



APRIA HEALTHCARE®

eDelivery Agreement and Disclosure

Apria Healthcare
26220 Enterprise Court
Lake Forest, CA 92630
866-505-6365

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE CONSENTING TO THIS SERVICE

This **eDelivery Agreement and Disclosure** (herein referred to as this "Agreement") constitutes the agreement between Apria Healthcare and you concerning your election to receive delivery of statements, notices, disclosures and other communications electronically for the account(s) you have with Apria Healthcare.

1. Election and Authorization for Electronic Delivery

By accepting this Agreement you agree to its terms and conditions and you give your consent and authorization to Apria Healthcare to send regular periodic statement(s), notices, disclosures and other communications to you and/or your appointed agent (if you have designated one) in electronic format for the designated account(s) (collectively, the "eDelivery Services" refers to these documents and the delivery of these documents), in lieu of providing a paper copy of any of these documents. Your consent and agreement shall remain valid until such time as you exercise your right to revoke this consent as provided in this Agreement.

If, at any time after you accept this Agreement and elect to receive the eDelivery Services, you would like to receive a paper copy of any document you would otherwise receive through the eDelivery Services, you may contact Apria Healthcare in writing or by telephone as set forth in Section 7.8 of this Agreement, and a paper copy of the document(s) will be mailed to you.

1.1 System Requirements

You acknowledge and agree that your computer system meets the following minimum requirements:

Windows: Adobe Acrobat Reader Version 7 or higher

- Intel Pentium® III or equivalent processor
- Microsoft Windows 2000 with Service Pack 4; Windows Server 2003; Windows XP Professional, Home Edition, or Tablet PC Edition with Service Pack 2; Windows Vista
- 128MB of RAM (256MB recommended for complex forms or large documents)
- Up to 90MB of available hard-disk space

2. Warranties

2.1 Security

- Apria Healthcare will use commercially reasonable measures, consistent with industry standards, to maintain a reasonable level of security over the information contained in the eDelivery Services. Upon your election to receive the eDelivery Services, Apria Healthcare will “prenote” your email address by sending you a welcome email and requiring you to reply to us within 15 calendar days to activate the eDelivery Services for you.
- Apria Healthcare’s security consists of “Pushing” the electronic document to your email address where it may be accessed with your login id and password.
- You understand that industry standards are dynamic and constantly developing. By accepting this Agreement, you agree that you acknowledge and understand that there are risks inherent to the electronic delivery of documents and notices, including, but not limited to, delay or failure of delivery due to technical difficulties such as weather conditions (including, but not limited to sun spots) and other matters beyond Apria Healthcare’s reasonable control, and that there is a risk that document(s) and notices may be intercepted and/or altered by third parties despite Apria Healthcare’s commercially reasonable security measures.

2.2 Equipment

Apria Healthcare is not responsible for any loss, damage or injury resulting from (i) an interruption in your electrical power or internet service; (ii) the disconnection of your internet service by your provider or deficiencies in your line quality; or (iii) any defect or malfunction of your personal computer, modem, internet server or software.

2.3 Virus Protection

Apria Healthcare is not responsible for any electronic virus or viruses that you may encounter. Apria Healthcare suggests that you routinely scan your PC(s) using a virus protection product. An undetected virus may corrupt and destroy your programs, files and hardware.

2.4 Disclaimer

Apria Healthcare makes no warranties of any kind with respect to the software program used to access eDelivery Services, and does not warrant that the software program or the eDelivery Services will meet your specific requirements. Apria Healthcare makes no warranties of any kind, whether expressed or implied, with respect to the use and adequacy of the software program or the eDelivery Services. Apria Healthcare disclaims, to the extent allowed under applicable law, any and all implied warranties, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

3. Liability; Indemnification

Notwithstanding any provision to the contrary contained in this Agreement, Apria Healthcare shall be responsible only for performing the eDelivery Services as expressly provided for in this Agreement. Apria Healthcare shall be liable only for material losses that are the direct result of its own gross negligence or intentional misconduct in performing the eDelivery Services. Apria Healthcare shall have no liability for any consequential, special, punitive damages or indirect loss under any circumstances.

- The eDelivery Services are provided by Apria Healthcare “as-is” and “where is”. Apria Healthcare, to the extent allowed under applicable law, specifically disclaims all other warranties, expressed or implied, including, but not limited to, implied warranties of merchantability, accuracy and fitness for a particular purpose as to the eDelivery Services. Without limiting the foregoing, Apria Healthcare does not warrant that the use of the system(s) under which the eDelivery Services are provided will be uninterrupted or error-free.

4. Your Obligations and Responsibilities

4.1 Your Compliance

You agree to comply with, and to cause any agents you may employ or designate to comply with, all your obligations and responsibilities under this Agreement.

You agree that Apria Healthcare has no control over the persons who have access to your personal computer and your password because that access information is in your possession. Apria Healthcare will not be liable for any unauthorized access to your personal computer using your password. You agree that it is your responsibility to initiate and maintain adequate and appropriate protections and procedures to prevent any unauthorized access to your personal computer or unauthorized use of your password with regard to the eDelivery Services.

4.2 Your Email Address

With your consent, Apria Healthcare will send your eDelivery Services to you by email to the last known email address provided by you. **If there is any change in your email address, you agree to notify us promptly either electronically through our secure website or in a signed letter sent in paper form to the address and using one of the delivery methods set forth in Section 7.8 of this Agreement.**

For your protection and for security purposes, Apria Healthcare will not accept any change of email address sent to Apria Healthcare via email. If you have not notified us of any change in your email address, you agree that your failure to provide us with a good email address is the lack of ordinary care on your part. It is your responsibility to update your email address(es) to ensure proper delivery of the eDelivery Services. If we become aware that you are not receiving your eDelivery Services, we will send your eDelivery Services via U.S. Mail to your last mail delivery address known to us.

