

**AGENDA ITEM
REQUEST/JUSTIFICATION FORM**

(To be completed by requesting Department)
Forward all requests to Sharon Bourke, LC2 Civic Center
**DEADLINE SUBMITTAL IS 3:00 P.M. WEDNESDAY
BEFORE THE TUESDAY MEETING**

Agenda item: Infuscience Contract Agreement
(i.e. Consent/Recognition-Proclamation/Presentation/Public Hearing/Committee, etc.)
Date to be on agenda: December 15, 2015

Exact wording to be used for the agenda: Review and approve of contract with
Infuscience for the administering of infusions to DCHC residents.

Action requested: Approval of contract.

Amount requested: _____ Object Code: _____

Is item in current year's budget? Yes _____ No X

Does this item commit funds in future years? Yes X No _____

If yes, explain: It will for any residents needing infusions from this company.

If an agreement or contract, has the County Attorney reviewed and approved? Yes X No _____

Previous action taken on this item, if any: N/A

Recommendations and rationale or action: N/A

Will anyone speak on behalf of this item, if so who? James Tourville, DCHC
Administrator; Shakil Malik, Deputy County Attorney

If this is a rush agenda item, please explain why: N/A

Submitted by (Name & Dept.): James Tourville Ext. 7314

Date submitted: 12/09/2015

List Attachments: Resolution, contract
(Attach resolution and all pertinent documentation; i.e. contract, agreement, memorandums, etc.)

Certified resolutions can be obtained at the County Clerk's website:
<http://www.douglascountyclerk.org/county-board-records/search-for-resolutions>

Completed by receiving office
Received in Administrative Office: Date 12/9/15 Time _____

**BOARD OF TRUSTEES
OF THE
DOUGLAS COUNTY HEALTH CENTER
DOUGLAS COUNTY, NEBRASKA**

Resolved

WHEREAS, Douglas County, Nebraska is the owner and operator of the Douglas County Health Center (DCHC) and provides quality long term care and short term rehabilitation to the residents of Douglas County through DCHC; and

WHEREAS, Infusion Therapy Specialists, Inc. dba InfuScience, agree to have InfuScience provide infusion therapy services to residents and patients of DCHC.

NOW THEREFORE, BE IT RESOLVED BY THIS BOARD OF TRUSTEES THAT this Professional Services Agreement requested by UNMC Physicians and Douglas County, Nebraska is hereby ratified and approved; and

BE IT FURTHER RESOLVED THAT the Chair of the Board is authorized to sign said Contract on behalf of Douglas County.

DATED this 15th day of December, 2015

INFUSION THERAPY SERVICES CONTRACT

THIS INFUSION THERAPY SERVICES CONTRACT ("Agreement"), is made and entered this 30th day of November, 2015 ("Effective Date"), by and between **Douglas County Health Center**, a nursing facility established to protect the health and welfare of the people of Douglas County, having an address at 4102 Woolworth Avenue, Omaha, NE 68105 ("DCHC") and **Infusion Therapy Specialists, Inc. dba InfuScience**, a Nebraska company ("Agency"). DCHC and Agency are each also referred to herein as a "Party" and collectively, the "Parties."

RECITALS

- A. DCHC is a Medicare/Medicaid-certified skilled nursing facility under Section 1861(j) of the Social Security Act and/or is duly licensed as a skilled nursing facility in the State of Nebraska, to the extent required by law.
- B. Agency is duly licensed as a home health care agency and pharmacy in the state(s) in which it operates, to the extent required by law, and provides infusion therapy and associated nursing services for patients receiving infusion therapy ("Infusion Therapy Services").
- C. Agency wishes to provide DCHC and its residents with Infusion Therapy Services on an as requested basis.

AGREEMENT

In consideration of the recitals above, DCHC and Agency hereby agree as follows:

1. DEFINITIONS

a. "DCHC patient/resident" or "patient/resident" means an individual who is residing at DCHC and who is receiving nursing care/services. The patient/resident remains a DCHC patient/resident until such individual is discharged from DCHC.

b. "Plan of Care" means a written plan of care that is developed, maintained, reviewed and updated as necessary, to meet the needs of the patient/resident. The determination of the care needs is based on the nursing assessment and the individual patients/residents.

