

**WELLMARK OF SOUTH DAKOTA, INC.
ENTITY AGREEMENT**

LF012804-09

This Entity Agreement ("Agreement") is made by and between Wellmark of South Dakota, Inc., doing business as Wellmark Blue Cross and Blue Shield of South Dakota (hereinafter "Wellmark"), and the undersigned provider (hereinafter "Provider").

RECITALS

1. Wellmark is authorized by the South Dakota Division of Insurance to transact the business of health insurance and is licensed by the Blue Cross and Blue Shield Association.
2. Wellmark, on behalf of itself and (i) state and federal programs administered by Wellmark, (ii) any licensed subsidiary or affiliate of the Blue Cross and Blue Shield Association and licensed Blue Cross and Blue Shield Plans, and (iii) Wellmark's Affiliates (as hereinafter defined), wishes to secure the health care services of providers for the Members (as hereinafter defined) and for the members and products of the other programs and entities set forth above.
3. Provider desires to make health care services available to Wellmark's Members and the members and products of the other programs and entities set forth in Recital 2 for the purposes specified in this Agreement.

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

**ARTICLE I
DEFINITIONS**

- 1.1 "**Affiliate**" of a party to this Agreement means any entity that now or hereafter (i) is owned or controlled (directly or indirectly) by such party to this Agreement, (ii) owns or controls (directly or indirectly) any such party to this Agreement, or (iii) is under common control with such party to this Agreement. "Affiliate" also includes an Affiliate of an Affiliate.
- 1.2 "**Agreement**" means this Agreement and Exhibits attached hereto presently in effect and hereafter added by amendment to this Agreement. The Exhibits attached to this Agreement at the time of initial execution are as follows:

Exhibit A: Payment
Exhibit B: Products
- 1.3 "**Benefit Contract**" means the benefit certificate, policy or other written documents setting forth the health care benefits the Member is eligible to receive.
- 1.4 "**Client**" means an employer or group sponsor for whom Wellmark Select benefits are processed.
- 1.5 "**Covered Services**" means those health care services or supplies to which a Member is entitled pursuant to a Benefit Contract.
- 1.6 "**Emergency Medical Condition**" means the sudden, and at the time unexpected, onset of a health condition that a prudent layperson, possessing an average knowledge of health and medicine, could reasonably expect absence of immediate medical attention to result in one of the following:
 - (a) Placing the health of the individual in serious jeopardy;

- (b) Serious impairment to bodily function; or
 - (c) Serious dysfunction of any bodily organ or part.
- 1.7 **“Medically Necessary” or “Medical Necessity”** means Covered Services which, under the terms and conditions of this Agreement, are determined through Utilization Management to be:
- (a) Appropriate and necessary for the symptoms, diagnosis or treatment of the condition of a Member;
 - (b) Provided for the diagnosis or direct care and treatment of the condition of a Member enabling the Member to make reasonable progress in treatment;
 - (c) Within standards of professional practice and given at the appropriate time and in the appropriate setting;
 - (d) Not primarily for the convenience of the Member, the Member’s physician or other provider; and
 - (e) The most appropriate level of Covered Services which can safely be provided.
- 1.8 **“Member”** means any eligible employee, individual or group member, and any eligible sponsored dependent, entitled to receive Covered Services according to the terms and conditions of this Agreement and pursuant to an applicable Benefit Contract.
- 1.9 **“Participating Provider”** means a provider who has entered into a provider agreement with Wellmark whereby such provider has agreed to provide health care services to Wellmark’s Members and the members of the programs and entities set forth in Recital 2 for the purposes set forth in this Agreement.
- 1.10 **“Product”** means a health benefit plan offered or administered by Wellmark.
- 1.11 **“Provider”** means the provider which is identified as such on the signature page of this Agreement. If Provider is a corporation, professional corporation (“PC”), limited liability company (“LLC”), professional limited liability company (“PLLC”) or other legal entity, “Provider” means the corporation, the PC, the LLC, the PLLC or the other legal entity, as the case may be.
- 1.12 **“Provider Guide”** means the Wellmark documents (guides and/or manuals), and all attachments thereto, incorporated herein by reference, and as amended from time to time, distributed to Provider that sets forth applicable Wellmark administrative/operational policies, rules and procedures.
- 1.13 **“Quality Improvement”** means measuring, evaluating and improving the quality of Covered Services to Members by providers.
- 1.14 **“Utilization Management”** means the review and determination on prospective, concurrent and retrospective bases of the Medical Necessity of Covered Services provided to Members pursuant to the terms and conditions set forth herein.
- 1.15 **“Wellmark”** means Wellmark of South Dakota, Inc. doing business as Wellmark Blue Cross and Blue Shield of South Dakota.

**ARTICLE II
SCOPE OF AGREEMENT**

- 2.1 **Applicability.** This Agreement applies to those Products that are issued or administered by

Wellmark set forth on Exhibit B. This Agreement also applies to those Products that are added from time to time by amendment to this Agreement as provided in Section 14.10.

