

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

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### FILER

#### **PROMEDCO MANAGEMENT CO**

CIK: **1011630** | IRS No.: **752529809** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
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SIC: **8011** Offices & clinics of doctors of medicine

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities and Exchange Act of 1934

Date of Report (date of earliest event reported): October 1, 1997

ProMedCo Management Company  
(Exact name of Registrant as specified in its charter)

Delaware  
(State of  
Incorporation)

0-21373  
(Commission File No.)

75-2529809  
(IRS Employer  
Identification No.)

801 Cherry Street, Suite 1450  
Fort Worth, Texas 76102  
(Address of principal executive offices, including zip code)

(817) 335-5035  
(Registrant's telephone number, including area code)

Item 2. Acquisition or Disposition of Assets

On October 1, 1997, ProMedCo Management Company ("ProMedCo" or the "Company"), a Delaware corporation, through its wholly owned subsidiary, PHB Management Company, Inc., ("PHB") acquired from HealthAmerica Pennsylvania, Inc.

("HealthAmerica") substantially all of the operating assets of Beacon Medical Group ("Beacon"), including accounts receivable and furniture and equipment. Concurrent with the acquisition, PHB entered into a long-term service agreement (the "Service Agreement") with Beacon. Beacon has a total of 14 physicians and two physician extenders at four sites serving the Harrisburg, Pennsylvania market. The total consideration for the transaction was approximately \$4.2 million, which consisted of a combination of cash and deferred cash payments and the assumption of certain liabilities. The consideration was determined through arm's length negotiations between representatives of ProMedCo and HealthAmerica. The factors considered in determining the purchase price included information with respect to the financial condition, assets, liabilities, business and operations of Beacon on both a historical and prospective basis. The cash portion of the purchase price was funded with proceeds from the March 1997 public offering of the Company's Common Stock.

Assets acquired will be used by PHB to provide administrative and medical support services to Beacon pursuant to the terms of the Service Agreement.

#### Item 7. Financial Statements and Exhibits

##### Financial Statements

(a) Not applicable.

(b) Not applicable.

##### Exhibits

(c) Asset Purchase Agreement as of August 12, 1997 by and between ProMedCo Management Company, PHB Management Company, Inc. and HealthAmerica Pennsylvania, Inc. Service Agreement by and between PHB Management Company, Inc. and HealthAmerica Pennsylvania, Inc. effective October 1, 1997.

#### SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ProMedCo Management Company

By: /s/ H. Wayne Posey  
H. Wayne Posey  
President and Chief Executive Officer

Date: October 15, 1997

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ASSET PURCHASE AGREEMENT

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PROMEDCO MANAGEMENT COMPANY  
PHB MANAGEMENT COMPANY, INC.

AND

HEALTHAMERICA PENNSYLVANIA, INC.

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August 12, 1997

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## ASSET PURCHASE AGREEMENT

Asset Purchase Agreement dated as of August 12, 1997, among HealthAmerica Pennsylvania, Inc., a Pennsylvania corporation ("HealthAmerica"), ProMedCo Management Company, a Delaware corporation ("ProMedCo") and PHB Management Company, Inc., a Pennsylvania corporation ("ProMedCo-Harrisburg"), a

wholly owned subsidiary of ProMedCo.

RECITAL:

HealthAmerica operates a multi-specialty medical practice in Harrisburg, Pennsylvania and owns the Assets. ProMedCo, through its subsidiaries, including ProMedCo-Harrisburg is engaged in the business of providing medical practice facilities, nonmedical personnel and medical practice management and administrative services.

HealthAmerica desires to sell the Assets to ProMedCo-Harrisburg in exchange for the consideration described herein.

The parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

"Affiliate" means with respect to any Party, any entity which controls, is controlled by, or is under common control with such party all as more fully set forth in the rules and regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended.

"Alliance4Health NetSource Agreement" means the agreement effective October 1, 1996 between HealthAmerica and Alliance4Health NetSource, Inc.

"Assets" means the following assets pertaining to the Clinic Facility:

- (a) All furnishings, fixtures and equipment owned by HealthAmerica relating to the Clinic Facility or the business carried on at the Clinic Facility;
- (b) All of HealthAmerica's rights, benefits and interests under all contracts and agreements related to the operation of the business of HealthAmerica conducted at the Clinic Facility which are to be

assumed by ProMedCo-Harrisburg (collectively, the "Contracts"), including without limitation the Alliance4Health NetSource Agreement for the period after July 1, 1997, certain contracts and leases described in Exhibit 3.7A-H hereof and including, to the extent allowable by law, all payor contracts

under which HealthAmerica (with respect to the business carried on at the Clinic Facility) or any of the Medical Professionals are currently paid for services;

- (c) All books, records, documents and other writings used in connection with the operation of HealthAmerica's business at the Clinic Facility, including all patient records, charts and files;
- (d) All accounts receivable of HealthAmerica relating to the business carried on at the Clinic Facility and, subject to applicable laws and regulations, all patient accounts receivable records of HealthAmerica respecting the business carried on at the Clinic Facility;
- (e) All cash and prepaid expenses of HealthAmerica relating to the business carried on at the Clinic Facility;
- (f) All current and useable inventory of supplies, drugs, janitorial and office supplies and other disposables and consumables on hand at or under order by HealthAmerica on the Closing Date relating to the business carried on at the Clinic Facility;
- (g) All permits, licenses, certificates and governmental authorizations, approvals, license applications or related certifications obtained in connection with the operation of the Clinic Facility identified in Exhibit 3.14, but only to the extent that transfer is permitted by law;
- (h) All data processing programs, software programs, computer printouts, data bases and hardware and related items used in the conduct of the business of HealthAmerica at the Clinic Facility, including accounting, invoices, auditing, and data processing bases and programs;
- (i) All intangible assets, trade names, service marks and service names, and applications therefor, and all intellectual property used in connection with the operation of HealthAmerica's business at the Clinic Facility;

- (j) All rights, claims and causes of action other than malpractice counterclaims or cross claims held by HealthAmerica which have accrued as a result of the operation of the Clinic Facility;
- (k) All goodwill, customer lists, clinical and administrative policy and procedure manuals, trade secrets, marketing and promotional materials (including audiotapes, videotapes and printed materials) and all other property rights required for or incident to the marketing of the products and services of HealthAmerica's business at the Clinic Facility, and all books and record relating thereto; and
- (l) All other assets, personal or mixed, tangible or intangible, used in connection with the operation of HealthAmerica's business at the Clinic Facility other than the Excluded Assets.

"Assumed Balance Sheet Liabilities" is defined in ss. 2.2.

"Beacon" means Beacon Medical Group, P.C., a Pennsylvania professional corporation.

"Beacon Professionals" means the persons who are signatories to the Inducement Agreement.

"Binding Allocation" is defined in ss. 2.6.

"Clinic Expense" shall have the meaning ascribed thereto in the Service Agreement.

"Consideration" means \$2,014,995.

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. ss. 162 et seq.

"Clinic Facility" means the clinic facilities located at (i) 2151 Linglestown Road, Harrisburg, PA 17110, (ii) 825 Fishburn Road, Hershey, PA 17033, (iii) 550 22nd Street, Lemoyne, PA 17043, and (iv) 5 Willow Mill Park Road, Mechanicsburg, PA 17055.

"Closing" and "Closing Date" are defined in ss. 2.7.

"Code" means the Internal Revenue Code of 1986, as amended.

"Contracts" is defined in the definition of "Assets" above.

"CPA Firm" is defined in ss. 2.10(a).

"Deferred Consideration" is defined in ss. ss. 2.4(d).

"Definitive Closing Statements" is defined in ss. 2.10.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Excluded Assets" is defined in ss. 2.3.

"Excluded Liabilities" is defined in ss. 2.5.

"Exhibit Volume" means the volume of Exhibits referred to in this Agreement prepared and delivered by HealthAmerica.

"Final Closing Statement" is defined in ss. 2.10.

"GAAP" means generally accepted accounting principles.

"HealthAmerica" means HealthAmerica Pennsylvania, Inc., a Pennsylvania corporation.

"HealthAmerica Financial Statements" is defined in ss. 3.3.

"Inducement Agreement" is defined in ss. 2.9(a).

"Initial Portion of Purchase Consideration" is defined in ss. 2.4.

"Inventory" means the inventory of HealthAmerica.

"Interim Service Agreement" means the Services Agreement effective April 1, 1997 between ProMedCo-Harrisburg and HealthAmerica.

"IRS" means the Internal Revenue Service.

"Medical Professional" shall have the meaning ascribed thereto in the Service Agreement.

"Net Clinic Revenues" is defined in the Service Agreement. In the context of this Agreement, Net Clinic Revenues shall be computed as if HealthAmerica were Beacon.

"Pension Plan" and "Pension Plans" means any "employee pension benefit plan" listed in Exhibit 3.2 1.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust or unincorporated organization.

ProMedCo Management Company" means ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo-Harrisburg.

"ProMedCo-Harrisburg" means PHB Management Company, Inc., a Pennsylvania corporation.

"Second Portion of the Purchase Consideration" is defined in ss. 2.4(c).

"Service Agreement" means the Services Agreement effective as of the Closing Date between Pro-Medico-Harrisburg and Beacon.

"Undertaking" is defined in ss. 2.2.

## ARTICLE 2 SALE AND TRANSFER OF ASSETS: CONSIDERATION; CLOSING

2.1 Sale and Transfer of Assets. Upon the terms and subject to the conditions of this Agreement, on the Closing Date, HealthAmerica shall sell, transfer, assign, convey and deliver good and marketable title to the Assets to ProMedCo-Harrisburg, and ProMedCo-Harrisburg shall purchase the Assets from HealthAmerica, free and clear of any encumbrances other than those expressly assumed hereunder, for the consideration set forth in this Agreement. HealthAmerica shall retain, and ProMedCo-Harrisburg shall not purchase the Excluded Assets. The sale, transfer, assignment and conveyance of the Assets shall be made by the execution and delivery by Health America of a bill of sale substantially in the tentative form attached hereto as Appendix 2.1 (the "Bill of Sale") and such other instruments of assignment, transfer and conveyance as ProMedCo-Harrisburg shall request.

2.2 Assets Free and Clear; Undertaking. The Assets shall be sold free and clear of all liabilities, liens and encumbrances except those liabilities of HealthAmerica expressly assumed or agreed to be discharged by ProMedCo-Harrisburg in the Undertaking substantially in the tentative form attached hereto as Appendix 2.2 (the "Undertaking"), which shall include the following liabilities and obligations of HealthAmerica as the same exist on the Closing Date:

- (a) HealthAmerica's liability after the Closing under the equipment leases described in Exhibit 3.7;
- (b) HealthAmerica's liability after the Closing under the contracts (other than equipment leases) described in Exhibits 3.7A-H, including those liabilities described in Appendix 3.7;
- (c) expenses relating to accrued sick leave and accrued CME time, whether or not reflected in the HealthAmerica Financial Statements; and
- (d) HealthAmerica's liability for accounts payable up to a maximum of \$100,000, accrued vacation pay and other current liabilities due and payable reflected in the HealthAmerica Financial Statements (but not accrued payroll or any of payments referred to in ss. 6.13 hereof) payable to or incurred in the ordinary course of business after the date thereof (the "Assumed Balance Sheet Liabilities").

Except as provided in the Undertaking, ProMedCo-Harrisburg shall not assume any other liability or obligation of HealthAmerica fixed or contingent, disclosed or undisclosed, and HealthAmerica agrees to satisfy, when due, all of its liabilities, indebtedness and obligations not assumed by ProMedCo-Harrisburg pursuant to this Agreement and the Undertaking; provided, however, that HealthAmerica shall be entitled to contest in good faith any of such liabilities, indebtedness or obligations by appropriate legal proceedings. ProMedCo-Harrisburg will pay, perform and discharge in due course in accordance with their terms all obligations, indebtedness and liabilities of HealthAmerica assumed by it pursuant to the Undertaking; provided, however, that ProMedCo-Harrisburg shall be entitled to contest in good faith any of such obligations, indebtedness or liabilities by appropriate legal proceedings.

2.3 Excluded Assets. HealthAmerica is not selling and ProMedCo-Harrisburg is not purchasing or assuming obligations with respect to the following (collectively the "Excluded Assets"):

- (a) Any real estate owned by HealthAmerica;
- (b) HealthAmerica's corporate and fiscal records and other records that HealthAmerica is required by law to retain in its possession;
- (c) HealthAmerica's pension, retirement or profit sharing plans and any liabilities related thereto;
- (d) Any assets and businesses owned by HealthAmerica not constituting part of the Clinic Facility or the business operated thereat; and



(e) Any other assets described on Appendix 2.3.

#### 2.4 Consideration for Sale and Transfer.

(a) At the Closing, in consideration for the sale of the Assets to ProMedCo-Harrisburg, the following will occur:

(i) ProMedCo-Harrisburg will deliver to HealthAmerica 80% of the Consideration (the "Initial Portion of Purchase Consideration") via wire transfer as directed by HealthAmerica.

(ii) ProMedCo-Harrisburg will execute and deliver to HealthAmerica an executed copy of the Undertaking assuming the liabilities of HealthAmerica set forth in ss. 2.2 above, and shall specifically exclude any mortgage or other liabilities related to real estate owned by HealthAmerica.

(iii) HealthAmerica will execute and deliver to ProMedCo-Harrisburg the Bill of Sale, assignment and other good and sufficient instruments of conveyance and transfer, in form and substance satisfactory to ProMedCo-Harrisburg's counsel, as shall be effective on the Closing Date to vest in ProMedCo-Harrisburg good and marketable title to the Assets as provided in this Agreement.

(iv) ProMedCo-Harrisburg shall pay HealthAmerica, as contingent consideration hereunder, the amounts, if any, which would have been disbursed by HealthAmerica under Section 2 of the Inducement Agreement for the period from July 1, 1997 through the Closing Date had the Inducement Agreement been in effect during such period and the obligations under such Section 2 commenced on July 1, 1997.

(b) In at other times, the following will occur:

(i) As soon as the Definitive Closing Statement is prepared in accordance with ss. 2.10(a), ProMedCo-Harrisburg shall deliver to HealthAmerica the balance of the Consideration (the "Second Portion of the Purchase Consideration") adjusted pursuant to ss. 2.10.

(ii) On demand from time to time, ProMedCo-Harrisburg shall pay HealthAmerica, as contingent consideration hereunder, amounts equal to

the amounts, if any, disbursed by HealthAmerica under Section 2 of the Inducement Agreement on and after the Closing Date and 175% of the amount disbursed by HealthAmerica under Section 3 of the Inducement Agreement.

2.5 Excluded Liabilities. Except as provided in the Undertaking, HealthAmerica shall remain liable and responsible for the payment or performance as the case may be, of all contracts, leases and other obligations of any nature, including without limitation all deferred payments remaining under the acquisition agreements listed in Appendix 2.5 pursuant to which HealthAmerica acquired the medical practices of the Beacon Professionals. Additionally, HealthAmerica shall remain liable and responsible for all suits, claims, indemnities, judgments, stipulation agreements, mortgages, taxes,

contingent liabilities and other obligations of HealthAmerica, including, without limitation, any and all investment tax credit recapture, depreciation recapture; recapture or prior period adjustments under Blue Cross, Medicare and Medicaid; all impositions of income tax and other taxes for all time periods prior to and including the Closing; all employee wages, salaries and benefits including, without limitation, retirement payments, COBRA obligations, accrued vacation not assumed by ProMedCo-Harrisburg, and other accrued employee benefits and rights of Health America's retirees to participate in HealthAmerica's medical plans. The obligations described in this ss. 2.5 are referred to collectively as the "Excluded Liabilities."

2.6 Allocation of Consideration. The parties agree that the consideration paid pursuant to ss. 2.2 shall be allocated among the Assets by ProMedCo-Harrisburg within 120 days after the Closing or by such time as is reasonable under the circumstances; if HealthAmerica agrees with the allocation made by ProMedCo-Harrisburg, such allocation shall be binding on the parties as set forth below and if HealthAmerica notifies ProMedCo-Harrisburg within 30 days of its disagreement with the allocation, the parties shall engage a mutually agreeable "big six" accounting firm to make the allocation, and the findings of such firm shall be binding on the parties (the allocation which is ultimately binding on the parties pursuant to this sentence is referred to herein as the "Binding Allocation"). The Binding Allocation shall be used by the parties for all purposes including tax, reimbursement and other purposes. Each party hereto agrees that it will report the transaction in accordance with the Binding Allocation, including under Section 1060 of the Code, and that it will not take a position inconsistent with the Binding Allocation except with the written consent of the other party hereto. Each party agrees to cooperate with the other so that the information shown on Form 8594 filed with the IRS by such party will be consistent with the information on the other party's Form 8594. Each party shall pay 50% of the fees and expenses of the accounting firm which makes the Binding Allocation.

2.7 Closing. The sale, purchase, and other activities provided for herein (the "Closing") shall take place on or before October 31, 1997 (the "Closing Date"), at a site designated by ProMedCo-Harrisburg. In case the Closing does not take place on the Closing Date, the Closing Date shall be set by mutual agreement between ProMedCo-Harrisburg and HealthAmerica; provided, however, that in no event shall the Closing take place later than October 31, 1997 unless extended by ProMedCo-Harrisburg.

2.8 Further Acts and Assurances. HealthAmerica shall, at any time and from time to time at and after the Closing, upon request of ProMedCo-Harrisburg, take any and all steps reasonably necessary to place ProMedCo-Harrisburg in possession and operating control of the Assets and the business to be transferred hereunder and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the transferring and confirming to ProMedCo-Harrisburg or to its successors or assigns, or for reducing to possession, any or all of the Assets.

2.9 Other Transactions. In addition to the transaction set forth above, the following additional transactions shall occur:

- (a) At the Closing, HealthAmerica shall enter into an agreement in the form attached hereto as Appendix 2.9A (the "Beacon Inducement Agreement") as with the Beacon Professionals.
- (b) HealthAmerica and the HealthAmerica Medical Professionals shall terminate all employment agreements between such parties effective the Closing Date.
- (c) Simultaneously herewith, HealthAmerica and ProMedCo-Harrisburg are entering into an interim Service Agreement in the form attached hereto as Appendix 2.9B.
- (d) At the Closing, Beacon and ProMedCo-Harrisburg shall enter into a Service Agreement in the form attached hereto as Appendix 2.9C.
- (e) Beacon Medical Group shall enter into employment agreements in the form attached as Appendices 2.91D and E hereto (the "Physician Employment Agreements" and "Non-Physician Employment Agreements") with each of the Beacon Professionals.
- (f) ProMedCo-Harrisburg shall enter into a Split-Dollar Agreement in the

form attached hereto as Appendix 2.9F (the "Split-Dollar Agreement") with each of the Beacon Professionals who enter into Physician Employment Agreements.

- (g) Each Beacon Professional who is a party to a Split-Dollar Agreement and Pro-MedCo-Harrisburg shall execute a Collateral Assignment (the "Collateral Assignment") in the form attached hereto as Appendix 2.9G pertaining to the Life Insurance Policy contemplated by the Split-Dollar Agreement.
- (h) ProMedCo-Harrisburg and HealthAmerica shall execute a mutually agreeable ten year Provider Agreement having terms which are consistent with the provisions outlined in Appendix 2.9H.

