

MEMORANDUM OF AGREEMENT

BETWEEN

THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

FOR A SPECIAL NEEDS PLAN PURSUANT TO THE MEDICARE IMPROVEMENT FOR PATIENTS AND PROVIDERS ACT

WHEREAS, the Centers for Medicare and Medicaid Services (CMS) has a program to pay the cost-sharing for individuals who are dually eligible for Medicaid and Medicare coverage and are enrolled as members in a Medicare Advantage health benefit plan sponsored by a duly licensed and qualified insurance company or health maintenance organization (“Qualified Members”).

WHEREAS XXXXXXXXXXXXXXXX. (the “Contractor”), a duly licensed health maintenance organization/insurance company that has National Committee for Quality Assurance (NCQA) Model of Care (MOC) approval, sponsors Medicare Advantage plans in South Carolina and offers a plan(s) to dually eligible Medicaid and Medicare members to provide coverage for the Medicare services; and

WHEREAS the Contractor may choose which of these dually eligible beneficiaries to enroll in its Dual Special Needs Plan (D-SNP) based on the Special Needs Plan (SNP) type under the terms of this Memorandum of Agreement (MOA). Dual eligible categories in South Carolina are:

- Qualified Medicare Beneficiary Plus (QMB+)
- Special Low-Income Medicare Beneficiary (SLMB Only)
- Special Low-Income Medicare Beneficiary Plus (SLMB+)
- Qualifying Individual (QI)
- Qualified Disabled and Working Individual (QDWI)
- Full Benefit Dual Eligible (FBDE)

For the purposes of this MOA, the Contractor chooses to permit the following South Carolina dual eligibles to enroll in the following categories:

- Qualified Medicare Beneficiary Plus (QMB+)
- Special Low-Income Medicare Beneficiary Plus (SLMB+)
- Full Benefit Dual Eligible (FBDE)

NOW THEREFORE, in order to assure the efficient operation of the above-described program, the South Carolina Department of Health and Human Services (SCDHHS) and the Contractor agree as follows:

1. The Contractor shall provide Qualified Members enrolled in its plan(s) coverage in accordance with its Medicare Advantage contract with CMS to provide SNPs in South Carolina. The Contractor must retain responsibility for providing or arranging for benefits for individuals entitled to receive Medicare covered benefits under Title XIX, and any supplemental benefits filed by the Contractor and approved by CMS.
2. The Contractor will not provide Medicaid services. Medicaid services will continue to be provided by SCDHHS in accordance with the South Carolina State Plan for Medical Assistance (State Plan). The Contractor shall maintain current knowledge and familiarity of State Plan benefits through ongoing reviews of South Carolina laws, rules, and policies. A list of benefits provided by SCDHHS at the time of the execution of this MOA can be found as incorporated in Attachment B. After the execution of this MOA, any changes in Medicaid services will be available online at www.scdhhs.gov.
3. The Contractor will determine the benefits of its qualified members on an annual basis. Such benefits must be approved by CMS prior to January 1 of each successive calendar year.
4. The Contractor is responsible for coordinating the delivery of all benefits covered by both Medicare and the State Plan, including when Medicaid benefits are delivered via SCDHHS' fee-for-service and/or managed care plans. The Contractor must establish and maintain health service resources to ensure appropriate coordination and integration of Medicare and Medicaid benefits available to its qualified members. Such health services resources include, but are not limited to, dedicated programs and staff to support care management and case management services. The Contractor will establish individual care management programs for Qualified Members when specific healthcare services are offered by the Contractor or where benefits and services may be available through South Carolina's Medicaid program. This will include specific coordination to ensure Qualified Members have access to all services as part of the entire healthcare delivery continuum.
5. SCDHHS will follow its approved State Plan methodology for processing claims for Qualified Members. SCDHHS shall retain financial responsibility for applicable Medicaid cost-sharing obligations as detailed in the State Plan. If applicable, the Contractor will submit claims eligible for coordination of cost-sharing directly to SCDHHS for payment of any appropriate amounts as determined by SCDHHS.