2. AGENCY OBLIGATIONS

a. Agency will provide Infusion Therapy Services upon receipt of an appropriate physician's order for such services together with a request from DCHC using forms and a notification process agreed to by the Parties. DCHC acknowledges and agreed that Agency will only provide Infusion Therapy Services to a patient/resident and no other services. Notwithstanding this Section 2 or Section 4 below, Agency acknowledges that DCHC retains professional management responsibility for all services provided to a patients/resident's residing at DCHC.

b. Agency and its clinical staff providing Infusion Therapy Services under this Agreement shall: (i) be qualified and competent to render Infusion Therapy Services provided hereunder; (ii) be registered nurses licensed in the state of Nebraska (or hold a multi-state license), as required by law and properly trained/certified to provide Infusion Therapy Services in a skilled nursing facility; (iii) provide Infusion Therapy Services in accordance with all applicable state, federal, and local laws and regulations; and (iv) maintain eligibility to provide services under Medicare, Medicaid and other governmental payment programs. Agency shall direct and oversee its clinical staff providing Infusion Therapy Services and shall be fully responsible for the supervision and management of such staff, provided, however, that Agency shall provide Infusion Therapy Services hereunder in conformance with applicable DCHC policies, including personnel qualifications and supervisory requirements which Agency is duly informed in writing prior to the provision of Infusion Therapy Services.

c. Agency shall follow accepted standards of nursing and infusion therapy practice to prevent the transmission of infections and communicable diseases, including the use of standard precautions and sterile practices.

d. Agency shall provide the supplies and medications needed for the provision of Infusion Therapy Services.

e. Agency will provide necessary emergency medications in the event of allergic reactions to the infusion therapy.

f. Agency is responsible for billing third parties as indicated for all supplies and medications.

g. Agency shall provide necessary supplies for the care of an IV site/access port (and any supplies needed for obtaining a blood draw therefrom) for any patient/resident for whom the Agency is providing Infusion Therapy Services.

3. OBLIGATIONS OF DCHC

a. DCHC shall provide Agency with adequate identification of those patients/residents to whom DCHC has requested Agency provide Infusion Therapy Services. Such information shall include patient/resident name, nursing neighborhood, anticipated length of service, and such other information as may reasonably be requested by Agency in order to provide the services described hereunder.

b. DCHC shall assess each patient's need for Infusion Therapy Services, obtain written physician orders as necessary, and notify Agency, as needed, of such orders.

c. DCHC maintains responsibility for the overall coordination of the patient'/resident's care.

d. Agency will be responsible for billing and collecting payment for all Infusion Therapy Services delivered by Agency to DCHC patients/residents. DCHC shall compensate Agency for Infusion Therapy Services in accordance with Section 5 below.

e. DCHC shall notify Agency of changes/additions that would impact Infusion Therapy Services, promptly and regularly (e.g. patient/resident has been hospitalized).

4. ADDITIONAL RESPONSIBILITIES OF THE PARTIES

In addition to the responsibilities, duties and obligations set forth in this Agreement, the Parties shall provide the services as set forth in Exhibit A, incorporated herein by this reference as appropriate.

5. BILLING AND PAYMENT

a. In consideration of Agency's provision of Infusion Therapy Services hereunder, DCHC shall pay Agency in accordance with the Fee Schedule (as defined herein) set forth in Exhibit B, incorporated herein by this reference. The Fee Schedule shall reflect any discounts negotiated by the Parties and shall not be subject to additional discounts unless agreed to, in writing, by the Parties.

b. Agency shall remit an invoice to DCHC on a monthly basis for all Infusion Therapy Services provided during the prior month. Payment shall be made by DCHC within forty-five (45) days of the date of the invoice. DCHC shall be required to pay a late charge equal to the lesser of: (a) the maximum allowable monthly interest percentage under state law; or (b) one and one-half percent (1.5%) per month on any payment made later than forty-five (45) days after date of Agency's invoice, as well as any legal or collection expenses incurred by Agency associated with DCHC's failure to comply with this Section 5(b).

c. Agency shall bill third parties as indicated for the infusion supplies and medications.