#### 2.10 Purchase Consideration Adjustments.

- (a) Definitive Closing Statements. Within 120 days after the Closing or by such time as is reasonable under the circumstances, ProMedCo-Harrisburg shall prepare and deliver to HealthAmerica a final closing statement ("Final Closing Statement") of HealthAmerica as of August 12, 1997. ProMedCo-Harrisburg covenants that the Final Closing Statement shall be true, complete and accurate

and will present fairly the assets and liabilities items set forth in ss.ss. 2.1 and 2.2 hereof as at the August 12, 1997, calculated in a manner consistent with GAAP (except as disclosed in Exhibit 3.3B), as applied in the HealthAmerica Financial Statements (as defined in ss. 3.3), and the requirements of this Agreement. HealthAmerica and its representatives shall be provided access to the books and records of ProMedCo-Harrisburg as necessary to verify the accuracy of such calculations. If within 30 business days of receipt of the Final Closing Statement, HealthAmerica fails to deliver to ProMedCo-Harrisburg written notice specifying any unacceptable entries on the Final Closing Statements and the reasons therefor, then such Final Closing Statement shall constitute the Definitive Closing Statements. If HealthAmerica timely and duly delivers such notice within 30 business days of receipt thereof, the parties shall attempt in good faith to resolve the differences, and if they are unable to do so, within 20 days thereafter either party may deliver the Final Closing Statement to a "big six" accounting firm mutually agreeable to the parties (the "CPA Firm"), who shall have 20 business days to review the Final Closing Statement and make such adjustments thereto as it deems necessary to ensure that the Final Closing Statement has been prepared in a manner consistent with GAAP as applied in the HealthAmerica Financial Statements calculated on a consistent basis and the requirements of this Agreement. The Final Closing Statement as so

adjusted shall constitute the Definitive Closing Statement and shall be binding on the parties hereto. If the total amount payable by ProMedCo-Harrisburg pursuant to clause (b) below increases from that shown on the Final Closing Statement, ProMedCo-Harrisburg shall pay the fees and expenses of the CPA Firm, otherwise such fees and expenses shall be borne by HealthAmerica. If the parties are unable to mutually agree on a CPA firm, they shall select one by using the following process: First ProMedCo-Harrisburg shall nominate a "big six" firm; if that firm is unacceptable to HealthAmerica, it shall nominate a different "big six" firm; if that firm is unacceptable to ProMedCo-Harrisburg, each party shall designate a partner of the firm nominated by it, and the two partners shall choose a third "big six" firm which that thereupon be the "CPA Firm" contemplated hereby.

- (b) Balance Sheet Adjustment. To the extent that the Definitive Closing Statement shows Assets at Closing net of Assumed Balance Sheet Liabilities to be different from the same assets net of the same liabilities on the HealthAmerica Financial Statements as of June 30, 1997, the Consideration shall be increased or reduced, as the case may be, on a dollar for dollar basis; provided however, if the adjustment is less than \$5,000, neither party shall have an obligation to make any payment to the other.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF HEALTHAMERICA

HealthAmerica hereby represents and warrants to ProMedCo-Harrisburg as follows (all representations other than those set forth in ss.ss. 3.1, 3.2, 3.16, 3.17, 3.30 and 3.31 are intended to be with respect to the business conducted at the Clinic Facilities, and not to refer to business conducted by HealthAmerica elsewhere):

3.1 Organization, Corporate Power and Qualification. HealthAmerica is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has full corporate power and authority and all authorizations, licenses and permits necessary to own, lease and operate its properties and assets and to carry on its business as and where it is now being conducted, to enter into this Agreement, and to consummate the transactions contemplated hereby. No jurisdiction where HealthAmerica is not presently qualified as a foreign corporation has made any assertion that such corporation's business or ownership of property makes qualification as a foreign corporation in such jurisdiction necessary. A copy of the Articles of Incorporation and all amendments thereto of HealthAmerica and a copy of its

by-laws, as amended to the date hereof (both certified by the Secretary of HealthAmerica to be true and correct copies as in effect as of the date hereof), are included as Exhibit 3.1 of the Exhibit Volume and are true, accurate and complete as of the date hereof. HealthAmerica is not in default under or in violation of any provision of its Articles of Incorporation or by-laws.

3.2 Authority; Binding Effect. HealthAmerica has full power and authority to enter into this Agreement and, subject to approval by its Board of Directors, to carry out the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitutes the valid and binding agreement of HealthAmerica enforceable in accordance with its terms, and the execution, delivery and performance of this Agreement is not in conflict with any other agreement, and will not result in the acceleration or imposition of any other obligation that will have a material adverse effect on the Assets.

3.3 Financial Statements. Exhibit 3.3A consists of the following financial statements of HealthAmerica: unaudited schedule of assets and of the business operated by HealthAmerica at the Clinic Facilities as of June 30, 1997 and the related statement of revenue and operating expenses for the three and six month periods then ended (such financial statements and the related notes being herein called "HealthAmerica Financial Statements").

The HealthAmerica Financial Statements are true, complete and accurate, have been based upon the information contained in the books and records of HealthAmerica and present fairly the assets, liabilities and financial results of HealthAmerica as of the

dates thereof, prepared in conformity with generally accepted accounting principles except as disclosed in Exhibit 3.3B. The HealthAmerica Financial Statements do not contain any material inaccuracy and do not suffer from any material omissions.

3.4 Absence of Undisclosed Liabilities. Except as and to the extent reflected or reserved against in the HealthAmerica Financial Statements and except for commitments and obligations incurred in the ordinary course of business and consistent with past practice accruing after June 30, 1997, HealthAmerica as of June 30, 1997, had, or will have at Closing, no material liabilities, claims or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether or not known to HealthAmerica or any directors, officers or employees of HealthAmerica, whether due to become payable and regardless of when or by whom asserted) relating to the Clinic Facility. The expenses associated with accrued CME time assumed by ProMedCo-Harrisburg pursuant to ss. 2.2 do not exceed the estimates by HealthAmerica, the details of which are set forth on Exhibit 3.4 hereto.

3.5 Absence of Certain Recent Changes. Except as expressly provided in

this Agreement or as set forth on Exhibit 3.5 in alphabetical order corresponding to the following subsections, HealthAmerica has continued and shall continue the normal operations of HealthAmerica's business until the Closing, and since June 30, 1997, and through the Closing Date, HealthAmerica has not and will not have:

- (a) except in the usual and ordinary course of its business, consistent with past practice, and in an amount which is usual and normal incurred any indebtedness or other liabilities (whether accrued, absolute, contingent or otherwise), guaranteed any indebtedness or sold any of its assets;
- (b) transferred, disposed of, or further encumbered or pledged any of the Assets without the prior written consent of ProMedCo-Harrisburg;
- (c) suffered any damage, destruction or loss, whether or not covered by insurance, in excess of \$10,000;
- (d) suffered the resignation or other termination of any management personnel of HealthAmerica, or the loss of or other termination of a business relationship with any material customers or suppliers of HealthAmerica's business;
- (e) increased the regular rate of compensation payable by it to any employee other than normal merit and cost of living increases granted in the ordinary course of business; or increased such compensation by bonus, percentage, compensation service award or similar arrangement theretofore in effect for the benefit of any of its employees, and no such increase is required;
- (f) established or agreed to establish, amended or terminated any pension, retirement or welfare plan or arrangement for the benefit of its employees not theretofore in effect;
- (g) suffered any change in its financial condition, assets, liabilities, operations, prospects or business or suffered any other event or condition of any character which individually or in the aggregate has or might reasonably have a material adverse effect on HealthAmerica;
- (h) experienced any labor organizational efforts, strikes or complaints other than grievance procedures in the ordinary course of business or entered into any collective bargaining agreements with any union;

- (i) made any single capital expenditure which exceeded \$5,000 or made aggregate capital expenditures which exceeded \$10,000;
- (j) except with respect to liens or encumbrances arising by operation of law, permitted or allowed any of the Assets to be subjected to any pledge, lien, security interest, encumbrance, restriction or charge of any kind;
- (k) written down the value of any of the Assets, or written off as uncollectible any notes or accounts receivable, except for write-downs and write-offs in the ordinary course of business and consistent with past practice, none of which are material or revalued any of the Assets;
- (l) paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise) other than in the usual and ordinary course of business;
- (m) suffered any extraordinary losses, canceled any debts or waived any claims or rights of substantial value, whether or not in the usual and ordinary course of business;
- (n) paid, lent or advanced any amount to, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to, or entered into any agreement or arrangement with, any stockholder of HealthAmerica or any of the officers or directors of HealthAmerica or of any "Affiliate" of any of its officers or directors, except for reimbursement of ordinary and reasonable business expenses related to the business of HealthAmerica and compensation to officers at rates not exceeding the rates of compensation at June 30, 1997;
- (o) amended, terminated or otherwise altered (whether by action or inaction) any contract, agreement or license of significant value to which HealthAmerica is a party, except in the ordinary course of business;
- (p) entered into a material transaction other than in the ordinary course of business or made any change in any method of accounting or accounting practice;
- (q) canceled, or failed to continue, insurance coverages; or
- (r) agreed, whether in writing or otherwise, to take any action described in this ss. 3.5.



3.6 Title to Assets. The Assets to be transferred hereunder constitute all of the non-real estate operating assets of HealthAmerica necessary or appropriate for the continued operation of the Clinic Facility. HealthAmerica shall remove all liens and encumbrances on the Assets, if any, prior to the Closing (except those approved by ProMedCo-Harrisburg in writing). The bills of sale and the assignments and other instruments to be executed and delivered by HealthAmerica at the Closing will be valid and binding and enforceable in accordance with their respective terms, and will effectively vest in ProMedCo-Harrisburg good and marketable title to all the Assets. If HealthAmerica shall fail to remove all such security interests, ProMedCo-Harrisburg shall have the right to do so and shall have the right to off-set the cost of doing so against the Cash Consideration payable under ss. 2.4 hereof.

3.7 Contracts. Exhibits 3.7A through 3.7H of the Exhibit Volume contains a copy of each contract, lease, agreement and other instrument to which HealthAmerica is a party or is bound which involves an unperformed commitment or obligation (contingent or otherwise) of more than \$10,000 in the aggregate, including the following: Service Agreements, Exhibit 3.7A; Maintenance Agreements, Exhibit 3.7B; Bank Loans and Equipment Financings, Exhibit 3.7C; Real Estate Leases, Exhibit 3.7D; Payor Contracts, Exhibit 3.7E; Professional Service Agreements, Exhibit 3.7F; Software License Agreements, Exhibit 3.7G and Other Agreements, Exhibit 3.7H. Except as noted in such Exhibits: (i) to the best knowledge of HealthAmerica, all such contracts, leases and agreements are in full force and effect; (ii) to the best knowledge of HealthAmerica, there has been no threatened cancellation thereof, (iii) there are no outstanding disputes thereunder; (iv) each is with unrelated third parties and was entered into on an arms-length basis in the ordinary course of business and all will continue to be binding in accordance with their terms after consummation of the transactions contemplated hereby; (v) there are no contracts, leases, agreements or other instruments to which HealthAmerica is a party or is bound (other than insurance policies) which could either singularly or in the aggregate have an adverse effect on the value of the Assets to ProMedCo-Harrisburg; and (vi) there are no employment agreements or other agreements to which Health-America is a party or by which HealthAmerica is bound that contain any severance or termination pay liabilities or obligations.

Except as described in Exhibits 3.7A-H or the other Schedules hereto (and except for purchase contracts and orders for inventory in the ordinary course of business consistent with past practice), HealthAmerica is not, as of the date of this Agreement, a party to or bound by any:

(a) material agreement or contract not made in the ordinary course of

business;

- (b) employee collective bargaining agreement or other contract with any labor union;
- (c) covenant not to compete;
- (d) lease or similar agreement under which HealthAmerica is a lessor or sublessor of any material real property owned or leased by HealthAmerica or any portion of premises otherwise occupied by HealthAmerica;
- (e) (i) lease or similar agreement under which (A) HealthAmerica is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by a third party or (B) HealthAmerica is a lessor or sublessor of any tangible personal property owned by any of its shareholders, (ii) continuing contract for the future purchase of materials, supplies or equipment, or (iii) management, service, consulting or other similar type of contract, in any such case which has a future liability in excess of \$10,000, and which is not terminable by HealthAmerica for a cost of less than \$10,000;
- (f) license or other agreement relating in whole or in part to, trademarks (including, but not limited to, any license or other agreement under which HealthAmerica has the right to use any of the same owned or held by a third party);
- (g) agreement or contract under which HealthAmerica has borrowed or lent any money or issued any note, bond, indenture or other evidence of indebtedness or directly or indirectly guaranteed indebtedness, liabilities or obligations of others for an amount in excess of \$10,000 (other than (i) endorsements for the purpose of collection in the ordinary course of business and (ii) advances to employees of HealthAmerica in the ordinary course of business);
- (h) mortgage, pledge, security agreement, deed of trust or other document granting a lien against the Assets (including liens upon properties acquired under conditional sales, capital leases or other title retention or security devices but excluding operating leases);
- (i) other agreement, contract, lease, license, commitment or instrument to which HealthAmerica is a party or by or to which HealthAmerica or any of its assets or businesses are bound or subject, which has an aggregate future liability in excess of \$10,000 and is not terminable by HealthAmerica for a cost of less than \$10,000; or

(j) any agreement, contract, understanding or business venture with any physician, other provider or any other Person which violates the Medicare/Medicaid Fraud and Abuse amendments or any regulations thereunder adopted by the U.S. Department of Health and Human Services.

Notwithstanding the failure of the parties to formalize the payment arrangements HealthAmerica and Alliance4Health NetSource have followed a course of conduct based on the arrangements described in Appendix 3.7 hereto, and HealthAmerica will hold ProMedCo-Harrisburg harmless from any deviations from such arrangements by Alliance4Health NetSource prior to the termination of the Alliance4Health NetSource Agreement.

3.8 Burdensome Agreements. Except as is set forth in Exhibit 3.8 of the Exhibit Volume, HealthAmerica is not a party to, nor are the Assets subject to or bound or affected by, any provision of any order of any court or other agency of government or any indenture, agreement or other instrument or commitment which materially adversely affects the Assets,

3.9 Absence of Related Party Transactions. Except as disclosed on Exhibit 3.9, neither HealthAmerica, nor any officer, director or affiliate of HealthAmerica, has any material direct or indirect financial or economic interest in any competitor or supplier of HealthAmerica. HealthAmerica is not a party to any transaction or proposed transaction, including without limitation the leasing of property, the purchase or sale of materials or goods (except with respect to HealthAmerica's service business) or the furnishing of its services (except as employees of the HealthAmerica), with HealthAmerica, or any Affiliate of HealthAmerica, including (without limitation) any family member of a shareholder of HealthAmerica; and HealthAmerica has not directly or indirectly entered into any agreement or commitment which could result in HealthAmerica becoming obligated to provide funds in respect of or to assume any obligation of any such affiliated person or entity. Except as set forth on Exhibit 3.9, there are no debts owing to HealthAmerica by, or any contractual agreements or understandings between HealthAmerica and, any shareholder, director or officer of HealthAmerica, any member of their respective families, or any affiliate or associate of any of the foregoing individuals, as the term "affiliate" is defined for purposes of the Securities Act of 1933 and the rules and regulations thereunder, and none of the foregoing individuals or any affiliate or associate of them owns any property or rights, tangible or intangible (other than an equitable interest), used in or related to HealthAmerica's business. HealthAmerica is not indebted to any shareholder, officer, director or employee of HealthAmerica, or to any member of their respective families, or to any affiliate or associate of any of the foregoing individuals, in any amount whatsoever, other than for payment of salaries and compensation for services actually rendered to HealthAmerica in the ordinary course of their businesses.

3.10 Defaults. Except as disclosed in Exhibit 3.10, HealthAmerica is not in material default under, nor has any event occurred which, with the lapse of time or action by a third party, could result in a material default under any outstanding

indenture, mortgage, contract, instrument or agreement to which HealthAmerica is a party or by which HealthAmerica may be bound or under any provision of the Articles of Incorporation or by-laws of HealthAmerica. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any provision of, or result in the breach of, or constitute a default under, any law the violation of which would result in a significant liability to HealthAmerica, or any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal; constitute a violation of or a default under, or a conflict with, any term or provision of the Articles of Incorporation or by-laws of HealthAmerica or any contract, commitment, indenture, lease, instrument or other agreement, or any other restriction of any kind to which HealthAmerica is a party or is bound; or cause, or give any party grounds to cause (with or without notice, the passage of time or both) the maturity of any liability or obligation of HealthAmerica, to be accelerated, or increase any such liability or obligation.

3.11 Inventory. The Inventory is sold hereunder on an AS IS WHERE IS BASIS WITHOUT ANY WARRANTY, INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. The Inventory is treated as a current expense on the HealthAmerica Financial Statements. The only transactions related thereto since June 30, 1997 have been additions or sales in the ordinary course of business.

3.12 Equipment. All Assets consisting of equipment being sold hereunder on an AS IS WHERE IS BASIS WITHOUT ANY WARRANTIES, INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR USE. The only transactions related thereto since June 30, 1997, have been additions thereto in the ordinary course of business.

3.13 Receivables. All notes and accounts receivable of HealthAmerica shown on the HealthAmerica balance sheet and all those arising since the balance sheet dates have arisen in the ordinary course of business. Attached as Exhibit 3.13 is a true and correct aging of the accounts receivable currently on the books and records of HealthAmerica.

3.14 Permits and Licenses. Included as Exhibit 3.14 in the Exhibit Volume is a schedule of permits and licenses, listing and briefly describing each permit, license or similar authorization from each governmental authority issued with respect to the operation or ownership of properties by HealthAmerica together with the designation of the respective expiration dates of each, and also listing and briefly describing each association in which HealthAmerica is a member and each association or governmental authority by which HealthAmerica is accredited or otherwise recognized.

HealthAmerica is not required to obtain any additional permits, licenses or similar authorizations (including, without limitation, any additional certificates of need) from any governmental authority for the proper conduct of its business or to become a member of or accredited by any association or governmental authority other than those listed on Exhibit 3.14 in the Exhibit Volume, and there are no proceedings pending, or to the best of HealthAmerica's knowledge, threatened, which may result in the revocation, cancellation, suspension, or other adverse modification of, any license or permit listed in Exhibit 3.14. All of such permits, licenses and authorizations will continue to be valid and in full force and effect in accordance with their respective terms after the consummation of the transactions contemplated hereby.

3.15 Litigation, etc. Except as set forth in Exhibit 3.15 of the Exhibit Volume, there is no litigation, arbitration, governmental claim, investigation or proceeding pending or, to the best knowledge of HealthAmerica, threatened against HealthAmerica at law or in equity, before any court, arbitration tribunal or governmental agency. No such proceeding set forth in Exhibit 3.15 concerns the ownership or other rights with respect to the Assets. To the best knowledge of HealthAmerica, there are no facts based on which material claims may be hereafter made against HealthAmerica. Any and all claims arising from incidents on or before the Closing Date shall be the sole responsibility of HealthAmerica and are specifically excluded from the liabilities to be assumed by ProMedCo-Harrisburg hereunder. All claims and litigations against HealthAmerica are fully covered by insurance. HealthAmerica shall unconditionally indemnify and hold ProMedCo-Harrisburg harmless against any loss or liability including, without limitation, attorney's fees, resulting from any claims or litigation arising out of incidents relating to HealthAmerica which occurred prior to the Closing Date, to the extent such loss or liability is not covered by insurance.