Wellmark and the Provider agree that Provider will also provide health care services, as set forth in this Agreement, for the benefit of the members and products of the following programs and entities: (i) state and federal programs administered by Wellmark, (ii) any licensed subsidiary or affiliate of the Blue Cross and Blue Shield Association and licensed Blue Cross and Blue Shield Plans, and (iii) Wellmark's Affiliates.

Upon request, Wellmark shall furnish to Provider a specimen Benefit Contract or benefit summary for each Product subject to this Agreement.

- 2.2 Product – Construction.** This Agreement shall be construed together with the terms and conditions of Benefit Contracts and Products subject to this Agreement; provided, however, that in the event of any conflict, the terms of this Agreement shall govern.

ARTICLE III RELATIONSHIP BETWEEN WELLMARK AND PROVIDER

- 3.1 Independent Contractors.** Wellmark and Provider are independent contractors under this Agreement with respect to each other. Nothing in this Agreement shall be construed or deemed to create a relationship of employer and employee, principal and agent, joint venturers or any relationship other than that of independent entities contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement. Neither party shall have any express or implied right or authority to assume or create any obligation or responsibility on behalf of, or in the name of, the other party, except as set forth herein.
- 3.2 Blue Cross and Blue Shield Disclosure.** Provider hereby expressly acknowledges Provider's understanding that this Agreement constitutes a contract between Provider and Wellmark, that Wellmark is an independent corporation operating under a license from the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans permitting Wellmark to use the Blue Cross and Blue Shield service marks in the State of South Dakota, and that Wellmark is not contracting as an agent of the Association. Provider further acknowledges and agrees that Provider has not entered into this Agreement based upon representations by any person other than Wellmark and that no person, entity or organization other than Wellmark shall be held accountable or liable to Provider for any of Wellmark's obligations to Provider created under this Agreement. This paragraph shall not create any obligations whatsoever on the part of Wellmark in addition to those obligations created under other provisions of this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

- 4.1 By Wellmark.** Wellmark represents and warrants to Provider that: (a) Wellmark possesses and agrees to maintain during the term of this Agreement and all licenses, permits, registrations, governmental and other approvals required to carry out its obligations pursuant to the terms of this Agreement; (b) this Agreement is authorized by all necessary corporate action on behalf of Wellmark, is duly executed and delivered by Wellmark, constituting a legal and binding obligation upon Wellmark; and (c) Wellmark shall comply with relevant federal, state and local laws, statutes, ordinances, orders and regulations that are applicable to the terms and conditions of this Agreement.
- 4.2 By Provider.** Provider represents and warrants to Wellmark that: (a) the information furnished by Provider on and in connection with Provider's application and all updates thereto is and shall remain true, correct and complete with no material omissions; (b) Provider now possesses, and during the term of this Agreement shall maintain, all licenses, accreditations, certifications,

permits, registrations, governmental and other approvals required in order to provide the Covered Services; (c) Provider shall comply with relevant federal, state and local laws, statutes, ordinances, orders and regulations which are applicable to the terms and conditions of this Agreement; (d) if Provider is an entity, then Provider is duly organized, validly existing under the laws of the state of its organization with full power and authority to engage in business as currently conducted; and (e) this Agreement has been authorized by all necessary action on behalf of Provider, is duly executed and delivered, and constitutes a legal and binding obligation of Provider.

ARTICLE V PROVIDER

- 5.1 **Provider's Notices.** Provider shall notify Wellmark, in writing, within fifteen (15) business days of Provider's receipt of notice regarding: (a) any termination, suspension, limitation or restriction of Provider's license, accreditation, certification or other governmental authorization; (b) failure to maintain any insurance as required herein; (c) Provider's conviction of a felony or any other criminal charge relating to Provider; (d) any disciplinary action taken by a state licensing board or other governmental agency; (e) Provider's suspension or exclusion from participation in the Medicare or Medicaid programs; or (f) any other legal, governmental or other action or event which may materially impair the Provider's ability to perform any duties and obligations under this Agreement.
- 5.2 **Acceptance of Provider.** To be eligible for participation under this Agreement, Provider shall meet Wellmark's contracting and credentialing standards set forth in the Provider Guide. Wellmark retains sole discretion to determine whether Provider shall be accepted as a Participating Provider pursuant to Wellmark's policies, rules, procedures and contracting and credentialing standards.
- 5.3 **Rights Reserved to Wellmark.** Notwithstanding any other provision of this Agreement, Wellmark reserves the right to communicate directly with Provider on any subject matter, and to decline, suspend or terminate the participation of Provider under this Agreement under circumstances including, but not limited to, the following: (a) termination, suspension, limitation or restriction of Provider's license, accreditation, certification or other governmental authorization; (b) failure to maintain any insurance as required herein; (c) Provider's conviction of a felony or any other criminal charge relating to Provider; (d) any disciplinary action taken by a state licensing board or other governmental agency; (e) Provider's suspension or exclusion from participation in the Medicare or Medicaid programs; (f) any other legal, governmental or other action or event which may materially impair the Provider's ability to perform any duties or obligations under this Agreement; or (g) Wellmark has reason to believe Provider does not meet Wellmark's contracting and/or credentialing standards set forth in the Provider Guide.

