

*Proposed Indian Addendum for Network Provider Contracts between Qualified Health Plans offered through an Exchange and a provider that is the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization. 3/21/11*

### **Addendum for Indian Health Care Providers**

#### **1. Purpose of Addendum; Supersession.**

The purpose of this Addendum for Indian Health Care Providers is to apply special terms and conditions necessitated by Federal law and regulations to the agreement by and between \_\_\_\_\_ (herein "Qualified Health Plan") and \_\_\_\_\_ (herein "Indian Health Care Provider"). To the extent that any provision of the Qualified Health Plan's network provider agreement or any other addendum thereto is inconsistent with any provision of this Addendum for Indian Health Care Providers, the provisions of this Addendum for Indian Health Care Providers shall supersede all such other provisions.

#### **2. Definitions.**

For purposes of the Qualified Health Plan's agreement, any other addendum thereto, and this Addendum for Indian Health Care Providers, the following terms and definitions shall apply:

- (a) "Qualified Health Plan" has the meaning given in Sec. 1301 of the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. §18021.
- (b) "Indian Health Care Provider" means the Indian Health Service (IHS), an Indian tribe, tribal organization or urban Indian organization.
- (c) "Indian Health Service" means the agency of that name within the U.S. Department of Health and Human Services established by Sec. 601 of the Indian Health Care Improvement Act (IHCIA), 25 USC §1661.
- (d) "Indian tribe" has the meaning given in Sec. 4 of the IHCIA, 25 USC §1603.
- (e) The term "tribal organization" has the meaning given in Sec. 4 of the IHCIA, 25 USC §1603.
- (f) "Urban Indian organization" has the meaning given in Sec. 4 of the IHCIA, 25 USC §1603.
- (g) The term "Indian" has the meaning given in 42 C.F.R. 447.50(b)(1).
- (h) The term "Federal health care program" has the meaning given in Sec. 408(b)(3) of the IHCIA, 25 U.S.C. §       .
- (i) The term "contract health services" has the meaning given in Sec. 4(5) of the IHCIA, 25 U.S.C. §1603(5).

#### **3. Description of Indian Health Care Provider.**

The Provider identified in Section 1 of this Addendum for Indian Health Care Providers is (check appropriate box):

The Indian Health Service (IHS).

/\_/ An Indian tribe that operates a health program under a contract or compact with the Indian Health Service issued pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 USC §450 *et seq.*

/\_/ A tribal organization authorized by one or more Indian tribes to operate a health program under a contract or compact with the ISDEAA, 25 USC §450 *et seq.*

/\_/ An urban Indian organization that operates a health program with funds provided under a grant from the Indian Health Service issued pursuant to Title V of the IHCA.

#### **4. Cost-Sharing Exemption for Indians; No Reduction in Payments.**

The Qualified Health Plan shall not impose any cost-sharing on an Indian enrollee who is furnished an item or service by the Indian Health Care Provider directly or through referral under contract health services, and shall not reduce the payment to the Indian Health Care Provider or contract health services provider that would otherwise be due from the Indian enrollee. ACA §1402(d) (2) (42 USC 18071(d)(2)).

#### **5. Persons eligible for items and services from Indian Health Care Provider.**

(a) The parties agree that the IHS is limited to serving eligible IHS beneficiaries pursuant to 42 CFR Part 136 and Sec. 813 of the IHCA, 25 USC §1680c.

(b) The parties agree that the Indian Health Care Provider that is an Indian tribe or a tribal organization or a Provider who is an urban Indian organization has the authority to limit its service population in accordance with the following authorities:

- (1) Sec. 813 of the IHCA, 25 USC §1680c;
- (2) 42 CFR Part 136; and
- (3) The terms of the contract, compact or grant issued to the Indian Health Care Provider by the IHS.

(c) No term or condition of the Qualified Health Plan's agreement or any addendum thereto shall be construed to change, reduce, expand or alter the eligibility of persons for services of the Indian Health Care Provider that is inconsistent with the authorities identified in subsection (a) or (b).