6. The Contractor is prohibited from imposing cost-sharing requirements on Dual Eligible enrollees that would exceed the amounts permitted under the State Plan if the enrollee were not enrolled in the Contractor's Dual Eligible SNP per section 1852(a)(7) of the Social Security Act and 42 CFR §422.504(g)(1)(iii). Section 1902(n)(3)(B) of the Social Security Act prohibits a Medicare provider from billing a Dual Eligible Member with QMB benefits for Medicare cost sharing amounts, including deductibles, coinsurance, and copayments. A Dual Eligible Member with QMB benefits has no legal obligation to make further payment to a provider or to the Contractor for Medicare Part A or Part B cost sharing amounts. The Contractor assures that its contracts with participating providers contain provisions that require such participating providers to accept Medicare fee schedules plus enrollee cost sharing as payment in full. Under the Contractor's Dual Eligible SNP, participating providers may only collect such enrollee cost sharing as specified by the Contractor pursuant to the limitations of Beneficiary Enrollment and Financial Protection section of this MOA.
7. SCDHHS will provide its active Medicaid provider information monthly via a file transfer protocol (FTP) site. The link will be provided upon request by the Contractor. The Contractor will establish a reasonable process for updating its directory of providers and similar resources for qualified members to identify which of its contracted providers are also SCDHHS providers.
8. The Contractor must verify a person's Medicare and Medicaid eligibility. Medicaid eligibility may be verified by utilizing the South Carolina Medicaid Web-based Claims Submission Tool or an eligibility verification vendor.
9. The Contractor will make available a health insurance plan(s) providing certain benefits to qualified members who reside in the service area, as listed on Attachment A. Any plan(s) offered under this MOA must be approved by CMS. Additional counties may be added later to this MOA with CMS and SCDHHS approval. The Contractor must submit a written request to SCDHHS for additional counties.
10. The Contractor acknowledges and understands that this MOA is not effective until it has received all requisite state government approvals and the Contractor shall not begin performing work under this MOA until notified to do so by SCDHHS. This MOA is for the time period from January 01, 20XX through December 31, 20XX, unless terminated earlier in accordance with the terms of this MOA.
11. For high-risk members, defined as all Full Benefit Dual Eligible Members (QMB+ and FBDE), the Contractor shall provide timely notification of all

admissions to a hospital and skilled nursing facility (SNF) to SCDHHS. "Timely notification" is defined as monthly, submitted on or before the fifth day of the following month. The Contractor will upload a HL7 V3/V2 delimited file or other agreed upon format to appropriate shared file location. The file shall be organized and populated with the required data fields provided by SCDHHS and identify the Contractor's Full Benefit Dual Eligible Members who experienced a hospital or SNF admission that the D-SNP was made aware of within the previous month.

12. The Contractor must provide SCDHHS with copies of all CMS approved marketing materials, including oral and written solicitations, application and enrollment forms, policies and any other materials specifically related to the enrollment of qualified members in the plan(s) within forty-five (45) days after CMS approval.
13. Within forty-five calendar (45) days after the effective date of this MOA the Contractor will provide SCDHHS with a report containing its SNP enrollment by county at the initiation of the MOA and, if applicable, its enrollment by county for the contracting period. Within forty-five (45) days after the end of each calendar quarter, the Contractor will provide SCDHHS with a report containing its SNP quarterly enrollment by county and SCDHHS SNP HEDIS Care for Older Adults (COA) (i.e., Advance Care Planning, Medication Review, Functional Status Assessment, & Pain Assessment.)
14. Medicaid is the payor of last resort and will pay secondary to any third-party payment sources. Medicare benefits, including those offered by Contractor under its Plans, can also be secondary to third party payment sources. Under South Carolina state law, SCDHHS has both an assignment of rights to any other health coverage for a Medicaid recipient and subrogation rights to the extent Medicaid has paid for a service. The Contractor agrees to cooperate with SCDHHS to enforce third party liability, including procedures for appropriate coordination of benefits between Medicare and Medicaid. The Contractor may also utilize its own coordination of benefits procedures to identify other third-party payors and will provide SCDHHS with any third-party information gathered during this process.
15. The Division of Integrated Managed Care is the SCDHHS contact for administration of this program. The contact person for the Contractor shall be Dustin K. Welch, MHA, PAHM.
16. Qualified members will be enrolled and disenrolled in the Contractor's dual plan(s) according to CMS requirements. The Contractor shall be responsible for informing Qualified Members of the effective date of enrollment.

