

A NOTE OF CAUTION

The document that follows is a **SAMPLE** Memorandum of Understanding (MOU) between a community based organization (such as a AAA) and a hospital. It details the expectations, protections and limitations of a hypothetical agreement between the two entities in which the CBO would be providing evidence-based self-management education programs to the hospital's patients/former patients. The MOU contemplates that the CBO has already submitted the necessary paperwork to obtain its own Medicare provider number, but simply hasn't received it yet.

Obviously if your situation does not match the above assumptions, this document will be of limited use to you. But even if your situation seems to be compatible with the above assumptions, this document can only serve as a sample to give you ideas what you might want to negotiate with your chosen partner. **You cannot simply copy this MOU and use it as-is.** There are additional built-in assumptions that may or may not reflect how you will be contracting with a hospital. You need to read it carefully and use it as a **guide, not a template.**

You will need to create your own MOU if you will be entering into an agreement with a hospital or other entity to provide CDSME programs. This document is intended for reference purposes only and DOES NOT constitute legal advice. Consult an attorney for any legal advice required to execute an agreement with a third Party.

SAMPLE ONLY

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING ("Agreement") is made and entered into effective as of the _____ day of _____, 20__, by and between [NOTE: Insert name of Hospital, medical clinic, FQHC or hospital system] ("Hospital"), and the [NOTE: Insert name of the Aging Network Provider] (ANP), which is a [NOTE: Insert name of the State] Non-Profit Corporation ("ANP").

WHEREAS, ANP is a non-profit corporation that provides evidence-based disease self-management and preventive health programs and services;

WHEREAS, Hospital desires to have evidenced-based programs provided by ANP and ANP desires to provide evidence-based programs to Hospital patients/former patients/consumers ("consumers")_in a sustainable manner under the terms and conditions set forth in this document;

WHEREAS, ANP desires and has the capacity to provide evidence-based programs and services provided to the hospital;

WHEREAS, Hospital desires to improve health outcomes and reduce readmissions to Hospital that can be avoided in the interest of improving consumer health and welfare and reducing the cost of consumer care to consumers and to the health care system generally;

WHEREAS, in order to accomplish those objectives, Hospital agrees to provide designated space for certain ANP staff and contractors to facilitate the delivery of evidence-based programs and services; and

WHEREAS, Hospital and ANP desire to set forth the terms of their agreement to provide evidence-based programs and services according to the ANP Evidence-Based program outlined in this Agreement in Exhibit A.

NOW, THEREFORE, Hospital and ANP, in consideration of mutual covenants and promises of the parties, promise and agree as follows:

1. **Term of Agreement.** The term of this Agreement will begin on the date executed and continue in full force and effect until _____ [NOTE: insert time period; the standard term is 5 years] ("Initial Term") at which point the Agreement shall terminate unless extended by mutual agreement of the parties.

2. **Termination.** This Agreement may be terminated:
 - a. Upon the mutual agreement of the parties; or
 - b. By either Party at any time for cause which shall be defined as a material breach of the terms of this Agreement by either Party. In the event that one Party claims that the other Party has committed a material breach of the Agreement, the non-breaching Party shall provide written notice of such breach to the breaching Party and the breaching Party shall have a period of thirty (30) days from its receipt of the notice to cure the breach. If the breach is cured within the thirty (30) day period then there is no breach. If the breach is not cured within the thirty (30) day period then the breaching Party is in default and the non-breaching Party may take such action as authorized in this document. **No default or termination of this Agreement, whether by Hospital or ANP, terminates Hospital's obligation to provide ANP any compensation received from Medicaid, Medicare and third Party payers for services ANP already provided.**
3. **Evidence-Based Services.** Hospital hereby agrees to use ANP to provide evidence-based disease self-management program services to its consumers and ANP agrees to provide the evidence-based program services to Hospital consumers as described in Exhibit A.