Consistent with the "Provider Denial, Termination, Appeal and Reporting Procedure" set forth in the Provider Guide, should Wellmark believe termination of participation of Provider is warranted at any time after Provider has been accepted as a Participating Provider hereunder, it shall so notify Provider and advise Provider of Provider's right to appeal the proposed adverse action of termination. Notwithstanding the foregoing, however, subject to subsequent notice and appeal, Wellmark may immediately suspend or limit Provider's participation in any or all Benefit Contracts where the failure to take such immediate action could, in Wellmark's judgment, result in imminent danger to the health of any Member. In the event Provider's participation is terminated, limited or suspended, Provider will immediately notify Provider's patients or customers, as the case may be, of such termination, limitation or suspension.

ARTICLE VI PROVIDER RESPONSIBILITIES

In addition to the other duties of Provider under this Agreement, Provider agrees as follows:

- 6.1 Provide Covered Services.** Upon presentation by a Member of a Wellmark-issued or administered identification card stating the Member's identification number or, pursuant to Wellmark's telephonic or electronic verification (or other means of verification hereafter established by Wellmark from time to time) of a Member's eligibility, Provider will provide Covered Services in accordance with the terms of this Agreement with the same quality and accessibility in terms of timeliness, duration and scope as is provided to Provider's other patients or customers (as the case may be). All Covered Services provided by Provider will be Medically Necessary. Further, Provider shall not discriminate against Members based upon their status as Members, their age, sex, race, religion, national origin, creed, color, physical or mental disability, political belief or health status. Provider shall, unless medically contraindicated or in a situation requiring emergency services to evaluate or stabilize an Emergency Medical Condition, refer Members to another provider designated as a Participating Provider by Wellmark in the event that Provider cannot provide the type of Covered Services required by the Member.
- 6.2 Blue Cross and Blue Shield Out of Area Program.** Provider shall provide covered services to any person covered by another licensed Blue Cross and Blue Shield Plan ("Plan") under the Blue Cross and Blue Shield Association's out of area or reciprocal programs, and submit claims for payment to Wellmark for Wellmark's coordination with the appropriate Plan in adjudicating the claim according to the person's benefit contract. The provisions of this Agreement shall apply to charges for covered services under the Blue Cross and Blue Shield out of area and reciprocal programs. Provider shall accept reimbursement by Wellmark as payment in full for covered services provided to such persons except to the extent of deductibles, coinsurance and/or copayments.
- 6.3 Participate in Complaint Resolution.** Provider shall participate in such complaint procedures as Wellmark may put into effect to address the complaints of Members provided, however, that compliance with this Section shall not include responding to allegations of medical malpractice or other claims that could result in damage awards against Provider.
- 6.4 Designate a Contact Person.** Provider shall designate one person as the contact person for purposes of this Agreement. That designated person shall be the representative of Provider with whom Wellmark shall consult on matters relating to the terms of this Agreement.
- 6.5 Health Management.** Wellmark may establish and implement a Utilization Management program to include the review and determination on prospective and retrospective bases of the Medical Necessity of Covered Services provided to Members, and a Quality Improvement program to include measurement, evaluation and improvement of the quality of Covered Services provided to Members by Provider. The Utilization Management and Quality Improvement programs are set forth in the Provider Guide. Provider shall cooperate in carrying out all duties specified in the Utilization Management and Quality Improvement programs consistent with applicable Benefit Contracts.
- Wellmark may, in Wellmark's discretion, request Provider's participation in the development and/or ongoing review and oversight of the Utilization Management and Quality Improvement programs through Provider representation on various health management committees which may be established from time to time by Wellmark. The mechanism for appointment to and responsibilities of the health management committees are set forth in the Provider Guide.
- 6.6 Information Requests.** Provider shall furnish information as requested, in accordance with relevant state and federal laws, including, but not limited to, the medical records of Members and Health Plan Employer Data and Information Set reporting, to support Wellmark quality initiatives and performance. Ownership of all such information provided to Wellmark shall vest exclusively in Wellmark. Provider shall be paid reasonable costs, not to exceed a maximum of \$15.00 per patient or customer (as the case may be), for the duplication of information contained in such patient or customer records related to Provider's compliance with Wellmark quality initiatives as

contemplated by this Section. Provider shall obtain from the Members any consents and authorizations necessary in order to provide such records and information to Wellmark.

