

HOSPITAL FUNDING AGREEMENT SOONERCARE AMERICAN INDIAN/ALASKA NATIVE TRIBAL HEALTH SERVICE PROVIDERS

Based upon the following recitals, the Oklahoma Health Care Authority (OHCA hereafter) and Provider enters into this Agreement:

ARTICLE I. PURPOSE

- 1.1 The purpose of this Agreement is for OHCA and Provider to contract for various healthcare services to be provided to 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

Provider states that:

- a) It is an American Indian/Alaska Native (AI/AN) tribe or tribal organization that operates a health program pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, 25 U.S.C. 450f *et seq.*;
- b) It is a hospital, as defined by 63 Okla. Stat. § 1-701 or as defined in the Federal statutes, or as defined by the appropriate statutes of the state where services are rendered pursuant to this Agreement, which: (i) provides acute health care, (ii) is licensed and credentialed in accordance with Federal statutes and regulations, (iii) has all other accreditation in accordance with Federal Statutes and regulations, and (iv) holds all state, federal, tribal, and local licenses, certifications, and permits as applicable to such facility;
- c) It has authority to enter into this Agreement pursuant to its organizational documents, bylaws, or properly enacted resolution of its governing authority. The person executing this Agreement for Provider has authority to execute this Agreement on Provider's behalf pursuant to Provider's organizational documents, bylaws, or properly enacted resolution of Provider's governing authority;
- d) Its malpractice coverage is provided through the United States Government under the Federal Tort Claims Act, 25 U.S.C. § 450; and
- e) Provider has supplied Provider Information to OHCA and executed this Agreement in order to order, refer, and/or provide health-care services to SoonerCare members.

2.4 DEFINITIONS

- a) American Indian/Alaska Native (AI/AN) means an officially enrolled member in a federally recognized AI/AN tribe of the United States of America.
- b) Choice means a comprehensive medical benefit plan with a Primary Care Provider for each member.
- c) EPE means OHCA's Electronic Provider Enrollment web-based system.
- d) Insure Oklahoma Individual Plan (IO) means a comprehensive SoonerCare package that requires members to share in the cost through premiums and co-payments. IO members choose a PCP who is paid a capitation rate for case management.
- e) Practice of Medicine means "practice of medicine and surgery" as provided in 59 Okla. Stat. § 492c and "practice of osteopathic medicine" as provided in 59 Okla. Stat. § 621 or as defined in the appropriate licensure act in the state where services are rendered. Medical Services means services included within such practice of medicine.
- f) Provider Information means all information requested from and/or supplied by PROVIDER to OHCA through EPE, a paper application form or other written communication from PROVIDER.
- g) Member means a person approved to receive health care benefits under a SoonerCare plan.
- h) SoonerCare means all OHCA medical benefit plans including Traditional, Choice, SoonerPlan, Supplemental and Oklahoma Employer/employee Partnership for Insurance Coverage (IO) and others.
- i) SoonerPlan means a limited benefit plan covering services related to family planning.
- j) Supplemental means a plan that provides medical benefits that supplement those services covered by Medicare.
- k) Traditional means a comprehensive medical benefit plan that purchases benefits for members on a fee-for-service rate or OMB rate for AI/AN members.

ARTICLE III. TERM AND ASSIGNMENT

- 3.1 This Agreement shall be effective upon completion when: (1) it is executed by Provider; (2) all necessary documentation has been received and verified by OHCA; and (3) it has been accepted by OHCA. OHCA acceptance is complete only upon written notification to Provider. The term of this Agreement shall expire March 31, 2021.
- 3.2 Provider shall not assign or transfer any rights or obligations under this Agreement without OHCA's prior written consent except as otherwise provided in this Agreement and applicable Addenda.

ARTICLE IV. SCOPE OF WORK

4.1 GENERAL PROVISIONS

Provider agrees:

- a) To provide healthcare services pursuant to O.A.C. 317:30-5-40 *et seq.* to SoonerCare members in a hospital setting in keeping with sound professional practice;

