TRICARE RETAIL PHARMACY MEMORANDUM OF UNDERSTANDING BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

1. **PURPOSE**: To authorize Department of Veterans Affairs (VA) medical facilities to dispense pharmaceuticals to eligible TRICARE beneficiaries in VA medical facilities, and to receive reimbursement through the Department of Defense's (DoD's) TRICARE Retail Pharmacy Contract.

2. **BACKGROUND**: TRICARE Management Activity's (TMA) Retail Pharmacy Contract was implemented on June 1, 2004, with the follow-on TRICARE Pharmacy Contract (TPharm) implemented on November 4, 2009. This Memorandum of Understanding (MOU) outlines the procedures for VA participation as a provider under the pharmacy contract. This VA-DoD MOU establishes reimbursement and billing policy consistent with TMA's contract with the pharmacy contractor.

3. **AUTHORIZATION:** This MOU is authorized under the "VA and DoD Health Care Resources Sharing and Emergency Operations Act," 38 United States Code (U.S.C.) 8111.

4. **SCOPE:** All VA Medical Centers or Veterans Integrated Service Networks that have entered into agreements with TRICARE Managed Care Support Contractors to become TRICARE-eligible providers may participate in this MOU at their discretion. Prescriptions are limited to only those written by VA providers for TRICARE beneficiaries seen by VA for a TRICARE-covered encounter. VA Pharmacy may dispense medications in a supply sufficient to cover up to a 90-day period. Prescriptions may be mailed to beneficiaries, at the option of the dispensing VA facility. Refills may also be provided for prescriptions originally filled under this MOU.

5. **REIMBURSEMENT AND BILLING**: Pharmaceuticals will be billed at the VA acquisition cost (reflects the Federal Supply Schedule, Federal Ceiling Price, and VA mandatory pricing when contracted item is available from the prime vendor), plus an $8 dispensing fee and reimbursed minus applicable cost-shares. Acquisition price can be validated on the invoice from the prime vendor at time of sale. In any instance where VA is unable to purchase the item at the contracted price, DoD will be responsible for payment of the actual price. Online electronic National Council for Prescription Drug Programs (NCPDP) transactions will be used for claims submissions to the DoD TRICARE Pharmacy Contractor. All sites must file electronically. Paper claims will not be accepted. Applicable edits for the DoD benefit will apply to each transaction with all alerts returned to the VA.

6. **EXCLUDED COVERAGE**: DoD will not reimburse costs for over-the-counter drugs and supply items, unless they are included on the DoD Uniform Formulary (covered by TRICARE regulation or policy).

7. **COST SHARES**: VA will charge, and collect from, DoD beneficiaries the applicable cost-share consistent with TRICARE requirements. Cost-shares ***may not be waived or discounted, without obtaining a separate authority to change these requirements***. VA will utilize its normal business practices in the collection of applicable cost shares.

8. **CONFIDENTIALITY OF RECORDS**

   a. Authorities:

      1) Data being released by Veterans Health Administration (VHA) pursuant to this MOU fall under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule [45 Code of Federal Regulations (CFR), Parts 160 and 164], Privacy Act of 1974, as amended, 5 U.S.C. 522a; Title 38, U.S.C., Sections (Sec.) 5701 and 7332.

      2) VHA is permitted to disclose protected health information (PHI) to Payer/PBM, without patient authorization, as a disclosure for the purpose of payment as authorized by 45 CFR, Sec. 164.506(a)(1). The Payer/PBM is required to abide by all requirements of the HIPAA Security and Privacy Rules with respect to PHI disclosed under this Agreement.

      3) The information requested is also protected in a Privacy Act System of Records and shall be released from VHA in accordance with the Privacy Act (5 U.S.C., Sec. 552a) and VHA data release policies and procedures. VHA may disclose PHI for payment purposes pursuant to the Privacy Act disclosure exception found in "The Revenue Program-Billing and Collections Records-VA" (114VA16) system of records Routine Use 13 and "Patient Medical Records-VA" (24VA19) system of records Routine Use 12. Data provided by VHA for the purposes stated in this Addendum may also be protected by Title 38, U.S.C., Sec. 7332. Prior to any 38 U.S.C., Sec. 7332 information being provided to the Payer/PBM, VHA will obtain a signed, written authorization from the patient.

1) The following authorities are applicable to DoD's TPharm Contract: 10 U.S.C., Sec. 1074g, 38 U.S.C., Sec. 8126 (Veterans Health Care Act of 1992), 32 C.F.R. 199, and 45 C.F.R. 160 and 164 (security and privacy standards, requirements and implementation specifications). The requirements of the Privacy Act (5 U.S.C., Sec. 552a) and the DoD Privacy Program (DoD 5400.11-R), along with the TRICARE manuals, are also applicable to this contract and the systems of records operated and maintained by the contractor on behalf of the TMA.

2) TMA will immediately notify the VHA of any theft, loss, or compromise of pharmacy PHI and personally identifiable information associated with pharmacy claims transactions that originated from VA Pharmacies. The VHA Point of Contact will promptly make the appropriate contacts within VHA to determine whether the incident warrants escalation, and comply with the escalation requirements for responding to security and privacy incidents.

9. **GENERAL PROVISIONS**

Off-shoring: DoD agrees to utilize only contractors or subcontractors who are physically located within the jurisdiction subject to the laws of the U.S Payer/PBM is required to ensure that it does not use or disclose PHI received from VA in any way that will remove the PHI from such jurisdiction.

10. **DISPUTE RESOLUTION, EFFECTIVE DATE, MODIFICATIONS and TERMINATION**:

a. Disputes between the parties arising under this MOU will be submitted, concurrently, for resolution to the VA's Chief Consultant for Pharmacy Benefits Management and TMA's Director of Pharmacy Operations Directorate; and the VA/DoD Joint Financial Workgroup, if appropriate.

b. DoD and VA each agree not to seek financial responsibility from each other for any liability arising under this MOU that is attributable to each entity through acts or omissions of their respective employees and/or contractors.

c. This MOU shall be effective as of the date of the last signature and shall remain in effect until it is terminated in the manner described below:

1) Modification - Requests for modification shall be in writing, and presented not less than 90 days prior to the desired effective date of such modification. Before becoming effective, modifications must be accepted in writing by the signatories below, their successors, or their designees.

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2) Termination - Either party may terminate the agreement at any time by giving 90 days written notice to the other party's signatory below, their successor, or their designee so that beneficiaries can be notified of termination and seek appropriate alternatives.

d. Adjustments to the dispensing fee, noted in paragraph 5. REIMBURSEMENT AND BILLING, may on occur on an annual basis in accordance with the provisions in paragraph 10.c.1 of this MOU.

George Peach Taylor, Jr., M.D.
Deputy Assistant Secretary of Defense
(Force Health Protection and Readiness)
Performing the Duties of the
Assistant Secretary of Defense
(Health Affairs)

29 Oct 2010
Date of Signature

Robert A. Petzel, M.D.
Under Secretary for Health
Veterans Health Administration
Department of Veterans Affairs

29 Nov. 2010
Date of Signature