

# PHARMACY REIMBURSEMENT AGREEMENT SOONERCARE AMERICAN INDIAN/ALASKA NATIVE TRIBAL HEALTH SERVICE PROVIDERS

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

## ARTICLE I. PURPOSE

- 1.1 The purpose of this Agreement is for OHCA and Provider to contract for pharmaceutical services to be provided to members in Oklahoma Medicaid programs, known as SoonerCare.

## ARTICLE II. THE PARTIES

### 2.1 OHCA

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

### 2.2 PROVIDER

Provider states that:

- a. The parties have a current funding agreement for Hospital Services and/or Outpatient Clinic Services.
- b. It is an American Indian/Alaskan 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.*;
- c. It is a distinct entity that meets criteria described in O.A.C. 317:30-5-1086 to provide services under the SoonerCare program, is licensed and credentialed in accordance with Federal statutes and regulations, and holds all state, federal, tribal, and local licenses, certifications, and permits as applicable to such facility;
- d. 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;
- e. Its malpractice coverage is provided through the United States Government under the Federal Tort Claims Act, 25 U.S.C. § 450; and
- f. Provider has supplied Provider Information to OHCA and executed this Agreement in order to provide healthcare services to SoonerCare members.

## ARTICLE III. TERM AND ASSIGNMENT

- 3.1 This Agreement shall become effective upon completion: (i) when it is executed by Provider; (ii) when all necessary documentation has been received and verified by OHCA; and (iii) when it has been accepted by OHCA. OHCA acceptance is complete only upon written notification to Provider.

- 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 or 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 has a pharmacy which is not licensed by individual states, is accredited in accordance with Federal statutes and regulations, and has all other state, federal, tribal, and local licenses, certifications, registrations, and permits required of such an operation. All such accreditation shall be kept current during the term of this Agreement.
- 4.2 Provider agrees to abide by all applicable restrictions on the provision of pharmaceutical services as expressed by the federal statutes and federal regulations.
- 4.3 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 federal regulations, as well as Oklahoma Statutes and Oklahoma rules or the appropriate statutory and regulatory restrictions of the state where prescription drugs or other pharmaceutical products are provided;
  - c. To make a reasonable effort to obtain, record, and maintain the following information regarding the SoonerCare member for whom the product is prescribed:
    - (i) Name, address, telephone number, date of birth or age, and gender;
    - (ii) Individual history where significant, including disease state(s), known allergies and drug reactions, and a comprehensive list of medications and relevant devices; and
    - (iii) Pharmacist's comments relevant to the member's drug therapy;
  - d. To comply with 42 USC § 1396r-8(g) (2) (A) (ii), in providing any product pursuant to this Agreement; and
  - e. To accept electronically prescribed prescriptions from SoonerCare providers with certified e-prescribing.
- 4.4 Provider's pharmacist or assistant pharmacist, acting within the scope of practice and in keeping with the terms of their professional license, shall 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.
- 4.5 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.
- 4.6 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.
- 4.7 If Provider provides sterile products for home infusion therapy, Provider must meet the requirements 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.
- 4.8 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.
- 4.9 OHCA shall pay Provider for prescription drugs and other pharmaceutical products within the scope of OHCA's programs based on rates recommended by the OHCA Rates and Standards Committee and approved by the OHCA Board of Directors.
- 4.10 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 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 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.
- 4.11 Services Provided to Non-AI/AN SoonerCare Members:

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

  - a. Provider shall be issued separate provider identification numbers for AI/AN members and non-AI/AN members. Provider agrees to bill with the correct provider identification 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; and
  - e. The Provider shall pay the state share reimbursement within thirty (30) days of receipt of the 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.
- 4.12 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).

#### **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. § 8101 *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. 31 U.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. Chapter 60, 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, 38 U.S.C. § 4212 and 41 C.F.R. Part 60-300;
  - l. Protective Services for Vulnerable Adults Act, 43A O.S. § 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; and
  - s. Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1313 and participates in the Status Verification System. The Status Verification System is defined at 25 O. S. § 1312 and includes but is not limited to, the free Employment Verification Program (e-Verify) available at [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify).
- 5.3 The explicit inclusion of some statutory and regulatory duties in this Agreement shall not exclude other applicable 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 For the purpose of Federal jurisdiction, in any action in which the State of Oklahoma is a party, venue shall be in the United States District Court for the Western District of Oklahoma. Nothing in this Agreement shall be construed to waive the sovereign rights of either party. The parties shall endeavor in good faith to resolve any and all differences that may arise.

## **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"), and the U.S. Secretary of Health and Human Services ("Secretary"). 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 O.S. 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 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; and the Health Insurance Portability and Accountability Act of 1996 located at 42 U.S.C. 1320D-1320d-9, and its implementing regulations at 45 CFR 160 and 45 CFR 164 ("HIPAA Security and Privacy Rule") and the Health Information Technology for Economic and Clinical Health Act of 2009 (P.L. 111-5) (the "HITECH Act").
- 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. 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 Providers 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 Provider shall be deemed owned by Provider.
- 7.5 The parties shall notify each other when fraud or abuse by a participating provider is suspected or discovered, or when a participating provider 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 (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 contract immediately (a) to protect the health and safety of members, (b) upon evidence of fraud, or (c) pursuant to Paragraph 2.2 (c) and 4.1 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. SEVERABILITY CLAUSE**

- 9.1 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 patients, and Provider does not obtain any property right or interest in any SoonerCare member business by this Agreement.

#### **ARTICLE XI. REIMBURSEMENT**

- 11.1 OHCA shall reimburse Provider for pharmaceutical services in accordance with the appropriate part of OHCA's Provider Manual § 317:30-5-78 *et seq.*