

**REIMBURSEMENT AGREEMENT
FOR
PRESCRIPTION DRUGS AND OTHER PHARMACEUTICAL PRODUCTS
between
OKLAHOMA HEALTH CARE AUTHORITY
and
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
OKLAHOMA CITY AREA INDIAN HEALTH SERVICE**

ARTICLE I. PURPOSE

The purpose of this Agreement is for the Oklahoma Health Care Authority (OHCA) and the Oklahoma City Area Indian Health Service (Provider) to establish a formal process for Provider to bill and collect from OHCA for prescription drugs and other pharmaceutical products provided by the Provider to eligible American Indian/Alaskan Native members in Oklahoma Medicaid programs, known as SoonerCare.

ARTICLE II. THE PARTIES

2.1 OKLAHOMA HEALTH CARE AUTHORITY

- a. OHCA is the single state agency that the Oklahoma Legislature has designated through 63 Okla. Stat. § 5009(B) to administer Oklahoma's Medicaid Program.
- b. OHCA has authority to enter into this Agreement pursuant to 63 Okla. Stat. § 5006(A). OHCA's Chief Executive Officer has authority to execute this Agreement on OHCA's behalf pursuant to 63 Okla. Stat. § 5008(B).

2.2 PROVIDER

- a. Provider is a facility under the Indian Health Service (IHS), an agency of the United States Department of Health and Human Services (HHS) and is authorized by the United States Congress under the Snyder Act and the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1601 et seq., to provide a range of healthcare services to eligible American Indians and Alaska Natives, to the extent resources are available.
- b. Provider (1) has a pharmacy that meets criteria to provide services under the Medicaid program; (2) is accredited in accordance with Federal statutes and regulations; and (3) all such accreditation shall be kept current during the term of this Agreement.
- c. Provider has authority to enter into this Agreement pursuant to 42 U.S.C. §1396j.
- d. Provider's employees acting within the scope of their employment are covered by the Federal Tort Claims Act (28 U.S.C. §§ 1346(b), 2671-2680). Nothing in this Agreement shall be interpreted to authorize or obligate any employee to operate outside the scope of his/her employment. Provider shall not be required to acquire insurance, provide indemnification, or guarantee that the OHCA will be held harmless.

2.3 DEFINITION

Member means a person receiving health care benefits from a SoonerCare program and is eligible for services by IHS pursuant to eligibility requirements set forth in the IHCIA,

Federal regulations at 42 C.F.R. Part 136 (2005), and other applicable Federal law. Health services at Provider are generally unavailable to persons who are not eligible IHS beneficiaries except in emergencies and under certain circumstances described in the IHCIA. The parties agree that no clause, term or condition in this Agreement shall be construed in any way to change, reduce, expand, or alter the eligibility requirements for services by IHS.

ARTICLE III. TERM

- 3.1 This Agreement shall be effective upon completion when: (i) it is signed or otherwise acknowledged as accepted by OHCA and the Oklahoma City Area Indian Health Service; and (ii) all necessary documentation has been received and verified by OHCA.
- 3.2 This Agreement shall automatically renew for one (1) year terms for a period of four (4) years. The final expiration date for this Agreement is March 31, 2025.
- 3.3 Neither party shall assign or transfer any rights nor obligations under this Agreement without the other party's prior written consent except as otherwise provided in this Agreement.

ARTICLE IV. SCOPE OF WORK

- 4.1 Provider agrees:
 - a. To provide prescription drugs and other pharmaceutical products to SoonerCare members;
 - b. To abide by all restrictions on the provision of prescription drugs and other pharmaceutical products as expressed by the federal statutes and regulations.
 - c. Consistent with IHS statutory authority, to comply with all applicable federal Medicaid statutes, regulations, policies, and relevant rules of OHCA. IHS, as a federal agency, is not otherwise subject to Oklahoma State laws, but agrees to follow Oklahoma health and safety laws for reimbursement purposes;
- 4.2 Pursuant to 42 U.S.C. § 1396r-8(g)(2)(A)(ii), Provider's pharmacist or assistant pharmacist, acting within the scope of practice and in keeping with the terms of their professional license, shall:
 1. Offer to counsel the SoonerCare member receiving the product or the caregiver of such member about matters within the pharmacist's or assistant pharmacist's professional judgment are significant, including:
 - a) Name and description of the product;
 - b) Dosage form, route of administration, and duration of drug therapy;
 - c) Special directions and precautions for preparation, administration, and use by patient;
 - d) Common severe or adverse side effects or interactions and therapeutic contraindications that may be encountered, including how to avoid them and what actions are required if they occur;
 - e) Techniques for self-monitoring drug therapy;
 - f) Proper product storage;
 - g) Prescription refill information; and
 - h) Action to take if a dose is missed; and
 2. To make a reasonable effort to obtain, record, and maintain the following information regarding the SoonerCare member for whom the product is prescribed:

- a) Name, address, telephone number, date of birth or age, and gender;
 - b) Individual history where significant, including disease state(s), known allergies and drug reactions, and a comprehensive list of medications and relevant devices; and
 - c) Pharmacist's comments relevant to the member's drug therapy.
- 4.3 Provider shall not be required to provide the counseling or to obtain the information set out in this paragraph if the member or caregiver refuses such consultation or request for information.
- 4.4 Provider shall fill orders from Provider's own inventory or the inventory of other suppliers with which it has contracts to fill such orders or shall compound or mix prescription drugs for sale from supplies it buys under a contract. Professional samples, patient assistance program medications, and products received by Provider through other than regular channels of commerce shall not be billed to the Medicaid program.
- 4.5 If Provider provides sterile products for home infusion therapy, Provider must meet any Federal requirements, if any, as well as those stated at O.A.C. § 535:15-9-1 *et seq.* for parenteral pharmacies or the relevant law of the state where such products are provided if different than Oklahoma.
- 4.6 Provider's provision of prescription drugs shall be pursuant to a valid prescription as defined at 59 O.S. § 353.1 from a prescriber authorized by state or federal law.
- 4.7 Payment for Services
- a. OHCA shall reimburse Provider for compensable prescription drugs and other pharmaceutical products at the applicable Office of Management and Budget (OMB) encounter rate published each year in the Federal Register.
 - b. Provider shall accept payment from OHCA by direct deposit to Provider's financial institution. OHCA shall make payment in accordance with the Provider Information.
 - c. Satisfaction of all claims will be from federal and state funds. Any false claims, statements, or documents, or any concealment of a material fact may be prosecuted under applicable federal laws.
 - d. Payments will be made to Provider within forty-five (45) days of submission of a "clean claim" as defined at 42 C.F.R. § 447.45(b). Provider is entitled to interest in accordance with 62 O.S. § 41.4B (1991) for all payments not made within forty-five (45) days after the clean claim has been submitted to OHCA or its claims payment agent.
 - e. Provider certifies that the services or products for which payment is billed by or on behalf of Provider were medically necessary and were rendered by Provider.
- 4.8 Billing Procedures
- a. Provider agrees all claims shall be submitted to OHCA in a format acceptable to OHCA and in accordance with the OHCA Provider Manual. Electronic and/or Internet submitted claims may receive priority handling.
 - b. If Provider enters into a billing service agreement, Provider shall be responsible for the accuracy and integrity of all claims submitted on Provider's behalf by the billing service.
 - c. Provider shall not use the billing service or any other entity as a factor as defined by 42 C.F.R. § 447.10.
 - d. Provider is responsible for verifying a patient's eligibility for services by contacting OHCA's Eligibility Verification System (EVS).

ARTICLE V. LAWS APPLICABLE

- 5.1 The parties to this Agreement acknowledge and expect that over the term of this Agreement, laws may change. Specifically, the parties acknowledge and expect (i) federal Medicaid statutes and regulations, (ii) applicable state Medicaid statutes and rules, and (iii) any other laws cited in this Agreement may change. The parties shall be mutually bound by applicable changes.
- 5.2 The Provider agrees, consistent with IHS statutory authority, comply with all applicable federal Medicaid statutes, regulations, policies, and relevant rules of OHCA. IHS, as a federal agency, is not otherwise subject to Oklahoma State laws, but agrees to follow Oklahoma health and safety laws for reimbursement purposes.
- 5.3 The parties acknowledge that Provider is a non-taxable entity, and as such, neither collects nor remits any type of local, state, or Federal tax.
- 5.4 In lieu of binding arbitration, the parties agree to meet and confer in good faith to resolve any problems or disputes that may arise with regard to performance or interpretation of any of the terms of this Agreement. This Agreement and any addenda thereto shall be governed and construed in accordance with Federal law of the United States. In the event of a conflict between the Agreement and applicable Federal Law, the parties acknowledge that Federal law will prevail and supersede the terms of such Agreement. Nothing in this Agreement shall be construed to constitute an acknowledgement that Provider is governed by any state law not expressly agreed to within this Agreement.
- 5.5 The venue for all legal actions arising from this Agreement shall be in the United States District Court, Western District of Oklahoma.

