

**Professional Service Agreement**  
**Between**  
**Business Associate**  
**And**  
**Trust Therapeutic Services**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, referred to in this Agreement as "BUSINESS ASSOCIATE" and "Agency", referred to in this Agreement as "HHA".

HHA offers a full range of home health services to patients within HHA's geographic service area who are covered by the Medicare or Medicaid programs, who receive home care benefits through health insurance plans, or who pay privately.

BUSINESS ASSOCIATE either employs professional practitioners, referred to in this Agreement as "Practitioners", who are duly qualified and licensed to provide such services and willing to furnish these services to HHA's patients: RN, PT, OT, ST, MSW, HHAs or provides business services to the HHA which may involve access to patient/client records.

**1. Responsibilities of HHA**

- 1.01 Responsibility for Patient Care.** HHA is responsible for admission of patients/clients and for coordinating, supervising, and evaluating home health services provided to patients/clients to verify that these services meet HHA's quality assurance standards. Patients will only be accepted for care by HHA.
- 1.02 Assessments.** HHA professionals will perform nursing assessments when appropriate.
- 1.03 Evaluation.** HHA will evaluate, in any manner it chooses, whether BUSINESS ASSOCIATE and its Practitioners/service providers are achieving HHA's goals and performing properly under this Agreement. HHA will also evaluate the results of quality assurance reviews of BUSINESS ASSOCIATE's services.
- 1.04 Documentation.** HHA will supply Practitioners/service providers with appropriate forms for documenting patient/client assessments, services rendered, patient/client progress, and any other documentation required by HHA. BUSINESS ASSOCIATE may use its own forms if HHA reviews such forms and finds that they meet all HHA requirements.
- 1.05 Patient/client Information.** HHA will provide, maintain, and make available for review by BUSINESS ASSOCIATE's Practitioners/service providers, patient/client medical records, including Practitioners/service providers documentation.
- 1.06 Non-discrimination.** HHA will not discriminate in employment or provision of services with respect to age, race, color, religion, military status, gender preference, genetic information, sex, marital status, national origin, disability, or source of payment.
- 1.07 Grievance Policy.** HHA will investigate all complaints regarding Practitioners'/service providers services to patients/clients according to HHA's grievance policy and in cooperation with BUSINESS ASSOCIATE. HHA will provide a current copy of this policy to BUSINESS ASSOCIATE.

1.08 **HHA Choice.** HHA retains the right to decline to work with any Practitioner/service provider provided by BUSINESS ASSOCIATE.

## 2. **Responsibilities of BUSINESS ASSOCIATE**

- 2.01 **Personnel.** BUSINESS ASSOCIATE will make available to HHA, as requested, Practitioners/service providers who are qualified and experienced in providing physical therapist, occupational therapist, and speech pathologist/therapist services or other services as needed.
- 2.02 **Requirements.** BUSINESS ASSOCIATE certifies that Practitioners or others providing services under this Agreement meet all applicable local, state, and federal licensing, regulatory, and educational requirements to perform services within HHA's geographical service area. For each Practitioner /service provider provided to HHA, BUSINESS ASSOCIATE will maintain on file a current copy of such Practitioner's/service providers professional licensure/certification; registration; education; experience; CPR certification, when required by state regulations or HHA policy; and professional/personal references. HHA will have access to such files within twenty-four (24) hours of request. BUSINESS ASSOCIATE will enable HHA to audit these files as needed. BUSINESS ASSOCIATE further certifies that training, evaluation and orientation of contracted staff, including orientation to HHA's patient/client care policies and paperwork, will be performed, per HHA policy, on all staff being utilized by the HHA. If contract includes unlicensed person(s) providing face-to-face contact with a patient/client the BUSINESS ASSOCIATE is responsible for searching the nurse aide registry (NAR) and the employee misconduct registry (EMR) before the unlicensed person's first face-to-face contact with a patient/client of the agency using the DADS Internet website to confirm that the unlicensed person is not listed in either registry as unemployable and provides written information to the unlicensed person about the EMR that complies with the requirements of §93.3(c) of TAC40 and searches the NAR and the EMR at least every twelve months using the DADS Internet website to confirm that the person is not listed in either registry as unemployable.
- 2.03 **Revisions.** BUSINESS ASSOCIATE will ensure that its Practitioners and other service providers:
- A. Inform HHA and attending physician of all changes in patients'/client's conditions requiring medical or other professional intervention.
  - B. Revise medical treatment plans/Plan of Care only after consultation and approval by HHA and the attending physician (except in the case of a situational response to an adverse reaction to a specific treatment).
  - C. Comply with Agency policies and procedures
  - D. Participate in Agency quality improvement program that may include attending care conferences either in person or teleconference.

