

MD/DO AMENDMENT TO THE PHYSICIAN AGREEMENT

This **MD/DO AMENDMENT TO THE PHYSICIAN AGREEMENT** (this “**Amendment**”) is made and entered into by and between **Highmark Inc.**, on its own behalf and/or on behalf of any its subsidiaries and affiliates which are signatories to the Physician Agreement (as hereinafter defined) including, without limitation, Keystone Health Plan West, Inc. (hereinafter, collectively, “**Highmark**”) and the undersigned physician, physician group, physician organization or other entity identified on the execution page hereof and who or that is a signatory to the Physician Agreement (hereinafter, “**Participating Physician**”).

WHEREAS, Participating Physician is a party to, or concurrent with the execution of this Amendment is executing, a participating physician agreement with Highmark as listed on the Listing of Physician Agreements set forth in Attachment A, as attached hereto and made a part hereof (hereinafter, the “**Physician Agreement**”); and

WHEREAS, Highmark entered into a Settlement Agreement dated as of October 19, 2007 in connection with the Love class action litigation filed against Highmark and certain other licensees of the Blue Cross Blue Shield Association in the United States District Court for the Southern District of Florida, Miami Division (hereinafter, the “**Love Settlement Agreement**”); and

WHEREAS, as part of the Love Settlement Agreement, Highmark agreed that its future standard participating physician agreements would be consistent with the commitments and undertakings of Highmark under the Love Settlement Agreement in such settlement; and

WHEREAS, the parties desire by this Amendment to set forth necessary terms and conditions to ensure that the Physician Agreement is not inconsistent with such commitments and undertakings under the Love Settlement Agreement.

NOW THEREFORE, in consideration of the mutual covenants stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. EFFECTIVE DATE

This Amendment shall be effective as of the day and year assigned by Highmark and set forth on the execution page of this Amendment below the signature of the authorized Highmark officer (the “**Effective Date of this Amendment**”).

2. GENERAL AGREEMENTS

2.1. Applicable to Medical Doctors only. The parties hereby agree that this Amendment and any provisions contained herein shall be limited in application to only those individual providers covered under the applicable Physician Agreement who are

individually duly licensed by the required state licensing board as a Medical Doctor or as a Doctor of Osteopathy regardless of whether the Physician Agreement covers an individual practitioner or a group of practitioners. If an individual practitioner other than a Medical Doctor or a Doctor of Osteopathy, or an entity that is the party to an agreement listed on Attachment under which no Medical Doctor or a Doctor of Osteopathy participate, executes this Amendment regardless of whether Highmark countersigns such amendment, the amendment will be deemed null and void and will not apply to the relationship between Highmark and such individual practitioner or entity.

2.2. Modifications to the Physician Agreement and Policies and Procedures. This Amendment shall contain certain modifications to the Physician Agreement consistent with the Love Settlement Agreement. Those modifications will be effective and, where applicable, shall replace, modify and/or nullify any inconsistent terms contained in the Physician Agreement for the term of this Amendment.

In addition to this Amendment, Highmark will develop additional policies and procedures as necessary to be consistent with the terms of the Love Settlement Agreement (hereinafter, “**Love Settlement Policies**”). The Love Settlement Policies will be included in Chapter 2, Unit 8 of the Highmark’s Blue Shield Office Manual or its successor. The Love Settlement Policies will be binding upon the Participating Physician and, where applicable, shall replace, modify or nullify any inconsistent terms contained in the Physician Agreement for the term of this Amendment. Highmark and Participating Physician each agree to comply with and abide by the modifications contained in this Amendment and the Love Settlement Policies. Except as otherwise set forth herein or in the Love Settlement Policies, both Highmark and Participating Physician are, and shall during the term thereof continue to be, bound by the terms and conditions of the Physician Agreement.

2.3. Product and Program Exclusions. This Amendment and the Love Settlement Policies will not apply to the Federal Employee Program or Highmark’s role under the Federal Employees Health Benefits Act and the rules and regulations and contracts promulgated or entered thereunder. In addition, this Amendment and the Love Settlement Policies will not also apply where required by applicable law or a governmental body. Further, this Amendment and the Love Settlement Policies may not apply to a self-insured plan and/or another licensee of the Blue Cross Shield Association where such plan or licensee is not required to comply with applicable terms of the Love Settlement Agreement.