[NOTE: The following section 4 only applies to programs that are requesting the partnering organization to bill for services and compensate ANP.]

4. **Compensation.** ANP will not charge Hospital for the provision of services that are provided to consumers, Subject to applicable billing and eligibility rules, ANP shall receive compensation for the services it provides to consumers from Medicaid, Medicare and third party health insurance coverage as set forth below.
 - a. Explanatory Notes:
 - i. The services provided by ANP will be billed on a fee for service basis recognizing that these are professional medical services that are reimbursable under Part B of the Medicare Program.
 - ii. *[This section (4.a.ii) only applies to ANPs that are going through the process to become an independent Medicare Provider]*
ANP has submitted appropriate applications and requests to permit it to bill for services provided by its employees and agents but has not yet received approval to do so at Hospital. Therefore, Hospital has agreed to submit all

billings on behalf of ANP until such time as ANP has received authorization to bill directly for such services. All references in this document to Hospital billing for the services provided by the employees and agents of ANP shall immediately be null and void once ANP has received authorization to bill on its own. ANP shall provide Hospital with written notice within three (3) business days after it receives authorization to bill directly.

iii. The services provided by ANP and its agents will be billed on a fee for service basis recognizing that these are professional medical services that are reimbursable under Part B of the Medicare Program.

b. Documentation and Billing:

i. ANP will provide documentation of services rendered and the appropriate billing codes that coincide with the provision of the services to Hospital. The services that will be performed are all professional medical services that are reimbursable under Part B of the Medicare Program.

ii. ANP professionals performing the services shall reassign their right to bill and collect for such services to Hospital in whatever form that may be required by Hospital, until such time as ANP can bill directly for these services (if applicable).

iii. Hospital will submit a claim against the consumer's insurance (if insurance exists) within fifteen (15) days after receipt of all necessary information from ANP.

iv. Hospital will resubmit all claims for which there was a problem with claim documentation in a timely manner and after the additional documentation or information required is supplied by ANP.

v. Hospital will charge ANP a fee equal to _____ percent [*NOTE: Insert applicable negotiated percentage*] of all collections it receives on behalf of ANP.

vi. Hospital will bill on its own behalf for any technical hospital services provided to the consumers.

vii. The compensation actually paid to ANP by Hospital shall be equal to _____ percent [*NOTE: Insert applicable negotiated percentage*] of all amounts collected by Hospital on behalf of ANP.

viii. Hospital will pay ANP within fifteen (15) days after it receives the funds collected on behalf of ANP.

c. Explanatory Notes:

i. The services provided by ANP will be billed on a fee for service basis recognizing that these are professional medical services that are reimbursable under Part B of the Medicare Program.

ii. The two Parties agree to complete a break-even analysis. This break-even analysis will detail the true costs of each Party to deliver evidence-based programs according to the terms of this agreement.

iii. Upon mutual agreement of the true costs of delivering the programs, by each Party, both parties will agree on the level of funding required to meet the break-even expenses.

iv. Both parties agree that all receivables for billable services will be allocated to pay the expenses of the program based on the mutually agreed upon program expenses.

v. Both parties agree to split any revenue over expenses, only after the program base expenses identified and agreed to in the break-even analysis discussed above are met.

vi. The split of revenue over expenses will adhere to the percentages listed in section 4.b of this agreement.

5. **Work Space, Equipment, Inventory and Supplies.** Hospital agrees to provide ANP with work space for the term of the Agreement where ANP staff can provide evidence-based program group training sessions and individual consumer assessments.

6. **Representations by ANP.** ANP hereby represents and warrants that:
It is a non-profit corporation in good standing and organized in the State of _____ [NOTE: Insert State].

Explanatory Notes:

i. ANP employs professional medical personnel, and trained lay health workers that will perform services hereunder and that its employment of such personnel in its current model of organization is in compliance with the laws of the State of _____ [NOTE: Insert State].