- 2.04 **Documentation.** BUSINESS ASSOCIATE will ensure that Practitioners/service providers will prepare, using HHA's forms approved or provided by HHA, legibly written clinical notes following each visit, which includes observations, treatments, responses to treatment, teaching activities performed, changes in patient/client status, indication(s) of progress, proposed plan of continuing care, etc., as well as a progress summary on each Medicare patient every sixty (60) days or more often as required by state of Texas statute. BUSINESS ASSOCIATE will ensure that Practitioners/service provider submit notes for all visits within the time frame established by HHA.
- 2.05 **Invoices.** Twice a month, for clinical services and monthly for others, BUSINESS ASSOCIATE will provide to HHA invoices which detail the services provided during that period of time, their costs, and other permitted expenses. Such invoices may be on plain paper or on BUSINESS ASSOCIATE's letterhead; the latter is preferred.
- 2.06 **Non-discrimination.** BUSINESS ASSOCIATE and Practitioners/service providers will not discriminate in employment or provision of services with respect to age, race, color, religion, military status, gender preference, genetic information, sex, marital status, national origin, disability, or source of payment according to Title VI of the Civil Rights Act.
- 2.07 **Complaints.** BUSINESS ASSOCIATE will cooperate with HHA to resolve any complaints regarding Practitioner's/service providers services to HHA's patients/clients.
- 2.08 **Insurance.** BUSINESS ASSOCIATE or its Practitioners/service providers will maintain, at its sole expense, a valid insurance policy covering general and professional liability arising from the acts or omissions of BUSINESS ASSOCIATE, its Practitioners/service providers, its agents, and its employees in the amount of \$500,000 per occurrence and \$1,000,000 in the aggregate.
- 2.09 **Taxes and Penalties.** BUSINESS ASSOCIATE certifies that it operates an independent business and HHA has no obligation to pay or withhold any income tax, FICA, or FUTA on behalf of BUSINESS ASSOCIATE or its Practitioners/service providers. BUSINESS ASSOCIATE will not take any action inconsistent with this position. BUSINESS ASSOCIATE agrees to hold HHA harmless for any and all taxes, penalties, FICA, or FUTA which it may owe in connection with any Practitioner/service provider.
- 2.10 **Benefits.** BUSINESS ASSOCIATE acknowledges and agrees that neither BUSINESS ASSOCIATE nor any Practitioner/service provider working for BUSINESS ASSOCIATE is entitled to benefits of any kind, including, but not limited to, worker's compensation and unemployment compensation, from HHA as a result of this Agreement or the performance of services under this Agreement.
- 2.11 **Standards.** BUSINESS ASSOCIATE will ensure that each Practitioner/service provider providing services to HHA patients/clients meets the qualifications and licensure requirements and fulfills the responsibilities of his or her professional discipline as outlined in the federal Conditions of Participation and other applicable regulations. BUSINESS ASSOCIATE is responsible for all expenses incurred and for providing, cleaning and properly maintaining per HHA standards all equipment and supplies utilized to perform services under this Agreement.
- 2.12 **Compliance with Requirements.** BUSINESS ASSOCIATE will ensure that services provided under this Agreement are in compliance with Medicare, Medicaid, insurance, and local, state, and federal requirements.