- 6.7 **Compliance with Administrative/Operational Policies.** Provider shall comply with the administrative/operational policies, rules, procedures and protocols set forth in the Provider Guide, as adopted and amended from time to time by Wellmark, and as distributed to Provider. Non-material changes to the Provider Guide may be made by Wellmark from time to time without amendment of this Agreement. Material changes to the Provider Guide may be made by Wellmark from time to time by amendment of this Agreement pursuant to Section 14.10 of this Agreement.
- 6.8 **Periodic Evaluation.** Provider will cooperate with Wellmark's periodic evaluation of Provider's qualifications to provide Covered Services under this Agreement.

ARTICLE VII WELLMARK RESPONSIBILITIES

In addition to the other duties of Wellmark under this Agreement, Wellmark agrees as follows:

- 7.1 **Provider Guide.** In conjunction with the initial delivery of this Agreement to Provider, Wellmark will make available a Provider Guide to Provider. The Provider Guide will be updated on a regular basis and supplemented with communications as needed to reflect changes in benefits, copayments and any other administrative/operational policies, including Quality Improvement and Utilization Management policies, with which Provider must comply as a condition of participation.
- 7.2 **Benefit Differentials.** Wellmark may establish incentives in the Benefit Contracts for Members to receive Covered Services from Participating Providers.

ARTICLE VIII PAYMENT FOR COVERED SERVICES

- 8.1 **Payment.** Subject to the terms and conditions of this Agreement, Provider shall be paid in accordance with the terms and conditions of the applicable provisions of Exhibit A.
- 8.2 **Source of Payment.** Except as expressly provided herein, Provider agrees to: (a) accept payment made by Wellmark as full payment for Covered Services furnished to Members except to the extent of deductibles, coinsurance and/or copayments; (b) not bill Members for any balance attributable to Covered Services other than deductibles, coinsurance and copayments; and (c) seek payment from Members for any such deductibles, coinsurance and/or copayments. Provider may seek payment from Members for other services not covered under the applicable Benefit Contract, except that Provider may only seek payment in accordance with Section 8.5 of this Agreement for services determined not to be Medically Necessary under Wellmark's Utilization Management program. However, in the event of Client insolvency or refusal to provide adequate funds to Wellmark for the payment of Wellmark Select claims, Provider may seek payment for such Wellmark Select claims directly from Client or the Member. Provider agrees that should Client become insolvent or fail to remit adequate funds for payment of such Wellmark Select claims, Wellmark shall have no obligation to make payment to Provider for such claims and that Provider's sole recourse shall be against the Client or the Member.
- 8.3 **Utilization Management Procedures.** Provider will follow Wellmark's Utilization Management procedures set forth in the Provider Guide with respect to the specified services identified in such Provider Guide. Provider will not attempt to collect from Members any payment reduction resulting from Provider's failure to follow such procedures.
- 8.4 **Claims Filing.** Provider shall submit claims on behalf of Members in a manner and format acceptable to Wellmark and as prescribed from time to time by Wellmark.

In order for Provider to be paid for Covered Services furnished any Member, the claim for such Covered Services must be received by Wellmark within three hundred and sixty-five (365) days immediately following the last date Covered Services are provided to the Member. Claims which are not submitted by Provider within such three hundred and sixty-five (365) day period will not be honored by Wellmark. Wellmark will waive this provision for any claim for which Wellmark is the cause of the delay, which is due to incorrect information provided by the Member and relied upon in good faith by Provider or which Wellmark concludes results from circumstances beyond the reasonable control of Provider. Provider agrees not to bill Members for Covered Services associated with any claim Provider fails to submit within such three hundred and sixty-five (365) day period.

If, under this Agreement or any of its Exhibits, it is determined that Wellmark has made payment to Provider in error, Wellmark may deduct from future payments due to Provider amounts equal to the amount of payment or payments made in error or may recover payments directly from Provider for such payment or payments made in error. If it is determined that an underpayment has been made to Provider, Wellmark will make a payment adjustment in that amount to Provider.

- 8.5 Payment by Members.** Provider shall have the right to seek payment from a Member for services rendered to a Member which have been determined not to be Medically Necessary under Wellmark's Utilization Management program, provided that, prior to rendering such services, the Provider informs the Member, in writing, that the services have been determined under such program to not be Medically Necessary.
- 8.6 Claims Encounter Data.** Provider shall: (a) furnish on request all information reasonably required to verify and substantiate the providing of Covered Services; and (b) not charge Wellmark or Members for any expenses associated with Provider's compliance with Wellmark's requirements for information to enable Wellmark to process claims.
- 8.7 Coordination of Benefits.** Provider agrees to cooperate, to the extent permitted by law, with Wellmark's coordination of benefits efforts, providing to Wellmark such information as Provider may obtain regarding other payors, either primary or other than primary, with respect to a particular Member.
- 8.8 Subrogation.** Provider agrees to cooperate, to the extent permitted by law, with Wellmark's efforts regarding subrogation by providing to Wellmark such information as the Provider may obtain regarding other payors.
- 8.9 Liens.** In the event Provider is entitled to assert a lien upon any recovery or sum collected or to be collected by a Member or the Member's heirs or personal representatives in the case of Member's death, Provider shall furnish Wellmark with a copy of any lien filed within thirty (30) days of the filing thereof.
- 8.10 Time for Payment.** Wellmark shall promptly pay Provider's claims for Covered Services within thirty (30) days of receipt by Wellmark if submitted electronically, otherwise within forty-five (45) days of receipt by Wellmark; provided, however, that such claims shall contain, in Wellmark's judgment, all necessary information required for claims processing. A description of the information required for claims processing is set forth in the Provider Guide.

