CHAPTER 11
ADDENDUM E

PARTICIPATION AGREEMENT FOR HOSPICE PROGRAM SERVICES FOR TRICARE/CHAMPUS BENEFICIARIES

CORPORATE NAME: _____

DBA: _____
(if different from corporate name)

LOCATION: _____

_____

MAILING ADDRESS: _____
(if different from location)

_____

TELEPHONE: _____

PROVIDER EIN NO.: _____

ARTICLE 1

RECITALS

1.1 IDENTIFICATION OF PARTIES

This Participation Agreement is between the United States of America through the Department of Defense, TRICARE Management Activity (hereinafter TMA), a field activity of the Office of the Secretary of Defense, the administering activity for TRICARE/Civilian Health and Medical Program of the Uniformed Services Management Activity (hereinafter TMA) and _____, doing business as _____, (hereinafter designated the hospice program).

1.2 AUTHORITY FOR HOSPICE CARE

The implementing regulations for TRICARE/CHAMPUS, 32 Code of Federal Regulations Part 199, provides for TRICARE/CHAMPUS cost-sharing of hospice care under certain conditions.

1.3 INTENT OF PARTICIPATION AGREEMENT

It is the intent of this participation agreement to recognize the undersigned hospice program as a TRICARE/CHAMPUS-authorized provider of hospice care, subject to terms and conditions of this agreement, and applicable federal law and regulation.

1.4 BILLING NUMBER

The number used for billing of <u>all</u> hospice care is the hospice program's employer identification number (EIN). This number must be used until the provider is officially notified by TMA of a change. The hospice program's billing number is shown on the face sheet of this agreement. It is the only billing number that will be accepted by TMA claims processors after the effective date of this hospice program under TRICARE/CHAMPUS.

ARTICLE 2

PERFORMANCE PROVISIONS

2.1 GENERAL AGREEMENT

The hospice program agrees to render palliative hospice care to eligible TRICARE/CHAMPUS beneficiaries as required by this participation agreement and the TRICARE/CHAMPUS regulation (32 CFR 199). The terms and conditions of 32 CFR 199 applicable to the participation or treatment of TRICARE/CHAMPUS beneficiaries by hospice programs are incorporated herein by reference.

2.2 COVERAGE/BENEFITS

(a) The hospice program agrees to provide the care and services set forth in 32 CFR 199.4(e)(19)(i).

(b) The hospice program further agrees to provide for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the hospice program, except that the agency must:

(1) Routinely supply a substantial amount of core-services (i.e., nursing services; physician services; medical social services; and counseling) services for the TRICARE/CHAMPUS beneficiary and his or her family (32 CFR 199.4(e)(19)(ii)).

(2) Maintain professional management responsibility of non-core services (i.e., home health aide services, medical appliances and supplies, physical therapy, occupational therapy, speech-language pathology and short-term inpatient care) which are not directly furnished to the patient, regardless of the location or facility in which the services are rendered (32 CFR 199.4(e)(19)(iii)).

(3) Make nursing services, physician services, and drugs and biologicals routinely available on a 24-hour basis. All other covered services must be available on a 24-hour basis to the extent necessary to meet the needs of individuals for care that is reasonable and necessary for palliation and management of the terminal illness and related condition (32 CFR 199.4(e)(19)(iv)).

(4) Provide assurances that the aggregate number of days of inpatient care provided in any 12-month period does not exceed 20 percent of the aggregate number of days of hospice care during the same period.

(5) Have an interdisciplinary group (i.e., one physician; one registered nurse; one social worker; and one pastoral or other counselor) who provides those services set forth in 32 CFR 199.4(e)(19)(i) and establishes the policies governing the provision of such services/care.

(6) Maintain central clinical records on all patients.

2.3 CONDITIONS FOR COVERAGE

Under the terms of this agreement, the hospice program shall:

(a) Assure that there is written certification in the medical records that the TRICARE/CHAMPUS beneficiary is terminally ill with a life expectancy of six months or less if the terminal illness runs its normal course.

