

DEPARTMENT OF VERMONT HEALTH ACCESS GENERAL PROVIDER AGREEMENT

ARTICLE I. PURPOSE

The purpose of this Agreement is for Department of Vermont Health Access (DVHA) and PROVIDER to contract for health care services to be provided to members in Vermont Medicaid.

ARTICLE II. PARTIES AND DEFINITIONS

2.1 DVHA

- a) DVHA is a Department within the Agency for Human Services and is charged with the responsibility to contract with providers who serve the Medicaid Program. 3 V.S.A. § 3088.
- b) DVHA has authority to enter into this Agreement pursuant to 42 U.S.C. §1396b (m).
- c) The mailing address for DVHA is: 280 State Drive, Waterbury, VT 05671.
- d) Reporting of Privacy or Security breaches can be made by contacting DVHA Legal Counsel at the address above and AHS.DVHAProtectionMonitor@state.vt.us.

2.2 PROVIDER

- a) PROVIDER is an individual or entity that has supplied Provider enrollment information to DVHA and executed this Agreement in order to order, refer, prescribe and/or provide health care services to Vermont Medicaid members.

2.3 DEFINITIONS

“Protected Health Information” or PHI means individually identifiable health information, transmitted or maintained electronically or in any form, as defined in 45 C.F.R. § 160.103.

“Authorized Representative” means an employee performing audits, site reviews, quality reviews or inspections.

“Eligibility” means meeting the financial and categorical requirements for receipt of Vermont Medicaid benefits.

“Billing Service Agreement” means an agreement with a business agent to furnish statements and receives payments in the name of the provider.

“Secretary” means the Secretary of the Department of Health and Human Services.

ARTICLE III. TERM

3.1 This Agreement shall be effective upon completion when: (1) it is executed by the Provider; (2) all necessary documentation has been received and verified by DVHA; and (3) it has been accepted by DVHA. DVHA acceptance is complete only upon written notification to the PROVIDER by mail or electronic mail. The term of this Agreement shall expire after a term of no more than five (5) years from its effective date.

3.2 PROVIDER shall not assign or transfer any rights, duties, or obligations under this Agreement without prior written consent from DVHA except as otherwise provided in this Agreement and applicable Addenda.

ARTICLE IV. SCOPE OF WORK

4.1 General Provisions

Unless otherwise specified in the Special Provisions for PROVIDER’s Type, PROVIDER agrees:

- a) To provide health care services to Vermont Medicaid Members appropriate to PROVIDER’s Type and in accordance with applicable professional standards;
- b) That all Provider Information supplied by PROVIDER in its enrollment application is correct;

- c) Provider must make changes to the enrollment application as provided in this contract or its special provisions.
- d) To comply with all applicable statutes, regulations, reimbursement manuals, policies, and properly promulgated rules of DVHA;
- e) That DVHA has an obligation under 42 U.S.C. § 1396a (a) (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 DVHA or its authorized agents, in determining the liability of third parties;
- f) To maintain all applicable licenses, certifications and/or accreditations as specified in the Special Provisions for PROVIDER's type during the term of this Agreement. Should PROVIDER's licenses, certifications and/or accreditations be modified, suspended, revoked, or in any other way impaired, PROVIDER shall notify DVHA in writing within three business days of such action. In the event PROVIDER's licenses, certifications and/or accreditations are modified, PROVIDER shall abide by the terms of the modified licenses, certifications and/or licenses. In the event of suspension, revocation, or other action making it unlawful for PROVIDER to provide services under this Agreement, the Agreement shall terminate immediately. A violation of this paragraph, at the time of execution or during any part of the Agreement term, shall render the Agreement immediately void;
- g) That provision of services for purposes of this Agreement shall be limited to those services within the scope of the Vermont Medicaid State Plan reflected by properly promulgated rules; to the extent that services are not compensable under Medicaid, the services may be provided but shall not be compensated by DVHA; PROVIDER acknowledges that covered services may vary depending on Medicaid benefit plan;
- h) To maintain a clinical record system as follows:
 - i. The system shall be maintained in accordance with written policies and procedures, which shall be produced to DVHA or its agent upon request;
 - ii. 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;
 - iii. Each patient's record shall include, as applicable and in addition to other items set forth herein: Member identification and personal, demographic and social data; evidence of consent forms; pertinent medical history; assessment of patient's health status and health care needs; report of physical examination; brief summary of presenting episode and disposition; education and instruction to patient; all physician orders; diagnostic and laboratory test results; consultative findings; reports of treatments and medications; immunization records; preventive services; and other pertinent information necessary to monitor the patient. All entries must be legible, dated and include signatures of the physician and other health care professionals rendering the care to the patient;
- i) To render services in an appropriate physical location, which shall include barrier-free access, adequate space for provision of direct services, appropriate equipment, proper exit signs, and a safe environment for patients;
- j) To train staff in handling medical and non-medical emergencies to ensure patient safety;
- k) To have a preventive maintenance program to ensure essential mechanical, electrical, and patient-care equipment is maintained in safe operating condition;
- l) 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;