ARTICLE IX MARKETING, ADVERTISING AND PUBLICITY

- 9.1 Use of Provider's Name and Other Identifying Data.** Wellmark shall have the right to use Provider's name and other identifying data concerning Provider for the purposes of publishing Participating Provider directories, marketing, informing Members of the identity of the Products

and Participating Providers, and as necessary to carry out the terms of this Agreement. Provider shall have the right to review marketing materials prepared by Wellmark which specifically reference Provider and may request revision to the extent Provider believes such marketing materials are inaccurate, incomplete or carry a material risk of liability for Provider. Nothing herein shall permit Wellmark to use any symbols, service marks, trademarks or trade names of Provider without the prior written approval of Provider.

- 9.2 **Use of Wellmark Name.** Provider shall have the right to use the name of Wellmark as necessary to carry out the terms of this Agreement. Nothing herein shall permit Provider to use any symbols, service marks, trademarks or trade names of Wellmark without the prior written approval of Wellmark. Provider shall cease any such permitted usage immediately (i) upon notice from Wellmark, and (ii) upon termination of this Agreement. Wellmark shall have the right to prior review and approval of any use of the name "Wellmark of South Dakota, Inc." or "Wellmark Blue Cross and Blue Shield of South Dakota," or any derivative thereof.

ARTICLE X RECORDS, CONFIDENTIALITY AND AUDIT

- 10.1 **Product Data.** All information and data collected or developed by Wellmark related to claims, cost, utilization, outcomes, quality and financial performance under the health benefit plans offered or administered by Wellmark during the term of this Agreement shall be referred to as "Product Data." Any Product Data that relates to services of a specific provider to a specific Member shall be referred to as "Provider Specific Product Data." Wellmark shall be the owner of all Product Data and Provider Specific Product Data. Product Data provided to Provider by Wellmark shall be kept confidential by Provider and used only for the purpose of carrying out Provider's obligations under this Agreement. Upon termination, Provider shall return to Wellmark any Product Data that is not Provider Specific Product Data.

To the extent permitted by law, Wellmark reserves the right to disclose (during the term and after the termination of this Agreement) to a current or prospective Member, to a current or prospective employer or sponsor of a group health benefit plan or to an auditor or health care consultant of a current or prospective employer or sponsor, insofar as the information concerns Covered Services that are or would be provided under Benefit Contracts, information derived from the Provider Specific Product Data. Such information may explicitly or implicitly identify Provider and include, but not be limited to, actual or projected payment levels made to Provider.

- 10.2 **Medical Records.** Provider agrees to prepare and maintain, in accordance with prudent record-keeping procedures, and as required by applicable federal and state law, legible medical, financial and other records or data with respect to Members that Provider typically prepares and maintains with respect to Provider's patients or customers (as the case may be). Ownership and access to medical records of Members are governed by applicable state and federal laws and this Agreement. Provider shall obtain from Members any consents and authorizations necessary in order to provide such records and information to Wellmark. Subject to privacy and confidentiality requirements, the records of a Member (and the information contained therein) shall be available to Wellmark (during the term and after termination of this Agreement) upon reasonable request by Wellmark in order to process claims, perform necessary quality assurance or Quality Improvement programs, or to comply with any lawful request for information from appropriate authorities, and Wellmark will not make such records available to any other person who is not legally entitled thereto.
- 10.3 **Release of Information.** Provider agrees that all information provided to Wellmark by Provider or otherwise obtained by Wellmark in connection with Provider's application for participation or pursuant to Quality Improvement review, peer review, Utilization Management review, provider profiling or other review or audit of Provider's business conducted by or on behalf of Wellmark specifically identifying Provider may be released or disclosed to: (a) Wellmark's Affiliates; and (b) the contact person designated by Provider pursuant to Section 6.4 of this Agreement. Provider

shall, if requested by Wellmark, complete Wellmark's standard form of confidentiality/hold harmless agreement preceding the release to Provider of the information contemplated by this Section.

- 10.4 **Office and Record Audit.** Provider will provide access to Wellmark representatives to perform office audits and medical record reviews during normal business hours. Provider will give access to Wellmark to all records and documents reasonably related to the obligations of Provider under this Agreement. Wellmark will attempt to notify Provider, in writing, thirty (30) days in advance of routine office audits and medical record reviews, but reserves the right, when necessary in the judgment of Wellmark, to conduct such audits and reviews pursuant to advance notice of less than thirty (30) days.