(1) For the initial 90-day period, the hospice must obtain written certification statements from the individual's attending physician (if the individual has an attending physician) and the medical director of the hospice or the physician member of the hospice

interdisciplinary team no later than two days after the period begins. If written certification cannot be obtained within two calendar days, then oral certification must be obtained within two calendar days, followed by written certification no later than eight calendar days after hospice care is initiated.

(2) Recertification is required for any subsequent periods (for periods two, three and four) of hospice care for which the beneficiary is eligible. The hospice medical director or staff physician will be responsible for recertifying TRICARE/CHAMPUS beneficiaries for subsequent election periods. A written certification must always be in the medical records not later than two days after hospice care is initiated.

(b) Design and print its own election statements to include the following information:

(1) identification of the particular hospice that will provide care to the individual;

(2) individual's or representative's acknowledgment that he or she has been given a full understanding of hospice care;

(3) individual's or representative's acknowledgment that he or she understands that certain TRICARE/CHAMPUS services are waived by the election;

(4) effective date of election; and

(5) signature of the individual or representative.

(c) Assure that an election statement is in the clinical records prior to signing the Notice of Admission. This includes the admission date, which must be the same date as the effective date of the hospice election. The hospice program must notify the contractor of the initiation, change or revocation of any election.

(d) Establish a written plan of care on the same day that a member of the basic interdisciplinary group assesses the patient's needs. The attending physician and medical director or physician designee must review the initial plan of care and provide their input within two calendar days following the day of the assessment.

2.4 CERTIFICATION REQUIREMENTS

The hospice program certifies and attaches hereto documentation that:

(a) it is Medicare approved and meets all Medicare conditions of participation (42 CFR 418); and

(b) is licensed pursuant to any applicable state or local law.

2.5 QUALITY OF CARE

(a) The hospice program shall assure that any and all eligible beneficiaries receive hospice services that are reasonable and necessary for the palliation or management of a terminal illness and meet the conditions for coverage as established in Article 2.3 above.

(b) The hospice program shall provide hospice services in the same manner to TRICARE/CHAMPUS beneficiaries as it provides to all patients to whom it renders services.

(c) The hospice shall not discriminate against TRICARE/CHAMPUS beneficiaries in any manner, including admission practices or provisions of special or limited treatment.

2.6 BILLING FORM

(a) The hospice program shall use the CMS 1450 UB-04 billing form (or subsequent editions.) Hospice care shall be identified in item 4 of this form.

(b) The CMS 1450 UB-04 billing form (or subsequent editions) will also be used as an admission notice. This notice will be used to notify the contractor of the initiation, change or revocation of an election.

2.7 COMPLIANCE WITH TMA MEDICAL REVIEW ACTIVITIES

(a) Submit all medical records and documentation to the contractor and, where applicable, to the Peer Review Organization within 30 days of the date of their request.

(b) Failure to submit the requested information will result in denial of the claim.

2.8 STAFF QUALIFICATIONS

The hospice shall comply with requirements for professional staff qualifications as established in 32 CFR 199.4 and 32 CFR 199.6.

ARTICLE 3

PAYMENT PROVISIONS

3.1 The hospice program agrees to accept reimbursement at one of four predetermined national TRICARE/CHAMPUS rates (32 CFR 199.14(g)) adjusted for regional wage differences using appropriate Medicare wage indices as payment in full, except for physician-directed patient services and applicable cost-shares. The hospice will be reimbursed for an amount applicable to the type and intensity of the services furnished (i.e., routine home care, continuous home care, inpatient respite care and general inpatient care) to the TRICARE/CHAMPUS beneficiary on a particular day.

(a) One rate will be paid for each level of care, except for continuous home care where reimbursement is based on the number of hours of continuous care furnished on a particular day. The following requirements must be met in order to receive reimbursement for continuous home care:

(1) More than half of the period of continuous care must be provided by either a registered or licensed practical nurse.

(2) A minimum of 8 hours must be provided during a 24-hour day which begins and ends at midnight. If less than 8 hours of care are provided within a 24 hour period, the care will be paid at the lower routine home care rate.

(b) Payment for inpatient respite care may be for a maximum of 5 days at a time, including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(c) The hospice program agrees to submit all claims as a participating provider. TMA agrees to make payment of the TRICARE/CHAMPUS-determined rate directly to the hospice program for any care authorized under this agreement.

