MEMORANDUM

HPSC
Agenda Item No. **2(E)**

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: **November 28, 2007**

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving the Member County Agreement for Miami-Dade County's participation in NACO's Discount Prescription Drug Program

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The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Katy Sorenson, Commissioner Audrey M. Edmonson and Commissioner Sally A. Heyman.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 18, 2007

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor Agenda Item No.
Veto _____
Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING THE MEMBER COUNTY AGREEMENT, IN THE FORM ATTACHED AS EXHIBIT C TO THE MANAGED PHARMACY BENEFIT SERVICES AGREEMENT BY AND BETWEEN THE NATIONAL ASSOCIATION OF COUNTIES (NACO) AND CAREMARKPCS HEALTH, L.P., FOR MIAMI-DADE COUNTY'S PARTICIPATION IN NACO'S DISCOUNT PRESCRIPTION DRUG PROGRAM; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE THE MEMBER COUNTY AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

WHEREAS, many uninsured and underinsured residents of Miami-Dade County need prescription drugs but such residents either do not have access to health insurance providing prescription drug benefits or do not have the ability to pay for such drugs; and

WHEREAS, pursuant to Section 1.01A6 of the Charter for Miami-Dade County, this Board is empowered to provide "... uniform health and welfare programs"; and

WHEREAS, this Board desires to provide a discount prescription drug program for the benefit of residents in Miami-Dade County; and

WHEREAS, the National Association of Counties ("NACO") and CaremarkPCS Health, L.P., have entered into a Managed Pharmacy Benefit Services Agreement (Consumer Card Program) ("Agreement"), pursuant to which Agreement NACO makes available a discount prescription drug program (the "Program") to counties which are members of NACO ("Member County"); and

WHEREAS, the Program will provide a network of Participating Pharmacies, clinical services, drug utilization review, formulary services, and other services as more particularly set forth in Section 1 of the Agreement attached hereto and made a part hereof; and

WHEREAS, Miami-Dade County is a Member County of NACO and this Board desires to participate in the Program for the benefit of the residents of Miami-Dade County; and

WHEREAS, to participate, the County must become a party to the Agreement by executing the Member County Agreement attached as Exhibit C to the Agreement,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the Member County Agreement providing for Miami-Dade County's participation in NACO's discount prescription drug program, and authorizes the County Mayor or his designee to execute the Member County Agreement, with authority to exercise any and all rights conferred in the Member County Agreement or Agreement.

The foregoing resolution was sponsored by Commissioner Katy Sorenson, Commissioner Audrey M. Edmonson and Commissioner Sally A. Heyman and offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this day of 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. ES

Eugene Shy, Jr.

Dear County Officials:

The Prescription Drug Card Program contract is attached. **Please review the checklist on p. 1 of the contract document**. Incorrect checklists or contracts will result in a delayed implementation of the program.

Please follow these directions carefully:

1. Counties, Parishes, Boroughs **sign exhibit C of the contract** which attaches the county to the overall NACo contract. If your county requires a copy of the signature page bearing the NACo and Caremark signatures, this can be provided to you via .PDF on request.

2. Once signed, mail the Exhibit C page (***this is on page 15 of the contract with BLANK signature lines***) and the checklist to:

Andrew Goldschmidt
Director of Membership Marketing
National Association of Counties
25 Massachusetts Ave, NW 5th Floor
Washington, DC 20001

3. Once the contract is received, our executive director will sign it and pass it on to Caremark for final signature. You may start your internal planning process to promote the program.

4. While the final signatures are being completed, please forward your logo or seal via e-mail to elandsman@naco.org or agoldschmidt@naco.org (if you prefer, you may have the card simply read XYZ County or XYZ CountyRx) and specify the quantity of card brochures you would like to order by **filling out the checklist**. Caremark will draw up proofs for your approval. **Once they are approved by your county**, the materials will be completed and in your hands by the time the contract returns with the final signature.

You may estimate 8-10 weeks from the date the contract is returned until you can distribute the cards to your county residents. A key note, any non pre-approved press releases or other information to be distributed on the program must come to NACo and Caremark's attention for approval prior to use.

Please contact me or Andrew if you have any questions or need further information. NACo looks forward to working with you on this exciting program!

Sincerely,

Emily Landsman
Membership Coordinator, II

P.S. - If you need to access the collateral materials on the program, you can access those by logging in to the NACo's members only portion of the web site at www.naco.org. Please contact me at (202) 942-4242 or elandsman@naco.org if you need assistance.

The above message and enclosed attachments are confidential and should not be shared outside of the county officials considering the program without permission from NACo.

NACO National Association of Counties

This checklist is not part of the NACo contract, however, please return it with your signed contract.
Incomplete or incorrect checklists will delay implementation of the program

NACo Prescription Drug Program checklist

County Name/State: ____________________ *Date contract returned to NACo:* ______________

1. Who is the ONE contact person in the county with whom we may communicate about this program?

Name and title ____

Address (*w/ City, State, Zip*) ____

____

Phone ______________________ Fax ______________________

E-mail (We must have your e-mail address!) ______________________________

2. What is your county's anticipated start-up date for the program? ***CURRENT START UP TIME IS 8-10 WEEKS FROM THE TIME THE CONTRACT IS RETURNED TO NACo.*** Please plan your county's roll out of the program accordingly. ______________________________

3. Please choose a design for the discount cards: (***YOU MUST CIRCLE ONE***)
   a. "County Name" or "County NameRx"
   b. Logo/seal on cards
      a. Be sure to e-mail a black and white logo/seal to agoldschmidt@naco.org or elandsman@naco.org in a .jpg or .tiff format
      b. Put "(COUNTY NAME) LOGO" in the subject line of your e-mail
   c. Other. You must contact NACo if you do not choose either a or b.