ARTICLE XI LIABILITY

11.1 **Insurance.**

- (a) **Coverage.** Each party agrees to carry professional liability insurance (claims-made with appropriate tail coverage or occurrence-based), at its own expense, in an amount of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate, covering any claims with respect to Covered Services which may arise out of an incident occurring during the term of this Agreement. Such insurance shall include coverage for claims in connection with the performance of each party's respective responsibilities under this Agreement. Provider will furnish to Wellmark at the time Provider signs this Agreement, and from time to time thereafter as requested by Wellmark, proof of such insurance, which proof will include the name of the carrier, effective dates of coverage and coverage amounts.
- (b) **Notice of Claims.** Provider will promptly notify Wellmark whenever Provider learns that a Member has filed a claim or notice of intent to commence a claim against Provider in connection with Covered Services. Upon request, Provider shall provide full details to Wellmark, to the extent of Provider's knowledge, regarding the nature, circumstances and disposition of such claim.

11.2 **Liability.**

- (a) **Liability of Wellmark.** Wellmark shall not be liable for any claims, damages, losses or expenses resulting from any injury or death of persons, damage to property or other form of injury arising from the alleged malpractice, negligence, breach of contract or other act of Provider or any of Provider's employees, representatives or agents relating in any way to the performance or omission of any act or responsibility of Provider under this Agreement.
- (b) **Liability of Provider.** Provider shall not be liable for any claims, damages, losses or expenses resulting from any injury or death of persons, damage to property or other form of injury arising from the alleged malpractice, negligence, breach of contract or other act of Wellmark or any of Wellmark's employees, representatives or agents relating in any way to the performance or omission of any act or responsibility of Wellmark under this Agreement.

**ARTICLE XII
CONTRACT TERM AND TERMINATION**

12.1 Term. The term of this Agreement commences upon the date of acceptance of this Agreement by Wellmark and shall continue until terminated in accordance with Section 12.2.

12.2 Termination. This Agreement:

- (a) shall terminate in the event Wellmark dissolves or Provider dissolves (if Provider is an entity); or
- (b) shall be terminated upon sixty (60) days written notice in the event of a material breach in the performance of the terms and conditions of this Agreement, which breach, upon notice by the non-breaching party to the party in breach, remains uncured by the party in breach at the end of the sixty (60) day notice period; or
- (c) may be terminated by either party upon no less than ninety (90) days prior notice to the other; or
- (d) may be terminated by Wellmark as provided in Section 14.10.

Notice of termination shall be given in accordance with Section 14.4 of this Agreement.

12.3 Obligations During Termination Period. In the event this Agreement is terminated pursuant to (b), (c) or (d) in Section 12.2 above, Provider shall continue providing Covered Services to Members throughout the Termination Period in accordance with all prevailing standards of care and applicable professional ethical canons. For purposes of this Agreement, "Termination Period" is defined to mean that period of time beginning with the date of written notice of termination pursuant to Sections 12.2 or 14.10 and concluding with the effective date of termination. Covered Services provided during the Termination Period shall be reimbursed in accordance with the terms and conditions of Exhibit A.

If this Agreement is terminated by Wellmark or by Provider pursuant to Section 12.2(c), upon request to Wellmark by Provider or the Member (and upon (i) agreement by the Provider to continue to follow all applicable provisions of this Agreement during any such extended period, and (ii) Member continuing to be a "Member" during such extended period) Wellmark will permit the Member to continue an ongoing course of treatment for ninety (90) days following the effective date of termination of this Agreement, and if the Member has entered the second trimester of pregnancy as of the effective date of termination of this Agreement, the continuation of care through the Provider shall extend to the provision of postpartum care directly related to the delivery.

12.4 Post Termination. Upon termination of this Agreement, Provider shall no longer be entitled to designation as a Participating Provider. Provider shall return all Wellmark promotional materials to Wellmark and take those steps that may be reasonably required by Wellmark for Provider to be disassociated from Wellmark including, but not limited to, notifying Provider's patients or customers (as the case may be) that Provider is no longer a Participating Provider..

**ARTICLE XIII
NON-EXCLUSIVITY**

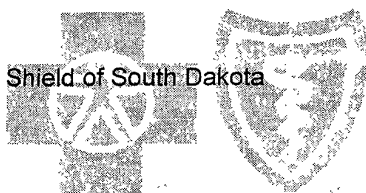
13.1 Provider. Nothing herein shall preclude Provider from contracting with other health insurance companies, health maintenance organizations or other entities licensed to assume health insurance risk.

- 13.2 **Wellmark.** Nothing herein shall preclude Wellmark from contracting with other providers to provide Covered Services to Members.

