

UTAH DEPARTMENT OF HEALTH  
Box 143104  
288 North 1460 West, Salt Lake City, Utah 84114-3104

CONTRACT

156146

H1424501

Department Log Number

State Contract Number

1. CONTRACT NAME:  
The name of this Contract is CHIP – Molina Healthcare of Utah
2. CONTRACTING PARTIES:  
This Contract is between the Utah Department of Health (DEPARTMENT) and Molina Healthcare of Utah, Inc. (CONTRACTOR).
3. CONTRACT PERIOD:  
The service period of this Contract shall be July 1, 2014 through June 30, 2019 unless terminated or extended by agreement in accordance with the terms and conditions of this Contract.
4. CONTRACT AMOUNT:  
The DEPARTMENT shall pay the CONTRACTOR up to a maximum amount of \$ 33,180,000 in accordance with the provisions in this Contract. This Contract is funded with Federal and State funds at the applicable participation rates. The CFDA # is 93.767 and relates to the federal funds provided.
5. CONTRACT INQUIRIES:  
Inquiries regarding this Contract shall be directed to the following individuals:

CONTRACTOR

Contact Person: Doug Springmeyer  
Business Address: 7050 South Union Park Center  
Suite 200  
Midvale, UT 84047

Phone Number: [REDACTED]

E-mail Address: [REDACTED]

DEPARTMENT

Program: CHIP  
Contact Person: Leigha Rodak  
Phone Number: [REDACTED]  
E-mail Address: [REDACTED]

6. REFERENCE TO ATTACHMENTS INCLUDED AS PART OF THIS CONTRACT:

Attachment A: GENERAL PROVISIONS <sup>Professional Services <sup>UB</sup></sup>  
Attachment B: INTRODUCTORY PROVISIONS  
Attachment C: COVERED SERVICES, LIMITATIONS, EXCLUSIONS, AND CO-PAYMENT REQUIREMENTS  
Attachment D: QUALITY ASSURANCE AND UTILIZATION MANAGEMENT  
Attachment E: COST AND UTILIZATION REPORTING FORMS AND DEFINITIONS  
Attachment F: RATES AND RELATED PROVISIONS

7. PROVISIONS INCORPORATED INTO THIS CONTRACT BY REFERENCE, BUT NOT ATTACHED HERETO:
  - A. All other governmental laws, rules, regulations, or actions applicable to services provided herein.
  - B. If the CONTRACTOR has provided the DEPARTMENT with Assurances, then the DEPARTMENT is entering into this agreement based upon the Assurances provided by the CONTRACTOR and the Assurances are incorporated by reference.
8. If the CONTRACTOR is not a local public procurement unit as defined by the Utah Procurement Code (UCA § 63G-6-103-14), this Contract must be signed by a representative of the State Division of Finance and the State Division of Purchasing to bind the State and the DEPARTMENT to this Contract.
9. This Contract, its attachments, and all documents incorporated by reference constitute the entire agreement between the parties and supersede all prior negotiations, representations, or agreements, either written or oral between the parties relating to the subject matter of this Contract.

156146


IN WITNESS WHEREOF, the parties sign this Contract.

CONTRACTOR: MOLINA HEALTHCARE OF UTAH, INC. UTAH DEPARTMENT OF HEALTH

By:   
Signature of Authorized Individual

9/15/14  
Date

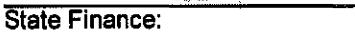
Print Name: CHAD WESTOVER  
Title: PRESIDENT

By:   
Shari A. Watkins, C.P.A.  
Director  
Office of Fiscal Operations

9/24/14  
Date

CONTRACT RECEIVED AND  
PROCESSED BY  
DIVISION OF FINANCE

OCT 07 2014

State Finance: 

Date

State Purchasing: 

10/2/14  
Date

**ATTACHMENT "A"**  
**UTAH DEPARTMENT OF HEALTH**  
**General Provisions - RFP**  
**July 13, 2010**

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## ATTACHMENT "A"

### UTAH DEPARTMENT OF HEALTH GENERAL PROVISIONS

#### I. CONTRACT DEFINITIONS

The following definitions apply in these general provisions:

- "**Assign**" or "**Assignment**" means the transfer of all rights and delegation of all duties in the contract to another person.
- "**Business**" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
- "**This Contract**" means this agreement between the Department and the Contractor, including both the General Provisions and the Special Provisions.
- "**The Contractor**" means the person who delivers the services or goods described in this Contract, other than the state or the Department.
- "**The Department**" means the Utah Department of Health.
- "**Director**" means the Executive Director of the Department or authorized representative.
- "**Equipment**" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the Contractor for financial purposes, or (b) \$5,000.00, unless a different definition or amount is set forth in the Special Provisions or specific Department Program policy as described in writing to Contractor.
- "**Federal law**" means the constitution, orders, case law, statutes, rules, and regulations of the federal government.
- "**General provisions**" means those provisions of this Contract which are set forth under the heading "General Provisions."
- "**Governmental entity**" means a federal, state, local, or federally-recognized Indian tribal government, or any subdivision thereof.
- "**Individual**" means a living human being.
- "**Local health department**" means a local health department as defined in § 26A-1-102, Utah Code Annotated, 1953 as amended (UCA.).
- "**Non-governmental entity**" means privately held non-profit or for profit organization not classified as a "Governmental entity."
- "**Person**" means any governmental entity, business, individual, union, committee, club, other organization, or group of individuals.
- "**Recipient**" means an individual who is eligible for services provided by the Department or by an authorized Contractor of the Department under the terms of this Contract.
- "**Services**" means the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.
- "**Special provisions**" means those provisions of this Contract which are in addition to the General Provisions and which more fully describe the goods or services covered by this Contract.
- "**State**" means the State of Utah.
- "**State law**" means the constitution, orders, case law, statutes, and rules, of the state.
- "**Subcontract**" means any signed agreement between the Contractor and a third party to provide goods or services for which the Contractor is obligated, except purchase orders for standard commercial equipment, products, or services.
- "**Subcontractor**" means the person who performs the services or delivers the goods described in a subcontract.

#### II. AUTHORITY

1. The Department's authority to enter into this Contract is derived from Chapter 6, Title 63G, UCA; Titles 26 and 26A, UCA; and from related statutes.
2. The Contractor represents that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project or services described in this Contract.

#### III. MISCELLANEOUS PROVISIONS

1. For reference clarity, as used in these General Provisions: "ARTICLE" refers to a major topic designated by capitalized roman numerals; "SECTION" refers to the next lower numbered heading designated by arabic numerals, and "SUBSECTIONS" refers to

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## ATTACHMENT "A"

the next two lower headings designated by lower case letters and lower case roman numerals.

2. If the General Provisions and the special provisions of this Contract conflict, the special provisions govern.
3. These provisions distinguish between two Contractor types: Governmental and Non-governmental. Unspecified text applies to both types. Type-specific statements appear in bold print (e.g., **Non-governmental entities only**).
4. Once signed by the Director and the State Division of Finance, when applicable, and the State Division of Purchasing, when applicable, this Contract becomes effective on the date specified in this Contract. Changes made to the unsigned Contract document shall be initialed by both persons signing this Contract on page one. Changes made to this Contract after the signatures are made on page one may only be made by a separate written amendment signed by persons authorized to amend this Contract.
5. Neither party may enlarge, modify, or reduce the terms, scope of work, or dollar amount in this Contract, except by written amendment as provided in section 4.
6. This Contract and the contracts that incorporate its provisions contain the entire agreement between the Department and the Contractor. Any statements, promises, or inducements made by either party or the agent of either party which are not contained in the written Contract or other contracts are not valid or binding.
7. The Contractor shall comply with all applicable laws regarding federal and state taxes, unemployment insurance, disability insurance, and workers' compensation.
8. The Contractor is an independent Contractor, having no authorization, express or implied, to bind the Department to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the Department unless expressly set forth herein. Compensation stated herein shall be the total amount payable to the Contractor by the Department. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the Department for these contract services.
9. The Contractor shall maintain all licenses, permits, and authority required to accomplish its obligations under this Contract.
10. The Contractor shall obtain prior written Department approval before purchasing any equipment with contract funds.
11. Notice shall be in writing, directed to the contact person on page one of this Contract, and delivered by certified mail or by hand to the other party's most currently known address. The notice shall be effective when placed in the U.S. mail or hand-delivered.
12. The Department and the Contractor shall attempt to resolve contract disputes through available administrative remedies prior to initiating any court action.
13. This Contract shall be construed and governed by the laws of the State of Utah. The Contractor submits to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. The proper venue of any legal action arising under this contract shall be in Salt Lake City, Utah.
14. Any court ruling or other binding legal declaration which declares that any provision of this Contract is illegal or void, shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
15. The Contractor agrees to maintain the confidentiality of records that it holds as agent for the Department as required by the Government Records Access and Management Act, Title 63G, Chapter 2, UCA and the confidentiality of records requirements of Title 26, UCA.
16. The Contractor agrees to abide by the State of Utah's executive order, dated March 17, 1993, which prohibits sexual harassment in the workplace.
17. The waiver by either party of any provision, term, covenant or condition of this Contract shall not be deemed to be a waiver of any other provision, covenant or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant or condition of this Contract.
18. The Contractor agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the Department under this Contract. The Contractor acknowledges that the Uniform Commercial Code applies to this Contract. In general, the Contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any special purposes that the Department has relied on the Contractor's skill or judgement to consider when it advised the Department about the product, (e) the product has been properly designed and manufactured, and (f) the product is free of significant defects or unusual problems about which the Department has not been warned.
19. The State of Utah's sales and use tax exemption number is 11736850-010-STC. The tangible personal property or services being purchased are being paid for from State funds and used in the exercise of that entity's essential functions. If the items

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purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

20. The Contractor agrees that the Contract will be a public document, and may be available for distribution. Contractor gives the Department express permission to make copies of the Contract and/or of the response to the solicitation in accordance with State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

21. This Contract may be amended, modified, or supplemented only by written amendment to the Contract, executed by the parties hereto, and attached to the original, signed copy of the Contract.

22. Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance, when responsibility will pass to the Department, except as to latent defects, fraud and Contractor's warranty obligations.

23. All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the Department. The State contract number shall be listed on all invoices, freight tickets, and correspondence relating to the Contract order. The prices paid by the Department will be those prices listed in the Contract. The Department has the right to adjust or return any invoice reflecting incorrect pricing.

24. The Contractor will release, indemnify, and hold the State, its officers, agents, and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in the performance of this Contract.

25. Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The Department may terminate this Contract after determining that such delay or default will reasonably prevent successful performance of the Contract.

26. The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953 as amended).

27. Contractor Terms and Conditions that apply must be in writing and attached to the Contract. No other Terms and Conditions will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: a. Department General Provisions; b. Department Special Provisions; c. Contractor Terms and Conditions.

28. The Contractor agrees to maintain the security and integrity of any electronic media that contains confidential data procured or used pursuant to the undertaking of this agreement. At the termination of this agreement the Contractor shall certify in writing that all such confidential data has been disposed of in such a manner that it cannot be recovered or recreated. If, as part of this agreement, the Department has provided the Contractor with any type of electronic data storage device, the Contractor shall return all devices to the Department at the termination of this agreement.

29. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM": The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids nor to the Multi-Step Process.

### 29.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with UCA Section 63G-11-103.

2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with Section 63G-11-103 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

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3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-11-103.

### 29.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

## IV. UTAH INDOOR CLEAN AIR ACT

The Contractor, for all personnel operating within the State of Utah, shall comply with the Utah Indoor Clean Air Act, Title 26, Chapter 38, UCA, which prohibits smoking in public places.

## V. RELATED PARTIES & CONFLICTS OF INTEREST

1. The Contractor may not pay related parties for goods, services, facilities, leases, salaries, wages, professional fees, or the like for contract expenses without the prior written consent of the Department. The Department may consider the payments to the related parties as disallowed expenditures and accordingly adjust the Department's payment to the Contractor for all related party payments made without the Department's consent. As used in this section, "related parties" means any person related to the Contractor by blood, marriage, partnership, common directors or officers, or 10% or greater direct or indirect ownership in a common entity.
2. The Contractor shall comply with the Public Officers' and Employees' Ethics Act, § 67-16-10, UCA, which prohibits actions that may create or that are actual or potential conflicts of interest. It also provides that "no person shall induce or seek to induce any public officer or public employee to violate any of the provisions of this act." The Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with § 67-16-8, UCA.

## VI. OTHER CONTRACTS

1. The Department may perform additional work related to this Contract or award other contracts for such work. The Contractor shall cooperate fully with other contractors, public officers, and public employees in scheduling and coordinating contract work. The Contractor shall give other contractors reasonable opportunity to execute their work and shall not interfere with the scheduled work of other contractors, public officers, and public employees.
2. The Department shall not unreasonably interfere with the Contractor's performance of its obligations under this Contract.

## VII. SUBCONTRACTS & ASSIGNMENTS

The Contractor shall not assign, sell, transfer, subcontract, or sublet rights or delegate responsibilities under this Agreement, in whole or part, without the prior written consent of the Department. The Department agrees that the Contractor may partially subcontract services, provided that the Contractor retains ultimate responsibility for performance of all terms, conditions and provisions of this Agreement. When subcontracting, the Contractor agrees to use written subcontracts that conform with Federal and State laws. The Contractor shall request Department approval for any assignment at least 20 days prior to its effective date.

## VIII. FURTHER WARRANTY

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The Contractor warrants that (a) all services shall be performed in conformity with the requirements of this Contract by qualified personnel in accordance with generally recognized standards; and (b) all goods or products furnished pursuant to this Contract shall be free from defects and shall conform to contract requirements. For any item that the Department determines does not conform with the warranty, the Department may arrange to have the item repaired or replaced, either by the Contractor or by a third party at the Department's option, at the Contractor's expense.

### IX. INFORMATION OWNERSHIP

Except for confidential medical records held by direct care providers, the Department shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. The Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Department.

### X. SOFTWARE OWNERSHIP

1. If the Contractor develops or pays to have developed computer software exclusively with funds or proceeds from this Contract to perform its obligations under this Contract, or to perform computerized tasks that it was not previously performing to meet its obligations under this Contract, the computer software shall be exclusively owned by or licensed to the Department. In the case of software owned by the Department, the Department grants to the Contractor a nontransferable, nonexclusive license to use the software in the performance of this Contract. In the case of software licensed to the Department, the Department grants to the Contractor permission to use the software in the performance of this Contract. This license or permission, as the case may be, terminates when the Contractor has completed its work under this Contract.
2. If the Contractor develops or pays to have developed computer software which is an addition to existing software owned by or licensed exclusively with funds or proceeds from this Contract, or to modify software to perform computerized tasks in a manner different than previously performed, to meet its obligations under this Contract, the addition shall be exclusively owned by or licensed to the Department. In the case of software owned by the Department, the Department grants to the Contractor a nontransferable, nonexclusive license to use the software in the performance of this Contract. In the case of software licensed to the Department, the Department grants to the Contractor permission to use the software in the performance of this Contract. This license or permission, as the case may be, terminates when the Contractor has completed its work under this Contract.
3. If the Contractor uses computer software licensed to it which it does not modify or program to handle the specific tasks required by this Contract, then to the extent allowed by the license agreement between the Contractor and the owner of the software, the Contractor grants to the Department a continuing nonexclusive license to use the software, either by the Department or by a different Contractor, to perform work substantially identical to the work performed by the Contractor under this Contract. If the Contractor cannot grant the license as required by this section, then the Contractor shall reveal the input screens, report formats, data structures, linkages, and relations used in performing its obligations under this Contract in such a manner to allow the Department or another Contractor to continue the work performed by the Contractor under this Contract.
4. The Contractor shall deliver to the Department a copy of the software or information required by this Article within 90 days after the commencement of this Contract and thereafter immediately upon making a modification to any of the software which is the subject of this Contract.

### XI. INFORMATION PRACTICES

1. **(Governmental entities only)** The Contractor shall establish, maintain, and practice information procedures and controls that comply with Federal and State law. The Contractor assures that any information about an individual that it receives or requests from the Department pursuant to this Contract is necessary to the performance of its duties and functions and that the information will be used only for the purposes set forth in this Contract. The Department shall inform the Contractor of any non-public designation of any information it provides to the Contractor.
2. **(Non-governmental entities only)** The Contractor shall establish, maintain, and practice information procedures and controls that comply with Federal and State law. The Contractor may not release any information regarding any person from any information provided by the Department, unless the Department first consents in writing to the release.

### XII. INDEMNIFICATION

1. **(Governmental entities only)** It is mutually agreed that each party assumes liability for the negligent or wrongful acts committed by its own agents, officials, or employees, regardless of the source of funding for this Contract. Neither party waives any rights or defenses otherwise available under the Governmental Immunity Act.

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2. **(Non-governmental entities only)** To the extent authorized by law, the Contractor shall indemnify and hold harmless the Department and any of its agents, officers, and employees, from any claims, demands, suits, actions, proceedings, loss, injury, death, and damages of every kind and description, including any attorney's fees and litigation expenses, which may be brought, made against, or incurred by that party on account of loss or damage to any property, or for injuries to or death of any person, caused by, arising directly or indirectly out of, or contributed to in whole or in part, by reason of any alleged act, omission, professional error, fault, mistake, or negligence of the Contractor or its employees, agents, or representatives, or subcontractors or their employees, agents, or representatives, in connection with, incident to, or arising directly or indirectly out of this Contract, or arising out of workers' compensation claims, unemployment, or claims under similar such laws or obligations.

### XIII. SUBMISSION OF REPORTS

If the Contractor is a Local Health Department, it shall submit monthly expenditure reports to the Department in a format approved by the Department. All other Contractors shall submit monthly summarized billing statements to the Department. Expenditure reports and billing statements must be submitted to the Department within 30 days following the last day of the month in which the expenditures were incurred or the services provided.

### XIV. PAYMENT

1. If a recipient, a recipient's insurance, or any third-party is responsible to pay for services rendered pursuant to this Contract, the Contractor shall bill and collect for the goods or services provided to the recipient. The Department shall reimburse total actual expenditures, less amounts collected as required by this section.
2. Under no circumstances shall the Department authorize payment to the Contractor that exceeds the amount specified in this Contract without an amendment to the Contract.
3. The Department agrees to make every effort to pay for completed services, and payments are conditioned upon receipt of applicable, accurate, and completed reports prepared by the Contractor and delivered to the Department. The Department may delay or deny payment for final expenditure reports received more than 20 days after the Contractor has satisfied all Contract requirements.
4. In the case that funds are not appropriated or are reduced, the Department will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the Department will not be liable for any future commitments, penalties, or liquidated damages.

### XV. RECORD KEEPING, AUDITS, & INSPECTIONS

1. The Contractor shall use an accrual or a modified accrual basis for reporting annual fiscal data, as required by Generally Accepted Accounting Principles (GAAP). Required monthly or quarterly reports may be reported using a cash basis.
2. The Contractor and any subcontractors shall maintain financial and operation records relating to contract services, requirements, collections, and expenditures in sufficient detail to document all contract fund transactions. The Contractor and any subcontractors shall maintain and make all records necessary and reasonable for a full and complete audit, inspection, and monitoring of services by state and federal auditors, and Department staff during normal business hours or by appointment, until all audits and reviews initiated by federal and state auditors are completed, or for a period of four years from the date of termination of this Contract, whichever is longer, or for any period required elsewhere in this Contract.
3. The Contractor shall retain all records which relate to disputes, litigations, claim settlements arising from contract performance, or cost/expense exceptions initiated by the Director, until all disputes, litigations, claims, or exceptions are resolved.
4. The Contractor shall comply with federal and state regulations concerning cost principles, audit requirements, and grant administration requirements, cited in Table 1. Unless specifically exempted in this Contract's special provisions, the Contractor must comply with applicable federal cost principles and grant administration requirements if state funds are received. The Contractor shall also provide the Department with a copy of all reports required by the State of Utah Legal Compliance Audit Guide (SULCAG) as defined in Chapter 2a, Title 51, UCA. All federal and state principles and requirements cited in Table 1 are available on the Web at the addresses indicated. A Contractor who receives federal or state funds may be subject to federal and state reporting requirements. A Contractor who receives \$500,000 or more per year from federal sources may be subject to the federal single audit requirement. Counties, cities, towns, school districts, and all non-profit corporations that receive 50 percent or more of its funds from federal, state or local governmental entities are subject to the State of Utah Legal Compliance Audit Guide. Copies of required reports shall be sent to the Utah Department of Health, Office of Internal Audit & Program Integrity,

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## ATTACHMENT "A"

Box 143103, Salt Lake City, Utah 84114-3103.

| <b>Federal and State Principles and Requirements</b> |   |                                   |                                 |                                   |
|--|---|-----------------------------------|---------------------------------|-----------------------------------|
| <u>Contractor</u>                                    | <u>Cost Principles</u>  | <u>Federal Audit Requirements</u> | <u>State Audit Requirements</u> | <u>Grant Admin. Requirements</u>  |
| State or Local Govt. & Indian Tribal Govts.          | OMB Circular A-87   | OMB Circular A-133                | SULCAG                          | OMB Common Rule (Circular A-102)  |
| Hospitals  | 45 CFR 74   | OMB Circular A-133                | SULCAG                          | OMB Common Rule or Circular A-110 |
| College or University                                | OMB Circular A-21   | OMB Circular A-133                | SULCAG                          | OMB Circular A-110                |
| Non-Profit Organization                              | OMB Circular A-122  | OMB Circular A-133                | SULCAG                          | OMB Circular A-110                |
| For-Profit Organization                              | 48 CFR 31   | n/a                               | n/a                             | OMB Circular A-110                |
| <u>Documents</u>                                     | <u>Web Address</u>  |                                   |                                 |                                   |
| OMB Circulars  | <a href="http://www.whitehouse.gov/omb/circulars/index.html">http://www.whitehouse.gov/omb/circulars/index.html</a>                 |                                   |                                 |                                   |
| OMB Common Rule                                      | <a href="http://www.whitehouse.gov/omb/grants/attach.html">http://www.whitehouse.gov/omb/grants/attach.html</a>                     |                                   |                                 |                                   |
| CFRs   | <a href="http://www.access.gpo.gov/nara/cfr/cfr-table-search.html">http://www.access.gpo.gov/nara/cfr/cfr-table-search.html</a>     |                                   |                                 |                                   |
| SULCAG   | <a href="http://www.sao.utah.gov/lgResources.htm">http://www.sao.utah.gov/lgResources.htm</a> Select "Legal Compliance Audit Guide" |                                   |                                 |                                   |

**Table 1**

### XVI. CONTRACT ADMINISTRATION REQUIREMENTS

The Contractor agrees to administer this Contract in compliance with either OMB Common Rule (Circular A-102) or OMB Circular A-110 depending upon the legal status of the of the Contractor as shown in Table 1. Financial management, procurement, and affirmative step requirements specify that:

1. the Contractor must have fiscal control and accounting procedures sufficient to:
  - a. permit preparation of reports required by this Contract, and
  - b. permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
2. the Contractor's financial management systems must meet the following standards:
  - a. *financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of this Contract.
  - b. *accounting records.* The Contractor must maintain records which adequately identify the source and application of funds provided for federally financially-assisted activities. These records must contain information pertaining to the Contract's awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
  - c. *internal control.* Effective control and accountability must be maintained for all Contract cash, real and personal property, and other assets. The Contractor must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
  - d. *budget control.* Actual expenditures or outlays must be compared with budgeted amounts for the Contract. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in this Contract. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
3. Federal OMB cost principles, federal agency program regulations, and the terms of grant and subgrant, and contract agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
  - a. *source documentation.* Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subcontract award documents, etc.
  - b. *cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S.

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Treasury and disbursement by the Department and the Contractor must be followed whenever advance payment procedures are used.

4. the Contractor shall use its own procurement procedures which reflect applicable State and local laws, rules, and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this Contract.
  - a. The Contractor will maintain a contract administration system which ensures that subcontractors perform in accordance with the terms, conditions, and specifications of its contracts or purchase orders.
  - b. The Contractor will maintain a written code of standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Contractor shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    - i. the employee, officer or agent,
    - ii. any member of his immediate family,
    - iii. his or her partner; or
    - iv. an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Department's or the Contractor's officer, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. The Department and the Contractor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Department's or the Contractor's officers, employees, or agents, or by subcontractors or their agents.
  - c. The Contractor's procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
  - d. To foster greater economy and efficiency, the Contractor, if a governmental entity, is encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
  - e. If allowed by law, the Contractor is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
  - f. The Contractor may contract only with responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
  - g. The Contractor shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to the following:
    - i. the rationale for the method of procurement,
    - ii. selection of contract type,
    - iii. contractor selection or rejection, and
    - iv. the basis for the contract price.
  - h. The Contractor may use time and material type contracts only:
    - i. after a determination that no other contract is suitable, and
    - ii. if the Contract includes a ceiling price that the Contractor exceeds at its own risk.
  - i. The Contractor alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the Contractor of any contractual responsibilities under its contracts.
  - j. The Contractor shall have protest procedures to handle and resolve disputes relating to its procurements and shall in all instances disclose information regarding the protest to the federal funding agency. A protestor must exhaust all administrative remedies with the Department and the Contractor before pursuing a protest with the federal funding agency.
5. the Contractor shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:
  - a. placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

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- c. dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- d. establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- e. using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- f. requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Article XVI, section 5, subsections a - e.

### XVII. DEFAULT, TERMINATION, & PAYMENT ADJUSTMENT

1. Each party may terminate this Contract with cause. If the cause for termination is due to the default of a party, the non-defaulting party shall send a notice, which meets the notice requirements of this Contract, citing the default and giving notice to the defaulting party of its intent to terminate. The defaulting party may cure the default within fifteen days of the notice. If the default is not cured within the fifteen days, the party giving notice may terminate this Contract 45 days from the date of the initial notice of default or at a later date specified in the notice.
2. The Department may terminate this Contract without cause, in advance of the specified termination date, upon 30 days written notice.
3. The Department agrees to use its best efforts to obtain funding for multi-year contracts. If continued funding for this Contract is not appropriated or budgeted at any time throughout the multi-year contract period, the Department may terminate this Contract upon 30 days notice.
4. If funding to the Department is reduced due to an order by the Legislature or the Governor, or is required by federal or state law, the Department may terminate this Contract or proportionately reduce the services and goods due and the amount due from the Department upon 30 days written notice. If the specific funding source for the subject matter of this Contract is reduced, the Department may terminate this Contract or proportionately reduce the services and goods due and the amount due from the Department upon 30 written notice being given to the Contractor.
5. If the Department terminates this Contract, the Department may procure replacement goods or services upon terms and conditions necessary to replace the Contractor's obligations. If the termination is due to the Contractor's failure to perform, and the Department procures replacement goods or services, the Contractor agrees to pay the excess costs associated with obtaining the replacement goods or services.
6. If the Contractor terminates this Contract without cause, the Department may treat the Contractor's action as a default under this Contract.
7. The Department may terminate this Contract if the Contractor becomes debarred, insolvent, files bankruptcy or reorganization proceedings, sells 30% or more of the company's assets or corporate stock, or gives notice of its inability to perform its obligations under this Contract.
8. If the Contractor defaults in any manner in the performance of any obligation under this Contract, or if audit exceptions are identified, the Department may, at its option, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. Default and audit exceptions for which payment may be adjusted or withheld include disallowed expenditures of federal or state funds as a result of the Contractor's failure to comply with federal regulations or state rules. In addition, the Department may withhold amounts due the Contractor under this Contract, any other current contract between the Department and the Contractor, or any future payments due the Contractor to recover the funds. The Department shall notify the Contractor of the Department's action in adjusting the amount of payment or withholding payment. This Contract is executory until such repayment is made.
9. The rights and remedies of the Department enumerated in this article are in addition to any other rights or remedies provided in this Contract or available in law or equity.
10. Upon termination of the Contract, all accounts and payments for services rendered to the date of termination will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. If the Department terminates this Contract, the Contractor shall stop all work as specified in the notice of termination. The Department shall not be liable for work or services performed beyond the termination date as specified in the notice of termination.
11. Any of the following events will constitute cause for the Department to declare Contractor in default of the Contract: a. Nonperformance of contractual requirements; b. A material breach of any term or condition of this contract. The Department will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has

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been provided the opportunity to cure, the Department may do one or more of the following: c. Exercise any remedy provided by law; d. Terminate this Contract and any related Contracts or portions thereof; e. Impose liquidated damages, if liquidated damages are listed in the Contract; f. Suspend Contractor from receiving future solicitations.

### XVIII. FEDERAL REQUIREMENTS

The Contractor shall comply with all applicable federal requirements. To the extent that the Department is able, the Department shall give further clarification of federal requirements upon the Contractor's request. If the Contractor is receiving federal funds under this Contract, certain federal requirements apply. The Contractor agrees to comply with the federal requirements to the extent that they are applicable to the subject matter of this Contract and are required by the amount of federal funds involved in this Contract.

#### 1. Civil Rights Requirements:

- a. The Civil Rights Act of 1964, Title VI, provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The Health and Human Services regulation implementing this requirement is 45 CFR Part 80.
- b. The Civil Rights Act of 1964, Title VII, (P.L. 88-352 & 42 U.S.C. § 2000e) prohibits employers from discriminating against employees on the basis of race, color, religion, national origin, and sex. Title VII applies to employers of fifteen or more employees, and prohibits all discriminatory employment practices.
- c. The Rehabilitation Act of 1973, as amended, section 504, provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The Health and Human Services regulation 45 CFR Part 84 implements this requirement.
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), prohibits unreasonable discrimination on the basis of age in any program or activity receiving federal financial assistance. The Health and Human Services regulation implementing the provisions of the Age Discrimination Act is 45 CFR Part 91.
- e. The Education Amendments of 1972, Title IX, (20 U.S.C. §§ 1681-1683 and 1685-1686), section 901, provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. Health and Human Services regulation 45 CFR Part 86 implements this requirement.
- f. Executive Order No. 11246, as amended by Executive Order 11375 relates to "Equal Employment Opportunity," (all construction contracts and subcontracts in excess of \$10,000)
- g. Americans with Disabilities Act of 1990, (P.L. 101-336), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), prohibits discrimination on the basis of disability.
- h. The Public Health Service Act, as amended, Title VII, section 704 and TITLE VIII, section 855, forbids the extension of federal support for health manpower and nurse training programs authorized under those titles to any entity that discriminates on the basis of sex in the admission of individuals to its training programs. Health and Human Services regulation implementing this requirement is 45 CFR Part 83.
- i. The Public Health Service Act, as amended, section 526, provides that drug abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment because of their drug abuse or drug dependence, by any private or public general hospital that receives support in any form from any federally funded program. This prohibition is extended to all outpatient facilities receiving or benefitting from federal financial assistance by 45 CFR Part 84.
- j. The Public Health Service Act, as amended, section 522, provides that alcohol abusers and alcoholics who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their alcohol abuse or alcoholism, by any private or public general hospital that receives support in any form from any federally funded program. This prohibition is extended to all outpatient facilities receiving or benefitting from federal financial assistance by 45 CFR Part 84.

2. **Confidentiality:** The Public Health Service Act, as amended, sections 301(d) and 543, require that certain records be kept confidential except under certain specified circumstances and for specified purposes. Confidential records include records of the identity, diagnosis, prognosis, or treatment of any patient that are maintained in connection with the performance of any activity or program relating to drug abuse prevention, i.e., drug abuse education, training, treatment, or research, or alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research that is directly or indirectly assisted by the federal

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government. Public Health Service regulations 42 CFR Parts 2 and 2a implement these requirements.

**3. Lobbying Restrictions:** Lobbying restrictions as required by 31 U.S.C. § 1352, requires the Contractor to abide by this section and to place its language in all of its contracts:

- a. No federal funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Federal Standard Form LLL, "Disclosure Form to report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this article be included in the award documents for all subcontracts and that subcontractors shall certify and disclose accordingly.

**4. Debarment, suspension or other ineligibility:** The Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in this Contract by any federal governmental department or agency (<http://epls.gov>). The Contractor must notify the Department within 30 days in accordance with the notification requirements specified in Article III, section 11 of this Contract if the Contractor has been debarred/excluded by any governmental entity within the contract period. Debarment regulations are stated in Health and Human Services regulation 45 CFR Part 76.

**5. Environmental Impact:** The National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190) establishes national policy goals and procedures to protect and enhance the environment. NEPA applies to all federal agencies and requires them to consider the probable environmental consequences of any major federal activity, including activities of other organizations operating with the concurrence or support of a federal agency. This includes grant-supported activities under this Contract if federal funds are involved. Additional environmental requirements include:

- a. the institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 11514;
- b. the notification of violating facilities pursuant to Executive Order 11738 (all contracts, subcontracts, and subgrants in excess of \$100,000);
- c. the protection of wetlands pursuant to Executive Order 11990;
- d. the evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- e. the assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
- f. the conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176 (c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
- g. the protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523),
- h. the protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205) and;
- i. the protection of the national wild and scenic rivers system under the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.).

**6. Human Subjects:** The Public Health Service Act, section 474(a), implemented by 45 CFR Part 46, requires basic protection for human subjects involved in Public Health Service grant supported research activities. Human subject is defined in the regulation as "a living individual about whom an investigator (whether professional or student) conducting research obtains data through intervention or interaction with the individual or identifiable private information." The regulation extends to the use of human organs, tissues, and body fluids from individually identifiable human subjects as well as to graphic, written, or recorded information derived from individually identifiable human subjects. The regulation also specifies additional protection for certain classes of human research involving fetuses, pregnant women, human in vitro fertilization, and prisoners. However, the regulation exempts certain categories of research involving human subjects which normally involve little or no risk. The exemptions are listed in 45 CFR Part 46.101(b). The protection of human subjects involved in research, development, and related activities is found in P.L. 93-348.

**7. Sterilization:** Health and Human Services and Public Health Service have established certain limitations on the

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performance of nonemergency sterilizations by Public Health Service grant-supported programs or projects that are otherwise authorized to perform such sterilizations. Public Health Service has issued regulations that establish safeguards to ensure that such sterilizations are performed on the basis of informed consent and that the solicitation of consent is not based on the withholding of benefits. These regulations, published at 42 CFR Part 50, Subpart B, apply to the performance of nonemergency sterilizations on persons legally capable of consenting to the sterilization. Federal financial participation is not available for any sterilization procedure performed on an individual who is under the age of 21, legally incapable of consenting to the sterilization, declared mentally incompetent, or is institutionalized.

**8. Abortions and Related Medical Services:** Federal financial participation is generally not available for the performance of an abortion in a grant-supported health services project. For further information on this subject, consult the regulation at 42 CFR Part 50, Subpart C.

**9. Recombinant DNA and Institutional Biosafety Committees:** Each institution where research involving recombinant DNA technology is being or will be conducted must establish a standing Biosafety Committee. Requirements for the composition of such a committee are given in Section IV of *Guidelines for Research Involving Recombinant DNA Molecules*, (49 FR 46266 or latest revision), which also discusses the roles and responsibilities of principal investigators and contractor institutions. *Guidelines for Research Involving Recombinant DNA Molecules and Administrative Practices Supplement* should be consulted for complete requirements for the conduct of projects involving recombinant DNA technology.

**10. Animal Welfare:** The *Public Health Service Policy on Humane Care and Use of Laboratory Animals By Awardee Institutions* requires that applicant organizations establish and maintain appropriate policies and procedures to ensure the humane care and use of live vertebrate animals involved in research activities supported by Public Health Service. This policy implements and supplements the U.S. *Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training* and requires that institutions use the *Guide for the Care and Use of Laboratory Animals* as a basis for developing and implementing an institutional animal care and use program. This policy does not affect applicable State or local laws or regulations which impose more stringent standards for the care and use of laboratory animals. All institutions are required to comply, as applicable, with the Animal Welfare Act as amended (7 U.S.C. 2131 et seq.) and other federal statutes and regulations relating to animals. These documents are available from the Office for Protection from Research Risks (OPRR), National Institutes of Health, Bethesda, MD 20892, (301) 496-7005.