4. How many cards are you requesting? (We are advising 20% to 25% of your county's total population, on average. Some counties may need more.)

____

   a. What is your county's population? ______________________________

   b. Do you need cards/posters in Spanish? How many? ______________________

5. Please provide a street address for delivery of cards. Cards will be sent via UPS Ground. **NO PO BOXES!**

____

____

6. What is your county's web address (if available)? ______________________
   Will this program have its own page? (Please provide) ______________________
   What number would county residents call to pick up a card? ______________________

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This section for NACo use only
__________ Copy of signed contract sent to Caremark?
__________ Signed contract back from Caremark?
__________ Proofs approved?

NACo National Association of Counties

Notes:

CAREMARKPCS HEALTH, L.P.

MANAGED PHARMACY BENEFIT SERVICES AGREEMENT

CONSUMER CARD PROGRAM

THIS RESTATED AGREEMENT (the "**Agreement**") is effective beginning March 1, 2006 (the "**Effective Date**") among National Association of Counties ("**Customer**"), counties that are members of the National Association of Counties ("**Member County**") and CaremarkPCS Health, L.P., formerly known as AdvancePCS Health, L.P. ("**Caremark**"), for the purpose of delineating the terms and conditions under which Caremark will provide certain managed pharmacy benefit services to Member County and Customer. This restated agreement will amend and replace all existing Member County Agreements.

Customer agrees that it will require each Member County to execute an individual agreement with Caremark in the form attached hereto as Exhibit C (the "**Member County Agreement**") prior to Caremark's providing Services to such Member County. Caremark will not provide Services to Member County prior to the receipt of the Member County's execution of the Member County Agreement.

1. STATEMENT OF SERVICES / OBLIGATIONS.

1.2 Services. Caremark will provide Member County the services as set forth in this Section 1, and the services described in any attachment, addendum or amendment hereto (collectively the "**Services**"). Caremark may make changes to the Services from time to time so long as such changes do not materially alter any of the provisions of this Agreement.

1.3 Participating Pharmacies. Caremark has created a network of Participating Pharmacies, which will perform pharmacy services for Participants.

1.4 Pharmacy Help Desk and Voice Response Unit. Caremark will provide Participating Pharmacies with help desk assistance and access to Caremark's voice response unit during Caremark's hours of operation.

1.5 Claims Processing.

a. Submission of Claims. Caremark will adjudicate Claims submitted by Participating Pharmacies to Caremark in accordance with the Participating Pharmacy's agreement with Caremark and the Consumer Card Program.

b. Collection at Point of Sale. Customer and Member County acknowledge that Participating Pharmacies will collect from the Participant one hundred percent (100%) of the applicable prescription price, discounted at the rates set forth on Exhibit B as applicable, plus a transaction fee from the Participant.

1.5 Customer Service. Caremark will make available to Customer, Member County and Participants a toll free number during those hours of operation maintained by Caremark. Staff will be available to answer questions on the Consumer Card Program and Consumer Card Program guidelines.

1.6 Identification Cards. Caremark will, at its own cost, produce identification cards for Participants, which contain Member County's and Customer's logo(s). Identification cards will be available to any individual the Member County or Customer deem appropriate. Caremark will work with Member County on the distribution method for identification cards; provided, however if Member County requests that Caremark mail the identification cards to Members, postage and handling charges will apply. The Participant shall be responsible for paying for any prescriptions obtained while using the identification card.

1.7 Clinical Services and Drug Utilization Review ("DUR").

a. Clinical Services. Caremark may provide to Member County its member compliance programs and other programs designed to ensure proper drug utilization and encourage the use of cost-effective

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medications. These programs may include mailings to Participants with active prescriptions for targeted drug products or drug classes or to let Participants know that they may qualify for participation in a clinical trial program. Such mailings may include Participant and drug specific information and/or general educational material. Participants, by notifying Caremark, may opt-out of such programs.

b. **DUR Services.** Caremark will provide its automated concurrent DUR Services for Claims. The information generated in connection with DUR Services is intended as an economical supplement to, and not as a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, or other health care providers in providing patient care. Providers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. Notwithstanding anything set forth in this Agreement, Caremark will have no obligation to acquire information concerning any Participant beyond the information that is included in Caremark's eligibility records or the Claims submitted by Participating Pharmacies in connection with the Consumer Card Program.

