

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES**

Agreement Between

State of South Dakota
Department of Social Services
DIVISION OF MEDICAL SERVICES
700 Governors Drive
Pierre, SD 57501-2291

Referred to as Provider

Referred to as State

The State hereby enters into a vendor-type contractual agreement.

1. PROVIDER'S South Dakota Vendor Number is .
2. PERIOD OF PERFORMANCE:
 - A. This agreement shall be effective as of the date of signing and shall end on May 31, 2020, unless sooner terminated pursuant to the terms hereof.
 - B. Agreement is exempt from the RFP process.
3. PROVISIONS:
 - A. The purpose of this Agreement is to set forth the terms and conditions by which the Provider shall coordinate and implement changes affecting federal funding for services received by Medicaid-eligible individuals, through referral by facilities of the Indian Health Service (IHS) or 638 tribal facilities. This payment methodology will allow the State of South Dakota to receive 100% federal match for services referred by IHS/638 tribal facility to a non-IHS/638 tribal facility.
 - B. Provider responsibilities.
 - A. Execute care coordination agreements with non-IHS providers to meet the "received through" payment methodology requirements per the Centers for Medicare and Medicaid Services (CMS).
 - B. Provide the Division of Medical Services with a copy of care coordination agreements with all non-IHS/638 tribal facilities. Annually certify the National Provider Identification (NPI) numbers associated with the care coordination agreement.
 - C. Notify the Division of Medical Services about any changes, modifications, or amendments to the care coordination agreement.

- D. Follow guidance set forth by CMS regarding the care coordination to include:
- i. The Provider will send a request or referral for specific services (by electronic or other verifiable means) and relevant information about the patient to the non-IHS/638 tribal facility.
 - ii. The Provider will continue to assume responsibility for the patient's care.
 - iii. The Provider will receive and incorporate the patient's information, tests, services, etc. in the medical record through Health Information Exchange or other agreed upon means such as outlined in the Care Coordination Agreement.
- E. Quarterly for the first year and biannually thereafter, provide the Division of Medical Services of no less than five (5) percent of Medicaid recipient records for review of CMS payment policy "received through" compliance.

C. State responsibilities:

- A. Pay Provider in accordance with Section 4.
- B. Provide communication, guidance and training to the Provider on requirements regarding CMS payment methodology on "received through" services to American Indian Medicaid-eligible individuals.
- C. Work collaboratively with the Provider to evaluate referral process and oversight of care.
- D. Review recipient records quarterly for the first year and annually thereafter to confirm requirements of CMS payment policy "referred through" are being followed.

4. PAYMENT:

The State agrees to make payment to Provider based on realized general fund savings generated by Provider, within each State fiscal year, pursuant to the terms of this agreement and the Centers for Medicare and Medicaid Services' (CMS) payment policy regarding services "received through" an IHS or 638 provider. The State's calculation of the amounts and fiscal-year timing of such Provider-generated general fund savings shall include use of claims-based data elements such as the National Provider Identification (NPI) and/or Pay to Provider numbers reflected in the Medicaid Management Information System (MMIS) and CMS-64 report.

Provider shall not be entitled to any portion of general fund savings until the State, within each State fiscal year, realizes from participating providers an aggregate total of \$3,000,000 in general fund savings, all of which shall be reserved for other purposes and ineligible for shared savings distribution. Provider is further ineligible to receive any portion of general fund savings until Provider, each State fiscal year, generates general fund savings based upon historical claims data that represents Provider's proportionate share of the \$3,000,000 in reserved savings. Provider's proportionate share requirement shall apply regardless of whether the State has realized from other participating providers reserved general fund savings of \$3,000,000. All general fund savings credited to Provider beyond those necessary to satisfy Provider's proportionate share – or necessary to account for proportionate share shortfalls from other participating providers – shall be subject to the following distribution provisions:

- A. If, in a State Fiscal Year, the State is able to demonstrate a general fund savings of \$500,000 or less, the State will make a payment of 5% of the State General Fund savings to the Provider.
- B. If, in a State Fiscal Year, the State is able to demonstrate a general fund savings of \$500,001 to \$1,000,000 the State will make a payment of 10% of the State General Fund savings to the Provider.
- C. If, in a State Fiscal Year, the State is able to demonstrate a general fund savings of \$1,000,000 or more, the State will make a payment of 15% of the State General Fund savings to the Provider.

Payment shall be made sixty (60) days after the completion of each State Fiscal Year.

Provider participation is voluntary. Nothing in this Agreement creates a financial obligation or liability of any kind that would require Provider to "pay in" or forfeit Medicaid reimbursement for services provided, even if the savings thresholds established by this Agreement are not satisfied.

The State reserves the right to withhold funds owed to the state for NPIs included under this agreement.

5. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services' rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. LICENSING AND STANDARD COMPLIANCE:

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Provider will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. ASSURANCE REQUIREMENTS:

The provider agrees to abide by all applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended.

8. RETENTION AND INSPECTION OF RECORDS:

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Provider.

9. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Provider breaches any of the terms or conditions hereof, this agreement may be terminated by the State for cause at any time, with or without notice. On termination of this agreement all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

10. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. AMENDMENTS:

This agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. CONTROLLING LAW:

This Contract shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. SUPERCESSION:

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

14. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this agreement, which shall remain in full force and effect.

15. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

16. CONFLICT OF INTEREST

Provider agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

17. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State if during the term of this Agreement, either it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

18. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

_____ Provider Signature	_____ Date
_____ State- DSS Division Director William Snyder	_____ Date
_____ State - DSS Chief Financial Officer Laurie Mikkonen	_____ Date
_____ State – DSS Secretary Lynne Valenti	_____ Date

State Agency Coding:

CFDA#	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person _____
Phone _____

DSS Fiscal Contact Person Contract Accountant
Phone 605 773-3586

Provider Program Contact Person _____
Phone _____
Provider Program Email Address _____