**11. Contract Provisions:** The Contractor must include the following provisions in its contracts, as limited by the statements enclosed within the parentheses following each provision:

- a. administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provides for such sanctions and penalties as may be appropriate. (Contracts other than small purchases. Small purchase involve relatively simple and informal procurement methods that do not cost more than \$100,000 in aggregate.)
- b. termination for cause and for convenience by the contractor or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
- c. compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of \$10,000 by the Contractor and its contractors or subgrantees)
- d. compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)
- e. compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded when required by Federal grant program legislation)
- f. compliance with the Contract Work Hours and Safety Standards Act, sections 103 and 107, (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)
- g. notice of the federal awarding agency requirements and regulations pertaining to reporting.
- h. notice of federal awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- i. federal awarding agency requirements and regulations pertaining to copyrights and rights in data.
- j. access by the Department, the Contractor, the Federal funding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- k. compliance with all applicable standards, orders, or requirements of the Clear Air Act, section 306, (42 U.S.C.

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1857(h)), the Clean Water Act, section 508, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

l. mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

12. **(Governmental entities only) Merit System Standards:** The Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763), requires adherence to prescribed standards for merit systems funded with federal funds.

13. **Misconduct in Science:** The United States Public Health Service requires certain levels of ethical standards for all PHS grant-supported projects and requires recipient institutions to inquire into, investigate and resolve all instances of alleged or apparent misconduct in science. Issues involving potential criminal violations must be promptly reported to the HHS Office of Inspector General. (See regulations in 42 CFR Part 50, Subpart A)

END OF GENERAL PROVISIONS

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**ATTACHMENT A: STATE OF UTAH TERMS AND CONDITIONS  
FOR PROFESSIONAL SERVICES**

1. **AUTHORITY:** Provisions of this contract ("Contract") are pursuant to the authority set forth in 63G-6, Utah Code Annotated, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The person or entity contracting with the State under this Contract ("Contractor") and any and all supplies, services, equipment, and construction furnished under this Contract will comply fully with all applicable Federal, and State, and local laws, codes, rules, regulations, and ordinances, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of, all records necessary to properly account for the payments made to the Contractor for costs authorized by this Contract. These records shall be retained by the Contractor for at least four years after the Contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency staff, access to all the records to this Contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **TIME:** The Contractor shall complete the scope of services work in a manner to achieve any milestones identified in the procurement documents related to this Contract and the attachments to this Contract. The full scope of services work shall be completed by any applicable deadline stated in the solicitation.
6. **TIME IS OF THE ESSENCE:** For all work and services under this Contract, time is of the essence and Contractor shall be liable for all damages to the State of Utah and anyone for whom the State of Utah may be liable, as a result of the failure to timely complete the scope of work required under this Contract.
7. **PAYMENT:**
  - 7.1 Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
  - 7.2 The contract total may be changed only by written amendment executed by authorized personnel of the parties. Unless otherwise stated in the Contract, all payments to the Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's purchasing card (major credit card).
  - 7.3 The acceptance by the Contractor of final payment without a written protest filed with the State within ten (10) working days of receipt of final payment shall release the State from all claims and all liability to the Contractor for fees and costs of the performance of the services pursuant to this Contract.
8. **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
9. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
10. **DOCUMENT OWNERSHIP:** Contractor agrees that any work/services and all Deliverables prepared for State, to the extent to which it is

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eligible under copyright law in any county, shall be deemed a work made for hire, such that all right, title and interest in the work and Deliverables reside with the State. To the extent any work or Deliverable is deemed not to be, for any reason whatsoever, work made for hire, Contractor agrees to assign and hereby assigns all right, title, and interest, including but not limited to, copyright, patent, trademark, and trade secret, to such work and Deliverables, and all extensions and renewals thereof, to the State. Contractor further agrees to provide all assistance reasonably requested by State in the establishment, preservation and enforcement of its rights in such work and deliverables, or subsequent amendments or modifications to such work and deliverables, without any additional compensation to Contractor. Contractor agrees to waive, and hereby, to the extent permissible, waives, all rights relating to such work and deliverables, or subsequent amendments or modifications to such work and deliverables, including without limitation any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use.

- 11. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify," only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids or to the Multiple Stage Bid.

**11.1 Status Verification System**

(1) Contractor certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302.

(2) The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Utah Code Ann. Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

(3) The State will not consider a proposal for award, nor will it make any award, where there has not been compliance with this Section.

(4) Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code Ann. Section 63G-12-302.

**11.2 Indemnity Clause for Status Verification System**

Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Contractor's subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

- 12. CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with Section 67-16-8, Utah Code Annotated, as amended. Contractor also represents that it has no conflict of interest in performing the services for the State under this Contract, unless such conflict of interest has been disclosed to the State and approval to proceed, notwithstanding the conflict, has been obtained from the State in writing.

- 13. CONTRACTOR AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and Social Security amounts due as a result of payments received from the State for these Contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

- 14. INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all claims, loss, damages, injury, liability, suits, and proceedings arising out of the performance of this Contract which are caused in whole or in part by the acts or negligence of (a) the Contractor, (b) the Contractor's officers, agents, volunteers, or employees, (c) the Contractor's subcontractors or subconsultants at any tier, or (d) anyone for whom Contractor may be liable but not for claims arising from the State's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

- 15. EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which

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prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place. Contractor also agrees to abide by any laws and policies of the State of Utah regarding any of the above mentioned prohibitions in this paragraph.

16. **PERFORMANCE EVALUATION:** The State of Utah may conduct a performance evaluation of the Contractor's services, including specific personnel of the Contractor. References in the Contract to Contractor shall include Contractor, Contractor's subcontractors, or subconsultants at any tier, if any. Results of any evaluation will be made available to the Contractor.
17. **WAIVERS:** No waiver by the State or Contractor of any default shall constitute a waiver of the same default at a later time or of a different default.
18. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
19. **RENEGOTIATION OR MODIFICATIONS:** This Contract may be amended, modified, or supplemented only by written amendment to this Contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of this Contract. Automatic renewals will not apply to this Contract.
20. **SUSPENSION/DEBARMENT:** The Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract), by any governmental department or agency in the United States, including any federal, state or local agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if suspended or debarred by any governmental entity during the Contract period.

**21. TERMINATION:**

21.1 Unless otherwise stated in the Additional Terms and Conditions of the State of Utah, if applicable, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which this Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given to the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

21.2 In the event of such termination, the Contractor shall be compensated for services properly performed under this Contract up to the effective date of the notice of termination. The Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of the Contractor having to terminate contracts necessarily and appropriately entered into by the Contractor pursuant to this Contract. Contractor further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, and any and all documents produced by Contractor under this Contract up to the date of termination are the property of the State and shall be promptly delivered to the State.

**22. INSURANCE:**

22.1 To protect against liability, loss and/or expense in connection with the performance of services described under this Contract, the Contractor shall obtain and maintain in force during the entire period of this Contract without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah.

22.2 The following are minimum coverages that may be supplemented by additional requirements contained in the solicitation for this Contract or provided in an Attachment to this Contract:

- (1) Worker's Compensation Insurance and Employers' Liability Insurance. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction.
- (2) General Liability Insurance. Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.
- (3) Professional liability insurance in the amount as described in the solicitation for this Contract, if applicable.
- (4) Any other insurance described in the solicitation for this Contract, if applicable.

22.3 Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

22.4 The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order.

23. **STANDARD OF CARE:** The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract. The Contractor shall be liable to the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors or omissions that do not meet this standard of care.

24. **STATE REVIEWS, LIMITATIONS:** The right of the State to perform plan checks, plan reviews, other reviews and/or comment upon the services of the Contractor, as well as any approval by the State, shall not be construed as relieving the Contractor from its professional and legal responsibility for services required under this Contract. No review by the State or any entity/user, approval or acceptance, or payment for any of the services required under this Contract shall be construed to operate as a waiver by the State of any right under this Contract or of any cause of action arising out of the performance or nonperformance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the wrongful acts, errors and/or omissions of the Contractor or its subcontractors or subconsultants at any tier, if any.

25. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If the State becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render the Contractor's delivery or performance under this Contract impossible, or unnecessary, this Contract will be terminated, either in whole or in part. If the Legislature does not appropriate funds for paying the State's obligations on this Contract, or if funding to the State is reduced due to an order by the Governor, or is required by State law, or if Federal funding (when applicable) is not provided, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, the State may terminate this Contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice to Contractor. If this Contract is terminated, or services and purchase obligations are reduced due to nonappropriation of funds or reduction in funding, as described in the preceding sentence, the State will pay Contractor for services properly performed, and will reimburse Contractor for expenses incurred, as authorized under this Contract, through the date of cancellation or reduction, and this payment shall be Contractor's sole remedy, and the State will not be liable for any future commitments, penalties, or liquidated damages.

26. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Contract.

27. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related sales orders, and invoices shall be public documents, and shall be available for distribution. Contractor gives the State express permission to make copies of this Contract, related sales orders, and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor also agrees that the Contractor's response to the solicitation, if applicable, will be a public document, and copies may be given to the public under GRAMA laws. This permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

28. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.

29. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the State.

30. **DEFAULT AND REMEDIES:**

30.1 Any of the following events will constitute cause for the State to declare Contractor in default of this Contract:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Contract.

30.2 Should Contractor be in default under any of the provisions under Subsection 30.1 above, the State will issue a written notice of default

providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the State may do one or more of the following: (1) Exercise any remedy provided by law; (2) Terminate this Contract and any related contracts or portions thereof; (3) Impose liquidated damages, if liquidated damages are listed in the Contract; or (4) Suspend Contractor from receiving future solicitations.

- 31. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this Contract after determining such delay or default will reasonably prevent successful performance of this Contract.
- 32. PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-2304.5, Utah Code Annotated, as amended).
- 33. CONFLICT OF TERMS:** In order for any terms and conditions of the Contractor to apply to this Contract, they must be in writing and attached to this Contract. No other terms and conditions of the Contractor will apply to this Contract, including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the terms and conditions in the Contract, the order of precedence shall be: (1) Attachment A: State of Utah Terms and Conditions; (2) State of Utah Contract Signature Page(s); (3) Additional Terms and Conditions of the State of Utah; (4) Terms and Conditions of the Contractor, if any.
- 34. ENTIRE CONTRACT:** This Contract including all attachments and documents incorporated hereunder, and the related State solicitation documents, if any, constitutes the entire Contract between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Contract shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Contract shall prevail in any dispute between the terms of this Contract and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Contract.
- 35. DISPUTE RESOLUTION:** In the event of any dispute under this Contract prior to any filing in any judicial proceedings, the parties agree to participate in good faith in the mediation of the dispute. The State, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of the dispute. If the State appoints such an expert or panel, State and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

(Revision date: 30 Oct 2013)

## **Article 1 Introductory Provisions**

### **1.1 Parties**

This contract is between the State of Utah, acting by and through its Department of Health hereinafter referred to as "DOH" or "Department" and Molina, hereinafter referred to as "Contractor." Together, the Department and Contractor shall be referred to as the "Parties."

### **1.2 Notices**

Any notices that are permitted or required under this Contract shall be in writing and shall be transmitted through either:

- (a) Certified or registered United States mail, return receipt requested;
- (b) Personal delivery;
- (c) Expedited Delivery Service.

Such Notices shall be addressed as follows:

Department (If by Mail):  
Utah Department of Health  
Medicaid and Health Financing  
Director, Bureau of Managed Health Care  
P.O. Box 143108  
Salt Lake City, UT 84114

Department (If in Person):

Utah Department of Health  
Medicaid and Health Financing  
Director, Bureau of Managed Health Care  
288 North 1460 West  
Salt Lake City, UT 84114

Contractor:

Molina Healthcare of Utah  
7050 S Union Park Center, Suite 200  
Midvale, UT 84047

In the event that the above contact information changes, the party changing the contact information shall notify the other party, in writing, of such change.

### **1.3 Effective Date and Duration**

This Contract shall automatically terminate on June 30, 2019. The Parties agree to meet prior to the end date of this Contract to discuss terms and conditions that may be incorporated into future

contracts. The effective date and duration of the contract may change subject to the Contract Termination Provisions found in Article 16 of this Contract.

## 1.4 Service Area

The Service Area is the specific geographic area within which the Enrollee must reside to enroll in the Contractor's Health Plan. The Service Area for this Contract is the entire state of Utah.

## Article 2 Definitions

### 2.1.1 Definitions

For purposes of this Contract the following definitions apply, unless otherwise specified:

**Abuse** means Provider practices that are inconsistent with sound fiscal, business, or medical practices, and results in unnecessary cost to the CHIP program, or in reimbursement services that are not Medically Necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the CHIP program.

**Action** means:

1. the denial or limited authorization of a requested service, including the type or level of service;
2. the reduction, suspension, or termination of a previously authorized service;
3. the denial, in whole or in part, of payment for a service and the denial could result in the Enrollee liable for payment;
4. the failure to provide services in a timely manner, as defined as failure to meet performance standards for appointment waiting times; or
5. the failure of the Contractor to act within the time frames established for resolution and notification of Grievances and Appeals.

**Advance Directive** means a written instruction such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State), relating to the provision of health care when the individual is incapacitated.

**Appeal** means a request for review of an Action taken by the Contractor.

**Balance Bill** means the practice of billing patients for charges that exceed the amount that the Contractor will pay.

**Behavioral Management Services** means structured services designed to serve individuals with emotional, behavioral, and neurobiological or substance abuse problems of such severity that appropriate functioning in the home, school, or community requires highly structured behavioral intervention.

**BMHC** means the Bureau of Managed Health Care, Division of Medicaid and Health Financing, Utah Department of Health.

**Capitation** means the reimbursement arrangement in which a fixed rate of payment per Enrollee per month is made to the Contractor for the performance of all of the Contractor's duties and obligations pursuant to this Contract, except for the Delivery Case Rate.

**Capitation Payment** means the payment the Department makes to the Contractor on behalf of each Enrollee for the provision of Covered Services. The Department makes the payment regardless of whether the Enrollee receives services during the period covered by the payment.

**Capitation Rate** means the rate negotiated between the Contractor and Department for each CHIP eligibility group or Capitation Rate cell.

**Child with Special Health Care Needs** means a child under 21 years of age who has or is at increased risk for chronic physical, developmental, behavioral, or emotional conditions and requires health and related services of a type or amount beyond that required by children generally, including a child who, consistent with Section 1932(a) (2) (A) of the Social Security Act, 42 U.S.C.1396u-2(a) (2) (A):

1. is blind or disabled or in a related population (eligible for SSI under title XVI of the Social Security Act);
2. is in Foster Care or other out-of-home placement;
3. is receiving Foster Care or adoption assistance; or
4. is receiving services through a family-centered, community-based coordinated care system that receives grant funds described in Section 501(a) (1)(D) of Title V of the Social Security Act.

**Claim** includes (1) a bill for services, (2) a line item of services, or (3) all services for one Enrollee within a bill.

**Clean Claim** means a claim that can be processed without obtaining any additional information from the Provider of the service or from a third party. It includes a claim with errors originating from the Contractor's claims system. It does not include a claim from a Provider who is under investigation for Fraud or Abuse or a claim under review for medical necessity.

**CMS** means the Centers for Medicare and Medicaid Services, the federal Medicaid agency, within the Department of Health and Human Services.

**Cold Call Marketing** means any unsolicited personal contact by the Contractor, its employees, Participating Providers, agents, or subcontractors with a potential enrollee for the purposes of marketing.

**Confidential Data** means any non-public information maintained in an electronic format used or exchanged by the Parties in the course of the performance of this contract whose collection, disclosure, protection, and disposition is governed by state or federal law or regulation, particularly information subject to the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act, and other equivalent state and federal laws. Confidential Data includes,



but is not limited to, social security numbers, birth dates, medical records, Medicaid/CHIP identification numbers, medical claims and Encounter Data.

**Convicted** means a judgment of conviction entered by a Federal, State, or local court, regardless of whether an appeal from that judgment is pending.

**Covered Services** means services identified in Attachment C of this Contract which the Contractor has agreed to provide and pay for under the terms of this Contract.

**Disclosing Entity** means a CHIP Provider (other than an individual practitioner or group of practitioners), or a Fiscal Agent. For purposes of the Contract, Disclosing Entity means the Contractor.

**Electronic Resource Eligibility Product** or **eREP** means the computer support system used by eligibility workers to determine Medicaid and CHIP eligibility and store eligibility information.

**Emergency Medical Condition** means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

1. placing the health of the individual (or, with respect to a pregnant woman, the health of a woman or her unborn child) in serious jeopardy;
2. serious impairment to bodily functions; or
3. serious dysfunction of any bodily organ or part.

**Emergency Services** means covered inpatient and outpatient services that are furnished by a Provider that is qualified to furnish these services and that are needed to evaluate or stabilize an Emergency Medical Condition.

**Encounter** means an individual service or procedure provided to an Enrollee that would result in a claim.

**Encounter Data** means the compilation of data elements, as specified in the Department's 837 companion guide, identifying an Encounter.

**Enrollee** means any CHIP Eligible Individual whose name appears on the Department's Eligibility Transmission as enrolled in the Contractor's Health Plan.

**Enrollees with Special Health Care Needs** means Enrollees who have or are at increased risk for chronic physical, developmental, behavioral, or emotional conditions and who also require health and related services of a type or amount beyond that required by adults and children generally.

**Enrollment Area** or **Service Area** means the counties enumerated in Article 1.4 of this Contract.

**Excluded Parties List System** or **EPLS** means the electronic version of the Lists of Parties Excluded from Federal Procurement and Non-procurement Programs (List) that identifies those individual and firms excluded from receiving Federal contracts or Federally-approved subcontracts and from certain types of Federal financial and non-financial assistance and benefits. The EPLS website is located at <http://epls.gov>.

**Exclusion** or **Excluded** means that the items or services furnished by a specific Provider who has defrauded or abused the Medicaid or CHIP program will not be reimbursed under Medicaid or CHIP.

**External Quality Review** or **EQR** means the analysis and evaluation of information on quality, timeliness, and access to the health care services that a Health Plan, or its Providers, furnished to its Enrollees.

**Federal Financial Participation** or **FFP** means, in accordance with 42 CFR 400.203, the Federal Government's share of a state's expenditures under the Medicaid or CHIP program and is determined by comparing a state's per capita income to the national average.

**Federal Health Care Program** means (1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under chapter 89 of title 5, United States Code) of the Social Security Act; or (2) any State Health Care program, as defined in Section 1128(h) of the Social Security Act.

**FFS** means the Fee For Service Utah Medicaid Program.

**Fiscal Agent** means a contractor that processes or pays vendor claims on behalf of the Contractor.

**Foster Care** or **Children in Foster Care** means children and youth under the statutory responsibility of the Utah Department of Human Services identified as such in eREP.

**Fraud** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person including any act that constitutes fraud under applicable Federal or State law. Under Utah Code Ann. §63J-41-102(5), Fraud means intentional or knowing: (a) deception, misrepresentation, or up coding in relation to Medicaid or CHIP funds, costs, a claim, reimbursement, or services; or (b) a violation of a provision of Utah Code Ann. §§ 26-20-3 through 26-20-7.

**Grievance** means an expression of dissatisfaction about any matter other than an Action.

**Grievance and Appeals System** means an overall system that includes a Grievance process, an Appeal process, and access to the State's fair hearing system.

**Health Care-Acquired Condition or HAC** means a condition occurring in any inpatient hospital setting, defined as a HAC by the Secretary of Health and Human Services under Section 1886(d)(4)(D)(iv) of the Social Security Act for purposes of the Medicare program identified in the State Plan as described in Section 1886(D)(4)(D)(ii) and (iv) of the Act; other than Deep Vein Thrombosis(DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

**Health Insurer Fee** means the annual fee the Contractor is required to pay pursuant to Section 9010 of the Patient Protection and Affordable Care Act.

**Health Plan** means a federally defined Prepaid Ambulatory Health Plan, a federally defined Primary Care Case Management system, or a federally defined Managed Care Organization under contract with the Department to provide specified physical health care services to a specific group of CHIP Eligible Individuals.

**Indirect Ownership Interest** means an Ownership Interest in an entity that has an Ownership Interest in the Contractor. This term includes an Ownership Interest in any entity that has an Indirect Ownership Interest in the Contractor.

**List of Excluded Individuals/Entities or LEIE** means the Federal Department of Health and Human Services-Office of Inspector General's (HHS-OIG's) database regarding individuals and entities currently Excluded by the HHS-OIG from participation in Medicare, Medicaid, and all other Federal Health Care Programs. Individuals and entities who have been reinstated are removed from the LEIE. The LEIE website is located at <http://www.exclusions.oig.hhs.gov>.

**Managed Care Entity or MCE** means MCOs, PIHPs, PAHPs, PCCMs, and HIOs. The Contractor is an MCO.

**Managed Care Organization** means an entity that has, or is seeking to qualify for, a comprehensive Risk Contract, and that is – (1) A Federally qualified HMO that meets the Advance Directives requirements of 42 CFR 489, Subpart I; or (2) Any public or private entity that meets the Advance Directives requirement of 42 CFR 489, Subpart I and is determined to also meet the following conditions: (i) Makes the services it provides to its Medicaid or CHIP Enrollees as accessible (in terms of timeliness, amount, duration, and scope) as those services are to other Medicaid or CHIP recipients within the area served by the entity.

**CHIP Eligible Individual** means any individual who has been certified by the Utah Department of Human Services or the Utah Department of Workforce Services to be eligible for CHIP benefits.

**Managing Employee** means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of the Contractor.

**Marketing** means any communication from Contractor, its employees, Participating Providers, agents or subcontractors to a potential enrollee that can reasonably be interpreted to influence the

potential enrollee to enroll in Contractor's CHIP product, or either to not enroll in, or to disenroll from an another Health Plan's CHIP product.

**Marketing Materials** means materials that are produced in any medium, by or on behalf of the Contractor, its employees, affiliated Providers, agents or subcontractors to a potential enrollee that can reasonably be intended to market to potential enrollees.

**Medicaid Fraud Control Unit (MFCU)** means the statutorily authorized criminal investigation unit charged with investigating and prosecuting the Medicaid and CHIP fraud in the Utah Attorney General's Office.

**Medically Necessary or Medical Necessity** means any medical service that is (1) reasonably calculated to prevent, diagnose, or cure conditions in the Enrollee that endanger life, cause suffering or pain, cause deformity or malfunction, or threaten to cause a handicap; and (2) there is no equally effective course of treatment available or suitable for the Enrollee requesting the service which is more conservative or substantially less costly. To be considered Medically Necessary, the medical services shall be of a quality that meets professionally recognized standards of health care, and shall be substantiated by records including evidence of such medical necessity and quality.

**Member Services** means a method of assisting Enrollees in understanding Contractor policies and procedures, facilitating referrals to participating specialists, and assisting in the resolution of problems and member complaints. The purpose of Member Services is to improve access to services and promote Enrollee satisfaction.

**Non-Participating Provider** means an any individual, corporate entity, or any other organization that is engaged in the delivery of health care services, is legally authorized to do so by the State in which it delivers the services and who does not have a subcontract or any other pre-arranged payment agreement with the Contractor.

**Notice of Action** means written notification to an Enrollee and written or verbal notification to a Provider when applicable, of an Action that will be taken by the Contractor.

**Notice of Appeal Resolution** means written notification to an Enrollee, and a Provider when applicable, of the Contractor's resolution of an Appeal.

**Office of Recovery Services (ORS)** means an agency within the Department of Human Services.

**Other Disclosing Entity** means any other Medicaid disclosing entity and any entity that does not participate in Medicaid but is required to disclose certain ownership and control information because of participation in any of the programs established under Title V, XVIII, or XX of the Social Security Act. This includes:

1. Any hospital, skilled nursing facility, home health agency, independent clinical laboratory, renal disease facility, rural health clinic, or health maintenance organization that participates in Medicare;
2. Any Medicare intermediary or carrier; and
3. Any entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health-related services for which it claims payment under any plan or program established under Title V or Title XX of the Social Security Act.

**Other Provider-Preventable Condition** means a condition occurring in a health care setting that meets the following criteria:

1. Is identified in the State Plan.
2. Has been found by the State, based upon a review of medical literature by qualified professionals, to be reasonably preventable through the application of procedures supported by evidence-based guidelines.
3. Has a negative consequence for the Enrollee.
4. Is auditable.
5. Includes, at minimum, wrong surgical or other invasive procedure performed on a patient; surgical or other invasive procedure performed on the wrong body part; surgical or other invasive procedure performed on the wrong patient.

**Ownership Interest** means the possession of equity in the capital, the stock, or the profits of the Contractor.

**Participating Provider** means any individual, corporate entity, or any other organization that is engaged in the delivery of health care services, is legally authorized to do so by the State in which it delivers the services and has a contractual agreement with the Contractor to provide health care services to Enrollees.

**Performance Improvement Project or PIP** means a project designed to achieve, through ongoing measurements and intervention, significant improvement, sustained over time, in clinical and non-clinical areas that are expected to have a favorable effect on the health outcomes and Enrollee satisfaction.

**Person with an Ownership or Control Interest** means a person or corporation that:

1. Has an ownership interest totaling 5 percent or more in the Contractor;
2. Has an indirect ownership interest equal to 5 percent or more in the Contractor;

3. Has a combination of direct and indirect ownership interests equal to 5 percent or more in the Contractor;
4. Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the Contractor if that interest equals at least 5 percent of the value of the property or assets of the Contractor;
5. Is an officer or director of the Contractor including the Contractor's Board of Directors' members, if applicable; or
6. Is a partner in the Contractor that is organized as a partnership.

**Physician Incentive Plan** means any compensation arrangement between the Contractor and a physician group that may directly or indirectly have the effect of reducing or limiting services furnished to Enrollees.

**Post-Stabilization Care Services** means Covered Services related to an Emergency Medical Condition that are provided after an Enrollee is stabilized in order to maintain the stabilized condition, or to improve or resolve the Enrollee's condition.

**Potential Enrollee** means a CHIP recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific Health Plan.

**Prepaid Ambulatory Health Plan or PAHP** means an entity that provides medical services to Enrollees under contract with the Department and on the basis of prepaid Capitation Payments, or other payment arrangements that do not use State Plan payment rates; does not provide or arrange for, and is not otherwise responsible for the provision of any inpatient hospital or institutional services for its Enrollees; and does not have a comprehensive Risk Contract.

**Prepaid Inpatient Health Plan or PIHP** means an entity that provides medical services to Enrollees under contract with the Department, and on the basis of prepaid Capitation Payments, or other payment arrangements that do not use State plan payment rates; provides, arranges for, or otherwise has responsibility for the provision of inpatient hospital or institutional services for its Enrollees; and does not have a comprehensive Risk Contract.

**Primary Care** means all health care services and laboratory services customarily furnished by or through a general practitioner, family physician, internal medicine physician, obstetrician/gynecologist, or pediatrician, to the extent the furnishing of those services is legally authorized in the State in which the practitioner furnishes them.

**Primary Care Case Management or PCCM** means a system under which a PCCM contracts with the Department to furnish case management services (which include the location, coordination and monitoring of primary health care services) to Enrollees.

**Primary Care Provider or PCP** means a health care provider the majority of whose practice is devoted to internal medicine, family/general practice or pediatrics. The Contractor may allow other specialists to be PCPs, when appropriate. PCPs are responsible for delivering Primary Care services, coordinating and managing Enrollees' overall health, and authorizing referrals for other necessary care.

**Provider** means a Participating Provider or a Non-Participating Provider.

**Provider Preventable Condition** means a condition that meets the definition of a Health Care-Acquired Condition or an Other Provider-Preventable condition.

**Risk Contract** means a contract under which the Contractor assumes risk for the cost of the services covered under the contract; and incurs loss if the cost of furnishing the services exceeds the payments under the contract.

**Service Authorization Request** means a Provider's or Enrollee's request to the Contractor for the provision of a service.

**State Fiscal Year** means twelve calendar months commencing on July 1 and ending on June 30 following or the 12-month period for which the State budgets funds.

**State Health Care Program** means (1) a State plan approved under Title XIX of the Social Security Act, (2) any program receiving funds under Title V of the Social Security Act or from an allotment to a State under such title; (3) any program receiving funds under Title XX of the Social Security Act or from an allotment to a State under such title; or (4) a State child health plan approved under Title XXI of the Social Security Act.

**State Plan** means the Utah State Plan for organization and operation of the Medicaid and CHIP program as defined pursuant to Section 1902 of the Social Security Act (42 U.S.C. 1396a).

**Subcontract** means any written agreement between the Contractor and another party to fulfill the requirements of this Contract. However, such term does not include insurance purchased by the Contractor to limit its loss with respect to an individual Enrollee.

**Subcontractor** means (1) an individual, agency, or organization to which the Contractor has contracted or delegated some of its management functions or responsibilities of providing medical care to its Enrollees; or (2) an individual, agency, or organization with which a fiscal agent has entered into a contract, agreement, purchase order, or leases (or leases of real property) to obtain space, supplies, equipment, or services provided under this Contract.

**Suspended** means, for purposes of Article 6 of this Contract that items or services furnished by a specified Provider who has been convicted of a program-related offense in a Federal, State, or local court will not be reimbursed under Medicaid or CHIP.

**TTY/TTD** means a teletype writer and telecommunications device for the deaf.

**Third Party Liability or TPL** means any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State Plan.

**Waste** means overutilization of resources or inappropriate payment.

**Four Day Grace Period** means the four day grace period granted to eligible applicants as currently defined in the Utah Department of Health CHIP Policy Manual Section 602-1.

**Timely Post-Delivery Follow-Up Care** means health care that is provided (1) following the discharge of a mother and her newborn from the inpatient setting; and (2) in a manner that meets the health needs of the mother and her newborn, that provides for the appropriate monitoring of the conditions of the mother and child, and that occurs within the 24 to 72 hour period immediately following discharge.

**Non-Covered Service or Non-Covered Item** means a medical service or item that is not a benefit to the Enrollee pursuant to this Contract, or is a medical service or item that does not meet Medical Necessity criteria for amount, duration, as described in the Utah State Plan.

**CHIP** means the Children's Health Insurance Program authorized by Title XXI of the Social Security Act.

## **Article 3 Enrollment Services**

### **3.1 Marketing Activities**

(A) The Contractor, its employees, Participating Providers, agents or subcontractors shall not conduct direct or indirect Marketing of the Health Plan.

(B) The Contractor shall not Market to or otherwise attempt to influence the Department's Health Plan Representatives or local Health Department staff to encourage Enrollees or Potential Enrollees to enroll in the Contractor's Health Plan.

#### **3.1.1 Prohibited Marketing Activities**

(A) Contractor, its employees, Participating Providers, agents, or Subcontractors are prohibited from:

- (1) Directly or indirectly, conducting door-to-door, telephonic, or other "cold call" Marketing activities;
- (2) Influencing a Potential Enrollee's enrollment in conjunction with the sale or offering of any private insurance; and
- (3) Distributing any materials that include statements that will be considered inaccurate, false, or misleading. Such statements can include that the Potential Enrollee must enroll



with the Contractor in order to obtain or not to lose benefits; or that the Contractor has been endorsed by CMS, the Federal or State government, or similar entity.

## **3.2 Outreach Activities**

### **3.2.1 Outreach Activities, General Rules**

(A) The Contractor may conduct outreach activities and produce outreach materials that promote the CHIP program, generally. The Contractor is not allowed to conduct outreach activities and/or produce marketing materials which promotes its individual CHIP Health Plan.

(B) Any outreach materials must be submitted to the Department for Department approval prior to use or distribution. This includes new outreach materials as well as changes being made to existing outreach materials. The Contractor shall submit outreach materials to the Department public information officer and to the CHIP Director either by email or in a format approved by the Department. The Department shall provide its approval or disapproval of the outreach materials in writing. If the Department does not provide approval or disapproval of the materials within 15 days of the request, and if the Department does not request additional information or correction to the material, the Contractor may deem the materials approved by the Department.

(C) The Contractor shall notify the Department of all events within the State of Utah that are events that the Contractor intends to organize or participate in which the Contractor intends to conduct outreach activities. The Contractor shall notify the Department of such events at least five days in advance of the event or activity. The Department shall provide its approval or disapproval of the event in writing. Representatives from the Health Plan may not promote the Health Plan by wearing clothing with company logos or handing out items to Potential CHIP enrollees that specifically promotes the Health Plan.

(D) In the event that the Contractor violates any of the provisions found in this Article the Contractor shall be subject to the sanctions found in Article 15.

## **3.3 Enrollment Process**

### **3.3.1 Enrollee Choice**

(A) The Department or the Department's designee shall determine a Potential Enrollee's eligibility for Enrollment and will offer Potential Enrollees a choice among all available Health Plans. If the Enrollee does not select a Health Plan, then the Department will assign the Enrollee to a Health Plan.

(B) The Department shall certify and the Contractor agrees to accept the individuals who are eligible to be enrolled in the CHIP program. The Contractor shall enroll individuals in the order in which they apply.

(C) Each Enrollee can be enrolled or disenrolled in a Health Plan independent of the enrollment or disenrollment of any other children in the family.

(D) On an annual basis, Enrollees shall be permitted to transfer from one Health Plan to another without cause during the Department-defined open enrollment period.

(E) The Department may, at any time, revise its enrollment procedures. The Department will advise the Contractor of the anticipated changes in advance whenever possible. The Contractor shall have the opportunity to make comments and provide input on the changes. The Contractor shall be bound by the changes in enrollment procedures.

### **3.3.2 Prohibition Against Conditions on Enrollment**

(A) Contractor must accept eligible Enrollees without restrictions unless such restriction is authorized by the Department.

(B) Contractor and Department may not pre-screen or select Potential Enrollees on the basis of pre-existing health problems.

(C) Contractor shall not discriminate against Enrollees or Potential Enrollees on the basis of race, color, or national origin, and shall not use any policy or practice that has the effect of discriminating on the basis of race, color, or national origin.

(D) Contractor shall not discriminate against Enrollees or against Potential Enrollees on the basis of health status or the need for health services.

### **3.3.3 Period of Enrollment**

(A) An Enrollee shall be considered enrolled in the Contractor's Health Plan beginning on the effective date shown on the Eligibility Transmission.

(B) An Enrollee shall be enrolled in the Contractor's Health Plan until the earliest of the following:

- (1) the end of the Contract;
- (2) the end of the period of CHIP eligibility;
- (3) the date the Enrollee has changed Health Plans; or
- (4) the date the Enrollee is disenrolled.

(C) Until the Department notifies the Health Plan that an Enrollee is no longer CHIP eligible or is no longer enrolled with the Health Plan, the Health Plan may assume that the Enrollee continues to be enrolled. The Contractor is responsible for verifying enrollment using the most current information available from the Department.

(D) Generally, the enrollment period is for one year from the time of enrollment.

### **3.3.4 CHIP and Medicaid Eligibility**

(A) If a CHIP Enrollee becomes eligible for Medicaid, CHIP coverage will end the last day of the month prior to the start of Medicaid eligibility.

(B) The Contractor will make a good faith effort to recover claims paid to a Provider after the date coverage began with Medicaid. The Contractor will recover such claims according to industry standards. The Contractor will use recovered claims to offset the total claims expenses.

### **3.3.5 CHIP and Other Health Insurance**

(A) If a CHIP Enrollee becomes eligible for private insurance during the same month or a month previously covered by CHIP, CHIP coverage will end the last day of the month in which 10 day proper notice of closure can be given.

(B) The Contractor shall coordinate with the private insurance company to recover claims paid after the date coverage began with the private insurance. If the Contractor chooses to coordinate with the private insurance company, the Health Plan shall pay as a secondary insurance. The Health Plan may not recover claims from the provider other than when coordinating with the private insurance company and paying as a secondary insurance plan. The Health Plan will use recovered claims to offset the total claims expenses. The Health Plan shall not bill the CHIP Enrollee.

### **3.3.6 CHIP and Other Pharmacy Coverage**

If the Contractor paid a pharmacy claim during any month in which the CHIP Enrollee became Medicaid eligible or in a month in which the Managed Care Plan has changed, the Health Plan shall report payment of the pharmacy claims to the Department. The Department shall reinstate the premiums for the month in question. The Health Plan shall not bill the CHIP Enrollee.