1.8 **Formulary Services.** Caremark will administer an open formulary for the Member County and will provide certain Services that are designed to provide useful clinical information to physicians (the "**Formulary Services**"). Caremark may make changes to the Formulary Services described in this Agreement from time to time, and will notify Member County and Customer of any material changes to any formulary management programs. In all cases, the prescribing physician shall have final authority over the drug that is prescribed to the Participant.

a. **Rebate Contracts.** Caremark contracts with certain Manufacturers for Rebate programs.

b. **Disclosure of Manufacturer Fees.** Caremark may receive fees or other compensation from Manufacturers, including, without limitation, administrative fees not exceeding three percent of the aggregate cost of the pharmaceutical products dispensed to participants, and fees for property provided or services rendered to a Manufacturer (which may include providing physicians clinical messages consistent with the Performance Drug List, as defined below). Caremark's specialty pharmacies may also receive fees from Manufacturers for products and services provided. In addition, Caremark's mail order and specialty pharmacies may negotiate on their own behalf directly with Manufacturers for discounts, including rebated discounts based on market share or other factors. The term Rebates as used in this Agreement does not include these fees and discounts which belong exclusively to Caremark or Caremark's mail order or specialty pharmacies, respectively.

c. **Participant Authorizations and Disclosures.** Customer and Member County shall comply with all Laws applicable to it as a sponsor of the Services or as otherwise consistent with its obligations under this Agreement.

d. **Additional Participant Discounts.** Caremark may provide a program that will provide Participants with additional manufacturer discounts on certain drugs at the point of sale. From time to time, Caremark may revise the list of drugs that have additional participant discounts. The current list of drugs on which Participants may receive additional discounts is available upon request. Caremark will timely notify Member County and Customer of any revisions to this list of drugs.

1.9 **Management Reports.** Caremark will provide Member County and Customer with Caremark's standard management reports in connection with the Services, which reports may change from time to time at Caremark's discretion. Member County and Customer may elect to receive a reasonable number of the standard management reports made available by Caremark.

1.10 **Mail Service Program.** Caremark may provide to Member County mail order pharmacy services through its mail order pharmacy facilities. For the duration of this Agreement, Member County agrees that it will offer only Caremark mail order pharmacy services for its Participants covered under this Agreement, as further described below.

Caremark shall fill prescriptions for Participants and shall mail such drugs or medications to such Participants subject to the following terms and conditions:

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a. Distribution of Information. Caremark shall provide Participants with its standard informational material explaining the mail service and the forms necessary for Participants to utilize mail service. Participants will have toll-free telephone access to a pharmacist and customer service representative. Access to a pharmacist will be available 24 hours per day, seven days per week.

b. Delivery and Dispensing. Caremark shall dispense through its mail service pharmacy new or refill prescription orders upon receipt from a Participant of (i) a valid prescription order or a completed refill order form and (ii) the applicable payment. Caremark shall cause the filled prescriptions to be mailed to each Participant via common carrier at the address appearing on the face of the prescription so long as such addresses are in the United States. Caremark shall not be liable to Member County, Customer or Participant for any delay in delivery resulting from circumstances beyond Caremark's control as set forth in Section 6.2.

Caremark's mail order pharmacies may dispense drugs even if the prescription is not accompanied by the correct amount however, Member County and Customer acknowledge and agree that Caremark may refuse to fill any prescription that is either not accompanied by the correct amount and/or for any Participant who has an unpaid balance with Caremark.

1.11 Preferred Drug Program. Caremark and the retail Participating Pharmacies will work together to encourage the use of Preferred Drugs by (i) identifying appropriate opportunities for converting a prescription from a non-Preferred Drug to a Preferred Drug, and (ii) contacting the Participant and the prescriber to request that the prescription be changed to the Preferred Drug. A Preferred Drug is one on the Performance Drug List, which has been developed by Caremark as a clinically appropriate and economically advantageous subset of the Caremark Formulary, as revised by Caremark from time to time.

1.12 Specialty Pharmacy. Caremark's specialty pharmacy service will be provided by a Caremark specialty pharmacy entity or its affiliate ("**Caremark SpecialtyRx**"), and offers a distribution channel for certain pharmaceutical products that are generally biotechnological in nature, are given by injection, or otherwise require special handling ("**Specialty Medications**").

Caremark SpecialtyRx shall provide prescription fulfillment and distribution of Specialty Medications and supplies, pharmaceutical care management services, as well as the types of Service that Member County receives under this Agreement, including but not limited to customer services, utilization and clinical management, integrated reporting and Claims processing ("**SpecialtyRx Services**").

Caremark SpecialtyRx may receive prescriptions from Participants through an affiliated Caremark mail facility or directly via the U.S. Mail or commercial carrier at the address specified by Caremark from time to time and may also receive prescriptions from physicians by fax or by U.S. Mail/commercial carrier. In accordance with the Consumer Card Program, Caremark SpecialtyRx shall dispense Covered Items in accordance with those prescriptions and mail the Covered Items to Participants at the designated address, so long as such address is located within the United States. Caremark SpecialtyRx may not dispense drugs to Participants who fail to submit the correct payment with their prescription.

Caremark SpecialtyRx pharmaceutical care management services include but may not be limited to: (1) patient profiling focusing on the appropriateness of Specialty Medication therapy and care and the prevention of drug-drug interactions; (2) patient education materials; and (3) disease management and compliance programs with respect to Specialty Medications. As part of these services, Participants will be asked to participate in various surveys.