- m) To comply and certify compliance with 42 U.S.C. §§ 1395 cc (a) (1), 1395cc (f), and 1396a (w) which require DVHA providers to provide patients with information about patients' rights to accept or refuse medical treatment. PROVIDER shall educate staff and Medicaid Members concerning advance directives. PROVIDER shall include in each Member's individual medical record documentation as to whether the Member has executed an advance directive. PROVIDER shall not discriminate on the basis of whether an individual has executed an advance directive;
- n) To train staff to identify and properly respond to potential conflicts of interest in the course of practice and treatment.

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

- a) Pursuant to 42 C.F.R. § 447.15, payments made by DVHA shall be considered payment in full for all covered services provided to a Member, except for DVHA-allowed Member co-payments.
- b) All covered services provided to a member shall be billed to DVHA. 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 DVHA. This provision is in force even if PROVIDER fails to bill DVHA for a covered service. Violation of this provision may result in suspension of payments, recoupment of DVHA reimbursements and/or contract action up to and including termination of this Agreement.
- c) PROVIDER shall not require Members to pay for services in advance, except for DVHA-allowed Member co-payments.
- d) PROVIDER shall not deny covered services to eligible Members because of their inability to pay a co-payment.
- e) PROVIDER may collect a DVHA allowed co-payment from a Member for a covered service and may use any legal means to enforce the Member's liability for such co-payment.

4.3 Payments from DVHA

- a) Unless otherwise specified in the Special Provisions for PROVIDER's Type, DVHA shall pay PROVIDER for services in accordance with 42 C.F.R. § 447.45 (d) (2) & (4).
- b) PROVIDER agrees and understands that payment cannot be made by DVHA to vendors providing services under federally assisted programs unless services are provided without discrimination on the grounds of race, color, religion, sex, national origin or handicap.
- c) PROVIDER shall accept payment from DVHA by direct deposit to PROVIDER's financial institution. DVHA shall make payment in accordance with the information supplied by PROVIDER on the attached electronic funds transfer (hereafter EFT) form. PROVIDER shall update direct deposit information as needed by sending a signed EFT form to DVHA.
- d) PROVIDER shall release any lien securing payment for any DVHA compensable service. This provision shall not affect PROVIDER's ability to file a lien for non-covered service or DVHA-permitted co-payment.
- e) 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.

- f) PROVIDER certifies with each claim for payment that the services or products for which payment is billed by or on behalf of PROVIDER were medically necessary as defined by DVHA Medicaid Covered Services Rule 7103 and were rendered by PROVIDER.

4.4 Billing Procedures

- a) PROVIDER agrees all claims shall be submitted to DVHA in a format acceptable to DVHA and in accordance with DVHA regulations.
- b) If PROVIDER enters into a billing service agreement, PROVIDER shall be responsible for the accuracy and integrity of all claims submitted on behalf of PROVIDER 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 appropriate eligibility of a Member with DVHA.

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) state Medicaid statutes and rules, (iii) state statutes and rules governing practice of health care professions, and (iv) any other laws cited in the Agreement may change. The parties shall be mutually bound by such 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) Vermont Worker's Compensation Act, 21 V.S.A § 616;
- i) 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 Agreement to lobby Congress or any federal official to enhance or protect the monies paid under the Agreement and (2) require disclosures to be made if other monies are used for such lobbying;
- j) 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
- k) origin;
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,
- l) and HIPAA regulations at 45 C.F.R. §§ 160.101 et seq.;
- m) Vietnam Era Veterans' Readjustment Assistance Act, Public Law 93-508, 88 Stat. 1578;
- n) Debarment, Suspension and other Responsibility Matters, 45 C.F.R. §§ 76.105 and 76.110; With regard to equipment (as defined by 2 C.F.R. § 225) purchased with monies received from DVHA pursuant to this Agreement, (insert cite for equipment) and (C), 45 C.F.R §§

74.34, 42 C.F.R §§ 447.20 and 447.21.

p) Federal False Claims Act, 31 U.S.C. §§ 3729-3733; 31 U.S.C. § 3801.