- 2.13 **Continuity of Care.** BUSINESS ASSOCIATE will attempt to keep the same Practitioner/service provider assigned to a HHA patient/client for the duration of the patient's/client's need for such type of service.
- 2.14 **Quality Review.** BUSINESS ASSOCIATE will allow HHA to review the results of quality assurance evaluations of BUSINESS ASSOCIATE's services and will cooperate with HHA to enable HHA to evaluate BUSINESS ASSOCIATE's services.
- 2.15 **Service to Competitors.** BUSINESS ASSOCIATE is free to contract with competitors of HHA or the general public to perform similar services, but BUSINESS ASSOCIATE agrees not to enter into any agreement with a HHA patient/client during the term of this Agreement without HHA's written consent and agrees to provide services in HHA's name only with HHA's approval.
- 2.16 **HIPAA Compliance.** BUSINESS ASSOCIATE will comply with all aspects of HIPAA per the Notice of Privacy Practices and HIPAA Security Rules, including electronic documents. Agency will monitor the BUSINESS ASSOCIATE'S compliance with HIPAA regulations, if there is a pattern of non-compliance, Agency will terminate the relationship with the BUSINESS ASSOCIATE.
- 2.17 **Scheduling of Visits.** BUSINESS ASSOCIATE will be responsible for the scheduling of patient visits, as applicable.
- 2.18 **Electronic Documentation.** If utilizing electronic documentation, including electronic or digital signatures, the BUSINESS ASSOCIATE will implement measures to maintain confidentiality/security of patient/client information. Upon request by the Agency, BUSINESS ASSOCIATE will provide proof of measures taken to ensure confidentiality/security of patient/client information as well as a confidentiality/security statement signed by each individual utilizing the electronic documentation.

### 3. **Mutual Responsibilities**

- 3.01 **Patient/Client Care.** On behalf of HHA and according to HHA policies and procedures, qualified HHA and/or BUSINESS ASSOCIATE personnel will:
- A. If nursing assessments are not required, perform appropriate assessments for patients/clients within forty-eight (48) hours from receipt of referral and initiate services as appropriate to meet patients'/client's needs (does not apply to therapy aides).
  - B. Develop and maintain plans of care for patients/clients; schedule, provide, and report ongoing visits according to physician's orders.
  - C. Confer with and educate patients/clients, families, and HHA personnel regarding developing, implementing, reviewing, and revising plans of care; coordinate multidisciplinary services; participate in case conferences for each Medicare patient at least every sixty (60) days and more often if necessary; provide discharge planning.

#### 4. **Compensation**

- 4.01 **Schedule of Rates.** HHA will pay BUSINESS ASSOCIATE according to the billing schedule in Schedule A.
- 4.02 **Rates Subject to Change.** Contract rates will be subject to change with fourteen (14) days advance written notice.
- 4.03 **Payment Schedule.** Upon receiving BUSINESS ASSOCIATE's invoice and satisfactory documentation at HHA's branch, HHA will compensate BUSINESS ASSOCIATE for services rendered within thirty (30) days.
- 4.04 **Billing.** In no event will BUSINESS ASSOCIATE bill the patient/client or collect insurance deductibles or proceeds. BUSINESS ASSOCIATE and its Practitioners/service providers will not accept gratuities or payment in any form from any patient/client for services performed under this Agreement.
- 4.05 **Other Services.** Payment for instruction at staff development seminars and other services not related to patient/client service visits will be made in addition to, and separate from, payment specified in Schedule A, as agreed in writing between HHA and BUSINESS ASSOCIATE.
- 4.06 **In case of non-payment by payer to AGENCY.** In the event AGENCY is denied payment based on BUSINESS ASSOCIATE'S failure to comply with payer regulations BUSINESS ASSOCIATE will repay AGENCY amount compensated.