Caremark will provide Member County and Customer with a list of the Specialty Medications and their corresponding rates (which may vary from Network Rates) upon request. Routine supplies (needles, syringes, alcohol swabs) in a sufficient quantity will be included at no additional expense.

2. FEES AND PAYMENT.

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2.1 Fees. The parties agree that, in lieu of billing Member County a "per Claim" fee for Services, Caremark shall retain 100% of the Rebates as reasonable compensation for the Services. Customer and Member County understand and agree that neither they nor any Participant will share in the Rebate monies collected from Manufacturers by Caremark.

2.2 Remedies. In the event Member County or Customer incurs any fee, as identified in Exhibit B, it will pay Caremark such fees as reasonable compensation. In the event any such fees apply and Member County or Customer fails to pay Caremark by the due date any amount owing, Caremark, after making a reasonable effort to collect and upon notice to such Member County or Customer may, in addition to its remedies under this Agreement, at Law or in equity, do any or all of the following: (i) suspend performance of any or all of Caremark's obligations under or in connection with this Agreement with respect to such Member County or Customer, including Caremark's obligation to process Claims or (ii) set off against any amounts payable to such Member County or Customer by any amounts due Caremark from such Member County or Customer.

2.3 Pricing Changes. After the Initial Term of this Agreement, as set forth in Section 7.1, Caremark may change the fees applicable to the Consumer Card Program. Caremark will give Customer sixty days' written notice of any change, and such change will take effect on the first day of the month following the sixty-day notice period. Customer may object to an increase in fees by providing written notice to Caremark at least thirty days before the expiration of the sixty-day notice period. If the parties cannot agree on an appropriate fee, this Agreement will terminate at the end of the sixty-day notice period. If Customer does not timely object, Customer will have no right to terminate this Agreement based on the pricing change.

3. CUSTOMER AND MEMBER COUNTY OBLIGATIONS.

3.1 Marketing Materials. The parties agree to use only those marketing brochures and other advertising materials pertaining to Customer's Consumer Card Program (in any medium, including, but not limited to, written communications, verbal communications and web based marketing) that have been approved by the other. Member County and Customer further agree that they will communicate such requirements to its clients or groups and will ensure that such clients or groups comply with the requirements of this Section 3.1. Caremark may terminate this Agreement immediately in the event Member County or Customer fails to comply with the provisions of this Section 3.1.

Caremark will provide its standard marketing brochures, advertising materials and mail order forms, as applicable, to Member County at no cost. Caremark will work with and support each Member County in marketing the Consumer Card Program at no cost. If the cost associated with providing such materials is determined by Caremark to be unreasonable or excessive, Customer or Member County shall pay for the costs of the materials at a rate to be mutually agreed to by the parties in writing. If Member County or Customer elects to use customized brochures or advertising materials (in any medium, including but not limited to written communications, verbal communications and web based marketing), Member County and Customer will (i) obtain Caremark's approval on such forms, and (ii) pay a reasonable charge, as established by Caremark, for such materials if created or provided by Caremark.

3.2 Support of Consumer Card Program. Customer will recommend and support the Consumer Card Program in accordance with the terms of this Agreement.

4. USE OF AND ACCESS TO INFORMATION.

4.1 Use of Participant Information. Caremark, Customer and Member County may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Claims ("**Claims Information**") as well as Eligibility Information, in any manner they deem appropriate, except that each party and its agents, employees and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, and may not use the information in any way prohibited by Law. Any work, compilation, processes or inventions developed by Caremark, Customer, Member County or their respective agents, employees or contractors, is deemed Confidential Information of such party under this Agreement.

4.2 Right to Audit Rebates. Customer, at its sole expense, may audit a reasonable sample of records directly related to Customer's Rebates once in each twelve-month period (following sixty (60) days written notice to

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Caremark). Such records shall be limited to information necessary for validating the accuracy of the Rebate amounts distributed to Member County by Caremark. The parties agree that an independent third-party auditor agreeable to Customer and Caremark shall conduct such audit, and that such firm will sign a Caremark confidentiality agreement ensuring that all details and terms of all Manufacturer Rebate contracts with Caremark (except the total aggregate amount due to Customer) will be treated as confidential to Caremark and will not be revealed in any manner or form by or to any person or entity. Furthermore, such audit shall be conducted at Caremark's office where such records are located, during normal business hours, without undue interference with business activities, and in accordance with reasonable audit procedures.

5. CONFIDENTIALITY AND INTELLECTUAL PROPERTY.

5.1 Confidential and Proprietary Information. In connection with this Agreement, each party may disclose to the other party certain proprietary or confidential technical and business information, databases, trade secrets, and innovations belonging to the disclosing party ("**Confidential Information**"), the value of which might be lost if the proprietary nature or confidentiality of such Confidential Information is not maintained. For the purposes of this Section, the contents of this Agreement and of any exhibits, amendments, or addenda attached hereto are deemed Confidential Information. Furthermore, any work, compilation, processes or inventions developed by Caremark, Member County or Customer, or their respective agents, employees or contractors, is deemed Confidential Information of such party under this Agreement. Notwithstanding the foregoing, Confidential Information may be disclosed by Member County in response to a request made pursuant to the Member County's applicable state Public Records Law, insofar as disclosure is required by that Law. Member County shall provide Caremark with (i) notice of its intent to disclose Confidential Information and (ii) an opportunity for Caremark to object to such disclosure in accordance with Law. Attached hereto as Exhibit D is a copy of this Agreement which redacts certain pricing information. Notwithstanding the foregoing, the parties agree that as a matter of convenience, Exhibit D may be disclosed by Member County as required by Member County's applicable Public Records Law without providing Caremark an opportunity to object. Member County agrees to provide Caremark with reasonable notice of its disclosure of Exhibit D.