- ii. The services being provided as a part of ANP's evidence-based programs, as defined in Exhibit A, are reimbursable by Medicare, Medicaid, and other medical insurance programs, under identified billing codes.

7. **Insurance and Indemnification.**

- a. **Professional Liability Insurance.** ANP agrees to provide general professional liability insurance for all ANP staff members that will participate in the delivery of evidence-based program services and maintain at its own expense. ANP's liability insurance policy shall cover all staff members providing services on behalf of ANP hereunder and other providers for all professional services performed by or on behalf of ANP under this Agreement. ANP's malpractice coverage will remain in full force and effect for the entire period that ANP provides the services defined in this agreement to Hospital and for such additional period or periods of time after the expiration or termination of this Agreement as is necessary to ensure that ANP workers providing services hereunder are insured against any claims made for ANP's and its health care providers' professional acts or omissions occurring during the period of this Agreement. ANP agrees to deliver promptly to Hospital a copy of its certificate of insurance, and upon receipt, a copy of any notice of claim against ANP involving its liability insurance; ANP's services performed on behalf of Hospital; or any adverse action, change or modification to the terms and conditions of ANP's liability insurance.
- b. **Worker's Compensation Insurance.** ANP agrees to obtain and maintain worker's compensation insurance for ANP employees as required by _____ [NOTE: *Insert State*] law.
- c. **General Liability Insurance.** ANP agrees to obtain and maintain a general liability insurance policy. ANP's liability insurance coverage will remain in full force and effect for the entire period that ANP provides the services defined in this agreement to Hospital.
- d. **Proof of Insurance.** Within ten (10) days of the execution of this Agreement, ANP agrees to provide Hospital with applicable certificates of insurance with respect to all insurance policies required under this Agreement. Additionally, if requested by Hospital, ANP will provide copies of the requested insurance policies required under the terms of this Agreement. Failure to provide such certificates and policies shall be cause to terminate this Agreement by Hospital.

- e. **ANP Indemnification.** ANP shall indemnify and hold Hospital harmless from any and all claims, administrative investigations, actions, liability, fines, penalties and expenses (including, without limitation, costs of investigations, judgments, settlements, court costs and attorneys fees, regardless of the outcome of such claim or action) caused by, resulting from or alleging negligent, intentional or willful acts or omissions by ANP, or any person acting on behalf of ANP, in the performance of any duty or obligation imposed on the other, the breach of any representation or warranty, or any failure to comply with any obligation in this Agreement. ANP shall have responsibility for the actions or omissions of any person performing services on behalf of ANP under this Agreement. Upon notice from Hospital, ANP will resist and defend the action at its own expense. Notwithstanding the foregoing, ANP shall have the right to defend Hospital. ANP's selection of counsel shall be with the advice of Hospital.
- f. **Hospital Indemnification.** Hospital shall indemnify and hold ANP harmless from any and all claims, administrative investigations, actions, liability, fines, penalties and expenses (including, without limitation, costs of investigations, judgments, settlements, court costs and attorneys fees, regardless of the outcome of such claim or action) caused by, resulting from or alleging negligent, intentional or willful acts or omissions by Hospital, Hospital's employees, or any person acting on behalf of Hospital, in the performance of any duty or obligation imposed on the other, the breach of any representation or warranty, or any failure to comply with any obligation in this Agreement. Hospital shall have responsibility for the actions or omissions of any person performing services on behalf of Hospital under this Agreement. Upon notice from ANP, Hospital will resist and defend the action at its own expense. Notwithstanding the foregoing, Hospital shall have the right to defend ANP at its cost and expense with counsel of its selection. Hospital's selection of counsel shall be with the advice of ANP.
8. **Licenses, Certifications, and Registrations.** Any employee or agent retained by ANP to perform services pursuant to this Agreement must be licensed, certified or registered, as appropriate, for their area of professional experience as required by _____ [NOTE: Insert State] law. ANP shall provide Hospital proof of licensure, certification or registration for each ANP employee or agent who performs services pursuant to this Agreement.
9. **ANP Staff.** If Hospital is dissatisfied with any staff provided by ANP, either as an employee or agent, Hospital will provide ANP with written notice of the reasons for its dissatisfaction with the individual. ANP will attempt to address Hospital's

concerns. If Hospital's concerns cannot be resolved within a reasonable time period, Hospital may require ANP to discontinue the use of that individual in providing services under the Agreement.