**ARTICLE XIV
MISCELLANEOUS**

- 14.1 **Assignment.** No assignment of the rights, duties or obligations of this Agreement shall be made by Wellmark or Provider without the consent of Provider or Wellmark, respectively.
- 14.2 **Waiver.** Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision.
- 14.3 **Entire Agreement.** This Agreement, all Exhibits hereto, and the Provider Guide constitute the entire agreement between the parties with respect to the subject matter hereof, and all prior and concurrent agreements, understandings, representations and warranties, whether written or oral, in regard to the subject matter hereof including, without limitation, any provider agreement previously entered into with Wellmark concerning the Benefit Contracts subject to this Agreement by or on behalf of Provider, are hereby superceded.
- 14.4 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when either delivered personally or sent by U.S. mail at the addresses set forth below if to Wellmark or set forth on the signature page to this Agreement if to Provider; provided, however, any notice concerning termination of this Agreement pursuant to Sections 12.2 or 14.10 shall be either delivered personally or sent by certified or registered mail, return receipt requested.

Attn: Provider Relations
Wellmark Blue Cross and Blue Shield of South Dakota
Station 348
1601 West Madison Street
Sioux Falls, SD 57104



Either party may change said address pursuant to notice of such change in accordance herewith.

- 14.5 **Medical Judgment.** Nothing herein shall permit Wellmark to dictate or direct Provider in the exercise of medical judgment. Wellmark shall implement Quality Improvement and Utilization Management activities so as not to be in violation of this provision. Furthermore, nothing herein shall be construed to prohibit or otherwise restrict Provider, acting within the lawful scope of Provider's business, from discussing with a Member the Member's health status and medical care or treatment options regardless of whether such medical care or treatment options are Covered Services.
- 14.6 **Severability.** To the extent any provision of this Agreement is prohibited by or invalid under applicable law or determined invalid or unenforceable by a court of competent jurisdiction or any other governmental authority with jurisdiction over the parties hereto, such provision shall be ineffective to the extent of such prohibition, invalidity or unenforceability without invalidating the remainder of the provision or the remaining provisions of this Agreement.
- 14.7 **Headings; Recitals.** The headings of articles and sections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The Recitals are a part of this Agreement.
- 14.8 **Governing Law.** This Agreement has been entered into, and is performable in part, in Sioux Falls, South Dakota. This Agreement shall be construed and enforced in accordance with the laws of the State of South Dakota, but without regard to provisions thereof relating to conflicts of law.

14.9 **Amendment.** This Agreement, including any Exhibits hereto, may be amended from time to time. Except as expressly stated hereinafter in this Section 14.10, no amendment will be effective unless duly executed in writing by Wellmark and Provider.

Wellmark shall provide written notice to Provider regarding any proposed amendment ninety (90) days in advance of the stated effective date of the proposed amendment. Unless Provider rejects the proposed amendment, in writing, thirty (30) days preceding the stated effective date of the amendment, Provider shall be deemed to have agreed to the proposed amendment. If a proposed amendment is rejected, Wellmark may terminate this Agreement pursuant to ninety (90) days advance written notice to Provider preceding the effective date of termination. Wellmark and Provider agree any rejected amendment shall not take effect prior to the stated effective date of termination.

14.10 **Third-Party Beneficiary.** This Agreement is not a third-party beneficiary contract and shall not in any respect whatsoever increase the rights of Members or any other third party with respect to Provider or Wellmark or the duties of each of those parties or create any rights or remedies on behalf of Members against Provider or Wellmark.

14.11 **Consideration; Construction.** Provider and Wellmark agree that the mutual obligations contained herein constitute consideration for their respective obligations and that there shall not be any separate monetary compensation therefor. This Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

14.12 **Limitation of Action; Waiver of Jury Trial.** No legal or equitable action may be brought on any claim arising under this Agreement more than two (2) years after the cause of action arose. **Wellmark and Provider each irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.**

IN WITNESS WHEREOF, Wellmark and Provider have executed this Agreement as set forth below.

CITY OF RAPID CITY
Print Legal Name of Provider Signing this Agreement

46-6000-380
Social Security or Tax Identification Number

300 Sixth Street
Street Address

Rapid City, SD 57701
City, State and Zip Code

Date of Execution by Provider

Signature

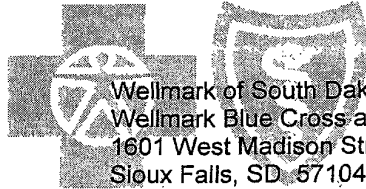
ATTEST:

Jim Shaw
Print Name of Person Signing Agreement

Finance Officer

Mayor
Title

(SEAL)



Wellmark of South Dakota, Inc. d/b/a
Wellmark Blue Cross and Blue Shield of South Dakota
1601 West Madison Street
Sioux Falls, SD 57104

By: _____
David N. Southwell
Vice President and Chief Financial Officer

Date of Acceptance by
Wellmark of South Dakota, Inc.

EXHIBIT A
to the
WELLMARK OF SOUTH DAKOTA, INC.
ENTITY AGREEMENT

The purpose of this Exhibit is to set forth the terms and conditions by which Wellmark of South Dakota, Inc., doing business as Wellmark Blue Cross and Blue Shield of South Dakota ("Wellmark") shall make payment to Provider for Covered Services furnished to Members by Provider under a Benefit Contract. This Exhibit is an integral part of and subject to all of the terms and conditions of the Entity Agreement ("Agreement") to which it is attached. Except as provided herein, each of the terms defined in the Agreement shall have the same meaning when used in this Exhibit.