## **3.4 Eligibility Transmission**

### **3.4.1 Eligibility Transmission, Generally**

(A) The Department shall provide to the Contractor an Eligibility Transmission which is an electronic file that includes data on individuals that the Department certifies as being CHIP Eligible and who have been enrolled in Contractor's Health Plan. The Eligibility Transmission will include new Enrollees, reinstated Enrollees, retroactive Enrollees, terminated Enrollees and Enrollees whose eligibility information results in a change to a critical field.

(B) Critical Fields found in the Eligibility Transmission shall include: Enrollee's case number, case name, eREP identification number, name, date of birth, date of death, social security

number, gender, prevalent language, race, Capitation Rate Cell, pregnancy indicator, co-payment/coinsurance indicators, (including those for American Indians) eligibility start date, third party liability coverage, county, address, and phone number.

(C) The Eligibility Transmission shall be designated as the "834 File" and shall be in accordance with the Utah Health Information Network ("UHIN") standard. The Contractor shall have the ability to receive and process the Eligibility Transmission.

(D) The appearance of an individual's name on the 834 File, other than a deleted Enrollee, shall be evidence to the Contractor that the Department has determined that the individual is enrolled in the Health Plan and qualifies for CHIP Assistance under Title XXI of the Social Security Act.

(E) In addition to the monthly transmission of eligibility files, the Department shall send daily transmissions to report changes to the Contractor.

#### **3.4.2 Eligibility File, Contractor Responsibilities**

(A) The Contractor shall be responsible for ensuring that it is using the most recent 834 File when processing claims.

(B) The Contractor shall follow the policies and procedures found in the Department's 834 Eligibility Transmission Manual, the HIPAA 834 Best Practices Manual, and any amendments to these documents.

#### **3.4.3 Enrollees in an Inpatient Hospital Setting**

If an Enrollee is a patient in an inpatient hospital setting on the date that his or her name appears as a terminated Enrollee on the Contractor's Eligibility Transmission or he or she is otherwise disenrolled, the Health Plan shall remain financially responsible for the Enrollee's care until the Enrollee is discharged.

### **3.5 Member Orientation**

#### **3.5.1 Initial Contact, General Orientation**

(A) The Contractor's representative shall ensure that each Enrollee's family or guardian receives the Contractor's Member Handbook within 21 calendar days after the Health Plan has been notified of the Enrollee's Enrollment in the Contractor's Health Plan. The Contractor shall maintain written or electronic records of such initial contact.

(B) The Contractor's representative shall make a good faith effort to make an initial contact with the Enrollee within 10 working days after the Contractor has been notified through the Eligibility Transmission of the Enrollee's Enrollment in the Contractor's Health Plan. The Contractor shall maintain written or electronic records of such initial contact.

(1) If the Contractor cannot contact the Enrollee within 10 working days or at all, the Contractor's representative shall document its efforts to contact the Enrollee.

(2) The initial contact shall be in person or by telephone and shall inform the Enrollee of the Contractor's rules and policies. The initial contact may also be in writing but only if reasonable attempts have been made to contact the Enrollee in person and by telephone and those attempts have been unsuccessful.

(C) The Contractor shall ensure that Enrollees are provided interpreters, Telecommunication Device for the Deaf, and other auxiliary aids to ensure that Enrollees understand their rights and responsibilities.

(D) During the initial contact, the Contractor's representative shall provide, at minimum, the following information to the Enrollee or Potential Enrollee:

(1) Specific written and oral instructions on the use of the Contractor's Covered Services and procedures;

(2) The availability and accessibility of all Covered Services;

(3) The rights and responsibilities of the Enrollee under the Health Plan, including the right to file a Grievance or an Appeal and how to file a Grievance or an Appeal;

(4) The right to terminate enrollment with the Health Plan;

(5) Encouragement to make a medical appointment with a Provider; and

(6) Encouragement to use well-child services and receive immunizations.

(E) The Contractor shall also provide the information described in Section 3.5.1(D) to the Enrollee upon request from the Enrollee.

### **3.5.2 Initial Contact, Identification of Enrollees with Special Health Care Needs**

(A) The Contractor shall establish a policy which shall be used by Contractor's representatives during the initial contact to identify Enrollees with Special Health Care Needs.

(B) When an Enrollee is identified as having Special Health Care Needs, the Contractor's representative shall forward this information to a Contractor designated individual with knowledge of coordination of care, case management services, and other services necessary for such Enrollees. The Contractor's designated individual, with knowledge of coordination of care for Enrollees with Special Health Care Needs, shall make a good faith effort to contact such Enrollee within ten working days after identification to begin coordination of health care needs, as necessary.

### **3.5.3 Identification Card**

(A) The Contractor shall issue an identification card to all Enrollees. The identification card shall contain the following information:

- (1) Children's Health Insurance Program (CHIP);
- (2) Whether the Enrollee is Plan A, Plan B, or Plan C, and if they are Native American.
- (3) The name of Contractor's Health Plan;
- (4) A toll free Member Service number.

(B) The Contractor shall issue the identification card to new Enrollees within 21 calendar days after the Department notifies the Contractor that the Enrollee has been enrolled in the Contractor's Health Plan.

(C) The Health Plan must issue a new identification card to incumbent Enrollees when their coverage terminates for 60 days or more before reinstating with the same Health Plan, when the Enrollee changes Plans (A, B, or C), or when the Enrollee has changes to their co-pay exempt status.

(D) The Health Plan is not required to issue an identification card to Enrollees who have qualified for only retroactive enrollment in the Contractor's Health Plan.

### **3.6 Member Education**

#### **3.6.1 Enrollee information Requirements, Generally**

The Contractor shall write all Enrollee and Potential Enrollee informational, instruction, and educational material, including the member handbook, in a manner that may be easily understood at the sixth grade reading level.

#### **3.6.2 Prevalent Language**

(A) The Contractor shall use the Eligibility Transmission to determine prevalent non-English languages. A language is prevalent when it is spoken by five percent or more of the Contractor's enrolled population.

(B) The Contractor shall make available all written Enrollee informational and instructional materials, including the member handbook, in the prevalent non-English languages. Written materials include vital documents such as applications, consent forms, release of information forms, letters containing important information, etc.

#### **3.6.3 Member Handbook**

(A) On a yearly basis, the Contractor shall submit its member handbook to the Department for review and approval prior to general distribution. During open enrollment, the Contractor shall submit its member handbook to the Department for review within the thirty days after the Department has notified the Contractor of benefit changes for the new plan year. The Department shall notify the Contractor in writing of its approval or disapproval within thirty working days after receiving the member handbook unless the Department and the Contractor agree to another timeframe. If the Department does not respond within the agreed upon time frame, the Contractor may deem such materials approved by the Department.

(B) At minimum, the member handbook shall explain in clear terms the following information:

- (1) The amount, duration, and scope of benefits provided by the Contractor described in sufficient detail to ensure that Enrollees understand the scope of service and the benefits to which they are entitled;
- (2) The Contractor's procedures for obtaining Covered Services, including any service authorization requirements; how and under what circumstances out of area services are covered; policy on referrals to specialty care; and procedures for resolving Enrollee issues related to authorization of coverage or payment for services;
- (3) Instructions on what to do in an emergency or urgent medical situation, including emergency numbers and what constitutes an emergency service;
- (4) Information about immunizations and well-child visits;
- (5) A description of Enrollee cost-sharing requirements;
- (6) Toll free Member Services telephone number;
- (7) A description of the Member Services function;
- (8) How the Enrollee may file a Complaint, Grievance, or Appeal.

(C) The Contractor shall notify the Department when it makes changes to the member handbook at least 90 days prior to the changes taking effect. If the Department deems the changes being made to the member handbook to be "significant" the Contractor shall give each enrollee written notice of the change at least 30 days prior to the intended effective date of the change. The Department agrees to notify the Contractor of information deemed to be "significant" at least 60 calendar days prior to the intended effective date.

#### **3.6.4 Additional Information to Enrollees**

(A) The Contractors shall annually reinforce, in writing, to Enrollees how to access emergency and urgent services and how to file an Appeal or Grievance.

(B) The Contractor shall make a good faith effort to give written notice of termination of a Participating Provider, within 15 days after receipt or issuance of the termination notice, to each enrollee who received his or her primary care from, or was seen on a regular basis by, the terminated Participating Provider.

### **3.7 Disenrollment**

#### **3.7.1 Disenrollment Initiated by Enrollee, Without Cause**

(A) Enrollees are permitted to transfer from one Health Plan to another without cause as follows:

- (1) Within the first 90 days following the date of each enrollment period with the Health Plan;
- (2) During the open enrollment period (which shall occur at least once a year or as otherwise defined by the Department); or
- (3) When the Enrollee has been automatically re-enrolled after being disenrolled solely because the Enrollee lost CHIP eligibility for a period of two months or less and the temporary loss of CHIP eligibility caused the Enrollee to miss the annual disenrollment period.

#### **3.7.2 Limited Disenrollment, With Cause**

(A) Enrollees may request to transfer from one Health Plan to another at any time for the following reasons:

- (1) The Enrollee moves out of the Health Plan's Service Area;
- (2) The Enrollee needs related services to be performed at the same time and not all services are available within the network, and the Enrollee's Primary Care Provider determines that receiving the services separately would subject the Enrollee to unnecessary risk;
- (3) Other reasons as determined by the Department, including but not limited to, poor quality of care, lack of access to services covered under the Contract, or lack of access to Providers experienced in dealing with the Enrollee's health care needs;
- (4) Health Plan does not, because of moral or religious objections cover the service the Enrollee seeks;
- (5) Enrollee becomes emancipated; or



- (6) If the Health Plan makes changes to its network of Participating Providers that interferes with an Enrollee's continuity of care with the Enrollee's Provider of choice.

### **3.7.3 Process for Requesting Health Plan Change**

- (A) The Enrollee may change Health Plans by submitting an oral or written request to the Department. The Enrollee must declare the Health Plan in which he or she wishes to enroll should the disenrollment be approved.
- (B) If the Enrollee makes a request for disenrollment directly to the Contractor the Contractor shall forward the request for disenrollment to the Department.
- (C) The Department shall review each disenrollment request from an Enrollee to determine if the request meets the criteria for cause, and if so, the Department shall allow the Enrollee to switch to another Health Plan. If the request does not meet criteria for cause, or if the concern is with a Provider and not the Health Plan, the Department shall deny the disenrollment request and inform the Enrollee of his or her rights to request a State fair hearing.
- (D) If the Department fails to make a determination within ten calendar days after receiving the disenrollment request, the disenrollment is considered approved.
- (E) The disenrollment shall be effective once the Department has been notified by the Enrollee, and the disenrollment is indicated on the Eligibility Transmission. The effective date of an approved disenrollment request shall be no later than the first day of the second month following the month in which the Enrollee filed the request.

### **3.7.4 Disenrollment Initiated by Health Plan**

- (A) The Health Plan may not terminate an Enrollee's enrollment because of an adverse change in the Enrollee's health or because of the Enrollee's utilization of Covered Services.
- (B) The Health Plan may initiate disenrollment of any Enrollee for one or more of the following reasons:
- (1) For reasons specifically identified in the Health Plan's approved Enrollee handbook;
  - (2) When the Enrollee ceases to be eligible for medical assistance under the State's Title XXI State Plan and as finally determined by the Department;
  - (3) Upon expiration of the Health Plan's Contract with the Department;
  - (4) Confinement of an Enrollee in an institution when confinement is not a Covered Service under this contract;

(5) Violation of enrollment requirements developed by the Contractor and approved by the Department but only after the Contractor and/or the Enrollee has exhausted the Contractor's applicable internal Grievance procedure; or

(6) When the Contractor has determined that the Enrollee has other valid health insurance coverage.

(C) To initiate disenrollment of an Enrollee's participation in the Health Plan, the Contractor shall provide the Department with documentation justifying the proposed disenrollment.

(1) The Department shall approve or deny the disenrollment request by email or in writing within thirty days of receipt of the request. Failure by the Department to deny a disenrollment request within thirty days shall constitute an approval of the Contractor's disenrollment request.

(2) If the Department approves the Contractor's disenrollment request, the Contractor shall give the Enrollee thirty days written notice of the proposed disenrollment, and shall notify the Enrollee of his or her right to file a Grievance or Appeal. The Contractor shall provide a copy of the written notice to the Department at the time the notice is sent to the Enrollee.

(D) If an Enrollee is disenrolled because of a violation of the responsibilities included in the Contractor's member handbook, the Contractor may refuse re-enrollment of that Enrollee.

## **Article 4 Benefits**

### **4.1 General Provisions**

#### **4.1.1 Basic Standards**

(A) The Contractor shall provide to Enrollees, directly or through arrangements with Providers, all Medically Necessary Covered Services described in Attachment C as promptly and continuously as is consistent with generally accepted standards of medical practice.

(B) The Contractor shall ensure that services are sufficient in amount, duration or scope to reasonably be expected to achieve the purpose for which the services are furnished.

(C) The Contractor may not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition of the beneficiary.

### **4.2 Scope of Services**

#### **4.2.1 Scope of Covered Services**

(A) Except as otherwise provided for cases of Emergency Services, the Contractor is responsible to pay for all Covered Services listed in Attachment C. The Contractor shall also be responsible to pay for Covered Services that are, subsequent to the execution of this contract, deemed Covered Services due to amendments, revisions, or additions to the State Plan or to State or Federal regulations, guidelines or policies or made pursuant to court or administrative orders.

(B) The Contractor is responsible for payment of Emergency Services 24 hours a day, 7 days a week whether the services were provided by a Participating Provider or a Non-Participating Provider and whether the service was provided inside or outside of the Contractor's Service Area.

#### **4.2.2 Changes to Benefits**

Amendments, revisions, or additions to the State Plan or to State or Federal regulations, guidelines, or policies, insofar as they affect the scope or nature of benefits available to a CHIP Eligible Individual shall be considered incorporated by this Contract and the Contractor shall be required to provide those benefits to CHIP Eligible Individuals. The Department will provide written notice to the Contractor of any amendments, revisions, or additions prior to implementation when feasible.

#### **4.2.3 Court and Administrative Orders Regarding Benefits**

The Contractor shall pay for benefits deemed eligible for payment pursuant to the terms of a court or administrative order.

### **4.3 Covered Services, Emergency Services**

#### **4.3.1 Emergency Services, Generally**

(A) The Contractor is responsible for coverage and payment of Emergency Services for treatment of Emergency Medical Conditions as described by this contract and by law.

(B) The Contractor shall cover and pay for Emergency Services regardless of whether the Provider that furnishes the services is a Participating Provider or a Non-Participating Provider.

(D) The Contractor may not refuse to cover Emergency Services based on the emergency room Provider, hospital, or fiscal agent not notifying the Enrollee's Primary Care Provider or the Contractor of the Enrollee's screening and treatment within ten calendar days of presentation for Emergency Services.

(E) The Contractor shall inform Enrollees that access to Emergency Services is not restricted and that if an Enrollee experiences a medical emergency, he or she may obtain services from a Non-Participating Provider without penalty.

#### **4.3.2 Payment Liability for Emergency Services**

(A) An Enrollee who has had an Emergency Medical Condition may not be held liable for payment of subsequent screening and treatment needed to diagnose the specific condition or stabilize the patient.

(B) When the Enrollee has an Emergency Medical Condition, the Contractor shall pay for both the screening examination and the services required to stabilize the Enrollee. Services required to stabilize an enrollee includes all emergency services that are Medically Necessary to assure, within reasonable medical probability, that no material deterioration of the Enrollee's condition is likely to result from, or occur during, discharge of the Enrollee or transfer of the Enrollee to another facility.

(C) If there is a disagreement between a Provider and the Contractor concerning whether the Enrollee is stable enough for discharge or transfer, or whether the medical benefits of an unstabilized transfer outweighs the risks, the judgment of the attending physician(s) actually caring for the Enrollee at the treating facility prevails and is binding on the Contractor. The Contractor may establish arrangements with hospitals whereby the Contractor may send one of its own physicians with appropriate ER privileges to assume the attending physician's responsibilities to stabilize, treat, and transfer the Enrollee.

(D) In the event an Enrollee presents to an Emergency Room with both a physical health and mental health diagnosis, and the Enrollee requires medical stabilization, the Contractor shall pay for the facility charge and any ancillary services for the entire Emergency Room visit.

#### **4.3.3 Payment Liability in the Absence of a Clinical Emergency**

The Contractor must pay for Emergency Services obtained by an Enrollee when the Enrollee had an Emergency Medical Condition but such condition did not result in the three outcomes specified in the definition of an Emergency Medical Condition. In such instances, the Contractor shall review the presenting symptoms of the Enrollee and determine whether the presenting symptoms were acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably have expected the absence of immediate medical attention to result in one of the three outcomes listed in the definition of an Emergency Medical Condition.

#### **4.3.4 Payment Liability for Referrals**

The Contractor may not deny payment for treatment obtained by an Enrollee when a representative of the Contractor, including the Enrollee's Primary Care Provider, instructs the Enrollee to seek emergency care.

### **4.4 Covered Services—Post Stabilization Care**

#### **4.4.1 Post Stabilization Care Generally**

The Contractor shall cover and pay for Post-Stabilization Care in accordance with the guidelines found in 42 CFR 422.113(c). Generally, Post-Stabilization Care Services begin when an

Enrollee is admitted for an inpatient hospital stay after the Enrollee has received Emergency Services. However, in situations where a Provider demonstrates that the Enrollee received Emergency Services related to an Emergency Medical Condition during the inpatient admission, the Contractor shall reimburse the Provider in accordance with the payment provisions governing Emergency Services outlined in Article 4.3.

#### **4.4.2 Pre-Approved Post-Stabilization Care Services**

The Contractor is financially responsible for Post-Stabilization Care Services obtained by an Enrollee from a Participating Provider or a Non-Participating Provider that are pre-approved by a Contractor representative.

#### **4.4.3 Other Contractor-Liable Post-Stabilization Care Services**

(A) The Contractor is financially responsible for Post-Stabilization Care Services obtained within or outside the Contractor's network that are not pre-approved by a Contractor representative, but are administered to maintain the Enrollee's stabilized condition within one hour of a request to the Contractor for pre-approval of further Post-Stabilization Care Services.

(B) The Contractor is financially responsible for Post-Stabilization Care Services obtained within or outside of the Contractor's network that are not pre-approved by a Contractor representative but are administered to maintain, improve or resolve the Enrollee's stabilized condition if:

- (1) The Contractor does not respond to a request for pre-approval within one hour of the request;
- (2) The Contractor cannot be contacted; or
- (3) The Contractor representative and the treating physician cannot reach an agreement concerning the Enrollee's care and a Contractor physician is not available for consultation. In this situation, the Contractor shall give the treating physician the opportunity to consult with a Contractor physician and the treating physician may continue with the care of the Enrollee until a Contractor physician is reached, or one of the following criteria, found in 42 CFR 422.113(c)(3) is met:
  - (i) A Contractor physician with privileges at the treating hospital assumes responsibility for the Enrollee's care;
  - (ii) A Contractor physician resumes responsibility for the Enrollee's care;
  - (iii) A Contractor representative and the treating physician reach an agreement concerning the Enrollee's care; or
  - (iv) The Enrollee is discharged.

#### **4.4.4 Limitation on Charges to Enrollees**

The Contractor must limit charges to Enrollees for Post-Stabilization Care Services to an amount no greater than that what the Contractor would charge the Enrollee if he or she had obtained the services through the Contractor. For purposes of cost sharing, Post-Stabilization Care Services begin upon inpatient admission.

### **4.5 Covered Services, Mental Health and Maternity**

#### **4.5.1 Compliance with Maternity and Mental Health Requirements**

The Health Plan shall comply with the requirements of subpart 2 of Part A of title XXVIII of the Public Health Service Act insofar as such requirements apply and are effective with respect to a health insurance issuer that offers group health insurance coverage.

#### **4.5.2 Mental Health Services Coordination**

(A) When an Enrollee presents with a possible mental health condition to his or her Primary Care Provider, it is the responsibility of the Primary Care Provider to determine whether the Enrollee should be referred to a psychologist, pediatric specialist, psychiatrist, neurologist, or other specialist. Mental health conditions may be handled by the Primary Care Provider and referred to a mental health provider when more specialized services are required for the Enrollee.

#### **4.5.3 Maternity Stays**

(A) The Contractor is responsible for paying for and providing post-delivery care services to a mother who is an Enrollee and her newborn as follows:

(1) inpatient care for a minimum of 48 hours of inpatient care following a normal vaginal delivery;

(2) inpatient care for a minimum of 96 hours of inpatient care following a caesarean section; and

(3) the Contractor shall not require the Provider attending the mother and her newborn to obtain authorization from the Health Plan in order to keep the mother and her newborn in the inpatient setting for the periods of time described in Article 4.6.1(A)(1) or (2).

(B) The Health Plan shall not be required to provide coverage for post-delivery inpatient care for a mother who is an Enrollee and her newborn during the periods described in Article 4.6.1(A)(1) or (2) if:

(1) the attending Provider, in consultation with the mother, discharges the mother and the newborn prior to the expiration of the time periods described in Article 4.6.1(A)(1) or (2); and

(2) the Contractor provides Timely Post-Delivery Follow-Up Care.

(C) Post-delivery care shall be provided to a mother and her newborn by a registered nurse, physician, nurse practitioner, nurse midwife or physician assistant experienced in maternal and child health in:

(1) the home, a Provider's office, a federally qualified health center, a federally qualified rural health clinic, or a State health department maternity clinic; or

(2) another setting determined to be appropriate under regulations promulgated by the Secretary of Health and Human Services (including a birthing center or an intermediate care facility).

## **4.6 Diabetes Education**

### **4.6.1 Contractor Provision of Diabetes Education**

(A) Under orders of a Provider with prescribing authority, the Contractor shall provide diabetes self-management education from a Utah certified or American Diabetes Association recognized program when an Enrollee:

(1) has recently been diagnosed with diabetes; or

(2) is determined by the Provider to have experienced a significant change in symptoms, progression of the disease or health condition that warrants changes in the Enrollee's self-management plan; or

(3) is determined by the Provider to require re-education or refresher training.

## **4.7 Covered Services, Hospice**

If a Potential Enrollee is receiving hospice services at the time of enrollment in the Health Plan, or if an Enrollee is already enrolled by the Health Plan and has less than six months to live, the Enrollee must be offered hospice services or the continuation of hospice services if he or she is already receiving such services.

## **4.8 Covered Services, Enrollees with Special Health Care Needs**

### **4.8.1 Identification of Enrollees with Special Health Care Needs**

(A) The Contractor shall have policies and procedures in place to identify Enrollees and Children With Special Health Care Needs using a process at the initial contact between the Contractor and Enrollees. The Contractor shall also have procedures in place to identify existing Enrollees and Children who may have Special Health Care Needs.

#### **4.8.2 Primary Care Provider for Enrollees With Special Needs**

(A) The Contractor shall have policies and procedures to inform caregivers, and when appropriate, Enrollees With Special Health Care Needs, about Primary Care Providers who have training in caring for such Enrollees.

(B) The Contractor shall contract with Primary Care Providers with skills and experience to meet the needs of Enrollees with Special Health Care Needs.

(C) For Enrollees determined to need a course of treatment or regular care monitoring, the Contractor shall have a mechanism in place to allow Enrollees to directly access a specialist (for example, through standing referral or an approved number of visits) as appropriate for the Enrollee's condition and identified needs. The Contractor shall allow an appropriate specialist to be the Enrollee's Primary Care Provider but only if the specialist has the skills to monitor the Enrollee's preventative and primary care services.

#### **4.8.3 Referrals and Access to Specialty Providers**

(A) The Contractor shall ensure that there is access to appropriate specialty providers to provide Medically Necessary Covered Services for Adults and Children With Special Health Care Needs. If the Contractor does not employ or contract with a specialty provider to treat a special health care condition at the time the Enrollee needs such Covered Services, the Contractor shall have a process to allow the Enrollee to receive Covered Services from a qualified specialist who may not be affiliated with the Contractor. In such instances the Contractor shall be responsible for payment, even if the Provider is a Non-Participating Provider. The process for requesting specialist care shall be clearly described by the Contractor in the Contractor's Member Handbook, and explained to each Enrollee during the initial contact with the Enrollee.

#### **4.8.4 Collaboration for Enrollees with Special Health Care Needs**

(A) The Contractor shall share with other MCEs contracted with the Department who are serving Enrollees with Special Health Care Needs the results of its identification and assessment of each Enrollee's needs to prevent duplication of activities.

(B) The Contractor shall coordinate health care needs for Enrollees with Special Health Care Needs with Enrollee's families, caregivers, and advocates.

(C) The Contractor shall coordinate health care needs for Enrollees with Special Health Care Needs with the services of other agencies such as mental and substance abuse, public health departments, transportation, home and community based care, developmental disabilities, Title V, local schools, IDA programs, and child welfare, and with families, caregivers, and advocates.

## **Article 5 Delivery Network**



## **5.1 Availability of Services**

### **5.1.1 Network Requirements**

(A) The Contractor shall maintain and monitor a network of appropriate, Participating Providers that is supported by written agreements and is sufficient to provide adequate access to all services covered under this Contract.

(B) The Health Plan shall have at least two primary care providers within 40 miles of each Enrollee's residence. This requirement shall not apply to rural areas where there is a general shortage of Primary Care Providers.

(C) If the Department determines that the Contractor does not have a sufficient Participating Provider network, the Department shall give written notice to the Contractor of its non-compliance. Upon receipt of the notice, the Contractor shall have 90 days to become compliant. If the Contractor is non-compliant after 90 days, an Enrollee may use any Primary Care Provider whose practice address is within 40 miles of the Enrollee's residence and the Contractor shall reimburse that provider in accordance with the rates found in Attachment C.

## **5.2 Relationships with Subcontractors and Delegation of Duties**

### **5.2.1 Generally**

(A) The Contractor shall ensure that all of its Subcontracts are in writing.

(B) The written agreements with the Subcontract shall include any general requirements of this Contract that are appropriate to the service or activity being delegated under the Subcontract, including confidentiality requirements and shall assure that all duties of the Contractor under this Contract are performed.

(C) Prior to entering into a Subcontract, the Contractor shall evaluate the prospective Subcontractor's ability to perform the activities being delegated.

(D) The Contractor shall oversee and be held accountable for any functions and responsibilities that it delegates to any Subcontractor.

(E) The Contractor shall monitor the Subcontractor's performance on an on-going basis that shall be subject to formal review according to a periodic schedule established by the Department, consistent with industry standards or State laws and regulations.

(F) If the Contractor identifies in its Subcontractor deficiencies or areas of improvement, the Contractor and the Subcontractor shall take corrective action.

(G) No Subcontract shall terminate or limit the legal responsibility of the Contractor to the Department to assure that all activities under this contract are carried out. The Contractor is not relieved of its contractual responsibilities to the Department by delegating those responsibilities

to a Subcontractor.

(H) Within 15 days of receiving a request from the Department, the Contractor shall make all Subcontracts available to the Department.

### **5.2.2 Other Provider-Subcontractor Requirements**

(A) All of the Contractor's Subcontracts and agreements with Participating Providers will include a provision stating that if either party wishes to terminate the subcontract or agreement, whichever party initiates the termination must give the other party written notice of termination at least 30 calendar days prior to the effective termination date.

(B) The Contractor shall notify the Department of a Subcontractor or Participating Provider agreement being terminated either when the Contractor initiates termination or the Contractor receives notice of termination from the Subcontractor or Participating Provider.

(C) The Contractor shall ensure that its Participating Providers abide by the requirements of Section 1877(E)(3)(B) of the Social Security Act prohibiting the Contractor Providers from making payments directly or indirectly to a physician or other provider as an inducement to reduce or limit Medically Necessary services provided to Enrollees.

(D) All of the Contractor's Participating Providers shall be aware of the Contractor's Quality Assurance Plan and activities. All of the Contractor's agreements with Participating Providers shall include a requirement securing cooperation with the Contractor's Quality Assurance Plan and activities and shall allow the Contractor access to the medical records of Enrollees being treated by Participating Providers.

(E) All physicians who provide services under this Contract shall have a unique identifier in accordance with the system established under Section 1173(b) of the Social Security Act and in accordance with the Health Insurance Portability and Accountability Act.

## **5.3 Contractor's Selection of Participating Providers**

### **5.3.2 Participating Provider Selection, Generally**

(A) The Contractor shall implement written policies and procedures for selection and retention of Participating Providers and those procedures should include, at minimum, the requirements found in this Contract.

(B) The Contractor shall maintain documentation of its credentialing and re-credentialing activities. Upon request from the Department, the Contractor shall demonstrate that its Participating Providers are credentialed and re-credentialed following Contractor's written credentialing and re-credentialing policies and procedures.

### **5.3.3 Excluded Providers**

Pursuant to 42 CFR 438.214(d), the Contractor shall not employ or contract with Providers that are Excluded from participation in Federal Health Care Programs under either Section 1128 or 1128A of the Social Security Act.

#### **5.3.4 Notifications**

The Contractor shall have procedures for notifying the Utah Department of Professional Licensing when it suspects or has knowledge that a Provider has violated Professional Licensing statutes, rules, or regulations.

#### **5.3.5 Non-Inclusion of Providers**

(A) The Contractor shall report to the Department when a Provider is denied Participating Provider status. Such denial can include when a Provider is denied admission to the Contractor's provider panel, is removed from the Contractor's panel, or voluntarily withdraws from the panel when the denial, removal, or withdrawal is due to a substantive issue. Substantive issues include violations of the Department of Occupational and Professional Licensing's regulations, and allegations of Fraud, Waste or Abuse.

(B) The Contractor shall electronically submit information relating to the non-inclusion of Providers to the Department within 30 calendar days of the non-inclusion action using the Department-specified form.

(C) The Contractor shall not report non-inclusion of Providers when due to non-substantive issues. Non-substantive issues include instances where the provider fails to complete the credentialing process or the Contractor has sufficient network capacity.

#### **5.3.6 Nondiscrimination**

(A) Consistent with 42 CFR 438.214 and 42 CFR 438.12, the Contractor's Provider selection policies and procedures must not discriminate against particular Providers who serve high-risk populations or specialize in conditions that require costly treatment.

(B) Pursuant to 42 CFR 438.12, the Contractor shall not discriminate against Providers with respect to participation, reimbursement, or indemnification as to any Provider who is acting within the scope of that Provider's license or certification under applicable State law, solely on the basis of the Provider's license or certification. This may not be construed to mean that the Department:

- (1) Requires the Contractor to Contract with Providers beyond the number necessary to meet the needs of its Enrollees;
- (2) Precludes the Contractor from using different reimbursement amounts for different specialties or for different practitioners in the same specialty; or

(3) Precludes the Contractor from establishing measures that are designed to maintain quality of services and control costs and are consistent with its responsibilities to Enrollees.

(C) If the Contractor declines to include individuals or groups of Providers in its network, it shall give the affected Providers written notice of the reason for its decision.

### **5.3.7 Primary Children's Medical Center**

The Contractor shall enter into a Participating Provider agreement with Primary Children's Medical Center.

### **5.3.8 Participating Provider Hospital Reporting Requirements**

(A) The Contractor shall maintain Participating Provider agreements with the hospitals it had designated as being part of the Contractor's Participating Provider network in Attachment G of the RFP.

(B) The Contractor shall submit to the Department by May 1 of each year, a list of hospitals with which the Contractor has entered into a Participating Provider agreement. The Contractor shall state on this list any restrictions or limitations to clients receiving all Covered Services at any of the hospitals on the list.

(C) In the event that the Participating Provider agreement between the Contractor and one of the hospitals on the list described in Article 5.3.8(A) is terminated, the Contractor shall:

(1) notify the Department within two business days of the Contractor having knowledge that the Participating Provider agreement with a hospital will be terminated;

(2) notify CHIP Enrollees living within a 40 mile radius of the hospital within 10 calendar days of the termination effective date;

(3) guarantee access to all Covered Services to Enrollees living within a 40 mile radius of the terminated hospital through whichever of the following dates is later:

(i) the end of the month following the month following the month the Contractor notified the Department;

(ii) the termination date of the Participating Provider agreement between the hospital and the Contractor; or

(iii) the date of discharge if the Enrollee was admitted prior to Article 5.3.8(C)(1) (i) or (ii); and

(4) in the event that there is no other hospital that is a Participating Provider within a 40 mile radius of the terminated hospital, allow Enrollees to obtain Covered Services

at any hospital within a 40 mile radius without imposing any requirements for prior authorization or other restrictions that would be different from those applied to contracted hospitals.

(D) Termination of a hospital as a Participating Provider is considered a major change to the Contractor's network of Participating Providers. The Department will allow Enrollees an opportunity to transfer to another Health Plan.

## **5.4 Payment of Provider Claims**

### **5.4.1 General Requirements**

(A) The Contractor shall pay Providers on a timely basis consistent with the claims payment procedures described in Section 1902(a)(37)(A) of the Social Security Act and the implementing federal regulations at 42 CFR 447.45 and 42 CFR 447.46 unless the Contractor and the Participating Provider have established an alternative payment schedule.

(B) The Contractor shall pay 90 percent of all Clean Claims from practitioners, who are in individual or group practice or who practice in shared health facilities, within 30 days of receipt.

(C) The Contractor shall pay 99 percent of all Clean Claims from practitioners, who are in individual or group practice or who practice in shared facilities, within 90 days of the date of receipt.

(D) The date of receipt is the date the Contractor receives the claim as indicated by its date stamp on the claim.

(E) The date of payment is the date of the check or other form of payment.

### **5.4.3 Coverage Start Dates**

(A) The Contractor is responsible for making payment on claims for Enrollees from the earlier of:

(1) the first day of the month of Enrollee's application is submitted; or

(2) during the Four Day Grace period from the date of application.

### **5.4.4 Federally Qualified Health Center and Rural Health Clinic Payments**

The Health Plan shall pay to Federally Qualified ("FQHCs") and Rural Health Clinics ("RHCs") with which it is contracted an amount not less than what it pays other similar providers that are not FQHCs and RHCs.

### **5.4.5 Division of Community and Family Health Services Payments**

(A) When an Enrollee qualifies for special services offered through the Utah Department of Health's Division of Community and Family Health Services ("DCFHS"), the Contractor agrees to reimburse DCFHS at the standard CHIP rate for one outpatient team evaluation and one follow-up visit when the Enrollee becomes Eligible and selects the Contractor's Health Plan.

(B) The Contractor shall waive any prior authorization requirement for one outpatient team evaluation and one follow-up visit.

(C) The services provided in the outpatient team evaluation and follow-up visit for which the Contractor must reimburse DCFHS are limited to the Covered Services that the Contractor is otherwise obligated to provide under this Contract. The Contractor may subcontract with DCFHS.

#### **5.4.6 Indian Health Services Contracts**

(A) The Contractor shall make a good faith effort to subcontract with Indian Health Services. Any such subcontract shall be comparable to subcontracts offered to other Participating Providers.

(B) If an Indian health care Provider is a Participating Provider and a Primary Care Provider, the Contractor must allow Native American Enrollees to choose the Indian health care Provider as the Native American Enrollee's Primary Care Provider.

(C) The Contractor must demonstrate that it has sufficient Indian health care providers as Participating Providers to ensure that Enrollees have timely access to Covered Services.

(D) The Contractor agrees to make prompt payment to Indian Health Services in accordance with 42 CFR 447.45 and 42 CFR 447.46.

(E) The Contractor shall pay an Indian health care provider that is both an FQHC and a Non-Participating Provider at the same rate that the Contractor would pay a Participating Provider.

## **Article 6: Program Integrity Requirements**

### **6.1 Fraud, Waste and Abuse**

#### **6.1.1 Generally**

(A) Pursuant to 42 CFR 438.608, the Contractor shall have administrative and management arrangements or procedures, including a mandatory compliance plan, that are designed to guard against Fraud, Waste, and Abuse on the part of the Providers, Enrollees, and other patients who falsely present themselves as being CHIP eligible.

(B) The Contractor's compliance plan shall be designed to identify and refer suspected Fraud, Waste, and Abuse activities. The Contractor shall submit the Fraud, Waste, and Abuse plan to the Department, upon the Department's request and the compliance plan shall be subject to the Department's approval.