- b) To abide by all applicable statutory and regulatory restrictions on the operation of hospitals as expressed by Federal Statutes;
- c) To comply with all applicable Medicaid statutes, regulations, policies, and applicable promulgated rules of OHCA;
- d) And OHCA also agrees that tribal eligibility is limited to requirements set forth in: 1) Title XVIII, Part D of the Social Security Act and 42 C.F.R. Part 423; 2) Section 813(a) and (c) of the Indian Health Care Improvement Act, 25 USC §1680c (a) and (c); 3) 42 C.F.R. part 136, and other applicable Federal law; health services at tribal facilities are generally unavailable to persons who are not eligible beneficiaries except in emergencies and under certain circumstances described in the Indian Health Care Improvement Act (IHCIA); and, furthermore, the parties agree that no clause, term, or condition in the Agreement shall be construed in any way to change, reduce, expand, or alter the eligibility requirements for services at tribal facilities for AI/AN members paid with IHS funding;
- e) That the state has an obligation under 42 U.S.C. §1396a(25)(A) to ascertain the legal liability of third parties who are liable for the health care expenses of members under the care of Provider. Because of this obligation, Provider agrees to assist OHCA, or its authorized agents, in determining the liability of third parties;
- f) To maintain at all times, all applicable state or federal licenses, certifications, and permits and provide services to eligible SoonerCare members pursuant to professional standards during the term of this Agreement. Should Provider's license, certification, or permit to operate as a hospital be modified, suspended, revoked, or in any other way impaired, Provider shall notify OHCA within thirty days (30) of such action. In the event Provider's license, certification, or permit is modified, Provider shall abide by the terms of the modification. In the event of suspension, revocation, or other action making it unlawful for Provider to operate a hospital, this Agreement shall terminate immediately. A violation of this paragraph, at the time of execution or during any part of the term of this contract, shall render the contract immediately void;
- g) To ensure that its employees and persons who engage in health care in its facility shall maintain all state or federal licenses, certifications, and permits required for such activities during the term of this Agreement. 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;
- h) That provision of healthcare services for purposes of this Agreement shall be limited to those services within the scope of the Oklahoma Medicaid State Plan reflected by properly promulgated rules. To the extent that health-care services are not compensable services under SoonerCare, the services may be provided, but shall not be compensated by OHCA. Provider acknowledges that covered services may vary between SoonerCare benefit plans;
- i) To comply and certify compliance with 42 U.S.C. 1395cc(a)(1),

1395cc(f), and 1396a(w), which require Medicaid providers to provide patients with information about patients' rights to accept or refuse medical treatment. Provider shall educate staff and SoonerCare members concerning advance directives. Provider shall include in each patient's individual medical record documentation as to whether the patient has executed an advance directive. Provider shall not discriminate on the basis of whether an individual has executed an advance directive;

- j) To develop and enforce policies and procedures in accordance with laws regarding communicable diseases. These policies and procedures shall include universal precautions, including precautions related to Human Immunodeficiency Virus (HIV) serologically positive patients, which equal or exceed such standards established by the U.S. Occupational Safety and Health Administration;
- k) To maintain a clinical record system:
 - 1. The system shall be maintained in accordance with written policies and procedures, which shall be produced to OHCA or its agent upon request;
 - 2. Provider shall designate a professional staff member to be responsible for maintaining the records and for ensuring they are completely and accurately documented, readily accessible, and systematically organized;
 - 3. Each patient's record shall include, as applicable and in addition to other items set forth herein, identification and social data, evidence of consent forms, pertinent medical history, assessment of patient's health status and health-care needs, brief summary of presenting episode and disposition, instructions to patient, report of physical examination, diagnostic and laboratory test results, consultative findings, all physician's orders, reports of treatments and medications, other pertinent information necessary to monitor the patient, and signatures of the physician and other health-care professionals involved in patient's care;
- l) That Provider's clinical services shall be under the medical direction of a duly licensed physician. Provider shall state in writing and have available for inspection its organizational policies, responsibilities, and lines of authority, including responsibilities of physicians, physician assistants, and nurse practitioners;
- m) That services rendered under this Agreement shall be performed in an appropriate physical location, which shall include barrier-free access for the disabled, adequate space for provision of direct services, proper exit signs, and a safe environment for patients;
- n) To train staff in handling medical and non-medical emergencies to ensure patient safety;
- o) To have a written preventive maintenance program to ensure all essential mechanical, electrical, and patient-care equipment is maintained in a safe operating condition;
- p) To comply with OHCA rules regarding EPSDT screenings found at Oklahoma Administrative Code (OAC) 317:30-3-65 if Provider provides primary care services to member under the age of twenty-one (21).