3.16 Court Orders, Decrees and Laws. There is not outstanding or, to the best knowledge of HealthAmerica, threatened any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting HealthAmerica or the Assets. HealthAmerica is in compliance with all applicable federal, state and local laws, regulations and administrative orders which are material to the business of HealthAmerica and HealthAmerica has received no notices of alleged violations thereof. No governmental authorities are presently conducting proceedings against HealthAmerica and to the best knowledge of HealthAmerica, no such investigation or proceeding is pending or being threatened.

3.17 Taxes. All federal, state and other tax returns of HealthAmerica required by law to be filed have been timely filed, and HealthAmerica has paid or provided for all taxes (including taxes on properties, income, franchises, licenses, sales and payrolls) which have become due pursuant to such returns or

pursuant to any assessment, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which HealthAmerica has set aside on its books adequate reserves. All such tax returns have been prepared in compliance with all applicable laws and

regulations and are true and accurate in all respects. There are no tax liens on any of the Assets except those with respect to taxes not yet due and payable and except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which HealthAmerica has set aside on its books adequate reserves. There are no pending tax examinations nor has HealthAmerica received a revenue agent's report asserting a tax deficiency. HealthAmerica does not expect any taxing authority to claim or assess any amount of additional taxes against it. No claim has ever been made by a taxing authority in a jurisdiction where HealthAmerica does not file tax returns that HealthAmerica is or may be subject to taxes assessed by such jurisdiction. HealthAmerica has withheld from each payment made to its employees the amount of all taxes (including, but not limited to, federal, state and local income taxes and Federal Insurance Contribution Act taxes) required to be withheld therefrom and all amounts customarily withheld therefrom, and has set aside all other employee contributions or payments customarily set aside with respect to such wages and has paid or will pay the same to, or has deposited or will deposit such payment with, the proper tax receiving officers or other appropriate authorities, except to the extent of any liabilities to be assumed by ProMedCo-Harrisburg under ss. 11.3 hereof.

3.18 Immigration Act. HealthAmerica is in material compliance with the terms and provisions of the Immigration Act in all material respects. For each employee (as defined in 8 C.F.R. ss. 274a.I(f)) of HealthAmerica for whom compliance with the Immigration Act by HealthAmerica is required, HealthAmerica has obtained and retained a complete and true copy of each such employee's Form I-9 (Employment Eligibility Verification Form) and all other records or documents prepared, procured or retained by HealthAmerica pursuant to the Immigration Act. There are no violations or potential violations of the Immigration Act by HealthAmerica. HealthAmerica has not been cited, fined, served with a Notice of Intent to Fine or with a Cease and Desist Order, nor, to HealthAmerica's knowledge, has any action or administrative proceeding been initiated or threatened against HealthAmerica, by reason of any actual or alleged failure to comply with the Immigration Act.

3.19 Program Compliance. To the best of HealthAmerica's knowledge after due inquiry, neither HealthAmerica nor any of its shareholders, employees or

agents have engaged in or is being investigated for any activities which are prohibited under either (a) Section 1320a-7a or 1320a-7b of Title 42 of the United States Code, (b) Section 1395nn of Title 42 of the United States Code, or (c) Section 3729 of Title 31 of the United States Code, or the regulations promulgated thereunder, or any similar or related state or local statutes or regulations, or which are prohibited by rules of professional conduct, including, but not limited to, the following: (1) knowingly presenting or causing to be presented a false claim for payment; (2) knowingly making or using a false record in order to receive payment for a claim; (3) knowingly and

willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment; (4) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment; (5) any failure by a claimant to disclose knowledge of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another, with the intent to fraudulently secure such benefit or payment; (6) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate) directly or indirectly, overtly or covertly, in cash or in kind, or offering to pay or receive such remuneration (A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or Medicaid, or (B) in return for purchasing, leasing or ordering or arranging for, or recommending, purchasing, lease or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or Medicaid; or (7) referring a patient for "designated health services" to a person or entity with which the referring physician has a financial relationship.

3.20 Environmental Matters. Except as disclosed on Exhibit 3.20:

- (a) There are no outstanding violations or any consent decrees entered against HealthAmerica regarding environmental matters, including, but not limited to, matters affecting the emission of air pollutants, the discharge of water pollutants, the management of hazardous or toxic substances or wastes, or noise.
- (b) There are no claimed, threatened or alleged violations with respect to any federal, state or local environmental law, rule, regulation, ordinance, permit, license or authorization, and there are no present discussions with any federal, state or local governmental agency concerning any alleged violation of environmental laws, rules, regulations, ordinances, permits, licenses or authorizations.

- (c) All operations conducted by HealthAmerica have been and are in compliance with all federal, state and local statutes, rules, regulations, ordinances, permits, licenses and authorizations relating to environmental compliance and control.

### 3.21 ERISA.

- (a) Except as listed in Exhibit 3.21 of the Exhibit has no "employee benefit plans", as such term is defined under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any other plan or similar arrangement, written or otherwise, which provides any type of pension or welfare benefit to any of its directors, employees, or former employees.
- (b) With respect to all of the plans listed in Exhibit 3.21, HealthAmerica has delivered to ProMedCo-Harrisburg true and exact copies of (i) all plan documents embodying the provisions of such plans, together with all amendments thereto, (ii) all summary plan descriptions and summaries of material modifications pertaining thereto, (iii) copies of the most recent Internal Revenue Service determination letters, if any, relating to such plans, (iv) copies of the last three (3) years' Annual Report (Form 5500 series), as filed with respect to such plans with the Internal Revenue Service, together with all Schedules and attachments thereto, including, without limitation, copies of the plan audits and/or actuarial valuations, (v) copies of all contract administration agreements between HealthAmerica and third party administrators, (vi) copies of all participant-related forms currently in use in connection with such plans including, without limitation, salary reduction agreements and beneficiary designations, and (vii) participant-specific claims history for any "welfare benefit plan" (within the meaning of Section 3(1) of ERISA) that has been in existence during any part of the last three years.
- (c) No "prohibited transaction", as such term is defined under Section 4975(c) of the Code or under Section 406 of ERISA, and the respective regulations thereunder, has occurred or is occurring with respect to any "employee benefit plan" maintained by HealthAmerica or with respect to any trustee or administrator thereof.

### 3.22 Pension, etc.



- (a) No "unfunded accrued liability", as such term is defined under Section 3(30) of ERISA, exists with respect to any "employee pension benefit plan" listed in Exhibit 3.21 (each a "Pension Plan" and collectively the "Pension Plans").
- (b) None of the Pension Plans or any related trusts have been partially or fully terminated (through the complete cessation of contributions thereto or otherwise). In addition there has not occurred any "reportable events", as such term is defined under Section 4043 of ERISA, which could have a material adverse effect on the condition, financial or otherwise, of HealthAmerica.
- (c) Neither any of the Pension Plans nor any related trusts have incurred any "accumulated funding deficiency", as such term is defined under Section 302(a)(2) of ERISA or Section 412(a) of the Code (whether or not waived), since the effective date of ERISA.
- (d) With respect to each Pension Plan, there are not in existence any liabilities other than those liabilities shown on the Annual Reports (Form 5500 series) delivered to ProMedCo-Harrisburg in connection herewith. No material change with respect to the matters covered by the most recent Annual Report for each Pension Plan has occurred since the filing date thereof. The terms and operation of each Pension Plan have complied, and are in compliance, with the applicable provisions of ERISA and the Code. All Pension Plans have at all times been and are qualified under Section 401(a) of the Code, except for those Pension Plans set forth in Exhibit 3.22 of the Exhibit Volume. None of the Pension Plans listed in Exhibit 3.21 is unfunded.

3.23 Employee Matters. Included as Exhibit 3.23A of the Exhibit Volume is a list of all employees of HealthAmerica together with their annual rates of compensation and a list of all people who were paid bonuses in the last twelve months plus the amount thereof. No written employment agreement to which HealthAmerica is a party requires longer than a four-week notice before termination, and there is no agreement to lend, or guarantee any loan, to an employee, or an agreement relating to a bonus, severance pay or similar plan, agreement, arrangement or understanding, except as set forth in Exhibit 3.23B. Exhibit 3.23C of the Exhibit Volume is a written description of employee benefits of HealthAmerica.

3.24 Insurance and Bonds. Exhibit 3.24A contains a description of all fire, liability and other insurance coverage maintained by HealthAmerica currently in force, including the amounts and losses and risks covered; all such

policies are fully paid as to all premiums heretofore due. Exhibit 3.24B contains a description of all malpractice liability insurance policies of HealthAmerica since January 1, 1994. Except as set forth on Exhibit 3.24B, HealthAmerica has not had in the last seven years filed a written application for any insurance coverage which has been denied by an insurance agency or carrier. HealthAmerica is not in material default with respect to any provision contained in any such policy and has not failed to give any notice or present any claim under any such policy in due and timely fashion.

3.25 Labor Matters. There are no collective bargaining agreements with any labor union to which HealthAmerica is a party or by which HealthAmerica is bound, and it is not currently negotiating with a labor union. No employees of HealthAmerica have ever petitioned for a representation election. HealthAmerica is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice. There is no unfair labor practice complaint against HealthAmerica pending before the National Labor Relations Board. There is no labor strike, dispute, slowdown or stoppage actually pending or, to its knowledge, threatened against or affecting HealthAmerica. No grievance which might have a material adverse effect on HealthAmerica or the conduct of its business nor any such arbitration proceeding arising out of or under collective bargaining agreements is pending and no claim therefor exists. HealthAmerica has not experienced any employee strikes during the

last three years. HealthAmerica will advise ProMedCo-Harrisburg of any such labor dispute, petition for representative election or negotiations with any labor union which shall arise before the Closing Date. Except as may be required by ss. 4980B of the Code or applicable state health care continuation coverage statutes, HealthAmerica has no liability under any plan or arrangement which provides welfare benefits, including medical and life insurance, to any Current or future retiree or terminated employee.

3.26 Third Party Payor Compliance. HealthAmerica is participating in or otherwise authorized to receive reimbursement from or is a party to Medicare, Medicaid, and other third-party payor programs (collectively "Third Party Payor Programs"). All necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned as of the date hereof, and to the best of HealthAmerica's knowledge, no condition exists or event has occurred which in itself or with the giving of notice or the lapse of time or both would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such Third Party Payor Program. To the best of HealthAmerica's knowledge, HealthAmerica is in full compliance with the

requirements of all such Third Party Payor Programs applicable thereto.

3.27 Facility Compliance. The Clinic Facility is duly licensed and is lawfully operated in accordance with the requirements of all applicable law and has all necessary authorizations for the use and operation, all of which are in full force and effect. There are no outstanding notices of deficiencies relating to HealthAmerica issued by any governmental authority or Third Party Payor Program requiring conformity or compliance with any applicable law or condition for participation of such governmental authority or Third Party Payor Program, and after reasonable and independent inquiry and due diligence and investigation, HealthAmerica has neither received notice nor has any knowledge or reason to believe that such necessary authorizations may be revoked or not renewed in the ordinary course.

3.28 Improper Payments. Neither HealthAmerica nor any officer or employee of HealthAmerica have made any bribes, kickbacks or other improper payments on behalf of HealthAmerica or received any such payments from vendors, suppliers or other persons contracting with HealthAmerica.

3.29 Books of Account; Reports. The books of account of HealthAmerica in reasonable detail, accurately and fairly reflect its transactions and the disposition of its assets. HealthAmerica has filed all reports and returns required by any law or regulation to be filed by it for which the failure to file would have a material adverse effect on the operations of the Clinic Facility or the Assets.

3.30 No Finders or Brokers. Neither HealthAmerica nor any officer or director of HealthAmerica has engaged any finder or broker in connection with the transactions contemplated hereunder.

3.31 Consents and Approvals of Governmental Authorities. No characteristic of HealthAmerica or of the nature of its business or operations requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby other than required approvals by the Pennsylvania Departments of Insurance and Health.

3.32 Consents and Approvals of Non-Governmental Authorities. Except as set forth in Exhibit 3.32, no approvals or consents from any nongovernmental third parties are required in connection with the execution and delivery of this Agreement by HealthAmerica and the consummation of the transactions contemplated hereby.

3.33 No Adverse Effect. To the best knowledge of HealthAmerica, there is no event or condition of any kind or character pertaining to the business,

assets or prospects of HealthAmerica that may adversely affect such business, assets or prospects other than general economic conditions affecting the United States.

3.34 Disclosure. No representations and warranties by HealthAmerica in this Agreement and no statement in this Agreement or any document or certificate furnished or to be furnished to ProMedCo and ProMedCo-Harrisburg pursuant hereto contains or will contain any untrue statement or omits or will omit to state a fact necessary in order to make the statements contained therein not misleading. HealthAmerica has disclosed to ProMedCo and ProMedCo-Harrisburg all facts known to HealthAmerica material to the assets, liabilities, business, operation and property of HealthAmerica. There are no facts known to HealthAmerica not yet disclosed which would adversely affect the future operations of HealthAmerica.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PROMEDCO AND PRO-MEDCO-HARRISBURG

ProMedCo and ProMedCo-Harrisburg hereby jointly and severally represent and warrant as follows:

4.1 Organization and Standing of ProMedCo and ProMedCo-Harrisburg. ProMedCo and ProMedCo-Harrisburg are each corporations duly organized, validly existing and in good standing under the laws of the state of Delaware and Pennsylvania, respectively; each has full corporate power and authority to conduct its business as now being conducted; and each is duly qualified to do business in each jurisdiction in which the nature of the property owned or leased or the nature of the business conducted by it requires such qualification.

4.2 Authority; Binding Effect. Each of ProMedCo and ProMedCo-Harrisburg has corporate power to execute and deliver this Agreement and consummate the transactions contemplated hereby and has taken (or by the Closing Date will have taken) all action required by law, its Articles of Incorporation, by-laws or otherwise to authorize such execution and delivery and the consummation of the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitutes the valid and binding agreement of each of ProMedCo and ProMedCo-Harrisburg enforceable in accordance with its terms (except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as to the remedy of specific performance which may not be available under the laws of various jurisdictions) assuming that this Agreement has been duly authorized, delivered

and executed by HealthAmerica and constitutes the valid and binding obligation, enforceable against HealthAmerica in accordance with its terms (except as enforceability against HealthAmerica may be restricted, limited or delayed to the same extent as referred to in parenthetical phrase immediately above).

4.3 No Finders or Brokers. Neither ProMedCo, ProMedCo-Harrisburg nor any officer or director of either has engaged any finder or broker in connection with the transactions contemplated hereunder.

4.4 Consents and Approvals of Governmental Authorities. No characteristic of ProMedCo or ProMedCo-Harrisburg or of the nature of their business or operations requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

#### ARTICLE 5 COVENANTS OF PROMEDCO AND PROMEDCO-HARRISBURG

ProMedCo and ProMedCo-Harrisburg hereby jointly and severally covenant and agree as follows:

5.1 Best Efforts to Secure Consents. ProMedCo and ProMedCo-Harrisburg shall use their best efforts to secure before the Closing all necessary consents and approvals needed to satisfy all the conditions precedent to the obligations of HealthAmerica hereunder, including, if necessary to procure landlord consents, provision of ProMedCo guarantees of ProMedCo-Harrisburg's obligations under leases assumed by or subleased to ProMedCo-Harrisburg as a result of the consummation of the transactions contemplated hereby.

5.2 Corporate Action. ProMedCo and ProMedCo-Harrisburg will take all necessary corporate and other action and use its best efforts to obtain all consents, approvals and amendments of agreements required of it to carry out the transactions contemplated by this Agreement and to satisfy the conditions specified herein.

5.3 Non-Disclosure. ProMedCo and ProMedCo-Harrisburg will keep confidential and not disclose to any third party any information relating to the business of HealthAmerica or any Affiliate thereof, whether acquired by ProMedCo or ProMedCo-Harrisburg before or after the Closing Date, which HealthAmerica has not made generally available to the public and will exercise the same care in handling such information as it would exercise with similar information of its own.

5.4 Special Accounts. ProMedCo and ProMedCo-Harrisburg will comply with applicable federal law, rules and regulations relating to the collection of

Medicare and Medicaid accounts receivable on behalf of HealthAmerica.

## ARTICLE 6 COVENANTS OF HEALTHAMERICA

HealthAmerica hereby covenants and agrees as follows:

6.1 Access and Information. Between the date of this Agreement and the Closing Date, HealthAmerica will: (i) provide to ProMedCo-Harrisburg and its officers, attorneys, accountants and other representatives, during normal business hours, or otherwise if ProMedCo-Harrisburg deems reasonably necessary, free and full access to all of the properties, assets, agreements, commitments, books, records, accounts, tax returns, and documents of HealthAmerica pertaining to the business operated at the Clinic Facility and permit them to make copies thereof; (ii) furnish ProMedCo-Harrisburg and its representatives with all information concerning the business, properties and affairs of HealthAmerica pertaining to the business operated at the Clinic Facility as ProMedCo-Harrisburg reasonably requests and certified by the officers, if requested; (iii) cause the independent public accountants of HealthAmerica to make available to ProMedCo-Harrisburg and its representatives all financial information pertaining to the business operated at the Clinic Facility requested, including all working papers pertaining to audits and reviews made heretofore by such auditors; (iv) furnish ProMedCo-Harrisburg true and complete copies of all financial and operating statements of HealthAmerica pertaining to the business operated at the Clinic Facility; (v) permit access to customers and suppliers of the Clinic Facility for consultation or verification of any information obtained by ProMedCo-Harrisburg and use their best efforts to cause such customers and suppliers to cooperate with ProMedCo-Harrisburg in such consultation and in verifying such information; and (vi) cause their employees, accountants and attorneys to make disclosure of all material facts known to them affecting the financial condition and business operations of HealthAmerica pertaining to the business operated at the Clinic Facility and to cooperate fully with any audit, review, investigation or examination made by ProMedCo-Harrisburg and its representatives, including, without limitation, with respect to:

- (a) The books and records of HealthAmerica pertaining to the business operated at the Clinic Facility;
- (b) The reports of state and federal regulatory examinations pertaining to the business operated at the Clinic Facility;
- (c) Leases, contracts and commitments between HealthAmerica and any other person pertaining to the business operated at the Clinic Facility;

(d) Physical examination of the Clinic Facility; and

(e) Physical examination of the equipment and furnishings within the Clinic Facility.

