

SAVINGS SHARE AGREEMENT

THIS SAVINGS SHARE AGREEMENT ("Agreement") is entered into effective as of the last of the dates on which it is executed by the parties below ("Effective Date"), between **County of Santa Barbara Public Health Department**, an organization approved by the State Department of Health Services as a Federally Qualified Health Center (FQHC) ("ENTITY"), and **Santa Barbara San Luis Obispo Regional Health Authority, dba CenCal Health**, a body corporate and politic ("PLAN").

RECITALS

- A. WHEREAS, ENTITY qualifies as a "covered entity" as defined in Section 340B of the Public Health Services Act, 42 U.S.C. § 256b(4)(A), and thereby ENTITY is qualified to participate in the 340B Drug Pricing Program, established pursuant to Public Law 102-585, also known as the Veterans Health Care Act of 1992; and
- B. WHEREAS, PLAN is a County Organized Health System that, under contract with the State of California Department of Health Care Services, provides for the administration and delivery of Medi-Cal benefits to PLAN Members; and
- C. WHEREAS, ENTITY provides medical services to certain PLAN Members pursuant to contracts between ENTITY and PLAN; and
- D. WHEREAS, ENTITY and PLAN mutually desire to modify their previous agreement by which both parties share the savings of dispensing prescriptions for Eligible Patients of ENTITY who are PLAN Members (hereinafter referred to as the "Target Patient Group") through the 340B Drug Pricing Program; and
- E. WHEREAS, ENTITY has or will enter into agreements ("Pharmacy Services Agreements") with Contract Pharmacies to fulfill prescriptions for patients within the Target Patient Group, in accordance with guidelines for 340B Drug Pricing Program contracted pharmacy services developed by the U.S. Department of Health and Human Services, Health Resources and Services Administration ("HRSA");
- F. WHEREAS, PLAN has or will enter into an amendment ("340B Amendment") to its Service Agreement with MedImpact Healthcare Systems, Inc., a California corporation, which acts as PLAN's pharmacy benefits manager ("PBM"), by which the PBM will provide various services with respect to 340B Drug Pricing Program claims submitted on behalf of any member of the Target Patient Group; and
- G. WHEREAS, PBM has or will enter into various agreements with Program Pharmacies, including, as appropriate, Pharmacy Services Agreements, to facilitate the arrangements

described above, including the processing of claims by the Program Pharmacies for the fulfillment of prescriptions to members of the Target Patient Group;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Definitions

For purposes of this Agreement, the following definitions apply:

“340B Program” shall mean the program created by this Agreement and described in Section 2, below.

“340B Program Administrative Costs” shall include:

- The negotiated dispensing fee for Program Pharmacies; and
- The replenishment costs for dispensed eligible 340B pharmaceuticals; and
- Any appropriate 340B administrative fees

“Contract Pharmacy” shall mean any pharmacy not owned and operated by ENTITY that enters into a contract with ENTITY (directly or indirectly through a pharmacy benefits manager) to dispense prescriptions to ENTITY’s Eligible Patients.

“Eligible Patients” shall mean a “patient” of ENTITY as defined in guidelines established by the HRSA; as such guidelines may be amended from time to time.

“In-House Pharmacy” shall mean a pharmacy owned by the County of Santa Barbara and operated by ENTITY.

“PLAN Members” shall mean those individual Medi-Cal beneficiaries who are eligible to receive Medi-Cal benefits through PLAN’s Santa Barbara and San Luis Obispo Health Initiative programs.

“Program Commencement Date” shall mean the date on which claims are first adjudicated under the 340B Program described herein.

“Program Pharmacies” shall mean both In-House Pharmacies and Contract Pharmacies.

“Savings” shall mean the difference between the 340B Administrative Costs of an individual 340B eligible pharmaceutical claim and the total cost if paid by the PLAN at PLAN network rates, as described in Section 2, below.

