

Agreement # \_\_\_\_\_

Service PO # \_\_\_\_\_

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF HUMAN SERVICES  
DIVISION OF LONG TERM SERVICES AND SUPPORTS**

Purchase of Services Agreement  
Between

State of South Dakota  
Department of Human Services  
Division of Long Term Services and Supports  
Hillsview Plaza, East Highway 34  
c/o 500 East Capitol  
Pierre SD 57501-5070

\_\_\_\_\_  
Referred to as Provider

\_\_\_\_\_  
Referred to as State

1. This is a vendor-type contractual agreement for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

2. DESCRIPTIONS, METHODS AND LOCATIONS OF SERVICES:

A. This agreement is made for the purpose of providing assisted living services.

Refer to Attachment 1 – Assisted Living Provider Provisions for services being provided. The Care Plan (Form 678E) is incorporated within this Agreement as Attachment 2.

B. Does this Agreement involve Protected Health Information (PHI)? YES (X) NO ( )  
If PHI is involved, a Business Associate Agreement is attached and is fully incorporated herein as part of the Agreement (see Appendix A).

3. PERIOD OF PERFORMANCE:

This agreement shall be effective as of \_\_\_\_\_ and shall end on \_\_\_\_\_,  
unless sooner terminated pursuant to the terms hereof.

4. BASIS OF AGREEMENT AMOUNTS:

Room and Board will be collected for the consumer by the Assisted Living Center. The State agrees to reimburse the Provider based on the current fee schedule. The current fee schedule is posted at: <https://dhs.sd.gov/ltss/ltssproviders.aspx>.

Provider agrees to submit the Assisted Living Cost Report as outlined by the Department of Human Services within 150 days following the provider's fiscal year end.

This Agreement has no TOTAL AGREEMENT AMOUNT.

5. METHOD AND SOURCE OF PROVIDER PAYMENT:

Provider agrees to submit a completed claim form within six months following the month the service was provided. This time limit may be waived or extended only if one or more of the following situations exist: 1) the claim is an adjustment or void of a previously paid claim and is received within three months after the previously paid claim; 2) the claim is received within six months after a retroactive initial eligibility determination was made as a result of an appeal; 3) the claim is received within three months after a previously denied claim; 4) the claim is received within six months after the provider receives payment from Medicare or private health insurance or receives a notice of denial from Medicare or private health insurance; or 5) to correct an error made by the Department.

6. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Human Services' rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

7. LICENSING AND STANDARD COMPLIANCE:

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

8. ASSURANCE REQUIREMENTS:

The Provider agrees to abide by all applicable provisions of the following assurances: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180) , Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973 as amended, Title

IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcohol Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013, and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provisions of any other nondiscrimination statute (s) which may apply to the award.

9. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State, if during the term of this Agreement, the Provider or its principals become subject to debarment, suspension, proposed for debarment, or declared ineligible from participating in transactions by the federal government, or by any state or local government department or agency.

10. OFFICE OF INSPECTOR GENERAL EXCLUSIONARY LIST REQUIREMENTS:

Providers, who utilize federal Medicaid or Medicare funds, agree to screen all employees and contractors, prior to hiring or contracting and on a regular basis, to determine whether any of them are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities. Provider shall maintain documentation to support the screenings were performed and shall immediately report to DHS all cases in which employees are found on the exclusionary list. Provider understands that no payment shall be made for any goods or services furnished, ordered, or prescribed by an excluded individual or entity and any payment made for services provided by excluded parties will be recouped; and recoupment may include penalties.

11. RETENTION AND INSPECTION OF RECORDS:

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for six years following termination of the agreement. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this agreement.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Provider.

All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this agreement will become the sole property of the State. The State hereby grants the Provider the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of the Provider's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to the State, of all technical data, evaluations, reports and other work product of the Provider shall be delivered to the State upon completion or termination of services under this agreement.

12. TERMINATION:

This agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. On termination of this agreement all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

13. FUNDING:

This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reduction, this agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

14. AMENDMENTS:

This agreement may not be assigned without the express prior written consent of the State. This agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

15. CONTROLLING LAW:

This agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**16. SUPERCESSION:**

All other prior discussions, communications and representations concerning the subject matter of this agreement are superseded by the terms of this agreement, and except as specifically provided herein, this agreement constitutes the entire agreement with respect to the subject matter hereof.

**17. SEVERABILITY:**

In the event that any provision of this agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**18. NOTICE:**

Any notice or other communication required under this agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

**19. SUBCONTRACTOR:**

Provider may not use subcontractors to perform the services described herein without the express prior written consent of the State. Provider will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this agreement, to indemnify the State, and to have insurance coverage in a manner consistent with this agreement. Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

**20. HOLD HARMLESS:**

The Provider agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Provider to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

**21. INSURANCE:**

Before beginning work under this agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this

agreement and which provide that such insurance may not be canceled except on 30 days prior written notice to the State. Provider shall furnish copies of insurance policies if requested by the State.

a. Commercial General Liability Insurance:

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$ 1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit.

b. Business Automobile Liability Insurance:

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$ 500,000.00 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

c. Workers' Compensation Insurance:

Provider shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

d. Professional Liability Insurance:

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$ 1,000,000.00.

