

**INDIGENT HEALTH CARE AGREEMENT  
TOM GREEN COUNTY AND SHANNON BUSINESS SERVICES, INC.**

This Agreement made and entered into by and between Tom Green County, a political subdivision of the State of Texas, hereinafter designated "County," acting by and through its County Judge, Michael D. Brown, and Shannon Business Services, Inc., hereinafter designated "Pharmacy," acting by and through its Chief Executive Officer, Bryan Horner, in consideration of the mutual promises herein contained, agree as follows:

RECITALS

1. Shannon Business Services, Inc. has within its corporate structure two licensed pharmacies identified as Shannon Outpatient Pharmacy ("Outpatient Pharmacy") and Shannon Pharmacy Assistance Program Pharmacy ("PAP Pharmacy") which provides pharmaceutical services to the citizens of Tom Green County, including Indigent Persons, except those pharmaceutical services provided in the Indigent Health Care Agreements with other health care providers. The Outpatient Pharmacy is an approved Medicaid-enrolled pharmacy. The PAP Pharmacy is not a Medicaid-enrolled pharmacy.
2. Tom Green County desires to assure the availability to Indigent Persons pharmaceutical services, and Shannon Business Services, Inc. through the PAP Pharmacy is willing to provide pharmaceutical services to Indigent Persons, upon the terms and subject to the conditions set forth herein. It is the intent of the County to provide by this contractual agreement for some of the Health Care Services that is required be provided to Indigent Persons under the provisions of the Indigent Health Care and Treatment Act, V.T.C.A. Health and Safety Code § 61.001 et.seq. (the "Act").

Therefore, the County and Pharmacy hereto agree as follows:

**1. Definitions.**

- 1.01 Indigent Person. The term "Indigent Person" means any person who (a) is an eligible resident of a county who does not reside in the service area of a public hospital or hospital district and meets the income and resource requirements established by the Act, and (b) is a Resident of Tom Green County. This definition is adopted solely for purposes of this Agreement and does not constitute a definition of "Indigent Person" or "Pauper" for any other purpose.
- 1.02 Indigent Care. The term "Indigent Care" means Health Care Services, which under state law are the responsibility of Tom Green County and are provided to an Indigent Person who (a) is an eligible resident of a county who does not reside in the service area of a public hospital or hospital district and meets the income and resource requirements established by the Act, and (b) are Residents of Tom Green County.
- 1.03 Medical Staff. The term "Medical Staff" means the medical personnel of the Pharmacy or those individuals or entities as selected by the Pharmacy.

- 1.04 Resident. The term “Resident” shall be determined in accordance with §6 1.003 of the Act as it now exists or may hereafter be amended.
- 1.05 Working Days. The term “Working Days” means normal working business days, i.e., Monday through Friday of each calendar week, exclusive of county holidays.
- 1.06 Mandated Provider. The term “Mandated Provider” means a provider of Health Care Services selected by the County that agrees to provide pharmaceutical services to eligible residents.
- 1.07 General Revenue Levy. The term “General Revenue Levy” means the property taxes imposed by a county that are not dedicated to construction and maintenance of farm-to-market roads or to flood control under Article VIII, Section 1-a, of the Texas Constitution, or dedicated to the further maintenance of the public roads under Article VIII, Section 9, of the Texas Constitution and the sales and use tax revenue to be received by County during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.
- 1.08 SSI/Medicaid. The term “SSI” means the Supplemental Security Income program for the aged, blind and disabled, administered by the Social Security Administration. Medicaid is administered by the Texas Department of State Health Services (DSHS) under 42 U.S.C.A. 1381-1383c.
- 1.09 Health Care Services. The term “Health Care Services” means those basic services County is required to provide Indigent Persons under the Act, § 61.028 which are (1) primary and preventative services, including immunizations, medical screening services and annual physical exams, (2) inpatient and outpatient hospital services; (3) rural health pharmacy services; (4) laboratory and X-ray services; (5) family planning services; (6) physician services; (7) payment for not more than three prescription drugs per month; and (8) skilled nursing facility services, regardless of the patient’s age.
- 1.10 County Indigent Health Care Officer. (CIHCO). The official designated by the County for overseeing and insuring County and providers compliance with the Act.
- 1.11 Red Book. The Red Book is a comprehensive and single source reference for current pricing, packaging, and new product information on top value prescription drugs.
- 1.12 Medical Necessity or Medically Necessary. Means, unless otherwise defined (i) preventative, diagnostic and/or therapeutic in nature; (ii) specifically related to the condition which is being treated/evaluated; (iii) rendered in the least costly medically appropriate setting (e.g., inpatient, outpatient, office), based on the severity of the illness and intensity of service required; and (iv) not primarily for the covered person’s convenience or that of his/her physician.
- 1.13 Pharmacy. Shall be the PAP Pharmacy unless otherwise changed by Shannon Business

Services, Inc. with the written consent of Tom Green County.