4.3 Prompt Review of eDelivery

The eDelivery Services you receive will be dated the prior business day that they are made available to you (the "Statement Date"). You must promptly review the eDelivery Services you receive and notify us in writing or by telephone of any errors, alterations or other irregularities. You are responsible for the review of the eDelivery Services you receive for any errors, alterations or other irregularities, regardless of whether you review them personally or have someone else review them for you. Any applicable time periods within which you must notify us of any errors, alterations or other irregularities in any documents you receive through the eDelivery Services shall begin on the Statement Date regardless of when you receive and/or open the eDelivery Services.

4.4 Notice of Unauthorized Access

If you believe any eDelivery Service is lost or that someone has obtained access to your eDelivery Services or account without your permission, you must contact Apria Healthcare in writing or by telephone as set forth in Section 7.8 of this Agreement.

5. Term and Termination

This Agreement shall remain in full force and effect until it is terminated by either party, as provided for in this Agreement. **In order for you to revoke or withdraw your consent to receive eDelivery Services and terminate this Agreement, you must notify Apria Healthcare in writing or by telephone as set forth in Section 7.8 of this Agreement.**

Such revocation or withdrawal of consent and termination of this Agreement shall be effective 10 days following Apria Healthcare's receipt of your notification. You may revoke or withdraw your consent to receive eDelivery Services and terminate this Agreement at any time by following these procedures. There are no fees associated with terminating this Agreement.

Apria Healthcare also has the right to terminate this Agreement, immediately, with or without cause, or if you fail to comply with the terms of this Agreement or any other agreement which you

may have with us or any other applicable rule or regulation which may govern your account(s). If Apria Healthcare terminates this Agreement for any of these reasons, such termination shall be effective on the effective date specified in the notice sent to you, which may not necessarily be the date the notice is sent or received.

6. Indemnifications, Other Relief

6.1 Limitation of Liability

- Apria Healthcare and its subsidiaries and affiliates (and the officers, directors, employees, agents, representatives and stockholders of each such entity) shall have no liability (whether direct or indirect, in contract, tort, or otherwise) to you or your agents or representatives for any losses or damages arising out of or in connection with the transactions contemplated by this Agreement or the eDelivery Services except to the extent that any such losses or damages are found in a final and binding arbitration award or a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of Apria Healthcare.
- In no event shall either party be liable for punitive, special, incidental, consequential or other indirect damages arising out of or relating in any manner to this Agreement under any cause of action, including, without limitation, lost profits, even if the parties have been advised of the possibility of such damages.
- Neither party may bring any claim under this Agreement more than two (2) years after such claim first occurs.

7 Miscellaneous Provisions

7.1 Waiver

Any failure of a party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing by the other party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, the right to enforce the Agreement for any consequent or other failure.

7.2 Entire Agreement

This Agreement, including any attachments and amendments hereto, constitutes the entire understanding and agreement of the parties with respect to the eDelivery Services.

7.3 Amendment; Binding Effect; Assignment

- No amendment, modification or alteration of the terms of this Agreement shall be binding unless in written or electronic form and agreed to, accepted and documented by the parties hereto. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors (including, without limitation, successors by merger) and permitted assigns.
- You may not assign this Agreement in whole or in part without the prior written consent of Apria Healthcare. Any attempted assignment in violation of this Section shall be void and of no effect.

7.4 Compliance with Applicable Laws

Each party shall comply with all state and federal laws and regulations applicable to this Agreement.

7.5 Force Majeure

Apria Healthcare shall not be liable for any failure to perform or any disruption or delay in performing the eDelivery Services or for any loss or damage to the extent any such failure, disruption, delay, loss or damage results from any cause beyond Apria Healthcare's reasonable control, including, but not limited to, (i) Internet network failures or Internet capacity limitations, (ii) failure or disruption of electrical power, computer equipment, telecommunications systems, internet service providers or weather conditions, (iii) compliance with regulations, orders or

instructions of any federal, state or municipal government or any department or agent thereof that delay or restrict performance hereunder, (iv) acts of God or third parties, (v) acts or omissions of you or your agents or representatives, (vi) acts of civil or military authority, or (vii) fires, embargoes, war, terrorism, or riots.

7.6 Governing Law

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California and the U.S. without giving effect to the conflict-of-laws principles thereof. The parties agree that jurisdiction over a venue in any legal proceedings arising out of or relating to this Agreement will exclusively be in the courts of Orange County, California.

7.7 Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

7.8 Notices

All written notices required or permitted to be given to Apria Healthcare under this Agreement shall be deemed to have been duly given if faxed or sent by registered or certified U.S. mail (return receipt requested), addressed as follows:

**Apria Healthcare
Attn: Patient Pay Management Center
3128 S Highland Rd
Jackson TN 38301
Facsimile: 731-424-1083**

Any notices or communications which may be provided to Apria Healthcare by telephone under this Agreement shall be made by calling the following telephone number:

(866) 505-6365

All notices required or permitted to be given to you under this Agreement shall be deemed to have been duly given if given as provided in this Agreement or if sent by U.S. mail addressed to you at your last address known to us.

7.9 Survival

All provisions of this Agreement that by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect.

7.10 Headings; Interpretation

Headings of particular Sections are inserted only for convenience and shall not be considered a part of this Agreement or used to define, limit, or construe the scope of any term or provision of this Agreement. Should a provision of this Agreement require judicial interpretation, the parties agree that the court or arbitrators construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party than against another.

7.11 This Agreement Controls

The provisions of this Agreement shall take precedence and control over any conflicting provisions in any purchase order, sale order, sale confirmation, or any other document relating to the eDelivery Services.