17. No later than April 1st of the then current MOA year, the Contractor will provide SCDHHS with written notice of any proposed changes for covered benefits under the plan(s) for the following year. SCDHHS shall have sixty (60) days from the date of receipt of the request from the Contract to review and/or approve the suggested changes.
18. Any modification of this MOA must be approved by SCDHHS and the Contractor and incorporated by written amendment to this MOA.
19. Should either party desire to terminate this MOA, the party terminating the MOA shall give notice of such termination in writing to the other party. Notice of termination shall be sent by certified mail, return receipt requested, and shall be effective ninety (90) days after the date of receipt, unless otherwise provided by law.
20. This MOA may be canceled or terminated by either party upon thirty (30) days' notice within the MOA period whenever it is reasonably determined by such party that the other party has materially breached or otherwise materially failed to comply with its obligations hereunder.
21. If any provision of this MOA is prohibited by the laws of the State of South Carolina, such provision shall be deemed ineffective without invalidating the remaining provisions of this MOA.
22. Each officer or employee of any person to whom Social Security information is or may be disclosed shall be notified in writing by such person that Social Security information disclosed to such officer or employee can be used only for authorized purposes and to that extent and any other unauthorized use herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the cost of prosecution. Such person shall also notify each officer or employee that any unauthorized further disclosure of Social Security information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars (\$1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR §301.6103(n). It is incumbent upon the contractor to inform its officers and employees of penalties for improper disclosure implied by the Privacy Act of 1974, 5 USC 552a. Specifically, 5 USC 552a(i)(1), which is made applicable to Contractors by 5 USC 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses that

material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

23. The Contractor agrees to comply with all applicable federal and state laws and regulations including constitutional provisions regarding due process and equal protection of the laws and including, but not limited to:
- a. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. §7401, et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251, et seq.)
 - b. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.) and regulations issued pursuant thereto (45 CFR Part 80, 2021, as amended), which provide that the Contractor must take adequate steps to ensure that persons with limited English skills receive, free of charge, the language assistance necessary to afford them meaningful and equal access to the benefits and services provided under this MOA.
 - c. Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e) in regard to employees or applicants for employment.
 - d. Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. §794), which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto (45 CFR Part 84 (2021, as amended)).
 - e. The Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 et seq.), which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
 - f. The Omnibus Budget Reconciliation Act of 1981, as amended, P.L. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
 - g. The Americans with Disabilities Act, (42 U.S.C. §12101 et seq.), and regulations issued pursuant thereto.
 - h. The Drug Free Workplace Acts, S.C. Code Ann. §44-107-10 et seq. (2018), and the Federal Drug Free Workplace Act of 1988 as set forth in 2 CFR Part 182 (2021, as amended).
 - i. The Code of Federal Regulations at 42 CFR Part 422 (2021, as amended).
 - j. Section 6002 of the Solid Waste Disposal Act of 1965 as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6962).

