

MD THINK SYSTEM AND DATA ACCESS AGREEMENT FOR LONG-TERM CARE PROVIDER ORGANIZATIONS

I. PARTIES

This Agreement is between the State of Maryland Department of Human Services/Family Investment Administration (hereinafter “DHS/FIA” or “DHS”), and

ORGANIZATION NAME

(hereinafter “LTC Organization”), collectively referred to as the “Parties”.

II. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions whereby DHS will provide LTC Organization with access to the DHS Eligibility and Enrollment – Long-term Care module and other aspects of the MD THINK data system (hereinafter “DHS Systems”), and certain information stored therein, for the purpose of assisting nursing facility residents and/or residents’ authorized representatives in applying for Long-term Care benefits under the Maryland Medical Assistance Program and other related activities. This Agreement further establishes the authorized and appropriate uses for data accessed on DHS Systems, and sets forth the responsibilities of the Parties with regards to the DHS Systems and DHS system security.

Nothing in this Agreement affects or otherwise alters the powers or duties of nursing facilities or LTC Organizations under Md. Code Ann. Health-General §19-344 *et seq.* to assist residents in applying for and retaining eligibility for Medical Assistance Long-term Care benefits. Similarly, nothing in this Agreement affects or otherwise alters the obligations of nursing facilities or LTC Organizations as covered entities under State and federal privacy and

security laws, including among others the Health Insurance Portability and Accountability Act of 1996.

III. INTRODUCTION

The Maryland Department of Health (hereinafter “MDH”) administers the Maryland Medical Assistance Program, which includes the Long-term Care Benefits program (hereinafter “LTC”). On behalf of and under agreement with MDH, DHS/FIA performs certain eligibility and enrollment related functions for LTC. To perform this work, DHS and MDH staff utilizes various DHS data systems, including the MD THINK Eligibility and Enrollment – Long-term Care module. As part of that system, DHS makes available a public-facing web-based portal, MyMDTHINK, which allows applicants and recipients and/or the authorized representatives to create and submit applications and supporting materials for LTC. DHS also makes available certain enhanced access and case management functionality via the MyMDTHINK portal to LTC Organizations that enter into a system and data access agreement.

Federal and state laws allow for the use and disclosure of certain information concerning applicants and recipients of public assistance, food supplement, health care and energy assistance benefits, but, also places restrictions on the release of information regarding applicants and recipients. The legal authority for use and disclosure of information is found in: 42 U.S. C. § 602(a) (1)(A) (iv); 42 U.S.C. § 1396a (a)(7); 7 C.F.R. § 272.1(c)(1); 42 C.F.R. § 431.300 et seq.; 45 C.F.R. Part 160; 45 C.F.R. Part 164; 45 C.F.R. § 205.50; Md. Code Ann., Hum. Servs. § 1-201; and COMAR 07.01.07.

The scope of this Agreement is limited to the data of applicants and recipients who are residents of facilities operated by the LTC Organization, which is contained on and accessed or obtained through the DHS systems, and this agreement does not affect the LTC Organization’s

use of any data otherwise provided to or obtained by the LTC Organization outside of the DHS systems, nor shall it affect the LTC Organization's rights and legal authority for the use and disclosure of information as otherwise set forth in law, regardless of whether or not such data is uploaded by the LTC Organization to the DHS Systems.

IV. DEFINITIONS

For the purposes of this Agreement, the term following terms shall have the following meanings:

1. "Applicant" means a person whose written application for Medical Assistance is being prepared or has been submitted to the local department of social services but has not received final action. This includes a person, who need not be alive at the time of application, whose application is submitted through a representative.

2. "Authorized assistant" means an LTC Organization or an employee of an LTC Organization who has been appointed by a resident to transmit application and renewal information to the State on the resident's behalf for purposes of establishing and retaining LTC benefits, and to communicate with the State with respect to LTC benefits, but who is not authorized to sign applications on behalf of the resident, and who does not receive notices on behalf of the resident.

3. "Authorized representative" has the meaning set forth at COMAR 10.01.04.12.

"Nursing facility" means an institution which is primarily engaged in providing to residents the care set forth at COMAR 10.09.10.01B(27).

4. "Participating Resident" means a resident or a resident's authorized representative who has appointed the LTC Organization or an employee of the LTC Organization to act as Authorized Assistant.

5. “Recipient” means a person who is certified as eligible for Medical Assistance.

6. “The State” means the Maryland Department of Human Services (DHS) and the Maryland Department of Health (MDH), collectively.

