourth (24th) week of pregnancy and extending through delivery, immediate post-partum care, and the follow-up checkup within the first six (6) weeks of delivery. "Special Circumstances" shall mean a condition such that the Covered Individual's practitioner reasonably believes that discontinuing care by the practitioner could cause harm to the Covered Individual. Special Circumstances shall be identified by the treating physician or health care provider, which must request that the Covered Individual be permitted to continue treatment under the physician's or provider's care and agree not to seek payment from the Covered Individual of any amounts for which the Covered Individual would not be responsible if the Group were still a Preferred Provider. Special Circumstances may include, but is not limited to, disability, acute conditions, life threatening illness, or pregnancy past the twenty-fourth (24th) week;
- (c) Group and each Participating Professional will continue to provide health care services to Covered Individuals who do not have a Special Circumstance and who are receiving treatment on the effective date of termination: (i) until the course of treatment is completed; (ii) for a period of ninety (90) days or through the current period of active treatment for those Covered Individuals undergoing active treatment for a chronic or acute medical condition, whichever time period is shorter; or (iii) Group makes appropriate arrangements to transfer the Covered Individual to the care of another provider, making such transfer to a Preferred Provider whenever; and
- (d) Group and each Participating Professional will accept payment made pursuant to Article VII, as payment in full, for Covered Care rendered in accordance with this Section; and
- (e) Group and each Participating Professional will inform Covered Individuals seeking health care services that Group is no longer a Preferred Provider.
- (f) Group may, in the event of a dispute between the Group and the Payor concerning the necessity for continued treatment of a Covered Individual by the Group or any Participating Professional, request reconsideration of the decision not to approve the continued treatment by submitting a written request to PHCS, Regional Medical Director for the State of Texas, Parkwest C-3, 1501 LBJ FWY Dallas, TX 75234-6800.

3. As required by Art. 3-70-3C(3)(i) of Texas Code and 28 TAC Sec. 3703, delete Section 3.9 in its entirety and replace with the following Section 3.9:

3.9 PHCS Programs. Group and each Participating Professional will participate in and observe the protocols of the Payor's utilization management program. Group and each Participating Professional will participate in and observe the protocols of the PHCS programs described in the administrative handbook(s), as may be modified by PHCS from time to time, including, without limitation, the quality management and credentialing/recredentialing program(s). Any and all quality assessment activities conducted by PHCS will be performed through the use of a panel consisting of at least three (3) practitioners contracted with PHCS as part of the PHCS provider network.

EXHIBIT C
COORDINATING PROVISIONS-STATE/FEDERAL LAWS AND ACCREDITATION STANDARDS

STATE LAW COORDINATING PROVISIONS Continued

4. As required by Art. 3070-3C, Texas Insurance Code, Section 3(n), add the following paragraph in its entirety as Section 4.8 to the end of Article IV, Responsibilities of PHCS:

4.8 Doctors of Podiatry.

- (a) PHCS shall, upon request from a Participating Professional that is a Doctor of Podiatry ("Doctor of Podiatry") as defined in Section 1.4 of this Agreement, provide a copy of the coding guidelines and Preferred Payment Rates within thirty (30) days of such request; and
- (b) A Doctor of Podiatry may, practicing within the scope of the law regulating podiatry, furnish x-rays and nonprefabricated orthotics covered by the Covered Individual's Contract.

5. As required by 3-70-3C, Texas Insurance Code, Section 3(f), add the following paragraph in its entirety as new Section 6.3 to Article VI:

6.3 Internal Complaint Resolution Process. In the event of a complaint initiated by a Covered Individual or Group in connection with the services, duties, rights or obligations under this Agreement, the following initial procedures may be followed:

- (a) Write to PHCS Corporate Quality Management Department, 1100 Winter Street, Waltham, MA 02154 with the nature of the complaint. The complaint will be investigated by the Corporate Quality Management Department.
- (b) Where applicable, the complaint resolution process shall have a mechanism for reasonable due process which includes a physician panel in an advisory role. The panel shall be composed in accordance with applicable Texas law, as amended from time to time.
- (c) In the event the Group exhausts the procedures set forth in this section, and any controversy or claim arising out of this Agreement or breach thereof continues to exist, the Group shall follow the provisions set forth in Article VI of this Agreement.

6. As required by Art. 3-70-3C, Texas Insurance Code and 28 TAC § 21.2801 et. seq., Section 7.2 is deleted in its entirety and replaced with the following Section 7.2:

7.2 Payment for Covered Care. Following the receipt of a Clean Claim containing all necessary information, Payor will pay or arrange to pay Group for Covered Care, as full compensation, the Preferred Payment Rate in accordance with the Texas Insurance Code, Art. 3-70-3C and 28 TAC § 21.2801 et. seq. Clean Claim(s) are defined as those claims that contain:

- (a) all reasonably necessary information as defined under Article 3-70-3C;
- (b) any information of which Group has been notified in writing as necessary for processing in accordance with Texas Insurance Code, Art. 3-30-3C and 28 TAC § 21.2801 et. seq.; and
- (c) any coordination of benefits information.