24. Upon knowing, The Contractor agrees to furnish to SCDHHS or to the USDHHS information on any person convicted of a criminal offense related to such persons involvement in any program under Medicare (Title XVIII), Medicaid (Title XIX), or the Social ServicesBlock Grant program as set forth in 42 CFR §455.106 (2021, as amended). Failure to comply with this requirement may lead to termination of this MOA.
25. The Contractor shall safeguard the use and disclosure of information concerning applicants for or recipients of Title XIX services in accordance with 42 CFR Part 431, Subpart F (2021, as amended), S.C. Code Ann. Regs. 126 - 170, et seq. (2011), and all other applicable state and federal laws and regulations and shall restrict access, use, and disclosure of such information in compliance with said laws and regulations.
26. If at any time during the term of this MOA, the Contractor becomes aware of or has reason to believe that, under this or any other program administered by SCDHHS, a recipient of or applicant for services, an employee of the Contractor or SCDHHS, and/or subcontractor or its employees, has improperly or fraudulently applied for or received benefits, monies, or services pursuant to this or any other MOA, such information shall be reported in confidence by the Contractor directly to SCDHHS.
27. This MOA shall be construed to be the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written amendment executed and approved pursuant to Paragraph 18 of this MOA.
28. It is mutually understood and agreed this MOA shall be governed by the laws of the state of South Carolina and federal laws as they pertain to the performance of services provided under this MOA.
29. The failure of SCDHHS at any time to require performance by the Contractor of any Contractor provision of this MOA shall in no way effect the right of SCDHHS to enforce any provision of this MOA; nor shall the SCDHHS' waiver of any breach of any provision be construed as a waiver of breach of such provision or as a waiver of the provision itself.
30. The parties hereby agree that the execution and any performance pursuant to this MOA does not constitute a waiver, each to the other, of any claims, rights, or obligations which shall or have arisen by virtue of any previous agreement between the parties. Any such claims, rights, or obligations are hereby preserved, protected, and reserved.
31. No assignment or transfer of this MOA or of any rights hereunder by the Contractor shall be valid without the prior written notice to SCDHHS. Notice of such intent to assign or transfer must be provided to SCDHHS within five

- (5) days of Contractor providing notice to CMS by providing to SCDHHS, at a minimum, a copy of the same information provided to CMS.
32. Any and all suits or actions for the enforcement of the obligations of this MOA and for any breach thereof, or for the review of a SCDHHS final agency decision with respect to this MOA or audit disallowances, must be brought pursuant to S.C. Code Ann. §1-23-380 (2005) and shall be instituted in any court of competent jurisdiction in the county of Richland, State of South Carolina.
 33. At the end of the term of this MOA, SCDHHS shall have the option to extend or renew this MOA upon the same terms and conditions as contained herein for a period not to exceed four (4) one (1) year terms.
 34. Individually identifiable health information is to be protected in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as agreed upon in Attachment C.
 35. All attachments referred to in this MOA are attached hereto, are expressly made a part, and incorporated as fully set forth herein.
 36. The Contractor agrees to comply with all applicable provisions of 2 CFR Part 180 (2021, as amended) as supplemented by 2 CFR Part 376 (2021, as amended), pertaining to debarment and/or suspension and require its subcontractors to comply with these same provisions to ensure that no party receiving funds from this MOA are listed on the government-wide exclusions in the System for Award Management (SAM).
 37. The Contractor hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this MOA by any Federal department or agency.
 38. The Contractor understands and agrees that all reports and assessments prepared by it pursuant to this MOA and requested by SCDHHS, including drafts, must be submitted to SCDHHS for its review and approval. The Contractor may not release or disclose, in any form, a report or assessment (including drafts) requested by SCDHHS to any person/entity without the express written consent of SCDHHS.
 39. The Contractor must maintain an accounting system with supporting fiscal records adequate to assure that claims for funds are in accordance with this MOA and all applicable laws, regulations, and policies. The Contractor further agrees to retain all financial and programmatic records, supporting documents, statistical records and other records of recipients relating to the delivery of care or service under this MOA, and as further required by SCDHHS. If any litigation, claim, or other actions involving the records have been initiated prior to the expiration of the five (5) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the five (5) year period, whichever is

later. This provision is applicable to any subcontractor and must be included in all subcontracts.