ARTICLE VI. AUDIT AND INSPECTION

- 6.1 As required under 42 C.F.R. §431.107, Provider shall keep such records as are necessary to disclose fully the extent of service provided to members and shall furnish records and any information for such service to OHCA, the Oklahoma Attorney General's Medicaid Fraud Control Unit (MFCU), and the U.S. Secretary of Health and Human Services. Provider agrees to keep records to disclose the services it provides for the longer of (i) six years from the date of service or (ii) as delineated in the applicable Federal retention schedule. Provider shall not destroy or dispose of records, which are under audit, review or investigation, until the longer retention period above is met and Provider is informed in writing by the auditing, reviewing or investigating agency that the audit, review or investigation is complete.
- 6.2 Authorized representatives of OHCA, MFCU, the Oklahoma State Auditor and Inspector, and the Secretary of Health and Human Services shall have the right to make physical inspection of Provider's place of business and to examine records relating to financial statements or claims submitted by Provider under this Agreement and to audit Provider financial records as provided by 42 C.F.R. § 431.107. If Provider fails to submit records to OHCA or its agent within reasonable specified timeframes, all SoonerCare payments may be suspended until records are submitted.

ARTICLE VII. CONFIDENTIALITY

- 7.1 Provider and OHCA agree that SoonerCare member information is confidential pursuant to 42 U.S.C. § 1396a(a)(7) and 42 C.F.R. § 431:300-306. Provider shall not release the

information governed by these Medicaid requirements to any entity or person without proper authorization.

- 7.2 Provider and OHCA agree to comply with the applicable provisions of the Federal Privacy Act of 1974, 5 U.S.C. §552a; Privacy Act Regulations, 45 C.F.R. Part 5b; Drug Abuse Prevention, Treatment, and Rehabilitation Act, as amended, 42 U.S.C. § 290dd-2; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320D-1320d-9; HIPAA Regulations, 45 C.F.R. Parts 160 and 164; and the Health Information Technology for Economic and Clinical Health Act of 2009.7.3 Provider must report a known impermissible use or disclosure of a Member's protected health information that is subject to this Agreement to the OHCA Privacy and Confidentiality Officer within 48 hours of knowledge of an unauthorized act by the OCAIHS Privacy Coordinator. An impermissible use or disclosure is considered "known" on the earliest date that Provider has actual knowledge of the violation or, on the date when, by exercising reasonable diligence, it would have been known to the Provider. Failure to report may result in immediate termination of the Agreement.
- 7.4 Provider shall have written policies and procedures governing the use and removal of patient records from Provider's facility. The patient's written consent shall be required for release of information not authorized by law, which such consent shall not be required for state and federal Medicaid personnel working with records of Medicaid members. All data, reports, research, and records generated, collected, or prepared by IHS shall be deemed owned by IHS.
- 7.5 The parties shall notify each other when fraud or abuse by an employee or contractor is suspected or discovered, or when an employee or contractor has been excluded from participation for Medicare or Medicaid.

ARTICLE VIII. TERMINATION

- 8.1 This Agreement may be terminated by three methods: (i) either party may terminate this Agreement for cause with a thirty day written notice to the other party; (ii) either party may terminate this Agreement without cause with a sixty day written notice to the other party; or (iii) OHCA may terminate the Agreement immediately (a) to protect the health and safety of Medicaid recipients, (b) upon evidence of fraud, (c) pursuant to Paragraph 2.2(b) or Article IV above.
- 8.2 In the event funding of SoonerCare from the State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to the anticipated Agreement expiration date, this Agreement may be terminated immediately by OHCA.

ARTICLE IX. SEVERABILITY CLAUSE

If any provision of this Agreement is determined to be invalid for any reason, such invalidity shall not affect any other provision, and the invalid provision shall be wholly disregarded.

ARTICLE X. OTHER PROVISIONS

- 10.1 The representations made in this memorialization of the Agreement constitute the sole basis of the parties' contractual relationship. No oral representation by either party

relating to services covered by this Agreement shall be binding on either party. Any amendment to this Agreement shall be in writing and signed by both parties.

- 10.2 Titles and subheadings used in this Agreement are provided solely for the reader's convenience and shall not be used to interpret any provision of this Agreement.
- 10.3 OHCA does not create and Provider does not obtain any license by virtue of this Agreement. OHCA does not guarantee Provider will receive any Members, and Provider does not obtain any property right or interest in any SoonerCare member business by this Agreement.
- 10.4 This Agreement replaces Provider's existing agreement for prescription drugs and other pharmaceutical products, if any, in its entirety.

For the Oklahoma Health Care Authority:

By: _____
Name: Kevin Corbett, or his designee
Title: Chief Executive Officer, or his designee

Date: _____

For the Oklahoma City Area Indian Health Service:

By: _____
RADM Travis Watts
Area Director

Date: _____