

**AGREEMENT**

BETWEEN A SOCIAL SERVICES DISTRICT

AND AN ASSISTED LIVING PROGRAM

AGREEMENT between the \_\_\_\_\_ County Department of  
Social Services, (referred to in this Agreement as "the Social Services  
District") which has its principal offices at \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

and \_\_\_\_\_,

an Assisted Living Program (referred to in this Agreement as "the  
Provider"), which has its principal offices at \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

WHEREAS, the Legislature of the State of New York has authorized the New York State Department of Social Services (referred to in this Agreement as "the Department") to approve Assisted Living Programs in accordance with Social Services Law (SSL) Section 461-1 and regulations promulgated in accordance with such Section at 18 NYCRR Section 485.6(n);

WHEREAS, the State's Medical Assistance program includes payment for Medical Assistance services provided by Assisted Living Programs in accordance with SSL Section 367-h and 18 NYCRR Sections 494.4(h) and 505.35;

WHEREAS, the Social Services District seeks to obtain Assisted Living Program services to be provided to Medical Assistance recipients;

WHEREAS, the Department and the New York State Department of Health have approved the Provider's application to become an Assisted Living Program and to provide such services to Medical Assistance recipients;

WHEREAS, SSL Section 461-1(3) and 18 NYCRR Sections 494.4(h) and 505.35(f) require that an Assisted Living Program be provided to Medical Assistance recipients in accordance with a contract between each Assisted Living Program and the social services district in which the Assisted Living Program is operating;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Eligibility and Prior Authorization for Assisted Living Program Services:

The Social Services District will determine whether an applicant for Assisted Living Program services is eligible for Medical Assistance.

The Provider is responsible for assuring that each Assisted Living Program applicant or recipient is assessed or reassessed, as appropriate, to determine whether he or she meets the admission or retention standards set

forth in 18 NYCRR Section 494.4. The Provider is responsible for assuring that such assessments or reassessments are forwarded to the Social Services District as required by 18 NYCRR Sections 494.4(h)(3) and (4) and 505.35(h)(3) and (4).

The Social Services District will determine, in accordance with 18 NYCRR Section 505.35(h)(3), (4) and (5), whether to prior authorize Medical Assistance payment for Medical Assistance services provided in the Assisted Living Program for each Assisted Living Program applicant or recipient who has been assessed or reassessed, as appropriate, for Assisted Living Program services, and whose assessment or reassessment has been forwarded for the Social Services District's review.

When the Social Services District conducts its own assessment or reassessment, as appropriate, of an Assisted Living Program applicant or recipient and disagrees with the Provider's assessment or reassessment, the Social Services District will forward its and the Provider's assessment or reassessment to the local professional director or designee in accordance with 18 NYCRR Sections 505.35(h)(3)(iii) or 505.35(h)(5)(iii), as appropriate. The local professional director or designee is responsible for the final determination whether Medical Assistance payment should be prior authorized for the Assisted Living Program applicant or recipient.

2. Assisted Living Program Services:

The Provider will provide, or arrange for the provision of, Assisted Living Program services to Medical Assistance recipients. Assisted Living Program services include the following services:

a. Resident services:

As specified in 18 NYCRR Section 494.5(a), resident services include the following: room; board; housekeeping; supervision; personal care, other than personal care services included in the Medical Assistance program; case management; and home health services.

b. Medical Assistance services:

As specified in 18 NYCRR Sections 494.5(b) and 505.35(h)(1), Medical Assistance services include personal care services; home health aide services; personal emergency response services; nursing services; physical therapy; occupational therapy; speech therapy; medical supplies and equipment not requiring prior approval; and adult day health care provided in a program approved by the Commissioner of Health.

The Provider is responsible for assuring that Medical Assistance services provided in the Assisted Living Program are furnished only to those Medical Assistance recipients who meet the eligibility requirements for the Assisted Living Program, as specified in 18 NYCRR Section 494.4 and with respect to whom the Social Services District has prior authorized payment for Medical Assistance services. The Provider will comply with such other provisions of 18 NYCRR Sections 494.4(h) and 505.35 as well as any other provisions of the Department's or the Department of Health's regulations as are relevant to the provision of services to Medical Assistance recipients participating in the Assisted Living Program.