22. REPORTING:

Provider agrees to immediately report to the Department any event or incident encountered in the course of performance of this agreement which results in injury to any person or property, or which may otherwise subject Provider, or the State of South Dakota or its officers, agents or employees to liability. Provider shall report any such event to the State immediately upon discovery.

Provider's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law.

Provider's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law. Reporting to the State under this section shall not excuse or satisfy any obligation of Provider to report any event to law enforcement or other entities under the requirements of any applicable law.

23. CONFLICT OF INTEREST:

Provider agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of

interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

24. RESTRICTION OF BOYCOTT OF ISRAEL:

Pursuant Executive Order 2020-01, for providers with five (5) or more employees who enter into an agreement with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement the Provider certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this agreement. The Provider further agrees to provide immediate written notice to the State if during the term of the agreement it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

25. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Provider by the State. Provider acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Provider shall not: (i) disclose any State Proprietary information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Provider is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Provider shall protect confidentiality of the State's Information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Provider; (ii) was known to Provider without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of the State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider without the benefit of influence of the State's information; (v) becomes known to provider without restriction from a source not connected to the State of South Dakota. State's proprietary Information

shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Provider understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by 1-27-1.6, SDCL 1-36A-27, SDCL 27B-7-30, SDCL 27B-8-46, SDCL 27B-8-47, SDCL 27B-8-48, and SDCL 27B-8-49, as applicable, federal regulation and agrees to immediately notify the State of the information disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the agreement except as required by applicable law or as necessary to carry out the terms of the agreement or to enforce that party's rights under this agreement. Provider acknowledges that the state and its agencies are public entities and thus bound by the South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including but not limited to posting this Agreement on the State's website. If work assignments performed in the course of this agreement require additional security requirements or clearance, the Provider will be required to undergo investigation.

Provider acknowledges that the State shares general information, including performance information, about Provider among and between other State agencies upon request of such agencies for the purpose of making determinations of the risk involved with potential, subsequent awards and for other purposes. Provider expressly consents and agrees to such uses by the State.

## 26. AUDIT REQUIREMENTS:

If the total of all Department of Human Service funding is greater than \$750,000 during the Provider's fiscal year, the Provider agrees to submit to the State a copy of an annual entity-wide, independent financial audit. The audit shall be completed and filed with the Department of Human Services by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. The audit should be sent to:

Department of Human Services  
Provider Reimbursements and Grants  
3800 East Highway 34  
c/o 500 East Capitol  
Pierre, SD 57501

If federal funds of \$750,000 or more have been received by the Provider the audit shall be conducted in accordance with OMB Uniform Guidance 2 CFR Chapter I, Chapter II, Part 200, et al Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited or 30 days after receipt



of the Auditor's report, whichever is earlier. For a Uniform Guidance audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit  
427 South Chapelle  
% 500 East Capitol  
Pierre, SD 57501-5070

For either an entity-wide, independent financial audit or a Uniform Guidance audit, the Provider assures resolution of all interim audit findings. The Provider shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its' contractor(s)/subrecipient(s) may perform.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely satisfied.

27. AUTHORIZED SIGNATURES: In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____	_____
Provider Signature	Date
_____	_____
State - DHS Division Director	Date
_____	_____
State - DHS Office of Budget and Finance	Date
_____	_____
State - Office of the Secretary	Date

This template is approved as to form:

/s/Carole J. Boos 01/24/2020  
Special Assistant Attorney General

Final agreement reviewed and recommendations made to Secretary.

Do sign recommendation: \_\_\_\_\_

Contract Description Code

State Agency Coding: \_\_\_\_\_

CFDA Number 93.778 \_\_\_\_\_

Company	<u>2003</u>	<u>1000</u>	_____	_____
Account	<u>52065000</u>	<u>52065000</u>	_____	_____
Center Req	<u>1920400</u>	<u>1920400</u>	_____	_____
Center User	<u>J0208</u>	<u>J0208</u>	_____	_____
Dollar Total	_____	_____	_____	_____
SVC PO Code	<u>3408</u>	<u>3407</u>	_____	_____

Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____
SVC PO Code	_____	_____	_____	_____

Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____
SVC PO Code	_____	_____	_____	_____

DHS Program Contact Person Leslie Lowe  
Phone (605) 773-6604

DHS Fiscal Contact Person Alan Fickbohm  
Phone (605) 773-5990

Provider Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

Provider Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

Agreement# \_\_\_\_\_  
PO# \_\_\_\_\_  
Vendor # \_\_\_\_\_  
Group \_\_\_\_\_

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## Appendix A HIPAA Business Associate Agreement

### A. Definitions of Terms

1. Agreement means the agreement to which this Business Associate Agreement is attached to including this attachment entitled HIPAA Business Associate Agreement.

2. Business Associate shall have the meaning given to such term in 45 C.F.R. section 160.103 and 42 U.S.C. section 17938, and in reference to the party of this agreement, shall mean the Provider, Consultant, or other entity contracting with the State of South Dakota, Department of Human Services as set forth more fully in the Agreement this Business Associate Agreement is attached.

3. C.F.R. shall mean the Code of Federal Regulations.

4. Department shall mean South Dakota Department of Human Services

5. Designated Record Set shall have the meaning given to such term in 45 C.F.R. section 164.501.

6. Covered Entity shall have the meaning given to such term in 45 C.F.R. section 160.103, and in reference to the party to this agreement, shall mean South Dakota Department of Human Services.