- 5.3** The explicit inclusion of some statutory and regulatory duties in this Agreement shall not exclude other statutory or regulatory duties.
- 5.4** All questions pertaining to validity, interpretation, and administration of this Agreement shall be determined in accordance with the laws of the State of Vermont, regardless of where any service is performed or product is provided.
- 5.5** The venue for legal actions arising from this Agreement shall be in the Superior Court of Chittenden County, State of Vermont or the Federal District Court, District of Vermont.

ARTICLE VI. AUDIT 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 services provided to Members and shall furnish records and information regarding any claim for providing such service to DVHA, the Vermont Attorney General's Medicaid Fraud Control Unit (MFRAU 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 DVHA, MFRAU, 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 copies of records to DVHA or its agent within reasonable specified timeframes, all DVHA payments to PROVIDER may be suspended until records are submitted.
- 6.3** Pursuant to 32 V.S.A. § 163, DVHA and the Vermont State Auditor of Accounts shall have the right to examine PROVIDER's books, records, documents, accounting procedures, practices, or any other items relevant to this Agreement.
- 6.4** PROVIDER shall submit, within thirty-five days of a request by DVHA, MFRAU, all documents, as defined by Rule 34 of the Rules for Civil Procedure, in its possession, custody, or control concerning (i) the ownership of any subcontractor with whom PROVIDER has had business transactions totaling more than twenty-five thousand dollars during the twelve months preceding the date of the request, or (ii) any significant business transactions between PROVIDER and any wholly owned supplier or between PROVIDER and any subcontractor during the five years preceding the date of the request.
- 6.5** If PROVIDER is an entity other than an individual person, PROVIDER shall provide DVHA with information concerning PROVIDER's ownership in accordance with 42 C.F.R § 455.100 et seq. PROVIDER agrees to update its Provider Information within twenty (20) days of any change in ownership. Ownership information is critical for determining whether a person with an ownership interest has been convicted of a program-crime under Titles V, XVIII, XIX, XX and XXI of the federal Social Security Act, 42 U.S.C. § 301 et seq. PROVIDER shall also furnish ownership information to DVHA upon further request.

ARTICLE VII. CONFIDENTIALITY

- 7.1** PROVIDER agrees that DVHA Member information is confidential pursuant to 42 U.S.C. § 1396a (7), and 42 C.F.R §§ 431.300-431.306. PROVIDER shall not release the information governed by these requirements to any entity or person without proper authorization or permission from DVHA.
- 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 DVHA Member and provider information cannot be remarketed, summarized, distributed, or sold to any other organization without the express written approval of DVHA.
- 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 (HIPAA) and 42 U.S.C. §§1320d-1320d-9.
- 7.5** PROVIDER must report a known breach of confidentiality, privacy, or security, as defined under HIPAA, to DVHA Legal Counsel at as provided in Paragraphs 2.1(c) and (d) 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 13 V.S.A. § 4102 to DVHA Legal Counsel at the address provided in Paragraphs 2.1(c) and (d) 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 DVHA of such breach pursuant to the terms of 45 C.F.R § 164.410 and cooperate in DVHA's breach analysis procedures, including risk assessment, if requested. A breach shall be treated as discovered by PROVIDER on the first date 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 DVHA 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 DVHA 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 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) DVHA may terminate the Agreement immediately (a) to protect the health and safety of Members, (b) upon evidence of fraud, (c) pursuant to Paragraph 4.1 (e) above.
- 8.2** In the event funding of DVHA 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 DVHA.

8.3 In the event of termination, PROVIDER shall provide any records or other assistance necessary for an orderly transition of DVHA Members' health care.

ARTICLE IX. OTHER PROVISIONS

- 9.1** The representations made in the 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, signed by PROVIDER and accepted by DVHA; DVHA acceptance is complete only upon written notification to PROVIDER by mail or electronic mail.
- 9.2** Attachments to this Agreement which are made part of the Agreement and incorporated by reference are (i) Special Provisions for PROVIDER's Type; and (ii) Provider Information.
- 9.3** 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.
- 9.4** 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.
- 9.5** DVHA does not create and PROVIDER does not obtain any license by virtue of this Agreement. DVHA does not guarantee PROVIDER will receive any patients, and PROVIDER does not obtain any property right or interest in any DVHA Member business by this Agreement.

Provider

Signature of Person Authorized to Bind Organization/Individual (Blue Ink Denotes Authenticity)

Printed Name

Title

Date