EPSDT screenings must contain all elements shown at OAC 317:30-3-65.2. Provider shall:

1. Educate families who have members under 21 about the EPSDT Program and its importance to the health of children and adolescents;
 2. Conduct and document EPSDT outreach to ensure that members are current with respect to the periodicity schedule;
 3. Conduct and document follow ups with members who have missed appointments;
- q) And OHCA agrees that Provider is not required to receive prior authorizations from OHCA when referring a patient within the tribal or IHS medical facilities; and
- r) That all Provider Information supplied by Provider is correct; Provider may correct or update Provider Information through EPE or in writing (facsimile acceptable) to OHCA.

4.2 Rights and Responsibilities Related to Member Co-payments and Collections

- (a) 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.
- (b) Provider shall not require members to pay for services in advance, except for allowable OHCA member co-payments. Provider may require IO members to pay allowable co-payments in advance of receiving services.
- (c) Provider shall release any lien securing payment for any SoonerCare compensable service.
- (d) Provider shall not bill a member or attempt in any way to collect any payment from a member for any covered service, except for co-payments allowed by OHCA. This provision is in force even if Provider elects not to bill OHCA for a covered service. Violation of this provision may result in suspension of payments, recoupment of OHCA reimbursements and/or contract action up to and including contract termination.
- (e) Provider may collect allowable co-payments from a member for covered services and may use any legal means to enforce the member's liability for such co-payment. Provider may not collect allowable co-payments from a member if the Provider has an agreement with tribal or IHS contract health service to waive or collect such payments from contract health services.
- (f) Provider shall not deny covered services to eligible members because of their inability to pay a co-payment, unless the member is enrolled in the IO benefit plan. Provider may deny covered services to eligible IO members if they are unable to pay a co-payment. Provision of a covered service to a member unable to pay a co-payment does not eliminate the member's liability for that co-payment, unless the tribe or IHS has authorized payment to such provider for co-payments.
- (g) OHCA acknowledges that IHS and tribal facilities generally cannot charge co-payments, deductibles, and/or premiums to eligible American Indians and Alaskan Natives.

4.3 Payment for Services

- a) OHCA shall reimburse Provider for SoonerCare-compensable healthcare

services 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 such term is defined at 42 C.F.R. 447.45 (b). Provider is entitled to interest in accordance with 62 Okla. Stat. 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 for which payment is billed by or on behalf of Provider were medically necessary as defined by O.A.C. 317:30-3-1(f) and were rendered by Provider.

4.4 Services Provided to Non-AI/AN SoonerCare Members

If Provider chooses to serve non-AI/AN members:

- a) Provider shall be issued separate provider numbers for AI/AN and non-AI/AN members. Provider agrees to bill with the correct provider number when submitting claims for AI/AN and non-AI/AN members.
- b) The parties agree and acknowledge that OHCA's payment of 100% of the OMB rate for services to non-AI/AN members constitutes OHCA advancing the state share match to the Provider;
- c) The parties agree and acknowledge that the Provider is responsible for the state share matching funds and shall reimburse OHCA all applicable state share payments made on behalf of the Provider;
- d) OHCA shall bill the Provider for the state share match of the actual claim payments appearing on the OHCA warrant register on a quarterly basis. OHCA reserves the right to change the state share billing frequency based upon actual claim volume. OHCA shall give the Provider a thirty (30) day written notice in the event OHCA elects to change the billing frequency;
- e) The Provider shall pay state share monies within thirty (30) days of date of receipt of invoice from OHCA. OHCA reserves the right to recoup funds disbursed or to withhold future disbursements if the Provider fails to properly submit the state share payments as specified above to OHCA.

4.5 Billing Procedures

- a) Provider agrees all claims shall be submitted to OHCA in a format acceptable to OHCA and in accordance with OHCA regulations. 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 appropriate eligibility by contacting OHCA's Eligibility Verification System (EVS).

4.6 Telemedicine

If serving as either an originating or distant site for telemedicine services, Provider shall comply with telemedicine policy at OAC 317:30-3-27.