7. Protected Health Information or PHI shall have the meaning given to such term in 45 C.F.R. section 164.103 and section 164.501, and is limited to the Protected Health Information received from, or received or created on behalf of Covered Entity by Business Associate pursuant to performance of the Services under the Agreement.

8. Regulations shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and 164, Subparts A and C, 45 CFR 164.314, and as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) §§ 13400-13424, 42 U.S.C. §§ 17921-17954 (2009) as it directly applies, as in effect on the date of this Business Associate Agreement.

### B. Obligations of the Business Associate.

1. Security Safeguards. The Business Associate shall implement a documented information security program that includes administrative, technical and physical safeguards designed to prevent the accidental or otherwise unauthorized use or disclosure of PHI, and that reasonably protect the confidentiality, integrity, and availability

of any electronic Protected Health Information that it creates, receives, maintains or transmits to or on behalf of Covered Entity as required by the Regulations. The Business Associate agrees to comply with the requirements of the Privacy and Security Rules directly applicable to Business Associates including the HITECH Act.

2. Affiliates, Agents, Subsidiaries and Sub-Contractors. The Business Associate shall require that any agents, employees, affiliates, subsidiaries or sub-contractors, to whom it provides PHI received from, or created or received by the Business Associate on behalf of the Department agree in writing to the same use and disclosure restrictions imposed on the Business Associate by this Agreement.

3. Reporting and Mitigating Unauthorized Uses and Disclosures of PHI. Immediately upon notice to the Business Associate, the Business Associate shall report to the Department any uses or disclosures of PHI not authorized by this Agreement. The Business Associate shall also notify the affected individual of the breach. If the breach affects more than 500 individuals, the Business Associate must contact the U.S. Health and Human Services Secretary and the media, under the American Recovery and Reinvestment Act of 2009. The Business Associate shall use its best efforts to mitigate the deleterious effects of any use or disclosure of PHI not authorized by this Agreement. Further, in the notice provided to the Department by the Business Associate regarding unauthorized uses and/or disclosures of PHI, the Business Associate shall describe the remedial or other actions undertaken or proposed to be undertaken regarding the unauthorized use or disclosure of PHI.

4. Permitted Uses and Disclosures. The Business Associate may not use or disclose PHI received or created pursuant to this Agreement except as follows:

(a) The Business Associate's Operations – Permitted Uses of PHI. The Business Associate may use the PHI it receives in its capacity for the proper management and administration of the Business Associate or to carry out the Business Associate's legal responsibilities.

(b) The Business Associate's Operations – Permitted Disclosures of PHI. The Business Associate may disclose the PHI it obtains in its capacity as a Business Associate if such disclosure is necessary for the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, and:

(i) The disclosure is required by law; or

(ii) The Business Associate obtains reasonable assurances from the person or entity to whom the PHI is disclosed that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person or entity notifies the Business Associate (and the Business Associate in turn notifies the Department) of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5. Disclosure Accounting. In the event that the Business Associate makes any disclosures of PHI related to the business associate function under this Agreement that are subject to the accounting requirements of 45 C.F.R. section 164.528, the Business Associate promptly shall maintain a record of each disclosure, including the date of the disclosure, the name and if available, the address of the recipient of the PHI, a brief description of the PHI disclosed and a brief description of the purpose of the disclosure. The Business Associate shall maintain this record for a period of six (6) years and make available to the Department upon request in an electronic format so that the Department may meet its disclosure accounting obligations under 45 C.F.R. section 164.528.

6. Access to PHI by Individuals. The Business Associate shall cooperate with the Department to fulfill all requests by individuals for access to the individual's PHI that are approved by the Department. The Business Associate shall cooperate with the Department in all respects necessary for the Department to comply with 45 C.F.R. section 164.524. If the Business Associate receives a request from an individual for access to PHI that affects funding eligibility, the Business Associate immediately shall forward such request to the Department within (10) business days. The Department shall be solely responsible for determining the scope of PHI and Designated Record Set to be released with respect to each request by an individual to access or obtain copies of the individual's PHI covered by this Agreement and in accordance with C.F.R. 164.524. The Business Associate shall make the PHI available in the format requested by the individual and approved by the Department, unless the PHI is not readily producible in such format, in which case the PHI shall be produced in hard copy format.

7. Access by the Department to the Business Associate's Books and Records. The Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Department available to the Department and the Secretary of the Department of Health and Human Services for purposes of determining the Department's compliance with the HIPAA laws and regulations. Upon reasonable notice to the Business Associate and during the Business Associate's normal business hours, the Business Associate shall make such internal practices, books and records available to the Department to inspect for purposes of determining compliance with this Agreement.

8. Amendment of PHI. As directed and in accordance with the time frames specified by the Department, the Business Associate shall incorporate all amendments to PHI received from the Department. The Business Associate shall provide written notice to the Department within ten (10) business days confirming that the Business Associate has made the amendments to PHI as directed by the Department. This confirmation shall also contain any other information that may be necessary for the Department to provide adequate notice to the individual in accordance with 45 C.F.R., section 164.526. The Department warrants that all time frames specified will be made in good faith and reasonable length so that the Business Associate can comply with the timeframe.