6.2 Conduct of Business. Between the date hereof and the Closing Date, except as otherwise expressly approved in writing by ProMedCo-Harrisburg, HealthAmerica shall conduct the business of the Clinic Facility only in the ordinary course thereof consistent with past practice and in such a manner that the representations and warranties contained in Article 3 of this Agreement shall be true and correct at and as of the Closing Date (except for changes contemplated, permitted or required by this Agreement) and so that the conditions to be satisfied by HealthAmerica at the Closing shall have been satisfied. HealthAmerica will, consistent with conducting its business in accordance with reasonable business judgment, preserve the business of the Clinic Facility intact, use its reasonable best efforts to preserve and maintain the business organization and the physician relationships of HealthAmerica, keep available to ProMedCo-Harrisburg the services of the present employees of the Clinic Facility (except those dismissed for cause, those who voluntarily discontinue their employment and those whose termination is consented to by ProMedCo-Harrisburg), and preserve for ProMedCo-Harrisburg the goodwill of the physicians, suppliers, patients and others having business relations with the Clinic Facility. So long as HealthAmerica does not terminate or otherwise interfere with ProMedCo-Harrisburg's performance of the Interim Service Agreement, it shall be deemed to be in compliance with this ss. 6.2.

6.3 Termination of Alliance4Health NetSource Agreement. Immediately upon execution of this Agreement, HealthAmerica shall give notice of termination of the Alliance4Health NetSource Agreement. If the transactions contemplated by this Agreement are consummated prior to the date the Alliance4Health NetSource Agreement is terminated, HealthAmerica shall take such steps as are necessary to provide the full economic benefit to HealthAmerica of the Alliance4Health NetSource Agreement to ProMedCo-Harrisburg, including, if necessary entering into a subcontracting arrangement with ProMedCo-Harrisburg or Beacon. HealthAmerica shall indemnify and hold ProMedCo-Harrisburg harmless from the consequence of any

breach of the Alliance4Health NetSource Agreement caused, or resulting from actions of, HealthAmerica.

6.4 Compliance with Agreement. Prior to the Closing, HealthAmerica shall not undertake any course of action inconsistent with satisfaction of the conditions applicable to it set forth in this Agreement, and shall do all such acts and take all such measures as may be reasonably necessary to comply with the representations, agreements, conditions and other provisions of this

Agreement. Prior to the Closing, HealthAmerica shall give ProMedCo-Harrisburg prompt written notice of any change in any information contained in the representations and warranties made in Article 3 hereof and on the Exhibits referred to therein (provided, however that such notice shall not limit ProMedCo-Harrisburg's rights under ss. 9.1 hereof) and of any condition or event which constitutes a default of any covenant or agreement made in Article 6 or in any other section hereof.

6.5 Necessary Consents. HealthAmerica shall take the necessary corporate and other actions, including submitting required notices to various departments of the Commonwealth of Pennsylvania on or before August 20, 1997, and shall, on or before the Closing Date, obtain and deliver to ProMedCo-Harrisburg in writing, effective as of the Closing Date, such consents as are necessary to effect a valid and binding transfer or assignment of all of the Assets so as to enable ProMedCo-Harrisburg to enjoy all of the rights now enjoyed by HealthAmerica with respect to the Assets. Said consents shall be in a form acceptable to ProMedCo-Harrisburg and, if executed with respect to a contract, shall contain an acknowledgment by the consenting party that HealthAmerica has fully complied with and is not in default under any provision of the particular contract. Nothing in this Agreement shall be construed as an attempt to agree to assign any contract which is by law or by agreement nonassignable without the consent of the other party or parties thereto, or of any governmental authority, as the case may be, unless such consent shall be given.

6.6 Unusual Events. Until the Closing Date, HealthAmerica shall supplement or amend all relevant Exhibits in the Exhibit Volume with respect to any matter thereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in such Exhibits; provided, however, that for the purposes of the rights and obligations of the parties hereunder, any such supplemental disclosure shall not be deemed to have been disclosed as of the date HealthAmerica delivers to ProMedCo-Harrisburg the Exhibit Volume pursuant to ss. 9.1 of this Agreement or any other date, and shall not be deemed to amend or supplement any Exhibits or to prevent or cure any misrepresentation, breach of warranty or breach of covenant, unless agreed to in writing by ProMedCo-Harrisburg.

6.7 Confidential Information. HealthAmerica shall keep confidential all information provided by ProMedCo and ProMedCo-Harrisburg regarding the business plan, financial condition and operations of ProMedCo and ProMedCo-Harrisburg, which is not in the public domain, and shall exercise the same care in handling such



information as it would exercise with similar information of its own. HealthAmerica may disclose information it deems advisable to its physician employees provided such physician employees are advised of the confidential nature of such information and agree to keep such information confidential as provided herein. ProMedCo and ProMedCo-Harrisburg shall be a third party beneficiaries of such agreements.

6.8 Interim Financial Statements. Within 30 days after the end of each calendar month subsequent to the date of this Agreement and prior to the Closing Date, HealthAmerica shall deliver to ProMedCo-Harrisburg an unaudited balance sheet of HealthAmerica as of the end of such calendar month together with the related statement of operations. All such financial statements shall fairly present the financial position, results of operations and cash flows for the financial periods indicated, in accordance with generally accepted accounting principles consistently applied except that footnote information may be omitted in such statements, and that such statements shall be subject to normal year-end audit adjustments, but only if such adjustments are of a normal, recurring type and are not material in the aggregate. So long as the Interim Service Agreement is in full force and effect, HealthAmerica shall be deemed to be in compliance with this ss. 6.8.

6.9 Departmental Violations. All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the departments of buildings, fire, labor, health, or any other state or municipal department having jurisdiction against or affecting the business, property or assets of HealthAmerica shall be complied with prior to the Closing Date. All such notes or notices, after the date hereof and prior to the Closing Date, shall be complied with by HealthAmerica prior to the Closing Date. Upon written request, HealthAmerica shall furnish ProMedCo-Harrisburg with an authorization to make the necessary searches for such notes or notices.

6.10 Insurance Ratings. HealthAmerica shall take all action reasonably requested by ProMedCo-Harrisburg to enable it to succeed to the Workers' Compensation and Unemployment Insurance ratings, insurance policies, deposits and other interests of HealthAmerica and other ratings for insurance or other purposes established by HealthAmerica. ProMedCo-Harrisburg shall not be obligated to succeed to any such rating, insurance policy, deposit or other interest, except as it may elect to do so.

6.11 Maintain Insurance Coverage. From the date hereof until the Closing, HealthAmerica shall maintain and cause to be maintained in full force and effect the existing insurance on the Assets and the operations of HealthAmerica and shall provide, upon request by ProMedCo-Harrisburg, evidence satisfactory to ProMedCo-Harrisburg (which evidence may be in the form of a certificate executed by an officer

of HealthAmerica) that such insurance continues to be in effect and that all premiums due have been paid.

6.12 Exclusive Dealings. During the period from the date of this Agreement to the Closing Date, or until the earlier termination of this Agreement pursuant to Article 9, HealthAmerica shall refrain from taking any actions, directly or indirectly, to encourage, initiate, or engage in discussions or negotiations with, or provide any information to, any corporation, partnership, person, or other entity or group, other than ProMedCo-Harrisburg, concerning the purchase of the Clinic Facility or the Assets, or any merger, joint venture or similar transaction involving the Clinic Facility and will not enter into any such transaction.

6.13 Payments Due Physicians. HealthAmerica shall pay when due all deferred amounts due any HealthAmerica Medical Professionals pursuant to agreements relating to the purchase of medical practices with which such HealthAmerica Medical Professionals were associated when their relationship with HealthAmerica commenced. HealthAmerica acknowledges that ProMedCo-Harrisburg has an interest in ensuring that the HealthAmerica Medical Professionals receive all payments from HealthAmerica to which they are entitled and intends that ProMedCo-Harrisburg shall have third party beneficiary rights to enforce this ss. 6.13.

#### ARTICLE 7 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF HEALTHAMERICA

All obligations of HealthAmerica which are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein which are to be performed by ProMedCo and ProMedCo-Harrisburg at or prior to the Closing and to the fulfillment at, or prior to, the Closing, of each of the following conditions (unless expressly waived in writing by HealthAmerica at any time at or prior to the Closing):

7.1 Representations and Warranties True. All of the representations and warranties made by ProMedCo and ProMedCo-Harrisburg contained in Article 4 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the date of Closing, and shall be true at and as of the date of Closing in all material respects; ProMedCo and ProMedCo-Harrisburg shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by then prior to or at the Closing; and HealthAmerica shall have been furnished with a certificate of the President or any Vice President of ProMedCo and of ProMedCo-Harrisburg, dated the Closing Date, in such officer's capacity, certifying to the truth of such representations and warranties as of the Closing and to the fulfillment of such covenants and conditions.

7.2 Opinion of Counsel. HealthAmerica shall have been furnished with an opinion dated the Closing Date of Boulton, Cummings, Connors & Berry, PLC, counsel

to ProMedCo and ProMedCo-Harrisburg, in form and substance reasonably satisfactory to HealthAmerica.

7.3 Authority. All action required to be taken by or on the part of ProMedCo and Pro-MedCo-Harrisburg to authorize the execution, delivery and performance of this Agreement by Pro-MedCo and ProMedCo-Harrisburg and the consummation of the transactions contemplated hereby shall have been duly and validly taken by the Boards of Directors of ProMedCo and ProMedCo-Harrisburg.

7.4 Approvals. HealthAmerica shall have received all consents and approvals from the Pennsylvania Departments of Health and Insurance and any other person, including without limitation HealthAmerica's senior lender, necessary for it to consummate the transactions contemplated hereby.

7.5 No Obstructive Proceeding. No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against HealthAmerica, or the officers or directors of HealthAmerica, which seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transactions contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

7.6 Delivery of Certain Certified Documents. At the Closing, ProMedCo-Harrisburg shall deliver to HealthAmerica copies of the Articles of Incorporation of each of ProMedCo-Harrisburg and ProMedCo certified (not more than 30 days prior to the Closing Date) by the appropriate governmental authorities, copies of resolutions of the Board of Directors of ProMedCo-Harrisburg, certified by the secretary or assistant secretary of ProMedCo-Harrisburg approving and authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and copies of resolutions of the Board of Directors of ProMedCo, certified by the secretary or assistant secretary of ProMedCo approving the consummation of the transactions contemplated hereby.

7.7 Proceedings and Documents Satisfactory. All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to HealthAmerica pursuant to this Agreement shall be satisfactory in form and substance to HealthAmerica and its counsel acting reasonably and in good faith.

7.8 No Agency Proceedings. There shall not be pending or, to the knowledge of ProMedCo or ProMedCo-Harrisburg, threatened, any claim, suit,

action or other

proceeding brought by a governmental agency before any court or governmental agency, seeking to prohibit or restrain the transactions contemplated by this Agreement or material damages in connection therewith.

7.9 Provider Agreement. ProMedCo-Harrisburg and HealthAmerica shall have entered into the provider agreement contemplated by ss. 2.9(h) or if state approval thereof is not forthcoming, the relationship with Alliance4Health NetSource is continued on terms reasonably satisfactory to ProMedCo-Harrisburg.

#### ARTICLE 8 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PROMEDCO AND PROMEDCO-HARRISBURG

All obligations of ProMedCo and ProMedCo-Harrisburg which are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein which are to be performed by HealthAmerica at or prior to the Closing and to the fulfillment at or prior to the Closing of each of the following conditions (unless expressly waived in writing by ProMedCo and ProMedCo-Harrisburg at any time at or prior to the Closing):

8.1 Representations and Warranties True. All of the representations and warranties of HealthAmerica contained in Article 3 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing, and shall be true at and as of the date of Closing in all material respects (without taking into account any disclosures made by HealthAmerica to ProMedCo and ProMedCo-Harrisburg pursuant to ss. 6.6 hereof) except for changes resulting from ProMedCo-Harrisburg's management under the Interim Service Agreement; HealthAmerica shall have performed or complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and ProMedCo and ProMedCo-Harrisburg shall be furnished with a certificate of the President or any Vice President of HealthAmerica, dated the Closing Date, in such person's corporate capacity, certifying to the truth of such representations and warranties as of the time of the Closing and to the fulfillment of such covenants and conditions other than the exception set forth in the first clause hereof.

8.2 No Obstructive Proceeding. No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against ProMedCo or ProMedCo-Harrisburg or the officers or directors of ProMedCo or ProMedCo-Harrisburg which seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by

reason of the transaction contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

8.3 Opinion of HealthAmerica Counsel. HealthAmerica shall have delivered to ProMedCo and ProMedCo-Harrisburg at the Closing an opinion of Bass, Berry & Simms, PLC, counsel to HealthAmerica, dated the Closing Date, in form and substance reasonably satisfactory to ProMedCo and ProMedCo-Harrisburg, and Beacon shall have delivered to ProMedCo and ProMedCo-Harrisburg at the Closing an opinion of Hartman & Miler, P.C., counsel to Beacon dated the Closing Date, in form and substance reasonably satisfactory to ProMedCo and ProMedCo-Harrisburg.

8.4 Consents and Approvals. Each of the parties to any agreement or instrument under which the transactions contemplated hereby would constitute or result in a default or acceleration of obligations shall have given such consent as may be necessary to permit the consummation of the transactions contemplated hereby without constituting or resulting in a default or acceleration under such agreement or instrument which would have a material adverse effect on the Assets, and any consents required from any public or regulatory agency or organization having jurisdiction shall have been given. Also, ProMedCo-Harrisburg shall have received releases, waivers of default and consents to assignment in form satisfactory to it from all parties to material contracts and agreements to be assumed by ProMedCo-Harrisburg hereunder.

8.5 Governmental Approvals. HealthAmerica shall have received all consents and approvals from the Pennsylvania Departments of Health and Insurance necessary for it to consummate the transactions contemplated hereby.

8.6 Proceedings and Documents Satisfactory. All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to ProMedCo-Harrisburg pursuant to this Agreement shall be satisfactory in form and substance to ProMedCo and ProMedCo-Harrisburg and its counsel acting reasonably and in good faith.

8.7 Delivery of Certain Documents. At the Closing, HealthAmerica shall have delivered to ProMedCo-Harrisburg copies of the Articles of Incorporation of HealthAmerica certified (not more than 30 days prior to the Closing Date) by the appropriate governmental authorities and copies of resolutions of the stockholders of HealthAmerica and of the Board of Directors of HealthAmerica, certified by the secretary of HealthAmerica, approving and authorizing the execution and delivery of this Agreement and the consummation of the

transactions contemplated hereby.

8.8 Provider Agreement. ProMedCo-Harrisburg and HealthAmerica shall have entered into the provider agreement contemplated by ss. 2.9(h) or if state approval thereof is not forthcoming, the relationship with Alliance4Health NetSource, Inc. is

continued on terms reasonably satisfactory to ProMedCo-Harrisburg (ProMedCo-Harrisburg agrees that the Alliance4Health NetSource Agreement is satisfactory).

8.9 Financing. ProMedCo-Harrisburg shall have arranged the financing necessary to carry out the transactions contemplated by this Agreement.

#### ARTICLE 9 TERMINATION

9.1 Optional Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing Date as follows:

- (a) By the mutual consent of ProMedCo, ProMedCo-Harrisburg and HealthAmerica; or
- (b) By HealthAmerica, if any of the conditions set forth in Article 7 shall not have been met by October 31, 1997; provided that HealthAmerica shall not be entitled to terminate this Agreement pursuant to this ss. 9.1(b) if HealthAmerica's willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby; or
- (c) By ProMedCo-Harrisburg, if any of the conditions provided in Article 8 hereof have not been met by October 31, 1997; provided that ProMedCo-Harrisburg shall not be entitled to terminate this Agreement pursuant to this ss. 9.1(c) if ProMedCo-Harrisburg's willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby.

Notwithstanding anything to the contrary set forth herein, the parties acknowledge and agree that the Exhibits 3.1, 3.9, 3.13, 3.14, 3.23A, 3.23B, 3.23C and 3.24B referred to in Article 3 herein were not prepared or delivered to ProMedCo-Harrisburg prior to or contemporaneously with the execution of this Agreement. By September 1, 1997, HealthAmerica shall deliver to ProMedCo-Harrisburg all the remaining Exhibits referred to in Article 3, to be prepared in accordance with Article 3 of this Agreement, and ProMedCo-Harrisburg may, at its discretion, within seven days after its receipt of such Exhibits, terminate this Agreement by notice to HealthAmerica if any information contained in any of such Exhibits or any information obtained by ProMedCo-Harrisburg

pursuant to ss. 6.4 of this Agreement shall establish that any representation or warranty of HealthAmerica contained in Article 3 of this Agreement or any information previously furnished to ProMedCo-Harrisburg by HealthAmerica concerning the Clinic Facility shall not be true and accurate in all material respects as of the date of the termination notice or in the opinion of ProMedCo-Harrisburg, any of such Exhibits shall disclose facts which shall be materially adverse concerning the financial condition, business or operations of the Clinic Facility.

9.2 Notice of Abandonment. In the event of such termination by either ProMedCo and ProMedCo-Harrisburg or HealthAmerica pursuant to ss. 9.1 above, written notice shall forthwith be given to the other party hereto.

9.3 Mandatory Termination. If the Closing has not occurred by October 31, 1997, this Agreement shall automatically terminate and no longer be of any force or effect.

9.4 Termination. In the event this Agreement is terminated as provided above, ProMedCo and ProMedCo-Harrisburg shall deliver to HealthAmerica all documents (and copies thereof in their possession) concerning HealthAmerica and its Affiliates previously delivered by HealthAmerica to ProMedCo and ProMedCo-Harrisburg; and none of the parties nor any of their respective partners, shareholders, directors, or officers shall have any liability to the other party for costs, expenses, loss of anticipated profits, consequential damages, or otherwise, except for any deliberate breach of any of the provisions of this Agreement; provided however, if ProMedCo-Harrisburg terminates this Agreement and abandons the transactions contemplated hereby for any reason other than the following:

- (i) Failure of HealthAmerica to satisfy the closing conditions to ProMedCo-Harrisburg's performance set forth in ss. 8.1 (with respect to the truth of the Representations and Warranties at the date hereof), 8.2, 8.4, 8.5 and 8.8;
- (ii) Bankruptcy of HealthAmerica or of its parent corporation Coventry Corporation;
- (iii) The refusal or inability of HealthAmerica to consummate the transactions contemplated hereby then ProMedCo shall pay HealthAmerica \$500,000 simultaneously with its delivery of the notice of abandonment described in ss. 9.2.