#### **6. Applicability of Other Federal laws.**

Federal laws and regulations affecting an Indian Health Care Provider, include but are not limited to the following:

(a) *The IHS as an Indian Health Care Provider:*

- (1) Anti-Deficiency Act 31 U.S.C. §1341;
- (2) Indian Self Determination and Education Assistance Act (ISDEAA) ; 25 USC §450 *et seq.*;
- (3) Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§2671-2680;
- (4) Federal Medical Care Recovery Act, 42 U.S.C. §§2651-2653;
- (5) Federal Privacy Act of 1974 ("Privacy Act"), 5 U.S.C. §552a, 45 CFR Part 5b;
- (6) Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
- (7) Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45C.F.R. Parts 160 and 164; and
- (8) IHCA, 25 U.S.C. §1601 *et seq.*

(b) *An Indian tribe or a tribal organization that is an Indian Health Care Provider:*

- (1) ISDEAA, 25 USC §450 *et seq.*;
- (2) IHCA, 25 USC §1601, *et seq.*;
- (3) FTCA, 28 USC §§2671-2680;
- (4) Privacy Act, 5 USC §552a and regulations at 45 CFR Part 5b; and
- (5) HIPAA, and regulations at 45 CFR parts 160 and 164.

(c) *An urban Indian organization that is an Indian Health Care Provider:*

- (1) IHCA, 25 USC §1601, *et seq.*;
- (2) Privacy Act, 5 USC §552a and regulations at 45 CFR Part 5b; and
- (3) HIPAA, and regulations at 45 CFR parts 160 and 164.

## **7. Non-taxable entity.**

To the extent an Indian Health Care Provider is a non-taxable entity, such Provider shall not be required by a Qualified Health Plan to collect or remit any Federal, State, or local tax.

## **8. Insurance and indemnification.**

(a) *Indian Health Service.* The Indian Health Service is covered by the Federal Tort Claims Act (FTCA) which obviates the requirement that IHS carry private malpractice insurance as the United States consents to be sued in place of federal employees for any damages to property or for personal injury or death caused by the negligence or wrongful act or omission of federal employees acting within the scope of their employment. 28 U.S.C. §2671-2680. Nothing in the Qualified Health Plan's agreement shall be interpreted to authorize or obligate any IHS employee to perform any act outside the scope of his/her employment. The IHS shall not be required to acquire insurance, provide indemnification, or guarantee that the Qualified Health Plan will be held harmless from liability.

(b) *Indian Tribes and Tribal Organizations.* An Indian Health Care Provider which is an Indian tribe or a tribal organization shall not be required to obtain or maintain professional liability insurance to the extent such Provider is covered by the Federal Tort Claims Act (FTCA) pursuant to Federal law (Pub.L. 101-512, Title III, §314, as amended by Pub.L. 103-138, Title III, §308 (codified at 25 USC §450f note); and regulations at 25 CFR Part 900, Subpt. M. Nothing in the Qualified Health Plan's agreement or any addendum thereto shall be interpreted to authorize or obligate such Provider or any employee of such Provider to operate outside of the scope of employment of such employee. Such Provider shall not be required to acquire insurance, provide indemnification, or guarantee that the Qualified Health Plan will be held harmless from liability.

(c) *Urban Indian Organizations.* To the extent an Indian Health Care Provider that is an urban Indian organization is covered by the FTCA pursuant to section 224(g)-(n) of the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act, Pub.L. 104-73, (codified at 42 USC §233(g)-(n)) and regulations at 42 CFR Part 6, such Provider shall not be required to obtain or maintain professional liability insurance. Nothing in the Qualified Health Plan's agreement or any addendum thereto shall be interpreted to authorize or obligate such Provider or any employee of such Provider to operate outside of the scope of employment of such employee. Such Provider shall not be required to acquire insurance, provide indemnification, or guarantee that the Qualified Health Plan will be held harmless from liability.

**9. Licensure of Health Care Professionals.**

(a) *Indian Health Service.* States may not regulate the activities of IHS-operated health care programs nor require that IHS health care professionals be licensed in the State where they are providing services, whether the IHS employee is working at an IHS-operated facility or has been assigned to a health care program of a tribe, tribal organization or urban Indian organization. The parties agree that during the term of the Qualified Health Plan's agreement, IHS health care professionals shall hold state licenses in accordance with applicable federal law, and that IHS facilities shall be accredited in accordance with federal statutes and regulations.