### C. Obligations of the Department

1. The Department shall notify Business Associate of any limitation(s) in its notice of privacy practices of the Department in accordance with 45 CFR 164.520 to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

2. The Department shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI to the extent that such changes may affect Business Associates use or disclosure of PHI.

3. The Department shall notify Business Associate of any restriction to use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR 164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

D. Term and Termination.

1. Term. The term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner

2. Termination by Breach. The Department may immediately terminate the primary Agreement this Business Associate Agreement is attached to if the Business Associate has breached a material term of this Business Associate Agreement. Alternatively, the department may choose to

(i) provide Business Associate with five (5) days written notice of the existence of an alleged material breach; and

(ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Department within five (5) days.

Business Associate's failure to cure shall be grounds for immediate termination of the primary Agreement to which the Business Associate Agreement is attached. Department's remedies under this Agreement are cumulative, and the exercise of any remedy shall not preclude the exercise of any other. However, in the event that the Department determines that termination of the Agreement is not feasible, the Department shall have the right to report the breach to the Secretary of the Department of Health and Human Services, notwithstanding any other provisions of this Agreement to the contrary.

3. Effects of Termination; Disposal of PHI. Upon termination of the primary Agreement to which this Business Associate Agreement is attached, the Business Associate shall recover all PHI that is in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors. The Business Associate shall return to the Department or destroy all PHI that the Business Associate obtained or maintained pursuant to this Agreement on behalf of the Department. If the parties agree at that time that the return or destruction of PHI is not feasible, the Business Associate shall extend



the protections provided under this Agreement to such PHI, and limit further use or disclosure of the PHI to those purposes that make the return or destruction of the PHI infeasible. If the parties agree at the time of termination of this Agreement that it is infeasible for the Business Associate to recover all PHI in the possession of the Business Associate's agents, affiliates, subsidiaries or sub-contractors, the Business Associate shall provide written notice to the Department regarding the nature of the unfeasibility and the Business Associate shall require that its agents, affiliates, subsidiaries and sub-contractors agree to the extension of all protections, limitations and restrictions required of the Business Associate hereunder.

E. Miscellaneous.

1. The Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by the Business Associate with this Agreement, HIPAA or the HIPAA regulations will be adequate or satisfactory for the Business Associate's own purposes or that any information in the Business Associate's possession or control, or transmitted or received by the Business Associate, is or will be secure from unauthorized use or disclosure. The Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

2. Change in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, the Department shall notify the Business Associate of any actions it reasonably deems are necessary to comply with such changes, and the Business Associate promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation or any such law, rule, regulation or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Business Associate may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.

3. Assignment/Subcontracting. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns. The Business Associate may not assign or subcontract the rights or obligations under this Agreement without the express written consent of the Department. The Department may assign its rights and obligations under this Agreement to any successor or affiliated entity.

4. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Assistance in Litigation or Administrative Proceedings. The Business Associate shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Business Associate in the fulfillment of its obligations under this Agreement, available to the Department, at no cost to the Department, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Department, its directors, officers, or employees, except where the Business Associate or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

The Department shall make itself and any agents, affiliates, subsidiaries, sub-contractors or employees assisting the Department in the fulfillment of its obligations under this Agreement, available to the Business Associate, at no cost to the Business Associate, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings resulting from the performance of this Agreement being commenced against the Business Associate, its directors, officers, or employees, except where the Department or its agents, affiliates, subsidiaries, sub-contractors or employees are a named adverse party.

6. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA rules.

7. Conflicts. In the event of a conflict in between the terms of this Business Associate Agreement and the primary Agreement to which Business Associate Agreement is attached, the terms of this Business Associate Agreement shall prevail to the extent such an interpretation ensures compliance with the HIPAA Rules.

## **ATTACHMENT 1**

### **ASSISTED LIVING PROVIDER PROVISIONS**

**A 1.1 PURPOSE:** The South Dakota Department of Human Services, (DHS) Division of Long Term Services and Supports (State) provides home and community-based service options to individuals 65 years of age and older and 18 years of age and older with disabilities. State services enable these South Dakotans to live independent, meaningful lives while maintaining close family and community ties. State provides home and community-based services sufficient in type, scope, amount, duration, and frequency, as specified in the Long Term Services and Supports Care Plan/Service Plan (LTSS Care Plan; see Provision B 2.2), to prevent or delay premature or inappropriate institutionalization.

State consumers are given information on available home and community-based services and have the right to choose between receiving services in his/her home and community or receiving services in a nursing facility. When a consumer chooses an Assisted Living setting to receive services, a partnership between the State and the Assisted Living Provider is developed to ensure the health, safety, and welfare of the consumer.

**A 1.2 PROVISION:** In addition to the requirements outlined in the SD Medicaid Provider Agreement, the Provider agrees to the following:

**A 1.3 RULES AND REGULATIONS:** The Provider shall comply with all Administrative Rules of South Dakota (ARSD) and South Dakota Codified Laws (SDCL) relative to the services provided. The Provider agrees to comply in full with all licensing requirements and other standards required by federal, state, county, city or tribal statute, regulation or ordinance in which the service and/or care is provided. Liability resulting from noncompliance with licensing and other standards required by federal, state, county, city or tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all consumers served is assumed entirely by the Provider. Medicaid rules and regulations supersede all Assisted Living policies and procedures.