(C) The Contractor shall cooperate and coordinate with the Department, the Utah OIG, and the Medicaid Fraud Control Unit ("MFCU") in any Waste, Fraud, and Abuse activities and investigations.

(D) The Contractor shall make reasonable efforts to attend and participate in quarterly Fraud, Waste, and Abuse meetings with the Department, MFCU, and the Utah OIG.

#### **6.1.2 Specific Requirements for Contractor's Management Arrangements or Procedures**

(A) The Contractor's management arrangements or procedures and compliance plan to guard against Fraud, Waste, and Abuse shall include the following:

- (1) Written policies, procedures, and standards of conduct that articulate the Contractor's commitment to comply with all applicable Federal and State standards;
- (2) The designation of a compliance officer and a compliance committee that are accountable to senior management;
- (3) Effective training and education for the compliance officer and the Contractor's employees;
- (4) Effective lines of communication between the compliance officer and the Contractor's employees;
- (5) Enforcement of standards through well-publicized disciplinary guidelines;
- (6) Provisions for internal monitoring and auditing including:
  - (i) Mechanism(s) for verifying with Enrollees that Covered Services provided or reimbursed by the Contractor were actually furnished to Enrollees (such as periodic questionnaires, telephone calls, etc., to a sample of Enrollees); and
  - (ii) Documentation of the sampling methodology and the schedule for conducting the verifications; and
- (7) Provisions for prompt response to detected offenses and for development of corrective action initiatives relating to this Contract.

#### **6.1.3 Reporting Potential Provider-Related Fraud, Waste, and Abuse**

(A) Pursuant to Utah Code Ann. §63J-4a-101 *et seq.*, if the Contractor or a Provider becomes aware of potential Provider-related Fraud, Waste, or Abuse, the Contractor or the Provider shall report the incident, in writing, to the Utah Office of Inspector General of Medicaid Services (“Utah OIG”) or MFCU in the Utah Attorney General’s Office.

(B) If the Contractor or Provider reports an incident to the Utah OIG or MFCU, the Contractor or Provider shall electronically submit a copy of the report to the Department.

(C) Reports of Fraud, Waste, or Abuse made by the Contractor or a Provider shall be made to the Utah OIG or MFCU and the Department within fifteen working days of detection of the incident of Provider-related Fraud, Waste, or Abuse.

(D) The Contractor or Provider shall include in the report:

- (1) Name and identification number of the suspected individual;
- (2) Source of the complaint (if anonymous, indicate as such);
- (3) Type of Provider or type of staff position, if applicable;
- (4) Nature of complaint;
- (5) Approximate dollars involved, if applicable and
- (6) The legal and administrative disposition of the case, if any, including actions taken by law enforcement to whom the case has been referred.

(E) In accordance with 42 CFR 455.17(a) the Contractor shall report to the Department on a quarterly basis the number of complaints of Fraud, Waste, and Abuse has warranted a preliminary investigation. The report shall be submitted to the Department no later than 30 days after each quarter.

#### **6.1.4 Reporting Recipient-Related Fraud, Waste, and Abuse**

If the Contractor or a Provider becomes aware of potential recipient Fraud related to the recipient’s eligibility for CHIP (such as, the recipient misrepresented facts in order to become or maintain CHIP eligibility), the Contractor or Provider shall report the potential recipient Fraud to the Utah Department of Workforce Services. All other types of potential Fraud and all types of potential recipient Waste or Abuse related to the CHIP program shall be reported to the Utah OIG and to the Department’s Bureau of Managed Health Care.

#### **6.1.5 Obligation to Suspend Payments to Providers**

(A) The Contractor shall develop policies and procedures to comply with 42 CFR §455.23.

(B) The Contractor shall contact MFCU prior to suspending payments.



## **6.2 False Claims Act**

### **6.2.1 False Claims Act, Generally**

(A) In accordance with Section 6032 of the Deficit Reduction Act of 2005, if the Contractor receives annual payments of at least \$5,000,000.00 from the Department, the Contractor shall establish written policies and procedures for all of its employees (including management) and its contractors or agents which comply with the Act.

(B) For purposes of this Article 6.2, the following definitions apply:

(1) **Employee:** includes any officer or employee of the Contractor.

(2) **Agent or contractor:** includes any contractor, subcontractor, agent or other person which or who, on behalf of the Contractor, furnishes or otherwise authorizes the furnishing of CHIP Covered Services, performs billing or coding functions, or is involved in monitoring of health care provided by or on behalf of the Contractor.

### **6.2.2 Information Required in False Claims Act Policies**

(A) The written policies shall provide detailed information about the False Claims Act established under Sections 3729 through 3733 of Title 31 of the United States Code, administrative remedies for false claims and statements established under Chapter 38 of Title 31, United States Code, any state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting Fraud, Waste, and Abuse in Federal Health Care Programs.

(B) The Contractor shall include as part of its written policies, detailed provisions regarding the Contractor's policies and procedures for detecting and preventing Fraud, Waste, and Abuse.

### **6.2.3 Dissemination of False Claims Act Policies and Procedures**

(A) The Contractor shall have written procedures for disseminating to its employees, contractors and agents its False Claims Act Policies.

(B) The Contractor shall require that its Participating Providers to comply with the Contractor's False Claims Act policies and procedures..

(C) The Contractor shall use all reasonable efforts, including provider attestations, to ensure that its Participating Providers are either disseminating the Contractor's or equivalent False Claims Act policies and procedures to the Participating Providers' employees and agents.

### **6.2.4 Employee Handbook**

(A) If the Contractor has an employee handbook, the Contractor shall include the following information:

- (1) A specific discussion of the False Claims Act established under Sections 3729 through 3733 of Title 31 of the United States Code, administrative remedies for false claims and statements established under Chapter 38 of Title 31, United States Code, any state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting Fraud, Waste, and Abuse in Federal Health Care Programs;
- (2) The rights of employees to be protected as whistleblowers; and
- (3) The Contractor's policies and procedures for detecting and preventing Fraud, Waste, and Abuse.

### **6.3 Prohibited Affiliations with Individuals Debarred by Federal Agencies**

#### **6.3.1 General Requirements**

(A) In accordance with Section 1932(d) of the Social Security Act and 42 CFR 438.610:

- (1) The Contractor shall not knowingly have a director, officer, partner, or person with beneficial ownership of more than 5% of the Contractor's equity who is:
  - (i) disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order; or
  - (ii) an affiliate, as defined in the Federal Acquisition Regulation, of a person who is disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order.
- (2) The Contractor shall not knowingly have an employment, consulting, or any other agreement with a person who is:
  - (i) disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order where the Contractor is using such person for the provision of items or services that are significant and material to the Contractor's obligations to the Department; or

(ii) an affiliate, as defined in the Federal Acquisition Regulation, of a person who is disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order.

(3) Per the Federal Acquisition Regulation, "business concerns are affiliates of each other, if directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; *provided* that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate whether or not it is organized for profit or located in the United States."

### 6.3.2 Screening for Prohibited Affiliations

(A) The Contractor shall maintain written policies and procedures for conducting routine searches for prohibited affiliations.

(B) The Contractor is required to screen the following relationships to ensure it has not entered into a prohibited affiliation:

(1) Directors, officers, or partners of the Contractor (including the Contractor's Board of Directors, if applicable);

(2) Persons with beneficial ownership of 5 percent or more in the Contractor's equity;

(3) Persons with an employment, consulting, or other arrangement with the Contractor for the provision of items and services that are significant and material to the Contractor's obligation under this Contract with the Department.

(C) Before entering into a relationship with the individuals listed in Article 6.3.2(B)(1), (2), and (3), the Contractor shall, at minimum:

(1) Conduct searches of the LEIE and EPLS databases and any other database required by the Department to ensure that the individuals listed in Article 6.3.2(B)(1),(2), and (3) have been debarred, Suspended, or otherwise Excluded; and

(2) The Contractor shall maintain documentation showing that such searches were conducted.

(D) If the individuals listed in Article 6.3.2(B)(1), (2), and (3) are not found in the database searches, the Contractor is required to determine if the individual is an Affiliate of a person who

is disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order. Affiliate is defined in Article 6.3.1(A)(3)(i) of this Contract.

(1) The Contractor may provide the Department's Prohibited Affiliation Attestation Form to the individuals listed in Article 6.3.2(B)(1), (2) and (3). If the Contractor chooses to use the Department's Prohibited Affiliation Form, the Contractor shall keep the original version of this form and shall provide the Department with an electronic copy of the form.

(2) The Department's Prohibited Affiliation Attestation form includes a statement that if the individual completing the form subsequently becomes an affiliate of a person who is disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order, the individual must notify the Contractor within 30 days of the discovery and complete a new attestation form.

(E) If the Contractor determines based on database search results or from the attestation forms that a prohibited affiliation would result, the Contract may not enter into the relationship.

(F) For relationships with the individuals listed in Article 6.3.2(B)(1)(2), and (3) that exist on the effective date of this Contract, the Contractor shall perform the database searches and obtain the requisite attestations. Thereafter, the Contractor shall conduct monthly searches of the required databases to determine if those individuals have been added to the databases. The Contractor shall keep records showing that these monthly searches were conducted.

(G) If an entity other than the Contractor (for example, the Board of Directors) has the authority to enter into a relationship described in Article 6.3.2(B)(1)(2) and (3) of this Contract, then the Contractor or the other entity shall conduct the required database searches and obtain the requisite attestations. Thereafter the other entity or the Contractor shall conduct the monthly searches to ensure that those individuals have not been added to the databases. The party conducting the search shall keep records showing that these monthly searches were conducted.

(H) The Contractor shall not be required to use the Department's Prohibited Affiliation Attestation form if the Contractor has developed an alternative method to screen and report Prohibited Affiliations as described in this Article 6.3. The Contractor shall send a written request to the Department describing the alternative method. The use of an alternative method must be approved of by the Department, in writing.

### **6.3.3 Subcontracted Administrative Functions**

(A) In the event that the Contractor has entered into a Subcontract with an entity that will be performing administrative functions that are significant and material to the Contractor's obligations under this Contract, the Contractor shall ensure that Subcontractor does not have a

prohibited affiliation of the type described in Section 6.3.1(A)(1), (2), and (3).

(B) The Contractor shall conduct the database searches and shall obtain attestations for individuals performing administrative functions locally to determine if any of the individuals are disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order.

(C) The Contractor shall report any prohibited affiliation in accordance with Article 6.3.4.

(D) If the local Subcontractor has a parent entity, the Contractor shall require the parent entity to submit a letter to the Contractor regarding whether any of its individuals listed in Article 6.3.2(B)(1)(2) and (3) has a prohibited affiliation. The Contractor shall keep the original copy of the letter. If the letter states that the Subcontractor has a prohibited affiliation, the Contractor shall electronically submit a copy of the letter to the Department within 30 calendar days after the Contractor received the letter.

#### **6.3.4 Reporting Prohibited Affiliations**

(A) In the event that the Contractor determines that it is not in compliance and has entered into a prohibited affiliation of the type described in Article 6.3.1(A)(1), (2), or (3) of this Contract, the Contractor must immediately, and no later than 30 days, notify the Department. Notification to the Department shall be by email and shall include the name, Social Security Number, and type of relationship the person has with the Contractor.

(B) If the Contractor obtains an Attestation from an individual stating that the individual has an affiliate who has been disbarred, Suspended, or otherwise Excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued pursuant to Executive Order No. 12549 or under any guidelines implementing such order, the Contractor shall provide an electronic copy of the attestation form to the Department no later than 30 calendar days from the date of the individual providing the attestation to the Contractor.

(B) The Department, after having been notified of the Contractor's noncompliance shall:

(1) Notify the Secretary of the United States' Department of Health and Human Services ("Secretary") of the noncompliance;

(2) May continue the existing Contract with the Contractor unless the Secretary (in consultation with the United States' Department of Health and Human Services Inspector General) directs otherwise;

(3) May not renew or otherwise extend the duration of an existing contract with the Contractor unless the Secretary (in consultation with the United States' Department of Health and Human Services Inspector General) provides to the State and to Congress a written statement describing Compelling reasons that exist for renewing or extending the

agreement.

## **6.4 Excluded Providers**

### **6.4.1 Definition of Excluded Providers**

In accordance with 42 CFR 438.214(d), the Contractor may not employ or contract with Providers who are Excluded from participation in Federal Health Care Programs under either Section 1128 or 1128(A) of the Social Security Act.

### **6.4.2 Screening for Excluded Providers**

(A) The Contractor shall maintain written policies and procedures for conducting routine searches of the LEIE and EPLS databases and any other database required by the Department to ensure that the Providers are not restricted Providers.

(B) Before contracting with or employing a Provider, and as part of the credentialing and recredentialing processes, the Contractor shall search the LEIE and EPLS databases and any other database required by the Department to ensure that the Providers are not restricted Providers.

(C) For Providers that are Medicare-certified or are Medicaid Providers, the Contractor need search only for the Provider's name (e.g., the name of a subcontracted hospital). For Providers that are not Medicare-certified or are not Medicaid Providers, the Contractor shall search for the Provider and its director.

(D) The Contractor shall conduct monthly searches of the LEIE and EPLS databases and any other database required by the Department to ensure that the Providers are not restricted Providers and maintain documentation showing that such searches were conducted.

(E) Once the Contractor has credentialed the potential Provider and enters into a Provider agreement, and the Provider is not Medicare-certified or is not a Medicaid Provider, the Contractor may delegate any of the following monthly searches:

- (1) Searches of the Provider's director; and/or
- (2) Searches of the Provider's providers who deliver Covered Services incident to the Provider's obligations under its agreements with the Contractor.

(F) The Contractor shall perform searches not delegated to the Provider and shall maintain documentation that such searches were conducted.

(G) If the Contractor delegates the Exclusion searches to a Participating Provider, the Contractor shall include this requirement in its written Provider agreement. The Contractor shall require the Provider to have policies and procedures for conducting the delegated searches, for maintaining documentation that such searches were conducted, and for reporting any Exclusion findings to

the Contractor within 30 calendar days of the discovery.

(H) If the Contractor delegates Exclusion monitoring to a Provider, the Contractor shall have monitoring policies and procedures to ensure its Providers are conducting the Exclusion searches in accordance with the delegation agreement.

(I) Within 30 calendar days of either identifying an Excluded provider or receiving Exclusion information from a Provider, the Contractor shall notify the Department of the Exclusion by electronically submitting the information on the Department's Disclosure of Excluded Provider Form to the Department.

#### **6.4.3 Excluded Provider Payment Prohibition**

(A) If the Contractor employs or contracts with an Excluded Provider, the Contractor is prohibited from paying for any claims for Covered Services to Enrollees which were furnished, ordered, or prescribed by Excluded Providers except as allowed by 42 CFR 1001.1901(c).

### **6.5 Disclosure of Ownership and Control Information**

#### **6.5.1 Disclosure Information**

(A) Using the Department's Managed Care Entity Disclosure Form, and in accordance with 42 CFR 455.104, the Contractor shall require the following disclosures:

(1) Each Person with an Ownership or Control Interest in the Contractor shall disclose:

(i) Identifying information that shall include the person's name, address, date of birth, Social Security Number (in the case of an individual) or other tax identification number (in the case of a corporation). An individual shall disclose the address of his or her primary residence. A corporate entity shall include (as applicable) the primary business address, every business location and P.O. Boxes; and

(ii) Whether that person is related to another Person with an Ownership or Control Interest in the Contractor is related to another Person with an Ownership or Control Interest in the Contractor as a spouse, parent, child, or sibling.

(2) Each Person with an Ownership or Control Interest in a Subcontractor in which the Contractor has a five percent or more interest shall disclose:

(i) Identifying information that shall include the person's name, address, date of birth, Social Security Number (in the case of an individual) or other tax identification number (in the case of a corporation). An individual shall disclose the address of his or her primary residence. A corporate entity shall include (as applicable) the primary business address, every business location and P.O. Boxes; and

(ii) Whether that person is related to another Person with an Ownership or Control Interest in the Contractor as a spouse, parent, child, or sibling.

(3) Managing Employees shall disclose:

(i) Identifying information that shall include the name, address, date of birth, and Social Security Number of any Managing Employee of the Contractor.

(4) Persons with an Ownership Interest in the Contractor shall disclose:

(i) Identifying information that shall include the name of the individual; and

(ii) the name of any Other Disclosing Entity (or Fiscal Agent or Managed Care Entity) in which the person with an Ownership Interest in the Contractor is also a Person with an Ownership or Control Interest in the Other Disclosing Entity (or Fiscal Agent or Managed Care Entity).

(5) In the event that the Contractor Subcontracts with an entity to perform administrative functions for the Contractor's CHIP program, the Contractor shall require Persons with an Ownership or Control Interest in the Subcontractor to disclose the following information:

(i) Identifying information that shall include the person's name, address, date of birth, Social Security Number (in the case of an individual) or other tax identification number (in the case of a corporation). An individual shall disclose the address of his or her primary residence. A corporate entity shall include (as applicable) the primary business address, every business location and P.O. Boxes; and

(ii) Whether that person is related to another Person with an Ownership or Control Interest in the Contractor is related to another Person with an Ownership or Control Interest in the Contractor as a spouse, parent, child, or sibling.

(6) In the event that the Contractor Subcontracts with an entity to perform administrative functions, for the Contractor's CHIP program, the Contractor shall require Managing Employees of the Subcontractor to disclose the following information:

(i) Identifying information that shall include the name, address, date of birth, and Social Security Number of any Managing Employee of the Contractor.

### **6.5.2 Reporting Timeframes**

(A) The Contractor shall electronically submit the Department's Managed Care Entity Disclosure Form at the following times:



- (1) Upon the Contractor submitting a proposal in accordance with State's procurement process.
- (2) Within 90 days of the Contractor executing the Contract with the Department.
- (3) Upon renewal or extension of the Contract.
- (4) Within 35 calendar days after any change in Persons with Ownership or Control Interest.
- (5) Within 35 calendar days after any change in Managing Employees.

### **6.5.3 Consequences for Failure to Provide Disclosures**

FFP is not available in payments made to the Contractor if the Contractor or its Subcontractor performing administrative functions fails to disclose ownership or control information as required by Article 6.5.

## **6.6 Disclosure of Provider Incentive Plans**

### **6.6.1 Generally**

The Contractor shall comply with the requirements set forth in 42 CFR 422.208 and 422.210.

### **6.6.2 Prohibition**

In accordance with 42 CFR 422.208, the Contractor may operate a Physician Incentive Plan only if the Contractor makes no specific payment, directly or indirectly, to a physician or physician group as an inducement to reduce or limit Medically Necessary services furnished to any particular Enrollee. Indirect payments may include offerings of monetary value (such as stock offerings or waivers of debt) measured in the present or future.

### **6.6.3 Reporting Requirements**

- (A) The Contractor shall notify the Department if the Contractor plans to operate a Physician Incentive Plan.
- (B) The Contractor shall report to the Department the following information in sufficient detail to determine whether the incentive plan complies with the regulatory requirements:
  - (1) Whether services not furnished by the physician or physician group are covered by the incentive plan. No further disclosure is required if the Physician Incentive Plan does not cover services not furnished by the physician or physician group;
  - (2) The type of incentive arrangement (e.g., withhold, bonus, capitation arrangement, etc.);

- (3) The percent of withhold or bonus, if applicable;
- (4) The panel size, and if Enrollees are pooled, the method used;
- (5) If the physician or physician group is at substantial financial risk, proof the physician/group has adequate stop-loss coverage, including the amount and type of stop-loss; and
- (6) If required to conduct Enrollee surveys, the survey results.

#### **6.6.4 Substantial Financial Risk**

If the physician/group is put at substantial financial risk for services not provided by the physician/group, the Contractor shall ensure adequate stop-loss protection to individual physicians and conduct annual Enrollee surveys.

#### **6.6.5 Information to Enrollees**

The Contractor shall provide information on its Physician Incentive Plan to any Enrollee upon request. If the Contractor is required to conduct Enrollee surveys, the Contractor shall disclose the survey results to Enrollees upon request.

### **Article 7: Authorization of Services, Notices of Action, Medical Necessity Denials**

#### **7.1 Service Authorization and Notice of Action**

##### **7.1.1 Policies and Procedures for Service Authorization Requests**

- (A) If requiring Service Authorizations, the Contractor shall establish and follow written policies and procedures for processing requests for initial and continuing authorization of Covered Services.
- (B) The Contractor shall implement mechanisms to ensure consistent application of review criteria for Service Authorization decisions and consult with the requesting Provider when appropriate.
- (C) The Contractor shall ensure that any decision to deny a Service Authorization Request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the Enrollee's condition or disease.

(D) The Contractor shall notify the requesting Provider, and give the Enrollee written notice of any decision to deny a Service Authorization request, or to authorize a service in an amount, duration, or scope that is less than requested. The notice to the Provider need not be in writing.

(E) The Contractor shall ensure compensation to individuals or entities that conduct utilization management activities is not structured so as to provide incentives for the individual or entity to deny, limit, or discontinue, Medically Necessary services to any Enrollee.

### **7.1.2 Time Frames and Procedures for Standard Service Authorizations**

(A) When making Standard Service Authorization Approvals the Contractor shall make a decision and provide notice to the Enrollee and Provider as expeditiously as the Enrollee's health condition requires, but no later than 14 calendar days from the receipt of the request for Service Authorization.

(1) The Contractor may extend the time frame for making the decision by up to an additional 14 calendar days if:

(i) the Enrollee or the Provider requests an extension; or

(ii) the Contractor justifies (to the Department upon request) a need for additional information and how the extension is in the Enrollee's best interest.

(2) If the Contractor extends the time frame for making standard Service Authorization decisions the Contractor shall:

(i) Give the Enrollee written notice of the reason for the decision to extend the time frame;

(ii) Inform the Enrollee of his or her right to file a Grievance, and how to do so, if the Enrollee disagrees with the decision; and

(iii) Issue and carry out the determination as expeditiously as the Enrollee's health condition requires and no later than the date the extension expires.

### **7.1.3 Time Frames and Procedures for Denying All or Part of a Service Authorization**

(A) If the Contractor denies a Service Authorization Request, or authorizes a requested service in an amount, duration or scope that is less than requested, the Contractor shall make the decision and give a Notice of Action to the Enrollee as expeditiously as the Enrollee's health condition requires it, but no later than 14 calendar days from receipt of the request for Service Authorization. The Contractor shall also notify the requesting Provider, although the notice need not be in writing.

(1) The Contractor may extend the time frame for making the decision by up to an additional 14 calendar days if:

- (i) the Enrollee or the Provider requests an extension; or
  - (ii) the Contractor justifies (to the Department upon request) a need for additional information and how the extension is in the Enrollee's best interest.
- (2) If the Contractor extends the time frame for making standard Service Authorization decisions the Contractor shall:
- (i) Give the Enrollee written notice of the reason for the decision to extend the time frame;
  - (ii) Inform the Enrollee of his or her right to file a Grievance, and how to do so, if the Enrollee disagrees with the decision; and
  - (iii) Issue and carry out the determination as expeditiously as the Enrollee's health condition requires and no later than the date the extension expires.

#### **7.1.4 Time Frames and Procedures for Expedited Service Authorization Decisions**

(A) For cases in which a Provider indicates, or the Contractor determines (on request from an Enrollee) that following the standard time frame could seriously jeopardize the Enrollee's life or health or ability to attain, maintain, or regain maximum function, the Contractor shall:

(1) Make an expedited Service Authorization decision and provide notice as expeditiously as the Enrollee's health condition requires, but no later than three working days after the receipt of the request for Service Authorization;

(i) The Contractor may extend the three working day time period by up to 14 calendar days if:

(a) the Enrollee requests the extension; or

(b) the Contractor justifies (to the Department upon request) a need for additional information and how the extension is in the Enrollee's interest.

(B) If the Contractor denies an expedited Service Authorization Request, or authorizes a requested service in an amount, duration or scope that is less than requested, the contractor shall follow the notification requirements found in Article 7.1.3.

#### **7.1.5 Service Authorization Decisions Not Reached Within Required Time Frames**

In the event that the Contractor fails to make a Service Authorization decision within the proscribed time frames, such failure shall constitute a denial of services and shall be considered an adverse Action. The Contractor is required send out a Notice of Action to the Enrollee on the day that the time frame expires.

### **7.1.6 Decisions to Terminate, Suspend, or Reduce Previously Authorized Covered Services**

(A) If the Contractor terminates, suspends or reduces previously authorized Covered Services this constitutes an Action. The Contractor shall notify the requesting Provider and mail a Notice of Action to the Enrollee as expeditiously as the Enrollee's health condition requires and within the following time frames:

- (1) At least 10 days prior to the date of the Action; or
- (2) Five days before the date of the Action if the Contractor has facts indicating that the Action should be taken because of probable Fraud by the Enrollee, and the facts have been verified, if possible, through secondary sources; or
- (3) by the date of the Action if:
  - (i) the Contractor has factual information confirming the death of the Enrollee;
  - (ii) the Contractor receives a clear, written statement from the Enrollee that:
    - (a) the Enrollee no longer wants the services; or
    - (b) the Enrollee gives information that requires termination or reduction of services and indicates that he or she understands that this shall be the result of supplying that information;
- (4) the Enrollee has been admitted to an institution where he is ineligible for further services;
- (5) the Enrollee's whereabouts are unknown and the post office returns mail directed to him indicating no forwarding address. In this case any discontinued services shall be reinstated if his whereabouts become known during the time he is eligible for services;
- (6) the Enrollee has been accepted for CHIP services by another local jurisdiction; or
- (7) the Enrollee's physician prescribes the change in the level of medical care.

## **7.2 Other Actions Requiring Notice of Action**

### **7.2.1 Action to Deny Payment in Whole or Part for a Service**

(A) The Contractor shall notify the requesting Provider of decisions to deny payment in whole or in part.

(B) The Contractor shall also mail the Enrollee a written Notice of Action at the time of the Action affecting a claim if the denial reason is that:

(1) the service was not authorized by the Contractor, and the Enrollee could be liable for payment if the Enrollee gave advance written consent that he or she would pay for the specific service; or

(2) the Enrollee requested continued services during an Appeal or State fair hearing and the Appeal or State fair hearing decision was adverse to the Enrollee.

(C) A Notice of Action to the Enrollee is not necessary under the following circumstances:

(1) the Provider billed the Contractor in error for a non-authorized service;

(2) the claim included a technical error (incorrect data including procedure code, diagnosis code, Enrollee name or CHIP identification number, date of service, etc.); or

(3) the Enrollee became eligible after the first of the month, but received a service during that month before becoming CHIP eligible.

#### **7.2.2 Action Due to Failure to Provide Covered Services in a Timely Manner**

Any failure of the Contractor's Participating Providers to provide services in a timely manner constitutes an Action. The Contractor shall provide a Notice of Action to the Enrollee at the time either the Enrollee or provider informs the Contractor that the provider failed to meet the performance benchmarks for appointment waiting times found in Article 10.2.6.

#### **7.2.3 Action Due to Failure to Resolve Appeals or Grievances Within Prescribed Timeframes**

(A) Failure of the Contractor to act within the prescribed timeframes provided for resolving and giving resolution notice for Appeals or Grievances constitutes an Action. The Contractor shall provide a Notice of Action to the Enrollee at the time the Contractor determines the time frame for resolving the Appeal or Grievance will not be met.

(B) If the Contractor does not resolve an Appeal within the required time frame, the Enrollee shall be considered as having completed the Contractor's Appeal process. The Contractor's failure to provide resolution of the Appeal within the required time frame is an Action and the Enrollee is allowed to file a request for a State fair hearing as the Enrollee has already exhausted the Contractor's internal appeals process. The Contractor may not require the Enrollee to go through the Contractor's internal appeals process again.

(C) When issuing a Notice of Action due to failure to resolve an Appeal within the required timeframe, the Contractor shall include in the Notice of Action information regarding the procedures and timeframes for filing a request for a State fair hearing rather than information on filing an Appeal. The Contractor shall also attach to the Notice of Action a copy of the request form for a State fair hearing that the Enrollee can submit to request a State fair hearing.

## 7.3 Required Content of Notice of Action

### 7.3.1 Generally

(A) The Contractor's Notice of Action to an Enrollee shall be in writing and meet the language and format requirements outlined in Article 3 to ensure ease of understanding.

(B) All written Notices of Action required by this Contract shall explain the following:

- (1) The Action the Contractor has taken or intends to take;
- (2) The reason for the Action;
- (3) The date the Action will become effective when the Action is to terminate, suspend, or reduce a previously authorized Covered Service;
- (4) The Enrollee's or Provider's right to file an Appeal of the Action with the Contractor;
- (5) The procedures for filing an Appeal;
- (6) The circumstances under which expedited resolution of the Appeal is available and how to request an expedited Appeal resolution;
- (7) The Enrollee's right to have disputed services continue, pending resolution of the Appeal of an Action to terminate, suspend or reduce a previously authorized course of treatment that was ordered by an authorized Provider;
- (8) How to request that the disputed services be continued, and the circumstances under which the Enrollee may be required to pay the cost of these services if the Appeal decision is adverse to the Enrollee, to the extent that they were furnished solely because of this Contract requirement in accordance with 42 CFR 438.420; 438.404(b)(7), and 431.230(b); and
- (9) The following timeframe for filing an Appeal, as applicable:
  - (i) If the Enrollee is not requesting continuation of disputed services pending resolution of an Appeal of an Action to terminate, suspend or reduce a previously authorized course of treatment that was ordered by an authorized Provider, and the original period covered by the original authorization has not expired, the Enrollee or the Provider, shall file the Appeal within 90 days from the date on the Contractor's Notice of Action; or
  - (ii) If the Enrollee is requesting continuation of disputed services pending resolution of an Appeal of an Action to terminate, suspend or reduce a previously authorized course of treatment that was ordered by an authorized Provider, and the original period covered by the original authorization has not expired, the

Enrollee or Provider shall file the Appeal on or before the later of the following:

- (a) within 10 days of the Contractor mailing the Notice of Action; or
- (b) by the intended effective date of the Contractor's proposed action.

### **7.3.2 Attachment to Notice of Action –Written Appeal Request Form**

(A) The Contractor shall develop and include as an attachment to the notice of Action an Appeal Request form that Enrollees may use as the written Appeal request for standard Appeals. The form may also be used for expedited Appeal requests if the Enrollee chooses to submit a written request for an expedited Appeals resolution, even though an oral request is all that is required. The form shall:

(1) Provide a prompt mechanism (through the use of check boxes or other means) for Enrollees to:

(i) request expedited Appeal resolution if they chose to submit a written request for an expedited Appeal resolution; and

(ii) request continuation of disputed services, if applicable;

(2) Provide a statement that if continuation of disputed services is requested when a previously authorized service is terminated, suspended or reduced, that the Enrollee agrees that the Contractor may recover from the Enrollee the cost of the services furnished while the Appeal is pending if the Appeal decision is adverse to the Enrollee, to the extent that the services were furnished solely because of the requirements of this Contract that are based on federal regulation in 42 CFR 438.420;

(3) Summarize the assistance available to the Enrollee may request to complete the Appeal Request form and how to request the assistance; and

(4) Include a reminder that if the Enrollee is not requesting an expedited Appeal resolution and the Enrollee files an Appeal orally, that the oral Appeal shall be followed by a written Appeal request within five working days from the date of the oral filing.

(B) When the Contractor is required to inform Enrollees or Providers of their State Fair Hearing rights, the Contractor shall not attach its own Appeal Request form but shall, instead, attach the State's request form for a Medicaid/CHIP State fair hearing.

## **Article 8 Grievance and Appeals Systems**

### **8.1 Overall System**

#### **8.1.1 General Requirements**



(A) The Contractor shall have a Grievance and Appeals System for Enrollees that includes:

- (1) a Grievance process whereby an Enrollee, or Provider acting on behalf of an Enrollee, may communicate a Grievance;
- (2) an Appeals process whereby an Enrollee, or Provider acting on behalf of the Enrollee with the Enrollee's written consent, may file an Appeal of an Action, and
- (3) procedures for an Enrollee, or a Provider acting on behalf of an Enrollee, to access the State's fair hearing system.

(B) The Contractor shall incorporate all of the Grievance and Appeals requirements found in this Contract into its policies and procedures for Grievances and Appeals.

## **8.2 Appeal Requirements**

### **8.2.1 Special Requirements for Appeals**

(A) The Contractor's process for Appeals shall:

- (1) Provide that oral inquiries seeking to appeal an Action are treated as an Appeal, to establish the earliest possible filing date for the Appeal;
- (2) Ensure that the Enrollee or Provider understands that the oral Appeal shall be confirmed in writing, no later than five working days from the date of the oral filing, unless the Enrollee or the Provider requests an expedited resolution to the Appeal. These requests do not require a follow-up written request;
- (3) Provide the Enrollee reasonable opportunity to present evidence and allegations of fact or law, in person as well as in writing. The Contractor shall inform the Enrollee of the limited time available for this in the case of an expedited Appeal resolution; and
- (4) Provide the Enrollee and his or her authorized representative the opportunity, before and during the appeals process, to examine the Enrollee's case file, including medical records and any other documents and records considered during the appeals process; and
- (5) Include as parties to the Appeal:
  - (i) the Enrollee and his or her representative, or
  - (ii) the legal representative of a deceased Enrollee's Estate.

## **8.3 Standard Appeals Process**

### **8.3.1 Authority to File**

- (A) An Enrollee or the Enrollee's legally authorized representative may file an Appeal; or
- (B) A Provider may file an Appeal.

### **8.3.2 Timing**

(A) The Enrollee or Provider may file an Appeal of an Action within 90 calendar days from the date on the Contractor's Written Notice of Action; or

(B) If the Action being appealed is to terminate, suspend or reduce a previously authorized course of treatment, the services were ordered by an authorized Provider and the original period covered by the original authorization has not expired, and the Enrollee wants disputed services to continue during the Appeal process, then the Enrollee or Provider shall file the Appeal on or before the later of the following:

- (1) within 10 days of the Contractor mailing the Notice of Action; or
- (2) the intended effective date of the Contractor's proposed Action.

### **8.3.3 Procedures**

(A) The Enrollee or the Provider may file an Appeal either orally or in writing.

(B) Unless the Enrollee or a Provider requests an expedited resolution of the Appeal (which does not require a written follow-up request), the oral Appeal shall be followed with a written, signed Appeal. The written, signed Appeal must be received within five working days from the date of the oral Appeal. If the Enrollee does not follow-up with a written, signed Appeal the Contractor has no further obligation to take action on the Enrollee's Appeal.

(C) A Provider may file the written, signed Appeal on behalf of the Enrollee and shall include the Enrollee's signed written consent.

(D) If an Enrollee or Provider requests an Appeal orally, the Contractor shall immediately inform the Enrollee or Provider that the oral filing of an Appeal must be followed with a written, signed appeal within five working days from the date of the oral Appeal.

(E) The Contractor shall give Enrollees any reasonable assistance in completing required forms for submitting a written Appeal or taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capacity.

(F) The Contractor shall acknowledge receipt of the Appeal either orally or in writing and explain to the Enrollee the process that must be followed to resolve the Appeal.

(G) The Contractor shall provide the Enrollee reasonable opportunity to present evidence, allegations of facts or law, in person as well as in writing. The Contractor shall inform the Enrollee of the limited time available for this in the case of an expedited Appeal resolution.

(H) The Contractors shall provide the Enrollee and the Enrollee's authorized representative the opportunity, before and during the appeals process, to examine the Enrollee's case file, including medical records, and any other documents and records considered during the appeals process.

(I) The Contractor shall include as parties to the appeal the Enrollee and the Enrollee's representative or the legal representative of a deceased Enrollee's estate.

(J) The Contractor shall ensure that the individuals who make the decision on an Appeal are individuals who:

(1) were not involved in any previous level of review or decision-making; and

(2) if deciding any of the following, are health care professionals who have the appropriate clinical expertise, as determined by the Department, in treating the Enrollee's condition or disease:

(i) an Appeal of a denial that is based on lack of Medical Necessity; or

(ii) an Appeal that involves clinical issues.

#### **8.3.4 Time Frames for Appeal Resolution and Notification**

(A) The Contractor shall resolve each Appeal and provide notice of resolution to affected parties as expeditiously as the Enrollee's health condition requires but no later than 30 calendar days from the day the Contractor receives the written, signed Appeal.