10. **Consumer Grievances.** If requested by Hospital, ANP agrees to cooperate in responding to all consumer complaints and grievances, directed to the hospital, regarding any evidence-based program provided by ANP.
11. **HIPAA Privacy and Security.** Each Party agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA"), and any current and future regulations promulgated thereunder, including without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." Neither Party shall use nor further disclose any Protected Health Information (as defined in 45 C.F.R. § 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. § 1320d), other than as permitted by HIPAA and the terms of this Agreement.

Each Party shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the extent required for determining compliance with the Federal Privacy Regulations.

12. **Access to Consumer Information.** Hospital shall provide ANP with the necessary access to and use of Hospital's information systems for the purposes contemplated under this Agreement. ANP shall comply with Hospital policy concerning access to Hospital's information systems, confidentiality and consumer privacy.
13. **ANP Reports to Hospital.** ANP will provide Hospital monthly and annual reports containing an analysis of services provided under the Agreement.
14. **Independent Contractor.** The Parties agree that ANP is an independent contractor to Hospital and at all times shall be performing as an independent contractor. Nothing contained in this Agreement is intended to or shall be construed to create an agency relationship or a joint venture relationship between the parties to the Agreement and their respective employee, agents and assigns. Hospital shall not have any control over the manner or method by which ANP performs professional duties or responsibilities, provided, however, that ANP shall render services in accordance with the Agreement, the bylaws, rules and regulations, standards and policies of Hospital and Medical Staff; as applicable. It is the sole responsibility of

the hospital to provide any referenced regulatory or compliance documents to ANP for review.

15. **Billing Coordination.** *[NOTE: This section only applies if the ANP requests that the hospital submit reimbursement claims for services provided by ANP]*

ANP shall supply Hospital or its agent with all necessary documentation, billing and collection information within its possession in an accurate and timely manner to allow Hospital or its agent to submit proper and accurate claims to third-party payers or consumers. ANP shall collect all applicable co-payments and deductibles at the time of service, in accordance with the consumers' insurance plans. Such payments shall be deposited, by ANP or ANP agents, in the manner specified by Hospital. . ANP will provide Hospital an accounting of all collections. Such payments (or the applicable portion thereof) shall be included in any disbursements to ANP pursuant to paragraph 4 above. This provision shall remain in effect until ANP obtains the right to submit claims directly to Medicare and/or any third party insurance companies for the services it provides. When ANP is approved to submit claims independently, ANP shall then continue to collect all applicable co-payments and deductibles at the time of service, in accordance with the consumers' insurance plans, but Hospital will no longer be responsible for submitting claims.
16. **Covenant Not To Compete.** During the Term of this Agreement, and for one (1) year thereafter regardless of how the Agreement is terminated, Hospital shall not anywhere in the State of _____ *[NOTE: Insert State]*, solicit or encourage any client or customer of ANP to terminate, reduce or alter in a manner adverse to ANP any existing business arrangements with ANP. Without the prior written approval of the other Party, neither Party shall, during the term of this Agreement and for one (1) year thereafter regardless of how the Agreement is terminated, directly or indirectly induce or attempt to induce any of the employees of the other Party to leave the employment of his/her current employer.
17. **Proprietary and Confidential Information.**
 - a. For Purposes of this Agreement "Proprietary Information" shall mean any proprietary information relating to the business of ANP or Hospital that has not previously been publicly released by duly authorized representatives of ANP or Hospital, respectively, and shall include (but shall not be limited to) information encompassed in all proposals, marketing and sales plans, financial information, costs, pricing information, computer programs (including without limitation source code, object code, algorithms and models), customer information, customer lists, consumer information, consumer lists, consumer records and all methods, concepts, know-how or ideas in or reasonably related to the business of ANP or Hospital.