**A 1.4 INTERPRETERS:** The State will utilize DHS approved interpreters, at State expense, whenever necessary for communication between the LTSS Specialist and the consumer. Interpreter services are authorized by the LTSS Specialist. The consumer must choose an approved LTSS Interpreter Agency, and the LTSS Specialist and Provider will cooperatively arrange for interpreter services as necessary for service provision.

**A 1.5 VERIFICATION AND DOCUMENTATION:** The Provider is required to maintain documentation and verification demonstrating compliance with this Agreement. This documentation must be readily available upon request.

**A 1.6 REIMBURSEMENT:** The rate(s) for services are specified in the HOPE Waiver Fee Schedule located at <http://dhs.sd.gov/ltss/ltssproviders.aspx>. All services authorized and delivered by the Provider to eligible consumers will be reimbursed at stated rates. The HOPE Waiver reimbursement rates are updated in July of each year. The Room and Board portion of the rate is adjusted in January of each year, based on the Cost of Living Adjustment (COLA). Notification of reimbursement rate adjustments is provided when these updates occur.

Approved claim forms, including all required information (e.g. Provider's National Provider Identifier, consumer's primary diagnosis code, etc.) will be submitted by the Provider to the State for payment of services authorized and provided.

The Provider may only bill for services acknowledged in Therap and delivered by the Provider.

The State will not reimburse or otherwise be made liable for purchases or transactions made by the Provider on behalf of the consumer.

To be reimbursed at the established rate, the consumer must be physically present in the Assisted Living Center and must be receiving the assisted living service, except in the following situations:

Hospital reserve bed days: An Assisted Living Center may bill SD Medicaid for a maximum of five consecutive days when a recipient is admitted to an inpatient hospital stay. Up to five consecutive days may be billed to SD Medicaid per hospitalization; however, the recipient must return to the Assisted Living Center for a minimum of 24 hours before additional hospital reserve bed days will be paid. When a consumer is transferred from an Assisted Living Center to a hospital, it is expected that the Provider will accept the consumer back at the Assisted Living Center at the time of hospital discharge.

Therapeutic leave days: An Assisted Living Center may bill SD Medicaid for a maximum of five therapeutic leave days per month. Therapeutic leave days may be consecutive or non-consecutive. Therapeutic leave days are leave days from the Assisted Living Center for non-medical reasons (e.g., visits to the homes of family or friends).

The State's reimbursement for services rendered shall be considered payment in full. Except for the cost-share for waiver services, the Provider may not bill the consumer for any additional fees. The Provider will be advised of the consumer's cost-share, if any, and will be responsible for collecting the cost-share from the consumer.

### **STANDARD PROGRAM DEFINITIONS**

**B 2.1 "Assisted Living Services"** include personal care and supportive services that are furnished to eligible consumer(s) who reside in a homelike, non-institutional setting

that includes 24-hour on-site response capability to meet scheduled or unpredictable consumer(s) needs and to provide supervision, safety and security. Services shall support full access to the greater community of consumers receiving Medicaid home and community-based services to the same degree of access as individuals not receiving Medicaid home and community-based services. The assisted living location promotes the health, treatment, comfort, safety, and well-being of consumer(s), with easy accessibility for visitors and others. Services also include social and recreational programming, and medication assistance (to the extent permitted under state law). Services that are provided by third parties must be coordinated with the Assisted Living Provider and the Long Term Services and Supports Specialist (LTSS Specialist).

Nursing and skilled therapy services are incidental rather than integral to the provision of assisted living services. Payment is not made for 24-hour skilled care. Federal financial participation is not available for room and board, items of comfort or convenience, or the costs of facility maintenance, upkeep and improvement.

The following waiver services cannot be billed separately: homemaker; personal care, respite care, emergency response service, meals, environmental accessibility adaptations, and chore services.

Adult companion services, adult day services, nursing, nutritional supplements, specialized medical equipment, and specialized medical supplies may be authorized by the LTSS Specialist, based on assessed need as identified in the LTSS Care Plan with a threshold equal to the average cost of nursing home care. When these additional services are authorized by the LTSS Specialist, the services/supplies must be provided by a third party that is enrolled as a HOPE Waiver Medicaid Provider.

**B 2.2 “Critical Service Need Consumer”**, is a consumer who needs service(s) (i.e., oxygen, injection, medication, wound care, therapy) provided on each assigned day without disruption, or without such service(s) the consumer’s health condition would decline. The LTSS Specialist will communicate with the Provider (through the LTSS Care Plan) when a consumer has been identified as a Critical Service Need Consumer. When a Critical Service Need Consumer is identified, the LTSS Specialist is responsible to work with the consumer and the Provider to develop a back-up plan for service provision during an emergency. The LTSS Specialist assists the consumer to identify any services that will be needed during an emergency.

The Provider must notify LTSS Specialist whenever a change in the Consumer Occurs and/or a modification may be necessary. The Provider is required to provide input and participate in the development of the initial and ongoing LTSS Care Plan.

**B 2.3 “Eligible Consumer”** is any person in need of services who has been determined eligible by DHS. State will provide on-going Case Management for each consumer. Case Management will include reassessing the consumer’s needs and eligibility at least

annually, facilitating the development of the LTSS Care Plan, convening annual and as-needed person-centered planning meetings to develop and approve changes to the LTSS Care Plan, authorizing additional services by the Provider and/or third parties, and resolving any consumer concerns and other consumer-related issues.