2.4. Conflicts. In the event of a conflict, the following order of control shall apply: (a) first, applicable laws; (b) second, the provisions, terms and conditions of the applicable benefit agreement or plan document with respect to the affected members; (c) third, the provisions, terms and conditions of the Love Settlement Agreement; (d) fourth, the provisions, terms and conditions of this Amendment, (e) fifth, the provisions, terms and conditions of the Love Settlement Policies, (f) sixth, the provisions, terms and conditions of the Physician Agreement and (g) seventh, other Highmark policies and procedures.

3. MODIFICATION(S) TO THE AGREEMENT

The parties agree that the Physician Agreement shall be amended as follows:

3.1. Notice of Policy and Procedure Changes. If Highmark intends to make a material adverse change(s) in the terms of its contracts (including policies and procedures incorporated by reference therein) with Participating Physician, Highmark will give at least ninety (90) days written notice to Participating Physician (except to the extent that a shorter notice period is required to comply with changes in applicable law), which notice shall reasonably apprise the Participating Physician of such change(s), and the change(s) shall not become effective before the conclusion of the notice period. If Participating Physician objects to the change(s) that is/are subject to the notice, the Participating Physician must, within thirty (30) days of the date of the notice (which shall be the date the notice is sent by United States mail, by facsimile, or, if Highmark offers it, electronically at the option of the Participating Physician), give written notice to terminate his, her, or its contract with Highmark, which termination shall be effective at the end of the notice period of the material adverse change unless, within sixty-five (65) days of the date of the original notice of change(s), Highmark gives written notice to the objecting Participating Physician that it will not implement, as to the objecting the Participating Physician, the material adverse change(s) to which the Participating Physician objected. Applicable continuation of care provisions shall apply to any contract termination pursuant to this Section 3.1.

3.2. Provider Disputes. Highmark is implementing certain appeal and dispute processes and procedures for Participating Physicians. Upon adoption, such processes and procedures shall be described as needed in the Love Settlement Policies and made available to Participating Physician. If pursued by the Participating Physician, the parties agree any final determination made as a result of such processes and procedures shall be final and binding, and non-appealable, upon all parties to this Amendment. This provision does not apply to disputes and matters that are subject to any separate provider dispute processes and/or member complaint, appeal or grievance procedures not covered under the Love Settlement Agreement.

3.3. Termination Without Cause. Notwithstanding anything to the contrary in the Physician Agreement, any party to a Physician Agreement shall have the right to terminate the contract without cause upon prior written notice provided to all other parties which notice shall be a definite period set forth in such agreement, which period shall be no less than sixty (60) or more than one hundred and twenty (120) calendar days. If a current Physician Agreement does not have a right to terminate, the Physician Agreement is hereby amended to include the following language: “Any party to this Physician Agreement shall have the right to terminate the contract without cause upon prior written notice provided to the other, which period shall be no less than sixty (60) calendar days.” If a current notice period is shorter than sixty (60) calendar days, such provision is hereby amended to require sixty (60) calendar days notice. If a current notice period is more than one hundred twenty (120) calendar days, such provision is

hereby amended to require one hundred twenty (120) calendar days notice. All other termination without cause and applicable notice provisions remain unmodified.

3.4. Termination for Changes to Fee Schedules. If an annual revision made by the Centers for Medicare & Medicaid Services (hereinafter, “CMS”) results in a reduction in the fees in a Highmark fee schedule that is directly tied to the CMS fee schedules as established and maintained by Highmark, a Participating Physician shall have the right to terminate his or her contract with Highmark by giving Highmark written notice of termination within thirty (30) days of the date on which CMS published notice of the annual revision, which termination shall be effective ninety (90) days after the date that such notice was published. Applicable continuation of care provisions shall apply to any contract termination pursuant to this Section 3.4.

3.5. Medical Necessity Definition. Except where any applicable law, regulation, or government body requires a different definition (i.e., CMS as to the Medicare Advantage program, etc.) or another exclusion applies as stated in Section 2.3 of this Amendment, “**Medically Necessary**,” “**Medical Necessity**” or such other comparable term in any of the Physician Agreements noted on Attachment A hereto shall mean health care services (or such similar term as contained in the applicable benefit agreement or plan document to include, but not be limited to, “health services and supplies,” “services and supplies” and/or “medications and supplies”) that a provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating an illness, injury, disease or its symptoms, and that are: (a) in accordance with generally accepted standards of medical practice; (b) clinically appropriate, in terms of type, frequency, extent, site and duration, and considered effective for the patient’s illness, injury or disease; and (c) not primarily for the convenience of the patient, physician, or other health care provider, and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient’s illness, injury or disease.