1. Definitions

- 1.1 "Billed Charges" means Provider's full (non-discounted) fee-for-service charges for Covered Services.
- 1.2 "Maximum Allowable Fee" means the fee established by Wellmark from time to time based upon any one or more of the following three (3) elements (as determined from time to time by Wellmark): (i) the Resource Based Relative Value System ("RBRVS") that includes Relative Value Units ("RVUs") and Wellmark-determined conversion factors; (ii) statistically derived customary charge, based upon the same service when performed by most providers with comparable skills and training within the State of South Dakota or, as applicable, another state; and (iii) commercially available fee schedules, payment values and methods developed from time to time by Wellmark.
- 1.3 "Provider" means any of the following:
- a. an ambulance service licensed by the State of South Dakota or according to similar statutes of another state;
 - b. a home medical equipment services and supply provider;
 - c. a home infusion therapy provider;
 - d. a laboratory certified by the State of South Dakota, or according to similar statutes of another state, and CLIA certified or certified to participate in the Medicare and/or Medicaid program;
 - e. a freestanding magnetic resonance imaging center accredited by a nationally recognized accreditation organization accepted by Wellmark including, but not limited to, the Joint Commission on Healthcare Organizations (JCAHO);
 - f. a freestanding mammography center accredited by a nationally recognized accreditation organization accepted by Wellmark including, but not limited to, JCAHO, and certified or accredited pursuant to State of South Dakota statutes or similar statutes of another state;
 - g. an orthotic and prosthetic provider with one or more staff certified by the American Board of Certification or Board of Orthotic/Prosthetic Certification; or
 - h. a freestanding radiology center accredited by a nationally recognized accreditation organization accepted by Wellmark including, but not limited to, JCAHO.

2. Payment

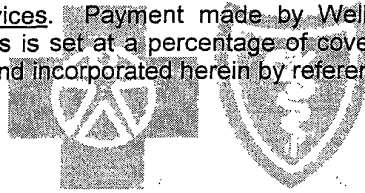
For claims incurred, Provider will be paid for Covered Services less applicable deductibles, coinsurance and copayments, as follows:

- a. Laboratory, Home Medical Equipment Services and Supplies Provider, Orthotic and Prosthetic Provider, Freestanding Radiology Center, Freestanding Mammography Center, or Freestanding Magnetic Resonance Imaging Center. Provider agrees payment for Covered Services provided by Provider shall be the lesser of the Provider's billed charge or the Maximum Allowable Fee established from time to time by Wellmark.

Maximum Allowable Fees will be reviewed annually by Wellmark and any changes will be communicated in writing by Wellmark to Provider at least ninety (90) days prior to the effective date of the change.

Fee schedules for illustration purposes only are provided to Provider in separate documents.

- b. Home Infusion Therapy Provider. Payments made by Wellmark for Medically Necessary home infusion therapy will be made at the lesser of charge or the per diem rates set forth under separate cover and incorporated herein by this reference. Services that should be billed separately include nursing services and drugs.
- c. Ambulance Services. Payment made by Wellmark for Medically Necessary Covered Services is set at a percentage of covered charges as set forth under separate cover and incorporated herein by reference.



**EXHIBIT B
TO THE
WELLMARK OF SOUTH DAKOTA, INC.
ENTITY AGREEMENT**

PRODUCTS

The purpose of this Exhibit is to set forth the Products to which the Wellmark of South Dakota, Inc. ("Wellmark") Entity Agreement ("Agreement") to which this is attached applies. This Exhibit is an integral part of and subject to all of the terms and conditions of the Agreement. Except as provided herein, each of the terms defined in the Agreement shall have the same meaning when used in this Exhibit.

The Products included in this Agreement are as follows for services provided at practice/service locations in South Dakota:

Indemnity Products

Comprehensive Major Medical, Blue Traditions, Classic Blue, Federal Employee Health Benefits Program (FEP), and the Blue Cross and Blue Shield Association Out-of-Area Program (BlueCard).

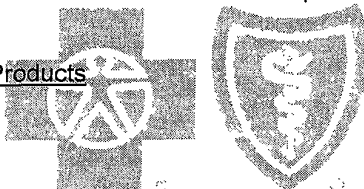
Preferred Provider Organization Products

Blue Select, Wellmark Select, Federal Employee Health Benefits Program (FEP), and the Blue Cross and Blue Shield Association Out-of Area Program (BlueCard PPO).

The Products included in this Agreement are as follows for services provided at practice/service locations not located in South Dakota:

Preferred Provider Organization Products

Wellmark Select



**Wellmark Blue Cross and Blue Shield of South Dakota
Rate Summary**

Ambulance Services

Classic Blue, Blue Select, Wellmark Select

Payment Percentage

100%