7. As required by Art 3-70-3C, Texas Insurance Code, delete Section 7.4 in its entirety and replace it with the following Section 7.4:

EXHIBIT C
COORDINATING PROVISIONS-STATE/FEDERAL LAWS AND ACCREDITATION STANDARDS

STATE LAW COORDINATING PROVISIONS Continued

7.4 Modification of Preferred Payment Rates and Terms.

- (a) The Preferred Payment Rates and billing requirements may be modified by PHCS ("Modifications") upon at least ninety (90) days prior written notice to Group. The Modifications will take effect on the effective date specified in the written notice ("Rate Effective Date") unless Group gives written notice to PHCS, within thirty (30) days from the effective date of such notice, rejecting the Modifications. If Group rejects the Modifications, this Agreement will terminate effective on the Rate Effective Date unless PHCS provides written notice to Group withdrawing the Modifications; and
- (b) PHCS shall not unilaterally make material retroactive revisions to the coding guidelines and Preferred Payment Rates for any Doctor of Podiatry.

ACCREDITATION STANDARDS COORDINATING PROVISIONS:

There are no Accreditation Standards Coordinating Provisions at this time.

GEOGRAPHIC EXCEPTIONS:

For any PHCS Participating Group Agreement involving the delivery of health care services in the State of Texas, the following geographic exceptions shall apply:

- 1. Delete Section 8.1 in its entirety and replace it with the following new Section 8.1:
 - 8.1 Group Insurance. Group will maintain: (i) professional liability insurance at minimum levels of at least \$200,000 per occurrence and \$600,000 in the aggregate; and (ii) comprehensive general liability insurance at minimum levels of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- 2. Delete Section 8.2 in its entirety and replace it with the following new Section 8.2:
 - 8.2 Participating Professional Insurance. Group will maintain, or ensure that each Participating Professional maintains: (i) professional liability insurance at minimum levels of \$200,000 per occurrence and \$600,000 in the aggregate for each individual Participating Professional; and (ii) comprehensive general liability insurance at minimum levels of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate to cover each individual Participating Professional.

EXHIBIT D
AMENDMENTS TO THE PHCS PARTICIPATING PROFESSIONAL GROUP AGREEMENT

The terms and conditions specified in the PHCS Participating Professional Group Agreement are further subject to the amendments set forth herein:

1. Delete Section 3.7 in its entirety and replace with the following:

- 3.7 Notice of Actions. Group will send written notice to PHCS within ten (10) days of becoming aware of the following:
- (a) any final legal, governmental, professional, or other action consummated against Group or any Participating Professional, even if such action is being appealed, including, but not limited to, actions related to each of the following:
 - (i) the reduction in, or cancellation of, general and/or professional liability insurance;
 - (ii) the termination, probation, suspension, or any other sanction or action taken by any state or federal government in connection with any Contract, government sponsored health benefit program, or other health benefit plan for any reason, including, without limitation, for billing fraud or abuse;
 - (iii) the termination, probation, suspension, or any other sanction or action taken by a regulatory authority in connection with any license, registration, or certification held by Group or any Participating Professional; and
 - (iv) any termination, probation, suspension or any other disciplinary action taken by a health care facility in connection with a Participating Professional's staff privileges.
 - (b) any action initiated or consummated against the Group or any Participating Professional including, without limitation, actions related to each of the following:
 - (i) indictment, arrest, or conviction for any felony or any criminal charge; and
 - (ii) the (1) insolvency of Group or any Participating Professional; (2) general assignment for the benefit of creditors by Group or any Participating Professional; (3) subjection of Group or any Participating Professional to any proceedings under the Federal Bankruptcy Act or any state statute relating to insolvency or the protection of rights of creditors; or (4) appointment of a receiver for Group's or any Participating Professional's business or assets.

Any notice required pursuant to this Section will be provided in accordance with the notice requirements specified in Section 9.8 of this Agreement, except that the address and agent to receive notice shall be as follows: Credentialing Coordinator to the Medical Director, Private Healthcare Systems, Inc., 1100 Winter Street, Waltham MA 02451.

2. Delete Section 3.8 in its entirety and replace with the following:

- 3.8 Product Participation and Requirements. This Agreement may contain references to each of the products offered by PHCS. Those products in which Group participates are listed on page one (1) of this agreement. Upon written notice to Group, PHCS will, in its sole discretion, designate those individual product(s) for which the Group participates as part of the PHCS provider network. Group and each Participating Professional will cooperate and comply with the product specific requirements applicable to Group and each Participating Professional contained in Exhibit B and/or described in the administrative handbook(s). PHCS may, in its sole discretion, modify Exhibit B and/or the administrative handbook(s).

EXHIBIT D
AMENDMENTS TO THE PHCS PARTICIPATING PROFESSIONAL GROUP AGREEMENT

3. Delete Section 3.11 in its entirety and replace with the following:

- 3.11 Access. Group will use reasonable efforts to accept all Covered Individuals for treatment in accordance with all terms and conditions of this Agreement. Group will ensure that medical and health care services are available to Covered Individuals 24 hours a day, 7 days a week. Group will use best efforts to provide at least ninety (90) days prior written notice to PHCS whenever Group or any Participating Professional (i) closes or limits their respective practice; and (ii) re-opens or removes any limitation on a closed or limited practice.

4. Delete Section 7.1 in its entirety and replace with the following:

- 7.1 Submission of Claims. Group will submit claims for payment within ninety (90) days of furnishing health care services. Group will follow the claims submission procedures contained in the administrative handbook(s).