**2. Terms of Agreement.** This Agreement shall be for a period of two (2) years beginning July 1, 2011, and ending on June 30, 2013. The parties shall have the option to renew and extend the Agreement for additional one (1) year terms upon the written agreement of the parties.

This Agreement may be amended only in writing executed by the parties through their authorized representatives. Termination or alteration of said Agreement may occur with sixty (60) days written notice by the parties. All amendments shall be submitted to the Commissioners' Court for their consideration and approval.

**3. Mandated Provider.** Pharmacy agrees that it will be a Mandated Provider for the County for the purposes of providing Indigent Persons pharmaceutical services, that it will provide such services in accordance with this Agreement; that it will comply with all requirements for a Mandated Provider set out in the Act and will comply with the rules and regulations promulgated by the Texas Department of State Health Services.

**4. Scope of Work.** Pursuant to this Agreement Pharmacy agrees to provide County with pharmaceutical services for Indigent Persons within Tom Green County, except those Health Care Services provided in the Indigent Health Care Agreements with other health care providers. The scope of work is as follows:

1. Pharmacy agrees that any services provided under this Agreement will be medically necessary pursuant to the order of medical personnel licensed by the State of Texas. Compliance with this section will be certified in writing to the County on a periodic basis or as required by County.
2. Pharmacy shall provide pharmaceutical services for eligible Indigent Persons residing within Tom Green County. Indigent eligibility to be determined by Indigent screening services provided by Tom Green County Indigent Health Care.
3. Pharmacy shall confirm Indigent Persons eligibility for pharmaceutical services before providing pharmaceutical services. Only eligible and allowed claims shall be approved for pharmaceutical services.
4. Pharmacy shall make pharmaceutical services available during regular Pharmacy business hours established by Pharmacy for a minimum of forty (40) hours per week.
5. Maintain all files and documentation (medical records) regarding each Indigent Person in conjunction with Tom Green County Indigent Health Care Director.

**5. Financial Responsibility for Indigent Care.** County's obligation to pay for Indigent Care provided Indigent Persons shall be limited in accordance with the terms set out in 8.01 of this Agreement. The County's obligation to reimburse Pharmacy for Indigent Care shall be limited as follows:

- (a) rates established pursuant to 9.01 of the Agreement for Indigent Health Care;
- (b) provided, the maximum obligation of the County per county fiscal year shall not exceed payment for a total of 30 days (cumulative) of inpatient hospitalization and/or care in a skilled nursing facility, or a maximum payment of \$30,000.00 for all mandatory services provided to an Indigent Person, whichever is reached first; and
- (c) provided, the maximum liability of the County for all services and payments in any one state's fiscal year is limited to eight percent (8%) of the County's General Revenue Tax Levy. If the 8% is expended, and state funding is available for further care as authorized by the Act, then the County is obligated for 10% of additional costs and the Texas Department of State Health Services is obligated for the remaining 90%. If the Texas Department of State Health Services has notified the County that the state funds have been depleted and are no longer available, the CIHCO will shut down the indigent health care program as authorized by the Act and no rollback will be granted to any provider for services rendered during the shut down period.

**6. Notice Requirements.** County and Pharmacy agree to comply with any notice requirements.

**7. Application and Determination of Eligibility.** Pharmacy shall not be required to accept or process any applicant or make the determination of the eligibility for any applicant for Indigent Care; however Pharmacy shall determine the eligibility of an Indigent Person for Pharmaceutical Assistance Program (PAP).

**8. Reimbursement.**

8.01 Pharmacy shall submit bills to County for Indigent Care provided to Indigent Persons at the Pharmacy. Bills will be submitted to County CIHCO as they are incurred and subject to payment under the Indigent Health Care Payment Standards utilizing the Red Book formulation. After review of bills, the CIHCO shall submit their recommendations of payment to the County Treasurer for processing and the County Treasurer will then submit the bills to the County Auditor for audit. The County Treasurer will present the bills at the Commissioners' Court next regularly scheduled meeting after the examination and approval of the bills. In the event that any bills submitted by Pharmacy to the County should contain charges that the County believes may not be eligible for reimbursement the County shall pay the portion of the bills that are not disputed, within 95 days of receipt.