5.2 Non-Disclosure of Confidential Information. The parties will not (except to the extent expressly authorized by this Agreement) disclose Confidential Information of any other to anyone outside of Caremark, Member County or Customer, nor will they copy or reproduce any Confidential Information of another unless expressly authorized to do so by such party in writing. Each party will disclose Confidential Information of another only to its employees who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information, and (ii) have agreed not to disclose it to others. In order to preserve and protect the confidential or proprietary nature of any Confidential Information and to prevent it from falling into the public domain or into the possession of persons not bound to maintain its confidentiality, each party will handle the Confidential Information of any other party with the same degree of care that it applies with respect to its own information that it considers as confidential and proprietary, but in no event with less than reasonable care.

5.3 Exceptions and Permitted Disclosures. The receiving party of Confidential Information will not be liable for any disclosure or use of Confidential Information which is publicly available or later becomes publicly available other than through a breach of this Agreement, or if the Confidential Information is shown by written documentation to be known to the receiving party on the date of execution of this Agreement, having been received from a source (other than a party to this Agreement) that had the right to disclose the Confidential Information.

5.4 Subpoena. Confidential Information may be disclosed pursuant to a bona fide subpoena if the party receiving the bona fide subpoena has given the other party prompt written notice of receipt of the subpoena so that the other party can object or otherwise intervene as it deems proper.

5.5 Return or Destruction of Information. All Confidential Information will remain the property of the disclosing party, and the receiving party will return all written or tangible materials, and all copies thereof, upon request of the disclosing party. If and to the extent feasible, upon termination of this Agreement, Caremark will destroy or will return to Member County or Customer all PHI obtained pursuant to this Agreement and shall retain no copies thereof; provided however, that if such return or destruction is not reasonably feasible, the provisions of Section 4 of this Agreement shall continue to apply to such information after the termination hereof.

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5.6 Proprietary to Caremark. Member County and Customer acknowledge that the Formulary is proprietary to Caremark. Further, all Caremark databases, as well as the software, hard coding, and logic used to generate the compilations of information contained in Caremark's Claims adjudication system and in all other databases developed by Caremark or its designees in connection with performing Services including identifiers assigned by Caremark, and the format of all reports, printouts, and copies there from, and any prior and future versions thereof by any name, are the property of Caremark and are protected by copyright which shall be owned by Caremark.

5.7 Tradenames; Trademarks; and Service Marks. None of the parties hereto may use any tradenames, trademarks or service marks of another, or any word or symbol likely to be confused with such tradenames, trademarks or service marks, unless authorized in writing or as expressly permitted by this Agreement.

5.8 Remedies. Any unauthorized disclosure or use of Confidential Information would cause Caremark, Member County or Customer immediate and irreparable injury or loss that cannot be adequately compensated with money damages. Accordingly, if any party hereto fails to comply with this Section 5, the other(s) will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages (including reasonable attorneys' fees) caused by the breach, and to any other remedies provided by Law.

6. LIMITATION OF LIABILITY; COMPLIANCE WITH LAW.

6.1 Warranty. This Agreement is not a contract for the sale of goods. Caremark will perform the Services in a good and workmanlike manner in accordance with the customs, practices, and standards of providers skilled in the industry. EXCEPT AS WARRANTED IN THIS SECTION 6.1, CAREMARK DISCLAIMS ALL EXPRESS AND ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE CAREMARK SYSTEM. CAREMARK RELIES ON FIRST DATABANK, MEDI-SPAN, OR INDUSTRY COMPARABLE DATABASES IN PROVIDING CUSTOMER, MEMBER COUNTY AND PARTICIPANTS WITH DRUG UTILIZATION REVIEW SERVICES. CAREMARK HAS UTILIZED DUE DILIGENCE IN COLLECTING AND REPORTING THE INFORMATION CONTAINED IN THE DATABASES AND HAS OBTAINED SUCH INFORMATION FROM SOURCES BELIEVED TO BE RELIABLE. CAREMARK, HOWEVER, DOES NOT WARRANT THE ACCURACY OF REPORTS, ALERTS, CODES, PRICES, OR OTHER DATA CONTAINED IN THE DATABASES. THE CLINICAL INFORMATION CONTAINED IN THE DATABASES AND THE FORMULARY IS INTENDED AS A SUPPLEMENT TO, AND NOT A SUBSTITUTE FOR, THE KNOWLEDGE, EXPERTISE, SKILL, AND JUDGMENT OF PHYSICIANS, PHARMACISTS, OR OTHER HEALTH-CARE PROFESSIONALS INVOLVED IN PARTICIPANT'S CARE. THE ABSENCE OF A WARNING FOR A GIVEN DRUG OR DRUG COMBINATION SHALL NOT BE CONSTRUED TO INDICATE THAT THE DRUG OR DRUG COMBINATION IS SAFE, APPROPRIATE OR EFFECTIVE FOR ANY PARTICIPANT. CAREMARK DOES NOT WARRANT THAT ITS SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