6. INSURANCE

Each Party shall, at that Party's sole cost and expense, procure, keep and maintain throughout the Term of this Agreement: (a) commercial general liability insurance in the amount of not less than \$1,000,000 per claim and \$1,000,000 per aggregate; and (b) professional liability insurance in the amount of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate; and (c) comply with state statutory requirements for workers compensation. Notwithstanding the foregoing, each Party shall maintain insurance coverage in the minimum amounts stated above, or as required by law, whichever is greater. By requiring insurance herein, neither Party represents that coverage or limits will necessarily be adequate to protect the other Party. Upon request, each Party will provide the other Party with a certificate of insurance reflecting the general nature of insurance coverage provided and the policy limits stated above.

7. TERM AND TERMINATION

a. The initial term of this Agreement shall be for one (1) year from the Effective Date (the "Initial Term"). Thereafter, this Agreement shall automatically renew for two (2) successive one (1) year terms (each a "Renewal Term" and collectively, with the Initial Term, the "Term").

b. Either Party may terminate this Agreement at any time for any reason upon giving written notice to the other Party at least thirty (30) days in advance of the termination date expressed in such written notice or at any time for cause.

c. Either Party may terminate this Agreement upon the breach of a material term of this Agreement by the other Party if the breach remains uncured by the breaching party for more than thirty (30) days after receiving written notice of the breach from the non-breaching party.

d. Notwithstanding anything in this Agreement to the contrary and in addition to other immediate or automatic termination provisions contained in Section 11(i) or elsewhere in this Agreement, either Party may terminate this Agreement immediately and without penalty upon the occurrence of any of the following events: (i) loss or suspension by either Party of any federal, state, or local license, permit, or governmental approval required for such Party to conduct its business in accordance with applicable law; or (ii) appointment of a receiver for either Party's assets, an assignment by either Party for the benefit of its creditors, or any relief taken or suffered by either Party under any bankruptcy or insolvency act.

e. If this Agreement is terminated by either Party other than for a reason set forth in Section 7(d) or 11(i), Agency will, upon request by DCHC, continue to provide Infusion Therapy Services under this Agreement for a period of time indicated by DCHC not to exceed an additional thirty (30) days from the effective date of such termination, so that DCHC may make alternate arrangements for patients/residents who are receiving Infusion Therapy Services on the termination date. During such additional post-termination period, the terms and conditions of this Agreement will continue to govern the relationship between DCHC and Agency.

8. COMPLIANCE

In performing their respective obligations and duties under this Agreement, the Parties shall comply with all applicable federal, state and local laws, rules and regulations and all applicable rules, regulations, standards and techniques of their respective accrediting organizations.

9. CONFIDENTIALITY

a. During the Term of this Agreement, each Party may furnish certain information or business data (e.g., training materials, marketing plans or business techniques) to each other that is not publicly available information and that such Party considers to be confidential and proprietary ("Confidential Information"). Confidential Information shall be marked as such by the delivering Party. Each Party acknowledges and agrees that Confidential Information is or may be disclosed to such Party and that it constitutes either valuable business information developed by the disclosing party at a great expenditure of time, effort, and money. Each Party

may not, either during or after the Term of this Agreement, use the other Party's Confidential Information for any purpose other than the performance of its duties under this Agreement. Each Party further agrees to keep strictly confidential and hold in trust all Confidential Information of the other Party and agree not to disclose or reveal such Confidential Information to any third party without the express written consent of the disclosing party. Notwithstanding the foregoing, a Party may disclose Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by such Party from a third party without confidential limitations; (iii) it has been independently developed for such Party by personnel or agents having no access to the other Party's Confidential Information; (iv) it was known to such Party prior to its first receipt from the other Party hereunder; or (v) such disclosure is required by applicable federal laws, state laws, regulations, or court orders.

