

AMERIHEALTH CARITAS DELAWARE, INC.

PHYSICIAN PROVIDER AGREEMENT

With

SAMPLE

**AMERIHEALTH CARITAS DELAWARE, INC.
PHYSICIAN PROVIDER AGREEMENT**

This Physician Provider Agreement (the “Agreement”), dated as of the Effective Date (defined below), is made by and between **AmeriHealth Caritas Delaware, Inc.**, a corporation organized under the laws of the State of Delaware, (hereinafter referred to as (“ACDE”) and the Provider (“Provider”) identified on the signature page.

WHEREAS, ACDE is a managed care organization that is responsible for providing or arranging for the provision of health care services to its Members; and

WHEREAS, Provider and ACDE mutually desire to enter into this Agreement, whereby Provider shall render services to Members enrolled with ACDE and be compensated by ACDE in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual promises made herein, it is mutually agreed by and between ACDE and Provider as follows:

1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the meaning specified herein, unless the context clearly requires otherwise.

- 1.1 **AFFILIATES.** An Affiliate is any corporation or other organization that is identified as an Affiliate in a written notice to Provider and is owned or controlled, either directly or through parent or subsidiary corporations, by or under common control with, ACDE shall give Provider thirty (30) days advance written notice of the addition of Affiliates added under this provision. Unless otherwise specified in this Agreement or any other attachment hereto, references to “ACDE” shall include the Affiliates referenced in **Appendix D**.
- 1.2 **AGENCY.** The State and/or Federal governmental agency that administers the Program(s) under which ACDE is obligated to provide or arrange for the provision of Covered Services.
- 1.3 **AGENCY CONTRACT.** The contract or contracts between ACDE and the Agency, as in effect from time to time, pursuant to which ACDE is responsible for coordinating health care services and supplies for Program recipients enrolled with ACDE.
- 1.4 **CLEAN CLAIM.** A claim for payment for a health care service, which has been received by ACDE, has no defect or impropriety. A defect or impropriety shall include a lack of required substantiating documentation or a particular circumstance requiring special treatment that prevents timely payment from being made on the claim. Consistent with **42 CFR §447.45(b)**, the term shall not include a claim from a health care provider who is under investigation for fraud or abuse regarding that claim, or a claim under review for medical necessity.

- 1.5 **COVERED SERVICES.** Those Medically Necessary health care services and supplies to which Members are entitled pursuant to the Agency Contract, and which shall be provided to Members by Provider, as described more specifically in **Appendix A**. Covered Services shall be furnished in the amount, duration and scope required under the Program.
- 1.6 **EFFECTIVE DATE.** The later of (i) the effective date on the signature page of this Agreement or (ii) the effective date of the Agency Contract, provided that Provider has been successfully credentialed by ACDE and that all required regulatory approvals have been obtained by ACDE.
- 1.7 **EMERGENCY MEDICAL CONDITION.** Health care services provided to a Member after the sudden onset of a medical condition that manifests itself by acute symptoms of sufficient severity or severe pain, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:
- (a) Placing the health of the Member (or with respect to a pregnant woman, the health of the Member or her unborn child) in serious jeopardy;
 - (b) Serious impairment to bodily functions; or
 - (c) Serious dysfunction of any bodily organ or part.
- 1.8 **EMERGENCY SERVICES.** Covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services under 42 C.F.R. Section 438.114(a) and 42 U.S.C. Section 1932(b)(2) and that are needed to screen, evaluate, and stabilize an Emergency Medical Condition.
- 1.9 **GROUP PHYSICIAN.** A physician who practices with Provider as an employee, partner, shareholder, or contractor.
- 1.10 **MEDICALLY NECESSARY.** Pursuant to the Agency Contract, Medical Necessity is defined as the essential need for health care or services which, when delivered by or through authorized and qualified providers, will:
- (a) be directly related to the diagnosed medical condition or the effects of the condition of the Member (the physical or mental functional deficits that characterize the Member's condition), and be provided to the Member only;
 - (b) be appropriate and effective to the comprehensive profile (e.g., needs, aptitudes, abilities, and environment) of the Member and the Member's family;
 - (c) be primarily directed to the diagnosed medical condition or the effects of the condition of the Member, in all settings for normal activities of daily living (ADLs), but will not be solely for the convenience of the Member, the Member's family, or the Member's provider;
 - (d) be timely, considering the nature and current state of the Member's diagnosed condition and its effects, and will be expected to achieve the intended outcomes in a reasonable time;
 - (e) be the least costly, appropriate, available health service alternative, and will represent an effective and appropriate use of funds;

- (f) be the most appropriate care or service that can be safely and effectively provided to the Member, and will not duplicate other services provided to the Member;
- (g) be sufficient in amount, scope and duration to reasonably achieve its purpose;
- (h) be recognized as either the treatment of choice (e.g., prevailing community or Statewide standard) or common medical practice by the practitioner's peer group, or the functional equivalent of other care and services that are commonly provided; and
- (i) be rendered in response to a life-threatening condition or pain, or to treat an injury, illness, or other diagnosed condition, or to treat effects of a diagnosed condition that has resulted in or could result in a physical or mental limitation, including loss of physical or mental functionality or developmental delay.