6.2 Force Majeure. Except for the payment obligations set forth in Section 2 of this Agreement, the parties are excused from performance under this Agreement to the extent that a party is prevented from performing any obligation, in whole or in part, as a result of causes beyond its reasonable control, including, acts of God, war, civil disturbance, court order, governmental intervention, Change in Law, nonperformance by the other party or any third party, failures or fluctuations in electrical power, heat, light, air conditioning, or telecommunications equipment. Any nonperformance under this Section 6.2 will not constitute a default or a ground for termination of this Agreement.

6.3 Indemnity. To the extent permitted by applicable Law applicable to Customer and each Member County, Customer and Member County shall indemnify and hold harmless Caremark and its officers, directors, employees, agents, successors, and assigns ("**Caremark Indemnitees**") for, from and against any damages, costs, or attorney's fees, actually incurred by Caremark a Caremark Indemnitee, as the result of a claim brought by any third party or a participant or beneficiary relating to the Services, provided that the Caremark Indemnitee has acted in a manner that is consistent with this Agreement and applicable standards of care. The foregoing indemnification shall not apply and shall not be enforceable to the extent any applicable Law prohibits a Member County from providing such indemnification. Caremark shall indemnify and hold harmless Member County, Customer and their officers, directors, employees, agents, successors, and assigns (collectively "**Customer Indemnitees**") for, from and against any damages, costs, or attorney's fees, actually incurred by any Customer Indemnitee, as the result of a third party claim that

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Caremark, its officers, directors, employees, agents, successors, or assigns acted with negligence, willfully, and/or in violation of applicable standards of care, provided that the Customer Indemnitee has acted in a manner that is consistent with this Agreement, the Consumer Card Program and applicable standards of care. However, nothing in this Agreement is to be construed as a waiver of governmental immunity as offered by the court or state law.

6.4 Compliance with Law. Customer and Member County will comply with all Laws applicable to its prescription drug benefit plan, including without limitation insurance licensing, antitrust, consumer protection, and any other Laws that may apply. Caremark has no responsibility to advise Member County or Customer about the applicability of or compliance with any applicable Law including, without limitation, HIPAA, the Employee Retirement Income Security Act, or the Americans with Disabilities Act.

Caremark will comply with all Laws applicable to it and to the Services it provides under this Agreement. Member County and Customer have no responsibility to advise Caremark regarding its compliance with any applicable Law.

Effective as of September 8, 2005, each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, Caremark shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. In addition, Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at http://www.caremark.com/wps/portal/_s.155/3370?cms=CMS-2-007764.

6.5 Change in Law. The parties will attempt to equitably adjust the terms of this Agreement to take into account any Change in Law or any material change in drug industry practice that materially alters the rights or obligations of either party under this Agreement. If the parties are unable to agree upon an equitable adjustment within sixty days after either party notifies the other of such a Change in Law or material change in drug industry practice, this Agreement will automatically terminate.

6.6 Limitations. In no event shall either party be liable to the other party, nor shall Caremark be liable to any Participant for any indirect, special, or consequential damages or lost profits, arising out of or related to performance of this Agreement or a breach of this Agreement, even if advised of the possibility of such damages or lost profits.

Caremark (and its affiliates, directors, employees, agents, successors or assigns) will not be liable for any claim which is asserted by Member County or Customer more than ninety days after Member County or Customer is or reasonably should have been aware of such claim, and will in no event be liable for any claim which is asserted more than twelve months after the event resulting in damages or loss.

Caremark does not direct or exercise any control over the professional judgment exercised by any pharmacist in dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. Participating Pharmacies are independent contractors, not subcontractors or agents of Caremark, and Caremark shall have no liability to Member County or Customer for a claim arising out of any act or omission of any Participating Pharmacy or its agents or employees.

7. TERM AND TERMINATION OF AGREEMENT.

7.1 Term. This Agreement is for an initial term of two years and four months from the Effective Date, through July 31, 2008 (the "**Initial Term**"), and will automatically continue in effect for successive one year terms thereafter, subject to the remaining provisions of this Section.

7.2 Termination. This Agreement may be terminated as follows:

a. By any party, with or without cause, at the end of the Initial Term or any renewal term, by giving written notice to the others at least 60 days prior to the end of such Initial Term or renewal term;

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b. Automatically, if the parties are unable to agree on an equitable adjustment under Section 6.5 of this Agreement;

c. By any party if another materially defaults in its performance of this Agreement and such default continues without cure for a period of sixty days after the terminating party provides written notice to the defaulting party specifying the nature of the default;

d. By any party, at its option, if any court, or governmental or regulatory agency issues to another party an order or finding of impairment or insolvency, or an order to cease and desist from writing business. The party receiving notice of an order or finding must provide the others written notice within two business days of receipt;

e. By any party if another party: (i) makes an assignment for the benefit of creditors; (ii) has a petition filed (whether voluntary or involuntary) under Title 11 of the United States Code, or any other similar statute now or hereafter in effect; (iii) has a receiver, custodian, conservator, or trustee appointed with respect to all or a substantial part of its property; or (iv) has a proceeding commenced against it which substantially impairs performance hereunder; or

f. By Caremark, immediately on written notice to Member County or Customer, if (i) either fails to comply with the provisions of Section 3.1 of this Agreement, or (ii) Caremark determines, in its sole discretion that Member County or Customer's program may not fully comply with all applicable Laws.