**B 2.4 “LTSS Care Plan/Service Plan”** is a written person-centered plan developed by the LTSS Specialist with a consumer, as well as any individuals the consumer chooses, and must be finalized and agreed to, with the informed consent of the consumer in writing, and signed by all individuals and providers responsible for its implementation. The LTSS Care Plan (Attachment 2) reflects the services and supports that are important for the individual to meet the needs identified through an assessment of need, as well as what is important to the individual with regards to preferences for the delivery of such services and supports. If a consumer needs special supports or modifications based upon an assessed health and safety need, it must be identified within the LTSS Care Plan. Any modification of the federal regulations for the HCBS Settings Final Rule, as described at CFR 42 § 441.710(a)(1)(vi), must be individualized and addressed in the LTSS Care Plan. If a provider is implementing any modification(s) to any of these federal home and community-based settings requirements, the modification(s) must be discussed with the LTSS Specialist and documented in the LTSS Care Plan.

The Provider must notify the LTSS Specialist whenever a change in the consumer occurs and/or a modification may be necessary. The Provider is expected to provide input and participate i

**B 2.5 “Therap”** is the online case management documenting and billing software.

**B 2.6 “Therap Pre Auth”** is the electronic document in Therap which details the services authorized for the consumer. The “Therap Pre Auth” must be acknowledged by the Provider within 7 business days of receipt. Failure to acknowledge the “Therap Pre Auth” within the designated time frame may negatively affect reimbursement for services provided. Any permanent change to the “Therap Pre Auth” must be reviewed and authorized by the State

## **PROGRAM REQUIREMENTS**

**C 3.1** The Provider must conduct fingerprint background checks to screen for abuse, neglect, and exploitation for all employees that provide direct services or supports. The Provider may request the State’s approval for an alternative background check by completing and submitting a “Provider Request for Approval of Alternative Background Check”, along with a description of the alternative background check (produced by the company that process the background checks). To receive approval, the alternative background check results for employees hired by the Provider must be readily accessible to the State upon request and the description of the alternative background check must include verification that the following threshold criteria are met:

- The alternative background check verifies the identity of the individual hired utilizing at least two unique types of identification (must include a government issued photo ID and an additional document that meets I-9 standards)
- The alternative background check identifies the criminal history of the individual hired
- The alternative background check creates a report of the criminal history of the individual hired which is readily accessible to the provider

An employee hired to provide direct services or supports to consumers residing in an Assisted Living Center must meet the following minimum standards:

1. Be 18 years of age or older.
2. Be employed by an enrolled Medicaid Provider.
3. Pass a State fingerprint (or State approved) background check.
  - a. The following are a list of fitness criteria that would either automatically preclude a Personal Care Attendant from being hired, or would be reviewed further to determine situational conditions and whether enrollment should be allowed:
    - i. A crime of violence as defined by SDCL 22-1-2 or a similar statute from another state;
    - ii. A sex crime pursuant to SDCL chapters 22-22 or 22-24A or SDCL 22-22A-3 or similar statutes from another state;
    - iii. Within the preceding five years, a conviction for any other felony;
    - iv. Misdemeanor convictions related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
    - v. Any convictions, including any form of suspended sentence, which are determined to be detrimental to the best interests of SD Medicaid. This includes convictions related to a person's character such as perjury and fraud related charges as individuals determined to be dishonest with any party should not be assumed to be honest with SD Medicaid;
    - vi. Conviction related to obstruction of a criminal investigation.

**C 3.2** The Office of the Inspector General (OIG) has the authority to exclude individuals and entities from federally funded health care programs and maintains a list of all currently excluded individuals. The Provider must check the OIG List of Excluded Individuals and Entities (LEIE) to ensure that new hires and current employees are not on the excluded list at a minimum of once every six months. Search the OIG exclusions database online at <https://exclusions.oig.hhs.gov/>. The Provider must have a policy that specifies the processes for conducting this verification.

**C 3.3** The Provider must report bed occupancy in the format and frequency required by Long Term Services and Supports.

**C 3.4** In accordance with South Dakota law, the Provider is mandated to immediately report any suspected abuse, neglect or exploitation of a consumer. The Provider must

have a policy for abuse, neglect or exploitation reporting which conforms to the mandatory reporting laws and must provide training on mandatory reporting laws to staff on an annual basis. See South Dakota Codified Law (SDCL) 22.46 for South Dakota's laws regarding abuse, neglect or exploitation of elders or adults with disabilities.

**C 3.5** The Provider agrees to fully comply with the HCBS Settings Final Rule, 42 CFR §441.301(c)(4) and (5) specified here and in the HCBS Settings Guide to Expectations and Compliance. The Provider also agrees to cooperate with all action steps included in South Dakota's HCBS Settings Final Rule Transition Plan. Both documents are available online at <https://dss.sd.gov/medicaid/hcbs.aspx>.

**C 3.6** The Provider's facility standards and policies must address the federal Medicaid requirements for Home and Community-Based Settings (HCBS Settings Final Rule) as specified in 42 CFR §441.301(c)(4) and (5). Specific policies that must be addressed as part of facility standards include the following:

1. Access to the broader community;
2. Privacy, dignity, respect, autonomy, choice, control, free from coercion and restraints, all consumer's rights as noted in ARSD 44:70 and the HCBS Settings Guide to Expectations and Compliance;
3. Consumer leases/tenant agreement requirements;
4. Roommate choice policy;
5. Visitor/Guest policy;
6. Policy to address ability to lock door to sleeping or living unit; and
7. Policy to address access to food.