“Specialty Claims” shall mean all claims for medications dispensed at CenCal Health contracted Specialty Pharmacies. Specialty Pharmacy contracts are the sole responsibility of CenCal Health.

“Target Patient Group” shall mean Eligible Patients who are also PLAN Members.

2. Purpose of Agreement

ENTITY and PLAN hereby enter into this and related Agreements to provide the mechanism by which: (i) ENTITY will originate prescriptions for its patients in the Target Patient Group, which may be eligible for 340B pricing through fulfillment at the Program Pharmacies; (ii) PLAN, through its PBM, will authorize and pay for the prescribed medications consistent with its PBM Service Agreement, as amended in accordance with the arrangements described above; (iii) PBM will, at the time of claim adjudication, and in accordance with the process and parameters set out in the 340B Amendment, determine what price represents the lowest cost to PLAN which may be: (a) PLAN network pricing as stipulated in the PBM Service Agreement; (b) Usual and Customary prices as submitted by the Program Pharmacy, or (c) the price associated with the 340B Drug Pricing Program; and (iv) PBM will allocate any Savings associated with claim adjudication under 340B Pricing to PLAN and ENTITY as further described in the 340B Amendment and below.

3. Savings Share

3.1 During the term of this Agreement PBM will allocate any Savings resulting from claim adjudication under 340B Drug Pricing as compared to PLAN network pricing as follows:

- ENTITY In-House Pharmacy non-Specialty Claims: 25% to PLAN, 75% to ENTITY
- Contract Pharmacy non-Specialty Claims: 50% to PLAN, 50% to ENTITY
- All Specialty Claims: 85% to PLAN, 15% to ENTITY

3.2 The Savings share pool shall be calculated utilizing the platform of the MedImpact business intelligence tool, MedOptimize, and the PLAN created custom report, “CenCal 340B Claims Utilization” report. There are three (3) revenue sources that contribute to the shared Savings pool; 1) The In-House Pharmacies, 2) the Contracted Pharmacies and 3) the contracted Specialty Pharmacies. The basis of the calculated shared pool built into the MedOptimize report reflects a discount off of the PLAN default retail network rate (currently AWP-15.5%).

4. Annual Reconciliation

4.1 As measured at the end of the first, second or third annual anniversary of the date of execution of this Agreement, if one party has received an aggregate annual Savings Share that is more than 5% greater than that received by the other party, the party with the larger Savings Share will provide payment to the other party to reconcile the difference and create parity within 30 days of discovery. If the annual difference between Parties exceeds 25%, the Parties agree to meet and review the Savings Share allocations in Section 3 for possible modification.

4.2 The parties agree that the PLAN default network rate is an appropriate point of reference for the In-House Pharmacies and the Contract Pharmacies, but is not appropriate for the Specialty Pharmacies as CenCal Health has considerable propriety rates well in excess of the AWP-15.5% base. As the average Specialty discount base is product mix and utilization dependent, to approximate the shared pool contribution from Specialty Pharmacy while utilizing the same MedOptimize report, the calculation for purposes of an annual reconciliation will be based on 50% of the MedOptimize report's Savings.

5. Eligible Patients

This Agreement and the 340B Program described herein is limited solely to prescriptions dispensed to PLAN Members who are Eligible Patients of ENTITY. PLAN or ENTITY, each in its sole discretion, reserves the right to deny the utilization of the 340B Program to any individual whom ENTITY or PLAN does not consider or accept as an Eligible Patient or PLAN Member. ENTITY agrees that it shall have full responsibility for ensuring compliance with current HRSA guidelines with respect to identifying Eligible Patients.

6. Patient Choice

Nothing in this Agreement shall require any individual to become an ENTITY patient or restrict the choice of any PLAN Member in selecting a physician or treatment facility, which choice shall be otherwise subject to PLAN membership rules and requirements. Nothing in this Agreement shall require an Eligible Patient to use any Program Pharmacy for pharmacy services. In the event that an Eligible Patient elects not to use a Program Pharmacy, the Eligible Patient may obtain the prescription from the pharmacy provider of his or her choice subject to PLAN limitations.