8.02 If County determines, in good faith, that the patient for whom Pharmacy has billed County, was not an Indigent Person pursuant to this Agreement, the CIHCO shall notify Pharmacy of this determination within ninety-five (95) days from the date of service.

8.03 Except as provided in 9 below and except in cases of fraud, misrepresentation or clerical error, County, through CIHCO, shall have the right to disallow payments to Pharmacy only if the patient for whom Pharmacy submits a bill to County is not an Indigent Person as defined in the Act.

**9. Cost of Indigent Care.**

9.01 County is liable for paying the amounts established by the Texas Department of State Health Services (DSHS) as the payment standard for mandatory services as set forth in applicable regulations including 25 T.A.C. 14.203.

(a) The payment standard for pharmaceutical services is the Red Book Average Wholesale Price rate for allowable pharmaceutical services as established by the Texas Department of State Health Services (DSHS) Indigent Health Care Payment Standards.

(b) County will reimburse for prescription drugs at the Red Book wholesale price minus 40% for generic and minus 13% for name brand, plus the basic dispensing fee of \$5.60 established by the Texas Department of State Health Services.

Provided, however, if the regulations promulgated for payment of pharmaceutical services are changed subsequently to require additional or different payment standards, Pharmacy and County will utilize the new standards.

9.02 Pharmacy will bill County for services covered by this Agreement at the rates set forth in 9.01 of this Agreement as limited by the terms set forth in 5 of this Agreement.

9.03 Pharmacy shall attempt to ascertain whether a person seeking Indigent Care at the Pharmacy is eligible for participation in the Medicaid or Medicare programs or for coverage by any other third-party payors. It is understood by the parties that initially the provision of services under this Agreement are through the PAP Pharmacy, which is not a Medicaid enrolled pharmacy. In the event the PAP Pharmacy becomes a Medicaid enrolled pharmacy or in the event services provided for under this Agreement will be provided by a Medicaid enrolled Pharmacy, the following requirements as defined in Section 9.03 shall apply.

(a) If it is determined by Pharmacy that a patient may reasonably be eligible for such coverage, then Pharmacy shall direct the patient to Tom Green County Indigent Health Care Department who shall provide that patient with assistance in preparing and presenting his application for coverage.

(b) If such patient is later determined to be eligible for Medicare or Medicaid, amounts received by Pharmacy for Medicare or Medicaid reimbursements for treatment of that patient shall be returned to the County to the extent that payments were made from the County to Pharmacy.

9.04 In computing the amounts Pharmacy will bill the County for pharmaceutical services, Pharmacy may not include the following:

- (a) any amount that Pharmacy has received, or is entitled to receive, from a third party insurer or under a governmental program; provided, however, if the health care source pays less than the appropriate payment standard as specified in 9.01 of this Agreement, County is responsible for the amount remaining up to the payment standard amount;
- (b) any amount in excess of the payment that Pharmacy has received, or is entitled to receive, from a third party insurer or under a governmental program where Pharmacy has agreed or is otherwise required to accept this payment as payment in full for the services; and
- (c) any amount for which reimbursement would be available under Medicare, Medicaid or similar programs if the Pharmacy does not participate in those programs.

9.05 The County is classified as the payor of last resort and shall provide assistance only if other public or private sources of payment are inadequate or unavailable.

## **10. Availability of Records.**

10.01 Pharmacy agrees to maintain and make available for inspection, by the County, upon request consistent with personal privacy and subject to the limitation of state law any and all records necessary to document Pharmacy's provision for pharmaceutical services to Indigent Persons of Tom Green County.

- (a) Such records shall be maintained for at least six years after the date services were provided. County and Pharmacy shall ensure the confidentiality of the information it receives pursuant to this contract in accordance with federal, state and local confidentiality laws. Pharmacy is not precluded from using the information it receives to determine if individuals qualify for other medication programs including, but not limited to, those established by pharmaceutical manufacturers.
- (b) The records described in 10.01(a) shall be made available for inspection and audit by the Texas Department of State Health Services (DSHS), for determination of the County's eligibility for financial assistance under the Act to the extent required by state or federal law imposed on Pharmacy or the County.
- (c) County Financial and related records pertaining to this Agreement shall be made available to Pharmacy for review upon written request.

10.02 As a prerequisite to obtaining Indigent Care, Indigent Persons shall be required to authorize release of their medical records to the County.

**11. Responsibility of Employers.** Pharmacy is an independent contractor and not an agent of the County. County and Pharmacy shall each be solely responsible for the wages, benefits, insurance all other costs of employing their respective employees.

