

**CONTRACT BETWEEN  
WYOMING DEPARTMENT OF HEALTH, DIVISION OF HEALTHCARE  
FINANCING  
AND  
CONTRACTOR**

1. **Parties.** The parties to this Contract are Wyoming Department of Health, Division of Healthcare Financing (Agency), whose address is: 6101 Yellowstone Road Cheyenne, WY 82002, and Contractor.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall coordinate and implement an update in payment policy affecting federal funding for services received by Medicaid-eligible individuals, through facilities of the Indian Health Service (IHS) or 638 tribal facilities and referred for services “received through” non-IHS/638 tribal facilities. This payment methodology will allow the State of Wyoming to receive 100% federal match for services referred by IHS/638 tribal facility to a non-IHS/638 tribal facility.
3. **Term of Contract and Required Approvals.** This Contract is effective when all parties have executed it and all required approvals have been granted (Effective Date). The term of the Contract is from February 1, 2017 through June 30, 2022.

This Contract may be renewed twice by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the Agency.

By law, contracts for professional consultant or other services must be approved as to form by the Attorney General and approved by A&I Procurement, Wyo. Stat. § 9-1-403(b)(v), and all contracts for services costing over one thousand, five hundred dollars (\$1,500.00) must be approved by the Governor or his designee, Wyo. Stat. § 9-2-1016(b)(iv).

4. **Payment.** The Agency agrees to share achieved general fund savings for compliance of the Centers for Medicare and Medicaid Services’ (CMS) payment policy revision regarding services “received through” an IHS or 638 provider as described in Section 5 below. Total payment under this Contract shall not exceed one million five hundred thousand dollars (\$1,500,000). Payment shall be made based on realized state general fund savings calculated from claim paid dates for each state fiscal year and prorated to the Contractor based on the reported percentage of services referred from the Contractor to non-tribal providers. This will be determined using claims-based data elements to include the National Provider Identification (NPI) and/or Pay to Provider numbers in the Medicaid Management Information System (MMIS) (CMS-certified system) and reported on the CMS-64 report.
  - If, in a State Fiscal Year, the Agency is able to demonstrate a general fund savings of \$5,000,000 or less, the Agency will make a payment of 5% (\$250,000 max) of the State General Fund savings to the Contractor.

- If, in a State Fiscal Year, the Agency is able to demonstrate a general fund savings of \$5,000,000 to \$10,000,000, the Agency will make a payment of 7.5% (\$750,000 max) of the State General Fund savings to the Contractor.
- If, in a State Fiscal Year, the Agency is able to demonstrate a general fund savings of \$10,000,000 or more, the Agency will make a payment of 10% of the State General Fund savings to the Contractor.

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

No payment shall be made for reported savings prior to the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Agency.

**5. Responsibilities of Contractor.** The Contractor agrees to:

- A.** Execute care coordination agreements with non-IHS/638 tribal providers to meet the “received through” payment methodology requirements per the Centers for Medicare and Medicaid Services (CMS).
- B.** Provide the Division of Healthcare Financing with a copy of care coordination agreements with all non-IHS/638 tribal facilities.
- C.** Follow guidance set forth by CMS regarding the care coordination to include:
  - (i). The Contractor 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 Contractor will continue to assume responsibility for the patient’s care by assessing the information including any screenings, diagnostic or treatment procedures and taking appropriate action, including when necessary, furnishing or requesting additional services.
  - (iii). The Contractor 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 Continuum of Care Document (CCD) viewer.
- D.** Quarterly for the first year and biannually thereafter, provide the Division of Healthcare Financing of no less than five (5) client records for review of CMS payment policy “received through” compliance.
- E. **Compliance with HIPAA.**** Under the Health Insurance Portability and Accountability Act of 1996, the Contractor is required to comply with the Standards for Privacy and Security of Individually Identifiable Information contained in 45 CFR Parts 160 and 164 (the “HIPAA Privacy and Security Standards”), as amended. Contractor agrees to comply with these provisions as set out in

Attachment B, the Business Associate Agreement, which is attached hereto and incorporated herein by this reference.