V. RESPONSIBILITIES OF DHS/FIA

1. DHS/FIA shall designate a principal person and an alternate person as the Point of Contact for the purpose of this Agreement.

2. DHS/FIA shall review a request for access to DHS Systems from the LTC Organization to ensure that the LTC Organization meets the requirements listed in **Appendix 1**, attached hereto, allowing it access to DHS Systems on behalf of Participating Residents.

3. Once approved, DHS/FIA will certify that the LTC Organization may access DHS Systems to assist Participating Residents with the LTC application process and related activities via the use of the DHS Systems.

4. DHS/FIA shall, through the DHS Systems, facilitate and support the issuance of usernames and passwords to the LTC Organization’s administrative account manager for the LTC Organization’s personnel to access DHS Systems. Before requesting a username and password for an individual staff member, the LTC Organization shall ensure that the individual is verified by the LTC Organization’s administrative account manager as an approved user.

5. As under existing LTC policy, the State agrees to continue to provide the LTC Organization with notices and information on the status of the residents’ eligibility, including submitted applications and/or redetermination applications. The State will also continue to provide notices directly to applicants and recipients, and the applicant’s or recipient’s authorized representative.

VI. RESPONSIBILITES OF THE LTC ORGANIZATION

1. The LTC Organization must meet the requirements as defined by DHS/FIA in **Appendix 1** prior to being granted access to DHS Systems.

2. Before accessing the DHS Systems on behalf of any Participating Resident, the LTC Organization shall obtain an Authorized Assistant Form from the Participating Resident. The Authorized Assistant Form authorizes the LTC Organization to: (a) prepare and transmit an application or renewal form and other supporting or supplemental documents to DHS Systems; (b) transmit the Participating Resident's signature to complete submission of an application or renewal form; and (c) access information from and communicate information to the State or other delegated entities regarding the status of the Participating Resident's LTC case, application, or reauthorization as necessary to assist the Participating Resident with those matters. The LTC Organization may only access or obtain information on the DHS Systems for those Participating Residents for which they have a fully executed and effective Authorized Assistant form. The executed Authorized Assistant form shall be retained for a minimum of six (6) years and shall be available to the State upon written request.

3. The LTC Organization shall assist the Participating Resident with completing the online application by using all the information that has been provided by the Participating Resident.

4. The LTC Organization may utilize the functionality of the DHS Systems to print copies of any applications, redeterminations, or notifications (including but not limited to requests for additional documents, notice of eligibility, notice of denials of eligibility, and notice of change), and any other forms generated or maintained on the DHS Systems for the LTC

Organization's Participating Resident, and retain such information for the LTC Organization's client files, and utilize same as authorized by state or federal law.

5. The LTC Organization agrees that all information disclosed to or from the Participating Residents and to or from DHS/FIA using the DHS Systems pursuant to this Agreement is confidential and cannot be disclosed to any third party without the written consent of DHS/FIA; provided, however, that this provision does not affect the LTC Organization's right to gather and maintain medical and financial information respecting its residents under existing law and to use such information as allowable under applicable state and federal law.

6. Except as noted in (IV)(4) and (IV)(5) above the LTC Organization agrees that use of confidential information accessed or obtained through the DHS Systems for research or for purposes other than those authorized under this Agreement, or otherwise expressly consented to in writing by DHS/FIA, is strictly prohibited by applicable state and federal law.

7. The LTC Organization shall ensure that its agents, employees, and other designated persons agree to all provisions of this Agreement and will require all individuals who will have access to confidential information are aware of the limitations on the use and disclosure of such information as set forth in this Agreement.

8. The LTC Organization must instruct all persons having access to confidential information about the security requirements and that they are bound by the confidentiality provisions of this Agreement. The LTC Organization must inform DHS/FIA immediately if an employee, or other designee who has access to DHS Systems, has severed or been severed from any relationship with the LTC Organization or has left employment, or if access is revoked for any reason.

9. The LTC Organization shall require all its employees, agents or designees to verify each resident's and/or the resident's authorized representative's identity. The approved forms and methods of identification are included in Appendix 2.

10. The LTC Organization must designate and provide DHS/FIA with the name and contact information of the individual (or individuals) who will serve as the administrative account manager(s) for the LTC organization, and shall be responsible for providing, modifying, and terminating DHS Systems user accounts, usernames, and passwords for its employees, agents, and other designated persons. No administrative account manager shall have access to customer information via DHS Systems. The LTC Organization must have at least one administrative account manager at all times.

11. The LTC Organization must immediately notify the DHS/FIA point of contact via email when an LTC Organization's DHS Systems administrative account manager is no longer employed in that role.