**C 3.7** The Provider must have a written Quality Assurance and Improvement Plan detailing all activities conducted by the Provider to ensure quality service provision. The Provider must also have a Quality Assurance policy specifying how the Provider will discover, fix, and report problems. The Provider will cooperate with quality performance site visit activities conducted by State.

The Provider agrees to participate in any evaluation and/or consumer satisfaction program developed and/or conducted by the State which will be used to determine the effectiveness of service provision statewide.

**C 3.8** The Provider must have an Admission, Transfer and Discharge policy. When the Provider determines services to a consumer must be discontinued, the Provider must notify the consumer in writing at least 30 days before the transfer or discharge, unless a change in the consumer's health requires immediate transfer or discharge or if the consumer has not resided in the Assisted Living Center for 30 days. The written notice must specify the reason for and effective date of the transfer or discharge and the new location to which the consumer will be transferred or discharged to; the conditions under which the consumer may refuse transfer within Assisted Living; and a description of how the consumer may appeal a decision by Assisted Living to transfer or discharge the consumer as per ARSD 44:70:09:14 Admission, Transfer, and Discharge Policies. Additionally, per ARSD 44:70:04:16 Discharge Planning, the Assisted Living Center



shall initiate planning with applicable agencies to meet identified needs of consumer and consumer shall be offered assistance to obtain needed services upon discharge. Information necessary for coordination and continuity of care shall be made available to the assisted living setting and/or whomever the consumer is discharged to and to each referral agency as required by the discharge plan.

**C 3.9** The Provider must have a Grievance policy pursuant to ARSD 44:70:09:10. A consumer may voice grievances without discrimination or reprisal. A grievance may be in writing or oral and may relate to treatment furnished, treatment that has not been furnished, the behavior of other consumers, and/or infringement of the consumer's rights. The Assisted Living Center shall adopt a grievance process and make the process known to each consumer and to the consumer's immediate family. The grievance process shall include the facility's efforts to resolve the grievance and documentation of the grievance; the names of the persons involved; the disposition of the matter; and the date of disposition.

**C 3.10** The Provider must have an incident reporting policy. The Provider must immediately notify State of any consumer-related concerns, incidents and occurrences, including possible exploitation, that are not consistent with routine care. The Provider must follow the Department of Health's policy for documenting the circumstances of any incident that involves restraint, seclusion, serious injury, missing person, or death from other than natural causes.

Upon being informed that a consumer has been hospitalized, or discharged from the hospital, the Provider will immediately communicate this information to the LTSS Specialist to assure the consumer's need for service provision continue to be met appropriately.

**C 3.11** The Provider must have an emergency response policy. An "emergency" is defined as a situation that is sudden, generally unexpected, and demands immediate attention. The Provider must notify the State of the emergency upon resolution of the emergency or transfer of the consumer to emergency responders.

**C 3.12** The Provider must have a health and safety policy. The health and safety policy must detail the use of universal precautions. The provider must provide all supplies and equipment needed for staff members to practice infection control.

**C 3.13** The Provider must have a documentation policy. The documentation policy must include how assisted living staff document service provision, consumer progress and health/safety concerns with a consumer. Documentation must be kept for each consumer. Records must be retained for 6 years after a claim has been paid or denied. Documentation must be easily accessible upon request.

**C 3.14** The Provider must have a quality assurance policy. The Provider must have a written quality assurance and improvement plan detailing all activities conducted by the Provider to ensure quality service provision. The Provider must also have a quality

assurance policy specifying how the Provider will discover, fix, and report problems. The Provider will cooperate with provider quality performance audits activities conducted by the State.

The Provider agrees to participate in any evaluation and/or consumer satisfaction program developed and conducted by the State to determine the effectiveness of service provision statewide.

**C 3.15** A copy of all policies must be readily accessible upon request.

<input type="checkbox"/> Critical Service Need		<h2>Care Plan</h2>			
<b>Name</b>	Name: Consumer Name				DOB:
<b>Residential Address</b>	Street:		City:	State:	Zip Code:
<b>Contact Information</b>	Home:		Cell:	Email:	
<b>Emergency Contact</b>	First:	Last:	Home:	Cell:	Work:
<b>Primary Physician</b>	Name:		Address:	Office:	Fax:
<b>LTSS Specialist</b>	Name:		Email:	Office:	

**Picture of My Life:**

Consumer Name

<b>Personal Goal</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	
<b>Goal</b>	
<b>Strategy</b>	

<b>ADDENDUM TO CARE PLAN</b>
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<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	
<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	
<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	
<b>Goal</b>	
Date	
<b>Strategy</b>	
Date	

<b>Six Month Review Signature</b>	
X	
Consumer's Signature or Authorized Representative's Signature	Date
X	
LTSS Specialist Signature	Date