7.3 Effect of Termination and Survival.

Sections 4, 5 and 6 of this Agreement, and obligations arising under this Agreement prior to the effective date of any termination, will survive termination.

8. NOTICES.

All notices under this Agreement must be in writing, delivered in person, sent by certified mail, delivered by air courier, or transmitted by facsimile and confirmed in writing (by air courier or certified mail) to a party at the facsimile number and address shown in this Agreement. A party may notify the other party of any changes in the listed address or facsimile number in accordance with the provisions of this Section. All notices are effective upon receipt.

Notices to Caremark must be addressed as follows:

Vice President, Client Contract Services
Caremark Inc.
2211 Sanders Road, NBT9
Northbrook, IL 60062
Fax No.: 847-559-4302

With a copy to:

Managing Counsel, Client and Account Services
Caremark Inc.
2211 Sanders Road, NBT9
Northbrook, IL 60062
Fax No.: 847-559-4879

Notices to Customer must be addressed as follows:

National Association of Counties
440 First Street, NW
Washington, DC 20001
Attn: Mr. Andrew Goldschmidt, Director, Membership Marketing

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Fax No.: (202) 393-2630

9. MISCELLANEOUS.

9.1 Entire Agreement; Interpretation; Amendment; Counterparts. This Agreement (including exhibits, schedules, attachments, or any addendum to this Agreement) constitutes the entire understanding and obligation of the parties with respect to the Services and supersedes any prior agreements, writings, or understandings, whether oral or written. The headings in this Agreement are used only for convenience of reference and do not affect the meaning or interpretation of any provision. The parties may amend this Agreement only through a properly executed writing authorized by both parties. This Agreement may be executed in several counterparts, all of which taken together constitute a single agreement between the parties.

9.2 Binding Effect; Assignment. This Agreement is binding on the parties and their respective successors and permitted assigns. None of the parties may assign this Agreement, in whole or in part, without the prior written consent of the others (which consent will not be unreasonably withheld); except that Caremark may assign this Agreement, in whole or in part, to any entity that controls, is controlled by, or is under common control with Caremark.

9.3 Independent Contractor; Third Parties. The parties to this Agreement are independent contractors, and have no other legal relationship under or in connection with this Agreement. No term or provision of this Agreement is for the benefit of any person who is not a party hereto (including, without limitation, any Participant or broker), and no such party will have any right or cause of action hereunder.

9.4 Waivers. Any failure by a party to comply with any covenant, agreement, or condition herein or in any other agreements or instruments executed and delivered hereunder may be waived in writing by the party in whose favor such obligation or condition runs; except that failure to insist upon strict compliance with any such covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.5 Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

9.6 Enforcement Costs. If any party hereto institutes an action or proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or proceeding will be paid all reasonable attorneys' fees and costs to enforce such rights by the other party, such fees and costs to be set by the court, not by a jury, and to be included in the judgment entered in such proceeding.

9.7 Authority. Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

9.8 Exclusivity. Member County and Customer hereby grant Caremark during the term of this Agreement, and any renewals hereof, the exclusive right to provide a Consumer Card Program to Member County and Customer. This exclusive right is solely applicable to Participants designated by Member County as eligible for the Member County's discount consumer card program and shall not affect any other benefits or programs provided to Participants by Member County. Member County and Customer further agree that, during the term of this Agreement and any renewals hereof, it will not negotiate, contract, or agree with any drug manufacturer for the purpose of obtaining Rebates or other discounts related to Participants under this Agreement. Member County and Customer also agree to cancel any existing agreements or contracts with any drug manufacturers related to such drug Rebates or discounts as of the Effective Date of this Agreement. In the event of a breach of this Section by Member County or Customer, Caremark may terminate this Agreement. By entering into this Agreement, Customer does not endorse, and Caremark will not represent Customer's endorsement of any other programs or services which Caremark may offer to a Member County or Participant.

9.9 Drug Classification and Pricing. Caremark shall use the latest edition of the First DataBank Blue Book (with supplements), the Medi-Span Master Drug Pricing Source (with supplements), or any other nationally

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recognized pricing source as the source for purposes of pricing and classifying drugs (e.g., legend vs. over the counter, brand vs. generic) in connection with this Agreement.