12. The LTC Organization shall not authorize the creation of any user account to provide access to DHS Systems for any person except for those employees, agents, or designated persons whose job function specifically requires such access for the purposes explicitly authorized in this Agreement.

13. The LTC Organization shall provide DHS/FIA with a list of all LTC facilities operated by the LTC Organization, as well as any other LTC Organization facilities from which its employees, agents, or designated persons will be accessing DHS Systems. The LTC Facility list shall be attached as **Appendix 5**. The LTC Organization shall provide DHS/FIA a new Facility List no less than annually, and shall immediately notify DHS/FIA of any changes to its Facility List.

14. The LTC Organization must provide DHS/FIA with a list of all agents, employees and other designated persons who have been given access to DHS Systems. This list must be kept current; and at least monthly, the LTC Organization shall take steps to ensure that only authorized personnel have access to the DHS Systems and a Participating Resident's confidential information.

15. The LTC Organization shall have sufficient processes, protections and procedures in place to protect the data and confidential information in accordance with State and federal law, including, at a minimum, the following:

- a. Protecting workstations with a "screensaver" password, set to automatically lock the system after a period of inactivity.
- b. Ensuring that computers or other devices containing DHS confidential information automatically lock within no more than 15 minutes of inactivity.
- c. Logging out of DHS Systems when workstations are left unattended.
- d. Selecting a "strong" set of passwords and using different passwords for access to different systems.
- e. Ensuring each device has an up-to-date virus protection installed that is maintained and patched daily.
- f. Installing Windows 7 Professional 64-bit 9 (or later) with all current security patches and ongoing monthly patches for operating systems and applications.
- g. Protecting USB ports to ensure that non-Federal Information Processing Standard (FIPS) compliant hardware level encryption devices that can store data cannot be connected to the laptop, desktop or tablet.

- h. Installing Absolute Computrace or another endpoint security on laptops that can be used to track, freeze, and remotely wipe the device.
- i. Ensuring that Portable Media Devices, including laptops, have FIPS 140-2 Compliant hardware level encryption.
- j. Ensuring that DHS/FIA confidential information accessed or obtained through DHS Systems is not transferred or shared by the LTC Organization in any manner other than through the DHS Systems, or as otherwise permitted in this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, this Agreement does not affect the LTC Organization's use of any data otherwise provided to or obtained by the LTC Organization outside of the DHS Systems, nor shall it affect the LTC Organization's rights and legal authority for the use and disclosure of information as otherwise set forth in law.
- k. Ensuring that DHS/FIA confidential information is not downloaded from the DHS Systems onto local machines or devices, except as set forth in section (IV)(4) of this Agreement. This prohibition on downloading confidential information from DHS Systems also prohibits saving "screenshots" of confidential data.
- l. Prohibiting the sharing or transfer of user names or passwords associated with accounts that allow access to a Customer's confidential information among LTC Organization personnel.

16. The LTC Organization staff shall call the DHS OTHS Helpdesk at (410) 767-7002 within one (1) hour when a security incident (s) involving the unauthorized acquisition, access, use or disclosure of confidential information is suspected or detected so DHS/FIA may take steps

to determine whether its system has been compromised and to take appropriate security precautions.

17. The LTC Organization may not assign its rights or interests, nor delegate its duties under this Agreement, in whole or in part, without the express prior written consent of DHS/FIA. Any attempted assignment or delegation without such express prior written consent shall be void and ineffective for all purposes.

18. DHS/FIA retains the right to request the LTC Organization to provide documentation of compliance with security requirements, and the right to perform an audit of the security provisions in place at the LTC Organization.

VII. CONFIDENTIALITY

The Parties are each independently responsible for compliance with all applicable federal and state privacy and confidentiality laws.

VIII. GENERAL PROVISIONS

1. Upon finding any breach of this Agreement by the LTC Organization, DHS/FIA may immediately terminate this Agreement and further use or access to DHS Systems shall be denied. In addition, on request of DHS/FIA, the LTC Organization shall immediately return to DHS/FIA all State data in either the form it was provided to LTC Organization or in a mutually agreed format along with the schema necessary to read such data. Upon the instruction of DHS/FIA, LTC Organization shall securely dispose of and permanently delete all State data in all of its forms according to National Institute of Standards and Technology (NIST) approved methods with certificates of destruction to be provided to DHS. Data outside of DHS Systems otherwise obtained and maintained by the LTC Organization through applicable state and federal law is not impacted.