(B) The Contractor may extend the time frame for resolving the Appeal and providing notice by up to 14 calendar days if:

(1) the Enrollee requests the extension; or

(2) the Contractor shows that (to the satisfaction of the Department, upon its request) there is no need for additional information and how the delay is in the Enrollee's interest.

(C) If the Contractor extends the time frame, and the extension was not requested by the Enrollee, the Contractor shall give the Enrollee written notice of the reason for the delay.

#### **8.3.5 Format and Content of Notice of Appeal Resolution**

(A) The Contractor shall provide written Notice of Appeal Resolution to the affected parties. The written Notice of Appeal Resolution shall include the following:

- (1) the results of the Appeal resolution process and the date it was completed; and
- (2) for Appeals not resolved wholly in favor of the Enrollee, the Contractor shall include the following in the written Notice of Appeal Resolution:
  - (i) the right to request a State fair hearing and how to do so;
  - (ii) the right to request continuation of disputed services if the Appeal decision is to terminate, suspend or reduce a previously authorized course of treatment that was ordered by an authorized Provider and the original period covered by the original authorization has not expired;
- (3) how to request continuation of disputed services;
- (4) a statement that the Enrollee may be liable for the cost of disputed services provided if the State fair hearing decision upholds the Contractor's Action;
- (5) the time frame for requesting a State fair hearing when continuation of disputed services is not requested and when continuation of disputed services is requested; and
- (6) as applicable, a copy of either:
  - (i) the standard request form for a State fair hearing; or
  - (ii) the request form for an expedited State fair hearing that the Enrollee must complete and submit to the Department to request a State fair hearing and continuation of disputed services; or
  - (iii) the standard request form for an expedited State fair hearing if the Enrollee has an expedited Appeal.

## **8.4 Process for Expedited Resolution of Appeals**

### **8.4.1 General Requirements**

- (A) The Contractor shall establish and maintain an expedited review process when:
- (1) The Contractor determines, based either upon a request from an Enrollee or in the Contractor's own judgment, that the standard timeframe for Appeal could seriously jeopardize the Enrollee's life or health or ability to attain, maintain or regain maximum function; or
  - (2) A Provider indicates that the standard timeframe for Appeal could seriously jeopardize the Enrollee's life or health or ability to attain, maintain or regain maximum function.

#### **8.4.2 Authority to File**

The Enrollee or a Provider may file an expedited Appeal request either orally or in writing. Oral requests for expedited Appeal do not require a follow-up written request.

#### **8.4.3 Timing**

(A) The Enrollee or Provider may file an Appeal of an Action within 90 days from the date on the Contractor's Notice of Action;

(B) If the Action being appealed is to terminate, suspend or reduce a previously authorized course of treatment, the services were ordered by an authorized Provider and the original period covered by the original authorization has not expired, and the Enrollee wants disputed services to continue during the Appeal process, then the Enrollee shall file the Appeal on or before the later of the following:

- (1) within 10 days of the Notice of Action; or
- (2) by the intended effective date of the Contractor's proposed Action.

#### **8.4.4 Procedures for an Expedited Appeal**

(A) When an Enrollee or Provider requests an expedited resolution of an Appeal, the Contractor shall inform the Enrollee or Provider of the limited time available for the Enrollee to present evidence and allegations of fact or law in person and in writing.

(B) The Contractor shall ensure that punitive action is not taken against a Provider who either requests an expedited resolution to an Appeal or supports an Enrollee's Appeal.

(C) The Contractor shall give Enrollees any reasonable assistance in making an expedited appeal. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

(D) The Contractor shall acknowledge receipt of the request for expedited Appeal resolution either orally or in writing and explain to the Enrollee the process that must be followed to resolve the Appeal.

(E) The Contractor shall ensure that the individuals who make the decision on an Appeal are individuals who:

- (1) were not involved in any previous level of review or decision-making; and
- (2) if deciding any of the following, are health care professionals who have appropriate clinical expertise, as determined by the Department, in treating the Enrollee's condition or disease:

- (i) an Appeal of a denial that is based on lack of Medical Necessity; or
- (ii) an Appeal that involved clinical issues.

#### **8.4.5 Denial of a Request for Expedited Appeal Resolution**

(A) If the Contractor denies a request for an expedited resolution of an Appeal, the Contractor shall:

- (1) Adjudicate the Appeal using the standard time frame of no longer than 30 calendar days from the day the Contractor receives the Appeal, with a possible 14 calendar day extension for resolving the Appeal and Providing Notice of Appeal resolution to affected parties;
- (2) Make reasonable effort to give the Enrollee prompt oral notice of the denial; and
- (3) Mail written notice within two calendar days explaining the denial, specifying the standard time frame that must be followed, and informing the affected parties that the Enrollee may file a Grievance regarding the denial of expedited resolution of an Appeal.

#### **8.4.6 Time Frame for Expedited Appeal Resolution and Notification**

(A) The Contractor shall resolve each expedited Appeal and provide notice to affected parties as expeditiously as the Enrollee's health condition requires, but no later than three working days after the Contractor receives the expedited Appeal request.

(B) The Contractor may extend the time frame for resolving the Appeal and providing notice by up to 14 calendar days if:

- (1) the Enrollee requests the extension; or
- (2) the Contractor shows that there is need for additional information and how the delay is in the Enrollee's interest (upon Department request).

(C) If the Contractor extends the timeframe and the extension was not requested by the Enrollee the Contractor shall give the Enrollee written notice of the reason for the delay.

#### **8.4.7 Format and Content of Expedited Appeal Resolution Notice**

(A) The Contractor shall make reasonable effort to provide oral notice of the expedited resolution in addition to providing a written Notice of Appeal Resolution.

(B) The Contractor shall provide a written notice of Appeal Resolution that meets the same format and content requirements found in Article 8.3.5 of this Contract.

#### **8.4.8 Continuation of Disputed Services During the Expedited Appeals Process**

(A) The Contractor shall continue the Enrollee's disputed services during the expedited Appeal process if:

- (1) the Action being appealed is to terminate, suspend or reduce a previously authorized course of treatment;
- (2) the services were ordered by an authorized Provider;
- (3) the original period covered by the original authorization has not expired;
- (4) the Enrollee or Provider files the Appeal timely, which means filing the Appeal on or before the later of the following:
  - (i) within 10 days of the Contractor mailing the Notice of Action; or
  - (ii) by the intended effective date of the Contractor's proposed Action; and
- (5) the Enrollee requests continuation of disputed services in the Appeal request.

#### **8.4.9 Duration of Continued Disputed Services and Enrollee Responsibility**

(A) If the Contractor continues the Enrollee's disputed services, the Contractor shall continue the disputed services until one of the following occurs:

- (1) the Enrollee withdraws the Appeal;
- (2) ten days pass after the Contractor mails written Notice of Appeal Resolution that is adverse to the Enrollee and within that 10 day time period, and the Enrollee does not request a State fair hearing with continuation of disputed services until a State fair hearing decision is reached;
- (3) a State fair hearing officer issues a hearing decision adverse to the Enrollee; or
- (4) the time period of service limits of a previously authorized service has been met.

(B) If the final resolution of the Appeal or State fair hearing is adverse to the Enrollee, that is, the decision upholds the Contractor's Action, the Contractor may recover the cost of the disputed service furnished to the Enrollee while the Appeal or State fair hearing was pending to the extent they were furnished solely because they were furnished according to the requirements found in Article 8.4.8 of this Contract and in accordance with 42 CFR 431.230(b).

#### **8.4.10 Reversed Appeal Resolutions**

(A) If the Contractor or State fair hearing officer reverses an action to deny, limit, or delay services that were not furnished while the Appeal was pending, the Contractor shall authorize or

provide the disputed services promptly and as expeditiously as the Enrollee's health condition requires.

(B) If the Contractor or the State fair hearing officer reverses a decision to deny authorization of services and the Enrollee received the disputed services while the Appeal was pending, the Contractor shall pay for those services in accordance with State policy and regulations.

## **8.5 State Fair Hearings**

### **8.5.1 General Procedures**

(A) When the Enrollee or a Provider has exhausted the Contractor's Appeal process and a final decision has been made, the Contractor shall provide written notification to the party or parties who initiated the Appeal of the outcome and explain in clear terms a detailed reason for the denial.

(B) The Contractor shall provide notification to Enrollees and Providers that the final decision of the Contractor may be appealed to the Department and shall give to the Enrollee and Provider the Department's form to request a State fair hearing. The Contractor shall inform the Enrollee and Provider the time frame for requesting a State fair hearing as follows:

(1) The Department permits the Enrollee (or the Enrollee's legal guardian or representative), consistent with Utah Administrative Code R410-14-1, *et seq.*, to request a state fair hearing within 30 days from the date of the Contractor's Notice of Appeal Resolution.

(2) If the Enrollee chooses to continue disputed services (when a previously authorized course of treatment has been terminated, suspended or reduced) pending the outcome of the State fair hearing and the services were ordered by an authorized Provider and the original period covered by the original authorization has not expired, the request for a State fair hearing and continuation of disputed services shall be submitted within 10 days after the Contractor mails the Notice of Appeals Resolution.

(C) As allowed by law, the parties to the State fair hearing include the Contractor as well as the Enrollee and his or her representative who may include legal counsel, a relative, a friend or other spokesman, or the representatives of a deceased Enrollee's estate.

(D) The parties to a State fair hearing shall be given an opportunity to examine at a reasonable time before the date of the hearing and during the hearing, the content of the Enrollee's case file and all documents and records to be used by the Contractor at the hearing.

(E) The parties to the State fair hearing shall be given the opportunity to:

(1) bring witnesses;

(2) establish all pertinent facts and circumstances;



- (3) present an argument without undue interference; and
- (4) question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

(F) The State fair hearing with the Department is a de novo hearing. If the Enrollee or Provider requests a State fair hearing with the Department, all parties to the hearing are bound by the Department's decision until any judicial reviews are completed. Any decision made by the Department pursuant to the hearing shall be subject to appeal rights as allowed by State and Federal laws.

(G) The Enrollee shall be notified in writing of the State fair hearing decision and any appeal rights as provided by State and Federal law.

(H) In accordance with 42 CFR 431.244(f):

(1) The State fair hearing shall take final administrative action within 90 days of the earlier of:

(i) the date the Enrollee filed an appeal with the Contractor, not including the number of days the Enrollee took to subsequently file for a State fair hearing; or

(ii) where permitted, the date the Enrollee filed for direct access to a State fair hearing;

(2) The State fair hearing shall take final administrative action as expeditiously as the Enrollee's health condition requires, but no later than 3 working days after the Department receives from the Contractor the case file and information for any appeal of denial of a service that, as indicated by the Contractor:

(i) Meets the criteria for expedited resolution as set forth in 42 CFR 438.410(a), but was not resolved within the timeframe for expedited resolution; or

(ii) Was resolved within the timeframe for expedited resolution, but reached a decision wholly or partially adverse to the Enrollee.

## **8.6 Grievances**

### **8.6.1 Authority to File a Grievance**

- (A) An Enrollee may file a Grievance; or
- (B) A Provider may file a grievance.

### **8.6.2 Procedures**

- (A) The Enrollee or the Provider may file a Grievance orally or in writing.
- (B) The Contractor shall give Enrollees any reasonable assistance in completing required forms for submitting a written Grievance or taking other procedural steps. Reasonable assistance includes, but is not limited to providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.
- (C) The Contractor shall acknowledge receipt of the Grievance either orally or in writing.
- (D) The Contractor shall ensure that the individuals who make the decision on a Grievance are individuals who:
  - (1) were not involved in any previous level of review of decision-making involving the Grievance; and
  - (2) if deciding any of the following, are health care professionals who have the appropriate clinical expertise, as determined by the Department, in treating the Enrollee's condition or disease:
    - (i) a Grievance regarding denial of a request for an expedited resolution of an Appeal; or
    - (ii) a Grievance that involves clinical issues.

### **8.6.3 Timeframes for Grievance Disposition and Notification**

- (A) The Contractor shall dispose of each Grievance and provide notice to the affected parties as expeditiously as the Enrollee's health condition requires, but not to exceed 45 calendar days from the day the Contractor receives the Grievance.
- (B) For written Grievances, the Contractor shall notify the affected parties in writing of the disposition of the Grievance. For Grievances received orally, the Contractor shall notify the affected parties of the disposition either orally or in writing.
- (C) If the Enrollee or a Provider files a Grievance with the Department, the Department shall apprise the Enrollee or the Provider, of his or her right to file the Grievance with the Contractor and how to do so.
  - (1) If the Enrollee or Provider prefers, the Department shall promptly notify the Contractor of the Enrollee's Grievance.
  - (2) If the Contractor receives the Grievance from the Department, the Contractor shall follow the procedures and time frames outlined above for Grievances.

(3) If the Contractor receives the Grievance from the Department, the Contractor shall notify the affected parties and the Department, in writing, of the disposition of the Grievance.

(D) The Contractor may extend the timeframe for disposing of the Grievance and providing notice by up to 14 calendar days if:

- (1) the Enrollee requests the extension; or
- (2) the Contractor shows that there is need for additional information and how the delay is in the Enrollee's interest (upon Department request).

(E) If the Contractor extends the time frame, and the extension was not requested by the Enrollee, the Contractor shall give the Enrollee written notice of the reason for the delay.

## **8.7 Dispute Resolution, Reporting and Documentation**

### **8.7.1 Reporting Requirements**

(A) The Contractor shall maintain complete records of all Appeals and grievances and submit semi-annual reports summarizing Appeals and Grievances using Department specified reporting templates. The Contractor shall separately track Grievances and Appeals that are relating to Children with Special Health Care Needs.

(B) The Contractor shall provide to the Department a summary of information on the number of Appeals and indicate the number of Appeals and Grievances that have been resolved. The Contractor shall include an analysis of the type and number of Appeals and Grievances.

### **8.7.2 Document Maintenance, Appeals**

(A) The Contractor shall maintain all documentation relating to Appeals which includes, but is not limited to the following:

- (1) written Notices of Action;
- (2) a log of all oral Appeals and oral requests for expedited resolution of Appeals including:
  - (i) date of the oral requests;
  - (ii) date of acknowledgement of oral requests for expedited resolution of Appeals and method of acknowledgment (orally or in writing);
  - (iii) date of denials of requests for expedited Appeals resolution; and
- (3) copies of written standard Appeal requests;

- (4) copies of written notices of denial of requests for expedited Appeal resolution;
- (5) date of acknowledgement of written standard Appeal requests and method of acknowledgement (orally or in writing);
- (6) copies of written notices when extending the time frame for adjudicating standard or expedited Appeals when the Contractor initiates the extension;
- (7) copies of written Notice of Appeal Resolution; and
- (8) any other pertinent documentation needed to maintain a complete record of all Appeals and to demonstrate that the Appeals were adjudicated according to the Contract provision governing Appeals.

### **8.7.3 Document Maintenance, Grievances**

(A) Using its previously established verbal complaint logging and tracking system, the Contractor shall log all oral Grievances and include the following:

- (1) date the Grievance was received;
- (2) date and method of acknowledgement (orally or in writing);
- (3) name of the person taking the Grievance;
- (4) date of resolution and summary of the resolution;
- (5) name of person resolving the Grievance; and
- (6) date the Enrollee was notified of the resolution and how the Enrollee was notified (either orally or in writing). If the Enrollee was notified of the disposition in writing, the Contractor shall maintain a copy of the written notification.

(B) The Contractor shall maintain all written Grievances and copies of the written notices of resolution to the affected parties.

## **Article 9 – Enrollee Rights and Protections**

### **9.1 Written Information on Enrollee Rights and Protections**

#### **9.1.1 General Requirements**

(A) The Contractor shall develop and maintain written policies regarding Enrollee rights and protections.

(B) The Contractors shall comply with any applicable Federal and State laws that pertain to Enrollee rights and ensure that its staff and Participating Providers take those rights into accounts when furnishing services to Enrollees.

(C) The Contractor shall ensure information on Enrollee rights and protections is provided to all Enrollees by including its Patient Rights statement in its member handbook.

(D) The Contractor and the Department shall ensure Enrollees are free to exercise their rights, and that the exercise of those rights shall not adversely affect the way the Contractor and its Participating Providers treat Enrollees.

### **9.1.2 Specific Enrollee Rights and Protections**

(A) The Contractor shall include all of the following Enrollee rights and protections in its written Patient Rights statement:

- (1) the right to receive information about Contractor's Health Plan;
- (2) the right to be treated with respect and with due consideration for his or her dignity and privacy;
- (3) the right to receive information on available treatment options and alternatives, presented in a manner appropriate to the Enrollee's condition and ability to understand;
- (4) the right to participate in treatment decisions regarding his or her health care, including the right to refuse treatment;
- (5) the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in other Federal regulations on the use of restraints and seclusion;
- (6) if the privacy rule, as set forth in 45 CFR parts 160 and 164 subparts A and E, applies, the right to request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 CFR 164.524 and 45 CFR 164.526;
- (7) the right to be furnished health care services in accordance with access and quality standards; and
- (8) the right to be free to exercise all rights and that by exercising those rights, the Enrollee shall not be adversely treated by the Department, the Contractor, and its Participating Providers.

## **9.2 Participating Provider-Enrollee Communications**

### **9.2.1 General Requirements**

(A) The Contractor shall communicate with its health care professionals that when acting within the lawful scope of their practice, they shall not be prohibited from advising or advocating on behalf of the Enrollee for the following:

- (1) the Enrollee's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;
- (2) any information the Enrollee needs in order to decide among all relevant treatment options;
- (3) the risks, benefits, and consequences of treatment or non-treatment; and
- (4) the Enrollee's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

### **9.3 Objection to Services on Moral or Religious Grounds**

#### **9.3.1 Generally**

(A) Subject to the information requirements of Article 9.3.1(A)(1) and (2) of this Contract, if the Contractor that would be otherwise required to provide, reimburse for, or provide coverage of, a counseling or referral service because of the requirements in Article 9.2.1 of this Contract, is not required to do so if the Contractor objects to the service on moral or religious grounds. If the Contractor elects this option, the Contractor shall:

- (1) furnish information to the Department about the services it does not cover prior to signing this Contract or whenever it adopts the policy during the term of the Contract; and
- (2) furnish the information to Potential Enrollees, before and during enrollment and to Enrollees, within 90 days after adopting the policy with respect to any service.

## **Article 10 – Contractor Assurances**

### **10.1 General Assurances**

#### **10.1.1 Nondiscrimination**

(A) The Contractor shall designate a nondiscrimination coordinator who shall:

- (1) ensure the Contractor complies with Federal Laws and Regulations regarding nondiscrimination; and

(2) take Grievances from Enrollees alleging nondiscrimination violations based on race, color, national origin, disability, or age.

(B) The nondiscrimination coordinator may also handle Grievances regarding the violation of other civil rights (sex and religion) as other Federal laws and regulations protect against these forms of discrimination.

(C) The Contractor shall develop and implement a written method of administration to assure that the Contractor's programs, activities, services and benefits are equally available to all persons without regard to race, color, national origin, disability, or age.

#### **10.1.2 General Standards**

(A) The Contractor must have sufficient operating staff to comply with the terms of this Contract. At minimum, the Contractor must be able to identify qualified staff in the following areas:

- (1) Executive management with clear oversight authority for all other functions;
- (2) Medical Director's Office;
- (3) Accounting and Budgeting function
- (4) Member Services Function
- (5) Provider Services Function
- (6) Medical Management function, including quality assurance and utilization review;
- (7) Enrollee and Provider complaint and grievance resolution function;
- (8) Management of Contractor's information system.

(B) The Contractor shall plan for increased workload during periods of increased CHIP marketing and outreach.

#### **10.1.2 Member Services Function**

(A) The Contractor shall operate a Member Services function during regular business hours.

(B) As necessary, the Contractor shall provide ongoing training to ensure that the Member Services staff is conversant in the Contractor's policies and procedures as they relate to Enrollees.

(C) At minimum, Member Services staff shall be responsible for the following:

- (1) explaining the Contractor's rules for obtaining services;

- (2) assisting Enrollees to select or change Primary Care Providers; and
- (3) fielding and responding to Enrollee questions including questions regarding Grievances.

(D) The Contractor shall conduct ongoing assessment of its orientation staff to determine staff members' understanding of the Health Plan and its CHIP managed care policies and provide training, as needed

#### **10.1.3 Provider Services Function**

(A) The Contractor shall operate Provider Services function during regular business hours.

(B) At a minimum, Provider Services staff shall be responsible for the following:

- (1) training, including ongoing training, of the Contractor's Providers on CHIP rules and regulations that shall enable Providers to appropriately render services to Enrollees;
- (2) assisting Providers to verify whether an individual is enrolled with the Health Plan;
- (3) assisting Providers with prior authorizations and referral protocols;
- (4) assisting Providers with claims payment procedures; and
- (5) Fielding and responding to Provider questions and the Grievance and Appeals System.

#### **10.1.4 Contractor Licensure**

Contractor shall be licensed with the Utah Department of Insurance. The Contractor shall maintain such licensure through the duration of the Contract and shall immediately notify the Department in the event that its license is invalidated.

#### **10.1.4 Enrollee Liability**

(A) The Contractor shall not hold an Enrollee liable for the following:

- (1) The debts of the Contractor if it should become insolvent.
- (2) Payment for services provided by the Contractor if the Contractor received payment from the Department for the services or if a Participating Provider fails to receive payment from the Contractor.



(3) The payments to Providers that furnish Covered Services under a contract or other agreement with the Contractor that are in excess of the amount that normally would be paid by the Enrollee if service had been received directly from the Contractor.

## **10.2 Contractor Assurances Regarding Access**

### **10.2.1 Documentation Requirements**

(A) The Contractor shall provide the Department adequate assurances and supporting documentation that demonstrates the Contractor has the capacity to serve the expected enrollment in its Service Area with the Department's standards for access to care.

(B) The Contractor shall provide the Department documentation, in a format specified by the Department, that the Contractor offers an appropriate range of preventive, Primary Care and specialty services that is adequate for the anticipated number of Enrollees for the Service Area, maintains a network of Participating Providers that is sufficient in number, mix and geographic distribution to meet the anticipated number of Enrollees in the Service Area.

(C) The Contractor shall submit to the Department the documentation assuring adequate capacity and services in the Department specified format no less frequently than:

(1) at the time it enters into a contract with the Department;

(2) at any time there has been a significant change (as defined by the Department) in the Contractor's operations that would affect adequate capacity and services including changes in services, benefits, geographic Service Area or payments, or enrollment of a new population in the Health Plan.

### **10.2.2 Elimination of Access Problems Caused by Geographic, Cultural and Language Barriers and Physical Disability**

(A) The Contractor shall minimize, with a goal to eliminate, the Enrollee's access problems due to geographic, cultural and language barriers, and physical disabilities.

(B) The Contractor shall provide assistance to Enrollees who have communications impediments or impairments to facilitate proper diagnosis and treatment.

(C) The Contractor shall guarantee equal access to services and benefits for all Enrollees by making available interpreters, Telecommunication Devices for the Deaf (TDD), and other auxiliary aids to all Enrollees as needed.

(D) The Contractor shall accommodate Enrollees with physical and other disabilities in accordance with the American Disabilities Act of 1990, as amended.

(E) If the Contractor's facilities are not accessible to Enrollees with physical disabilities, the Contractor shall provide services in other accessible locations.

### **10.2.3 Interpretive Services**

(A) The Contractor shall provide oral interpretive services available free of charge for all non-English languages, not just those the Department identifies as prevalent, on an as-needed basis. These requirements shall extend to both in-person and telephone communications to ensure that Enrollees are able to communicate with the Contractor and the Contractor's Participating Providers and receive Covered Services.

(B) Professional interpreters shall be used when needed where technical, medical, or treatment information is to be discussed, or where use of a family member or friend as interpreter is inappropriate. A family member or friend may be used as an interpreter if this method is requested by the patient, and the use of such a person would not compromise the effectiveness of services or violate the patient's confidentiality, and the patient is advised that a free interpreter is available.

(C) The Contractor shall ensure that its Participating Providers have interpretative services available.

(D) Nothing in this Article shall be construed to relieve Providers of their obligations to provide interpretive services under federal law.

### **10.2.4 Cultural Competence Requirements**

(A) The Contractor shall ensure the delivery of services in a culturally competent manner to all Enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds.

(B) The Contractor shall incorporate in its policies, administration, and delivery of services the values of honoring Enrollee's beliefs; being sensitive to cultural diversity; and promoting attitudes and interpersonal communication styles with staff and Participating Providers which respect Enrollees' cultural backgrounds.

(C) The Contractor shall foster cultural competency among its Participating Providers. Culturally competent care is care given by a Participating Provider who can communicate with the Enrollee and provide care with sensitivity, understanding, and respect for the Enrollee's culture, background and beliefs.

(D) The Contractor shall strive to ensure its Participating Providers provide culturally sensitive services to Enrollees. These services shall include but are not limited to providing training to Participating Providers regarding how to promote the benefits of health care services as well as training about health care attitudes, beliefs, and practices that affect access to health care services.

### **10.2.5 No Restriction on Provider's Ability to Advise and Counsel**

(A) The Contractor may not restrict a health care Provider's ability to advise and counsel Enrollees about Medically Necessary treatment options.

(B) All Providers acting within his or her scope of practice, shall be permitted to freely advise an Enrollee about his or her health status and discuss appropriate medical care or treatment for that condition or disease regardless of whether the care or treatment is a Covered Service.

### **10.2.6 Waiting Time Benchmarks**

(A) The Contractor shall adopt benchmarks for waiting times for physician appointments as follows:

(1) Benchmarks for Waiting Times for Appointments with a Primary Care Provider:

(i) within 30 days for a routine, non-urgent appointments

(ii) within 30 days for school physicals

(iii) within 2 days for urgent, symptomatic, but not life-threatening care (care that can be treated in a doctor's office)

(2) Benchmarks for Waiting Times for Appointments with a Specialist:

(i) within 30 days for non-urgent care

(ii) within 2 days for urgent, symptomatic, but not life-threatening care (care that can be treated in a doctor's office)

(B) These benchmarks do not apply to appointments for regularly scheduled visits to monitor a chronic medical condition if the schedule calls for visits less frequently than once every month.

## **10.3 Coordination and Continuity of Care**

### **10.3.1 In General**

(A) The Contractor shall ensure access to a coordinated, comprehensive and continuous array of needed services through coordination with other appropriate entities.

(B) The Contractor shall implement procedures to coordinate the services the Contractor furnishes to the Enrollee with the services the Enrollee receives from any other MCO, PIHP, or PAHP or Fee-For-Service Medicaid.

(C) The Contractor shall ensure that in the process of coordinating care, each Enrollee's privacy is protected in accordance with the privacy requirements in 45 CFR parts 160 and 164, subparts A and E, to the extent that they are applicable.

(D) The Contractor's Participating Providers are not responsible for rendering Home and Community-Based Waiver Services.

### **10.3.2 Primary Care**

(A) The Contractor shall implement procedures to deliver Primary Care to and coordinate health care services for all Enrollees.

(B) The Contractor shall implement procedures to ensure that each Enrollee has an ongoing source of Primary Care appropriate to his or her needs and a person or entity formally designated as primarily responsible for coordinating the health care services furnished to the Enrollee.

(C) The Contractor shall allow Enrollees the opportunity to select a participating Primary Care Provider.

(D) If an Enrollee's Primary Care Provider ceases to participate in the Contractor's network, the Contractor shall offer the Enrollee the opportunity to select a new Primary Care Provider.

## **10.4 Billing Enrollees**

### **10.4.1 Enrollee Billing, Generally**

(A) Except as otherwise provided for in this Contract, no claim for payment shall be made at any time by the Contractor or its Participating Providers to an Enrollee accepted by that Participating Provider as an Enrollee for any Covered Service.

(B) When a Provider accepts an Enrollee as a patient he or she shall look solely to the Contractor and any third party coverage for reimbursement. If the Provider fails to receive payment from the Contractor, the Enrollee cannot be held responsible for these payments.

### **10.4.2 Circumstances in Which an Enrollee May Be Billed**

(A) A Provider may bill an Enrollee for non-Covered Services only as outlined in this Contract.

(B) A non-Covered Service is a service that is not covered under this Contract, or includes special features or characteristics that are desired by the Enrollee (e.g., more expensive eyeglass frames, hearing aids, custom wheelchairs, etc.) but does not meet the Medical Necessity criteria for amount duration, and scope as set forth in the State Plan or is not authorized by the Contractor.

(C) The Department shall specify to the Contractor the extent of Covered Service and items under the Contract.

(D) An Enrollee may be billed for a non-Covered Service when all of the following conditions are met:

- (1) The Provider has an established policy for billing all patients for services not covered by a third party (i.e., the charge cannot be billed only to Enrollees);
- (2) The Provider has informed the Enrollee of its policy for billing patients for non-covered services;
- (3) The Provider has advised the Enrollee prior to rendering the non-covered service that the Enrollee shall be responsible for making payment; and
- (4) An agreement, in writing, is made between the Provider and the Enrollee that details the service and the amount to be paid by the Enrollee.

(E) The Provider may bill the Enrollee for disputed services continued during the Appeal process if the requirements of Article 8.4.9(B) of this Contract and 42 CFR 431.230(b) are met.

#### **10.4.3 Prohibition on Holding Enrollee's CHIP Card**

The Contractor or its Participating Providers shall not hold the Enrollee's CHIP card as guarantee of payment by the Enrollee, nor may any other restrictions be placed on the Enrollee.

#### **10.4.4 Criminal Penalties**

Criminal penalties shall be imposed on Providers as authorized under Section 1128B(d)(1) of the Social Security Act if the Provider knowingly and willfully charges an Enrollee at a rate other than those allowed under this Contract.

### **10.5 Survey Required**

#### **10.5.1 General Requirements**

(A) Surveys shall be conducted of Contractor's Enrollees that shall include questions about Enrollee's perceptions of access to and the quality of care received through the Contractor. The survey process, including the survey instrument, shall be standardized and developed by the Department.

(B) The Department shall analyze and publish the results of the surveys.

(C) The Contractor shall review the results of the surveys, identify areas needing improvement, outline action steps, and execute those actions. (See Attachment D)

## **Article 11 Measurement and Improvement Standards**

### **11.1 Participating Provider Practice Guidelines**

### **11.1.1 Participating Provider Practice Guidelines, General Standards**

(A) The Contractor and its Participating Providers shall develop or adopt practice guidelines consistent with current standards of care as recommended by professional groups such as the American Academy of Pediatrics and the U.S. Preventative Services Task Force. The practice guidelines shall meet the following requirements:

- (1) Guidelines shall be based on valid and reliable clinical evidence or a consensus of health care professionals in the particular field;
- (2) Guidelines shall consider the needs of the Contractor's Health Plan Enrollees;
- (3) Guidelines shall be adopted in consultation with contracting health care professionals; and
- (4) Guidelines shall be reviewed and updated periodically as appropriate.

(B) The Contractor shall disseminate the practice guidelines to all affected Participating Providers and, upon request, to Enrollees and Potential Enrollees.

(C) The Contractor shall ensure that decisions for utilization management, Enrollee education, coverage of services, and other areas to which the guidelines apply are consistent with the practice guidelines.

## **11.2 Quality Assessment and Performance Improvement Program**

### **11.2.1 Quality Assessment and Performance Improvement, Generally**

(A) The Quality Assessment and Performance Improvement Program shall include a policymaking body which oversees the Quality Assessment and Performance Improvement Program, a designated senior official responsible for administration of the program, an interdisciplinary quality assessment and performance improvement committee that has the authority to report its findings and recommendations for improvement to the Contractor's executive director, and a mechanism for ongoing communication and collaboration among the executive director, the policymaking body and other functional areas of the organization.

(B) The Contractor shall establish an ongoing quality assessment and performance improvement program for the services it furnished to Enrollees. CMS, in consultation with States and other stakeholders, may specify performance measures and topics for Performance Improvement Projects (PIPs) that would be required for the Contractor to implement.

### **11.2.2 Basic Elements of Quality Assessment and Performance Improvement Programs**

(A) At minimum, the Contractor shall comply with the following requirements:

- (1) Conduct PIPs that are designed to achieve, through ongoing measurements and intervention, significant improvement, sustained over time, in clinical and non-clinical areas that are expected to have a favorable effect on health outcomes and Enrollee satisfaction;
- (2) Submit performance measurement data;
- (3) Have in effect mechanisms to detect both underutilization and overutilization of services;
- (4) Have in effect mechanisms to assess the quality and appropriateness of care furnished to Enrollees with Special Health Care Needs; and
- (5) Have in effect a process for evaluating the impact and effectiveness of the quality assessment and performance improvement program.

#### **11.2.3 Performance Measurement**

(A) Annually, the Contractor shall:

- (1) Measure and report to the Department its performance, using standard measures required by the Department and/or CMS;
- (2) Submit to the Department data specified by the Department that enables the Department to measure the Contractor's performance; or
- (3) Perform a combination of the above activities.

#### **11.2.4 Required Areas and Reporting of Performance Improvement Projects**

(A) The Contractor shall have ongoing PIPs that focus on clinical and non-clinical areas, and that involve the following:

- (1) Measurement of performance objectives using objective quality indicators;
- (2) Implementation of system interventions to achieve improvement in quality;
- (3) Evaluation of effectiveness of the interventions; and
- (4) Planning and initiation of activities for increasing or sustaining improvement.

(B) The Contractor shall report the status and results of each project, including those required by CMS, to the Department as requested.

(C) Each PIP shall be completed in a reasonable time period so as to generally allow information on the success of PIPs in the aggregate to produce new information on quality of

care every year. The Department may also, at its discretion, set up a timeframe and deadline for the Contractor to complete a PIP.

#### **11.2.5 HEDIS and Consumer Satisfaction Surveys**

(A) Audited Healthcare Effectiveness Data and Information Set (HEDIS) and Consumer Assessment of Healthcare Providers and Systems (CAHPS) performance measures shall be reported as set forth in Utah Administrative Code R428-12-1, *et seq.*, and R428-13-1, *et seq.*

(B) The Contractor shall assign a staff member to attend an annual HMO Advisory Committee meeting as convened by the Office of Health Care Statistics to discuss the HEDIS reviews and consumer satisfaction survey results.

(C) For purposes of HEDIS measures and consumer satisfaction surveys, the calculations and results shall include both Traditional and Non-Traditional Enrollees.

(D) In the event that the Contractor experiences a 10 percentile decline in its HEDIS or CAHPS measures from the previous year compared to the NCQA Quality Compass for Medicaid, the Department will require the Contractor to develop and implement a corrective action plan.

#### **11.2.6 Future Performance Measures**

The Contractor and the Department agree to work collaboratively to develop future quality measures. The Parties agree to negotiate, in good faith, a quality measures amendment to this Contract.

#### **11.2.7 Emergency Room Services Quality Reporting**

(A) By July 1, 2015, the Contractor shall inform the Department whether it intends to conduct audits and develop a differential payment model as allowed by Utah Code Ann. §26-18-408(2).

(B) If the Contractor exercises its discretion to conduct audits and pay via a differential payment system the Contractor shall provide the yearly report required by Utah Code Ann. §26-18-408(3) (a) to the Department by April 1, beginning April 1, 2016.

(C) The Contractor shall participate with the Department's Quality Committee in Developing the quality measures described in Utah Code Ann. §26-18-408(4), and shall submit the date upon a mutually agreed upon date.

### **Article 12 Payments**

#### **12.1 General Payment Provisions**

##### **12.1.1 Risk Contract**

This Contract is a risk Contract.



#### **12.1.2 Payment Methodology**

(A) On or before the 10<sup>th</sup> day of each month, the Department shall pay to the Contractor the premiums due for each category shown for Enrollees in the Health Plan for that month as determined by the Department from the Enrollment and reinstatement transmissions.

(B) The premium amounts will be those rates agreed upon by the Contractor and the Department and are found in Attachment F.

(C) The Contractor shall receive premium payments for Enrollees beginning the earlier of:

- (1) the month of the Enrollee's application was submitted; or
- (2) the month in which the Four Day Grace period is approved.