b. Each Party acknowledges that it is a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended from time to time, including 45 C.F.R. Parts 160 and 164 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act and implementing regulations, as amended from time to time ("HITECH"). In performing their respective obligations under this Agreement, each Party shall comply with HIPAA and HITECH and shall only use and disclose "protected health information" (as such term is defined in HIPAA) in a manner permitted by HIPAA and HITECH. The Parties further agree to comply with any state or local privacy laws with respect to any personal information that is used or disclosed in connection with performing services under this Agreement, to the extent such laws are applicable to the Parties.

c. The provisions of this Section 9 shall survive the termination or expiration or of this Agreement.

10. AGREEMENT FOR ACCESS TO BOOKS AND RECORDS

If and to the extent required by 42 C.F.R. § 413.17 of the United States Code, until the expiration of four (4) years after the termination or expiration of this Agreement, each Party shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided under this Agreement. Each Party further agrees that in the event it carries out any of its duties under this Agreement through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall contain a provision requiring the related organization to make available until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract upon written request to the Secretary of the United States Department of Health and Human Services, or upon request to the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents and records of such organization as are necessary to verify the nature and extent of such costs. The provisions of this Section 10 shall survive the termination or expiration or of this Agreement.

11. MISCELLANEOUS

a. Relationship of the Parties. Agency is serving as an independent contractor to DCHC. Nothing in this Agreement shall be construed to make or render a Party or any of its officers, agents, or employees an employee of the other Party for any purpose, including, without limitation, participation in any benefits or privileges given or extended by a Party to its employees. Nothing in this Agreement shall be construed to: (i) establish a joint venture relationship; or (ii) allow any Party the right to exercise control or direction over the manner or method by which the other Party performs its obligations under this Agreement. In particular, each Party shall be solely responsible for that Party's salary, compensation, benefits, payroll taxes, required insurance, workers' compensation insurance and similar items for its personnel. No right or authority is granted to either Party to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party. The provisions of this Section 11(a) shall survive the termination or expiration of this Agreement.

b. Governing Jurisdiction. This Agreement, and any claim, controversy or dispute arising under or related to this Agreement, the relationship of the Parties and/or the interpretation and enforcement of their respective rights and obligations, shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska, irrespective of Nebraska's choice-of-law principles and any dispute under this Agreement shall be resolved by a court of competent jurisdiction in Nebraska. The provisions of this Section 11(b) shall survive the termination or expiration of this Agreement.

c. Use of Name/Publicity. Except with the prior written consent of the other Party, neither Party shall: (i) use the names, trademarks, or logos of the other Party on any web site or in any printed materials, publicity, advertising, or for trade or other commercial purposes. The provisions of this Section 11(c) shall survive the termination or expiration of this Agreement.

d. Severability. If any part of any provision of this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement.

e. Notices. All notices and other communications permitted or required pursuant to this Agreement shall be in writing, addressed to the Party at the address set forth below or to such other address as the Party may designate in writing from time to time. All notices and other communications shall be: (i) mailed by certified or registered mail, return receipt requested and postage pre-paid; (ii) personally delivered or (iii) sent by a nationally recognized overnight courier or delivery service. Notices mailed pursuant to this Section 11(e) shall be deemed given as of three (3) days after the date of mailing, and notices personally delivered, sent by overnight delivery courier service shall be deemed given at the time of receipt.