2. If the LTC Organization no longer requires or desires access to DHS Systems, this Agreement will be terminated.

3. Except as otherwise provided herein, the LTC Organization may not use the confidential information for any purpose other than assisting Participating Residents with the public assistance benefits for which eligibility is established or verified through DHS Systems. Nothing in this Agreement effects, limits, or restricts the rights, powers and obligations of the LTC Organization under existing law.

4. The LTC Organization agrees to hold the State of Maryland, DHS/FIA and its agents, employees, and officials harmless for any loss, damages, and cost for any liability as a result of the unlawful, unauthorized, or negligent disclosure or use of confidential information accessed or obtained from the DHS Systems by the LTC Organization during the administration and implementation of this Agreement.

5. The LTC Organization shall have the right to separately store and utilize any financial or other information regarding the Participating Residents that is provided to the LTC Organization and otherwise deemed confidential information, to the extent that the LTC Organization stores and utilizes such information relating to the exercise of its rights under its own agreements with residents or any such other rights that the LTC Organization may have under applicable law.

6. The State of Maryland or DHS/FIA is not responsible for any loss or expenses that may be incurred by the LTC Organization, its agents or employees as a result of an inability to access the DHS Systems.

7. DHS/FIA hereby agrees that in the event that the LTC Organization and/or the Customer Parties are unable to access the DHS Systems for the purposes of submitting

supplemental information required by DHS/FIA relating to applications that were originally submitted electronically via the DHS Systems, that the LTC Organization and/or the Customer Parties shall be allowed to submit such information via email, mail, or hand delivery.

8. The terms and provisions of this Agreement are solely for the benefit of the Parties hereto and no other person or entity shall have any right or cause of action on account thereof.

IX. TERM

1. The term of this Agreement will commence upon full execution of the Agreement and end on June 30, 2023.

2. Either Party may terminate this Agreement without cause or penalty at any time following thirty (30) days written notice to the other Party.

X. GOVERNING LAW

This Agreement and its construction, interpretation, and enforcement shall be construed in accordance with and governed by the laws of the State of Maryland.

XI. SYSTEM NAMES

This Agreement shall apply to the DHS data systems identified herein, specifically to the MD THINK platform and the Eligibility and Enrollment Long-term Care module thereon, and the MyMDTHINK public and provider portal, regardless of any change of system name. This Agreement may also apply to any future system(s) which perform(s) a substantially similar function upon written notice from DHS/FIA.

XII. APPENDICIES

This Agreement includes the following Appendices:

Appendix	Content
1	LONG TERM CARE ORGANIZATION CRITERIA FOR DHS SYSTEMS ACCESS
2	IDENTITY VERIFICATION
3	PARTICIPATING RESIDENT CONSENT FORM – AUTHORIZED ASSISTANT
4	CONTACT INFORMATION
5	LTC ORGANIZATION - FACILITIES LIST

The contents of Appendices 1, 2 and 3 shall be considered material terms of this Agreement. The State may update the contents of Appendices 3 and 4, from time to time with written notice to the LTC Organization, and such updates shall not require the Parties to execute a new Agreement. The LTC Organization may update the contents of Appendix 5 with written notice to DHS/FIA.

XIII. CONTACT PERSONS

All notices, inquiries, or matters arising related to this Agreement, unless otherwise indicated in the Agreement, shall be between the points of contact as set forth in **Appendix 5**. Each Party shall notify the other Party, in writing, of any changes to the points of contact.

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SIGNATURE PAGE

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused this Agreement to be executed as of the dates indicated below.

DEPARTMENT OF HUMAN SERVICES

Name:
Title:
Family Investment Administration

Date Signed

LTC ORGANIZATION

Name:
Title:

Date Signed

**APPROVED FOR FORM AND LEGAL SUFFICIENCY BY THE
OFFICE OF THE ATTORNEY GENERAL**

APPENDIX 1

LONG TERM CARE ORGANIZATION CRITERIA FOR DHS SYSTEMS ACCESS

Must Be:

1. Licensed health care providers (hospitals and nursing facilities).

May Not Be:

1. Organizations whose primary business is debt collection.
2. An organization on the federal or State of Maryland list of suspended or disbarred contractors.
3. Any organization whose business does not include assisting Maryland residents with applying for social services or medical services.

Must:

1. Serve Maryland residents.
2. Be able to comply with all applicable federal and state laws and regulations including confidentiality and non-discrimination requirements.
3. Have personnel available to access DHS Systems in order to assist Maryland residents that desire to be admitted to or reside with the LTC Organization in applying for medical assistance and long-term care benefits.