The Provider is responsible for assuring that the Social Services District is immediately notified when any Medical Assistance recipient to whom Assisted Living Program services have been furnished enters a hospital to receive in-patient care or a residential health care facility.

3. Case Management:

The Provider will assure that case management services are provided to each Medical Assistance recipient with respect to whom the Social Services District has prior authorized Medical Assistance payment for Assisted Living Program services. Case management services will be provided in accordance with 18 NYCRR Sections 494.6(b) and 505.35(g) and include the following activities:

a. receive referrals for Assisted Living Program services and provide information about such services to Medical Assistance recipients referred to the Provider;

b. refer an Assisted Living Program applicant whom the Provider reasonably expects may be eligible for Medical Assistance to the Social Services District;

c. permit access by a Medical Assistance recipient to his or her case records that the Provider maintains;

d. establish linkages to services provided by other community agencies, provide information about these services to Medical Assistance recipients and establish criteria for referring Medical Assistance recipients to these services;

e. to the maximum extent possible, achieve economic efficiencies including, but not limited to, the use of shared aides consistent with the Provider's staffing standards;

f. arrange for the discontinuance of Medical Assistance services provided to a recipient in the Assisted Living Program when the Provider, or the Provider's delegate, reassesses the recipient and determines that such services must be reduced or discontinued; and

g. arrange for the discontinuance of Medical Assistance services provided to a recipient in the Assisted Living Program when the Provider, or the Provider's delegate, reassesses the recipient and determines that the recipient should be reauthorized for such services; however, the Social Services District and the local professional director or designee determine that the recipient's Medical Assistance services must be discontinued, subject to the recipient's notice, fair hearing and aid-continuing rights.

4. Training or Licenses:

The Provider will assure that each employee who provides personal care

services to Medical Assistance recipients has successfully completed the training requirements for personal care services specified in 18 NYCRR Section 505.14(e). The Provider will assure that each employee or other person who provides any other service to Medical Assistance recipients has successfully completed the appropriate training, licensing or similar requirement for such service as may be specified by the Department's regulations, the regulations of the Department of Health or the New York State Education Department or by any other provision of State law or regulation.

The Provider will assure that documentation is maintained in each employee's personnel record that establishes that the employee has successfully completed any required training, licensing or similar requirement.

5. Payment for the Residential Component of Assisted Living Program Services:

Payment for the residential component of Assisted Living Program services will be made as follows:

a. When an Assisted Living Program recipient is eligible for Supplemental Security Income (SSI) benefits, the Provider may charge the recipient for the residential component of the Provider's services. However, the Provider may not charge the recipient an amount that exceeds the SSI Congregate Care Level II Rate.

b. When an Assisted Living Program recipient is not eligible for SSI benefits and is eligible for Medical Assistance only after incurring expenses equal to or greater than his or her excess income amount, as determined in accordance with the Department's regulations at 18 NYCRR Part 360, the Provider may charge the recipient for the residential component of the Provider's services. However, the Provider may not charge the recipient

an amount that exceeds the SSI Congregate Care Level II Rate.

6. Payment for the Medical Assistance Component of Assisted Living Program Services:

The Social Services District is responsible for prior authorizing Medical Assistance payment to the Provider for the Medical Assistance services specified in Section 2(b) of this Agreement and in 18 NYCRR Sections 494.5(b) and 505.35(h)(1).

Medical Assistance payment will be made at the capitated rate established in accordance with Department of Health regulations at 10 NYCRR Subpart 86-7. The Provider understands and agrees that such capitated rates are determined on an individual basis for each Medical Assistance recipient who participates in an Assisted Living Program, and that the capitated rates may increase or decrease during the term of this Agreement. Such capitated rate is payment-in-full for the Medical Assistance services, as specified in Section 2(b) of this Agreement, provided to Assisted Living Program recipients.