10.1 Grant of Indemnity by HealthAmerica. Subject to the provisions of ss. 11.15, HealthAmerica agrees to indemnify, defend and hold ProMedCo and ProMedCo-Harrisburg and their Affiliates, and subsidiaries, and its and their respective employees, representatives, officers and agents, harmless from and against any claims, losses, settlement payments, liability, obligations, lawsuits, deficiencies, encumbrances, damages or expense of whatever nature, whether known or unknown, accrued, absolute, contingent or otherwise including (without limitation) interest, penalties, attorneys' fees, costs of investigation and all amounts paid in defense or

settlement of the foregoing, suffered or incurred by ProMedCo or ProMedCo-Harrisburg as a result of the occurrence of any of the following: (i) the Assets were subject to any liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise, which are not being specifically assumed by ProMedCo-Harrisburg hereunder, including without limitation, liabilities for federal, state, local and other applicable taxes of every kind and description, whether or not said liabilities or obligations are disclosed in Exhibit 3.3; (ii) HealthAmerica did not have title to any of the Assets; (iii) a breach of any obligation, representation, warranty, covenant or agreement made by HealthAmerica in this Agreement or any agreement referred to herein or because any document furnished or required to be furnished pursuant to this Agreement by HealthAmerica to ProMedCo or ProMedCo-Harrisburg or any of their representatives, or any documents furnished to ProMedCo and ProMedCo-Harrisburg in connection with the Closing hereunder, shall be materially false or misleading; (iv) any liability, obligation or litigation arising out of or based upon events or operative facts occurring prior to the Closing Date, in connection with the Assets, whether or not disclosed in Exhibit 3.15 except for those liabilities and obligations expressly assumed by ProMedCo or ProMedCo Harrisburg; (v) any employee benefits, including pension or retirement benefits, and any severance payments to the employees of HealthAmerica which are or may be assessed as a result of the transactions contemplated by this Agreement, payable to or on behalf of the employees of HealthAmerica as of the Closing Date, or due through the consummation of this Agreement; (vi) unless otherwise specifically agreed in this Agreement, any and all claims, including legal, administrative or creditor claims or actions, in connection with the Assets or their sale or transfer hereunder, if any fact material to any such claim or cause of action pleaded or stated there occurred prior to or on the Closing Date; (vii) all claims and litigation and potential claims and litigation with respect to incidents or other matters which occurred prior to the Closing Date related to the business of the Clinic Facility; (viii) any other liabilities of HealthAmerica pertaining to the business of the Clinic Facility, including any professional malpractice liability of HealthAmerica or any individual physicians associated therewith, whether absolute or contingent, known or unknown, matured or unmatured and not expressly assumed hereunder pursuant to the Undertaking;



and (ix) reasonable costs and expenses (including reasonable attorneys' fees) incurred by ProMedCo and ProMedCo-Harrisburg in connection with any demand, action, suit, proceeding, assessment or judgment incident to any of the foregoing.

10.2 Grant of Indemnity by ProMedCo and ProMedCo-Harrisburg. Subject to the provisions of ss. 11.15, ProMedCo and ProMedCo-Harrisburg jointly and severally agree to indemnify, defend and hold HealthAmerica and its Affiliates, and subsidiaries, and its and their respective employees, representatives, officers and agents, harmless from and against any claims, losses, settlement payments, liability, obligations, lawsuits, deficiencies, encumbrances, damages or expense of whatever nature, whether known or unknown, accrued, absolute, contingent or otherwise including (without limitation) interest, penalties, attorneys' fees, costs of investigation and all amounts paid in defense or settlement of the foregoing, suffered or incurred by HealthAmerica or HealthAmerica as a result of the occurrence of any of the following:

(i) a breach of any obligation, representation, warranty, covenant or agreement made by ProMedCo-Harrisburg in this Agreement or any agreement referred to herein or because any representation or warranty by ProMedCo-Harrisburg contained herein, in any document furnished or required to be furnished pursuant to this Agreement by ProMedCo-Harrisburg to HealthAmerica or any of its representatives, or any documents furnished to HealthAmerica in connection with the Closing hereunder, shall be false; (ii) any liability, obligation or litigation arising out of or based upon events or operative facts occurring after the Closing Date, in connection with the Assets; (iii) all claims and litigation and potential claims and litigation with respect to incidents or other matters which may occur after to the Closing Date related to the business of ProMedCo-Harrisburg; and (iv) reasonable costs and expenses (including reasonable attorneys' fees) incurred by HealthAmerica and HealthAmerica in connection with any demand, action, suit, proceeding, assessment or judgment incident to any of the foregoing.

### 10.3 Representation, Cooperation and Settlement.

- (a) Each party agrees to give prompt notice to the other(s) of any claim against the other(s) which might give rise to a claim based on the indemnity contained in this Article 10, stating the nature and basis of the claim and the amount thereof.
- (b) In the event any claim, action, suit or proceeding is brought against a party (the "Indemnified Party") with respect to which the other party (the "Indemnifying Party") may have liability under the

indemnity contained in this Article 10, the Indemnified Party shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting from such claim, provided that ProMedCo-Harrisburg shall not be required to permit HealthAmerica to assume the defense of any third party claim which if not first paid, discharged, or otherwise complied with would result in an interruption or cessation of the conduct of the ProMedCo-Harrisburg's business or any material part thereof. Failure by the Indemnifying Party to notify the Indemnified Party of its election to defend any such claim or action by a third party within thirty (30) days after notice thereof shall have been given by the Indemnified Party, shall be deemed a waiver of any such election. If the Indemnifying Party assumes the defense of such claim or litigation resulting therefrom, the obligations of the Indemnifying Party hereunder as to such claim shall include taking all steps reasonably necessary in the defense or settlement of such claim or litigation resulting in the defense or settlement of such claim or litigation resulting therefrom, including the retention of counsel satisfactory to the Indemnified Party, and holding the Indemnified Party harmless from and against any and all damage resulting from, arising out of, or incurred with respect to any settlement

approved by the Indemnifying Party or any judgment in connection with such claim or litigation resulting therefrom. The Indemnifying Party shall not, in the defense of such claim or litigation, consent to the entry of any judgment (other than a judgment of dismissal on the merits with costs) except with the written consent of the Indemnified Party nor enter into any settlement (except with the written consent of the Indemnified Party) which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party a release from all liability in respect to such claim or litigation.

- (c) If the Indemnifying Party shall not assume the defense of any such claim by a third party or litigation resulting therefrom, the Indemnified Party may defend against such claim or litigation in such manner as it deems appropriate. The Indemnifying Party shall, in accordance with the provisions hereof, promptly reimburse the Indemnified Party for the amount of any settlement reasonably entered into by the Indemnified Party and for all damage incurred by the Indemnified Party in connection with the defense against or settlement of such claim or litigation.

10.4 Remedies Cumulative. The remedies provided herein shall be cumulative and shall not preclude ProMedCo and ProMedCo-Harrisburg from asserting any other rights or seeking any other remedies against HealthAmerica

to which ProMedCo and ProMedCo-Harrisburg are entitled by law. Notwithstanding the foregoing, neither party shall have any liability under this Article 10 in excess of the Consideration hereunder except for cases of fraud or other intentional misconduct and neither party shall assert any claims for matters involving less than \$5,000 in the aggregate.

## ARTICLE 11 MISCELLANEOUS

11.1 Expenses. All expenses of the preparation of this Agreement and of the transactions contemplated hereby, including, without limitation, counsel fees, accounting fees, investment adviser's fees and disbursements, shall be borne by the respective parties incurring such expense, whether or not such transactions are consummated.

### 11.2 Employee Transition.

- (a) Termination of Affected Employees. Effective at the Closing Date, HealthAmerica shall terminate all Affected Employees who shall be given the option of becoming employees of ProMedCo-Harrisburg on terms comparable to those in effect immediately prior to the Closing. "Affected Employees" shall mean non-medical employees of HealthAmerica on the Closing Date.
- (b) Insurance and Benefit Plans. HealthAmerica shall use its best efforts to satisfy, or cause its insurance carriers to satisfy, all claims for medical, health and hospital benefits, whether insured or otherwise (including, but not limited to, workers compensation, life insurance, medical and disability programs), under

HealthAmerica's employee benefit plans brought by, or in respect of, Affected Employees and former employees of the HealthAmerica prior to the Closing Date, in accordance with the terms and conditions of such employee benefit plans or applicable workers compensation statutes without interruption as a result of the employment by ProMedCo-Harrisburg of any such employees after the Closing Date.

- (c) Payroll and Payroll Taxes. HealthAmerica shall make a clean cut-off of payroll and payroll tax reporting with respect to the Affected Employees paying over to the federal, state and city governments those amounts respectively withheld or required to be withheld for periods ending prior to the Closing Date. HealthAmerica shall issue, by the date prescribed by IRS Regulations, Forms W-2 for wages paid to the Closing Date. ProMedCo-Harrisburg shall be responsible for all payroll

and payroll tax obligations accruing on and after the Closing Date for Affected Employees.

- (d) Termination Benefits. HealthAmerica shall be solely responsible for, and shall pay or cause to be paid, severance payments and other termination benefits, if any (not including state unemployment compensation), to Affected Employees who may become entitled to such benefits by reason of any events. If any action on the part of HealthAmerica prior to the Closing or the purchase by ProMedCo-Harrisburg of the Assets of HealthAmerica pursuant to this Agreement or the transactions contemplated hereby, shall result in any liability or claim of liability for severance payments or termination benefits, or any liability, forfeiture, fine or other obligation by virtue of any state, federal or local law, such liability or claim of liability shall be the sole responsibility of HealthAmerica, and HealthAmerica shall indemnify and hold harmless ProMedCo-Harrisburg for any losses resulting directly or indirectly from such liability or claim. ProMedCo-Harrisburg shall be solely responsible for and shall pay or cause to be paid severance payments and other termination benefits, if any, to Affected Employees who may become entitled to such benefits by reason of events occurring after Closing. If any action on the part of ProMedCo-Harrisburg after Closing shall result in any liability or claim of liability for severance payments or termination benefits, or any liability, forfeiture, fine or other obligation by virtue of any state, federal or local law, such liability or claim of liability shall be the sole responsibility of ProMedCo-Harrisburg, and ProMedCo-Harrisburg shall indemnify and hold harmless HealthAmerica for any losses resulting directly or indirectly from such liability or claim.
- (e) Employee Benefit Plans. At Closing, neither ProMedCo nor ProMedCo-Harrisburg shall assume any responsibility under any employee benefit plans maintained by HealthAmerica.

11.3 Occasional Sale. HealthAmerica, ProMedCo and ProMedCo-Harrisburg believe that the transaction contemplated by this Agreement constitute the sale of an entire operating unit or a separate division or a separate identifiable segment of a division in accordance with the Pennsylvania Tax Code, and, therefore, the sale of any and all items of tangible personal property to ProMedCo-Harrisburg pursuant to this Agreement is exempt from any and all state and local sales and use tax. In the event the transactions contemplated by this Agreement do not qualify for such exemption or other applicable exemption and the Commonwealth of Pennsylvania seeks to collect sale or use tax under the Pennsylvania Tax Code, ProMedCo-Harrisburg shall be liable and responsible for any such tax. HealthAmerica shall cooperate with ProMedCo-Harrisburg in connection with any audit of this transaction regarding the application of the

sales tax law thereto.

#### 11.4 Non-Assignable Property Interests.

- (a) To the extent that any lease, contract, permit or other property interest which would otherwise constitute a part of the Assets is not capable of being assigned, transferred or subleased or if such assignment, transfer or sublease or attempted assignment, transfer or sublease would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, neither this Agreement nor the Closing shall constitute an assignment, transfer or sublease thereof, or an attempted assignment, transfer or sublease thereof.
- (b) To the extent that any lease, contract, permit or other property interest constituting a part of the Assets is not capable of being assigned, transferred or subleased, from and after the Closing Date, and to the extent reasonably possible, HealthAmerica shall make all benefits of such non-assignable interests available to ProMedCo-Harrisburg at no charge, cost or expense to ProMedCo-Harrisburg.

11.5 Cooperation by ProMedCo and ProMedCo-Harrisburg. In the event HealthAmerica is required to defend against any action, suit or proceeding arising out of a claim pertaining to the business or operations of HealthAmerica, ProMedCo and ProMedCo-Harrisburg shall provide such assistance and cooperation, including, without limitation, witnesses and documentary or other evidence as may reasonably be requested by HealthAmerica in connection with its defense.

11.6 Cooperation by HealthAmerica. In the event ProMedCo or ProMedCo-Harrisburg is required to defend against any action, suit or proceeding arising out of a claim pertaining to a liability assumed by ProMedCo-Harrisburg pursuant to this Agreement relating to the business or operations of HealthAmerica, HealthAmerica shall provide such assistance and cooperation, including without limitation, witnesses and documentary or other evidence, as may reasonably be requested by ProMedCo-Harrisburg in connection with its defense.

11.7 Notices. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or mailed by certified mail or registered mail (postage prepaid) or sent

by reputable overnight courier service (charges prepaid):

To HealthAmerica: HealthAmerica Pennsylvania, Inc.  
5 Gateway Center  
60 Blvd. Of the Allies  
Pittsburgh, PA 15222  
Attention: President

with a copy to: Bob F. Thompson, Esq.  
Bass, Berry & Simms, PLC  
2700 First American Center  
Nashville, TN 37828-2700

To ProMedCo and  
ProMedCo-Harrisburg: ProMedCo Management Company  
801 Cherry Street  
Suite 1450  
Fort Worth, TX 76102  
Attention: Chief Executive Officer

with a copy to John E. Gillmor  
Boult, Cummings, Connors & Berry  
PLC 414 Union Street, Suite 1600  
Nashville, TN 38219

or to such other address as either HealthAmerica or ProMedCo may designate by notice to the other.

11.8 Entire Agreement. This Agreement and the Appendices, Exhibits, schedules and documents delivered pursuant hereto constitute the entire contract between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties to be bound thereby.

11.9 Alternative Dispute Resolution. Any dispute, disagreement, claim or controversy arising out of or related to this Agreement (a "Disputed Matter") may, at the option of either party hereto upon written notice to the other party, be submitted to non-binding mediation before a mutually acceptable neutral advisor. To the extent the neutral advisor is compensated, the parties shall each bear half the cost. Any Disputed Matter that is not resolved through

mediation will be settled by binding arbitration in accordance with the rules of commercial arbitration of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall occur within Dauphin County, Pennsylvania, unless the parties mutually agree to have such proceedings in some other locale. The arbitrator(s) may in any such proceeding award attorneys' fees and costs to the prevailing party.

11.10 Governing Law. THE VALIDITY AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE COMMONWEALTH OF PENNSYLVANIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE COMMONWEALTH OF PENNSYLVANIA. IN FURTHERANCE OF THE FOREGOING, THE INTERNAL LAW OF THE COMMONWEALTH OF PENNSYLVANIA SHALL CONTROL THE INTERPRETATION AND CONSTRUCTION OF THIS AGREEMENT, EVEN THOUGH UNDER THAT JURISDICTION'S CHOICE OF LAW OR CONFLICT OF LAW ANALYSIS, THE SUBSTANTIVE LAW OF SOME OTHER JURISDICTION WOULD ORDINARILY APPLY.

11.11 Time. Time is of the essence for purposes of each and every provision of this Agreement.

11.12 Section Headings. The Section headings are for reference only and shall not limit or control the meaning of any provision of this Agreement.

11.13 Waiver. No delay or omission on the part of any party hereto in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

11.14 Nature and Survival of Representations. All statements contained in any certificate delivered by or on behalf of any of the parties to this Agreement pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties made by the respective parties hereunder. No representations or warranties made by the parties shall survive the Closing by more than 12 months, except for the following representations and warranties of ProMedCo and ProMedCo-Harrisburg, on the one hand, and HealthAmerica, on the other hand: the representations and warranties set forth in ss.ss. 3.6, 3.15, 3.17, 3.19, 3.20, and 3.22 shall survive the Closing for the applicable period of limitations for the commencement of actions.

11.15 Exhibits. All Exhibits, Appendices, schedules and documents referred to in or attached to this Agreement are integral parts of this

Agreement as if fully set forth herein and all statements appearing therein shall be deemed to be representations. All items disclosed hereunder shall be deemed disclosed only in connection with the specific representation to which they are explicitly referenced.

11.16 Assignment. Neither party shall assign this Agreement without first obtaining the written consent of the other party (which consent may require the assignee to sign an instrument reasonably satisfactory to the consenting party formally assuming the obligations of the assigning party), except ProMedCo and ProMedCo-Harrisburg shall have the right to assign this Agreement to an Affiliate or any institutional lender providing financing to ProMedCo and its subsidiaries.

11.17 Binding on Successors and Assigns. Subject to ss.11.16, this Agreement shall inure to the benefit of and bind the respective heirs, administrators, successors and assigns of the parties hereto. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any, person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, it being the intention of the parties to this Agreement that this Agreement shall be for the sole and exclusive benefit of such parties or such successors and assigns and not for the benefit of any other person.

11.18 Parties in Interest. Nothing in this Agreement is intended to confer any right on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

11.19 Amendments. This Agreement may be amended, but only in writing, signed by the parties hereto, at any time prior to the Closing.

11.20 Drafting Party. The provisions of this Agreement, and the documents and instruments referred to herein, have been examined, negotiated, drafted and revised by counsel for each party hereto and no implication shall be drawn nor made against any party hereto by virtue of the drafting of this Agreement.

11.21 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument.

11.22 Reproduction of Documents. This Agreement and all documents



relating thereto, including without limitation, consents, waivers and modifications which may hereafter be executed, the Exhibits and documents delivered at the Closing, and financial statements, certificates and other information previously or hereafter furnished to either party to the other be reproduced by either party by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and such party may destroy any original documents so reproduced. Both parties agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by the other party in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

11.23 Access to Records After Closing. HealthAmerica will, and will cause its counsel and certified public accountants to, afford to the representatives of ProMedCo and ProMedCo-Harrisburg, including their counsel and accountants, reasonable access to, and copies of, any records pertaining to the business of the Clinic Facilities not transferred to ProMedCo-Harrisburg, including, but not limited to, audit and tax work papers. ProMedCo and ProMedCo-Harrisburg will afford to the representatives of HealthAmerica reasonable access to, and copies of, the records transferred to ProMedCo-Harrisburg at the Closing during normal business hours after the Closing Date. Copies furnished to the party gaining such access shall be furnished at the cost of the recipient.

11.24 Disclosure of Certain Information. HealthAmerica grants ProMedCo authorization to disclose aggregate financial history and financial and other information about HealthAmerica and about the Clinic Facility in order for ProMedCo to comply with disclosure requirements in connection with the sale and registration of its securities, and also to lenders, investment bankers and other officials as deemed necessary by ProMedCo. ProMedCo shall use its best efforts to maintain the confidentiality of such information through filing of documents in redacted format if feasible, and, when practicable, shall give HealthAmerica advance notice of any public filings of such information.

11.25 Press Releases. Except as required by law, HealthAmerica shall not make any press releases or other public announcements relating to this Agreement or the transactions contemplated hereby without the prior written consent of ProMedCo-Harrisburg.

11.26 Waiver of Conflict. ProMedCo and HealthAmerica acknowledge that the law firm of Boulton, Cummings, Conners & Berry, PLC acted as counsel for Coventry Corporation, the parent of HealthAmerica, at one time, and HealthAmerica represents to ProMedCo that Boulton, Cummings, Conners & Berry, PLC no longer acts in such capacity. Both parties hereby waive any claim they may have that Boulton, Cummings, Conners & Berry, PLC may have a conflict of interest in representing ProMedCo in the

transactions contemplated by this Agreement, and HealthAmerica hereby consents to their so doing.

11.27 ProMedCo Guaranty. ProMedCo hereby guarantees the performance by ProMedCo-Harrisburg of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

PROMEDCO MANAGEMENT COMPANY

By  
Its Senior Vice-President  
Name Dale K. Edwards

PHB MANAGEMENT COMPANY, INC.