(d) There may be a reclassification of care from one rate category to another as a result of medical review of the hospice claims. For example, if continuous home care is provided to a TRICARE/CHAMPUS beneficiary whose condition did not require the level of care described in 32 CFR 199.14 (or did not receive it), payment is made for the services at the routine home care rate.

3.2 Physician reimbursement is dependent on the physician's relationship with both the beneficiary and the hospice program.

(a) Physicians employed by, or contracted with, the hospice.

(1) Administrative and supervisory activities (i.e., establishment, review and updating of plans of care, supervising care and services, and establishing governing policies) are included in the adjusted national payment rate.

(2) Direct patient care services are subject to the appropriate TRICARE/CHAMPUS allowable charge methodology and are counted toward the cap limitation.

(b) Independent attending physician. Patient care services rendered by an independent attending physician (a physician who is not considered employed by, or under contract with, the hospice) are not part of the hospice benefit and may be billed in his/her own right.

(1) Services are subject to the appropriate allowable charge methodology but not counted toward the cap limitation.

(2) Services must be coordinated with any direct care services provided by hospice physicians.

(3) The hospice must notify the contractor of the name of the physician whenever the attending physician is not a hospice employee.

(c) No payments are allowed for physician services furnished voluntarily (both physicians employed by, and under contract with, the hospice and independent attending physicians). Physicians may not discriminate against TRICARE/CHAMPUS beneficiaries; e.g., designate all services rendered to non-TRICARE/CHAMPUS patients as volunteer and at the same time bill for TRICARE/CHAMPUS patients.

3.3 The hospice program agrees to the cap and inpatient limitations as prescribed in 32 CFR 199.14(g)(3).

(a) The hospice program further agrees to furnish such information as the contractor deems necessary for calculation and application of the cap amount and inpatient limitations within 30 days after the end of the cap period.

(b) Payments in excess of the cap and/or inpatient limitations must be refunded by the hospice.

(c) A hospice may request and obtain a contractor's review of the calculation and application of its cap amount and inpatient limitation if the amount in controversy meets the administrative dollar level established in 32 CFR 199.14(g)(3). These calculations are not subject to the appeal procedures set forth in 32 CFR 199.10.

3.4 The hospice program agrees to hold eligible TRICARE/CHAMPUS beneficiaries harmless (not to charge the beneficiary) for the following services:

(a) those for which the provider is entitled to payment from TRICARE/CHAMPUS;

(b) those for which the beneficiary would be entitled to have TRICARE/CHAMPUS payment made had the provider complied with certain procedural requirements (e.g., election notification, care plan and submission of requested records within 30 days);

(c) those which are not necessary for the palliation or management of the terminal illness;

NOTE: If the patient is informed that the services are not covered under the TRICARE/CHAMPUS hospice benefit and continues to insist that it be performed, he or she will be liable for payment. The above item only applies to those services and supplies prescribed by the hospice.

(d) those for which a beneficiary would be entitled to payment, but for a reduction or denial in payment as a result of quality review;

(e) those rendered during a period in which the hospice was not in compliance with one or more conditions for coverage.

3.5 TRICARE/CHAMPUS AS SECONDARY PAYOR

(a) The hospice program is subject to the provisions of 10 USC Section 1079(j)(1). The hospice program must submit claims first to all other insurance plans and/or medical service or health plans under which the beneficiary has coverage before submitting a claim to TRICARE/CHAMPUS.

(b) Failure to collect first from primary health insurers and/or sponsoring agencies is a violation of this agreement, may result in denial or reduction of payment, and may result in a false claim against the United States. It may also result in termination by TMA of this agreement pursuant to Article 5.

3.6 COLLECTION OF COST-SHARE

(a) The hospice program agrees to collect from the TRICARE/CHAMPUS beneficiary only those amounts applicable to the patient's cost-share as defined in 32 CFR 199.14(g)(8).

(b) The collection of cost-shares by individual hospice programs is optional under TRICARE/CHAMPUS. The waiver of cost-sharing will not be considered fraudulent billing under 32 CFR 199.9.