And will be reasonably determined to:

- (j) diagnose, cure, correct or ameliorate defects and physical and mental illnesses and diagnosed conditions or the effects of such conditions; or
- (k) prevent the worsening of conditions or effects of conditions that endanger life or cause pain, or result in illness or infirmity, or have caused or threaten to cause a physical or mental dysfunction, impairment, disability, or developmental delay; or
- (l) effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an institutional setting or other Medicaid program; or
- (m) restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury, or condition; or
- (n) provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition.

In order that the Member might attain or retain independence, self-care, dignity, self-determination, personal safety, and integration into all natural family, community and facility environments, and activities.

ACDE shall not arbitrarily deny or reduce the amount, duration or scope of a Medically Necessary service solely because of Member's diagnosis, type of illness or condition. ACDE shall determine Medical Necessity on a case-by-case basis and in accordance with the foregoing definition.

Agency Contract, §3.4.5.

- 1.11 **MEMBER.** An individual that is eligible for a Program and who has enrolled in ACDE under the Program.
- 1.12 **MEMBER APPEAL PROCEDURES.** The written procedures describing ACDE's standards for the prompt resolution of Member problems, grievances and appeals, as described in the Provider Manual.

- 1.13 **PARTICIPATING PROVIDER.** A physician duly licensed to practice medicine in the State of Delaware participating in or eligible to participate in the Delaware Medicaid program, and who is a member of the medical staff of a(n) ACDE- participating hospital, or a licensed, appropriately supervised allied health professional, either of whom has entered into, or who is recognized by ACDE as a member of a group which has entered into, an agreement with ACDE to provide medical services to Members under the Program.
- 1.14 **PRIMARY CARE PROVIDER.** A duly licensed pediatrician, internist, family practitioner, or doctor of general medicine, obstetrician/gynecologist or group thereof or a licensed, appropriately supervised allied health professional, who has been successfully credentialed by, and is a Participating Provider with ACDE, and who is responsible for the supervision, coordination, and provision of primary care services to Members who have selected, or have been assigned to, that provider. The Primary Care Provider also is responsible for initiating any required referrals for specialty care needed by a Member and maintaining overall continuity of a Member's care.
- 1.15 **PRIMARY CARE SERVICES.** Covered Services specified in **Appendix A** hereto and any additional services specified as Primary Care Services in the Provider Manual, as updated or amended from time to time. All Covered Services shall be provided in the amount, duration and scope set forth in the State Contract and as otherwise required under the Program.
- 1.16 **PROGRAM.**
- (a) Diamond State Health Plan (DSHP) – The program that provides services through a managed care delivery system to individuals who receive TANF (including children who qualify for Title IV-E foster care and adoption assistance and pregnant women), individuals who receive SSI but are not eligible for Medicare, adults age 19 to 64 who are not eligible for Medicare with income levels up to 133% of the federal poverty level, and children in the Delaware Healthy Children Program (DHCP).
 - (b) DSHP Plus – The program that provides services through a managed care delivery system to SSI children and adults with Medicare, and individuals participating in the Medicaid for Workers with Disabilities (Medicaid Buy-In) program.
- 1.17 **PROVIDER MANUAL.** The ACDE manual of standards, policies, procedures and corrective actions together with amendments or modifications ACDE may adopt from time to time. The Provider Manual is herein incorporated by reference and made part of this Agreement. The Provider Manual may be amended or modified by ACDE from time to time in accordance with **Section 4.8** herein below.
- 1.18 **QUALITY MANAGEMENT PROGRAM.** An ongoing review process and plan which functions to define, monitor, review, and recommend corrective action for managing and improving the quality of health care services to Members.
- 1.19 **SPECIALTY CARE PROVIDER.** A duly licensed physician who has been successfully credentialed by ACDE and who has entered into an agreement to provide Specialty Care Services to Members in accordance with the referral and preauthorization requirements of the Provider Manual.
- 1.20 **SPECIALTY CARE SERVICES.** Covered Services specified in **Appendix A** hereto and any additional specified as “Specialty Care Services” in the Provider Manual, as updated and amended from time to time.

