

NURSING FACILITY BASE EXTENDED RESPITE PROVIDER AGREEMENT

ARTICLE I. PURPOSE

The purpose of this Agreement is for Oklahoma Health Care Authority (OHCA) and Provider to contract for Nursing Facility Base Extended Respite services to be provided to eligible SoonerCare members.

ARTICLE II. PARTIES AND DEFINITIONS

1. OHCA: OHCA is the single state agency that the Oklahoma Legislature has designated through 63 Okla. Stat. § 5009(B) to administer Oklahoma's Medicaid program, known as SoonerCare. 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. PROVIDER: Provider is a distinct entity that meets criteria described in O.A.C. 317:30-5-761 to provide services under the SoonerCare program. These services shall be provided to SoonerCare members eligible for Home and Community Based Services (HCBS) Advantage program operated by the Department of Human Services (DHS), Living Choice or Medically Fragile Program operated by OHCA, or other applicable HCBS waiver.

ARTICLE III: TERMS

1. This agreement shall be effective upon completion when it is executed by the Provider and all necessary documentation has been received and accepted by OHCA.
2. Provider shall not assign or transfer any rights, duties, or obligations under this Agreement.
3. The term of this Agreement shall expire November 30, 2026.

ARTICLE IV: SCOPE OF WORK

1. Provider shall:
 - a. Provide services to eligible members pursuant to for ADvantage members, O.A.C. 317:30-5-760 through 317:30-5-764 and/or for members in the Living Choice Program, O.A.C. 317:30-5-1200 *et seq.* and/or members in the Medically Fragile Program, O.A.C. 317:50-1-1 *et seq.*
 - b. Comply with all properly promulgated rules of OHCA, DHS, and the Oklahoma State Department of Health.
 - c. Ensure that its employees and persons who engage in health care in its facility shall maintain all applicable licenses, certifications, and permits required for such activities during the term of this Agreement. More specifically, Provider agrees in its employment of nurse aides and community service workers that before employment of any person, Provider will verify that no pending notation is noted on either registry

for nurse aides or community service workers. Should such an employee or person's license, certification, or permit to engage in health care be modified, suspended, revoked, or in any other way impaired, Provider shall ensure that the terms of such action are followed.

- d. Be assigned members who may only be dis-enrolled under the following conditions:
 - i. the member is physically abusive.
 - ii. If other members of the household or persons who routinely visit the household poses a threat of harm or injury to the member or to a Provider employee delivering services, or if the member refuses care.
 - iii. The basis for demonstrating any of these reasons for disenrollment is comprehensive professional documentation.
- e. Adhere to the following process for dis-enrolling a member:
 - i. Provider shall file a grievance with the DHS or OHCA as appropriate.
 - ii. The grievance shall state: (1) the reason(s) according to paragraph above for the request to disenroll the member from Provider's care; (2) comprehensive documentation describing the difficulty encountered with the member; (3) documentation of efforts to accommodate the member; (4) intervention offered the member; and (5) how the member will be impacted should care cease by Provider.
 - iii. The disenrollment is not effective until the date of notification of approval by DHS/OHCA to Provider and under the conditions of the disenrollment stated by DHS/OHCA. If the disenrollment is not approved, Provider shall continue to provide services to the member. Provider shall furnish records and information regarding any claim for providing services to ADvantage members to DHS. Authorized representatives of DHS 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 for ADvantage members and to audit Provider's financial records as provided by 42 C.F.R. § 431.107.
- f. To provide nursing facility base extended respite services as defined in OAC. 317:30-5-763 to qualified persons as specified in the Individual Care Plan.
- g. To comply with all applicable statutes, regulations, policies, and properly promulgated rules of OHCA.
- h. To the provision of services for purposes of this Agreement, shall be limited to those nursing facility base extended respite services within the scope of the ADvantage Program, Living Choice, Medically Fragile, or other applicable HCBS waiver as defined by properly promulgated rules. To the extent that services are not compensable services under SoonerCare, the services may be provided but shall not be compensated by OHCA.

ARTICLE V: PAYMENT FOR SERVICES

- 1. Provider shall not use any policy or practice that has the effect of

discriminating on the basis of race, color, national origin, sex, sexual orientation, gender identification, or disability.

2. Pursuant to 42 C.F.R. § 447.15, payments made by OHCA shall be considered payment in full for all covered services provided to a SoonerCare member. Provider shall not bill a SoonerCare member for such service and shall not be relieved of this provision by electing not to bill OHCA for the service. This provision shall not apply to co-payments allowed by OHCA.
3. Provider shall release any lien securing payment for any SoonerCare compensable service. This provision shall not affect Provider's ability to file a lien for non-covered service or OHCA-permitted co-payment.
4. 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.
5. Provider accepts any terms and requirements of DHS, and/or OHCA.
6. Provider shall be responsible for the accuracy and integrity of all claims submitted.