7. Program Pharmacies

Upon request of PLAN, ENTITY will from time to time provide PLAN with a list of ENTITY's Program Pharmacies. This Program Pharmacy relationship shall, as appropriate, be documented in writing by a signed Pharmacy Services Agreement and/or Authorization to Participate, pursuant to *Section 602 of the Veterans Health Care Act of 1992, as it may be amended from time to time*. Specifically, the Pharmacy Services Agreements must be certified to the federal Office of Pharmacy Affairs and shall include, but not be limited to, the following:

- a. Provision indicating Pharmacy administers and dispenses the 340B medications on behalf of ENTITY and the actual purchaser of the medication is ENTITY;
- b. Requirement that Pharmacy shall maintain customary and adequate records, including a drug tracking system;
- c. Prohibition and provision of penalty on the diversion or resale of 340B medications by Pharmacy to any entity or individual other than the patients of ENTITY;

- d. Requirement that Pharmacy shall be prepared for and permit manufacturer and Department of Health and Human Services audits;
- e. Prohibition on the filling of Medi-Cal prescriptions at a 340B rate in the absence of an established arrangement designed to prevent duplicate discounts and/or rebates.

8. Prevention of Double Discount

PLAN shall cause its PBM to set up a mechanism to ensure all prescriptions filled pursuant to this Agreement shall comply with 42 U.S.C. 256b (a)(5)(A) and shall not violate the prohibition against receiving a double discount or rebate.

9. Sharing of Price File Information

ENTITY shall share with PLAN any 340B pricing file information that ENTITY receives from a wholesaler, to the extent not prohibited by regulations governing the protection of “confidential drug pricing information” as defined in 58 Fed. Reg. 68922 (Dec. 29, 1993). Data from a 340B pricing file may be submitted to PLAN in a format created by ENTITY’s 340B Administrative Services Provider. PLAN may not share pricing file information with any third party and shall use the pricing information only for purposes related to the 340B Program with ENTITY

10. Compliance with Anti-Kickback Statute

This Agreement does not amount to the offering of or acceptance by ENTITY of any kickback, bribe, rebate, or the transfer of anything of value as illegal remuneration. Nothing in this Agreement is intended as an attempt to refer patients in return for the provision of any services at no charge or at a reduced or below cost charge.

11. Compliance with Laws

This Agreement, and the other agreements and arrangements contemplated herein, shall be carried out in compliance with all applicable federal and state laws and regulations, and other governmental requirements or orders, whether or not explicitly referenced herein or in such other agreements and arrangements. Each party shall be solely responsible for compliance with its own legal obligations.

12. Contingencies

This Agreement is contingent upon execution of the Pharmacy Services Agreements, 340B Amendment and such other agreements and documentation as the parties may deem necessary or desirable to effectuate the purposes of this Agreement.

13. Term and Termination

13.1 Term. The term of this Agreement shall be three (3) years, commencing on the Program Commencement Date. The Agreement shall remain in effect for three years from the Program Commencement Date unless earlier terminated pursuant to the terms hereof. The parties agree to meet six months prior to the third anniversary of the Program Commencement Date for purposes of negotiating a new three-year term.

13.2 Termination for Breach. Upon the occurrence of a material breach of this Agreement by either party, the other party shall provide written notice to the defaulting party (the "Default Notice") specifying the nature of the breach. If such breach is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days after service of the Default Notice, this Agreement shall automatically terminate at the election of the non-defaulting party upon giving written notice of termination to the defaulting party not later than forty-five (45) days after service of the Default Notice.