3.6. Gag Clauses. No provision in the Physician Agreement or this Amendment will be interpreted to limit the free, open and unrestricted exchange of information between Participating Physician and a member regarding the nature of the member’s medical conditions or treatment and provider options and the relative risks and benefits and costs to the member of such options, whether or not such treatment is covered under member’s benefit agreement or plan document, and any right to appeal any adverse decision by Highmark regarding coverage of treatment that has been recommended or rendered. Highmark agrees not to penalize or sanction Participating Physician in any way for engaging in any free, open and unrestricted communication with a member with respect to the foregoing subjects or for advocating for any service on behalf of a member.

3.7. Provision of the Physician Contract. Highmark shall provide a copy of its contract with a Participating Physician (including without limitation a contract with a physician organization or a physician group through and under which an individual

physician Participating Physician participates) to such Participating Physician, upon receipt by the Highmark of a written request by such Participating Physician to provide such copy.

4. TERM AND TERMINATION OF THIS AMENDMENT

The term of this Amendment will begin on the Effective Date of this Amendment and shall continue through the term of Physician Agreement, subject to earlier termination as provided herein. This Amendment will immediately terminate upon the termination of the Physician Agreement. Further, this Amendment will immediately terminate upon the expiration or termination of the Love Settlement Agreement, except where Highmark provides prior written notice of its decision to continue this Amendment. The termination of this Amendment alone by Highmark in accordance with this Section 4 shall not affect the applicable Physician Agreement, which shall remain in full force and effect unless such agreement is terminated in accordance with the terms thereof.

5. MISCELLANEOUS

5.1. Amendments/Modifications. This Amendment or any provision hereof may be amended by Highmark immediately upon written notice to Participating Physician in order to comply with applicable laws and the directives of government bodies, or in order to account for modifications as permitted by the terms of the Love Settlement Agreement.

5.2. Compliance with Applicable Law. Nothing contained in this Amendment is intended to or shall, in any way, reduce, eliminate, or supersede any party's obligation to comply with applicable provisions of relevant state and federal law and regulations. The obligations hereunder shall be fulfilled by Highmark to the extent permissible under applicable laws and regulations, the terms and conditions of current and future government contracts, and applicable governmental directives. To the extent state or federal law or regulation imposes, with respect to a specific obligation created in this Amendment, a greater obligation than that specifically set forth in this Amendment, Highmark shall comply with said law or regulation. Further, if, and during such time as, Highmark is unable to fulfill an obligation hereunder to the extent contemplated by this Amendment because to do so would require governmental approval or action, Highmark shall perform such obligation to the extent permissible under applicable laws and regulations, the terms and conditions of current and future government contracts, and applicable governmental directives, and Highmark shall continue to fulfill its other obligations hereunder to the extent permitted under applicable laws and regulations, the terms and conditions of current and future government contracts, and applicable governmental directives.

5.3. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one amendment. It shall not be necessary in making proof of this Amendment to produce or account for more than one complete set of counterparts.

5.4. Definitions. Where needed, terms shall have the meaning assigned to them herein. Defined terms not otherwise defined herein shall have the meaning assigned to them in the Love Settlement Agreement.

5.5. Entire Agreement. No representations, promises or inducements have been made by the parties with respect to the subject matter hereof other than as appear in this Amendment. This Amendment becomes part of the Physician Agreement and is incorporated, as applicable and appropriate, into such agreement. This Amendment together with the Physician Agreement and all additional amendments in effect constitute the entire understanding of the parties with respect to the subject matter hereof and supersede any prior oral or written communications, representations, or agreements pertaining to such subject matter.

5.6. Force Majeure. No party hereto shall be required to meet an obligation under this Amendment where the inability to meet such obligation is the result of any act of God, governmental act, act of terrorism, war, fire, flood, earthquake or other natural disaster, explosion or civil commotion (“**Force Majeure**”). The performance of a party’s obligations under this Amendment, to the extent affected by the delay, shall be suspended for the period during which the cause, or the party’s substantial inability to perform arising from the cause, persists. If the performance of any obligation under this Amendment is excused or delayed by Force Majeure and that obligation is a condition precedent for the performance of an obligation by another party, performance of the obligation by the second party shall be excused or delayed to the same extent as the performance of the obligation by the first party.