6. **Responsibilities of Agency.** The Agency agrees to:
- A. Pay Contractor in accordance with Section 4 above.
  - B. Provide communication, guidance and training to the Contractor and non-IHS/638 tribal providers on requirements regarding CMS payment methodology on “received through” services to Native American clients.
  - C. Work collaboratively with the Contractor to evaluate referral process and oversight of care. Assist Contractor in determining system for receiving patient information.
  - D. Review patient files quarterly for the first year and biannually thereafter to confirm requirements of CMS payment policy “referred through” are being followed.

7. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.
- B. **Applicable Law/Venue.** The parties agree that this Contract shall be governed and interpreted according to federal laws and regulations. In the event a dispute arises under this Contract, jurisdiction will be in a court of competent jurisdiction.
- C. **Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof for collateral for any financial obligation without the prior written permission of the Agency.
- D. **Audit/Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data and records of the Contractor which are pertinent to this Contract

The Contractor shall immediately, upon receiving written instruction from the Agency, provide to any independent auditor or accountant all books, documents, papers, electronic data and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Agency.

- E. **Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for

the payment of this obligation. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed to permit the Agency to terminate this Contract to acquire similar services from another party.

- F. Award of Related Contracts.** The Agency may award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.
- G. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- H. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Agency within ten (10) days of such request and not release such information to a third party unless directed to do so by Agency.
- J. Entirety of Contract.** This Contract, consisting of [Insert number of pages, for example, "fourteen (14)"] \_\_\_\_\_ (\_\_\_) pages, *Attachment A*, [Title of document] *consisting of* \_\_\_\_\_ (\_\_\_) *page(s)*, and *Attachment B*, [Title of document] *consisting of* \_\_\_\_\_ (\_\_\_) *page(s)*, represent(s) the entire and integrated Contract between the parties and supersede(s) all prior negotiations, representations, and agreements, whether written or oral.
- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions/Renewals.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Agency and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and

without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

- N. Indemnification.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation, unemployment insurance and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.
- P. Monitoring Activities.** Agency shall have the right to monitor all activities related to this Contract that are performed by Contractor or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and, to observe personnel in every phase of performance of the related work.
- Q. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105 *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and/or any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the

performance under this agreement. Federal law requires the Contractor to include all relevant special provisions of this Contract in every subcontract awarded over ten thousand dollars (\$10,000.00) so that such provisions are binding on each subcontractor. Nothing in this paragraph will obligate the Tribe to comply with any law which by its terms does not apply to Indian tribes or has been held by a court of competent jurisdiction not to apply to Indian tribes nor will it prevent Contractor from providing Native American hiring preference

- R. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- S. Ownership and Destruction of Documents/Information.** Agency owns all documents, data compilations, reports, computer programs, photographs, data and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information/documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Agency confirming the destruction of any such residual Agency-owned data.
- T. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract until this Contract has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).
- U. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.
- V. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- W. Sovereign Immunity.** Except as noted herein, the State of Wyoming, the Department of Health and Tribe and its agency do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses

available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

**X. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

**Y. Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated by the Agency immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

If at any time during the performance of this Contract, in the opinion of the Agency, the work is not progressing satisfactorily or within the terms of this Contract, then at the sole discretion of the Agency and after written notice to the Contractor, the Agency may terminate this Contract or any part of it. As of the termination date, the Contractor will be entitled to a pro rata payment for all work accomplished and accepted by the Agency; however, the Contractor shall be liable to the Agency for the entire cost of replacement services for the duration of the contract term.

**Z. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

**AA. Time is of the Essence.** Time is of the essence in all provisions of this Contract.

**BB. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

**CC. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

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9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

**AGENCY:**  
WYOMING DEPARTMENT OF HEALTH

\_\_\_\_\_  
Thomas O. Forslund, Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Teri Green, State Medicaid Agent

\_\_\_\_\_  
Date

**CONTRACTOR:**  
[Insert full legal name of Contractor]

\_\_\_\_\_  
[Insert name and title of person signing for Contractor]

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

\_\_\_\_\_  
Susan O'Brien, Senior Assistant Attorney General

\_\_\_\_\_  
Date