#### **12.1.3 Contract Maximum**

In no event shall the aggregate amount of payments to the Contractor exceed the Contract maximum amount. If payments to the Contractor approach or exceed the Contract amount before the renewal date of the Contract, the Department shall make a good faith effort to execute a Contract amendment to increase the Contract amount within 30 calendar days of the date the Contract amount is exceeded.

#### **12.1.4 Payment Recoupment**

(A) The Department shall recoup any payment paid to the Contractor which was paid in error. Such error may include human or mechanical error on either part of the Contractor or the Department. Errors can include, but are not limited to, lack of eligibility, Enrollee eligibility for CHIP, or computer error.

(B) The Contractor shall refund any overpayments to the Department within 30 calendar days of discovering an overpayment or being notified by the Department that overpayments are due. If the Contractor fails to refund an overpayment within 30 days, the Department shall deduct the overpayment from the Department's next payment(s) to the Contractor. If the Contractor disagrees with the Department's determination that an overpayment has been made, the Contractor may request a State fair hearing within 30 days of the Department's recoupment of the overpayment.

#### **12.2.3 Prohibition on Balance Billing**

The Contractor shall ensure its Participating Providers will not balance bill the Enrollee. The Contractor shall ensure that its provider consider the reimbursement from the Health Plan, plus co-payments, deductibles and/or co-insurance as payment in full.

#### **12.2.4 Department Retraction of Premiums**

(A) The Department may retract a premium payment from the Contractor in the event that:

- (1) the Enrollee changes Health Plans;
- (2) the Enrollee becomes eligible for Medicaid; or
- (3) an error made by the Department has resulted in an inappropriate Premium being paid to the Contractor.

### **12.3 Third Party Liability and Coordination of Benefits**

#### **12.3.1 Recovery of Third Party Liability, Generally**

(A) The Contractor shall make reasonable efforts to pursue the recovery of Third Party Liability for Services provided to Enrollees. Third Party Liability may include, but is not limited to private health insurance, automobile insurance, Medicare, Tricare or an employer-administered ERISA plan.

(B) In the event that the Contractor collects Third Party Liability on a CHIP claim, the Contractor shall correct the Encounter Data it submitted to the Department for that claim to accurately reflect the Third Party Liability collection.

#### **12.3.2 Notification to Department**

If the Contractor discovers any Third Party Liability Coverage, the Contractor shall notify the Department via email within 10 days of the discovery.

### **12.5 Contractor's Payment Responsibilities**

#### **12.5.1 Covered Services Delivered by Non-Participating Providers but Paid by the Contractor**

(A) The Contractor shall not be required to pay for Covered Services when the Enrollee receives the services from Non-Participating Providers, not arranged for and not authorized by the Contractor except as follows:

- (1) Emergency Services;
- (2) Court ordered services that are Covered Services defined in Attachment C;
- (3) Cases where the Enrollee demonstrates that such services are Medically Necessary Covered Services and were unavailable from the Contractor's Participating Providers;

(4) Covered Services received between the Enrollee's effective date of eligibility but before the Enrollee reasonably could have known which Providers were Participating Providers.

#### **12.5.2 Payment to Non-Participating Providers**

(A) Payment by the Contractor to a Non-Participating Provider for Emergency Services for services that are approved for payment by the Contractor shall not exceed the lower of the following rates applicable at the time the services were rendered to an Enrollee, unless there is a negotiated arrangement:

- (1) The usual charges made to the general public by the Provider; or
- (2) The rate agreed to by the Contractor and the Provider.

#### **12.5.3 Covered Services which are Not the Contractor's Responsibility**

(A) The Contractor may not restrict an Enrollee's choice of Provider for family planning services and supplies. The Contractor is not responsible for payment when family planning services are obtained by an Enrollee from a Non-Participating Provider.

(B) The Contractor shall not be required to provide, arrange for, or pay for Covered Services to Enrollees whose illness or injury results directly from a catastrophic occurrence or disaster, including, but not limited to earthquakes or acts of war. The effective date of excluding such Covered Services shall be the date specified by the Federal Government or the State of Utah that a Federal or State emergency exists or disaster has occurred.

#### **12.5.5 Covered Services Provided by the Utah Department of Health, Division of Family Health and Preparedness**

(A) For Enrollees who qualify for special services offered by or through the Department of Health, Division of Family and Health Preparedness ("DFHP"), the Contractor agrees to reimburse DFHP at the standard CHIP rate in effect at the time of service for one outpatient team evaluation and one follow-up visit for each Enrollee upon each instance that the Enrollee becomes a CHIP Eligible Individual and selects the Contractor as its Health Plan.

- (1) The Contractor agrees to waive any prior authorization requirement for one outpatient team evaluation and one follow-up visit.
- (2) The services provided in the outpatient team evaluation and follow-up visit for which the Contractor shall reimburse DFHP are limited to the services that the Contractor is otherwise obligated to provide under this Contract.

(B) If the Contractor desires a more detailed agreement for additional services to be provided by or through DFHP for Children with Special Health Care Needs, the Contractor may subcontract with DFHP. The Contractor agrees that the subcontract with DFHP shall acknowledge and

address the specific needs of DFHP as a government provider.

#### **12.5.6 Payments for Vaccines for Children**

(A) The Contractor shall not reimburse Providers for the cost of vaccines that are purchased through the federal Vaccines for Children Program.

(B) The Contractor shall not include pre-paid vaccine payment errors in its Encounter Data.

### **12.6 Enrollee Transition Between Health Plans or Fee-For-Service**

#### **12.6.1 Enrollee Transition, Inpatient Hospital Stays**

(A) When an Enrollee is in an inpatient hospital setting and selects another Health Plan or becomes Fee-For-Service any time prior to discharge from the hospital, the Contractor is financially responsible for the entire hospital stay including all Covered Services related to the hospital stay until discharged.

(B) If a CHIP Eligible Individual was Fee-For-Service when admitted to the hospital and becomes enrolled in the Contractor's Health Plan at any time prior to discharge from the hospital, the Department is financially responsible for the entire hospital stay including all Covered Services related to the Hospital stay until discharged.

(C) The Health Plan in which the individual is enrolled with when discharged from the Hospital is financially responsible for Covered Services provided to the Enrollee during the remainder of the month.

(D) If a Chip Eligible Individual was eligible for Fee-For-Service when discharged from the hospital, the Department is financially responsible for services provided to the Enrollee during the remainder of the month when the individual was discharged.

#### **12.6.2 Enrollee Transition, Medical Equipment**

(A) When medical equipment is ordered for an Enrollee by the Contractor and the Enrollee enrolls in a different Health Plan or becomes Fee-For-Service before receiving the equipment, the Contractor is responsible for the payment of such equipment.

(B) When medical equipment is ordered for a CHIP Eligible Individual by the Department and the CHIP Eligible Individual selects a Health Plan, the Department is responsible for payment of such equipment.

(C) Medical equipment includes, but is not limited to, specialized wheelchairs or attachments, prostheses, and other equipment designed or modified for an individual client. Any attachments to the equipment, replacements, or new equipment are the responsibility of the Contractor if the client is enrolled with the Contractor's Health Plan at the time the equipment is ordered. If the client is Fee-For-Service at the time the equipment is ordered, the Department is responsible.

### **12.6.3 Department Acceptance of Contractor's Prior Authorization**

For Covered Services other than inpatient, medical equipment, and organ transplantations, if authorization has been given for a Covered Service and an Enrollee transitions to Fee-For-Service prior to the delivery of such Covered Service, the Department shall be bound the Contractor's prior authorization until the Department has evaluated the Medical Necessity of the service and agrees with the Contractor's prior authorization or has made a different determination.

### **12.6.4 Pharmacy Prior Authorizations**

The Contractor agrees that during the first 90 days of an enrollment that the Department's Fee-For-Service prior authorization for pharmacy services or a prior authorization which has been issued by another Health Plan to an Enrollee in the Contractor's Health Plan for pharmacy services will be honored for at least one temporary 30 day fill unless the prescription is written for less than 30 days by the prescriber.

### **12.6.5 Provision of Medical Information to Enrollee's Health Plan or the Department**

When CHIP Eligible Individuals are transitioned from the Contractor's Health Plan to Fee-For-Service or from Fee-For-Service to the Contractor's Health Plan, the Contractor and the Department, as applicable, shall submit upon request any critical medical information about the transitioning CHIP Eligible Individual prior to the transition, including, but not limited to, whether the member is hospitalized, pregnant, involved in the process of organ transplantation, scheduled for surgery or post-surgical follow-up on a date subsequent to transition, names of the treating physicians, types of equipment ordered and dates, scheduled for prior-authorized procedures or therapies on a date subsequent to transition, receiving dialysis or is chronically ill. Chronic illness includes, but is not limited to, diabetes, hemophilia, or HIV.

### **12.6.6 Acceptance of Pre-Enrollment Prior Authorization**

For Covered Services other than inpatient, medical equipment and organ transplantations, if authorization has been given for a Covered Service and a CHIP Eligible Individual transitions between Health Plans or Fee-For-Service prior to the delivery of such Covered Service, the receiving Health Plan shall be bound by the relinquishing Health Plan's prior authorization for 90 days.

### **12.6.7 Enrollee Transition, Organ Transplantations**

The Contractor shall honor prior authorizations for organ transplantations initiated by the Department while the Enrollee was covered under Medicaid Fee-For-Service until the Enrollee is evaluated by the Contractor and a new plan of care is established.

## **Article 13 Additional Recordkeeping and Reporting Requirements**

## **13.1 Recordkeeping Requirements**

### **13.1.1 Health Information Systems, General Requirements**

The Contractor shall maintain a health information system that collects, analyzes, integrates and reports data. The system shall provide information on areas including but not limited to, utilization, Grievances and Appeals, and disenrollments for reasons other than loss of CHIP eligibility.

#### **13.1.2 Accuracy of Data**

(A) The Contractor shall ensure that the data received from Providers is accurate and complete by:

- (1) verifying the accuracy of the reported data;
- (2) screening the data for completeness, logic, and consistency; and
- (3) collecting service information in standardized formats to the extent feasible and appropriate.

(B) The Contractor shall make all collected data available to the Department, the federal government, independent quality review examiners, and other Utah state agencies as allowed by law.

### **13.1.3 Medical Records**

The Contractor shall require its Participating Providers to maintain a medical record keeping system that complies with state and federal law.

#### **13.1.5 Record Retention Requirements, Generally**

(A) Unless otherwise specified by this Contract or by state or federal law, the Contractor shall keep all documents and reports required by this Contract for a period of 6 years. Such documents include, but are not limited to, the attestation forms required by Article 6.3.2, Contractor's policies and procedures, Contractor's member handbooks, and copies of reports required by the Department.

## **13.2 Additional Reporting Requirements**

### **13.2.1 Enrollment, Cost and Utilization Reports**

(A) The Contractor shall submit Enrollment, Cost and utilization reports in an electronic format designated by the Department. The reports shall be in Excel, and the Contractor shall utilize the Excel template provided by the Department. The Contractor is not allowed to customize or change the format of this report. The template of the report can be found in Attachment E of this

Contract. The Department may amend attachment E at its discretion.

(B) The Contractor shall certify, in writing, the accuracy and completeness, to the best of its knowledge, of all cost and utilization data provided to the Department on Attachment E.

(C) Two Attachment E reports shall be submitted covering the dates of service for each Contract year. The reports shall be submitted as follows:

(1) Attachment E is due May 1 for the preceding six month reporting period (July through December).

(2) Attachment E is due November 1 for the preceding 12 month reporting period (July through June).

(D) The Contractor may request, in writing, an extension of the due date up to 30 days beyond the required due date. The Department shall approve or deny the extension request within seven calendar days of receiving the request.

(E) The Contractor shall include claims detail supporting their Attachment E data.

### **13.2.2 Semi-Annual Reports**

(A) The following semi-annual reports are due May 1 for the preceding six month reporting period ending December 31 (July through December) and are due November 1 for the preceding six month period ending June 30 (January through June):

(1) A report of the number of organ transplants by type of transplant;

(2) A report of obstetrical information including:

(i) the total number of obstetrical deliveries by aid category grouping;

(ii) the total number of caesarean sections and total number of vaginal deliveries;

(iii) the total number of low birth weight infants; and

(iv) the total number of Enrollees requiring prenatal hospital admission.

(3) The Grievance and Appeals reports required by Article 8.7.1 of this Contract.

(4) The state requires the Managed Care Plans to submit semi-annual reports summarizing information on corrective actions taken on physicians who have been identified by the Managed Care Plans as exhibiting aberrant physician behavior.

(5) The Contractor shall submit a report describing the number of claims processed. The report will include the number of claims submitted, the number of clean claims

submitted, the number of clean claims paid within 30 days, and the number of clean claims paid within 90 days. The report will also provide the percentage of clean claims paid within 30 days and the percentage of clean claims paid within 90 days.

#### **13.2.4 Provider Network Reports**

The Contractor shall submit a monthly electronic file of its Participating Provider network that meets the Department's provider file specifications and data element requirements to the Department.

#### **13.2.5 Case Management Reports**

The Contractor shall submit annual case management reports no later than August 1 of each year for the preceding fiscal year. (See Attachment D).

#### **13.2.6 PS&R Reporting**

(A) In accordance with the Utah State Plan Attachment 4.19-B, page 1, incorporated into Utah Administrative R414-1-5, by reference, the Contractor shall provide, upon a Provider's request, a Provider Statistical and Reimbursement (PS&R) report.

(B) The PS&R report shall include statistical data including total covered charges, units, and reimbursement (including outpatient supplemental payments) by fiscal period.

(C) The Contractor shall provide the report within 30 days of the request.

#### **13.2.7 Additional Reporting Requirements**

(A) The Contractor shall submit the following reports on the dates listed. If the due date falls on a weekend or on a state holiday, the report shall be due the following business day:

(1) The Contractor shall submit immunization data to the Department. The report shall include Enrollee name, CHIP ID, type of immunization identified by procedure code, and date of immunization will be reported in accordance with the Encounter Data Technical Manual.

(2) The Contractor shall submit formally collected and audited HEDIS data to the Department. Audited HEDIS performance measures will cover services rendered during each calendar year and will be reported as set forth in state rule by the Office of Health Care Statistics or HEDIS measures will be calculated based on submitted encounter data by the Department.

(3) On a monthly basis, the Contractor shall submit to the Department income statements for the prior month including but not limited to the following: enrollments, revenue, and paid medical and pharmacy costs. The due date of this report is the last day of the month.



For example, February's income statement will be due March 31.

(4) On a monthly basis, the Contractor shall submit to the Department a report describing the time it takes for Enrollees to be sent their health plan ID cards. The report will detail the number of ID cards sent within the following time periods calculated in calendar days: 0-21 days; over 21 days; and not yet sent. It will also detail the overall average number of days. The number of days will be calculated starting the day the Health Plan receives enrollment information from the Department and ending the day the health plan sends the ID card. Reporting will occur in the second month after the Health Plan receives the enrollment information. For example, the report for enrollees whose enrollment information was received by the Health Plan in January would be reported in March to the Department. The due date for this report is the last day of the month.

(5) By July 15 of each year, the Contractor will complete the Health Plan Disclosure File as of July 1. In addition, the Contractor will update and submit this file to the Department when there is any material change in the information originally submitted and according to the instructions contained in the file.

(6) Upon request, the Contractor shall provide, to the Department and with other CHIP Health Plans, its list of CHIP covered codes within two weeks of the request.

(7) The Health Plans shall report quality measures as required by CMS and those measures designated by the Quality Improvement Council.

(9) Annually, on November 1, the Contractor shall submit a report showing when the appointment and waiting time benchmarks were not met for the year ended June 30.

### **13.2.8 Development of New Reports**

The Department may request other reports deemed necessary to the Department to assess areas including, but not limited to, access and timeliness or quality of care. The Contractor agrees to submit any report requested by the Department within the time frames specified by the Department.

## **13.3 Encounter Data**

### **13.3.1 Encounter Data, General Requirements**

(A) In accordance with Section 1903(m)(2)(A)(xi) of the Social Security Act, the Contractor agrees to maintain sufficient patient Encounter Data to identify the physician who delivers Covered Services to Enrollees.

(B) The Contractor shall transmit data to the Department using the HIPAA Transaction Standards for Health Care Claim data found in 45 CFR 162.1101 and 162.1102.

(C) The Contractor shall transmit and submit all data to the Department in accordance with the Department's Encounter Records 837 Institutional Guide and the 837 Professional Companion Guide, as amended.

(D) The Contractor shall submit Encounter Data at least once per calendar month. The Encounter Data shall represent all Encounter Claim types (medical and institutional) received and adjudicated by the Contractor the previous month.

(E) The Department will edit Encounter Data in accordance with the 837 companion guide. Encounters with incomplete data or incorrect codes will be rejected.

(F) The Department will notify the Contractor of the status of rejected Encounter Data by sending a 277 Health Care Claim Status Response Transaction to the Contractor. The Contractor shall be responsible for reviewing 277 transactions and taking appropriate action when necessary.

(G) The Contractor shall submit corrections to all rejected encounters within 90 days of the date the Department sends notice that the Encounter is rejected.

(H) The Contractor shall submit Encounter Data for all services rendered to CHIP Enrollees under this Contract, including Encounters where the Contractor determined no liability exists. The Contractor shall submit Encounter Data even if the Contractor did not make any payment for a Claim, including Claims for services to CHIP enrollees provided under a Subcontract, capitation or special arrangement with another facility or program.

(I) If the Contractor discovers that services and/or costs of Excluded Providers have been included in the Encounter Data, the Contractor shall immediately notify the Department and correct the Encounter Data.

### **13.3.2 Encounter Data Certification**

(A) By electronically submitting its Encounter Data to the Department, the Contractor is certifying that the Encounter Data in accordance with 42 CFR 438.606.

(B) By electronically submitting its Encounter Data to the Department, the Contractor ensures that the data has been certified by one of the following:

- (1) the Contractor's Chief Executive Officer;
- (2) the contractor's Chief Financial Officer; or
- (3) an individual who has delegated authority to sign for, and who reports directly to the Contractor's Chief Executive Officer or Chief Financial Officer.

(C) By electronically submitting the Encounter Data to the Department the Contractor ensures that the person certifying the encounter data attests to the completeness and truthfulness of the data and documents based on the person's best knowledge, information, and belief.

## **13.4 Disallowance of Claims**

### **13.4.1 Procedures for Incorrectly Paid Claims**

(A) The Contractor shall take reasonable action to collect any incorrectly paid claim from the Provider within 12 months of the date of discovery of the incorrectly paid claim. Incorrectly paid claims include but are not limited to claims which were duplicative, overpaid, or disallowed.

(B) The Contractor shall reverse the Encounter(s) for incorrectly paid claims or the claims within sixty (60) days of the date of the earlier of (1) the date of discovery of an incorrectly paid claim or (2) the date of the notice of disallowance of the incorrectly paid claim. The Contractor shall correct any Encounter(s) for any incorrectly paid claim regardless of whether the Contractor is successful in collecting the payment from the provider.

(C) Failure to properly reverse or adjust Encounter(s) will result in sanctions allowed by Article 15.

## **Article 14 Compliance and Monitoring**

### **14.1 Audits**

#### **14.1.1 Inspection and Audit of Financial Records**

(A) The Department and the federal government may inspect and audit any books and/or records of the Contractor or its Participating Providers that pertain to:

- (1) the ability of the Contractor to bear the risk of potential financial losses, or
- (2) to services performed or determinations of amounts payable under the Contract, or
- (3) for any other audit allowed by state or federal law.

(B) The Contractor shall make available to the Department, the federal government, independent quality review examiners, and other Utah state agencies as allowed by law any of the Contractor's records that may reasonably be requested to conduct the audit.

(C) The Contractor shall, in accordance with 45 CFR 74.48 (and except for contracts less than the simplified acquisition threshold), allow the HHS awarding agency, the U.S. Comptroller General, or any of their duly authorized representatives, to access to any books, documents, papers, and records of the Contractor which are directly pertinent to a specific program for the

purpose of making audits, examinations, excerpts, and transcriptions.

#### **14.1.2 Additional Inspections and Audits**

(A) The Contractor shall place no restrictions on the right of the Department, the federal government, independent quality review examiners, and other Utah state agencies as allowed by law to conduct whatever inspections and audits that are necessary to assure contract compliance, quality, appropriateness, timeliness and accessibility of services and reasonableness of Contractor's costs.

(B) Inspection and audit methods include, but are not limited to, inspection of facilities, review of medical records and other client data, or review of written policies and procedures and other documents.

#### **14.1.3 Information to Determine Allowable Costs**

(A) The Contractor shall make available to the Department, the federal government, independent quality review examiners, and other Utah state agencies as allowed by law, all reasonable and related financial, statistical, clinical or other information needed for the determination of allowable costs to the CHIP program for "related party/home office" transactions, as defined by CMS Manual 15-1.

(B) The records described in Article 13.1.3(A) shall be made available in Salt Lake City, Utah or the Contractor shall pay the increased cost of auditing at an out-of-state location. The increased costs shall include round-trip travel and two days of lodging and per diem. Additional travel costs of the out-of-state audit shall be shared equally by the Contractor and the Department.

#### **14.1.4 Management and Utilization Audits**

(A) The Contractor shall allow the Department, the federal government, independent quality review examiners, and other Utah state agencies as allowed by law, to perform audits for identification and collection of management data, including Enrollee satisfaction data, quality of care data, Fraud-related data, Abuse-related data, patient outcome data, and cost utilization data, which shall include patient profiles, exception reports, etc.

(B) The Contractor shall provide all data required by the Department, the federal government, independent quality review examiners, and other Utah state agencies allowed to conduct such audits.

### **14.2 Department and Contractor Quality Control**

#### **14.2.1 Quality Improvement Reports**

(A) Annually, the Contractor shall submit to the Department the following documents:

- (1) the Contractor's quality improvement program description for the current State Fiscal Year or calendar year,
  - (2) the Contractor's quality improvement work plan for the current State Fiscal Year or calendar year, and
  - (3) the Contractor's quality improvement work plan evaluation for the previous State Fiscal Year or calendar year.
- (B) These reports shall be in a format developed by the Department and be signed by the Contractor.
- (C) The reports listed in Article 14.2.1 shall be due on August 31 of each year.

#### **14.2.2 Quality Monitoring by the Department**

(A) The Department shall review, at least annually, the impact and effectiveness of the Contractor's quality assessment and performance improvement program. At least 60 days prior to the Department's review, the Contractor shall provide to the Department:

- (1) the Contractor's most current written quality improvement program description;
  - (2) the Contractor's most current annual quality improvement work plan;
  - (3) the Contractor's most current quality improvement work plan evaluation;
  - (4) documentation of the Contractor's compliance with standards defined by the Department's quality monitoring strategy (found in Attachment D);
  - (5) all other information requested by the Department to facilitate the Department's review of the Contractor's compliance standards defined in the Department's quality strategy (found in Attachment D).
- (B) All documents submitted to the Department pursuant to Article 14.2.2 shall provide evidence of a well-defined, organized program designed to improve client care.
- (C) The Department's review of the impact and effectiveness of the Contractor's quality assessment and performance improvement program shall also include:
- (1) The results of the Contractor's PIPs; and
  - (2) The Contractor's compliance with the Department's quality strategy (found in Attachment D).

#### **14.3 External Quality Review**

#### **14.3.1 External Quality Review, Generally**

(A) Pursuant to 42 CFR Part 438, Subpart E, the Department shall arrange for EQRs to assess Contractor's management of quality, timeliness, and access to Covered Services.

(B) The Contractor shall maintain, and make available to the EQRs, all clinical and administrative records for use in EQRs.

(C) The Contractor shall support any additional quality assurance reviews, focused studies, or other projects that the Department may require as part of EQRs.

#### **14.3.2 Contractor Staffing Requirements**

(A) The Contractor shall designate an individual to serve as a liaison for the EQRs.

(B) The Contractor shall designate representatives, as needed, including but not limited to a quality improvement representative and a data representative to assist with EQRs.

#### **14.3.3 Copies and On-Site Access**

(A) The Contractor shall be responsible for making all EQR-requested documentation, including Enrollee information, available prior to EQR activities and during an on-site review.

(B) Document copying costs are the responsibility of the Contractor.

(C) Enrollee information includes, but is not limited to, medical records, administrative data, encounter data, and claims data, maintained by the Contractor or its Participating Providers.

(D) On-Site EQRs shall be performed during hours agreed upon by the Department and the Contractor.

(E) The Contractor shall assure adequate work space, access to a telephone, and a copy machine for individuals conducting on-site EQRs.

(F) The Contractor shall assign appropriate staff to assist during on-site EQRs.

(G) The Department and EQRO agree to accept electronic versions of documents where reasonable and work cooperatively with the Contractor to reduce administrative costs.

#### **14.3.4 Timeframe for Providing Information**

(A) The Contractor shall provide requested EQR data and documentation necessary to conduct EQR activities within the timeframes required by the Department.

(B) The Department shall review requests from the Contractor for extensions of these timeframes and shall approve or disapprove the request.

## **Article 15 Corrective Action and Sanctions**

### **15.1 Corrective Action Plans**

#### **15.1.1 Corrective Action Plans, Generally**

(A) In the event that the Contractor fails to comply with its obligations under this Contract, the Department may impose a corrective action plan to cure the Contractor's non-compliance.

(B) At the Department's discretion, the corrective action plan may be developed by the Department or the Contractor.

#### **15.1.2 Department-Issued Corrective Action Plan**

(A) The Department may develop a corrective action plan which the Department shall provide to the Contractor, in writing.

(B) The Contractor agrees to comply with the terms of a Department-issued corrective action plan and to complete all required actions within the required timeframes. The Department shall provide the Contractor with a reasonable amount of time to complete the corrective action plan. If the Contractor fails to satisfactorily complete the Department's corrective action plan, the Department may assess liquidated damages in accordance with Article 15.3 of this Contract.

(C) If the Contractor disagrees with the Department's corrective action plan, the Contractor may file a Request for a State fair hearing within 30 days of receipt of the Department's corrective action plan.

#### **15.1.3 Contractor Generated Corrective Action Plan**

(A) The Department may require the Contractor to create its own corrective action plan. In such instances, the Department shall send a written notice to the Contractor detailing the Contractor's non-compliance. The notice shall require the Contractor to develop a corrective action plan.

(B) Unless otherwise specified in the notice from the Department, the Contractor shall have 20 business days from the date the Department's notice was mailed to submit a corrective action plan to the Department for its approval.

(C) The Department shall notify the Contractor of its approval of the Contractor's corrective action plan within 20 days of receipt. In the event that the Department determines that the Contractor's corrective action plan needs to be revised, the Department shall provide instructions to the Contractor on how the plan needs to be revised. The corrective action plan submitted by the Contractor shall be deemed approved by the Department if the Department fails to respond to the Contractor within 20 days of receipt of the Contractor's corrective action plan.

(D) The Contractor agrees to comply with the terms of a Department approved corrective action plan and to complete all required actions within the required timeframes. If the Contractor fails to satisfactorily complete the Department's corrective Action Plan, the Department may assess liquidated damages in accordance with Article 15.3 of this Contract.

#### **15.1.4 Notice of Non-Compliance**

(A) In the event that the Contractor fails to comply with its obligations under this Contract, the Department shall provide to the Contractor written notice of the deficiency, request or impose a corrective action plan and/or explain the manner and time frame in which the Contractor's non-compliance must be cured. If the Department decides to explain the manner in which the Contractor's non-compliance must be cured and decides not to impose a corrective action plan, the Department shall provide the Contractor at least 30 days to cure its non-compliance. However, the Department may shorten the 30 day time period in the event that a delay would endanger an Enrollee's health or the timeframe must be shortened in order for the Department and the Contractor to meet federal guidelines.

(B) If the Contractor fails to cure the non-compliance as ordered by the Department and within the timeframes designated by the Department, the Department may, at its discretion, impose any or all of the following sanctions:

- (1) Suspension of the Contractor's Capitation Payment;
- (2) Assessment of Liquidated Damages;
- (3) Assessment of Civil Monetary Penalties; and/or
- (4) Imposition of any other sanction allowed by federal and state law.

(C) The Department agrees that it shall not, for an individual event of the Contractor's non-compliance, impose both liquidated damages and the suspension of the Contractor's Capitation Payment. The Department may choose to either suspend the capitation payment or impose liquidated damages.

(D) The Department's imposition of any of the Sanctions described in 15.1.4(B) is not intended to be an exclusive remedy available to the Department. The assessment of any of the sanctions listed in 15.1.4(B) in no way limits additional remedies, at law or at equity, available to the Department due to the Contractor's Breach of this Contract.

### **15.2 Capitation Payment Suspension**

#### **15.2.1 Capitation Payment Suspension, Generally**

(A) The Department may suspend Contractor's Capitation Payment in the event that the Contractor fails to comply with any provision of this Contract.



(B) The Department may suspend the Contractor's Capitation Payment for any failure to submit or comply with a corrective action plan within the timeframes required by the Department.

### **15.2.2 Procedure for Capitation Payment Suspension**

(A) The Department shall notify the Contractor, in writing, of any suspension of a Capitation Payment and the reason for that suspension. The Department shall inform the Contractor what action needs to be taken by the Contractor to receive payment and the timeframe in which the Contractor must take action in order to avoid suspension of the Capitation Payment. If the Contractor fails to cure the deficiency, the Department may continue the suspension of Capitation Payments until the Contractor comes into compliance. Once the Contractor comes into compliance, all suspended Capitation Payments will be paid to the Contractor within 14 days.

(B) If the Contractor disagrees with the reason for the suspension of the Capitation Payments, the Contractor may request a State fair hearing within 30 days of receipt of the Department's notice of intent to suspend the Capitation Payments. The Department may continue to withhold Capitation Payments through the duration of the State fair hearing, unless ordered by the State fair hearing officer to release the Capitation Payments.

## **15.3 Liquidated Damages**

### **15.3.1 Liquidated Damages, Generally**

(A) If the Contractor fails to perform or does not perform in a timely manner provisions under this Contract, damages to the Department may result. The Parties agree that the damages from breach of this Contract may be incapable or very difficult of accurate estimation.

(B) Should the Department chose to impose liquidated damages, the Parties agree that the following damages provisions represent a reasonable estimation of the damages that would be suffered by the Department due to the Contractor's failure to perform. Such damages to the Department would include additional costs of inspection and oversight incurred by the Department due to Contractor's non-performance or late performance of any provision of this Contract.

(C) At its discretion, the Department may withhold liquidated damages from the Department's Capitation Payment to the Contractor.

(D) If the Department chooses to impose liquidated damages, the Department shall provide the Contractor with written notice of its intent to impose liquidated damages.

(E) If the Contractor disagrees with the reason for the imposition of liquidated damages, the Contractor may request a State fair hearing within 30 days of receipt of the Department's notice of intent to impose liquidated damages. The Department may impose liquidated damages through the duration of the State fair hearing unless the State fair hearing officer orders that the imposition of liquidated damages should be discontinued throughout the State fair hearing

process.

(F) Each category of liquidated damages found in Article 15.3.2 and Article 15.3.3 is exclusive, meaning that for any individual event of non-compliance by the Contractor the Department may only assert one category of liquidated damages. For example, if the Department imposes liquidated damages of \$500 per calendar day for failure to comply with a corrective action plan, it may not also impose for the same event liquidated damages of \$300 per calendar day for failure to submit documents to the Department. Furthermore, each imposition of liquidated damages must be based on actual failure of the Contractor to comply with the terms of this Contract, and no event of noncompliance may be extrapolated to other unsubstantiated claims of noncompliance.

(G) In no event will the Contractor's cumulative liability under Article 15.3 be more than \$500,000 per calendar year.

(H) The Department's ability to assess liquidated damages under this Section 15.3 is limited to the Contractor. In no event will liquidated damages under this Article 15.3 be assessed against the Contractor's parent company or any other affiliate of the Contractor.

(I) In no event may liquidated damages be retroactively assessed against the Contractor for failures to comply with the terms of this Contract that occurred more than one year prior to the discovery of the failures except in cases involving fraud, waste, and abuse.

### **15.3.2 Liquidated Damages, Per Day Amounts**

(A) The Department may assess the following damages against the Contractor for each date beyond the deadline that the Contractor was required to take the following actions:

- (1) \$150 per calendar day that the Contractor fails to submit documents to the Department as required under this Contract;
- (2) \$200 per calendar day the Contractor fails to submit required reports to the Department as required under this Contract;
- (3) \$500 per calendar day the Contractor fails to submit Encounter Data (as required by Article 13.3) or the Post Adjudication Pharmacy file (as required by Article 4.14.8);
- (4) \$500 per calendar day the Contractor fails to submit accurate or complete Encounter Data (as required by Article 13.3) or Post Adjudication History file (as required under Article 4.14.8);
- (5) \$500 per calendar day the Contractor fails to submit HEDIS and CAHPS results in the time frames established under Article 11.2.5.
- (6) \$250 per calendar day the Contractor fails to submit or comply with corrective action plan;

(7) \$250 per calendar day that the Contractor fails to provide audit access as required by Article 14.1;

(8) \$500 per calendar day for each day that the Contractor does not comply with the fraud and abuse provision found in Article 6 and such failure requires Department intervention;

## **15.4 Sanctions Allowed by Federal Law**

### **15.4.1 Reasons for Imposition of Intermediate Sanctions**

(A) In accordance with 42 CFR 438.700, the Department may impose intermediate sanctions when the Contractor acts or fails to act as follows:

(1) Fails substantially to provide Medically Necessary services that the Contractor is required to provide, under law or under this Contract with the Department, to an Enrollee covered under this Contract;

(2) Imposes on Enrollees premiums or charges that are in excess of the premiums or charges permitted under the CHIP program;

(3) Acts to discriminate among Enrollees on the basis of their health status or need for health care services. This includes termination of enrollment or refusal to reenroll a client, except as permitted under the CHIP program, or any practice that would reasonably be expected to discourage enrollment by clients whose medical condition or history indicates probable need for substantial future medical services;

(4) Misrepresents or falsifies information that it furnishes to CMS or the Department;

(5) Misrepresents or falsifies information that it furnishes to an Enrollee, Potential Enrollee, or health care provider;

(6) Fails to comply with the requirements for Physician Incentive Plans, as set forth in 42 CFR 422.208 and 422.210.

(7) Has distributed directly or indirectly through any agent or independent contractor marketing materials that have not been approved by the Department or that contains false or misleading information.

(8) Has violated any of the other applicable requirements of Section 1903(m) or Section 1932 of the Social Security Act and its Implementing Regulations.

(B) In the event that the Contractor fails to safeguard Enrollee Protected Health Information the Contractor shall be subject to sanctions imposed by CMS pursuant to HIPAA and HITECH.

### **15.4.2 Types of Intermediate Sanctions**

(A) The Department may impose any or all of the following intermediate sanctions:

- (1) Civil monetary penalties in the amounts specified in 42 CFR 438.704.
- (2) Appointment of temporary management of the Contractor as provided in 42 CFR 438.706 and this Contract.
- (3) Granting Enrollees the right to terminate enrollment without cause and notifying the affected Enrollees of their right to disenroll.
- (4) Suspension of all new enrollment, including default enrollment, after the effective date of sanction.
- (5) Suspension of payment for clients enrolled after the effective date of the sanction and until CMS or the Department is satisfied that the reason for imposition of the sanction no longer exists and is not likely to recur.

#### **15.4.3 Notice of Sanction**

(A) In accordance with 42 CFR 438.710, the Department shall provide the Contractor with timely written notice before imposing any of the intermediate sanctions specified in Article 15.4.2. The notice shall explain the basis and the nature of the sanction.

(B) The Contractor has 30 days to provide a written response to the Department.

(C) If the Contractor disagrees with the imposition of any of the sanctions specified in Article 15.4.2, the Contractor may request a State fair hearing. The Department may continue to impose the Sanction through the duration of the State fair hearing unless the hearing officer orders otherwise.