5.7. Governing Law. The provisions of this Amendment shall be governed, construed and interpreted in accordance with the Laws of the Commonwealth of Pennsylvania or, where applicable, federal Laws.

5.8. Incorporation of Recitals. The recitals first set forth above are hereby incorporated into this Amendment by reference.

5.9. Interpretation. The captions provided in this Amendment or in an attachment or appendix hereto are for convenience and do not affect the contents hereof and thereof. As used in this Amendment, any terms in the singular, either as defined terms or otherwise, shall be construed, where applicable, to be plural, and terms used in the plural, either as defined terms or otherwise, shall be construed, where applicable, to be singular.

5.10. Representation Regarding Execution, Delivery and Performance. The parties hereby understand and acknowledge that the Physician Agreement may have been executed by a physician group, physician organization or other entity on behalf of more than one professional provider. Each party to this Amendment hereby represents and warrants to the other party(ies) as follows: (a) the party has the full power and authority to execute and deliver this Amendment and to perform the transactions contemplated

hereunder; (b) if necessary, the execution and delivery of this Amendment and the performance of the transactions contemplated hereunder have been duly authorized by all appropriate persons, bodies and entities; and (c) except as specifically described herein, the party has obtained all consents, if any, necessary for execution, delivery and performance of this Amendment. Further, if this Amendment is executed by a physician group, physician organization or other entity, such entity represents and warrants as follows: (a) that all physicians covered under the Physician Agreement are employees of such entity; (b) that, as the employer of the physicians covered under the Physician Agreement, it has the lawful authority to execute this Amendment on behalf of each of the physicians and to execute similar agreements on behalf of each physician, thereby individually binding itself and each physician to the terms of all such executed agreements; and (c) that the individual executing this Amendment on behalf of such entity and all of its individual physicians has been duly authorized by the individual physicians to do so on their behalf.

5.11. Severable Agreement. The provisions of this Amendment are intended to be severable. Should any of the provisions be found illegal, invalid or unenforceable by any court of competent jurisdiction for any reason, it shall be severable from the remainder of this Amendment, and the remainder of this Amendment shall be unchanged and shall be read as if it did not contain the illegal or invalid provision.

(Signatures on Next Page)

IN WITNESS WHEREOF, the undersigned parties have executed or caused the due execution of this MD/DO Amendment to the Physician Agreement as of the date set forth below their signatures to be effective as of the Effective Date of the Amendment.

THIS AMENDMENT ONLY APPLIES TO, AND/OR MAY ONLY BE EXECUTED BY, A MEDICAL DOCTOR OR DOCTOR OF OSTEOPATHY

Participating Physician Name:

(Type or Print Legal and, where applicable, any Fictitious Name)

By: _____
(Signature)

(Please Print or Type Name)

Title: _____

Date: _____

HIGHMARK INC. and on behalf of any of its subsidiaries which are a party to a Physician Agreement

By: _____
(Signature)

(Please Print or Type Name)

Title: _____

Date: _____

Effective Date: _____

**MD/DO AMENDMENT TO THE PHYSICIAN AGREEMENT
EXHIBIT A
LISTING OF PHYSICIAN AGREEMENTS**

Pennsylvania Department of Health Oversight:

Any and all versions of the following agreements:

Keystone Health Plan West, inc. KHPW Professional Provider Agreement

*Premier*Blue Shield Preferred Provider Agreement with Highmark Blue Shield

*Premier*Blue Shield Preferred Provider Agreement with Highmark Blue Shield for Primary Care Physicians in Managed Care Programs

*Premier*Blue Shield Preferred Provider Agreement with Highmark Blue Cross Blue Shield

*Premier*Blue Shield Preferred Provider Agreement with Highmark Blue Cross Blue Shield for Primary Care Physicians in Managed Care Programs

Participating Provider Agreement with Highmark Blue Shield

Participating Provider Agreement with Highmark Blue Cross Blue Shield

Group Practice Preferred Provider Agreement with Highmark Inc. [d/b/a][Highmark Blue Shield][Highmark Blue Cross Blue Shield]

Federal Preemption:

Any and all versions of the following agreements:

Highmark Inc. Medicare Advantage PPO Health Services Doctor Preferred provider Agreement

Highmark Inc. Medicare Advantage PPO Health Services Doctor Preferred provider Agreement (For Medical Entities)