13.3 Immediate Termination. Notwithstanding any other provision hereof, this Agreement may be terminated by either party for cause, upon one (1) day prior written notice to the other party, upon the occurrence of any of the following events:

(a) The termination or suspension of any license or permit of ENTITY or ENTITY's designee to carry out the necessary administrative functions to handle 340B claims;

(b) The attempted assignment or other unauthorized delegation of any of PLAN or ENTITY obligations under this Agreement;

(c) Any change in any law, regulation or rule, state or federal, or any change in the judicial or administrative interpretation of any such law, regulation or rule, which effectively terminates the 340B Drug Pricing Program or its applicability to the Medi-Cal program or otherwise automatically invalidates this Agreement.

(d) The termination of the PLAN's contract with the State, or the loss by ENTITY of its status as a 340B qualified entity.

13.4 Partial Termination. The termination of the Pharmacy Services Agreement between ENTITY and any Contract Pharmacy shall result in the termination of this Agreement with respect only to claims submitted by such Contract Pharmacy. ENTITY will promptly notify PLAN of the termination of its agreement with any Contract Pharmacy and the timing of that termination.

14. Dispute Resolution

In the event any disagreement, dispute or claim (collectively "Dispute") arises among or between the parties arising out of or relating to this Agreement or any contemplated transaction, such Dispute shall be resolved as follows:

Meet and Confer. The parties agree to meet and confer on any issue that is the subject of a dispute under this Agreement ("Meet and Confer"), as a condition precedent to terminating the Agreement or taking any other formal steps to settle the dispute. The party seeking to initiate the Meet and Confer procedure (the "Initiating Party") shall give written notice to the other party, describing in general terms the nature of the dispute, the Initiating Party's position and a summary of the evidence and arguments supporting its position, and identifying one or more individuals with authority to settle the dispute on such party's behalf. The party receiving notice (the "Responding Party") shall have five (5) business days within which to respond. The response shall include the Responding Party's position and summary of the evidence and arguments supporting its position and shall identify one or more individual with authority to settle the dispute on such party's behalf (the individuals so designated shall be known as the "Authorized Individuals"). The Authorized Individuals shall meet at a mutually acceptable time and place within thirty (30) days after the Initiating Party's notice and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within sixty (60) days after the Initiating Party's notice, or if the Responding Party will not meet within thirty (30) days, the parties may agree upon an alternative dispute resolution technique (e.g., mediation or early neutral evaluation). All deadlines specified in this Meet and Confer provision may be extended by mutual agreement.

15. General Provisions

15.1 Amendments. No modification, amendment or addition to this Agreement shall be valid or enforceable unless in writing and signed by the parties.

15.2 Force Majeure. Notwithstanding any provision contained herein to the contrary, ENTITY, and PLAN shall not be deemed to be in default hereunder for failing to perform or provide any of their obligations to be performed or provided by ENTITY, or PLAN pursuant to this Agreement if such failure is the result of any labor dispute, act of God, inability to obtain labor or materials, governmental restrictions or any other event which is beyond the reasonable control of the party from whom such performance is required.

15.3 Third Party Beneficiaries. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any person not a party to this Agreement.

15.4 Waiver. Any waiver of any provision hereof shall not be effective unless expressly made in writing executed by the party to be charged. The failure of either party to insist on performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, and the obligations of the parties with respect thereto shall continue in full force and effect.

15.5 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the Savings sharing associated with the adjudication of the 340B Drug Pricing Program for the Target Patient Group. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, under-takings, warranties or representations, oral or written, express or implied, between the parties other than as set forth herein.

15.6 Continued Validity. If at any time either party reasonably believes in good faith that this Agreement or the performance by that party of any of its obligations under this Agreement violates any law or regulation, state or federal, or could result in the loss or restriction of that party's license or that party's right to participate in Medicare, Medicaid or any other governmental program, then that party may, upon written notice, require the other party to enter into good faith negotiations to renegotiate the terms of this Agreement. If the parties are unable to reach an agreement concerning the modification of this Agreement within forty-five (45) days after the date of the notice seeking renegotiation then either party may terminate this Agreement by thirty days written notice to the other party.