3.7 BENEFICIARY'S RIGHTS

If the hospice program fails to abide by the terms of this participation agreement and TMA or its designee either denies the claim or claims and/or terminates the agreement as a result, the hospice program agrees to forego its rights, if any, to pursue the amounts not paid by TRICARE/CHAMPUS from the beneficiary or the beneficiary's family.

ARTICLE 4

RECORDS AND AUDIT PROVISIONS

4.1 ON-SITE AND OFF-SITE REVIEWS/AUDITS

The hospice program grants the Executive Director, TMA, or his designee the right to conduct quality assurance audits or accounting (record) audits with full access to patients and records. The audits may be conducted on a scheduled or unscheduled (unannounced) basis. The right to audit/review includes, but is not limited to:

(a) Examination of fiscal and all other records of the hospice program which would confirm compliance with this agreement and designation as an authorized TRICARE/CHAMPUS hospice provider.

(b) Audits of hospice program records including clinical, financial, and census records to determine the nature of the services being provided, and the basis for charges and claims against the United States for services provided TRICARE/CHAMPUS beneficiaries. TMA or a designee shall have full access to records of both TRICARE/CHAMPUS and non-TRICARE/CHAMPUS patients.

(c) Examination of reports of evaluations and inspections conducted by federal, state, local government, and private agencies and organizations.

4.2 RIGHT TO UNANNOUNCED INSPECTION OF RECORDS

(a) TMA, or its designee, shall have the authority to visit and inspect the hospice program at all reasonable times on an unannounced basis.

(b) The hospice program's records shall be available and open for review by TMA during normal working hours (8am to 5pm, Monday through Friday) on an unannounced basis.

4.3 CERTIFIED COST REPORTS

Upon request, the hospice program shall furnish TMA or a designee audited cost reports certified by an independent auditing agency.

4.4 RECORDS REQUESTED BY TMA

Upon request, the hospice program shall furnish TMA or a designee such records, including medical records and patient census records, that would allow TMA or a designee to determine the quality and cost effectiveness of care rendered.

4.5 FAILURE TO COMPLY

Failure to allow audits/reviews and/or to provide records constitutes a material breach of this agreement. It may result in denial or reduction of payment, termination of this agreement pursuant to Article 6, and any other appropriate action by TMA.

ARTICLE 5

GENERAL ACCOUNTING OFFICE

5.1 RIGHT TO CONDUCT AUDIT

The hospice program grants the United States General Accounting Office the right to conduct audits.

ARTICLE 6

TERMINATION AND AMENDMENT

6.1 TERMINATION OF AGREEMENT BY TMA

(a) The Executive Director, TMA, or designee, may terminate this agreement upon 30 days' written notice, for cause, if the hospice program is not complying substantially with the provisions of this agreement or with applicable provisions set forth in 32 CFR 199. Causes for termination include violation of patient charging and cost reporting procedures, refusal to provide required program information or willfully providing false information, failing to meet the Conditions of Participation, and administrative remedies involving fraud, abuse, or conflict of interest as set forth in 32 CFR 199.9. Such written notice of termination shall be an initial determination for purposes of the appeal procedures set forth in 32 CFR 199.10.

NOTE: The notice provisions in this article do not limit TMA's authority to suspend claims processing or seek recoupment of claims previously paid.

(b) After termination of the agreement, the hospice program may not file another agreement to participate unless TRICARE/CHAMPUS finds that the reason for termination of the prior agreement has been removed and that there is reasonable assurance that it will not recur.

6.2 TERMINATION OF AGREEMENT BY THE HOSPICE PROGRAM

The hospice program may terminate this agreement by giving the Executive Director, TMA, or designee, written notice of such intent to terminate at least 6 months in advance of the effective date of termination. If the hospice program permanently or temporarily ceases to furnish services to the community, the agreement terminates effective with the date the program goes out of business.

6.3 AMENDMENT BY TMA

(a) The Executive Director, TMA, or designee, may amend the terms of this participation agreement by giving 120 days notice in writing of the proposed amendment(s) <u>except</u> when necessary to amend this agreement from time to time to incorporate changes to the TRICARE/CHAMPUS regulation. When changes or modifications to this agreement result from changes to the TRICARE/CHAMPUS regulation through rulemaking procedures, the Executive Director, TMA, or designee, is not required to give 120 days written notice. Any such changes to 32 CFR 199 shall automatically be incorporated herein on the date the regulation amendment is effective or the date this agreement is amended, whichever date is earlier.