1.21 **UTILIZATION MANAGEMENT PROGRAM.** A process of review of the medical necessity, appropriateness and efficiency of health care services, procedures, equipment, supplies, and facilities rendered to Members.

2. SERVICES:

- 2.1 Provider agrees to provide and cause its Group Physicians to provide, as applicable, (i) Primary Care Services to Members who have selected, or are otherwise assigned to, Provider as their Primary Care Provider, and (ii) Specialty Care Services to Members who have been referred to Provider. Covered Services shall be provided in accordance with the terms of this Agreement and ACDE referral, preauthorization and other Utilization Management Program polices as described in the Provider Manual, other than Emergency Services, which will be provided as needed. Provider will refer Members to providers participating in the ACDE network whenever Provider is unable to provide Medically Necessary services and/or when consistent with sound medical judgment and accepted standards of care. Provider and Group Physicians shall provide such services in the same manner and with the same availability as services provided to other patients without regard to reimbursement and shall further provide these services in accordance with the clinical quality of care and performance standards which are professionally recognized as industry practice and/or otherwise adopted, accepted or established by ACDE.
- 2.2 Provider will deliver office-based medical services to Members only at those office locations set forth in **Appendix B** hereto as such appendix is modified from time to time by mutual agreement of the parties. Provider shall notify ACDE at least sixty (60) days prior to making any addition or change to office locations.
- 2.3 Primary Care Providers shall accept as patients those Members who have selected or have been assigned to Provider, and Specialty Care Providers shall accept as patients those Members who have been referred to Provider, in either case without regard to the health status or medical condition of such Members. Primary Care Providers may decline to accept additional Members (excluding persons already in Provider's practice that enroll in ACDE) by giving ACDE written notice of such intent ninety (90) days in advance of the effective date of such closure. Provider agrees to accept any Members selecting the Primary Care Provider's practice during the ninety (90) day notice period.
- 2.4 Provider shall provide ACDE with complete and accurate statements of all Covered Services provided to Members in conformance with ACDE billing procedures, including without limitation, use of complete applicable diagnosis, procedure and revenue codes. ACDE will not be liable for any bills relating to services that are submitted the later of: (a) after twelve (12) months from the date the services were provided (consistent with **42 CFR §447.45(d)**), or (b) after sixty (60) days of the date of the Explanation of Benefits from another payor when services are first billed by Provider to another payor. Any appeal or request for adjustment of a payment by Provider must be made in accordance with applicable provisions of the Provider Manual and ACDE policies and procedures and, in any case, must be received by ACDE within sixty (60) days of the original payment or denial. Provider may not bring legal action on claims which have not been appealed through the appeal mechanisms described herein.

Encounter Data and Other Reports. Provider shall deliver all reports and clinical information required to be submitted to ACDE pursuant to this Agreement for reporting purposes, including but not limited to encounter data, Healthcare Effectiveness Data and Information Set (HEDIS), Agency for Healthcare Research and Quality (AHRQ), and EPSDT data in a format which will allow ACDE to transmit required data to the Agency electronically and in a format identical to or

consistent with the format used or otherwise required by ACDE and the Agency. Provider shall submit this information to ACDE within the time frames set forth in the Provider Manual or as otherwise required by the Agency. Provider shall submit all encounter data to the same standards of completeness and accuracy as required for proper adjudication of fee-for-service claims by ACDE.

- 2.5 In accordance with ACDE policies and procedures, only successfully credentialed Participating Providers may provide Covered Services to Members under this Agreement.

3. COMPENSATION:

- 3.1 ACDE shall pay Provider for Covered Services provided to Members pursuant to the terms of this Agreement. ACDE shall have the right to offset claims payments to Provider by any amount owed by Provider to ACDE, following at least thirty (30) days' written notice. Provider shall not be entitled to reimbursement if the Member was not eligible at the time services were rendered.
- 3.2 ACDE agrees to pay Provider the amount set forth in **Appendix C** for Covered Services rendered by Provider to Members. Provider understands and agrees that any payments ACDE makes directly or indirectly to Provider under this Agreement shall not be made as an inducement to reduce, limit, or delay Medically Necessary Covered Services to any Member. Except as may be otherwise specifically set forth in **Appendix C**, in no event will ACDE's payment exceed submitted charges. Provider recognizes and accepts the fees set forth in **Appendix C** as payment in full, and no additional charges will be made by Provider to ACDE for Covered Services provided hereunder.
- 3.3 Under no circumstances, including ACDE's failure to pay for Covered Services, termination of this Agreement, or the insolvency of ACDE, will Provider or any Group Physician bill or collect from, or make any charges or claims against any Member directly or indirectly for Covered Services authorized by ACDE, except for authorized co-payments, co-insurance and/or deductible. Provider and Group Physicians shall look only to ACDE for compensation for Covered Services. Provider shall not deny Covered Services to a Member in the event that a Member is unable to pay any authorized co-payment amounts. **42 CFR §447.15**.
- 3.4 Provider may directly bill Members for non-Covered Services if the Member is advised in writing before the service is rendered of: (i) the nature of the service(s) to be rendered; (ii) that ACDE does not cover the services; and (iii) that the Member will be financially responsible for the services if the Member elects to receive the services. Furthermore, Provider shall hold harmless ACDE for any claim or expense arising from such services.
- 3.5 ACDE shall pay all Clean Claims for Covered Services in accordance with applicable laws, regulations and Agency requirements; and ACDE will in any event meet the claim payment timeframes required under **42 CFR §447.45(d)**. ACDE will establish payment policies, including but not limited to the application of claim edits. In its processing of claims, ACDE will apply claim edits based on sources that include CMS and state-specific policy, as set forth in the Provider Manual.