By  
Its Vice President  
Name Dale K. Edwards

HEALTHAMERICA PENNSYLVANIA, INC.

By  
Its Vice President & CEO  
Name Jan H. Hodges

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SERVICE AGREEMENT

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P.B. MANAGEMENT COMPANY, INC.

AND

BEACON MEDICAL GROUP, P.C.

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Effective October 1, 1997

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SERVICE AGREEMENT

Service Agreement ("Agreement") dated October 1, 1997, between PHB Management Company, Inc., a Pennsylvania corporation ("ProMedCo-Harrisburg") and Beacon Medical Group, P.C. a Pennsylvania professional corporation ("BEACON").

RECITALS:

Subject to the terms and conditions hereof, BEACON desires to engage ProMedCoHarrisburg to provide to BEACON management services, facilities, personnel, equipment and supplies necessary to operate the Clinic (as defined herein) and ProMedCo-Harrisburg desires to accept such engagement.

The parties agree as follows:

1. RESPONSIBILITIES OF THE PARTIES

1.1 General Responsibilities of the Parties. ProMedCo-Harrisburg shall

provide BEACON with offices, facilities, equipment, supplies, non-professional support personnel, and management and financial advisory services. ProMedCo-Harrisburg shall neither exercise control over nor interfere with the physician-patient relationship, which shall be maintained strictly between the physicians of BEACON and their patients.

1.2 BEACON's Matters. BEACON shall maintain sole discretion and authority over the financial matters relative to its corporate existence. It shall set compensation levels for BEACON Employees. BEACON will also be responsible for all other matters pertaining to the operation of BEACON not otherwise assumed by ProMedCo-Harrisburg under the terms of this Agreement.

1.3 Patient Referrals. The parties agree that the benefits to BEACON do not require, are not payment for, and are not in any way contingent upon the admission, referral or any other arrangement for the provision of any item or service offered by ProMedCo-Harrisburg to any of BEACON's patients in any facility or laboratory controlled, managed or operated by ProMedCo-Harrisburg.

## 2. POLICY COUNCIL

2.1 Formation and Operation of the Policy Council. A Policy Council will be established which shall be responsible for the major policies which will serve as the basis for operations of the Clinic. The Policy Council shall consist of six members. ProMedCo-Harrisburg shall designate, at its sole discretion, three members of the Policy Council. Members of the Policy Council shall be entitled to attend and vote by proxy at any meetings of the Policy Council so long as at least one such representative is present in person and the most senior member of the group of designees of Pro MedCo-Harrisburg shall be deemed to hold the proxy of any designee of ProMedCo-Harrisburg who is absent from the meeting. BEACON at its sole discretion shall designate three members. Except as may otherwise be provided, the act of a majority of the members of the Policy Council shall be the act of the Policy Council.

2.2 Duties and Responsibilities of the Policy Council. During the term of this Agreement, the Policy Council shall have the following duties and responsibilities.

- (a) Annual Budgets. All annual capital and operating budgets prepared by ProMedCo-Harrisburg, as set forth in Section 3 and employing ProMedCo-Harrisburg's financial expertise, shall be subject to the review and approval of the Policy Council, provided; however, ProMedCo-Harrisburg shall have final approval of any capital expenditure required by BEACON.
- (b) Administrator. The selection and retention of the Administrator pursuant to Section 3.1 shall be subject to the reasonable approval of the Policy Council. If BEACON is dissatisfied with the services provided by the Administrator, BEACON shall refer the matter to the Policy Council. ProMedCo-Harrisburg and Policy Council shall in good faith determine whether the performance of the Administrator could be brought to acceptable levels through counsel and assistance, or

whether the Administrator should be terminated. ProMedCo-Harrisburg shall have the ultimate authority to terminate the Administrator.

- (c) Advertising. All advertising, marketing, and public relations shall be subject to the prior review and approval of the Policy Council, in compliance with applicable laws and regulations governing professional advertising and in accordance with the standards and medical ethics of the American Medical Association and the Pennsylvania Medical Society.
- (d) Ancillary Services. The Policy Council shall approve Clinic provided ancillary services based upon the pricing, access to and quality of such services.
- (e) Capital Improvements and Expansion. The Policy Council shall determine the priority for any renovation, expansion plans and major equipment expenditures with respect to the Clinic based upon economic feasibility, physician support, productivity and market conditions. Any capital expenditure in excess of \$10,000 shall require the approval of the Policy Council, however, ProMedCo-Harrisburg shall have final approval over any capital expenditures.

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- (f) Exceptions to Inclusion in the Net Revenue Calculation. The exclusion of any revenue from Net Clinic Revenues, whether now or in the future, shall be subject to the approval of the Policy Council.
- (g) Grievance Issues. Subject to the provisions of Section 1.2 of this Agreement, the Policy Council shall consider and make final decisions regarding grievances pertaining to matters not specifically addressed in this Agreement as referred to it by BEACON's Board or ProMedCo-Harrisburg.
- (h) Patient Fees. In consultation with BEACON and ProMedCo-Harrisburg, the Policy Council shall review and adopt the fee schedule for all physician and ancillary services rendered by the Clinic.
- (i) Physician Hiring. The Policy Council, with information and



analysis provided by ProMedCo-Harrisburg, shall determine the number and type of physicians required for the efficient operation of the Clinic and BEACON shall determine the individual physicians to be hired to fill such positions. The approval of ProMedCo-Harrisburg shall be required for any variations to the restrictive covenants in any physician employment contract.

(j) Provider and Payor Relationships. The Policy Council shall make the decisions regarding the establishment and maintenance of relationships with institutional health care providers and payors. The Policy Council shall be responsible for approving the allocation of capitation risk pools between the professional and institutional components of these pools to the extent applicable under a payor agreement. ProMedCo-Harrisburg and BEACON shall use actuarial data from a nationally recognized actuarial firm as agreed to by both parties, for the purposes of allocating capitation funds, for those professional services provided directly by BEACON.

(k) Strategic Planning. The Policy Council, with the assistance of ProMedCoHarrisburg, shall develop long-term strategic planning objectives.

### 3. OBLIGATIONS OF PROMEDCO-HARRISBURG

During the term of this Agreement, ProMedCo-Harrisburg shall provide or arrange for the services set forth in this Section 3, the cost of all of which shall be

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included in Clinic Expenses. ProMedCo-Harrisburg is hereby expressly authorized to perform its services in whatever manner it deems reasonably appropriate, in accordance with policies approved by the Policy Council, and including without limitation, performance of some functions at locations other than the Clinic Facility. BEACON will not act in a manner which would prevent ProMedCo-Harrisburg from efficiently managing the Clinic Facility operations in a businesslike manner. BEACON, through BEACON Employees, will provide all medical services. ProMedCo-Harrisburg will have no authority, directly or indirectly, to perform, and will not perform, any medical function. ProMedCo-Harrisburg may, however, advise BEACON as to the relationship between its performance of medical functions and the overall administrative and business functioning of the Clinic.

3.1 Management and Administration. During the term of this Agreement, BEACON hereby appoints ProMedCo-Harrisburg as the sole and exclusive manager and

administrator of all non-medical functions and services related to BEACON's services at the Clinic. BEACON, through BEACON Employees, shall perform all medical services, and ProMedCo-Harrisburg shall have no authority, directly or indirectly, to perform, and will not perform, any medical function. Without limiting the generality of the foregoing, ProMedCo-Harrisburg shall provide the following administrative, management and marketing services as may be required in conjunction with BEACON's services at the Clinic. ProMedCo-Harrisburg shall hire and supervise an Administrator, subject to the reasonable approval of the Policy Council, to manage and administer all of the day-today business functions of ProMedCo-Harrisburg, including without limitation:

3.1.1 Annual Budgets. Financial planning and preparation of annual budgets. Annually and at least 30 days prior to the commencement of each fiscal year, ProMedCoHarrisburg shall prepare and deliver to BEACON capital and operating budgets reflecting in reasonable detail anticipated revenues and expenses, sources and uses of capital to maintain and enhance BEACON's medical practice and Clinic services.

3.1.2 Financial Statements. ProMedCo-Harrisburg shall prepare monthly and fiscal year unaudited financial statements containing a balance sheet and a statement of income for Clinic operations, which shall be delivered to BEACON within thirty (30) days after the close of each calendar month. The fiscal year statement may be examined by a certified public accountant as selected by ProMedCo-Harrisburg in connection with the audit of the financial statements of ProMedCo. If BEACON desires an audit in addition to the audit provided by ProMedCo-Harrisburg, such an audit would be at BEACON's expense.

3.1.3 Non-Physician Personnel. ProMedCo-Harrisburg will provide all non physician personnel reasonably necessary for the conduct of Clinic operations with the

exception of Physician Extenders and Technical Employees. ProMedCo-Harrisburg shall determine and cause to be paid the salaries, fringe benefits and any sums withheld for income taxes, unemployment insurance, social security taxes required to be withheld or any other withholding amounts required by applicable law or governmental authority, of all such personnel. Such personnel shall be under the direction, supervision and control of ProMedCo-Harrisburg, with those personnel performing patient care services subject to the professional supervision of BEACON. If BEACON is dissatisfied with the services of any person, BEACON shall consult with ProMedCo-Harrisburg. ProMedCo-Harrisburg shall in good faith determine whether the performance of that employee could be brought to acceptable levels through counsel and assistance, or whether such

employee should be terminated. All of ProMedCo-Harrisburg's obligations regarding staff shall be governed by the overriding principle and goal of supporting BEACON in providing high quality medical care. At ProMedCo-Harrisburg's option some or all of the non-physician personnel may be carried on the books of BEACON as BEACON's employees in which event BEACON's costs associated with such employees will be a Clinic Expense.

3.1.4 Quality Assurance. ProMedCo-Harrisburg will assist BEACON in fulfilling its obligation to its patients to maintain high quality medical and professional services, including patient satisfaction programs, employee education, outcomes analysis, clinical protocol development and to implement a risk management program.

3.1.5 Facilities and Equipment. ProMedCo-Harrisburg will ensure the proper cleanliness of the premises, maintenance and cleanliness of the equipment, furniture and furnishings located on the premises.

3.1.6 Inventory Control and Purchasing Supplies. ProMedCo-Harrisburg shall order and purchase inventory and supplies, and such other ordinary, necessary or appropriate materials which ProMedCo-Harrisburg shall deem to be necessary in the operation of the Clinic, to deliver quality Clinic services in a cost effective manner.

3.1.7 Managed Care Contracting. ProMedCo-Harrisburg will be responsible for marketing, negotiation, and administering all managed care contracts, subject to the provisions of Section 2.20); provided, however, except with respect to the existing relationship with AllianceHealth NetSource, Inc., no contract or arrangement regarding the provision of clinical services shall be entered into without BEACON's consent. The parties agree that in the event the Policy Council determines to pursue the formation of an IPA, other physician organization or hospital network, or enter into risk assumption contractual arrangements, the parties will structure the IPA, hospital network or such arrangements in the manner in which the Policy Council determines unless otherwise specifically addressed in this Agreement. The IPA or hospital

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network will be managed by ProMedCo-Harrisburg or an affiliate of ProMedCo-Harrisburg. In the event a management agreement is entered into for the management of an IPA or hospital network, the management agreement will provide for a management fee to be paid to the management organization by the IPA. Such management fee shall be approved by the Policy Council and set at a level to cover the costs of the management agreement.

3.1.8 Billing and Collections. ProMedCo-Harrisburg shall bill patients and collect all fees for services performed inside or outside the Clinic Facility or arrange for such billing and collection. BEACON hereby appoints

ProMedCo-Harrisburg, for the term hereof, to be its true and lawful Attorney-in-fact for the following purposes (i) to bill patients in BEACON's name and on its behalf, (ii) to collect accounts receivable resulting from such billing in BEACON's name and on its behalf, (iii) to receive payments from Blue Cross and Blue Shield, Medicare, Medicaid, payments from health plans, and all other third party payors; (iv) to receive the cash proceeds of any accounts receivable; (v) to take possession of and endorse in the name of BEACON (and/or in the name of an individual physician, such payment intended for purpose of payment of a physician's bill) any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable; and (vi) in accordance with policies adopted by the Policy Council, to initiate legal proceedings in the name of BEACON to collect any accounts and monies owed to the Clinic, to enforce the rights of BEACON or BEACON Employees as creditor under any contract or in connection with the rendering of any service, and to contest adjustments and denials governmental agencies (or its fiscal intermediaries) as third-party payors. All adjustments made for uncollectible accounts, professional courtesies and other activities that do not generate a collectible fee shall be done in a reasonable and consistent manner acceptable to ProMedCo-Harrisburg's independent certified public accountants.

3.1.9 Deposit of Net Clinic Revenues. During the term of this Agreement, all Net Clinic Revenues collected resulting from the operations of the Clinic shall be deposited directly into a bank account of which BEACON shall be the owner ("Account"). ProMedCo-Harrisburg and BEACON shall maintain their accounting records in such a way as to clearly segregate Net Clinic Revenues from other funds of ProMedCo-Harrisburg or BEACON. BEACON hereby appoints ProMedCo-Harrisburg as its true and lawful attorney-in-fact to deposit in the Account all revenues collected. BEACON covenants, and shall cause all BEACON Employees to covenant, to forward any payments received with respect to Net Clinic Revenues for services provided by BEACON and BEACON Employees to ProMedCo-Harrisburg for deposit. ProMedCo-Harrisburg shall have the right to withdraw funds from the Account and all owners of the Account shall execute a revocable standing transfer order ("Transfer Order") under which the bank maintaining the Account shall periodically transfer the entire balance of the Account to a separate bank account owned solely by ProMedCo-Harrisburg ("ProMedCo-Harrisburg Account"). BEACON and ProMedCo-Harrisburg hereby agree

to execute from time to time such documents and instructions as shall be required by the bank maintaining the Account and mutually agreed upon to effectuate the foregoing provisions and to extend or amend such documents and instructions. Any action by BEACON that interferes with the operation of this Section, including, but not limited to, any failure to deposit or have

ProMedCo-Harrisburg deposit any Net Clinic Revenues into the Account, any withdrawal of any funds from the Account not authorized by the express terms of this Agreement, or any revocation of or attempt to revoke the Transfer Order (otherwise than upon expiration or termination of this Agreement), will constitute a breach of this Agreement and will entitle ProMedCo-Harrisburg, in addition to any other remedies that it may have at law or in equity, to seek a court ordered assignment of the following rights:

- (a) To collect accounts receivable resulting from the provision of services to patients of BEACON and the BEACON Employees;
- (b) To receive payments from patients, third party payor plans, insurance companies, Medicare, Medicaid and all other payors with respect to services rendered by BEACON and its BEACON Employees;
- (c) To take possession of and endorse any notes, checks, money orders, insurance payments and any other instruments received as payment of such accounts receivable; and
- (d) To collect all revenues of the Clinic.

3.1.10 Management Information Systems/Computer Systems. ProMedCo-Harrisburg shall supervise and provide information systems that are necessary and appropriate for the operation of the Clinic.

3.1.11 Legal and Accounting Services. ProMedCo-Harrisburg shall arrange for or render to BEACON such business and financial management consultation and advice as may be reasonably required or requested by BEACON and directly related to the operations of the Clinic, including the attorneys' fees and other costs of enforcing any physician contract containing restrictive covenants and attorneys' fees and other costs and expenses of litigation, arbitration or other proceeding for malpractice suits against the Clinic and the BEACON Employees other than the Physician Shareholders to the extent such fees, costs and expenses are not covered by insurance; provided, such services must be approved in advance by the Administrator and shall be paid by BEACON and treated as a Clinic Expense. ProMedCo-Harrisburg shall not be responsible for rendering any legal or tax advice or

services or personal financial services to BEACON or any employee or agent of BEACON.

3.1.12 Negotiation and Payment of Premiums For All Insurance Products Held By BEACON. ProMedCo-Harrisburg shall negotiate for and cause premiums to be paid with respect to the insurance provided for in Section 8. Premiums and deductibles with respect to such policies shall be a Clinic Expense.

3.1.13 Physician Recruiting. ProMedCo-Harrisburg shall assist BEACON in recruiting additional physicians, carrying out such administrative functions as may be appropriate such as advertising for and identifying potential candidates, checking credentials, and arranging interviews; provided, however, BEACON shall interview and make the ultimate decision as to the suitability of any physician to become associated with the Clinic. All physicians recruited by ProMedCo-Harrisburg and accepted by BEACON shall be the sole employees of BEACON to the extent such physicians are hired as employees. Any expenses incurred in the recruitment of physicians, including, but not limited to, employment agency fees, relocation and interviewing expenses shall be Clinic Expenses approved by the Policy Council.

3.1.14 Supervision of Ancillary Services. ProMedCo-Harrisburg shall operate and supervise such ancillary services as approved by the Policy Council.

3.1.15 Strategic Planning Assistance. ProMedCo-Harrisburg shall assist with and implement the strategic plan as approved by the Policy Council.

3.1.16 Advertising and Public Relations. From time to time ProMedCo-Harrisburg shall recommend to the Policy Council various advertising and public relations initiatives which shall not be implemented without Policy Council approval.

3.1.17 Files and Records. ProMedCo-Harrisburg shall supervise and maintain custody of all files and records relating to the operation of the Clinic, including but not limited to accounting, billing, patient medical records, and collection records. Patient medical records shall at all times be and remain the property of BEACON and shall be located at Clinic facilities so that they are readily accessible for patient care. The management of all files and records shall comply with applicable state and federal statutes. ProMedCo-Harrisburg shall use its reasonable efforts to preserve the confidentiality of patients' medical records and use information contained in such records only for the limited purpose necessary to perform the services set forth herein, provided, however, in no event shall a breach of said confidentiality be deemed a default under this Agreement unless such breach of confidentiality is determined to have resulted from intentional or willful misconduct or gross negligence of ProMedCo-Harrisburg. All medical records pertaining to BEACON patients obtained by ProMedCo-Harrisburg pursuant to the Asset Purchase Agreement shall be transferred to BEACON on the Effective Date of this Agreement.

3.2 Administrator. ProMedCo-Harrisburg shall be responsible for the selection and retention of the Administrator, subject to the provisions of Section 2.2(b).

3.3 Expansion of Clinic. ProMedCo-Harrisburg will pursue various programs to increase revenue and profitability including assisting BEACON in adding additional office based procedures, ancillary services and adding additional satellite office(s) as determined by the Policy Council to be beneficial to the Clinic. ProMedCo-Harrisburg will also assist in recruiting new

physicians and developing relationships and affiliations with other physicians, hospitals, networks, HMOs, etc. To assist in the continued growth and development of the Clinic, ProMedCo-Harrisburg may acquire other physician practices. BEACON will cooperate with ProMedCo-Harrisburg in such expansion efforts and use its reasonable efforts to assist ProMedCo-Harrisburg with respect thereto. Without limiting the generality of the foregoing, BEACON will not enter into any agreements with respect to any such matter referred to in this Section 3.3 without the prior consent of ProMedCo-Harrisburg.

3.4 Events Excusing Performance. ProMedCo-Harrisburg shall not be liable to BEACON for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies, or other events over which ProMedCo-Harrisburg has no control for so long as such events continue, and for a reasonable amount of time thereafter.