10. DEFINITIONS. The following terms and phrases, when capitalized, have the meanings set forth below.

a. "AWP" means the average wholesale price of the drug dispensed as set forth in the latest edition of the First DataBank Blue Book (with supplements), the Medi-Span Prescription Pricing Guide (with supplements) or any other similar nationally recognized reference selected by Caremark.

b. "Change in Law" means any (i) change in or adoption of any Law, (ii) change in the judicial or administrative interpretation of any Law, or (iii) change in the enforcement of any Law, occurring after the date Customer is implemented or the Effective Date, whichever is earlier.

c. "Claim(s)" mean those claims processed through the Caremark on-line claims adjudication system or otherwise transmitted or processed in accordance with the terms of this Agreement in connection with the Consumer Card Program.

d. "Covered Items" mean the prescription drug benefits for which Participants are eligible pursuant to Member County's drug benefit plan.

e. "Law" means any federal, state, local or other constitution, charter, act, statute, law, ordinance, code, rule, regulation, order, specified standards or objective criteria contained in any applicable permit or approval, or other legislative or administrative action of the United States of America, or any state or any agency, department, authority, political subdivision or other instrumentality thereof or a decree or judgment or order of a court.

f. "Manufacturer" means a pharmaceutical company that has contracted with Caremark (or its affiliate or agent) to offer discounts for pharmaceutical products in connection with Caremark's Formulary Services.

g. "Maximum Allowable Cost (MAC)" means the then current maximum allowable cost for a prescription drug listed as a drug available from more than one Manufacturer in Caremark's pharmaceutical MAC pricing formula, including but not limited to formulas utilizing the Medi-Span Master Drug Pricing Source or First Data Bank.

h. "Participant" means an individual designated by Member County as eligible for Covered Items under the terms of the Consumer Card Program.

i. "Participating Pharmacy" means a pharmacy that has agreed to provide certain pharmacy services to Participants in accordance with the terms of its agreement with Caremark. A list of Participating Pharmacies can be accessed via Caremark's Internet website, which is subject to change from time to time.

j. "Rebate(s)" means, for any period, all rebates, reimbursements, or other discounts received under a pharmaceutical manufacturer's discount program with respect to pharmaceutical products dispensed to a Participant under the Consumer Card Program for such period.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers or agents as of the date first above written.

NATIONAL ASSOCIATION OF COUNTIES

By: _____
Larry E. Naake

Title: Executive Director

Date: _____

CAREMARKPCS HEALTH, L.P.
By: CaremarkPCS Health Systems, LLC,
its General Partner

_____
_____

Title: _____

Date: _____

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Caremark will provide the following services if selected by Customer or Member County for an additional fee as set forth in Exhibit B. The Services are subject to change as provided for in the Agreement. Capitalized terms not defined herein will have the meanings used in the Agreement.

1. **Customer-Specific Programming.** If Customer or Member County requests services or changes to Services that require customized programming or systems work, Caremark will attempt to estimate the time and cost for completion of such work. If Customer or Member County authorizes Caremark to perform such work, it will pay Caremark the cost of performing such work at the programming rate set forth in Exhibit B.

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National Association of Counties
Effective March 1, 2006

As consideration for the Services selected by Member County in accordance with the Agreement, Member County will pay to Caremark the fees set forth below:

Administrative Fees

Per Processed Retail Claim	$0.00
Per Processed Mail Claim	$0.00

As consideration for the Consumer Card Program selected by Member County in accordance with this Agreement, Member County will pay to Caremark 100% of the Rebates collected from Manufacturers pursuant to this Agreement.

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Consumer Card Program Retail Network Rates [1]

Brand: AWP-13% + $3.50 transaction fee or Usual & Customary
Generic: AWP-13% + $3.50 transaction fee, MAC + $3.50 transaction fee or Usual & Customary

Mail Service Rates[1]

Brand: AWP-19% + $1.00 dispensing fee
Generic: AWP-50% + $1.00 dispensing fee

Specialty Pharmacy Rates[2]

AWP-13% + $3.50 dispensing fee

Other Fees

Section 1.6 - Card Issuance	No charge
Exhibit A(1) - Customer Specific Programming	$150.00/Hour

Note: Charges or Services not identified above will be quoted upon request.

1. All claims may be aggregated for purposes of this rate. Actual rates may vary by Participating Pharmacy. Certain retail and mail Claims may be excluded from these rates, including but not limited to (i) Select Generics, which are generic drugs that enter the market with supply limitations or competitive restrictions that limit marketplace competition and (ii) Claims for select injectable drugs and select oral drugs that are bio-technological in nature, compound drugs and those requiring special handling.

2. This rate will apply to Claims for certain drugs filled by Caremark SpecialtyRx, including but not limited to Claims for select injectable drugs and select oral drugs that are bio-technological in nature, compound drugs and those requiring special handling. All Claims may be aggregated for purposes of this rate. Rates for such drugs may vary if filled by a pharmacy other than Caremark SpecialtyRx. Certain drugs will be priced separately from, and not be subject to the contracted rate for prescription Claims due to, among other things, specialized manufacturer processes, limited availability or extraordinary shipping requirements.

Finance Charges. Invoices are assessed finance charges on the amounts not paid within the terms set forth on the invoice. The finance charge shall be in an amount equal to one and one-half percent per month, unless such rate exceeds the maximum rate allowable by applicable Law, in which case such amounts shall bear interest at the maximum legally allowable rate.

Contingency. All prices are contingent upon Member County's full adoption of Caremark's Performance Drug List and formulary management and intervention programs.

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