<b>Emergency/Disaster Preparedness Plan</b>		
The consumer received the following: Ready Brochure, Emergency Readiness Checklist and File of Life.		<b>Additional Information Provided</b>
<b>Fire</b> Smoke detector Fire extinguisher Evacuation plan		
<b>Tornado</b> Weather alert Interior room plan Emergency shelter plan		
<b>Blizzard/Power Outage</b> Food supply Water supply Power/heat alternative		
<div style="border: 2px solid black; padding: 2px; display: inline-block;"><b>Critical Service Back Up Plan in case of an Emergency</b></div>		

### Assisted Living Request for Modifications to LTSS Care Plan

<b>Consumer Name:</b> Consumer Name <b>Legal Guardian (if applicable):</b>	<b>Assisted Living Name:</b> <b>Name of person completing this form:</b>
<input type="checkbox"/> <b>No modification(s) being requested (signatures required)</b>	<input type="checkbox"/> <b>In Home Consumer (does not apply/signatures not required)</b>

<b>Modification(s) are being requested in the following areas:</b>	
<input type="checkbox"/> Access to all areas of the setting <input type="checkbox"/> Control of his/her own schedule and activities <input type="checkbox"/> Right to have any visitors at any time <input type="checkbox"/> Freedom to come and go <input type="checkbox"/> Access to a variety of foods throughout the day <input type="checkbox"/> Ability to lock bedroom doors or apartment <input type="checkbox"/> Freedom to furnish and decorate bedroom or apartment	<input type="checkbox"/> Right to choose roommate <input type="checkbox"/> Right to privacy when completing activities of daily living <input type="checkbox"/> Ability to communicate with other individuals in private <input type="checkbox"/> Freedom from restraint <input type="checkbox"/> Access to appliances <input type="checkbox"/> Access to personal resources
1.) Describe the restrictive intervention being requested:	
2.) Describe the specific and individualized assessed need related to the restrictive intervention being requested:	
3.) Describe how the intervention is consistent with the specific assessed need:	
4.) Describe the positive interventions and supports that have been attempted to avoid restrictive intervention (documentation of interventions/supports and outcomes must be available upon request):	
5.) Describe less intrusive methods of meeting the need that have been tried but didn't work (documentation of methods and outcomes must be available upon request):	
6.) Describe how you will monitor the modification to measure the ongoing effectiveness and how you will document the outcome:	
7.) Describe established time limits for periodic reviews to determine if the modification is still necessary or can be terminated:	
8.) Include an assurance that interventions and supports will cause no harm to the Consumer:	

<b>Provider Signature</b>	<b>Date</b>
<b>Consumer or Guardian Signature</b>	<b>Date</b>
<b>LTSS Specialist Signature</b>	<b>Date</b>

**By signing below, I acknowledge agreement with this Care Plan and the following statements.**

I have been offered the choice of all providers of services contained in this plan.

I understand I have the right to be free from abuse and neglect. I have been provided with an informational brochure on abuse, neglect and exploitation.

I have been provided with an informational brochure on preventative health care.

I have been provided information on home and community-based services and understand the service options that are available to me. I understand I have the right to choose between receiving services in my home and community and receiving services in a nursing facility.

I understand I have the choice and the right to accept, or to refuse all or part of the services contained in this plan.

I understand it is my responsibility to notify Long Term Services and Supports, who is responsible for monitoring my plan, of any change in my living, medical, or financial status.

I understand I may have a financial responsibility for the services I receive.

X \_\_\_\_\_  
Consumer's Signature or Authorized Representative's Signature

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
LTSS Specialist Signature

\_\_\_\_\_  
Signature Date

Care Plan Effective Date \_\_\_\_\_  
Date



## Notice of Nondiscrimination

As a recipient of Federal financial assistance and a State or local governmental agency, the Department of Human Services does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, or national origin, or on the basis of disability or age in admission or access to, or treatment or employment in, its programs, activities, or services, whether carried out by the Department of Human Services directly or through a contractor or any other entity with which the Department of Human Services arranges to carry out its programs and activities; or on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation or disability in admission or access to, or treatment or employment in, its programs, activities, or services when carried out by the Department of Human Services directly.

The Department of Human Services:

- Provides free aids and services to people with disabilities to communicate effectively with us, such as:
  - Qualified sign language interpreters
  - Written information in other formats (large print, audio, accessible electronic formats, other formats)
- Provides free language services to people whose primary language is not English, such as:
  - Qualified interpreters
  - Information written in other languages

If you need these services, contact your local DHS office.

If you believe that DHS has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a discrimination complaint or grievance with: Discrimination Coordinator, Legal Services, 3800 E. Hwy. 34, c/o 500 E. Capitol Ave., Pierre, SD 57501. Phone: (605) 773-5990, [infodhs@state.sd.us](mailto:infodhs@state.sd.us). You can file a discrimination complaint or grievance in person or by mail, fax, or email. If you need help filing a discrimination complaint or grievance, the Discrimination Coordinator is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at: U.S. Department of Health and Human Services 200 Independence Avenue, SW Room 509F, HHH Building Washington, D.C. 20201 1-800-368-1019, 800-537-7697 (TDD) Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and the Regulations of the U.S. Department of Health and Human Services issued pursuant to these statutes at Title 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, and 28 CFR Part 35, the Omnibus Crime Control and Safe Streets Act of 1968, Title IX of the Education Amendments of 1972, Equal Treatment for Faith-based Religions at 28 CFR Part 38, and Section 1557 of the Affordable Care Act.

ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-800-305-9673 (TTY: 711).

ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-800-305-9673 (TTY: 711).