3.5 Compliance With Applicable Laws. ProMedCo-Harrisburg shall comply with all applicable federal, state and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.

#### 4. OBLIGATIONS OF BEACON

4.1 Professional Services. BEACON shall provide professional services to patients in compliance at all times with ethical standards, laws and regulations applying to the medical profession. BEACON shall also ensure that each physician associated with BEACON is licensed by the Commonwealth of Pennsylvania. In the event that any disciplinary actions or medical malpractice actions are initiated against any such physician, BEACON shall immediately inform the Administrator of such action and the underlying facts and circumstances. BEACON shall carry out a program to monitor the quality of medical care practiced, with ProMedCo-Harrisburg's assistance. BEACON will cooperate with ProMedCo-Harrisburg in taking steps to

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resolve any utilization review or quality assurance issues which may arise in connection with the Clinic.

4.2 Employment Of Physician Employees. BEACON shall have complete control of and responsibility for the hiring, compensation, supervision, evaluation and termination of its Physician Shareholders and Physician Employees, although at the request of BEACON, ProMedCo-Harrisburg shall consult with BEACON regarding such matters. BEACON shall enforce formal employee agreements from each of its Physician Shareholders and Physician Employees, hired or contracted, substantially in the form attached to the Asset Purchase

4.3 BEACON Expenses. BEACON shall be solely responsible for the payment of all costs and expenses incurred in connection with BEACON operations which are not Clinic Expenses, including, but not limited to, accounting and other professional services fees, salaries and benefits, retirement plan contributions, health, disability and life insurance premiums (other than premiums relating to Split Dollar Agreements between ProMedCo-Harrisburg and certain Medical Professionals which shall be borne by ProMedCo-Harrisburg), payroll taxes, membership in professional associations, continuing medical education, and licensing and board certification fees for its Physician Employees and Physician Extenders.

4.4 Medical Practice. BEACON shall use and occupy the Clinic Facility exclusively for the practice of medicine, and shall comply with all applicable local rules, ordinances and all applicable and required standards of medical care. It is expressly acknowledged by the parties that the medical practice or practices conducted at the Clinic Facility shall be conducted solely by physicians associated with BEACON, and no other physician or medical practitioner shall be permitted to use or occupy the Clinic Facility without the prior written consent of the Policy Council.

4.5 Professional Insurance Eligibility. BEACON shall cooperate in the obtaining and retaining of professional liability insurance by assuring that its Physician Shareholders and Physician Employees are insurable, and participating in an ongoing risk management program.

4.6 Employment Of Non-Physician Employees. There will be certain Technical Employees that perform technical functions for BEACON. These Technical Employees will remain in the employ of BEACON. As provided in Section 3.1.3, ProMedCo-Harrisburg will provide payroll and administrative services for such Technical Employees which shall be a Clinic Expense.

4.7 Events Excusing Performance. BEACON shall not be liable to ProMedCo-Harrisburg for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies, or other events

over which BEACON has no control for so long as such events continue, and for a reasonable amount of time thereafter.

4.8 Compliance With Applicable Laws. BEACON shall comply with all applicable federal, state and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.



4.9 BEACON Employee Benefit Plans.

- (a) As of the Effective Date of this Agreement, BEACON has in effect no employee welfare benefit plans (as such term is defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and no employee pension benefit plans (as such term is defined in Section 3(2) of ERISA).
- (b) BEACON shall not enter into any new "employee benefit plan" (as defined in Section 3(3) of ERISA) without the express written consent of ProMedCo-Harrisburg. Except as otherwise required by law, BEACON shall not materially amend, freeze, terminate or merge any employee welfare or employee benefit plan without the express written consent of ProMedCo-Harrisburg unless such action is contemplated by the Asset Purchase Agreement. BEACON agrees to make such changes to any employee welfare or employee benefit plan, including the freeze, termination, or merger of such plan, as may be approved by ProMedCo- Harrisburg.
- (c) Expenses incurred in connection with any BEACON Plan or other employee benefit plan maintained by BEACON, including without limitation the compensation of counsel, accountants, corporate trustees and other agents shall be expenses of BEACON.
- (d) The contribution and administration expenses for Medical Professionals shall be an expense of BEACON. ProMedCo-Harrisburg shall make contributions or payments with respect to any BEACON Plan, as a Clinic Expense, on behalf of eligible Technical Employees.
- (e) ProMedCo-Harrisburg shall have the sole and exclusive authority to adopt, amend, or terminate any employee benefit plan for the benefit of its employees. ProMedCo-Harrisburg shall have the sole

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and exclusive authority to appoint the trustee, custodian, and administrator of any such plan.

4.10 Physician Powers of Attorney. BEACON shall require all Medical Professionals to execute and deliver to ProMedCo-Harrisburg powers of attorney, satisfactory in form and substance to ProMedCo-Harrisburg and BEACON, appointing ProMedCo-Harrisburg as attorney-in-fact for each of the purposes set forth in Sections 3.1.8 and 3.1.9, which powers of attorney shall immediately terminate upon termination of this Agreement.

4.11 Spokesperson. BEACON shall serve as spokesperson for ProMedCo-Harrisburg and ProMedCo in Clinic, ProMedCo-Harrisburg and ProMedCo development activities. The parties agree that Dean Leis, M.D. and Samuel Faber, M.D., or such other Physician Shareholder as tile Policy Council shall appoint, shall serve in this capacity on behalf of BEACON.

## 5. RECORDS

5.1 Patient Records. Upon termination of this Agreement, BEACON shall retain all patient medical records maintained by BEACON or ProMedCo-Harrisburg in the name of BEACON. BEACON shall, at its option, be entitled to retain copies of financial and accounting records relating to all services performed by BEACON.

5.2 Other Records. All records relating in any way to the operation of the Clinic which are not the property of BEACON under the provisions of Section 5.1 above, shall at all times be the property of ProMedCo-Harrisburg.

5.3 Access to Records. During the term of this Agreement, and thereafter, BEACON or its designee shall upon 24 hours notice have reasonable access during normal business hours to BEACON's and ProMedCo-Harrisburg's financial records, including, but not limited to, records of collections, expenses and disbursements as kept by ProMedCo-Harrisburg in performing ProMedCo-Harrisburg's obligations under this Agreement, and BEACON may copy any or all such records.

## 6. FACILITIES TO BE PROVIDED BY PROMEDCO-HARRISBURG

6.1 Facilities. ProMedCo-Harrisburg hereby agrees to provide or arrange as a Clinic Expense the offices and facilities for Clinic operations, including but not limited to, the Clinic Facility and all costs of repairs, maintenance and improvements, utility (telephone, electric, gas, water) expenses, normal janitorial services, related real or personal property lease cost payments and expenses, taxes and insurance, refuse disposal and all other costs and expenses reasonably incurred in conducting operations in the Clinic Facility during the term of this Agreement.

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6.2 Use of Facilities. ProMedCo-Harrisburg and BEACON agree that BEACON, as an independent contractor, is a separate organization that retains the authority to direct the medical, professional, and ethical aspects of its medical practice. If a Physician Shareholder or a Physician Employee performs abortion procedures in any facility, ProMedCo-Harrisburg shall not receive any ProMedCo-Harrisburg Distribution from the revenue generated from such procedures.

## 7. FINANCIAL ARRANGEMENTS

7.1 Payments to BEACON and ProMedCo-Harrisburg. BEACON and ProMedCo-Harrisburg agree that the compensation set forth herein is being paid to ProMedCo-Harrisburg in consideration of a substantial commitment made by ProMedCo-Harrisburg hereunder and that such fees are fair and reasonable. As payment for its services rendered to BEACON, each month ProMedCo-Harrisburg shall be paid the amount of all Clinic Expenses and the ProMedCo-Harrisburg Distribution. All Net Clinic Revenues after deduction of Clinic Expenses, and the ProMedCo-Harrisburg Distribution, shall be referred to as the "BEACON Distribution."

7.2 Distribution. The amounts to be paid to ProMedCo-Harrisburg under this Section 7.2 shall be payable monthly. ProMedCo-Harrisburg shall pay to BEACON, in accordance with the provisions of Section 7.4, the BEACON Distribution amounts on or about the 15th day of such following month. Some amounts may need to be estimated, with adjustments made as necessary the following month. Any audit adjustments would be made after completion of the fiscal year audit.

7.3 Clinic Expenses. Commencing on the Effective Date, ProMedCo-Harrisburg shall pay all Clinic Expenses as they fall due (including without limitation those related to any Non-Physician Personnel carried on the books of BEACON at the requirement of ProMedCo-Harrisburg), provided, however, that ProMedCo-Harrisburg may, in the name of and on behalf of BEACON, contest in good faith any claimed Clinic Expenses as to which there is any dispute regarding the nature, existence or validity of such claimed Clinic Expenses. ProMedCo-Harrisburg hereby agrees to indemnify and hold BEACON harmless from and against any liability, loss, damages, claims, causes of action and reasonable expenses of BEACON resulting from the contest of any Clinic Expenses.

7.4 Accounts Receivable. Except for the first month of this Agreement, on approximately the 15th day of each month, ProMedCo-Harrisburg shall purchase the accounts receivable of BEACON arising during the previous month, by payment of cash, or other readily available funds into an account of BEACON. The consideration for the purchase shall be an amount equal to the BEACON Distribution for such

previous month. Although it is the intention of the parties that ProMedCo-Harrisburg purchase and thereby become owner of the accounts receivable of BEACON, in case such purchase shall be ineffective for any reason, BEACON, as

of the Effective Date of this Agreement, grants and shall cause each Medical Professional to grant to ProMedCo-Harrisburg a first priority lien on and security interest in and to any and all interest of BEACON and such Medical Professional in any accounts receivable generated by the medical practice of BEACON and the Medical Professionals Employees or otherwise generated through the operations of the Clinic, and all proceeds with respect thereto, to secure the payment to ProMedCo-Harrisburg of all such accounts receivable, and this Agreement shall be deemed to be a security agreement to the extent necessary to give effect to the foregoing. In addition, BEACON shall cooperate with ProMedCo-Harrisburg and execute and deliver, and cause each Medical Professional to execute and deliver, all necessary documents in connection with the pledge of such accounts receivable to ProMedCo-Harrisburg or at ProMedCo-Harrisburg's option, its lenders. All collections in respect of such accounts receivable shall be deposited in a bank account at a bank designated by ProMedCo-Harrisburg. To the extent BEACON or any Medical Professional comes into possession of any payments in respect of such accounts receivable, BEACON or such Medical Professional shall direct such payments to ProMedCo-Harrisburg for deposit in bank accounts designated by ProMedCo-Harrisburg.

## 8. INSURANCE AND INDEMNITY

8.1 Insurance to be Maintained by ProMedCo-Harrisburg. Throughout the term of this Agreement, ProMedCo-Harrisburg will use reasonable efforts to provide and maintain, as a Clinic Expense, comprehensive professional liability insurance for all physicians and professional employees of ProMedCo-Harrisburg and BEACON with limits of not less than \$1,200,000 per claim and with aggregate policy limits of not less than \$3,600,000 per physician or employee with a separate limit for BEACON. ProMedCo-Harrisburg shall provide such insurance through its national program and will have the right to select the carrier for such insurance with the approval of the Policy Council, which approval shall not be unreasonably withheld. BEACON shall be responsible for all liabilities (including without limitation deductibles and excess liabilities) not paid within the limits of such policies. ProMedCo-Harrisburg shall also provide and maintain, as a Clinic Expense, comprehensive general liability insurance and property insurance covering the Clinic Facility and operations.

8.2 Tail Insurance Coverage. immediately after termination of the employment relationship with any Physician Shareholder or Physician Employee for any reason, BEACON shall purchase tail insurance coverage respecting Employee's professional liability risks during the term of employment.

8.3 Additional Insured. BEACON and ProMedCo-Harrisburg agree to use their reasonable efforts to have each other named as an additional insured on the other's respective professional liability insurance programs at

ProMedCo-Harrisburg's expense.

8.4 Indemnification. BEACON shall indemnify, hold harmless and defend ProMedCoHarrisburg, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), to the extent not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of medical services or any other acts or omissions by BEACON and/or its shareholders, agents, employees and/or subcontractors (other than ProMedCo-Harrisburg) during the term hereof, including any claim against ProMedCo-Harrisburg by a BEACON Employee, which claim arises out of such BEACON Employees' employment relationship with BEACON or as a result of services performed by such BEACON Employee, and which claim would typically be covered by worker's compensation. ProMedCo-Harrisburg shall indemnify, hold harmless and defend BEACON, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), to the extent not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of any intentional acts, negligent acts or omissions by ProMedCo-Harrisburg and/or its shareholders, agents, employees and/or subcontractors (other than BEACON) during the term of this Agreement.

#### 9. RESTRICTIVE COVENANTS AND LIQUIDATED DAMAGES

The parties recognize that the services to be provided by ProMedCo-Harrisburg shall be feasible only if BEACON operates an active medical practice to which the physicians associated with BEACON devote their full time and attention. To that end:

9.1 Restrictive Covenants by BEACON. During the term of this Agreement, except as approved by the Policy Council pursuant to Section 2.2(e) hereof, BEACON shall not establish, operate or provide physician services at any medical office, clinic or other health care facility providing services substantially similar to those provided by BEACON pursuant to this Agreement anywhere within a radius of 15 miles of the Clinic Facility, or within a radius of 15 miles of any current or future medical office, clinic or other health care facility from which BEACON provides medical services.

9.2 Restrictive Covenants By Medical Professionals. BEACON shall obtain and enforce formal employment agreements from each of its future Medical Professionals in substantially the form attached as Appendix 2.9C to the Asset Purchase Agreement pursuant to which each such Medical Professional agrees that

during the term of such Medical Professional's employment agreement, and for a period of two years after any termination of employment with BEACON, such Medical Professional will not establish, operate or provide physician services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by BEACON pursuant to this Agreement within a radius of 15 miles of any medical office, clinic or other health care facility operated by BEACON from which such Medical Professional had provided medical services within 24 months prior to such termination and that ProMedCo-Harrisburg shall have third-party rights to enforce such agreements. BEACON shall also ensure that any of its current Medical Professionals whose employment agreements are extended beyond an initial five year term are subject to the provisions set forth in this paragraph for such extension.

### 9.3 Physician Shareholder and Physician Employee Liquidated Damages.

- (a) Release from Restrictive Covenants. The restrictive covenants described in Section 9.2 of this Agreement will provide that the Medical Professionals (existing Medical Professionals with respect to renewal terms thereof, and future Medical Professionals with respect to the initial and renewal terms thereof) may be released from such restrictive covenants by paying Liquidated Damages in the amount of \$20,000.
  
- (b) Repayment of Consideration in Certain Events. In addition, if a Medical Professional received a \$20,000 payment pursuant to the Beacon Inducement Agreement to terminate his or her employment with HealthArnerica and said Medical Professional terminates his or her employment agreement with BEACON for any reason (other than death or Total Disability as defined in the employment agreement between such Medical Professional and BEACON) prior to the fifth anniversary of the Closing under the Asset Purchase Agreement, or is terminated for cause, as that term is defined in such employment agreement, by BEACON prior to the fifth anniversary of the Closing under the Asset Purchase Agreement, then the Medical Professional shall be required to reimburse back to ProMedCo-Harrisburg such \$20,000. Such payment shall be passed on to ProMedCo-Harrisburg by BEACON simultaneously with the payment thereof by the Medical Professional to BEACON. All payments made to ProMedCo-Harrisburg under this clause (b) shall be first applied to all costs incurred by ProMedCo-Harrisburg in the enforcement of the employment agreement for that departing Medical Professional and in recruiting a replacement Medical Professional for that departing Medical Professional. The remainder, if any, shall become an additional service fee to be paid to ProMedCo-Harrisburg pursuant to Section 7. The accounting treatment of such funds shall be consistently applied and

approved by ProMedCo-Harrisburg's independent certified public accountants and the Policy Council.

9.4 Enforcement. ProMedCo-Harrisburg and BEACON acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Section 9 shall be inadequate, either party shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist by law. All parties hereto also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. If any provision of Section 9 relating to territory or time described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity, restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity, restricted and/or area of restriction deemed to be reasonable and enforceable by the court shall thereafter be the time period, scope of activity, restricted and/or area of restriction applicable to the restrictive covenant provisions in this Section 9. The invalidity or non-enforceability of this Section 9 in any respect shall not affect the validity or enforceability of the remainder of this Section 9 or of any other provisions of this Agreement unless the invalid or non-enforceable provisions materially affect the benefits either party would otherwise be entitled to receive under this Section 9 or any other provision of this Agreement.

9.5 Termination of Restrictive Covenants. Notwithstanding anything to the contrary contained herein, if this Agreement is terminated pursuant to Section 10.2 herein, the required employment agreement restrictive covenant, liquidated damages and enforcement terms and the repayment of consideration term contained in this Section 9 shall be null and void and of no force or effect.

## 10. TERM RENEWAL; TERMINATION

10.1 Term and Renewal. The term of this Agreement shall commence on the Effective Date hereof and shall continue for 40 years, after which it shall automatically renew for five-year terms unless either party provides the other party with at least 12 months but not more than 13 months written notice prior to any renewal date.

10.2 Termination by BEACON. BEACON may terminate this Agreement as follows:

- (i) In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by ProMedCo-Harrisburg, or upon

other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by ProMedCo-Harrisburg, except for the filing of a petition in involuntary bankruptcy against ProMedCo-Harrisburg which is dismissed within 30 days thereafter, BEACON may give notice of the immediate termination of this Agreement.

- (ii) In the event ProMedCo-Harrisburg shall materially default in the performance of any duty or obligation imposed upon it by this Agreement and such default shall continue for a period of 120 days after written notice thereof has been given to ProMedCo-Harrisburg by BEACON; or ProMedCo-Harrisburg shall fail to remit the payments due as provided in Section 7.2 hereof and such failure to remit shall continue for a period of 30 days after written notice thereof, BEACON may terminate this Agreement. Termination of this Agreement pursuant to this Section 10.2(ii) by BEACON shall require the affirmative vote of 75% of the Physician Shareholders.

10.3 Termination by ProMedCo-Harrisburg. ProMedCo-Harrisburg may terminate this Agreement as follows:

- (i) In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by BEACON, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by BEACON, except for the filing of a petition in involuntary bankruptcy against BEACON which is dismissed within 30 days thereafter, ProMedCo-Harrisburg may give notice of the immediate termination of this Agreement.
- (ii) In the event BEACON shall materially default in the performance of any duty or obligation imposed upon it by this Agreement or in the event a majority of the Physicians Shareholders shall materially default in the performance of any duty or obligation imposed upon them by this Agreement or by their employment agreements with BEACON, and such default shall continue for a period of 90 days after written notice thereof has been given to BEACON and such Physician Shareholders by ProMedCo-Harrisburg, ProMedCo-Harrisburg may terminate this Agreement.