40. The Department (SCDHHS), HHS, CMS, the HHS Office of Inspector General, the State Comptroller, the State Auditor's Office, and the South Carolina Attorney General's (SCAG) Office, or any of their designees shall have the right to evaluate, through audit, inspection, or other means, whether announced or unannounced, any books, contracts, computer or other electronic systems of Subcontractor (or any subcontractor of Subcontractor) that pertain to any aspects of services and activities performed, or determination of amounts payable, under CONTRACTOR's contract with the Subcontractor, including those pertaining to quality, appropriateness and timeliness of services and the timeliness and accuracy of encounter data and Claims submitted to the CONTRACTOR.
 - a. The Subcontractor shall cooperate with these evaluations and inspections. The Subcontractor will make office workspace available for any of the above-mentioned entities or their designees when the entities are inspecting or reviewing any records related to the provision of services under this Subcontract. Subcontractor will make available, for purposes of an audit, evaluation or inspection, its premises, physical facilities, equipment, books, records, contracts, computer, or other electronic systems relating to its Medicaid enrollees.
 - b. The right to audit Subcontractor will exist through ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later. If the State, CMS, or the HHS Inspector General determines that there is a reasonable possibility of fraud or similar risk, the State, CMS, or the HHS Inspector General may inspect, evaluate, and audit the Subcontractor at any time.
41. The Contractor shall maintain contracts with participating providers whereby the Contractor assures adequate access and availability to Qualified Members for all medically necessary covered services in compliance with CMS access standards and guidelines. The Contractor must maintain policies and procedures to regularly monitor access and availability of such participating providers to ensure the Contractor consistently meets such access standards and guidelines. The Contractor agrees to maintain a contracted participating provider network which is qualified to serve the Qualified Members enrolled in the Contractor's plan, including any specific special medical care needs of such members which are covered benefits under the plan.
42. The Contractor is prohibited from contracting with any entity who is engaged in the boycott of a person, or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in S.C. Code Ann. § 11-35-5300 (Supp. 2020).

IN WITNESS WHEREOF, SCDHHS and the Contractor, by their authorized agents, in consideration of the mutual promises, covenants and conditions exchanged between them, have executed this MOA as of the _____ day of _____, 20XX.

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES
"SCDHHS"

XXXXXXXXXXXXXXXXXXXXX.

"The Contractor"