#### 5. **Miscellaneous Terms**

- 5.01 **Term and Termination.** This Agreement will be in effect for one (1) year and will be automatically renewed at the end of the first year and each subsequent year unless terminated. Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party. Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.
- 5.02 **Independent Contractors.** The parties enter into this Agreement as independent contractors, and nothing contained in this Agreement will be construed to create a partnership, joint venture, agency, or employment relationship between the parties. BUSINESS ASSOCIATE acknowledges that HHA has no responsibility for any employees, workers, or agents of BUSINESS ASSOCIATE.
- 5.03 **Arbitration.** Any dispute relating to this Agreement will be settled by binding arbitration conducted in accordance with the Health Care Arbitration Rules of the NHLA Alternative Dispute Resolution Service (c/o National Health Lawyers Association, 1620 Eye Street, NW, Washington, DC 20006).
- 5.04 **Assignment.** No assignment of this Agreement or the rights and obligations hereunder will be valid without prior written consent from both parties.

- 5.05 **Indemnification.** HHA agrees to indemnify and hold harmless BUSINESS ASSOCIATE, its Practitioners, service providers, directors, officers, employees, and agents from and against any and all claims, actions, or liabilities of any nature which may be asserted against them by third parties in connection with the performance of HHA, its directors, officers, employees, or agents under this Agreement. BUSINESS ASSOCIATE agrees to indemnify and hold harmless HHA, its directors, officers, employees, and agents from and against any and all claims, actions, or liabilities of any nature which may be asserted against them by third parties in connection with the performance of BUSINESS ASSOCIATE, its Practitioners/service providers, directors, officers, employees, or agents under this Agreement.
- 5.06 **Notices.** Any notice or demand required under this Agreement will be in writing, will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.
- 5.07 **Entire Contract.** This Agreement constitutes the entire contract between BUSINESS ASSOCIATE and HHA regarding therapy services. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original. No amendments to this Agreement will be effective unless made in writing and signed by both parties. This Agreement will be governed by and construed in accordance with the laws of the state.
- 5.08 **Compliance with Applicable Laws.** Nothing in this Agreement is intended to conflict with federal, state, or local laws or regulations. Should such conflicts exist, the parties agree to follow applicable laws and regulations.

BUSINESS ASSOCIATE and HHA have acknowledged their understanding of and agreement to the mutual promises written above by executing this Agreement.

BUSINESS ASSOCIATE

HHA

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PROFESSIONAL SERVICES**

**RATES AS OF \_\_\_\_\_**

**SCHEDULE A**

RN - \_\_\_\_\_

LVN - \_\_\_\_\_

PT - \_\_\_\_\_

PTA - \_\_\_\_\_

OT - \_\_\_\_\_

OTA - \_\_\_\_\_

ST - \_\_\_\_\_

MSW - \_\_\_\_\_

HHA - \_\_\_\_\_

Other - Describe: \_\_\_\_\_

Rate - \_\_\_\_\_

## **Contract Disclaimer**

**This product is not a substitute for the advice of an attorney. These written materials may be of use in identifying issues to discuss with your business lawyer.**

**HealthCare ConsultLink**

**Addendum To Professional Service Agreement**  
**PPS Final Rule 2011**

BUSINESS ASSOCIATE, \_\_\_\_\_, and Agency, \_\_\_\_\_, agree to implement the following Prospective Payment System (PPS) rules effective April 1, 2011:

**1. Initial Therapy Assessment**

- 1.1 A qualified therapist (instead of an assistant) will assess the patient's function using a method which objectively measures activities of daily living such as, but not limited to, eating, swallowing, bathing, dressing, toileting, walking, climbing stairs, using assistive devices, and mental and cognitive factors. The measurement results will be documented in the clinical record.
- 1.2 Where more than one discipline of therapy is being provided, a qualified therapist from each of the disciplines will functionally assess the patient. The therapist will document the measurement results which correspond to the therapist's discipline and care plan goals, in the clinical record.