10.4 Actions After Termination. In the event that this Agreement shall be terminated, the BEACON Distribution and the ProMedCo-Harrisburg Distribution shall be paid through the effective date of termination. In addition, the various rights and remedies herein granted to the aggrieved party shall be cumulative and in addition to any others such party may be entitled to by law. The exercise of one or more rights



or remedies shall not impair the right of the aggrieved party to exercise any other right or remedy, at law. Upon termination of this Agreement, BEACON shall:

10.4.1 Asset Repurchase. Purchase from ProMedCo-Harrisburg at book value the intangible assets set forth on the Opening Balance Sheet, as adjusted through the last day of the month most recently ended prior to the date of such termination in accordance with GAAP to reflect amortization or depreciation of the intangible assets, which amortization shall be for a period not in excess of 40 years.

10.4.2 Real Estate. Purchase from ProMedCo-Harrisburg all real estate, if any, associated with the Clinic and owned by ProMedCo-Harrisburg at the then book value thereof.

10.4.3 Improvements. Purchase all improvements, additions or leasehold improvements which have been made by ProMedCo-Harrisburg as reflected on ProMedCo-Harrisburg's books as of the last day of this Agreement and which relate solely to the performance of its obligations under this Agreement or the properties subleased by ProMedCo-Harrisburg, if any.

10.4.4 Debts. Assume all ordinary and necessary debt, contracts, payables and leases which are obligations of ProMedCo-Harrisburg and which relate principally to the performance of its obligations under this Agreement or the properties subleased by ProMedCo-Harrisburg, if any.

10.4.5 Equipment; Inventories; Accounts Receivable; etc. Purchase from ProMedCo-Harrisburg at book value as reflected on ProMedCo-Harrisburg's books as of the last day of this Agreement:

- (i) Equipment. All of the equipment acquired by ProMedCo-Harrisburg pursuant to the Asset Purchase Agreement, including all replacements and additions thereto made by ProMedCo-Harrisburg with the approval of the Policy Council pursuant to the performance of its obligations under this Agreement;
- (ii) Inventory. All stock, including inventory and supplies, tangibles and intangibles of ProMedCo-Harrisburg relating to BEACON operations;
- (iii) Accounts Receivable. All uncollected accounts receivable theretofore purchased by ProMedCo-Harrisburg pursuant to Section 7.4 hereof at the book value thereof on ProMedCo-Harrisburg's books; and

- (iv) Other Assets. All other assets of ProMedCo-Harrisburg relating to the operations of BEACON.

10.4.6 Closing of Repurchase. BEACON shall pay cash for the repurchased assets. The amount of the purchase price shall be reduced by the amount of debt and liabilities of ProMedCo-Harrisburg assumed by BEACON and shall be reduced by any payment ProMedCo-Harrisburg has failed to make under this Agreement. BEACON and any physician associated with BEACON shall execute such documents as may be required to assume the liabilities set forth in Section 10.4.4 and to remove ProMedCo-Harrisburg from any liability with respect to such repurchased assets and with respect to any property leased or subleased by ProMedCo-Harrisburg. The closing date for the repurchase shall be determined by BEACON, but shall in no event occur later than 180 days from the date of the notice of termination. The termination of this Agreement shall become effective upon the closing of the sale of the assets and BEACON shall be released from the Restrictive Covenants provided for in Section 9 on the closing date. From and after any termination, each party shall provide the other party with reasonable access to books and records then owned by it to permit such requesting party to satisfy reporting and contractual obligations which may be required of it.

## 11. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

11.1 Asset Purchase Agreement shall mean the Asset Purchase Agreement dated as of August 12, 1997 between BEACON ProMedCo and ProMedCo-Harrisburg.

11.2 BEACON Capitation Allocation shall mean payments made to BEACON for the provision of health care services delivered by BEACON Employees directly.

11.3 BEACON Employees shall mean all Physician Shareholders, Physician Employees, Physician Extenders and Technical Employees at the relevant dates.

11.4 BEACON Inducement Agreement shall mean the Beacon Inducement Agreement of even date herewith between BEACON and HealthAmerica.

11.5 Capitated Revenues shall mean payments made to BEACON by an HMO or other payor in return for the provision of health care services to enrollees or subscribers of the HMO or other payor regardless of whether or not the services are provided directly by BEACON providers. Such payments may be for primary care

services only in the form of a primary care capitation amount, or a global capitation covering a full range of services such as hospital and pharmaceutical costs. Any administrative fees negotiated with the payor are also included in Capitated Revenues. Fee-for-services payments to BEACON would not be included as Capitated Revenues unless the fees generated therefrom are associated with a capitated arrangement

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where a non-covered service is provided and billed separately. Managed care patient co-payments are not included as Capitated Revenues.

11.6 Clinic shall mean the medical care services, including, but not limited to the practice of medicine, and all related healthcare services provided by BEACON and the BEACON Employees, utilizing the management services of ProMedCo-Harrisburg and the Clinic Facility, regardless of the location where such services are rendered.

11.7 Clinic Expenses shall mean the amount of all expenses incurred in the operation of the Clinic including, without limitation:

- (i) Salaries, benefits (including contributions under any ProMedCo benefit plan), and other direct costs of all employees of ProMedCo-Harrisburg and Technical Employees attributable to BEACON;
- (ii) Direct costs, including benefits, of all employees or consultants of ProMedCo or affiliates of ProMedCo-Harrisburg who, with approval of the Policy Council, provides service at or in connection with BEACON required for improved performance, such as work management, purchasing, information systems, charge and coding analysis, managed care sales, negotiating and contracting, financial analysis, and business office consultation; provided, however, only that portion of such employee's or consultant's costs without mark-up by ProMedCo that is allocable to Clinic will be a Clinic Expense;
- (iii) Obligations of ProMedCo-Harrisburg or ProMedCo under leases or subleases related to Clinic operations;
- (iv) Interest Expense funds provided to ProMedCo-Harrisburg by ProMedCo or any outside source to finance or refinance any of ProMedCo-Harrisburg's obligations hereunder or services provided hereunder;
- (v) Personal property and intangible taxes assessed against ProMedCo-Harrisburg's assets used in connection with the operation of Clinic commencing on the date of this Agreement;

- (vi) Malpractice insurance expenses for ProMedCo-Harrisburg's operations and for the BEACON Employees, as well as any deductibles and non-insured expenses relating to malpractice claims;

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- (vii) Other expenses incurred by ProMedCo-Harrisburg in carrying out its obligations under this Agreement; and
- (viii) Amortization of intangible asset value resulting from the employment of, merger with, or other acquisition of, additional physicians in the BEACON service area approved by the Policy Council.

11.8 Clinic Expenses shall not include:

- (i) Corporate overhead charges or any other expenses of ProMedCo or any corporation affiliated with ProMedCo other than the kind of items listed above;
- (ii) Any federal or state income taxes;
- (iii) Any expenses which are expressly designated herein as expenses or responsibilities of BEACON and/or BEACON Employees other than Technical Employees;
- (iv) Any amortization expense resulting from the amortization of expenses incurred as shown on ProMedCo's financial statements, in connection with the acquisition and execution of the Asset Purchase Agreement and the execution of this Agreement; and
- (v) Interest expense on indebtedness incurred by ProMedCo-Harrisburg or ProMedCo to finance the consideration paid under the Asset Purchase Agreement.
- (vi) Any liabilities, judgments or settlements assessed against BEACON or Physician Shareholders in excess of any insurance policy limits.
- (vii) The direct expenses associated with management of Risk Pool Surpluses.

11.9 Clinic Facility shall mean clinic facilities located at (i) 2151 Linglestown Road, Harrisburg, PA 171 10, (ii) 825 Fishburn Road, Hershey, PA 17033, (iii) 550 22nd Street, Lemoyne, PA 17043, (iv) 5 Willow Mill Park Road, Mechanicsburg, PA 17055 and (v) any substitute facility or additional facility location, whether within or without the Harrisburg, Pennsylvania area, as approved by the Policy Council.

11.10 Distribution Funds shall mean those amounts remaining after Clinic Expenses have been deducted from Net Clinic Revenue.

11.11 Effective Date shall mean 12:01 a.m. on the date hereof

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11.12 HealthArnerica shall mean HealthAmerica Pennsylvania, Inc., a Pennsylvania corporation.

11.13 Medical Professional shall mean Physician Shareholders, Physician Employees and Physician Extenders.

11.14 Managed Care Surpluses shall mean Net Capitated Revenues less (i) Outside Medical Expenses and (11) Risk Management Expenses; provided however in the event the Alliance4Health NetSource Agreement with HealthAmerica of Pennsylvania, Inc., effective October 1, 1996, pursuant to which HealthAmerica is entitled to receive 100% of the difference between the realized percentage of premium and medical expenses, as set forth in the Alliance4Health NetSource Agreement, is still in effect, then:

Managed Care Surpluses shall mean the total surplus or deficit resulting from Clinic operations under such Alliance4Health NetSource Agreement. For purposes of this alternative definition "total surplus or deficit" shall mean the realized percent of premium for those members who have selected a Clinic physician less any "medical expenditures" as defined in the Alliance4Health NetSource Agreement. In addition, Managed Care Surpluses shall include surpluses from risk sharing arrangements entered into with any other payors.

11.15 Net Capitated Revenues shall mean Capitated Revenues less the BEACON Capitation Allocation.

11.16 Net Clinic Revenues shall mean BEACON's gross billings, including ancillaries and any other revenues that have historically been recorded by BEACON or HealthArnerica as well as non-real estate revenues historically recorded by BEACON or HealthArnerica, less any adjustments such as uncollectible accounts, discounts, contractual adjustments, Medicare allowances, Medicaid

allowances, and professional courtesies ("adjustments"). This specifically excludes Capitated Revenues, but does include Beacon Capitation Allocation.

11.17 Opening Balance Sheet shall mean the balance sheet of ProMedCo-Harrisburg as of the Effective Date (as defined in the Asset Purchase Agreement), prepared in accordance with GAAP (except for the absence of certain note information), and substantially in the form of the attached Exhibit B subject to adjustments in the Consideration (as defined in the Asset Purchase Agreement).

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11.18 Outside Medical Expenses shall mean health care costs for services not provided by BEACON directly or through subcontract arrangements with other providers.

11.19 Physician Employees shall mean any physician employed by BEACON and providing medical services to patients on behalf of BEACON, who are not Physician Shareholders.

11.20 Physician Extenders shall mean all non-physician professional employees who provide direct patient care for which a billed charge is generated.

11.21 Physician Shareholders shall mean any physician who is a shareholder of BEACON, both as of the date of this Agreement (which said Physician Shareholders are parties to this Agreement) and at any future point in time.

11.22 ProMedCo shall mean ProMedCo Management Company, a Delaware corporation which is sole shareholder of ProMedCo-Harrisburg.

11.23 ProMedCo-Harrisburg Distribution shall mean 15% of Distribution Funds plus 50% of Managed Care Surpluses.

11.24 Risk Management Expenses shall mean ProMedCo's expenses associated with the management of capitation risk including contracting, utilization management, information systems, quality, measurements, reporting and similar expenses.

11.25 Technical Employees shall mean technicians who provide services in the diagnostic areas of BEACON's practice, such as employees of the Clinic laboratory, radiology technicians and cardiology technicians. All Technical

Employees shall be BEACON employees.

## 12. GENERAL PROVISIONS

12.1 Independent Contractor. It is acknowledged and agreed that BEACON and ProMedCo-Harrisburg are at all times acting and performing hereunder as independent contractors. ProMedCo-Harrisburg shall neither have nor exercise any control or direction over the methods by which BEACON or the BEACON Employees practice medicine. The sole function of ProMedCo-Harrisburg hereunder is to provide all management services in a competent, efficient and satisfactory manner. ProMedCo-Harrisburg shall not, by entering into and performing its obligations under this Agreement, become liable for any of the existing obligations, liabilities or debts of BEACON unless otherwise specifically provided for under the terms of this

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Agreement. ProMedCo-Harrisburg will in its management role have only an obligation to exercise reasonable care in the performance of the management services. Except as contemplated in Section 8.4 hereof, neither party shall have any liability whatsoever for damages suffered on account of the willful misconduct or negligence of any employee, agent or independent contractor of the other party. Each party shall be solely responsible for compliance with all state and federal laws pertaining to employment taxes, income withholding, unemployment compensation contributions and other employment related statutes regarding their respective employees, agents and servants.

### 12.2 Proprietary Property.

12.2.1 Each party agrees that the other party's proprietary property (which term shall not include information or other material generally available in the public domain) shall not be possessed, used or disclosed otherwise than may be necessary for the performance of this Agreement. Each party acknowledges that its violation of this Agreement would cause the other party irreparable harm, and may (without limiting the other party's remedies for such breach) be joined at the instance of the other party. Each party agrees that upon termination of this Agreement for any reason, absent the prior written consent of the other party, it shall have no right to and shall cease all use of the other party's proprietary property, and shall return all such proprietary property of the other party in its possession to the other party.

12.2.2 ProMedCo-Harrisburg shall be the sole owner and holder of all right, title and interest, to all intellectual property furnished by it under this Agreement, including, but not limited to the trade name "ProMedCo," all computer software, copyright, services mark and trademark right to any material or documents acquired, prepared, purchased or furnished by ProMedCo-Harrisburg pursuant to this Agreement. BEACON shall have no right, title or interest in or

to such material and shall not, in any manner, distribute or use the same without the prior written authorization of ProMedCo-Harrisburg, provided, however, that the foregoing shall not restrict BEACON from distributing managed care information brochures and materials without the prior written approval of ProMedCo-Harrisburg provided no Proprietary Property of ProMedCo-Harrisburg is contained therein. Notwithstanding the preceding, however, ProMedCo-Harrisburg agrees that BEACON shall be entitled to use on a nonexclusive and nontransferable basis for the term of this Agreement the name "BEACON Family Practice" as may be necessary or appropriate in the performance of BEACON's services and obligations hereunder.

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12.3 Cooperation. Each of the parties shall cooperate fully with the other in connection with the performance of their respective duties and obligations under this Agreement.

12.4 Licenses, Permits and Certificates. ProMedCo-Harrisburg and BEACON shall each obtain and maintain in effect, during the term of this Agreement, all licenses, permits and certificates required by law which are applicable to their respective performance pursuant to this Agreement.

12.5 Compliance with Rules, Regulations and Laws. ProMedCo-Harrisburg and BEACON shall comply with all federal and state laws and regulations in performance of their duties and obligations hereunder. Neither party, nor their employees or agents, shall take any action that would jeopardize the other party's participation, if applicable, in any federal or state health Program including Medicare and Medicaid. ProMedCo-Harrisburg and BEACON shall take particular care to ensure that no employee or agent of either party takes any action intended to violate Section 1128B of the Social Security Act with respect to soliciting, receiving, offering or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Title XVIII or XIX of the Social Security Act, or for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Title XVIII or XIX of the Social Security Act.

12.6 Generally Accepted Accounting Principles (GAAP). All financial statements and calculations contemplated by this Agreement will be prepared or made in accordance with generally accepted accounting principles consistently applied unless the parties agree otherwise in writing.



12.7 Notices. Any notices required or permitted to be given hereunder by either party to the other may be given by personal delivery in writing or by registered or certified mail, postage prepaid, with return receipt requested. Notices shall be addressed to the parties at the addresses appearing on the signature page of the Agreement, but each party may change such party's address by written notice given in accordance with this section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of three days after mailing.

12.8 Attorneys' Fees. ProMedCo-Harrisburg and BEACON agree that the prevailing party in any legal dispute among the parties hereto shall be entitled to payment of its reasonable attorneys' fees by the other party.

12.9 Severability. If any provision of this Agreement is held by a court of competent jurisdiction or applicable state or federal law and their implementing

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regulations to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

12.10 Arbitration. Any controversy or claim arising out of or relating to this Agreement or the breach thereof will be settled by binding arbitration in accordance with the rules of commercial arbitration of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall occur within Dauphin County, Pennsylvania, unless the parties mutually agree to have such proceedings in some other locale. The arbitrator(s) may in any such proceeding award reasonable attorneys' fees and costs to the prevailing party.

12.11 Construction of Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The parties agree that the terms and provisions of this Agreement embody their mutual interest and agreement and that they are not to be construed more liberally in favor of, nor more strictly against, any party hereto.

12.12 Assignment and Delegation. ProMedCo-Harrisburg shall have the right to assign its rights hereunder to any person, firm or corporation controlling, controlled by or under common control with ProMedCo-Harrisburg and to any lending institution, for security purposes or as collateral, from which ProMedCo-Harrisburg or ProMedCo obtains financing for itself and as agent.

Except as set forth above, neither ProMedCo-Harrisburg nor BEACON shall have the right to assign their respective rights and obligations hereunder without the

written consent of the other party. BEACON may not delegate any of BEACON's duties hereunder, except as expressly contemplated herein; however, ProMedCo-Harrisburg may delegate some or all of ProMedCo-Harrisburg's duties hereunder to the extent it concludes, in its sole discretion, that such delegation is in the mutual interest of the parties hereto.

12.13 Confidentiality. The terms of this Agreement and in particular the provisions regarding compensation, are confidential and shall not be disclosed except as necessary to the performance of this Agreement or as required by law.

12.14 Waiver. The waiver of any provision, or of the breach of any provision of this Agreement must be set forth specifically in writing and signed by the waiving party. Any such waiver shall not operate or be deemed to be a waiver of any prior or future breach of such provision or of any other provision.

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12.15 Headings. The subject headings of the articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

12.16 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

12.17 Time is of the Essence. Time is hereby expressly declared to be of the essence in this Agreement.

12.18 Modifications of Agreement for Prospective Legal Events. In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or by agreement of legal counsel for both parties in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, or in the event the Pennsylvania Board of Medical Examiners or other authority with legal jurisdiction shall, solely by virtue of this Agreement, initiate an action to revoke, suspend, or restrict the license of any physician retained by BEACON to practice medicine in

the: Commonwealth of Pennsylvania, BEACON and ProMedCo-Harrisburg shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between BEACON and ProMedCo-Harrisburg. In the event it is not possible to amend this Agreement to preserve in all material respects the underlying economic and financial arrangements between BEACON and ProMedCo-Harrisburg, this Agreement may be terminated by written notice by either party within 90 days from date of such interpretation or action, termination to be effective no sooner than the earlier of 180 days from the date notice of termination is given or the latest possible date specified for such termination in any regulatory order or notice. Termination pursuant to this Section 12.18 by BEACON shall require the affirmative vote of a majority of Physician Shareholders.

12.19 Whole Agreement Modification. A contract in which the amount involved exceeds \$50,000 in value is not enforceable unless the Agreement is in writing and signed by the party to be bound or by that party's authorized representative. The rights and obligations of the parties hereto shall be determined solely from written agreements. Documents and instruments, and any prior oral agreements between the parties are superseded by and merged into such writings. This Agreement (As amended in writing from time to time), the exhibits, and the schedules delivered pursuant hereto

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represent the final agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements by the parties. There are no unwritten oral agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as

of the date and year first above written.

P.B. MANAGEMENT COMPANY, INC.

By:  
Name:  
Title:  
Address: 801 Cherry Street  
Suite 1450  
Forth Worth, TX 76102

BEACON MEDICAL GROUP, P.C.

By:  
Name:  
Title:  
Address:

Acknowledgment and Agreement by Physician Shareholders  
to abide by the terms of the Service Agreement

Printed Name  
Date

Printed Name  
Date

Printed Name  
Date

Printed Name  
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