BY: _____
Robert M. Kerr
Director

BY: _____
Authorized Signature

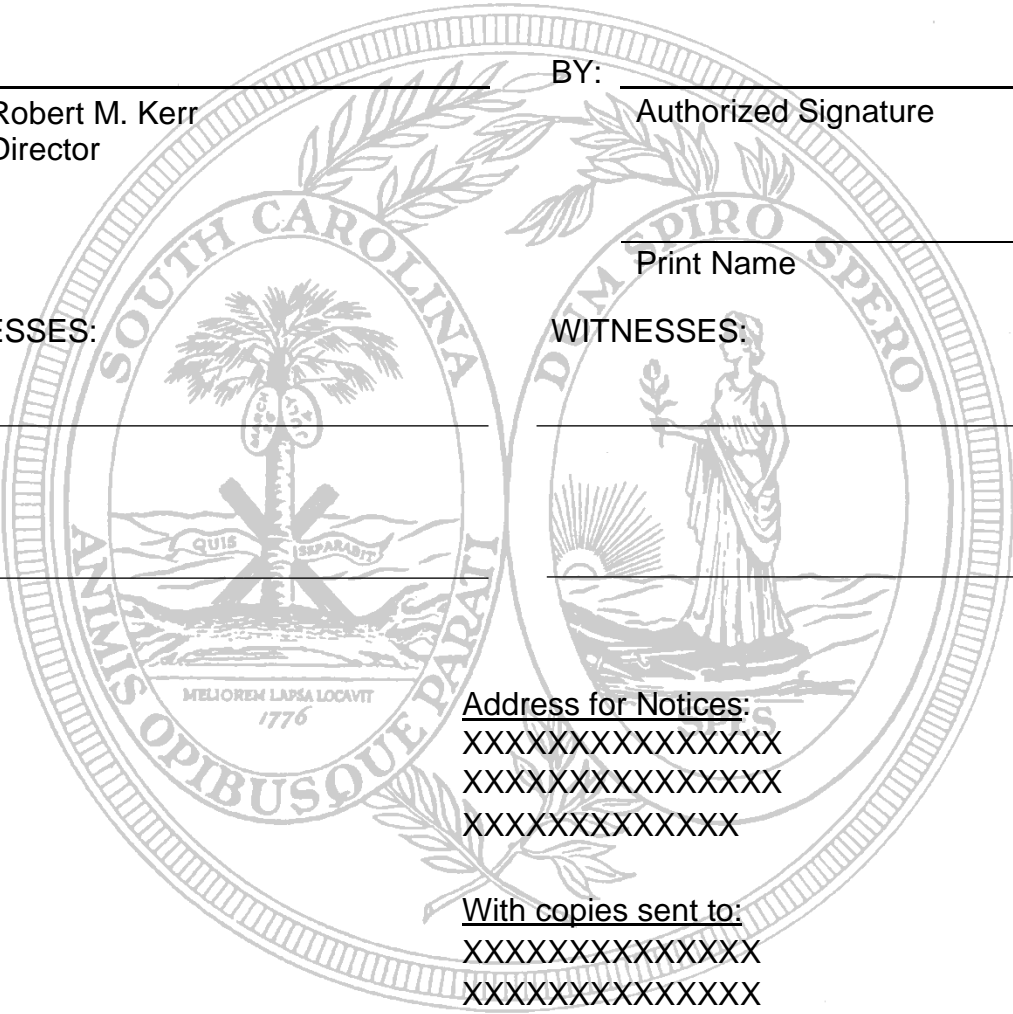
Print Name

WITNESSES:

WITNESSES:

Address for Notices:
XXXXXXXXXXXXXXXXXXXXX
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With copies sent to:
XXXXXXXXXXXXXXXXXXXXX
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ATTACHMENT A

Service Area

(By County)