(b) The hospice program, not wishing to accept the proposed amendment(s), including any amendment resulting from changes to the TRICARE/CHAMPUS regulation accomplished through rulemaking procedures, may terminate its participation as provided in this Article. However, if the hospice program's notice of intent to terminate its

participation is not given at least 6 months prior to the effective day of the proposed amendment(s), then the proposed amendment(s) shall be incorporated into this agreement for services furnished by the hospice program between the effective date of the amendment(s) and the effective date of termination of this agreement.

ARTICLE 7

CHANGE OF OWNERSHIP

7.1 CHANGE OF OWNERSHIP

(a) When an organization having a provider agreement undergoes a change of ownership, the agreement is automatically assigned to the successor provider.

(b) A change of ownership occurs whenever there is a transfer of ultimate responsibility for operational decisions of the institution to a different governing body; for example:

(1) Where a sole proprietor transfers title and property to another party;

(2) Where, in the case of a partnership, the addition, removal, or substitution of a partner effects a termination of the partnership and creates a successor partnership or other entity;

(3) Where an incorporated provider merges with another incorporated institution not participating in the program, and the nonparticipating institution is the surviving corporation;

(4) Where two or more corporate providers consolidate, and such consolidation results in the creation of a new corporate entity; or

(5) Where an unincorporated provider (a sole proprietorship or partnership) becomes incorporated

(c) The contractor must be notified in advance of any expected changes in ownership.

ARTICLE 8

APPEALS

8.1 APPEAL ACTIONS

Appeal of TMA actions under this agreement, to the extent they are allowable, will be pursuant to 32 CFR 199.10.

ARTICLE 9

RECOUPMENT

9.1 RECOUPMENT

TMA shall have the authority to suspend claims processing or seek recoupment of claims previously paid as specified under the provisions of the Federal Claims Collection Act (31 USC 3701 et seq.), the Federal Medical Care Recovery Act (42 USC 2651-2653), and 32 CFR 199. Payments in excess of the cap and/or inpatient limitations are subject to the provisions as set forth above.

ARTICLE 10

NONDISCRIMINATION

10.1 NONDISCRIMINATION

The hospice program agrees to comply with provisions of section 504 of the Rehabilitation Act of 1973 (Public Law 93-112; as amended) regarding nondiscrimination on the basis of handicap, Title VI of the Civil Rights Act of 1964 (Public Law 88-352), and with the Americans With Disabilities Act of 1990 (Public Law 101-336), as well as all regulations implementing these Acts.

ARTICLE 11

ORDER OF PRECEDENCE

11.1 ORDER OF PRECEDENCE

If there is any conflict between this agreement and any Federal statute or Federal regulation, including the TRICARE/CHAMPUS regulation, 32 CFR 199 and Medicare Conditions of Participation (42 CFR 418), the statute or regulation controls.

ARTICLE 12

DURATION

12.1 DURATION

The term of this agreement shall begin on the date this agreement is signed and shall continue in effect until such time as there is a voluntary or involuntary termination.

ARTICLE 13

EFFECTIVE DATE

13.1 DATE SIGNED

(a) This participation agreement will be effective on the date signed by the Executive Director, TMA, or designee.

(b) This agreement must be signed by the President or Chief Executive Officer of the corporation that owns the hospice program and must be accompanied by a resolution of the hospice program's Board of Directors authorizing the signature.

ARTICLE 14

AUTHORIZED PROVIDER

14.1 DATE RECOGNIZED

On the effective date of the agreement, TMA recognizes the hospice program as an authorized provider for purposes of providing hospice care to TRICARE/CHAMPUS eligible beneficiaries.

_____
Hospice Program

By: _____
Signature

_____
Type Name and Title

_____
Corporate Name

Executed on _____, 19___

_____
TMA

By: _____
Signature

_____
Type Name and Title

Executed on _____, 19___