Payment will continue to be made to the Provider at the capitated rate when an Medical Assistance recipient who is an Assisted Living Program resident is absent from the ALP in order to visit friends or relatives if:

- a. the recipient has resided in the ALP for at least 30 days;
- b. the ALP obtains a statement from the recipient's physician approving of the absence;
- c. the Assisted Living Program can assure that the recipient's health care needs will be met during his or her absence;
- d. the visit is limited to two (2) days duration for any single absence;
- e. the Assisted Living Program obtains prior authorization from the fiscally responsible social services district if the recipient's total days

of absence exceed more than 18 days in a 12 month period;

f. the Assisted Living Program assumes fiscal responsibility for the provision of any home care services included in the Medicaid home care services rate which are required by the recipient during his/her absence and which the family member or friend is unable or unwilling to provide;

g. the Assisted Living Program documents all absences as required by the Department. This documentation must be maintained in the recipients' record and a copy of the designated form must also be included in the recipients'/residents' transfer records when they are transferred to another Assisted Living Program.

No payment will be made under this Agreement when a Medical Assistance recipient to whom the Provider furnishes services enters a hospital to receive in-patient care or a residential health care facility. Nor will payment be made under this Agreement for any Medical Assistance services provided to Assisted Living Program recipients with respect to whom the Social Services District has not prior authorized payment for such services.

The Provider will assure that Medical Assistance services are not discontinued to any Assisted Living Program recipient solely because the costs of such services exceed the amount of the capitated payment rate.

7. Notice and Fair Hearings:

The Social Services District will notify Medical Assistance recipients of their right to a fair hearing to appeal the Social Services District's determinations regarding their eligibility for Medical Assistance services provided in the Assisted Living Program. The Social Services District will provide such notices in the following circumstances:

a. When the Provider determines that an Assisted Living Program applicant is eligible for Assisted Living Program services; however, the Social Services District and the local professional director or designee



determine, in accordance with 18 NYCRR Section 505.35(h)(3)(iii), that Medical Assistance services provided in the Assisted Living Program must be denied to the Assisted Living Program applicant; and

b. When the Provider determines that an Assisted Living Program recipient is eligible to continue to receive Assisted Living Program services; however, the Social Services District and the local professional director or designee determine, in accordance with 18 NYCRR Section 505.35(h)(5)(iii), that Medical Assistance services in the Assisted Living Program must be discontinued to the Assisted Living Program recipient.

The Social Services District will notify Medical Assistance recipients of their right to a fair hearing by using notices developed and required by the Department.

The Provider will participate in fair hearings when determined necessary by the Social Services District or the Department.

8. Quality of Services:

This Agreement does not diminish the Provider's responsibility for maintaining the quality and adequacy of Assisted Living Program services.

The Provider is responsible for the following:

a. Ensuring that Assisted Living Program services provided in accordance with this Agreement comply with Social Services Law Sections 367-h and 461-1; 18 NYCRR Part 494 and Section 505.35; and any other applicable provision of State or federal law or regulation;

b. ensuring the quality of Assisted Living Program services provided by the Provider or any entity with which the Provider has a subcontract for the provision of Assisted Living Program services; and

c. ensuring compliance with the plans of care the Provider establishes for Assisted Living Program recipients.

9. Provider as Independent Contractor:

The Provider is an independent contractor and not an employee, officer or agent of the Social Services District or the Department. The Provider agrees that the Provider and the Provider's employees, officers and agents will conduct themselves in accordance with this status and neither hold themselves out as, nor claim to be, employees, officers or agents of the Social Services District or the Department. Neither the Provider nor the Provider's employees, officers or agents will make any claim for any right or privilege applicable to a Social Services District or Department employee, officer or agent including, but not limited to, Workers' Compensation or retirement benefits.

10. Indemnification:

The Provider will defend, indemnify and hold harmless the Social Services District and the Department and their employees, officers and agents from any liability resulting from the Provider's performance or failure to perform in accordance with this Agreement.