#### **15.4.4 Discretionary Imposition of Temporary Management**

(A) Pursuant to 42 CFR 438.706, the Department may impose temporary management of the administration of the Contractor's CHIP operations only if it finds (through onsite survey, Enrollee complaints, financial audits, or any other means) that:

- (1) There is continued egregious behavior by the Contractor, including but not limited to behavior that is described in 42 CFR 438.700 or that is contrary to any requirements of Section 1903(m) and Section 1932 of the Social Security Act;
- (2) There is substantial risk to the Enrollee's health; or
- (3) The sanction is necessary to ensure the health of the Contractor's Enrollees while improvements are made to remedy violations under 42 CFR 438.700 or until there is an orderly termination or reorganization of the Contractor.

#### **15.4.5 Required Imposition of Temporary Management**

(A) In accordance with 42 CFR 438.706, the Department shall impose temporary management of the administration of the Contractor's CHIP operations (regardless of any other sanction that may be imposed) if it finds that the Contractor has repeatedly failed to meet substantive requirements in Sections 1903(m) or 1932 of the Social Security Act.

(B) The Department shall grant Enrollees the right to terminate enrollment without cause and shall notify Enrollees of their right to terminate Enrollment.

#### **15.4.6 Hearing on Temporary Management**

The Department may not delay imposition of temporary management of the administration of the Contractor's CHIP operations to provide a hearing before imposing this sanction.

#### **15.4.7 Duration of Temporary Management**

The Department may not terminate temporary management of the administration of the Contractor's CHIP operations until it determines that the Contractor can ensure that the sanctioned behavior shall not recur.

#### **15.4.8 Sanctions Imposed by CMS: Denial of Payment**

The Department may recommend that CMS deny payments to new Enrollees in accordance with 42 CFR 438.730.

### **Article 16 Termination of the Contract**

#### **16.1 Automatic and Without Cause Termination**

##### **16.1.1 Automatic Termination**

This Contract shall automatically terminate on June 30, 2019.

##### **16.1.2 Termination Without Cause**

(A) The Contractor may terminate this Contract without cause by giving the Department written notice of termination at least 60 days prior to the termination date. The termination notice must be on the first working day of the month with the termination effective no later than the first day of the third month following the Contractor's written notice.

(B) The Department may terminate this Contract without cause upon 30 days written notice.

##### **16.1.3 Termination for Failure to Agree Upon Rates**

(A) At least 60 days prior the end of each state fiscal year, or as otherwise determined by the Department, the Parties shall meet and negotiate in good faith the rates (Attachment F) applicable to the upcoming year. If the Parties do not agree upon future rates by the end of the Contract year, either Party may terminate the contract for subsequent years by giving the other party written notice of termination and the termination will become effective 90 days after receipt of the written notice of termination.

### **16.1.3 Effect of Automatic Termination or Termination Without Cause**

(A) The Contractor shall continue providing the Covered Services required by this Contract until midnight of the last calendar month in which the termination becomes effective. If an Enrollee is a patient in a hospital setting during the month in which termination becomes effective, the Contractor is responsible for the entire hospital stay (including physician and other ancillary charges) until discharge or thirty days following termination, whichever occurs first.

(B) If the Contractor one of its Participating Providers, or other subcontractor becomes insolvent or bankrupt, the Enrollees shall not be liable for the debts of the Contractor, the Participating Provider, or the Subcontractor.

(C) The Contractor must promptly supply to the Department all information necessary for the reimbursement of any claims not paid by the Contractor.

## **16.2 Termination of Contract With Cause**

### **16.2.1 Termination of Contract With Cause, Generally**

(A) In accordance with 42 CFR 438.708, the Department may terminate this Contract and enroll the Contractor's Enrollees in other MCOs or PCCMs or provide their CHIP benefits through other options included in the State Plan, if the Department determines that the Contractor has failed to:

- (1) Carry out the substantive terms of this Contract; or
- (2) Meet the requirements of Sections 1932, 1903(m), and 1905(t) of the Social Security Act.

### **16.2.2 Pre-Termination Hearing**

(A) In accordance with 42 CFR 738.710, before terminating the Contract pursuant to Section 16.2.1 of this Contract, the Department must provide the Contractor with a pre-termination hearing. The Department shall:

- (1) Give the Contractor written notice of its intent to terminate, the reason for the termination, and the time and place of the hearing;

(2) After the hearing, give the Contractor written notice of the decision affirming or reversing the proposed termination of the Contract and, for an affirming decision, the effective date of the termination; and

(3) For an affirming decision, give Enrollees notice of termination and information consistent with 42 CFR 438.10, on their options for receiving CHIP services following the effective date of the termination.

(B) In accordance with 42 CFR 438.722, after the Department notifies the Contractor that it intends to terminate the Contract, the Department may give Enrollees written notice of the Department's intent to terminate the Contract and may allow Enrollees to disenroll immediately, without cause.

### **16.2.3 CMS Direction to Terminate**

In the event that CMS directs the Department to terminate this Contract, the Department shall not be permitted to renew this Contract without CMS consent.

## **Article 17 Miscellaneous Provisions**

### **17.1 Additional Provisions**

#### **17.1.1 Integration**

This Contract and all attachments hereto, contain the entire agreement between the Parties with respect to the subject matter of this Contract. There are no representations, warranties, understandings, or agreements other than those expressly set forth herein. Previous contracts between the Parties hereto and conduct between the Parties which precedes the implementation of this Contract shall not be used as a guide to the interpretation or enforcement of this Contract or any provision hereof. Notwithstanding Attachment A, General Provisions, Article III, item 27, if there is a conflict between this Attachment B, Special Provisions, and the Attachment A, General Provisions, then this Attachment B shall control.

#### **17.1.2 Enrollees May Not Enforce Contract**

Although this Contract relates to the provision of benefits for Enrollees, no Enrollee is entitled to enforce any provision of this Contract against the Contractor and nor shall any provision of this Contract constitute a promise by the Contractor to an Enrollee or Potential Enrollee.

#### **17.1.3 Interpretation of Laws and Regulations**

The Department shall be responsible for the interpretation of all Federal and State laws and regulations governing or in any way affecting this Contract. When interpretations are required, the Contractor shall submit a written request to the Department. The Department shall retain full authority and responsibility for the administration of the CHIP program in accordance with the

requirements of Federal and State law.

#### **17.1.4 Severability**

If any provision of this Contract is found to be invalid, illegal, or otherwise unenforceable, the unenforceability of that provision will not affect the enforceability of any other provision contained in this Contract and the remaining portions of this Contract shall continue in full force and effect.

#### **17.1.5 Assignment**

Assignment of any or all rights or obligations under this Contract without the prior written consent of the Department is prohibited. Sale of all or part of the right or obligations under this Contract shall be deemed an assignment. Consent may be withheld in the Department's sole and absolute discretion.

#### **17.1.6 Continuation of Services During Insolvency**

If the Contractor becomes insolvent, the Contractor shall continue to provide all Covered Services to Enrollees for the duration of the period for which the Department has paid monthly Capitation Payments to the Contractor.

#### **17.1.7 Surveys**

All surveys required under this Contract shall be funded by the Contractor unless another source agrees to fund the survey.

#### **17.1.8 Policy, Rules, and Regulations**

(A) The Contractor shall be aware of, comply with, and be bound by the State Plan and the Department's policies and procedures, the Provider Manuals and Medicaid Information Bulletins, as applicable, and shall ensure that the Contractor and its Participating Providers comply with the policies and procedures in effect at the time when services are rendered.

(B) The Contractor shall comply with all appropriate and applicable state and federal rules and regulations.

#### **17.1.9 Solvency Standards**

Unless exempt, the Contractor agrees to meet the solvency standards required by 42 CFR 438.116(b)(1).

#### **17.1.10 Providers May Not Enforce Contract**



Although this Contract relates to the provision of benefits by Providers, no Provider is entitled to enforce any provision of this Contract against the Contractor and nor shall any provision of this Contract constitute a promise by the Contractor to a Provider.

#### **17.1.11 ACA Health Insurer Fee**

(A) The Contractor is responsible for paying the annual Health Insurer Fee.

(B) The Utah legislature has appropriated funding for the purpose of assisting the Contractor in paying the Health Insurer Fee. The funding for the Health Insurer Fee shall be incorporated into the monthly Capitation Rates found in Attachment F. The Department shall incorporate the funding appropriated for the Health Insurer Fee into the Capitation Rates on a prospective basis. The Capitation Rates shall be adjusted each state fiscal year to ensure actuarial soundness from the previous fiscal year. During the annual Capitation Rate adjustment the Department shall:

(1) reduce the new Capitation Rate by the amounts of the Health Insurer Fee incorporated into the previous year's Capitation Rate which the Department has determined through actuarial certification has been overpaid during the previous fiscal year; or

(2) request an appropriation from the Utah legislature for additional funding in the event the Department determines through actuarial certification that the amount appropriated by the Utah legislature does not adequately cover incorporation of the Health Insurer Fee into the new Capitation Rates.

(C) The Department shall not fund the Health Insurer Fee if the Utah legislature fails to appropriate funding for this purpose.

(D) By September 30 of each year, the Contractor shall provide to the Department its Health Insurer Fee invoice relating to the premiums paid to the Contractor under this contract. The Contractor shall also provide any additional supporting documentation relating to the Health Insurer Fee requested by the Department.

## **17.2 Data Security Provisions**

### **17.2.1 Duty of Confidentiality**

The Contractor shall maintain the confidentiality of any Confidential Data that it receives from the Department or any other state or public office which has been disclosed to the Contractor for the purpose of performance under this Contract. This includes any information contained in any database maintained by the State of Utah. This duty of confidentiality shall be ongoing and shall survive the term of this Contract.

### **17.2.2 Network Security**

(A) For any network on which the Contractor stores or transmits Confidential Data, the Contractor shall at all times maintain network security that at minimum, includes network firewall provisioning, intrusion detection and regular third party penetration testing.

(B) For any network on which the Contractor stores or transmits Confidential Data, the Contractor shall maintain network security that conforms to one of the following:

- (1) Those standards which the State of Utah applies to its own network as found at <http://www.dts.utah.gov>;
- (2) Current standards set forth and maintained by the National Institute of Standards and Technology; or
- (3) Any industry accepted standards that is comparable to those described in 17.2.2(B) (1) or (2).

### **17.2.3 Data Security**

(A) The Contractor shall protect and maintain the security of Confidential Data with protection that conforms to one of the following:

- (1) Those standards which the State of Utah applies to its own network as found at <http://www.dts.utah.gov>;
- (2) Current standards set forth and maintained by the National Institute of Standards and Technology; or
- (3) Any industry accepted standards that is comparable to those described in 17.2.3(A) (1) or (2).

(B) The Contractor shall develop and use appropriate administrative, technical and physical security measures to preserve the confidentiality and integrity of all electronically maintained or transmitted Confidential Data. These security measures include, but are not limited to, maintaining up-to-date anti-virus software, maintaining systems with current security updates, and controlled access to the physical location of the hardware itself.

### **17.2.4 Data Transmission**

The Contractor shall ensure that any transmission or exchange of Confidential Data with the Department shall take place via secure means, such as HTTPS or FTPS.

### **17.2.5 Data Storage**

(A) The Contractor shall ensure that any Confidential Data will be stored, processed, and maintained solely on designated target servers and that no Confidential Data at any time will be processed on or transferred to any unencrypted portable or laptop computing device or any unencrypted portable storage medium.

(B) The Contractor shall ensure that any Confidential Data that is stored, processed, or maintained on a laptop, portable computing device, cell phone, or portable storage device shall be encrypted using no less than 128 bit key.

#### **17.2.6 Data Re-Use**

The Contractor shall ensure that any and all Confidential Data exchanged shall be used expressly and solely for the purposes of fulfilling this Contract and other purposes as required or permitted by law. Confidential Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor.

#### **17.2.7 Notification of Confidential Data Breach**

The Contractor shall notify the Department when any Contractor system that may access, process, or store Confidential Data is subject to unintended access or disclosure. The Contractor shall notify the Department of such unintended access or disclosure within 48 hours of discovery of such access or disclosure.

#### **17.2.8 Confidentiality, Data Security, Subcontractors**

The Contractor shall extend the Duty of Confidentiality found in Article 17.2.1 and the Confidential Data requirements found in Articles 17.2.2 through 17.2.7 to all Subcontractors used by the Contractor.

#### **17.3.9 Access to State of Utah Databases**

(A) The Contractor shall maintain a log of all employees or Subcontractors who have access to any database maintained by the State of Utah or by the Department to whom the Department has given access.

(B) The Contractor shall notify the Department within two business days when an employee or subcontractor who has access to a database maintained by the Department or the State no longer requires access to the database.

(C) On a quarterly basis the Contractor shall provide to the Department a log of all employees who have access to a Department or State maintained database and in submitting that log to the Department, shall certify that the job duties of each employee named in the log requires that employee to have access to a Department-maintained database.

## **Covered Services, Limitations, Exclusions and Co-Payment Requirements**

### **SECTION 1: Covered Services**

The Contractor shall provide the following benefits to CHIP Enrollees in accordance with benefits as defined in the Utah Children's Health Insurance Program State Plan subject to the exclusions or limitations noted in this attachment. The Department reserves the right to interpret what is in the State Plan. CHIP covered services can only be limited through utilization criteria based on medical necessity. The Contractor's Health Plan shall provide at least the following benefits to CHIP Enrollees.

The Contractor is responsible to provide or arrange for all appropriate covered services on an emergency basis 24 hours each day, seven days a week. The Contractor is responsible for payment for all covered emergency services furnished by providers that do not have arrangements with the Contractor's Health Plan.

#### **1.1 Hospital Services**

- A. Inpatient Hospital  
Services furnished in a licensed, certified hospital.
- B. Outpatient Hospital  
Services provided to Enrollees at a licensed, certified hospital who are not admitted to the hospital.
- C. Emergency Department Services  
Emergency services provided to Enrollees in designated hospital emergency departments.

#### **1.2 Physician Services**

Services provided directly by licensed physicians or osteopaths, or by other licensed professionals such as physician assistants, nurse practitioners, or nurse midwives under the physician's or osteopath's supervision. Includes surgery and anesthesia.

#### **1.3 Vision Care**

Services provided by licensed ophthalmologists or licensed optometrists, within their scope of practice.

Services include:

- A. Routine vision examinations.
- B. One exam every 12 months.

#### **1.4 Lab and Radiology Services**

Professional and technical laboratory and X-ray services furnished by licensed and certified providers. All laboratory testing sites providing services under this Contract must have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number.

Those laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

**1.5 Physical Therapy/ Occupational Therapy**

Treatment and services provided by a licensed physical or occupational therapist. A physician must authorize treatment and services for physical or occupational therapy.

**1.6 Chiropractic Services**

This is not a covered benefit.

**1.7 Hearing Services**

Screening services provided by a licensed medical professional/audiologist to test for any hearing loss. One exam every 12 months.

Bilateral cochlear implants are covered up to a lifetime maximum of \$35,000. The surgery itself (facility, anesthesia, physician's fees, etc.) and the implant device apply to this limit. Aural rehabilitation related to an approved cochlear implantation is subject to speech therapy benefit limitations but does not apply to the maximum plan payment. Maintenance on the device, such as replacement batteries, is a covered service and does not apply to the maximum plan payment, whether or not the implant was performed while covered by CHIP.

**1.8 Podiatry Services**

Services provided by a licensed podiatrist.

**1.9 End Stage Renal Disease - Dialysis**

Treatment of end stage renal failure by dialysis. Dialysis is to be rendered by a Medicare-certified Dialysis facility.

**1.10 Home Health Services**

Home health services are defined as intermittent nursing care provided by certified nursing professionals (registered nurses and licensed practical nurses) in the Enrollee's home when the Enrollee is homebound or semi-homebound. Home health care is to be rendered by a Medicare-certified Home Health Agency.

**1.11 Speech Therapy**

Services provided by a licensed speech language pathologist if therapy is to restore speech loss or to correct impairment if due to a congenital defect or an injury or sickness.

**1.12 Hospice Services**

Services delivered to terminally ill patients (six months life expectancy) who elect to receive palliative care. Hospice care is to be rendered by a Medicare-certified hospice. Hospice services are available to clients without them forgoing any other service including curative treatment to which they are entitled under this contract. [Reference: Affordable Care Act, Section 2302, SMD # 10-018]

**1.13 Durable Medical Equipment and Supplies**

Equipment and appliances used to assist the patient's medical recovery, including both durable and non-durable medical supplies and equipment. Durable medical equipment includes, but is not limited to, prosthetic devices.

**1.14 Abortions and Sterilizations**

These services are provided to the extent permitted by Federal and State law and must meet the documentation requirement of 42 CFR 441, Subparts E and F. Abortion services to unmarried minors must have written notification of the parent or legal guardian.

**1.15 Organ Transplants**

The following transplantations are covered for all Enrollees:

- A. bone marrow
- B. combined heart/lung
- C. combined pancreas/kidney
- D. cornea
- E. heart
- F. kidney
- G. liver
- H. pancreas after kidney
- I. single or double lung

**1.16 Other Outside Medical Services**

The Health Plan, at its discretion and without compromising quality of care, may choose to provide services in Freestanding Emergency Centers, Surgical Centers and Birthing Centers.

**1.17 Transportation Services**

Ambulance (ground and air) service for medical emergencies.

**1.18 Preventive Services (Well-Child Care)**

The Health Plan shall provide to CHIP Enrollees preventive screening services, including routine physical examinations and immunizations.

The Health Plan shall provide preventive services to all eligible children and young adults up to age 19 in accordance with the American Academy of Pediatrics (AAP) periodicity schedules.

The Contractor agrees to educate and encourage compliance with the AAP periodicity schedules. These efforts will include education and compliance monitoring for children and young adults, taking into account the multi-lingual, multi-cultural nature as well as other unique characteristics of the CHIP Enrollees.

**1.19 Family Planning Services**

This service includes disseminating information, counseling, and treatments relating to family planning services. All services must be provided by or authorized by a physician, certified nurse midwife, or nurse practitioner. All services must be provided in concert with Utah law.

The following family planning services are not covered:

- A. Norplant
- B. Infertility drugs
- C. In-vitro fertilization
- D. Genetic counseling

**1.20 Pharmacy Services**

Prescribed drugs and preparations provided in a licensed pharmacy. Over the counter (OTC) drugs are not covered. Prescriptions must be medically necessary and may be limited to generic medications where medically acceptable. The Department advisory board of medical professionals may establish an approved list of covered name brand drugs, or a formulary/approved list of drugs will be developed by the Contractor, reviewed and approved by the Department.

Prospective drug utilization review at the point of sale and retrospective drug utilization review will be done by the health plan or its pharmacy benefit manager.

**1.21 Mental Health**

Inpatient and outpatient services are covered. Medically necessary services from contracted hospitals, inpatient treatment centers, inpatient pain clinics, day treatment facilities or intensive outpatient programs are covered. Residential treatment is limited to 25 days per plan year.

**1.22 Medical and Surgical Services of a Dentist**

Dental Services

Dental services are covered in the following limited circumstances:

- A. When rendered to diagnose or treat medical complications of a dental procedure and administered under the direction of a medical provider whose primary practice is not dentistry or oral surgery.
- B. When the Health Plan determines the following to be medically necessary:
  - i. Maxillary and/or mandibular procedures;
  - ii. Upper/lower jaw augmentation or reduction procedures, including developmental corrections or altering of vertical dimension; and
  - iii. Orthognathic Services.
- C. For repairs of physical damage to sound natural teeth, crowns, and the supporting structures surrounding teeth when:
  - i. Such damage is a direct result of an accident independent of disease or bodily infirmity or any other cause;
  - ii. Medical advice, diagnosis, care, or treatment was recommended or received for the injury at the time of the accident; and
  - iii. Repairs are initiated within one year of the date of the accident.

Orthodontia and the replacement/repair of dental appliances are not covered, even after an accident. Repairs for physical damage resulting from biting or chewing are not covered.

Unless stated otherwise above, services rendered to the teeth, the tooth pulp, the gums, or the bony structure supporting the teeth are not covered.

Dental Anesthesia

See section 2.16, Dental Anesthesia, for circumstances where dental anesthesia is covered.

**1.23 High-Risk Prenatal Services**

The Health Plan must ensure that high-risk pregnant Enrollees receive an appropriate level of quality prenatal care that is coordinated, comprehensive and continuous either by direct service or referral to an appropriate provider or facility.

**1.24 Services for Children with Special Needs**

In addition to primary care, children with chronic illnesses and disabilities need specialized care provided by trained experienced professionals. Since early diagnosis and intervention will prevent costly complications later on, the specialized care must be provided in a timely manner. The specialized care must comprehensively address all areas of need to be most effective and must be coordinated with primary care and other services to be most efficient. The children's families must be involved in the planning and delivery of the care for it to be acceptable and successful.

Therefore all children with special health care needs must have timely access to the following services:

- A. Comprehensive evaluation for the condition.
- B. Pediatric sub-specialty consultation and care appropriate to the condition.
- C. Rehabilitative services provided by professionals with pediatric training in areas such as physical therapy, occupational therapy and speech therapy.
- D. Durable medical equipment appropriate for the condition.
- E. Care coordination for linkage to early intervention, special education and family support services and for tracking progress.

In addition, children with the conditions marked by \* below must have timely access to coordinated multi-specialty clinics, when medically necessary, for their disorder.

The definition of children with special health needs includes, but is not limited to, the following conditions:

1. Nervous System Defects such as  
Spina Bifida\*  
Sacral Agenesis\*  
Hydrocephalus
2. Craniofacial Defects such as  
Cleft Lip and Palate\*  
Treacher - Collins Syndrome
3. Complex Skeletal Defects such as  
Arthrogyrosis\*  
Osteogenesis Imperfecta\*  
Phocomelia\*
4. Inborn Metabolic Disorders such as  
Phenylketonuria\*



Galactosemia\*

5. Neuromotor Disabilities such as  
Cerebral palsy\*  
Muscular Dystrophy\*  
Complex Seizure Disorders
6. Congenital Heart Defects
7. Genetic Disorders such as  
Chromosome Disorders  
Genetic Disorders
8. Chronic Illnesses such as  
Cystic Fibrosis  
Hemophilia  
Rheumatoid Arthritis  
Bronchopulmonary Dysplasia  
Cancer  
Diabetes  
Nephritis  
Immune Disorders
9. Developmental Disabilities with multiple or global delays in development such as  
Down Syndrome or other conditions associated with mental retardation.

**1.25 Facility Charges for Dental Procedures**

The Contractor is responsible to pay for the cost of the facility when a member qualifies to receive dental anesthesia under Section 2.16.

## **SECTION 2: Limitations and Exclusions**

Unless otherwise noted in this attachment as specifically covered, the following Limitations and Exclusions apply.

### **2.1 Abortions/Termination of Pregnancy**

Abortions are not covered except:

- A. When a physician has found that the abortion is necessary to save the life of the mother; or
- B. Where the pregnancy resulted from an act of rape or incest.

### **2.2 Acupuncture/Acupressure**

Acupuncture and acupressure Services are not covered.

### **2.3 Administrative Services/Charges**

Services obtained for administrative purposes are not covered. Such administrative purposes include Services obtained for or pursuant to legal proceedings, court orders, employment, continuing or obtaining insurance coverage, governmental licensure, home health recertification, travel, military service, school, or institutional requirements. Provider and Facility charges for completing insurance forms, duplication services, interest (except where required by Utah Administration Code R590—192), finance charges, late fees, shipping and handling, missed appointments, and other administrative charges are not covered.

### **2.4 Allergy Tests/Treatments**

The following allergy tests are not covered:

- A. Cytotoxic Test (Bryan's Test)
- B. Leukocyte Histamine Release Test
- C. Mediator Release Test (MRT)
- D. Passive Cutaneous Transfer Test (P—K Test)
- E. Provocative Conjunctival Test
- F. Provocative Nasal Test
- G. Rebeck Skin Window Test
- H. Rinkel Test
- I. Subcutaneous Provocative Food and Chemical Test
- J. Sublingual Provocative Food and Chemical Test

The following allergy treatments are not covered:

- K. Allergoids
- L. Autogenous urine immunization
- M. LEAP therapy
- N. Medical devices (filtering air cleaner, electrostatic air cleaner, air conditioners etc.)
- O. Neutralization therapy
- P. Photo—inactivated extracts
- Q. Polymerized extracts
- R. Oral desensitization/immunotherapy

### **2.5 Anesthesia**

General anesthesia rendered in a Provider's office is not covered.

**2.6 Attention—Deficit/Hyperactivity Disorder**

Cognitive or behavioral therapies for the treatment of these disorders are not covered.

**2.7 Bariatric Surgery**

Surgery to facilitate weight loss is not covered. The reversal or revision of such procedures and Services required for the treatment of complications from such procedures are not covered. However, medical or surgical complications that can be reasonably attributed to such a surgery will be considered for coverage if they arise ten years or more after the surgery.

**2.8 Biofeedback/Neurofeedback**

Biofeedback/neurofeedback is not covered.

**2.9 Birthing Centers and Home Childbirth**

Childbirth in any place other than a Hospital is not covered. This includes all Provider and/or Facility charges related to the delivery.

**2.10 Certain Cancer Therapies**

The following cancer therapies are not covered:

- A. Neutron beam therapy
- B. Proton beam therapy

**2.11 Certain Illegal Activities**

Services for an illness, condition, accident, or injury are not covered if it occurred:

- A. While the Member was a voluntary participant in the commission of a felony;
- B. While the Member was a voluntary participant in disorderly conduct, riot, or other breach of the peace;
- C. While the Member was engaged in any conduct involving the illegal use or misuse of a firearm or other deadly weapon;
- D. While the Member was driving or otherwise in physical control of a car, truck, motorcycle, scooter, off—road vehicle, boat, or other motor—driven vehicle if the Member either:
  - i. Had sufficient alcohol in the Member's body that a subsequent test shows that the Member has either a blood or breath alcohol concentration of .08 grams or greater at the time of the test; or
  - ii. Had any illegal drug or other illegal substance in the Member's body to a degree that it affected the Member's ability to drive or operate the vehicle safely;
- E. While the Member was driving or otherwise in physical control of a car, truck, motorcycle, scooter, off—road vehicle, boat, or other motor—driven vehicle either without a valid driver's permit or license, if required under the circumstances or without the permission of the owner of the vehicle; or

- F. As a complication of, or as the result of, or as follow— up care for, any illness, condition, accident, or injury that is not covered as the result of this exclusion.

The presence of drugs or alcohol may be determined by tests performed by or for law enforcement, tests performed during diagnosis or treatment, or by other reliable means.

**2.12 Claims After One Year**

Generally, claims with a date of service over one year old should be denied by the plan. Exceptions to this general rule should be addressed by the plan's policy and in its procedures.

**2.13 Complementary and Alternative Medicine (CAM )**

Complementary, alternative and nontraditional Services are not covered. Such Services include acupuncture, homeopathy, homeopathic drugs, certain bioidentical hormones, massage therapies, aromatherapies, yoga, hypnosis, rolfing, and thermography.

**2.14 Complications**

All Services provided or ordered to treat complications of a non—covered Service are not covered unless stated otherwise in this document.

**2.15 Custodial Care**

Custodial Care is not covered.

**2.16 Dental Anesthesia**

Services including local, regional, general, and/or intravenous sedation anesthesia, are not covered except for at participating facilities when members meet the following criteria:

- A. The member is developmentally delayed, regardless of the chronological age of the member:
- B. The member, regardless of age, has a congenital cardiac or neurological condition and provides documentation that the dental anesthesia is needed to closely monitor the condition; or
- C. The member is younger than five years of age and:
  - i. The proposed dental work involves three or more teeth;
  - ii. The diagnosis is nursing bottle-mouth syndrome or extreme enamel hypoplasia; and
  - iii. The proposed procedures are restoration or extraction for rampant decay.

**Cardiac/Neurologic Conditions**

Consideration of coverage will be given to members, regardless of age, with congenital cardiac or neurological conditions. The member must provide documentation describing that the need for dental anesthesia is due to an underlying medical condition and the associated requirement to closely monitor this condition.

Dental anesthesia for conditions such as ADHD, situational anxiety, or fear of dentists is not covered.

**Note:** Remember, general anesthesia rendered with an office surgery is not covered.

**2.17 Exclusion Deleted**

**2.18 Dry Needling**

Dry needling procedures are not covered.

**2.19 Duplication of Coverage**

The following are not covered:

- A. Services for which the member has obtained a payment, settlement, judgment, or other recovery for future payment intended as compensation.
- B. Services received by a Member incarcerated in a prison, jail, or other correctional facility at the time Services are provided, including care provided outside of a correctional facility to a person who has been arrested or is under a court order of incarceration.

**2.20 Experimental and/or Investigational Services**

Experimental and/or Investigational Services are not covered. An Experimental and/or Investigational Service is a service for which one or more of the following apply:

- A. It cannot be lawfully marketed without the approval of the Food and Drug Administration (FDA) and such approval has not been granted at the time of its use or proposed use;
- B. It is the subject of a current investigational new drug or new device application on file with the FDA;
- C. It is being provided pursuant to a Phase I or Phase II clinical trial or as the experimental or research arm of a Phase III clinical trial;
- D. It is being or should be delivered or provided subject to the approval and supervision of an Institutional Review Board (IRB) as required and defined by federal regulations, particularly those of the FDA or the Department of Health and Human Services (HHS); or
- E. If the predominant opinion among appropriate experts as expressed in the peer-reviewed medical literature is that further research is necessary in order to define safety, toxicity, effectiveness, or comparative effectiveness, or there is no clear medical consensus about the role and value of the Service.

**2.21 Eye Surgery, Refractive**

Radial keratotomy, LASIK, or other eye surgeries performed primarily to correct refractive errors are not covered.

**2.22 Fitness Training**

Fitness training, conditioning, exercise equipment, and membership fees to a spa or health club are not covered.

**2.23 Food Supplements**

Except for Dietary Products as defined by the Contractor, food supplements and substitutes are not covered.

- 2.24 Gene Therapy**  
Gene therapy or gene-based therapies are not covered.
- 2.25 Habilitation Therapy Services**  
Services designed to create or establish function that was not previously present are not covered.
- 2.26 Hearing Aids**  
Except for cochlear implants, the purchase, fitting, or ongoing evaluation of hearing aids, appliances, auditory brain implants, bone—anchored hearing aids, or any other procedure or device intended to establish or improve hearing or sound recognition is not covered.
- 2.27 Home Health Aides**  
Services provided by a home health aide are not covered.
- 2.28 Immunizations**  
The following immunizations are not covered: anthrax, BCG (tuberculosis), cholera, plague, typhoid, and yellow fever.
- 2.29 Exclusion Deleted**
- 2.30 Methadone Therapy**  
Methadone maintenance/therapy clinics or Services are not covered.
- 2.31 Noncovered Service in Conjunction with a Covered Service**  
When a noncovered Service is performed as part of the same operation or process as a Covered Service, only charges relating to the Covered Service will be considered. Allowed Amounts may be calculated and fairly apportioned to exclude any charges related to the noncovered Service.
- 2.32 Pain Management Services**  
The following Services are not covered:
- A. Prolotherapy
  - B. Radiofrequency ablation of dorsal root ganglion
  - C. Acupuncture
  - D. IV pamidronate therapy for the treatment of reflex sympathetic dystrophy
- 2.33 Pervasive Developmental Disorder**  
Services for Pervasive Developmental Disorder are not covered.
- 2.34 Exclusion Removed**
- 2.35 Prescription Drugs/Injectable Drugs and Specialty Medications.**  
The following are not covered:
- A. Appetite suppressants and weight loss medications;
  - B. Certain off-label drug usage, unless the use has been approved by a Health Plan Medical Director or clinical pharmacist;
  - C. Compound drugs when alternative products are available commercially;
  - D. Cosmetic health and beauty aids;
  - E. Drugs purchased from Nonparticipating Providers over the Internet;

- F. Flu symptom medications;
- G. Drugs and medications purchased through a foreign pharmacy, unless approved by the Health Plan.
- H. Human growth hormone for the treatment of idiopathic short stature;
- I. Infertility medications;
- J. Medications not meeting the minimum levels of evidence based upon Food and Drug Administration (FDA) approval and/or DrugDex level IIa strength of recommendation, and National Comprehensive Cancer Network (NCCN) category 2A, if applicable.
- K. Minerals, fluoride, and vitamins other than prenatal or when determined to be Medically Necessary to treat a specifically diagnosed disease;
- L. Nicotine and smoking cessation medications, except in conjunction with a Health Plan -sponsored smoking cessation program;
- M. Over-the-counter (OTC) medications, except as approved by the Health Plan;
- N. Prescription Drugs used for cosmetic purposes;
- O. Prescriptions written by a licensed dentist, except for the prevention of infection or pain in conjunction with a dental procedure;
- P. Replacement of lost, stolen, or damaged drugs and medications;
- Q. Sexual dysfunction medications; and
- R. Travel-related medications, including preventive medication for the purpose of travel to other countries.

### **2.36 Reconstructive, Corrective, and Cosmetic Services**

Services provided for the following reasons are not covered:

- A. To improve form or appearance;
- B. To correct a deformity, whether congenital or acquired, without restoring physical function;
- C. To cope with psychological factors such as poor self-image or difficult social relations;
- D. The service is rendered within 12 months of the cause or onset of the injury, illness, or therapeutic intervention, or a planned, staged series of services (as specifically documented in the member's medical record) is initiated within the 12-month period;
- E. To revise a scar, whether acquired through injury or surgery, except when the primary purpose is to improve or correct a functional impairment;
- F. Breast reduction (except according to Health Plan criteria);
- G. Congenital cleft lip except for treatment rendered within 12 months of birth, or a planned, staged series of Services (as specifically documented in the Member's medical record) is initiated, or when congenital cleft lip surgery is performed as part of a cleft palate repair;
- H. Port wine stain treatment (except according to Health Plan criteria);
- I. Sclerotherapy of superficial varicose veins (spider veins);

### **2.37 Rehabilitation Therapy Services**

The following are not covered:

- A. Services for functional nervous disorders;
- B. Vision rehabilitation therapy Services;
- C. Speech therapy for developmental speech delay.

### **2.38 Related Provider Services**

Services provided to a Member by a Provider who ordinarily resides in the same household as the Member are not covered.

**2.39 Respite Care**

Respite Care is not covered.

**2.40 Sexual Dysfunction**

Services related to sexual dysfunction are not covered.

**2.41 Specialty Services**

Coverage for specific specialty Services may be restricted to only those Providers who are board certified or have other formal training that is considered necessary to perform those Services.

**2.42 Specific Services**

The following Services are not covered:

- A. Anodyne infrared device for any indication
- B. Auditory brain implantation
- C. Chronic intermittent insulin IV therapy/metabolic activation therapy
- D. Coblation therapy of the soft tissues of the mouth, nose, throat, or tongue
- E. Computer-assisted interpretation of x-rays (except mammograms)
- F. Extracorporeal shock wave therapy for musculoskeletal indications
- G. Cryoablation therapy for plantar fasciitis and Morton's neuroma
- H. Freestanding/home cervical traction
- I. Home anticoagulation or hemoglobin A1C testing
- J. Infrared light coagulation for the treatment of hemorrhoids
- K. Interferential/neuromuscular stimulators
- L. Intimal Media Thickness (IMT) testing to assess risk of coronary disease
- M. Lovaas therapy
- N. Magnetic Source Imaging (MSI)
- O. Microprocessor controlled, computerized lower extremity limb prostheses
- P. Mole mapping
- Q. Nonsurgical spinal decompression therapy (e. g. , VAX-D or DRS therapy)
- R. Nucleoplasty or other forms of percutaneous disc decompression
- S. Pressure Specified Sensory Device (PSSD) for neuropathy testing
- T. Prolotherapy
- U. Radiofrequency ablation for lateral epicondylitis
- V. Radiofrequency ablation of the dorsal root ganglion
- W. Secretin infusion therapy for the treatment of autism
- X. Virtual colonoscopy
- Y. Whole body scanning

**2.43 Telephone/E-mail Consultations**

Charges for Provider telephone, e-mail, or other electronic consultations are not covered.

**2.44 Terrorism or Nuclear Release**

Services for an illness, injury, or connected disability are not covered when caused by or arising out of an act of international or domestic terrorism, as defined by United States Code, Title 18, Section 2331, or from an accidental, negligent, or intentional release of nuclear material or nuclear byproduct material as defined by United States Code, Title 18, Section 831.