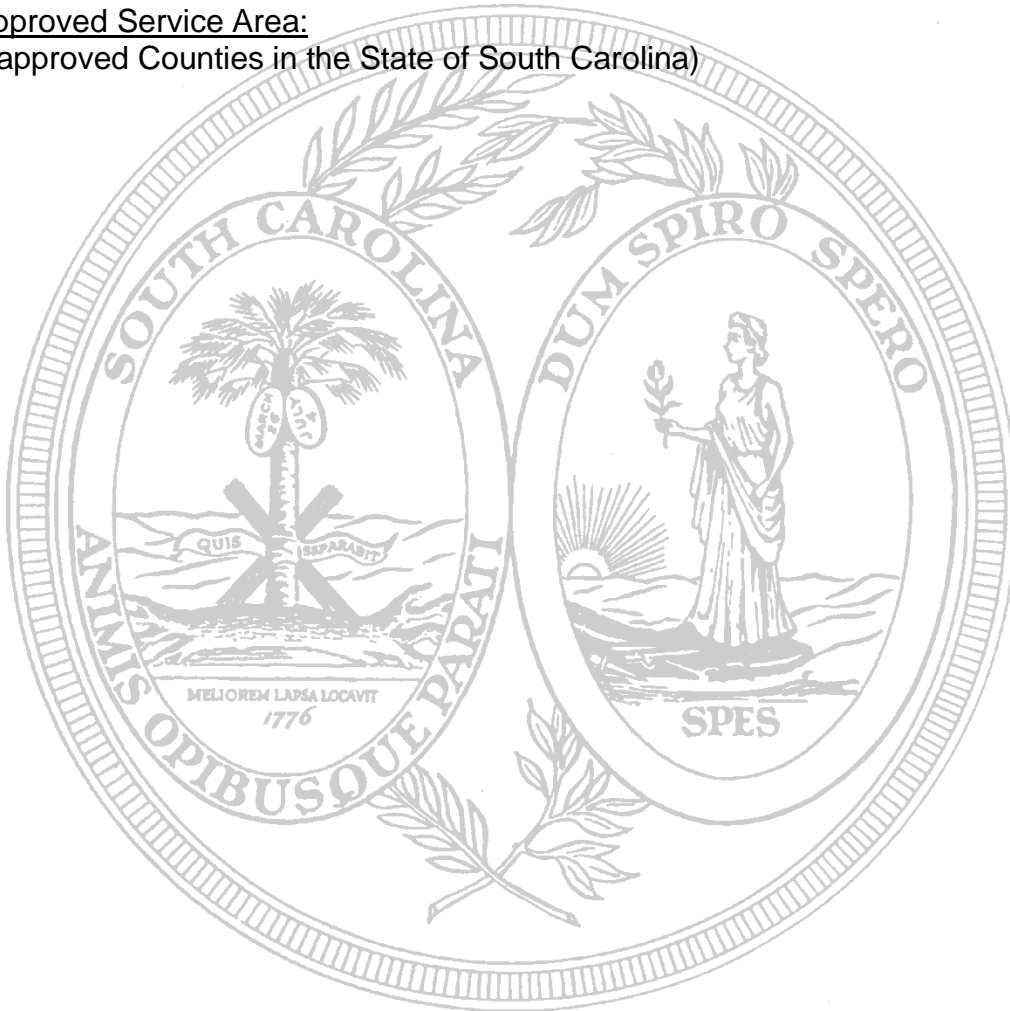
CMS Contract Code: XXXXX

Plan ID: XXX

Plan Name: XXXXXXXXXXXXX

CMS Approved Service Area:

(List of approved Counties in the State of South Carolina)



ATTACHMENT B

MEDICAID COVERED SERVICES

Within limits, Medicaid will pay for services that are medically necessary.

For Medicaid payment purposes, the following definitions apply:

Children - birth through 20 years of age
Adults - 21 years of age and older

Co-payments - The South Carolina Medicaid program requires many beneficiaries to pay a small part of their medical bill for some services called a co-payment. Certain groups do not pay co-payments for the medical services: children, pregnant women, individuals in a nursing home or receiving home and community-based waiver services, and individuals receiving family planning. Co-payments enable beneficiaries to assume some responsibility for their medical care. Co-payments are paid to the provider when services are rendered. The provider will tell the beneficiary when a co-payment is applicable.

Medicaid can pay for the following healthcare services:

- Hospital inpatient, outpatient, emergency room
- Lab and X-ray
- Doctor office visits (physician, nurse practitioner, midwife, podiatrist, chiropractor)
- Well childcare - EPSDT
- Well adult care
- Vision
- Dental
- Prescription drug (not all drugs are covered)
- Family Panning
- Medical equipment
- Hospice
- Ambulance
- Transportation to medical appointments
- Nursing facility
- ICF for individuals with intellectual disabilities
- Inpatient psychiatric care
- Home Health
- Physical therapy
- Speech/language therapy
- Mental health services
- Alcohol and drug abuse services
- Family support services
- Targeted case management
- Behavioral Health Services for emotionally disturbed children
- Home and Community based long-term care services

ATTACHMENT C

HIPAA BUSINESS ASSOCIATE AGREEMENT

A. Purpose

The South Carolina Department of Health and Human Services (Covered Entity) and Business Associate agree to the terms of this Agreement for the purpose of protecting the privacy of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in performing the functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract between the parties.