**12. Scope of Indigent Care.** Under the terms of this Agreement, the medically necessary care for which the County agrees to pay is limited to those services required by the Act as further defined by the regulations promulgated thereunder including but not limited to 25 T.A.C. 14.201 and 14.202.

**13. Personnel.** Shannon Business Services, Inc. shall perform all services associated with this Agreement. Pharmacy may, at its sole discretion and expense, engage independent contractor(s) to perform certain aspects of pharmaceutical services. Pharmacy shall determine the independent contractor(s) who provide pharmaceutical services to the Indigent Persons within Tom Green County are competent and qualified to perform those services.

**14. Place of Payment.** Payment shall be made to Shannon Pharmacy Assistance Program Pharmacy in care of the accounting department, Shannon Medical Center, 120 East Harris Avenue, San Angelo, Texas 76903.

**15. Exclusivity.** This Agreement is nonexclusive and nothing herein shall in anyway limit the right of the parties to enter into agreements with other individuals or entities to provide the same or similar service or to use the same or similar written materials as are used in performance of this Agreement.

**16. Relationship of the Parties.** The Pharmacy is associated with the County for the performance of pharmaceutical services to Indigent Persons within Tom Green County. The Pharmacy is and shall be an independent contractor and subject to the terms of this Agreement, shall have the sole and exclusive right to supervise, manage, operate, control, and direct the performance of the services under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer/employee or principal-agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities and obligations of the Pharmacy. The Pharmacy shall be solely responsible for (and the County shall have no obligation with respect to) payment of all federal income, FICA and other taxes owed or claimed to be owed by the Pharmacy, arising out of this Agreement, and the Pharmacy shall indemnify and hold the County harmless from and against, and shall defend the County against, any and all losses, damages, claims, costs, penalties, liabilities and expenses whatsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

**17. Notice.** Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if made in writing and delivered by hand-delivery, facsimile and confirmed by first-class mail, postage prepaid, or deposited in the United States Mail, postage prepaid, addressed to the respective representative and to the respective addresses set forth below. The notice shall be effective on the date of receipt, unless notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

IF TO COUNTY:

Name: Honorable Michael D. Brown  
Title: County Judge  
Address: 122 West Harris  
San Angelo, Texas 76903  
Telephone: 325/653-3318  
Facsimile: 325/659-3258

IF TO PHARMACY:

Name: Steve Lubke  
Title: Director  
Address: 120 East Harris  
San Angelo, Texas 76903  
Telephone: 325/657-5189  
Facsimile: 325/657-5401

The parties may change the address where or the individual to whom notice is to be given by providing written notice of such change pursuant to this section. Nothing contained in this section shall be construed to restrict the transmission of routine communications between authorized representatives of County and Pharmacy.

**18. Governing Law and Forum.** This Agreement and its interpretation and any disputes relating thereto, arising out of or connected with this Agreement, shall be governed by the laws of the State of Texas, without regard to its conflicts of law provisions. Any dispute relating to, arising out of, or connected with this Agreement shall be filed and maintained in San Angelo, Tom Green County, Texas, in the State Courts located in San Angelo, Tom Green County, Texas. For purposes of this Agreement, venue shall be in Tom Green County, Texas.

**19. Extent of Agreement.** This Agreement, together with Business Associate Addendum and Exhibit A attached hereto represents the entire Agreement between Pharmacy and County and supersedes all prior negotiations, representations or agreements, whether written or oral.

**20. Exclusive Right to Enforce Agreement.** County and Pharmacy have the exclusive right to bring suit to enforce this Agreement, and no other party may bring suit, as a third-party beneficiary or otherwise, to enforce this Agreement.

**21. Amendment.** This Agreement may be amended only in writing, with such written amendment being approved and executed by the Parties. All amendments shall be submitted to and approved by the Commissioners' Court.

**22. Force Majeure.** In the event either party is kept from performing its obligations hereunder because of strike, war, riot, fire, flood, earthquake, natural disaster, or any other event beyond its control, then such Party shall be relieved of its obligations to perform until such time

as the factor inhibiting performance has abated.

**23. Attorneys Fees.** In the event of the bringing of any legal action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions or provisions on the part of the other party arising out of this Agreement, the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including reasonable and necessary attorneys fees in accordance with the Civil Practice & Remedies Code.

**24. INDEMNIFICATION.** PHARMACY COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE COUNTY, ITS EMPLOYEES, OFFICERS, ELECTED OFFICIALS, AND LEGAL REPRESENTATIVES FROM ANY AND ALL THIRD-PARTY CLAIMS, SUITS, DEMANDS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS FEES RELATING TO ANY AND ALL DAMAGES (BODILY INJURY, DEATH AND DAMAGE TO PROPERTY), CLAIMS, LOSSES, CAUSES OF ACTION, SUITS, LIABILITIES OR FINES ARISING BY REASON OF OR IN CONNECTION WITH PHARMACY'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF PHARMACY IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY PHARMACY TO INDEMNIFY AND PROTECT COUNTY FROM THE PHARMACY'S ACTUAL OR ALLEGED NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.