- b. Hospital and ANP agree to regard and preserve as confidential all Proprietary Information, whether it has such information as a memory or in writing or other tangible or intangible form. Hospital and ANP will not, without written authority from the other Party to do so, directly or indirectly, use for its benefit or purposes, nor disclose to others, either during the term of this Agreement or thereafter, any Proprietary Information except as required by the conditions of this Agreement or pursuant to court order in which case the respective Party shall give the other prompt written notice so that the affected Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Hospital and ANP agree not to remove from the premises of the other respective Party, except as specifically permitted in writing, any document or object containing or reflecting any Proprietary Information. Hospital and ANP recognize that all such documents and objects, whether developed by ANP or Hospital, are the exclusive property of the creator. In addition, any Proprietary Information is retained as the exclusive property of the organization that provided the Proprietary Information. Proprietary Information shall not include information which is presently in the public domain or which comes into the public domain through no fault of Hospital or ANP or which is disclosed to Hospital or ANP by a third Party lawfully in possession of such information with a right to disclose it.
- c. ANP agrees that during and after the term of the Agreement its directors, officers, employees, agents and consultants will not without authorization from Hospital, divulge, disclose or otherwise communicate to any person or company any confidential or Proprietary Information pertaining to Hospital's business, functions, or operations, products, services, plan strategies, financial performance, customers, consumers, employees, or contracts (collectively, "Confidential Information"), except in connection with the discharge of its duties hereunder, or pursuant to the order of a court of competent jurisdiction. . Subject to such record keeping and documentation requirements imposed by law, ANP further agrees that upon termination of the Agreement with Hospital, ANP will promptly return to Hospital all books and records of or pertaining to Hospital's business, and all other property belonging to Hospital which is in its custody or possession.
- d. All documents, records, data, equipment and other physical property, whether or not pertaining to Proprietary Information, which are produced by and furnished to Hospital by ANP or produced by and furnished to ANP by Hospital will be and remain the sole property of the Party who produced and furnished the information. Each Party will return to the other promptly all such

materials and property upon the termination of this Agreement or sooner if requested by either Party.

- e. The Parties expressly agree that the covenants set forth in Sections 16 and 17 of this Agreement are being given to ANP and Hospital in connection with the Agreement and that such covenants are intended to protect Hospital and ANP against competition by the other Party, within the terms stated, to the fullest extent deemed reasonable and permitted in law and equity. In the event that the foregoing limitations upon the conduct of the Parties are beyond those permitted by law, such limitations, both as to time and geographical area, shall be, and be deemed to be, reduced in scope and effect to the maximum extent permitted by law.

18. **Injunctive Relief.** The Parties acknowledge that the injury to each by the other from any violation of any of the covenants contained in this Agreement will be of such a character that it cannot be adequately compensated by money damages, and, accordingly, the Parties may, in addition to pursuing other remedies, obtain any injunction from any court having jurisdiction of the matter restraining any such violation.

19. **Arbitration.** Any controversy, claim, or breach arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in State of _____ [NOTE: Insert State] in accordance with the rules of the American Arbitration Association and the judgment upon the award rendered shall be entered by consent in any court having jurisdiction thereof.

20. **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly delivered if delivered in person or sent by registered or certified, first class mail, postage prepaid to:

Hospital:

HOSPITAL/HEALTH PLAN NAME

ADDRESS

CITY, STATE, ZIP CODE

Attention: _____

ANP:

ORGANIZATION NAME

ADDRESS

CITY, STATE, ZIP CODE

Attention: _____

Either Party may from time to time change said address by written notice to the other Party, given as above provided.