**2.45 Travel-Related Expenses**

Costs associated with travel to a local or distant medical provider, including accommodation and meal costs, are not covered.

**2.46 Exclusion Deleted**

**2.47 War**

Services for an illness, injury, or connected disability are not covered when caused by or arising out of a war or an act of war (whether or not declared) or service in the armed services of any country.

**2.48 Orthotics and Other Corrective Appliances for the Foot**

Not covered unless they are part of a lower foot brace, and they are prescribed as part of a specific treatment associated with recent, related surgery.

**2.49 General Exclusions**

- A. Charges prior to coverage or after termination of coverage even if illness or injury occurred while the insured is covered by CHIP.
- B. Charges for educational material, literature or charges made by a provider to the extent that they are related to scholastic education, vocational training, learning disabilities, behavior modification, dealing with normal living such as diet, or medication management for illnesses such as diabetes.
- C. Charges for services primarily for convenience, contentment or other non-therapeutic purpose.
- D. Charges for unproven medical practices or care, treatment or drugs which are experimental or investigational in nature or generally considered experimental or investigational by the medical profession or non-FDA approved.
- E. Charges for any service or supply not reasonable or necessary for medical care of the patient's illness or injury.
- F. Charges which the insured is not, in the absence of coverage, legally obligated to pay.
- G. Charges for services, treatments or supplies furnished by a hospital or facility owned or operated by the United States Government or any agency thereof.
- H. Charges for services, treatments or supplies received as a result of an act of war occurring when the insured is covered by CHIP.
- I. Charges for any services received as a result of an industrial (on the job) injury or illness, any portion of which is payable under workman's compensation or employer's liability laws.
- J. Charges for services or supplies resulting from participating in or in consequence of having participated in the commission of an assault or felony.
- K. Charges made for completion or submission of insurance forms.
- L. Charges for care, treatment, or surgery performed primarily for cosmetic purposes, except for expenses incurred as a result of an injury suffered in the preceding five years.
- M. Shipping, handling, or finance charges.
- N. Charges for medical care rendered by an immediate family member are subject to review by CHIP and may be determined by CHIP to be ineligible.
- O. Charges for expenses in connection with appointments scheduled and not kept.
- P. Charges for telephone calls or consultations.



**SECTION 3: Co-Payment Requirements for Enrollees Equal To and Less Than  
100% of the Federal Poverty Level**

**(PLAN A)**

**3.1 Hospital Services** (inpatient, outpatient, and emergency department)

\$50 co-payment for inpatient hospital services  
Plan pays 100% for surgeon and anesthesiologist services  
For all other hospital services  
\$3 co-payment per visit

**3.2 Outpatient Office Visits**

This includes physician (inpatient and outpatient), physician-related, urgent care, physical and occupational therapy, speech therapy, and podiatry visits.

\$3 co-payment per visit  
No co-payment for well-baby care, well-child care and immunizations  
20 visit combined limit per plan year on physical, occupational, and speech therapy  
Chiropractic visits are not covered

**3.3 Laboratory and X-Ray Services**

|  |                |
|--|----------------|
| For laboratory services \$350 and under (of allowable charges)*: | No co-payment  |
| For laboratory services above \$350 (of allowable charges)**:    | \$3 co-payment |

|   |                |
|---|----------------|
| For X-ray services \$350 and under (of allowable charges)*: | No co-payment  |
| For X-ray services above \$350 (of allowable charges)**:    | \$3 co-payment |

Instead of by dollar amount, the Contractor may choose to group these diagnostic tests as Major\*\* (corresponding to the above \$350 co-pay category) and Minor (corresponding to the \$350 and under category) and have co-payment schedules reflecting those same categorizations. These groups shall be closely based on allowable charges for (1) those \$350 and under and (2) over \$350.

**3.4 Prescription Drugs**

For drugs on an approved list: \$1 co-payment per prescription

Plan pays 95% (of allowable charges) per prescription if not on the approved list.

**3.5 Vision Screening Services**

\$3 co-payment, limit of one exam every 12 months

**3.6 Hearing Screening Services**

\$3 co-payment, limit of one exam every 12 months

**3.7 Durable Medical Equipment and Supplies**

\$3 co-payment per service except for rentals;  
\$3 co-payment per month for rentals

**3.8 Mental Health Services**

**3.8.1 Inpatient and Outpatient Facility:**

\$50 co-payment

**3.8.2 Office Visit:**

No co-payment

**3.8.3 Residential Treatment:**

Co-insurance, 5% of allowed amount, limit of 25 visits per plan year

**3.9 Ambulance - Ground and Air**

Plan pays 95%

**3.10 Home Health and Hospice Care**

\$3 co-payment

**3.11 Pre-existing Condition Waiting Period**

No waiting period

**3.12 Out-of-Pocket Maximum**

The maximum out-of-pocket expense is 5% of the family's annual gross income.

If the out-of-pocket maximum exceeds 5% of the family's annual gross income, the family should contact the Department. Upon request, the Contractor will provide the Department with a record of co-insurance and co-payments that make up the family's out-of-pocket expenses. Upon notification from the Department, the Contractor will switch the family to a no out-of-pocket payment (exempt) option, will reimburse the family for any excess amount paid above 5%, and will mail new identification cards to the family.

CHIP Enrollees with zero income will also be exempt from co-pays and deductibles as their out-of-pocket will be \$0.

**NOTE:**

**The allowed amount is (1) the contract rate that the Contractor has with providers or (2) the lesser of billed charge less 25% or other negotiated rate for non-contracted providers, except for prescription drugs.**

**SECTION 4: Co-Insurance and Co-Payment Requirements for CHIP Enrollees  
from 101 to 150% of the Federal Poverty Level**

**(PLAN B)**

**4.1 Hospital Services** (inpatient, outpatient and emergency department)

\$150 co-payment, after deductible for allowable inpatient hospital services  
Plan pays 95%, after deductible for ambulatory surgical and outpatient hospital services  
Plan pays 95% for surgeon and anesthesiologist services  
\$10 co-payment for non-emergency use of emergency room

For all other hospital services  
\$5 co-payment per visit

**4.2 Outpatient Office Visits**

This includes physician (inpatient and outpatient), physician-related, urgent care, physical and occupational therapy, speech therapy, and podiatry visits

\$5 co-payment per visit  
No co-payment for well-baby care, well-child care and immunizations  
20 visit combined limit per plan year on physical, occupational, and speech therapy  
Chiropractic visits are not covered

**4.3 Laboratory and X-Ray Services**

|  |   |
|--|---|
| For laboratory services \$350 and under (of allowable charges)*: | No co-payment                                       |
| For laboratory services above \$350 (of allowable charges)**:    | Co-insurance, 5% of allowed amount after deductible |

|   |   |
|---|---|
| For X-ray services \$350 and under (of allowable charges)*: | No co-payment                                       |
| For X-ray services above \$350 (of allowable charges)**:    | Co-insurance, 5% of allowed amount after deductible |

Instead of by dollar amount, the Contractor may choose to group these diagnostic tests as Major\*\* (corresponding to the above \$350 co-pay category) and Minor \*(corresponding to the \$350 and under category) and have co-payment schedules reflecting those same categorizations. These groups shall be closely based on allowable charges for (1) those \$350 and under and (2) over \$350.

**4.4 Prescription Drugs**

|  |                                    |
|--|------------------------------------|
| For generic drugs on an approved list: | \$5 co-payment per prescription    |
| For <u>all</u> other drugs:            | Co-insurance, 5% of allowed amount |

**4.5 Vision Screening Services**

\$5 co-payment, limit of one exam every 12 months.

- 4.6 Hearing Screening Services**  
\$5 co-payment, limit of one exam every 12 months.
- 4.7 Durable Medical Equipment and Supplies**  
Co-insurance, 5% of allowed amount after deductible
- 4.8 Mental Health Services**
  - 4.8.1 Inpatient and Outpatient Facility:**  
\$150 co-payment, after deductible
  - 4.8.2 Office Visit:**  
No co-payment
  - 4.8.3 Residential Treatment:**  
Co-insurance, 5% of allowed amount after deductible, limit of 25 visits per plan year
- 4.9 Ambulance - Ground and Air**  
Co-insurance, 5% of allowed amount after deductible
- 4.10 Home Health and Hospice Care**  
Co-insurance, 5% of allowed amount after deductible
- 4.11 Deductible**  
Plan B enrollees are required to pay \$40 per family per year.
- 4.12 Pre-existing Condition Waiting Period**  
No waiting period
- 4.13 Out-of-Pocket Maximum**  
The maximum out-of-pocket expense is 5% of the family's annual gross income.

If the out-of-pocket maximum exceeds 5% of the family's annual gross income, the family should contact the Department. Upon request, the Contractor will provide the Department with a record of co-insurance and co-payments that make up the family's out-of-pocket expenses. Upon notification from the Department, the Contractor will switch the family to a no out-of-pocket payment (exempt) option, will reimburse the family for any excess amount paid above 5% and will mail new identification cards to the family.

**NOTE:** The allowed amount is (1) the contract rate that the Contractor has with providers or (2) the lesser of billed charge less 25% or other negotiated rate for non-contracted providers, except for prescription drugs.

**SECTION 5: Co-Insurance and Co-Payment Requirements for CHIP Enrollees  
above 150% of the Federal Poverty Level**

**(PLAN C)**

**5.1 Hospital Services** (inpatient, outpatient and emergency department)

Co-insurance, 20% of allowed amount after deductible, for inpatient, outpatient, and ambulatory surgical services

Plan pays 80% for surgeon and anesthesiologist services, after deductible

\$300 co-payment for each participating emergency department visit, after deductible

\$300 co-payment for each non-participating emergency department visit, after deductible

**5.2 Outpatient Office Visits**

This includes physician (inpatient and outpatient), physician-related, urgent care, physical and occupational therapy, speech therapy, and podiatry visits

For physician visits \$25 co-payment per visit

Therapy visits  
(Physical, occupational and speech): \$40 co-payment per visit after deductible

For all other outpatient office visits  
Including specialists and urgent care: \$40 co-payment per visit

No co-payment for well-baby care, well-child care and immunizations  
20 visit combined limit per plan year on physical, occupational, and speech therapy  
Chiropractic visits are not covered

**5.3 Laboratory and X-Ray Services**

For laboratory services \$350 and under (of allowable charges)\*: No co-payment  
For laboratory services above \$350 (of allowable charges)\*\*: Co-insurance, 20% of allowed amount, after deductible

For X-ray services \$350 and under (of allowable charges)\*: No co-payment  
For X-ray services above \$350 (of allowable charges)\*\*: Co-insurance, 20% of allowed amount, after deductible

Instead of by dollar amount, the Contractor may choose to group these diagnostic tests as Major\*\* (corresponding to the above \$350 co-pay category) and Minor \*(corresponding to the \$350 and under category) and have co-payment schedules reflecting those same categorizations. These groups shall be closely based on allowable charges for (1) those \$350 and under and (2) over \$350.

**5.4 Prescription Drugs**

For generic drugs on an approved list: \$15 co-payment per prescription

For brand name drugs on an approved list: Co-insurance, 25% of allowed amount  
For drugs not on an approved list: Co-insurance, 50% of allowed amount

- 5.5 Vision Screening Services**  
\$25 co-payment, limit of one exam every 12 months
- 5.6 Hearing Screening Services**  
\$25 co-payment, limit of one exam every 12 months
- 5.7 Durable Medical Equipment and Supplies**  
Co-insurance, 20% of allowed amount after deductible
- 5.8 Mental Health Services**
  - 5.8.1 Inpatient and Outpatient Facility:**  
Co-insurance, 20% of allowed amount after deductible
  - 5.8.2 Office Visit:**  
No co-payment
  - 5.8.3 Residential Treatment:**  
Co-insurance, 50% of allowed amount after deductible, limit of 25 visits per plan year
- 5.9 Ambulance - Ground and Air**  
Co-insurance, 20% of allowed amount after deductible
- 5.10 Home Health and Hospice Care**  
Co-insurance, 20% of allowed amount after deductible
- 5.11 Deductible**  
Plan C enrollees are required to pay \$500 per person / \$1,500 per family.
- 5.12 Pre-existing Condition Waiting Period**  
No waiting period
- 5.13 Out-of-Pocket Maximum**  
The maximum out-of-pocket expense is 5% of the family's annual gross income.

If the out-of-pocket maximum exceeds 5% of the family's annual gross income, the family should contact the Department. Upon request, the Contractor will provide the Department with a record of co-insurance and co-payments that make up the family's out-of-pocket expenses. Upon notification from the Department, the Contractor will switch the family to a no out-of-pocket payment (exempt) option, will reimburse the family for any excess amount paid above 5%, and will mail new identification cards to the family.

**NOTE:** The allowed amount is (1) the contract rate that the Contractor has with providers or (2) the lesser of billed charge less 25% or other negotiated rate for non-contracted providers, except for prescription drugs.



## **SECTION 6: Requirements for CHIP Native American Policy**

- 6.1 Hospital Services** (inpatient, outpatient and emergency department)  
No co-payment, plan pays 100%
- Plan pays 100% for surgeon, anesthesiologist, ambulatory surgical, outpatient hospital, and hospital inpatient physician visits
- 6.2 Outpatient Office Visits or Urgent Care Center Visits**  
This includes physician, physician-related, physical and occupational therapy, urgent care, speech therapy, and podiatry visits.
- No co-payment, plan pays 100%  
No co-payment for immunizations and well child exams  
20 visit combined limit per plan year on physical, occupational, and speech therapy  
Chiropractic visits are not covered
- 6.3 Laboratory and X-Ray Services**  
Plan pays 100%
- 6.4 Prescription Drugs**  
No co-pay for prescriptions
- 6.5 Vision Screening Services**  
No co-payment, Plan pays 100%, limit of one exam every 12 months.
- 6.6 Hearing Screening Services**  
No co-payment, Plan pays 100%, limit of one exam every 12 months.
- 6.7 Durable Medical Equipment and Supplies**  
Plan pays 100%
- 6.8 Mental Health Services**
- 6.8.1 Inpatient and Outpatient Facility:**  
Plan pays 100%
- 6.8.2 Office Visit:**  
Plan pays 100%
- 6.8.3 Residential Treatment:**  
Plan pays 100%, limit of 25 visits per plan year
- 6.9 Ambulance - Ground and Air**  
Plan pays 100%
- 6.10 Home Health and Hospice Care**  
Plan pays 100%

**6.11 Pre-existing Condition Waiting Period**

No waiting period

**6.12 Out-of-Pocket Maximum**

Not applicable. There are no out-of-pocket expenses for Native Americans.

**NOTE:**

The allowed amount is (1) the contract rate that the Contractor has with providers or (2) the lesser of billed charge less 25% or other negotiated rate for non-contracted providers, except for prescription drugs.

## **SECTION 7: Balance Billing**

### **7.1 Balance Billing**

No claim for payment, except for co-payments, deductibles, and co-insurance, will be made by the Contractor or Health Plan provider from the Enrollee for a service covered under the CHIP contract.

The Contractor and Health Plan provider will not balance bill the Enrollee. The Health Plan provider will consider the reimbursement from the Contractor plus co-payments, deductibles, and/or co-insurance as payment in full.

## **SECTION 8: Contract Year Basis for Benefits**

### **8.1 Benefits – Contract Year Basis**

Benefits are administered on a contract year basis. The Contractor is not responsible to administer run-in claims from the prior health plan. The 5% out-of-pocket maximum is calculated based on the date the Enrollees eligibility begins and the 5% maximum starts over at each recertification.

## QUALITY ASSURANCE AND UTILIZATION MANAGEMENT

### 1. Quality of Care

The Health Plan shall establish a written quality assurance plan, an annual quality improvement work plan, and a plan for utilization management for covered services. All plans should show evidence of a well-defined, organized program designed to improve Enrollee care, to monitor over utilization and under utilization, and to identify and correct aberrant provider behavior. Prior to the effective date of the Contract, the plans must be reviewed by the Department. Together the plans must:

- A. Show systematic surveillance and assessment of all modes of delivery by appropriate health professionals;
- B. Show mechanisms and/or designation of individuals with specific responsibility to resolve identified problems;
- C. Provide for monitoring to assure that resolution is achieved and maintained with documentary evidence of same;
- D. Require use of written, clinically sound criteria to enhance Enrollee services and assure sound clinical performance by health care deliveries;
- E. Result in identification of important Enrollee service problems or potential problems including utilization of service patterns by provider and recipient;
- F. Monitor the effectiveness of the Enrollee grievance process.

### 2. Internal Monitoring

In order to assess medical necessity, appropriateness, quality of care, and timeliness of service, the Health Plan must monitor services to all CHIP Enrollees in accordance with the Health Plan's written quality assurance plans.

- A. The Health Plan must provide for an internal quality assurance plan that:
  - i. Is consistent with the utilization control requirement of part 456 of 42 CFR;
  - ii. Provides for review by appropriate health professionals of the process followed in providing health services;
  - iii. Provides for systematic data collection of performance and patient results;

- iv. Provides for interpretation of this data to the practitioners; and
  - v. Provides for making needed changes.
- B. Provision of high-quality health care services must be demonstrated by:
- i. Adequate and appropriate diagnostic procedures;
  - ii. Treatment necessary and relevant to the working diagnosis;
  - iii. Appropriate consultation(s);
  - iv. Patient compliance with treatment;
  - v. Continuity of care with adequate transfer of information between health care providers;
  - vi. Appropriate, accurate, and complete Enrollee records;
  - vii. Patient satisfaction;
  - viii. Accessibility and availability of services including emergency services;
  - ix. Patient instruction in self-care, prevention and the use of medications and therapies;
  - x. The utilization of the least invasive and most cost-effective resources when possible;
  - xi. The use of ancillary services consistent with patients' needs; and
  - xii. Annual Enrollee satisfaction surveys will be conducted by the Department.
3. Objectives of Quality Assurance Monitoring
- The objective of the quality assurance monitoring process is to ensure compliance to state and federal policies, rules and regulations; adherence to community standards; and integrity of CHIP payments made for medical services provided to Enrollees under the Health Plan. To achieve that objective:
- A. The Health Plan will report all cases of program abuse or suspected abusive or fraudulent behavior by either providers or recipients.

- B. The Health Plan will take appropriate, effective and coordinated action on all such information.
- C. The Health Plan will:
  - i. Make reasonable efforts, pursuant to the Health Plan's standard procedures, to correct the behavior of providers or recipients violating program regulations or exhibiting inappropriate program utilization;
  - ii. Report to the Department, in writing, any providers or recipients who fail to correct aberrant practices and continue to abuse the program;
  - iii. Ensure that funds do not continue to be disbursed in the presence of evidence indicating such practices; and
  - iv. Attempt to recover any funds improperly disbursed, as a result of such practices.

4. The Department's Quality Assurance Monitoring Plan

The Department shall review the Health Plan for compliance to standards defined in the Department's HMO Quality Assurance Monitoring Plan. This plan will be made available upon request.

5. Corrective Action

In the event that the Department discovers that the Health Plan is not performing as required under the terms of this Contract, the Department shall specify in writing all areas of alleged non-performance. The Health Plan shall respond in writing within 20 calendar days as to how it will remedy the non-performance or why it believes the allegations of non-performance are incorrect. If this response does not resolve the matter, the parties must promptly meet face-to-face to attempt to resolve all issues.

The Health Plan will in good faith implement corrective action as agreed upon with the Department when quality assurance monitoring, including but not limited to, site reviews, Health Plan documentation reviews, data analysis, medical audits, or complaints/grievances demonstrate the need for such corrective action. In addition, if the parties agree that the Health Plan has not provided services in accordance with the Contract or within expected professional standards, the Department will request, in writing, that the Health Plan correct deficiencies or identified problems by developing a corrective action plan.

## COST AND UTILIZATION REPORTING FORMS AND DEFINITIONS

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Table 1  
CHIP Enrollment

PERIOD COVERED:  
PERIOD PAID:

|           | <u>Plan A</u> | <u>Plan B</u> | <u>Plan C</u> | <u>TOTAL</u> |
|-----------|---------------|---------------|---------------|--------------|
| July      |               |               |               |              |
| August    |               |               |               |              |
| September |               |               |               |              |
| October   |               |               |               |              |
| November  |               |               |               |              |
| December  |               |               |               |              |
| January   |               |               |               |              |
| February  |               |               |               |              |
| March     |               |               |               |              |
| April     |               |               |               |              |
| May       |               |               |               |              |
| June      |               |               |               |              |

TOTAL CHIP ENROLLEES FY \_\_\_\_\_



**Table 2**  
**Revenue & Cost Data**  
(Round to nearest dollar except for cost per Enrollee month)

Provider Name: \_\_\_\_\_  
Reporting Period: \_\_\_\_\_  
Period Paid (Cut-off Date): \_\_\_\_\_

|   |    | CHIP<br>Plan A  | CHIP<br>Plan B | CHIP<br>Plan C | CHIP<br>TOTALS |
|---|----|-----------------|----------------|----------------|----------------|
|   |    | <b>REVENUES</b> |                |                |                |
| 1 |    | Premiums        | \$             | \$             | \$             |
| 2 | =1 | TOTAL REVENUES  | \$             | \$             | \$             |

|    |  | <b>MEDICAL COSTS</b>        |    |    |    |
|----|--|-----------------------------|----|----|----|
|    |  | Hospital Services           |    |    |    |
| 3  |  | Inpatient hospital          | \$ | \$ | \$ |
| 4  |  | Outpatient hospital         |    |    |    |
| 5  |  | Emergency services          |    |    |    |
|    |  | Physician Services          |    |    |    |
| 6  |  | Primary Care services       | \$ | \$ | \$ |
| 7  |  | Specialty Care services     |    |    |    |
|    |  | Vision Care                 |    |    |    |
| 8  |  | Optometric services         | \$ | \$ | \$ |
| 9  |  | Laboratory Services         |    |    |    |
| 10 |  | Radiology Services          |    |    |    |
| 11 |  | Physical Therapy            |    |    |    |
| 12 |  | Speech and Hearing Services |    |    |    |
| 13 |  | Podiatry Services           |    |    |    |
| 14 |  | End Stage Renal Disease     |    |    |    |
| 15 |  | Home Health Services        |    |    |    |
| 16 |  | Hospice Services            |    |    |    |
| 17 |  | Medical Supplies            |    |    |    |

|     |           | MEDICAL COSTS<br>(cont.)             | CHIP<br>Plan A | CHIP<br>Plan B | CHIP<br>Plan C | CHIP<br>TOTALS |
|-----|-----------|--------------------------------------|----------------|----------------|----------------|----------------|
| 18  |           | Abortions & Sterilizations           | \$             | \$             | \$             | \$             |
| 19  |           | Mental Health                        |                |                |                |                |
| 20  |           | Organ Transplants                    |                |                |                |                |
| 21  |           | Other Medical Services               |                |                |                |                |
| 22  |           | Chiropractic                         |                |                |                |                |
| 23  |           | Transportation Services              |                |                |                |                |
| 24  |           | Pharmacy Services Net<br>of Discount |                |                |                |                |
| 24a |           | Gross Pharmacy<br>Services           |                |                |                |                |
| 24b |           | Discount on<br>Pharmacy Services     |                |                |                |                |
| 24c |           | Manufacturer Rebates                 |                |                |                |                |
| 25  |           | Dental Services (if<br>applicable)   |                |                |                |                |
| 26  |           | Other                                |                |                |                |                |
| 27  |           | IBNR                                 |                |                |                |                |
| 28  | 3 thru 27 | <b>TOTAL MEDICAL<br/>COSTS</b>       | \$             | \$             | \$             | \$             |

**ADMINISTRATION COSTS**

|    |            |                                 |    |    |    |    |
|----|------------|---------------------------------|----|----|----|----|
| 29 |            | Administration -<br>Advertising | \$ | \$ | \$ | \$ |
| 30 |            | Home Office Cost<br>Allocation  |    |    |    |    |
| 31 |            | Utilization                     |    |    |    |    |
| 32 |            | Administration -Other           |    |    |    |    |
| 33 | 29 thru 32 | <b>TOTAL ADMIN. COSTS</b>       | \$ | \$ | \$ | \$ |

|    |           |                          |    |    |    |    |
|----|-----------|--------------------------|----|----|----|----|
| 34 | 2 -28 -33 | <b>NET INCOME (LOSS)</b> | \$ | \$ | \$ | \$ |
|----|-----------|--------------------------|----|----|----|----|

|    |         |                                    |    |    |    |    |
|----|---------|------------------------------------|----|----|----|----|
| 35 |         | ENROLLEE MONTHS                    | #  | #  | #  | #  |
| 36 | 28 ÷ 35 | <b>MED. COST/ ENROLLEE<br/>MO.</b> | \$ | \$ | \$ | \$ |

Attachment E  
Molina CHIP Medical  
Effective July 1, 2014

|    |  |                      |   |   |   |   |
|----|--|----------------------|---|---|---|---|
| 37 |  | Number of Deliveries | # | # | # | # |
|----|--|----------------------|---|---|---|---|

MEDICAL SERVICES REVENUE AND COST DEFINITIONS  
FOR TABLE 2

I. **REVENUES** (Report all revenues paid or payable at the cut-off date indicated on the form.)

- A. Premiums. Report premium payments paid or payable by the DEPARTMENT.
- B. Total Revenue. Total line 1.

II. **MEDICAL COSTS**

**Medical costs will include all medical costs incurred during the period being reported and paid any time before the cutoff date.**

- C. Inpatient Hospital. Costs incurred in providing inpatient hospital services to Enrollees confined to a hospital.
- D. Outpatient Hospital. Costs incurred in providing outpatient hospital services to Enrollees, not including services provided in the emergency department.
- E. Emergency Department Services. Costs incurred in providing outpatient hospital emergency room services to Enrollees.
- F. Primary Care Physician Services. All costs incurred as a result of providing primary care physician, osteopath, physician assistant, nurse practitioner, and nurse midwife services, including payroll expenses, any capitation and/or contract payments, fee-for-service payment, fringe benefits, travel and office supplies.
- G. Specialty Care Physician Services. All costs incurred as a result of providing specialty care physician, osteopath, physician assistant, nurse practitioner, and nurse midwife services, including payroll expenses, any capitation and/or contract payments, fee-for-service payments, fringe benefits, travel and office supplies.
- H. Optometric Services. Included are payroll costs, any capitation and/or contract payments, and fee-for-service payments for services and procedures performed by an optometrist and other non-payroll expenses directly related to providing optometric services.
- I. Laboratory Services. Costs incurred as a result of providing pathological tests or services including payroll expenses, any capitation and/or contract payments, fee-for-service payments, and other expenses directly related to in-house laboratory services. Excluded are costs associated with a hospital visit.
- J. Radiology Services. Costs incurred in providing x-ray services, including x-ray payroll expenses, any capitation and/or contract payments, fee-for-services payments, and occupancy overhead costs. Excluded are costs associated with a hospital visit.

- K. Physical Therapy. Included are payroll costs, any capitation and/or contract payments, fee-for-service costs, and other non-payroll expenditures directly related to providing physical therapy services.
- L. Speech & Hearing Services. Payroll costs, any capitation and/or contract payments, fee-for-service payments, and non-payroll costs directly related to providing speech and hearing services.
- M. Podiatry Services. Salary expenses or outside claims, capitation and/or contract payments, fee-for-service payments, and non-payroll costs directly related to providing services rendered by a podiatrist.
- N. End Stage Renal Disease. Costs incurred in providing renal dialysis (ESRD) services to Enrollees.
- O. Home Health Services. Included are payroll costs, any capitation and/or contract payments, fee-for-service payments, and other non-payroll expenses directly related to providing home health services.
- P. Hospice Services. Expenses related to home care, general inpatient care for patients suffering terminal illness, and inpatient respite care for caregivers of patients suffering terminal illness.
- Q. Medical Supplies. This cost center contains fee-for-service cost for outside acquisition of medical requisites, special appliances as prescribed by a Health Plan physician or provider.
- R. Abortions & Sterilizations. Medical and hospital costs incurred in providing abortions and sterilizations.
- S. Mental Health. Medical, hospital and alternative costs incurred in providing treatment for mental health and substance abuse.
- T. Organ Transplants. Medical and hospital costs incurred in providing transplants.
- U. Other Medical Services. Costs for specialized testing and outpatient surgical centers ordered by the Health Plan.
- V. Chiropractic. Costs incurred in providing chiropractic services.
- W. Transportation Services. Costs incurred in providing ambulance (ground and air) services.
- X. Pharmacy Services. Costs net of pharmacy discount incurred in providing pharmacy services. Costs are not net of rebates.
  - a. Gross Pharmacy costs before discount.
  - b. Pharmacy discount
  - c. Manufacturer rebates
- Y. Dental Services. Costs incurred in providing dental services. *Not applicable unless dental is covered in the Contract.*
- Z. Other. Report costs not otherwise reported.

- AA. IBNR. An actuarially certified estimate of costs incurred but not reported during the current period.
- BB. TOTAL MEDICAL COSTS. Total lines 3 through 27.

**III. ADMINISTRATION**

Report payroll costs, any capitation and/or contract payments, non-payroll costs and occupancy overhead costs for accounting services, claims processing services, health plan services, data processing services, purchasing, personnel, CHIP marketing and regional administration.

Report the administration cost under four categories: advertising, home office indirect cost allocation, utilization, and all other administrative costs. If there are no advertising costs or indirect home office cost allocations, report a zero amount in the applicable lines.

- CC. Administration – Advertising.
- DD. Home Office Cost Allocation
- EE. Utilization. Payroll cost and any capitation and/or contract payments for utilization staff and other non-payroll costs directly associated with controlling and monitoring outside physician referral and hospital admission and discharges.
- FF. Administration – Other
- GG. TOTAL ADMINISTRATION COSTS. Total lines 29 through 32.

**IV. NET INCOME**

- HH. NET INCOME (LOSS). Item 2 minus item 28 minus item 33.

**V. OTHER**

- II. Enrollee Months. Total Enrollee months for period of time being reported.
- JJ. MEDICAL COST PER ENROLLEE MONTH. Item 28 divided by item 35
- KK. Number of Deliveries. Total number of deliveries when the delivery occurred at 24 weeks or later.

TABLE 3  
Utilization Data

Provider Name: \_\_\_\_\_  
Reporting Period: \_\_\_\_\_  
Period Paid (Cut-off Date): \_\_\_\_\_

|                         |   | CHIP<br>Plan A | CHIP<br>Plan B | CHIP<br>Plan C | CHIP<br>TOTALS |
|-------------------------|---|----------------|----------------|----------------|----------------|
| <b>MEDICAL SERVICES</b> |   |                |                |                |                |
|                         | Hospital Services                         |                |                |                |                |
| 1                       | General Days                              |                |                |                |                |
| 2                       | Discharges                                |                |                |                |                |
| 3                       | Outpatient Visits                         |                |                |                |                |
| 4                       | Emergency Department Visits               |                |                |                |                |
|                         | Physician Services                        |                |                |                |                |
| 5                       | Primary Care Services                     |                |                |                |                |
| 6                       | Specialty Care Services                   |                |                |                |                |
|                         | Vision Care                               |                |                |                |                |
| 7                       | Optometric Services                       |                |                |                |                |
| 8                       | Laboratory Procedures                     |                |                |                |                |
| 9                       | Radiology Procedures                      |                |                |                |                |
| 10                      | Physical Therapy Services                 |                |                |                |                |
| 11                      | Speech and Hearing Services               |                |                |                |                |
| 12                      | Podiatry Services                         |                |                |                |                |
| 13                      | ESRD Services                             |                |                |                |                |
| 14                      | Home Health Visits                        |                |                |                |                |
| 15                      | Hospice Days                              |                |                |                |                |
| 16                      | Medical Supplies                          |                |                |                |                |
| 17                      | Abortions and Sterilization Procedures    |                |                |                |                |
|                         | Mental Health Services                    |                |                |                |                |
| 18                      | Inpatient Hospital Services               |                |                |                |                |
| 19                      | Alternative Inpatient Services            |                |                |                |                |
| 20                      | Services & Procedures by M/H Professional |                |                |                |                |
| 21                      | Organ Transplants                         |                |                |                |                |
| 22                      | Other Outside Medical Services            |                |                |                |                |
| 23                      | Chiropractic Services                     |                |                |                |                |
| 24                      | Transportation Trips                      |                |                |                |                |
| 25                      | Pharmacy Prescriptions                    |                |                |                |                |

|    |                               |  |  |  |  |
|----|-------------------------------|--|--|--|--|
| 26 | Dental Visits (if applicable) |  |  |  |  |
|----|-------------------------------|--|--|--|--|

MEDICAL SERVICES UTILIZATION DEFINITIONS  
FOR TABLE 3

MEDICAL SERVICES

1. Hospital Services - General Days. Record total number of inpatient hospital days associated with inpatient medical care.
2. Hospital Services – Discharges. Record total number of inpatient hospital discharges.
3. Hospital Services - Outpatient Visits. Record total number of outpatient visits.
4. Emergency Department Visits. Record total number of emergency room visits.
5. Primary Care Physician Services. Number of services and procedures defined by CPT codes provided by primary care physicians or licensed physician extenders or assistants under direct supervision of a physician inclusive of all services except radiology, laboratory and injections/immunizations which should be reported in their appropriate section. The reporting of data under this category includes both outpatient and inpatient services.
6. Specialty Care Physician Services. Number of services and procedures defined by CPT codes provided by specialty care physicians or licensed physician extenders or assistants under direct supervision of a physician inclusive of all services except radiology, laboratory and injections/immunizations which should be reported in their appropriate section. The reporting of data under this category includes both outpatient and inpatient services.
7. Vision Care - Optometric Services. Number of optometric services and procedures performed by an optometrist.
8. Laboratory (Pathology) Procedures. Number of procedures defined by CPT codes under the Pathology and Laboratory section. Excluded are services performed in conjunction with a hospital outpatient or emergency department visit.
9. Radiology Procedures. Number of procedures defined by CPT codes under the Radiology section. Excluded are services performed in conjunction with a hospital outpatient or emergency department visit.
10. Physical Therapy Services. Physical therapy refers to physical therapy services and procedures performed by a physician or physical therapist.
11. Speech and Hearing Services. Number of services and procedures.
12. Podiatry Services. Number of services and procedures.
13. End Stage Renal Disease (ESRD) Services – Dialysis. Number of ESRD procedures provided upon referral.
14. Home Health Services. Number of home health visits, such as skilled nursing and personal care aide visits.



15. Hospice Days. Number of days hospice care is provided, including respite care.
16. Medical Supplies. Durable medical equipment such as wheelchairs, hearing aids, etc., and non-durable supplies such as oxygen.
17. Abortions and Sterilization Procedures. Number of procedures performed.
18. Mental Health Inpatient Hospital Services. Days of mental health inpatient hospital services.
19. Mental Health Alternative Inpatient Services. Days of mental health alternative inpatient services.
20. Services & Procedures by Mental Health Professional. Number of services and procedures defined by CPT codes provided by a psychiatrist, psychologist, clinical social worker, or other mental health professional.
21. Number of organ transplants.
22. Other Outside Medical Services. Specialized testing and outpatient surgical services ordered by Health Plan.
23. Chiropractic Services. Number of services and/or procedures performed.
24. Transportation Trips. Number of ambulance trips.
25. Pharmacy Prescriptions. Number of prescriptions.
26. Dental Services. The number of services and procedures based on American Dental Association (ADA) codes performed. *Do not report unless dental is covered under contract.*

## **RATES AND RELATED PROVISIONS**

**1. Premium Rates**

\$91.80 PMPM - July 1, 2014 to December 31, 2014

\$82.00 PMPM - January 1, 2015 to June 30, 2015

**2. Contract Year**

July 1, 2014 through June 30, 2015

**3. 100 % Risk Contract**

This contract is a 100% risk contract for the Health Plan with no stop loss or savings/ loss sharing provisions. The Department shall pay the Health Plan the premium per member per month as described in section 1. The Health Plan shall bear complete responsibility and risk for all expenditures related to this contract, including but not limited to medical, pharmacy, administration, and any other costs. Accordingly, all savings or losses that result from the difference between premium reimbursements and expenditures shall be retained by the Health Plan.