15.7 Additional Documents. Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement and to otherwise cooperate fully with such other party in connection with the performance of such party's obligations under this Agreement.

15.8 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be one and the same Agreement.

15.9 Headings. The headings in this Agreement are for convenience only and shall not affect the construction thereof.

15.10 Notices. Any notice or other communication required or permitted by this Agreement shall be in writing and shall be delivered personally, sent by any nationally recognized overnight courier that routinely issues receipts, or sent by United States first class mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

ENTITY:	Name:	Santa Barbara County Public Health Department
	Address:	300 N. San Antonio Road, Santa Barbara, CA 93110
	Fax:	(805) 681-5200
	Attn:	Dan Reid, Deputy Assistant Director
PLAN:	Name:	Santa Barbara San Luis Obispo Regional Health Authority
	Address:	4050 Calle Real, Santa Barbara, CA 93110
	Fax:	(805) 964-0367
	Attn:	Jeffrey Januska, Director of Pharmacy Services

The parties may, upon ten (10) days prior written notice given in accordance with this section, change its address for notices. Any notice or other communication sent as aforesaid shall be deemed served when actually received or refused.

15.11 Audit Rights. Upon reasonable written request specifying the nature and cause of its concerns, either party may audit material issues related to the other party's compliance with the terms of this Agreement. Such audit(s) will be conducted in accordance with mutually agreed-upon procedures, including procedures designed to assure that those conducting the audit have access to the documents and systems related to performance under this Agreement and that such access shall be limited to only that necessary to perform the audit and shall be conducted in a manner so as to preserve the confidentiality of the audited party's business, financial and operations information.

15.12 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California.

15.13 Exhibits. Any exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Savings Share Agreement as of the Effective Date indicated above.

[signatures appear on the following page]

IN WITNESS WHEREOF, the parties have executed this Saving Share Agreement to be effective on the date executed by County.

COUNTY OF SANTA BARBARA

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: 
Deputy Clerk

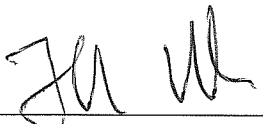
COUNTY OF SANTA BARBARA:

By: 
Chair, Board of Supervisors

Date: 7/7/15

RECOMMENDED FOR APPROVAL:

Takashi Wada, MD, MPH
Director / Deputy Health Officer

By: 
Department Head

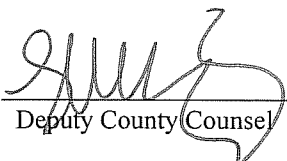
**APPROVED AS TO ACCOUNTING
FORM:**

Robert W. Geis, CPA
Auditor-Controller

By: 
Deputy

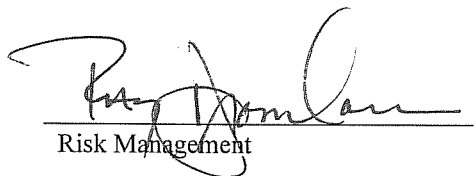
APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 
Deputy County Counsel

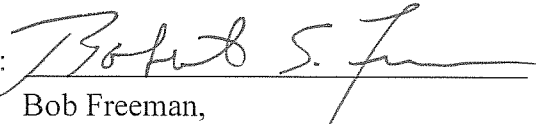
APPROVED AS TO FORM:

Risk Management

By: 
Risk Management

IN WITNESS WHEREOF, the parties have executed this Savings Share Agreement to be effective on the Effective Date set forth above.

SANTA BARBARA SAN LUIS OBISPO
REGIONAL HEALTH AUTHORITY
dba CENCAL HEALTH

By: 
Bob Freeman,
Chief Executive Officer

6-15-15
Date of Execution by CenCal Health

APPROVED AS TO FORM:


Caitlin Larsen, Director of Legal Affairs