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 contract may change. The parties shall be mutually bound by applicable changes.
- 5.2 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. § 701 et seq.;
 - d) Title XIX of the Social Security Act), 42 U.S.C. § 1396 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) 31U.S.C. § 1352 and 45 C.F.R. § 93.100 et seq., which (1) prohibits the use of federal funds paid under this Agreement to lobby Congress or any federal official to enhance or protect the monies paid under this Agreement and (2) requires disclosures to be made if other monies are used for such lobbying;
 - i) Presidential Executive Orders 11141, 11246 and 11375 at 5 U.S.C. § 3501 and as supplemented in Department of Labor regulations 41 C.F.R. §§ 741.1-741.84, which together require certain federal contractors and subcontractors to institute affirmative action plans to ensure absence of discrimination for employment because of race, color, religion, sex, or national origin;
 - j) The Federal Privacy Regulations and the Federal Security Regulations as contained in 45 C.F.R. Part 160 et seq. that are applicable to such party as mandated by the Health Insurance Portability and Accountability Act of (HIPAA), Public Law 104-191, 110 Stat. 1936, and HIPAA regulations at 45 C.F.R. § 160.101 et seq.;
 - k) Vietnam Era Veterans' Readjustment Assistance Act, Public Law 93-508, 88 Stat. 1578;
 - l) Protective Services for Vulnerable Adults Act, 43A Okla. Stat. § 10-101 et seq.;
 - m) Anti-deficiency Act, 31 U.S.C. § 1341;
 - n) The Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450, et seq.
 - o) The Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653.
 - p) Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
 - q) Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1601 et seq.
 - r) Federal False Claims Act, 31 U.S.C. § 3729-3733; 31 U.S.C. § 3801
 - s) 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.

- 5.3 The explicit inclusion of some statutory and regulatory duties in this Agreement shall not exclude other statutory and regulatory duties.
- 5.4 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.
- 5.5 The parties acknowledge and agree that nothing in this Agreement shall be interpreted to authorize or obligate any Federal employee of PROVIDER to operate outside the scope of his or her Federal employment pursuant to 28 U.S.C. 1346(b), 2671-2680.
- 5.6 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. 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.
- 5.7 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 information regarding any claim for providing such service to OHCA, the Oklahoma Attorney General's Medicaid Fraud Control Unit (MFCU hereafter), and the U.S. Secretary of Health and Human Services (Secretary hereafter). Provider agrees to keep records to disclose the services it provides for seven years from the date of service. Provider shall not destroy or dispose of records, which are under audit, review or investigation when the seven-year limitation is met. Provider shall maintain such records until 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, and the 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. 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.
- 6.3 Pursuant to 74 Okla. Stat. 85.41, OHCA and the Oklahoma State Auditor and Inspector shall have the right to examine Provider's books, records, documents, accounting procedures, practices, or any other items relevant to this Agreement.

ARTICLE VII. CONFIDENTIALITY

- 7.1 Provider agrees that SoonerCare Member information is confidential pursuant to 42 USC 1396a(7), 42 CFR 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.
- 7.2 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 consent shall not be required for state and federal personnel working with records of Members.
- 7.3 Provider agrees that SoonerCare member and provider information cannot be remarketed, summarized, distributed, or sold to any other organization without the express written approval of OHCA.
- 7.4 Provider agrees to comply with 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 (HIPPA) and 42 U.S.C. 320d-1230d-8.
- 7.5 Provider must report a known breach of confidentiality, privacy, or security, as defined under HIPPA, to the OHCA Privacy and Confidentiality Officer within 48 hours of knowledge of an unauthorized act. Failure to perform may constitute immediate termination of the Agreement.
- 7.6 Provider agrees to report potential known violations of 21 Okla. Stat. 1953 to the OHCA Legal Division within 48 hours of knowledge of an unauthorized act. In general, this criminal statute makes it a crime to willfully and without authorization gain access to, alter, modify, disrupt, or threaten a computer system.
- 7.7 Provider shall, following the discovery of a breach of unsecured PHI as defined in the HITECH (The Health Information Technology for Economic and Clinical Health Act) or accompanying regulations, notify the OHCA of such breach pursuant to the terms of 45 CFR 164.410 and cooperate in the OHCA's breach analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by Provider as of the first on which such breach is known to Provider or, by exercising reasonable diligence, would have been known to Provider.
- 7.8 Provider shall report to the OHCA any use or disclosure of PHI which is not in compliance with the terms of this Agreement of which it becomes aware. Provider shall report to OHCA any Security Incident of which it becomes aware. For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of PHI by Provider in violation of the requirements of this Agreement.

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 (30) written notice to the other party; (ii) either party may terminate this Agreement without cause with a sixty-day (60) written notice to the other party; or (iii) OHCA may terminate the Agreement immediately (a) to protect the health and safety of members, (b) upon evidence of fraud, or (c) pursuant to Paragraph 4.1(e) above.
- 8.2 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 Contract and prior to the anticipated Agreement expiration date, this Agreement may be terminated immediately by OHCA.
- 8.3 In the event of termination, Provider shall provide any and all records or other

assistance necessary for an orderly transition of SoonerCare members' health care.

ARTICLE IX. OTHER PROVISIONS

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.