

**Model Washington State  
Indian Health Care Provider Addendum**

**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 network provider agreement by and between \_\_\_\_\_ (herein "issuer") and \_\_\_\_\_ (herein "Provider"). To the extent that any provision of the Issuer's network provider agreement or any other addendum thereto is inconsistent with any provision of this Addendum, the provisions of this Addendum shall supersede all such other provisions.

**2. Definitions.**

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

- (a) "Contract health services" has the meaning given in IHCIA Sec. 4(5), 25 U.S.C. §1603(5).
- (b) "Indian," has the meaning given in the IHCIA Section 4, 25 U.S.C. § 1603 and the Indian Self-Determination and Education Assistance Act (ISDEAA) Section 4(d), 25 U.S.C. § 450b.
- (c) "Provider" means a health program administered by the Indian Health Service (IHS), a tribal health program, an Indian tribe or tribal organization to which funding is provided pursuant to 25 U.S.C. § 47 (commonly known as the "Buy Indian Act"), or an urban Indian organization that receives funding from the IHS pursuant to Title V of the IHCIA (Pub. L. 94-437), as amended, and is identified by name in Section 1 of this Addendum.
- (d) "Indian Health Service or IHS" means the agency of that name within the U.S. Department of Health and Human Services established by IHCIA Section 601, 25 USC § 1661.
- (e) "Indian tribe" has the meaning given in IHCIA Section 4(14), 25 USC § 1603(14).
- (f) "Qualified Health Plan" has the meaning given in Section 1301 of the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. §18021.
- (g) "Tribal health program" has the meaning given in IHCIA Section 4(25), 25 U.S.C. § 1603(25).
- (h) "Tribal organization" has the meaning given in IHCIA Section 4(26), 25 U.S.C. §1603(26).
- (f) "Urban Indian organization" has the meaning given in IHCIA Section 4(29), 25 U.S.C. §1603(29).

**3. Description Provider.**

The Provider identified in Section 1 of this Addendum is (check appropriate box):

The IHS.

An Indian tribe that operates a health program under a contract or compact to carry out programs of the IHS pursuant to the ISDEAA, 25 U.S.C. §450 et seq.

A tribal organization that operates a health program under a contract or compact to carry out programs of the IHS pursuant to the ISDEAA, 25 U.S.C. §450 et seq.

A tribe or tribal organization that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. § 47 (commonly known as the Buy Indian Act).

An urban Indian organization that operates a health program with funds in whole or part provided by IHS under a grant or contract awarded pursuant to Title V of the IHCIA.

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

- (a) The parties acknowledge that eligibility for services at the Provider's facilities is determined by federal law, including the IHCIA, 25 U.S.C. § 1680c, et seq. and/or 42 C.F.R. Part 136. Nothing in this agreement shall be construed to in any way change, reduce, expand, or alter the eligibility requirements for services through the Provider's programs.
- (b) No term or condition of the Issuer's agreement or any addendum thereto shall be construed to require the Provider to serve individuals who are ineligible under federal law for services from the Provider. The Issuer acknowledges that pursuant to 45 C.F.R. 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for services from the Provider.

**5. Applicability of Other Federal laws.**

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

(a) The IHS as a Provider:

- (1) Anti-Deficiency Act 31 U.S.C. § 1341;
- (2) 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 C.F.R. 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”), 45 C.F.R. Parts 160 and 164; and
- (8) IHCIA, 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 U.S.C. §450 *et seq.*;
- (2) IHCIA, 25 U.S.C. §1601, *et seq.*;
- (3) FTCA, 28 U.S.C. §§2671-2680;
- (4) HIPAA, 45 C.F.R. Parts 160 and 164.

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

- (1) IHCIA, 25 USC §1601, et seq. (including without limitation pursuant to IHCIA Section 206(e)(3), 25 U.S.C. § 1621e(e)(3), regarding recovery from tortfeasors);
- (2) Privacy Act, 5 U.S.C. § 552a, 45 C.F.R. Part 5b; and
- (3) HIPAA, 45 CFR parts 160 and 164.

**6. Non-taxable entity.**

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

## **7. Insurance and Indemnification.**

- (a) *Indian Health Service.* IHS is covered by the 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 issuer'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 issuer will be held harmless from liability.
- (b) *Indian Tribes and Tribal Organizations.* A 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 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 U.S.C. §450f note); and regulations at 25 C.F.R. Part 900, Sub. pt. M. Nothing in the issuer network provider 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 issuer will be held harmless from liability.
- (c) *Urban Indian Organizations.* To the extent a 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)), 42 CFR Part 6, such Provider shall not be required to obtain or maintain professional liability insurance. Nothing in the issuer network provider 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 issuer will be held harmless from liability.

## **8. 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 issuer'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. The parties agree that these federal laws, including 25 U.S.C. § 1647a, apply to the issuer'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 issuer's agreement and all addenda thereto, provided such employee is licensed to practice in any state. The parties agree that this federal law applies to the issuer's agreement and any addenda thereto.

### **9. Licensure of Provider; Eligibility for payments.**

To the extent that the Provider is exempt from state licensing requirements, such Provider shall not be required to hold a state license to receive any payments under the issuer network provider agreement and any addendum thereto.

### **10. Dispute Resolution.**

In the event of any dispute arising under the issuer'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 Issuer'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.

### **11. Governing Law.**

The issuer's network provider 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 issuer's network provider 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.

### **10. Medical Quality Assurance Requirements.**

To the extent the issuer imposes any medical quality assurance requirements on its network providers, any such requirements applicable to the Provider shall be subject to Section 805 of the IHCA, 25 U.S.C. §1675.

### **11. Claims Format.**

Pursuant to Sec. 206(h) of the IHCA, 25 USC §1621e(h), the issuer may not deny a claim submitted by the 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.

### **12. Payment of Claims.**

As set forth in Section 206(a) of the Indian Health Care Improvement Act, 25 U.S.C. 1621e(a), the issuer shall reimburse the Indian health care provider the reasonable charges billed or, if higher, the highest amount the issuer would pay for equivalent care and services furnished by nongovernmental providers who are within that service area even if the Indian health care provider is not a contract provider.

Pursuant to Sec. 206(c), 25 U.S.C. 1621e(c), no provision of any contract, insurance or health maintenance organization policy, employee benefit plan, self-insurance plan, managed care plan, or other health care plan or program entered into or renewed after November 23, 1988, shall prevent or hinder the right of recovery of an Indian health care provider under this section. A qualified health plan issuer's

payments to an Indian provider shall be in accordance with Section 1402(d)(2)(B) of the Affordable Care Act, 42 U.S.C. 18071(d)(2)(B) which provides that the issuer of the plan shall not reduce the payment to any entity for such item or service by the amount of any cost-sharing that would be due from the Indian but for the cost-sharing provisions in Section 1402(d)(2)(A).

**15. Hours and Days of Service.**

The hours and days of service of the Provider shall be established by such Provider. At the request of the issuer, such Provider shall provide written notification of its hours and days of service.

**16. Contract Health Service Referral Requirements.**

The issuer may not require the Provider to make referrals to the issuer's participating network providers if the Provider determines that such referrals would conflict with federal law or referral requirements under the contract health service program.

**17. Sovereign Immunity.**

Nothing in the issuer network provider 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 Issuer:**

**For the Provider:**

Date \_\_\_\_\_

Date \_\_\_\_\_