APPENDIX 2

IDENTITY VERIFICATION

Acceptable forms or methods of verifying the identity of Customers and/or their authorized representatives may include the following, but is not limited to this list. There may be other forms of identification that can be used that are not on this list. If a photo is not available, at least two forms of identification must be presented.

- Driver's license
- Motor Vehicle Administration Identification card (non-driver ID card)
- US Immigration documents
- Life Insurance policy
- Passport
- Documents showing a court ordered name change
- Marriage license; Divorce decree; Military ID; Employee ID card; School ID card; or Foreign ID card
- Final Adoption papers
- Report card for a student under age 18
- College registration or grade sheet
- Medical records from a doctor, clinic or hospital
- Library card
- Community Association card
- Personal knowledge of the person helping to complete the application
- Jail, Prison or Department of Corrections ID or paperwork
- Juvenile Justice Paperwork
- LexisNexus®Accurint®

- Other forms or methods approved in writing by DHS/FIA at its sole discretion on a case-by-case basis upon written request from LTC Organizations.

**** If a Customer presents as homeless and does not have documentation to verify his/her identity, an affidavit must be obtained from the Customer setting forth that he/she is homeless, does not have any documentation to prove identity, and that he/she is the person executing the affidavit.

APPENDIX 3

PARTICIPATING RESIDENT CONSENT FORM – AUTHORIZED ASSISTANT

DHS/FIA may update this document from time to time with written notice to the LTC Organization, and such updates shall not require a formal modification or re-ratification of this Agreement.

APPENDIX 4

CONTACT INFORMATION

This information was last updated by DHS/FIA on **[DATE]**.

The point of contact person for DHS Systems - User Security at the Department of Human Services is:

Name: OTHS Service Desk

Division: Office of Technology for the Human Services

Address: Department of Human Services
Office of Technology for the Human Services
311 West Saratoga Street
Baltimore, Maryland 21201

Phone Number: 410-767-7002

Email Address: Oths.helpdesk@maryland.gov

The point of contact person for the DHS Systems in the Department of Human Services is:

Name: Kim Lightfoot

Division: Family Investment Administration, Deputy Executive Director

Address: Department of Human Services
Family Investment Administration
311 West Saratoga Street
Baltimore, Maryland 21201

Phone Number: 410-767-7028 (W)

Email Address: Kim.Lightfoot@maryland.gov

The alternate point of contact person for the Department of Human Services is:

Name: Tanya Williams

Division: OTHS Deputy Chief Information Officer

Address: Department of Human Services
Office of Technology for the Human Services
311 West Saratoga Street
Baltimore, Maryland 21201

Phone Number: 410-767-8396

Email Address: tanya.williams@maryland.gov

LTC ORGANIZATION CONTACTS

This information was last updated by **LTC Organization** on [DATE].

The point of contact person for the LTC Organization is:

Name: _____

Organization: _____

Address: _____

Phone Number: _____

Email Address: _____

The alternate point of contact person for the LTC Organization is:

Name: _____

Organization: _____

Address: _____

Phone Number: _____

Email Address: _____

APPENDIX 5

LTC ORGANIZATION - FACILITIES LIST

The LTC Organization shall provide DHS/FIA with a list of all LTC facilities operated by the LTC Organization, as well as any other LTC Organization facilities from which its employees, agents, or designated persons will be accessing DHS Systems. For each facility, the LTC Organization must provide: (1) the facility's legal name; (2) the facility's public or common name; (3) the State Facility ID Number; (4) the facility address; and (5) the facility phone number. This information may be provided below or in an alternative format with the consent of DHS/FIA.

This information was last updated by LTC Organization on [DATE].

LTC Organization Name:

Principal Business Address in Maryland:

List of Facilities

Facility Name: _____

D/B/A: _____

State Facility ID Number: _____

Address: _____

Phone Number: _____

Facility Name: _____

D/B/A: _____

State Facility ID Number: _____

Address: _____

Phone Number: _____

Facility Name: _____
D/B/A: _____
State Facility ID Number: _____
Address: _____

Phone Number: _____

Facility Name: _____
D/B/A: _____
State Facility ID Number: _____
Address: _____

Phone Number: _____

Facility Name: _____
D/B/A: _____
State Facility ID Number: _____
Address: _____

Phone Number: _____

Facility Name: _____
D/B/A: _____
State Facility ID Number: _____
Address: _____

Phone Number: _____

Facility Name: _____
D/B/A: _____
State Facility ID Number: _____
Address: _____

Phone Number: _____