(b) *Indian tribes and tribal organizations.* Sec. 221 of the IHCA (25 U.S.C. §1621t) exempts a health care professional employed by an Indian tribe or tribal organization from the licensing requirements of the state in which such tribe or organization performs services, provided the health care professional is licensed in any state. Sec. 408 of the IHCA (25 U.S.C. §\_\_\_\_) provides that a health program operated by an Indian tribe or tribal organization shall be deemed to have met a requirement for a license under state or local law if such program meets all the applicable standards for such licensure, regardless of whether the entity obtains a license or other documentation under such state or local law. The parties agree that these federal laws apply to the Qualified Health Plan's agreement and any addenda thereto.

(c) *Urban Indian organizations.* To the extent that any health care professional of an urban Indian Provider is exempt from State regulation, such professional shall be deemed qualified to perform services under the Qualified Health Plan Sponsor's agreement and all addenda thereto, provided such employee is licensed to practice in any State. Sec. 408 of the IHCA (25 U.S.C. §\_\_\_\_) provides that a health program operated by an urban Indian organization shall be deemed to have met a requirement for a license under state or local law if such program meets all the applicable standards for such licensure, regardless of whether the entity obtains a license or other documentation under such state or local law.

**10. Licensure of Provider; eligibility for payments.**

To the extent that the Indian Health Care Provider is exempt from State licensing requirements, such Provider shall not be required to hold a State license to receive any payments under the Qualified Health Plan's agreement and any addendum thereto.

**11. Dispute Resolution.**

In the event of any dispute arising under the Qualified Health Plan's agreement or any addendum thereto, the parties agree to meet and confer in good faith to resolve any such disputes. The laws of the United States shall apply to any problem or dispute hereunder that cannot be resolved by and between the parties in good faith. Notwithstanding any provision in the Qualified Health Plan's agreement or any addendum thereto to the contrary, the Indian Health Care Provider shall not be required to submit any disputes between the parties to binding arbitration.

**12. Governing Law.**

The Qualified Health Plan's agreement and all addenda thereto shall be governed and construed in accordance with Federal law of the United States. In the event of a conflict between such agreement and all addenda thereto and Federal law, Federal law shall prevail. Nothing in the Qualified Health Plan's agreement or any addendum thereto shall subject an Indian tribe, tribal organization, or urban Indian organization to State law to any greater extent than State law is already applicable.

**13. Medical Quality Assurance Requirements.**

To the extent the Qualified Health Plan imposes any medical quality assurance requirements on its network providers, any such requirements applicable to Indian Health Care Providers shall be subject to Sec. 805 of the IHCIA (25 U.S.C. §1675).

**14. Claims Format.**

Pursuant to Sec. 206(h) of the IHCIA (25 USC §1621e(h)), the Qualified Health Plan may not deny a claim submitted by the Indian Health Care Provider based on the format in which submitted if the format used complies with that required for submission of claims under Title XVIII of the Social Security Act or recognized under section 1175 of such Act.

**15. Payment Rate.**

The Qualified Health Plan shall pay claims from the Indian Health Care Provider in accord with Federal law, including Sec. 206 of the IHCIA (25 U.S.C. §1621e), and Sec. 1402(d)(2)(B) of the ACA (42 U.S.C. §18071(d)(2)(B)).

**16. Hours and Days of Service.**

The hours and days of service of the Indian Health Care Provider shall be established by such Provider. At the request of the Qualified Health Plan, such Provider shall provide written notification of its hours and days of service.

**17. Sovereign Immunity.**

Nothing in the Qualified Health Plan's agreement or in any addendum thereto shall constitute a waiver of federal or tribal sovereign immunity.

**18. Endorsement.**

An endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by the IHS provider or IHS employees in their official capacities and titles. Such agency names and positions may not be used to suggest official endorsement or preferential treatment of any non-Federal entity under this agreement.

**APPROVALS**

**For the Qualified Health Plan:**

**For the Indian Health Care Provider:**

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\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_