11. Liability and Other Insurance:

Prior to providing Assisted Living Program services to Medical Assistance recipients, the Provider will obtain liability or other insurance in sufficient amounts to protect the Social Services District and the Department and their officers, employees and agents from any liability relating to the provision of Assisted Living Program services that may arise as a result of any acts, omissions, or negligence of the Provider or of the Provider's officers, employees or agents. Such insurance coverage may be an endorsement to an existing policy of the Provider. The Provider agrees to maintain such coverage while this Agreement is in effect.

The Provider also agrees that, regardless of the form or manner of the

Provider's insurance coverage, and prior to providing Assisted Living Program services under this Agreement, it will request its insurer to provide the Social Services District with a written acknowledgment of the Provider's insurance coverage, the terms of the Provider's insurance coverage, and a commitment that the insurer or the Provider will notify the Social Services District at least ten calendar days before the effective date of any change in, or cancellation of, the Provider's insurance coverage.

12. Provider's Recordkeeping Responsibilities:

a. The Provider will complete and maintain all required employee payroll records and deduct all tax, insurance, and other required payments including, but not limited to, workers' compensation; disability insurance; Social Security taxes; federal and State unemployment insurance benefits; and federal, State and local income tax withholding.

b. The Provider will maintain records and accounting procedures that properly reflect all direct and indirect costs expended in the performance of this Agreement. The Provider will collect and maintain all fiscal and program statistical records or other documentation as required by the Social Services District, the Department or the Department of Health.

c. At all times during this Agreement and for six years after final payment in accordance with this Agreement, the Provider will provide all authorized representatives of the Social Services District, the Department, the Department of Health, and the State or federal government with full access to all records relating to the Provider's performance under, or funds payable pursuant to, this Agreement for the purpose of examining, auditing or copying such records.

d. The Provider will comply with all applicable federal and State requirements governing the confidentiality of information relating to

Medical Assistance recipients including, but not limited to, Section 1902(a)(7) of the Social Security Act and SSL Section 369, and any regulations promulgated in accordance with such federal and State statutory provisions, and with 18 NYCRR 360-8.1.

e. The Provider will maintain all records and other documents relating to payment for, or the provision of, Medical Assistance services provided in the Assisted Living Program to Medical Assistance recipients under this Agreement for six years after the Provider receives Medical Assistance payment for such services.

The Provider is responsible for assuring that the provisions of subdivision (a) through (e) of this section apply to any subcontract related to performance under this Agreement.

13. Notice of Provider's Subcontracts or other Agreements:

The Provider will notify the Social Services District of any affiliated entities with which it has direct or indirect agreements, subcontracts for services, or any other arrangement under which the amounts the Provider receives as payment for Medical Assistance services provided in the Assisted Living Program are shared among or transferred between the Provider and any other entity.

14. Termination of Agreement:

By the Social Services District:

The Social Services District will terminate this Agreement when:

a. The Department notifies the Social Services District that federal or State Medical Assistance reimbursement is not available for Medical Assistance services provided in the Assisted Living Program;

b. The Department and the Department of Health have revoked the Provider's authority to provide an Assisted Living Program;

c. The Social Services District has determined that each of the Medical

Assistance recipients to whom the Provider has been furnishing services is no longer eligible for Medical Assistance;

d. The Social Services District has determined that an emergency exists that could jeopardize the health, safety or welfare of Medical Assistance recipients to whom the Provider furnishes services; or

e. The Provider fails to perform its obligations pursuant to this Agreement.

The Social Services District may terminate this Agreement for the reasons specified in any local variations that may be attached to this Agreement as Appendix A.

By the Provider:

The Provider will terminate this Agreement when the Provider voluntarily chooses to surrender its license as an Assisted Living Program.

The Provider may terminate this Agreement when:

a. The Department revises the requirements for the Provider's provision of services and the Provider reasonably finds these requirements unacceptable; or

b. as otherwise specified in any local variations that may be attached to this Agreement as Appendix A. By Mutual Agreement:

This Agreement may be terminated by the mutual agreement of the Social Services District and the Provider.