**2. Reassessment at least every 30 days (performed in conjunction with an ordered therapy service)**

- 2.1 At least once every 30 days, a qualified therapist (instead of an assistant) will provide the ordered therapy service, functionally reassess the patient, and compare the resultant measurement to prior assessment measurements. The therapist will document in the clinical record the measurement results along with the therapist's determination of the effectiveness of therapy, or lack thereof. The thirty-day clock begins with the first therapy service (of that discipline) and the clock resets with each therapist's visit / assessment / measurement / documentation (of that discipline).
- 2.2 Where more than one discipline of therapy is being provided, at least once every 30 days, a qualified therapist from each of the disciplines will provide the ordered therapy service, functionally reassess the patient, and compare the resultant measurement to prior assessment measurements. The therapist will document in the clinical record the measurement results along with the therapist's determination of the effectiveness of therapy, or lack thereof. In multi-discipline therapy cases, the qualified therapist would reassess functional items (and measure and document) those which correspond to the therapist's discipline and care plan goals. In cases where more than one discipline of therapy is being provided, the thirty-day clock begins with the first therapy service (of that discipline) and the clock resets with each therapist's visit / assessment / measurement / documentation (of that discipline).

**3. Reassessment prior to the 14th and 20th therapy visit**

- 3.1 If a patient's course of therapy treatment reaches 13 therapy visits, for each therapy discipline for which services are provided, a qualified therapist (instead of an assistant) will provide the ordered 13th therapy service, functionally reassess the patient, and compare the resultant measurement to prior measurements. The therapist will document in the clinical record the measurement results along with the therapist's determination of the effectiveness of therapy, or lack thereof.
- 3.2 Similarly, if a patient's course of therapy treatment reaches 19 therapy visits, a qualified therapist (instead of an assistant) will provide the ordered 19th therapy service, functionally reassess, measure and document effectiveness of therapy, or lack thereof. When the patient resides in a rural area or when documented circumstances outside the control of the therapist prevent the qualified therapist's visit at exactly the 13th visit, the qualified therapist's visit can occur after the 10th therapy visit but no later than the 13th visit. Similarly, in rural areas or if documented exceptional circumstances exist, the qualified therapist's visit can occur after the 16th therapy visit but no later than the 19th therapy visit.
- 3.3 Where more than one discipline of therapy is being provided, a qualified therapist from each of the disciplines will provide the ordered therapy service and functionally reassess, measure, and document the effectiveness of therapy or lack thereof close to but no later than the 13th and 19th therapy visit. The 13th and 19th therapy visit timepoints relate to the sum total of therapy visit from all therapy disciplines. In multi-discipline therapy cases, the qualified therapist would reassess functional items and measure those which correspond to the therapist's discipline and care plan goals.
- 3.4 Therapy services provided after the 13th and 19th visit (sum total of therapy visit from all therapy disciplines), are not covered until:
- 3.4.1 The qualified therapist(s) completes the assessment / measurement / documentation requirements.
- 3.4.2 The qualified therapist(s) determines if the goals of the plan of care have been achieved or if the plan of care may require updating. If needed, changes to therapy goals or an updated plan of care is sent to the physician for signature or discharge.
- 3.4.3 If the measurement results do not reveal progress toward therapy goals and/or do not indicate that therapy is effective, but therapy continues, the qualified therapist(s) will document why the physician and therapist have determined therapy should be continued.

4. **BUSINESS ASSOCIATE** agrees to work with Agency to establish process to ensure above regulations are met.

**BUSINESS ASSOCIATE and Agency have acknowledged their understanding of and agreement to the mutual promises written above by executing this Addendum.**

**BUSINESS ASSOCIATE**

**AGENCY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_