ARTICLE VI. LAWS APPLICABLE

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) state Medicaid statutes and rules, (iii) state statutes and rules governing practice of health-care professions, and (iv) any other laws cited in this agreement may change. The parties shall be mutually bound by such changes.
2. As applicable, Provider shall comply with and certifies compliance with:
 - A. Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*;
 - B. Rehabilitation Act, 29 U.S.C. § 701 *et seq.*;
 - C. Drug-Free Workplace Act, 41 U.S.C. § 8101 *et seq.*;
 - D. Title XIX and Title XXI of the Social Security Act, 42 U.S.C. § 1396 *et seq.* and § 2101 *et seq.*;
 - E. Civil Rights Act, 42 U.S.C. § 2000d *et seq.* and § 2000e *et seq.*;
 - F. Age Discrimination Act, 42 U.S.C. § 6101 *et seq.*;
 - G. Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*;
 - H. Oklahoma Anti-Discrimination Act, 25 Okla. Stat. § 1101 *et seq.*;
 - I. Oklahoma Worker's Compensation Act, 85A Okla. Stat. § 1 *et seq.*;
 - J. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*;
 - K. Equal Pay Act, 29 U.S.C. § 206(d);
 - L. 31 U.S.C. § 1352 and 45 C.F.R. § 93.100 *et seq.*, which (1) prohibit the use of federal funds paid under this Contract to lobby Congress or any federal official to enhance or protect the monies paid under the Contract, and (2) require disclosures to be made if other monies are used for such lobbying;
 - M. Presidential Executive Orders 11141, 11246, 11375, and 11478, and Amendments thereto, and 5 U.S.C. § 3501, and as supplemented in the Department of Labor regulations at 41 C.F.R. Chapter 60, which together require certain federal contractors and subcontractors to institute affirmative action plans to ensure absence of discrimination for employment because of age, race, color, religion, sex, sexual

- orientation, gender identity, disability, or national origin;
- N. The Federal Privacy Regulations and the Federal Security Regulations as contained in 45 C.F.R. Parts 160 through 164 that are applicable to such party as mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act¹ (HITECH) (42 U.S.C. § 300jj *et seq.* and § 17921 *et seq.*);
 - O. Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. § 4212 and 41 C.F.R. Part 60-300;
 - P. Protective Services for Vulnerable Adults Act, 43A Okla. Stat. § 10-101 *et seq.*;
 - Q. Non-procurement, debarment, and suspension, 2 C.F.R. Part 376;
 - R. 74 Okla. Stat. § 85.44(B) and (C) and 45 C.F.R. §§ 75.320, 75.439, and 75.465 (as defined by 45 C.F.R. § 75.2);
 - S. Anti-Kickback Act of 1986, 41 U.S.C. § 8701 *et seq.*;
 - T. Oklahoma Anti-Kickback Act of 1974, 74 Okla. Stat. § 3401 *et seq.*;
 - U. Federal False Claims Act, 31 U.S.C. §§ 3729-3733 and § 3801 *et seq.*;
 - V. Oklahoma Medicaid False Claims Act, 63 Okla. Stat. § 5053 *et seq.*; and
 - W. Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 Okla. Stat. § 1313 and participates in the Status Verification System. The Status Verification System is defined at 25 Okla. Stat. § 1312 and includes, but is not limited to, the free Employment Verification Program (e-Verify) available at www.dhs.gov/E-Verify.
- 3. The explicit inclusion of some statutory and regulatory duties in this Agreement shall not exclude other statutory or regulatory duties.
 - 4. All questions pertaining to validity, interpretation, and administration of this Agreement shall be determined in accordance with the laws of the State of Oklahoma, regardless of where any service is performed, or product is provided.
 - 5. The venue for legal actions arising from this Agreement shall be in the District Court of Oklahoma County, State of Oklahoma.

ARTICLE VII. AUDIT AND INSPECTION

- 1. Provider shall cooperate with DHS in keeping such records as are necessary to disclose fully the extent of services provided to SoonerCare members.
- 2. Authorized representatives of OHCA, the Oklahoma Attorney General's Medicaid Fraud Control Unit ("MFCU"), and the U.S. Secretary of Health and Human Services ("Secretary") 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's financial records as provided by 42 C.F.R. § 431.107.
- 3. Pursuant to 74 Okla. Stat. § 85.41, OHCA and the Oklahoma State Auditor and

[The American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" (HITECH) Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the "HIPAA Security and Privacy Rule" are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations).]

Inspector shall have the right to examine Provider's books, records, documents, accounting procedures, practices, or any other items relevant to this Agreement.

ARTICLE VIII. CONFIDENTIALITY

1. Provider agrees that SoonerCare member information is confidential pursuant to 42 U.S.C. § 1396a(7), 42 C.F.R. § 431.300-306, and 63 Okla. Stat. § 5018. Provider shall not release the information governed by these requirements to any entity or person without proper authorization or OHCA's permission.
2. Provider agrees to comply with the provisions of the Health Insurance and Portability Accounting Act of 1996 (HIPAA), specifically the privacy provisions of that act found at 45 C.F.R. Part 164.

ARTICLE IX. TERMINATION

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 SoonerCare members or b) upon evidence of fraud.
2. In the event funding of SoonerCare from 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.
3. In the event of termination, Provider shall provide any records or other assistance necessary for an orderly transition of SoonerCare members' health care.
4. In the event of termination, payments will be made for all work satisfactorily performed up to the date of termination.

ARTICLE X. OTHER PROVISIONS

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.
2. 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.
3. 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.
4. OHCA does not create, and Provider does not obtain any license by virtue of this Agreement. OHCA does not guarantee Provider will receive any patients, and Provider does not obtain any property right or interest in any SoonerCare member business by this Agreement.

ARTICLE XI. NON-COLLUSION CERTIFICATION

Provider certifies that: Neither Provider nor anyone subject to Provider's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein. No person who has been involved in any manner in the development of the Agreement to which this statement is attached while employed by the State of Oklahoma shall be employed by Provider to fulfill any of the services provided for under said contract.

ARTICLE X. TOBACCO

1. Provider will implement and provide a tobacco-free campus in accordance with the standards of the Tobacco Free policy of the State of Oklahoma 63 O. S. § 1-1523 and Executive Order 2013-43.
2. Providers shall make an effort to communicate the tobacco free campus in signage and other communications associated with the organization.