B. Definitions

General Statement

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, protected health information, Required by Law, Secretary, Subcontractor, Unsecured protected health information, and Use.

Specific definitions

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean [Arcadian Health Plan, Inc].
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean SCDHHS.
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Security incident. "Security incident" shall generally have the same meaning as the term "security incident" at 45 CFR 164.304.

C. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or ~~required~~ by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Submit system and program information to the Privacy Official, upon request, to document and verify compliance with federal and state privacy rules and regulations;

- (d) Report to the Privacy Official of the Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware within 72 hours of discovery;
- (e) Notwithstanding the requirements of 45 CFR 164.410, Business Associate shall notify the Privacy Official of the Covered Entity of potential breaches within 72 hours of discovery and keep the Privacy Official of the Covered Entity informed in their breach determination process;
- (f) Unless otherwise directed by Covered Entity, Business Associate shall be responsible for breach notifications to individuals, the US DHHS Office of Civil Rights (OCR), the media, and Consumer Affairs, if applicable, on behalf of Covered Entity and shall include Covered Entity's designee as part of the breach response team;
- (g) For breaches resulting from the action or inaction of Business Associate, or its subcontractors, surrounding the use, receipt, storage, and/or transmission of PHI and PII under this Agreement, be responsible for any and all costs, damages, liabilities, expenses, fines, and/or penalties;
- (h) In accordance with 45 CFR 164.502(e)(1) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements, to include reporting and notification requirements, that apply to the Business Associate with respect to such information;
- (i) All reporting or notifications requirements pursuant to letters (d), (e), (f), (g) and (h) above, should be submitted using the "Incident Reporting for Business Associates" form, addressed to the Privacy Official of the Covered Entity, by email to privacyoffice@scdhhs.gov. Additional contact information for the Privacy Official is:
 - South Carolina Department of Health and Human Services Privacy Office
 - Post Office Box 8206
 - Columbia, SC 29202-8206
 - Phone: (803) 898-2034
 - Fax: (803) 255-8276
- (j) Make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
- (k) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
- (l) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, or an individual if directed by Covered Entity, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
- (m) Notify Covered Entity within five (5) business days of receipt of any request covered under paragraphs (j), (k) or (l) above;

- (n) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
- (o) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

D. Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Contract to which this Agreement is appended, including, if applicable, authorization to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c) and follow additional guidance provided by US DHHS in "Guidance Regarding Methods for De-identification of protected health information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule" found at:
<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html>.
- (b) Business Associate may use or disclose protected health information as required by law.
- (c) Business Associate agrees to limit uses, disclosures, and requests for protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request according to the HIPAA Privacy Rule.
- (d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.
- (e) Business Associate may disclose protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the individual to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the individual, and the individual notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (f) Business Associate may not disclose, or duplicate protected health information identified by Covered Entity as provided by the Social Security Administration (SSA) without written approval and permission from SSA. If the need for such disclosure and/or duplication arises, Business Associate must notify Covered Entity and work with Covered Entity to obtain approval and permission from SSA.

E. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of and shall terminate on the effective and termination dates of the Contract to which this Agreement is appended, or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within thirty (30) calendar days.

(c) Obligations of Business Associate Upon Termination.

(1) Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity, or, if agreed to by Covered Entity, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity that the Business Associate still maintains in any form. Business Associate shall retain no copies of the protected health information.

(2) In the event that Business Associate determines that returning or destroying the protected health information is not practical or possible, Business Associate shall notify Covered Entity of the conditions and reasons return of the protected health information is not practical or possible. Upon concurrence by Covered Entity that return is not practical, Business Associate shall:

i. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;

iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information; and

iv. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section D of this Appendix.

(3) Business Associate shall obtain or ensure the destruction of protected health information created, received, or maintained by any subcontractors.

(4) Business Associate shall transmit the protected health information to another Business Associate of the Covered Entity at termination, upon receipt of a written request from the Covered Entity.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

F. Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(c) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.