**25. RELEASE.** PHARMACY, ITS PREDECESSORS, SUCCESSORS, AND ASSIGNS HEREBY RELEASE, RELINQUISH, AND DISCHARGE THE COUNTY, THEIR PREDECESSORS, SUCCESSORS, ASSIGNS, AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES, OFFICERS, ELECTED OFFICIALS AND LEGAL REPRESENTATIVES, FROM ANY LIABILITY ARISING OUT OF THE NEGLIGENCE OF PHARMACY FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSON OR PROPERTY, WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**26. Binding Agreement.** This Agreement is binding upon and shall ensure to the benefit of the parties, personal representatives and successors, as applicable.

**27. Assignment of Rights and Delegation of Duties.** Due to the unique nature of the Health Care Services, the parties agree that the Pharmacy may not assign its rights or delegate its duties hereunder to any third party without the prior written consent and approval of the County, which consent shall not be unreasonably withheld. Any purported assignment, transfer or conveyance without such consent shall be null and void. Notwithstanding the foregoing, a merger, recapitalization, consolidation, acquisition, reorganization, or similar action by the Pharmacy shall not be considered an assignment of rights or delegation of duties.

28. **Captions.** The heading of the various sections of this Agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date indicated.

SHANNON BUSINESS SERVICES, INC.

By: \_\_\_\_\_  
Bryan Horner, Chief Executive Officer Date

STATE OF TEXAS §  
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by BRYAN HORNER, Chief Executive Officer, on behalf of SHANNON BUSINESS SERVICES, INC.

\_\_\_\_\_  
Notary Public, State of Texas

TOM GREEN COUNTY

By: Michael D. Brown 3-5-11  
MICHAEL D. BROWN, County Judge Date  
Tom Green County, acting in his official  
capacity as County Judge and not individually

STATE OF TEXAS §  
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on the 5 day of April, 2011, by MICHAEL D. BROWN, County Judge, on behalf of TOM GREEN County.



Elizabeth McGill  
Elizabeth McGill, County Clerk,  
Tom Green County, Texas

**EXHIBIT A TO INDIGENT HEALTH CARE AGREEMENT  
BETWEEN TOM GREEN COUNTY AND SHANNON BUSINESS SERVICES, INC.**

CERTIFICATION BY APPROPRIATE OR LOCAL GOVERNMENT OFFICIAL THAT SHANNON WEST TEXAS MEMORIAL HOSPITAL AND SHANNON BUSINESS SERVICES, INC. IS UNDER CONTRACT TO PROVIDE HEALTH CARE SERVICES TO LOW INCOME INDIVIDUALS.

In order to meet eligibility requirements for a disproportionate share hospital to buy discounted outpatient drugs under Section 340B of the Public Health Service Act, this certification must be filled out and returned to the Office of Pharmacy Affairs

SHANNON WEST TEXAS MEMORIAL HOSPITAL  
Disproportionate Share Hospital

San Angelo  
City

Texas  
State

Steve Lubke  
Contact

Director of Pharmacy  
Title

(325)657-5189  
Phone Number

Shannon Business Services, Inc.  
Disproportionate Share Hospital Pharmacy

San Angelo  
City

Texas  
State

Steve Lubke  
Contact

Director of Pharmacy  
Title

(325)657-5189  
Phone Number

I certify the contracts between Tom Green County and Shannon West Texas Memorial Hospital and Shannon Business Services, Inc. and Tom Green County are in the public interest in providing health care services to low income individuals who are not entitled to benefits under Title XVII, or eligible for assistance under the State plan under Title XIX of the Social Security Act. To the best of my knowledge, the disproportionate share hospital and the disproportionate share hospital pharmacy are accepting no reimbursement or considerably less than the full reimbursement for services provided.

Signature of State or Local Government Official



Date: 3-5-11

Michael D. Brown  
Name

County Judge  
Tom Green County  
Title and Organization

122 West Harris  
San Angelo, Texas 76903  
Address

(325)653-3318  
Phone Number

OPA Mailing Address and Telephone Number:

Office of Pharmacy Affairs  
4350 Ease West Highway, Room 9-3D3  
Bethesda, Maryland 20814  
(301)594-4353 Office  
(301)594-4982 Fax