15. Agreement Close-Out Procedures:

The Provider agrees to comply with all Social Services District and Department close-out procedures when this Agreement terminates or expires. These close-out procedures include, but are not necessarily limited to, the following:

a. Within five business days after this Agreement terminates or

expires, the Provider will transfer to the Social Services District, or the District's designee, a copy of the Provider's records pertaining to all Medical Assistance recipients to whom the Provider has previously furnished, or is currently furnishing, services.

b. Within thirty calendar days after this Agreement terminates or expires, the Provider will notify the Social Services District in writing of all obligations relating to this Agreement that the Provider necessarily incurred before the date this Agreement terminated or expired and that came due after such date. The Social Services District will authorize payment to the Provider in accordance with this Agreement for such obligations. The Social Services District will not authorize payment to the Provider for any obligations that the Provider incurs or pays after this Agreement terminates or expires.

c. Within thirty calendar days after this Agreement terminates or expires, the Provider will account for, and refund to, the Social Services District any overpayments or excess funds paid to the Provider pursuant to this Agreement.

d. Within ninety calendar days after this Agreement terminates or expires, the Provider will submit to the Social Services District a final report, completed by a certified public accountant, of the Provider's receipt and expenditure of funds pursuant to this Agreement.

16. Employment Practices:

The Provider will comply with the nondiscrimination clause contained in federal Executive Order 11246, as amended by federal Executive Order 11375, relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin; the implementing regulations prescribed by the federal Secretary of Labor at 41 Code of Federal Regulations, Part 60; and the federal regulations contained in 45 Code of

Federal Regulations Part 84, entitled "Nondiscrimination on the basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance."

17. Renegotiation:

The Social Services District and the Provider may renegotiate the terms and conditions of this Agreement should the Department revise the requirements for the provision of services and the parties determine that renegotiation is necessary to comply with such revised requirements. Any renegotiated agreement is subject to the review and approval of the Department.

18. Amendments:

The Social Services District and the Provider may amend this Agreement whenever they deem necessary; however, no such amendment will be effective until approved by the Department. The Social Services District will submit all proposed amendments to the Department for its review. All amendments must be in writing, signed by the parties' authorized representatives, and attached to this Agreement.

19. Local Variations:

Local variations to this Agreement, if any, are set forth in Appendix A, which is attached to and made a part of this Agreement. Such local variations are effective only if the Department has approved them in writing. If the terms of any local variations conflict with the terms in the main body of this Agreement, the terms in the main body of the Agreement control to the exclusion of the local variations.

20. Entire Agreement:

This Agreement, including any local variations attached as Appendix A, contains all the terms and conditions agreed upon by the parties. No other precedent or contemporaneous agreement, oral or written, that relates to the

subject matter of this Agreement will bind the parties or vary any of the terms and conditions contained in this Agreement.

21. Effective Dates:

This Agreement is effective on \_\_\_\_\_, 199\_, and unless otherwise terminated pursuant to this Agreement, will expire on \_\_\_\_\_, 199\_. However, if the term of this Agreement continues beyond one year from the Agreement's effective date, the Social Services District or the Department may void this Agreement at any time after one year. Neither the Social Services District nor the Provider is obligated to renew or extend this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year appearing below their respective signature.

\_\_\_\_\_  
Social Services District

\_\_\_\_\_  
Provider or Agency Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Commissioner Name

\_\_\_\_\_  
Name & Title of Representative

\_\_\_\_\_  
Commissioner Signature

\_\_\_\_\_  
Signature of Provider



_____		_____	
County Attorney	Date	MMIS ID#	Date

STATE OF NEW YORK            )  
COUNTY OF                    )    ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that \_\_\_\_\_ resides at \_\_\_\_\_, New York; that \_\_\_\_\_ is the \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ corporation described in and which executed the within instrument; that \_\_\_\_\_ knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that \_\_\_\_\_ signed \_\_\_\_\_ name by like order.

\_\_\_\_\_  
Notary Public