21. **Reporting Injuries.** ANP agrees to immediately report to Hospital any event or incident, which it has ascertained in its performance under the Agreement, which results in injury to the person or property of any third Party at Hospital or which may otherwise subject ANP and Hospital to liability. The requirement to report and event or incident to Hospital under this provision does not excuse or satisfy any obligation that ANP may independently have to report the event or incident to the appropriate legal authorities or the appropriate agency as required by law.
22. **Exclusion from Federal Health Programs.** ANP represents and warrants that neither it nor any person employed by ANP or performing services hereunder on behalf of ANP, has ever been (1) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another federal health care program; (2) convicted of any felony; or (3) excluded from participation in any federal health care program, including Medicare and Medicaid. ANP shall notify Hospital immediately in the event that (1) ANP, or any person employed by ANP or performing services hereunder on behalf of ANP, is convicted of any felony or a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or another federal health care program; or (2) ANP, or any person employed by ANP or performing services hereunder on behalf of ANP, is excluded from participation in any federal health care program, including Medicare and Medicaid or another federal program.
23. **Governing Law.** This Agreement will be governed by the laws of the State of _____ [NOTE: Insert State].
24. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transactions contemplated in this Agreement and supersedes all previous representations, negotiations, commitments, and writing with respect to those transactions. No change or amendment of any of the terms or provisions of this Agreement shall be binding unless in writing and signed by the Party against whom the same is sought to be enforced.
25. **Severability.** The provisions of this Agreement are severable. If any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be

construed in a manner so as to give the maximum valid and enforceable effect to the intent of the parties expressed.

26. **Binding Effect-Assignment.** This Agreement shall be binding upon, and ensure to the benefit of the parties hereto and their respective successors and assignees. Neither Party to this Agreement may delegate its duties or assign its rights under this Agreement without the prior written consent of the other Party.
27. **Waiver of Breach.** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any of the parties to this Agreement.
28. **Amendment or Alteration.** No amendment or alteration of the terms of this Agreement shall be valid unless made in writing and signed by all of the parties to this Agreement.
29. **Gender.** Pronouns in any gender shall be construed as masculine, feminine, or neuter as the context requires in this Agreement.
30. **Counterparts.** This Agreement may be executed in any number of counterparts (including facsimile counterparts), each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties below have executed this Agreement effective as of the date and year written on Page One (1) of this document.

[NOTE: Insert Aging Network Provider Name]

By: _____

Printed Name: *[Insert]*

Printed Title: *[Insert]*

[NOTE: Insert Hospital Name]

By: _____

Printed Name: *[Insert]*

Printed Title: *[Insert]*

EXHIBIT A
EVIDENCE-BASED PROGRAMS

ANP will provide evidence-based programs intended to improve the health outcomes of community residents and Hospital consumers.

The following Evidence-Based Programs will be provided by ANP, according to a schedule determined by ANP and agreed upon by Hospital.

*[NOTE: List the services to be provided under this Agreement; the listing below is a **SAMPLE only**]*

1. Stanford Diabetes Self-Management Program (DSMP)
2. Stanford Chronic Disease Self-Management Program (CDSMP)
3. Stanford Positive Self-Management
4. Stanford Chronic Pain Self-Management
5. Medical Nutrition Therapy
6. Health Behavior and Assessment Intervention
7. Fall Prevention Programs
8. Activity Programs
9. Care Transitions

It is the sole responsibility of ANP to maintain current licensure agreements to offer and deliver the evidence-based programs covered by this Agreement.

All staff training requirements are also the sole responsibility of ANP. If Hospital wishes to have staff members participate in the training, ANP must agree, and the Hospital staff members must adhere to the licensure requirements of the evidence-based program.

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT

A Business Associate Agreement is required to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

You can consult the following reference for more information regarding meeting the mandates of the HIPAA legislation, and then include your applicable agreement here as Exhibit B:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>

SAMPLE