If to DCHC:

Douglas County Health Center
Attention: Jim Tourville
4102 Woolworth Avenue
Omaha, NE 68105

If to Agency:

Infusion Therapy Specialists, Inc.
dba InfuScience
Attention: General Manager
8710 F Street, Suite 118
Omaha, NE 08127

With a copy to:

BioScrip, Inc.
Attention: General Counsel
100 Clearbrook Road
Elmsford, New York 10523

f. Assignment. This Agreement shall not be assignable, in whole or in part, by either Party without the prior written consent of the other Party hereto.

g. Waiver. No waiver by DCHC or Agency of any of its rights or remedies hereunder shall be construed as a continuing waiver of any other rights or remedies hereunder.

h. Changes in Law. This Agreement shall be construed to be in accordance with any and all federal and state statutes, regulations, principles and interpretations including, without limitation, those of the foregoing pertaining to taxes, Medicare, Medicaid or other government programs. In the event (i) of any change in any federal, state or local laws, rules, regulations, or interpretations of the same, at any time during the Term of this Agreement that makes all or any part of this Agreement illegal; or (ii) either Party determines, based upon the advice of counsel that all or any part of this Agreement is illegal, then the Parties will negotiate in good faith to amend this Agreement in a manner consistent with applicable laws.

i. No Exclusion. Each Party represents and warrants that it (including its employees and independent contractors whose functions are a necessary component of providing services under this Agreement, collectively "Personnel") is not now and at no time has it been excluded from participation in any state or federally funded health care program, including Medicare and Medicaid (collectively referred to as "governmental health care program"). Each Party agrees to immediately notify the other Party of any threatened, proposed, or actual exclusion of such Party (including its Personnel) from participation in any governmental health care program during the Term of this Agreement. Notwithstanding anything to the contrary contained herein, in the event that either Party (including its Personnel) is excluded from participating in any governmental health care program during the Term of this Agreement or, if at any time after the Effective Date, it is determined that either Party is in breach of this Section 11(i), this Agreement shall, as of the effective date of such exclusion or breach, automatically terminate; provided; however, such

termination shall not occur if the applicable excluded employee or independent contractor of such Party is immediately removed from providing services under this Agreement by the applicable Party.

j. Binding Effect. Subject to the provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

k. Authorization. Each Party represents to the other that the execution, delivery and performance of this Agreement by the representatives of each of the Parties set forth below has been fully authorized by all necessary actions or approval and that this Agreement constitutes the valid and binding obligation of each of the Parties, enforceable in accordance with its terms.

l. No Referrals. Nothing contained in this Agreement shall be construed as a promise or inducement for either Party to make a referral to the other. The Parties agree that the rates utilized herein are reflective of fair market value for the Nursing Services provided under this Agreement and that such rates are a result of bona fide and arms-length negotiations and are not based in any manner upon the volume or value of business, if any, that ever existed, currently exists or develops in the future between the Parties.

m. Non-Discrimination. Neither Party shall differentiate or discriminate in the provision of Infusion Therapy Services hereunder on the basis of race, sex, creed, age, religion, marital status, mental or physical disability, color, national origin, or any other grounds prohibited by law.

n. Equal Opportunity and NLRA Compliance. The Parties shall abide by the applicable requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The Parties shall also abide by applicable requirements of EO 13496, including 29 C.F.R. Part 471, Appendix A to Subpart A, which provides for notice to employees of their rights under the National Labor Relations Act. The Parties acknowledge that DCHC is exempt from all requirements of the National Labor Relations Act by virtue of its status as a governmental entity.

o. New Employee Work Eligibility. Agency is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. §1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

p. Drug Free Workplace. Both Parties agree to establish and/or maintain a drug free workplace policy.

q. No Third Party Rights. This Agreement is executed for the benefit of the named parties only. This Agreement is not intended to, nor shall it provide third parties, excluding any assignment as provided herein, with any remedy, claim, liability, reimbursement, cause of action or other right or privilege

r. Entire Agreement/Counterparts. This Agreement, including all exhibits, schedules or attachments thereto, is the entire agreement between the Parties and supersedes all prior written agreements and understandings, whether written or oral, relating to the subject matter hereof, which was previously entered into by Agency or any of its subsidiaries or affiliates. This Agreement may be executed in counterparts, each of which shall be deemed an original, and together shall constitute one instrument. Signatures exchanged by fax, email or other electronic means shall be treated as original signatures with full force and effect.

[Signature Page to Follow]

IN WITNESS WHEREOF, each of the Parties hereto has executed, or caused its duly authorized representative to execute, this Infusion Therapy Services Contract as of the date set forth below such Party's signature, to be effective as of the Effective Date.

Douglas County Health Center

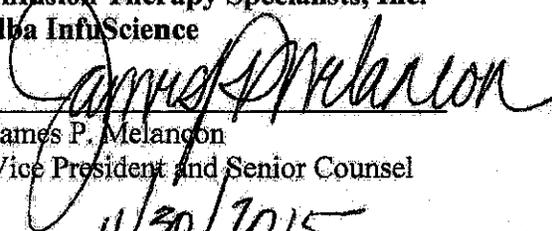
Chair of the Board of Trustees

Date

Approved as to form:

Deputy County Attorney

**Infusion Therapy Specialists, Inc.
dba InfuScience**



James P. Melancon
Vice President and Senior Counsel

Date

11/30/2015

EXHIBIT A

ADDITIONAL RESPONSIBILITIES OF THE PARTIES

I. RESPONSIBILITIES OF AGENCY TO DCHC WHEN PROVIDING INFUSION THERAPY SERVICES

1. During normal business hours (Monday - Friday, 8:30 a.m. - 5:00 p.m.), Agency shall provide Infusion Therapy Services to DCHC patients/residents, typically within four (4) hours of receipt of an appropriate physician's order for Infusion Therapy Services and a request from DCHC using forms and a notification process agreed to by the Parties.
2. During non-business hours or in the case of an emergency, Agency shall use reasonable efforts to: (a) respond by telephone within thirty (30) minutes of receipt of a telephone call from DCHC and (b) provide Infusion Therapy Services within four (4) hours of receipt of an appropriate physician's order for Infusion Therapy Services and a request from DCHC using forms and a notification process agreed to by the Parties.
3. Agency shall maintain a telephone service to counsel DCHC patients/residents who are receiving Infusion Therapy Services and their families and DCHC nurses, seven (7) days per week and, on an emergency basis, twenty-four (24) hours per day.
4. Agency shall follow appropriate procedures for submitting clinical and progress notes, scheduling visits and periodic DCHC patient/resident evaluation, including documentation in the Agency's medical record for the patient/resident for each visit to DCHC.
5. Agency shall comply with all applicable state licensure regulations.

II. RESPONSIBILITIES OF DCHC TO AGENCY

1. DCHC shall provide Agency with a copy of DCHC policies and procedures pertinent to Agency's provision of Infusion Therapy Services.
2. DCHC shall provide Agency with a general orientation to DCHC and pertinent DCHC policies and procedures.
3. Prior to requesting Agency to provide Infusion Therapy services, DCHC shall consult Agency to determine if there are issues that may affect Agency's ability to render Infusion Therapy Services. This determination shall be made jointly by both Parties.
4. DCHC is responsible for the care provided to patients/residents and as such shall coordinate with Agency all Infusion Therapy Services to be rendered by giving consideration of the individual needs of the patient/resident.

5. DCHC shall inform Agency personnel immediately of any change in a patient's/resident's physician orders, status or discharge from DCHC.
6. DCHC shall immediately notify Agency of any patient/resident with a suspected infectious disease.
7. DCHC shall coordinate with Agency records and forms necessary for documentation of information and the care/services provided by the Agency.
8. In the event that any Infusion Therapy Services provided by Agency to a patient/resident need to be terminated because of the exhaustion of insurance benefits or financial resources, a pre-termination review with all parties involved shall occur at least ten (10) days prior to termination to review the need for continuing Infusion Therapy Services. This review and discussions shall be documented in the clinical record.

EXHIBIT B

FEE SCHEDULE

Fees:

| | |
|--------------------------|---|
| Authorized Nursing Visit | \$135.00 per hour (for up to 2 hours) |
| Hourly Rate | \$ 50.00 per additional hour thereafter |

Schedule:

The number of authorized visits for each patient will be in accordance with the needs of the patient/resident and will be mutually agreed upon by the parties.