4. ADMINISTRATION:

- 4.1 Throughout the term of this Agreement, Provider and all Group Physicians shall: (a) have and maintain, without restriction, all licenses, certificates, registrations and permits as are required under applicable State and federal statutes and regulations to provide the Covered Services furnished by Provider and/or other related activities delegated by ACDE under this Agreement. Provider shall

obtain a unique identifier (national provider identifier) in accordance with the system established under Section 1173(b) of the Social Security Act, submit such identifier number to ACDE, and include such identifier on all claims. At all times during the term of this Agreement, Provider shall be eligible for participation in the Delaware Medicaid program; and, if required by the Delaware Medicaid program as a condition of furnishing services to Delaware Medicaid recipients, Provider shall participate in the Delaware Medicaid program. To the extent that Covered Services are furnished to Medicare beneficiaries under this Agreement, Provider shall also participate in the Medicare program. Provider shall ensure that all services provided pursuant to this Agreement are within the Provider's and, if applicable, Group Physicians' scope of professional responsibility.

- 4.2 During the term of this Agreement and in the event of termination of this Agreement for any reason, Provider and its Group Physicians will fully cooperate with each Member and with ACDE in arranging for the transfer of copies of Member medical records to other Participating Providers.
- 4.3 Record Maintenance, Inspection, Reporting and Auditing.
- (a) Record Retention. As required by **42 CFR 434.6(a)(7)** and otherwise in accordance with the standards of ACDE, Provider and Group Physicians shall maintain an adequate record system for recording services, service providers, charges, dates and all other commonly required information elements for services rendered to Members pursuant to this Agreement (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under this Agreement and the Agency Contract).
- (b) All records originated or prepared in connection with Provider's performance of its obligations under this Agreement will be retained and safeguarded by Provider in accordance with the terms and conditions of the Agency Contract and other relevant State and federal law. Provider agrees to retain all financial and programmatic records, supporting documents, statistical records and other records of Members relating to the delivery of care or service under the Agency Contract and as further required by the Agency, for a period of no less than seven (7) years from the expiration date of the Agency Contract, including any contract extension(s), and to retain all Member records, including but not limited to administrative, financial and medical records (whether electronic or paper) for a period of no less than seven (7) years after the last payment was made for services provide to the Member. If any audit, litigation, claim, or other actions involving the records have been initiated prior to the expiration of the seven (7) 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 seven (7) year period, whichever is later. If Provider stores records on microfilm or microfiche or other electronic means, Provider agrees to produce, at its expense, legible hard copy records promptly upon the request of state or federal authorities.
- (c) Medical Record Maintenance. Provider shall ensure that all medical records are in compliance with the medical record keeping requirements set forth in the Provider Manual, the Agency Contract and Agency guides. Provider shall maintain up-to-date medical records at the site where medical services are provided for each Member enrolled under this Agreement. Each Member's record must be accurate, legible and maintained in detail consistent with good medical and professional practice which permits effective internal and external quality review and/or medical audit and facilitates an adequate system of follow-up treatment.

- (d) ACDE shall be entitled to audit, examine and inspect Provider's books and records, including but not limited to medical records, financial information and administrative information pertaining to Provider's relationship with ACDE, at any time during normal business hours, upon reasonable notice. Provider agrees to provide ACDE, at no cost to ACDE, with such medical, financial and administrative information, and other records as may be necessary for ACDE to meet its obligations related to the Agency Contract and other regulatory obligations, Utilization Management Program and Quality Management Program standards, including NCQA standards, and other relevant accreditation standards which ACDE may require of ACDE participating providers.
- 4.4. Whether announced or unannounced, Provider agrees to, and shall cause its Group Physicians to, cooperate with, participate in, and abide by internal or external quality assessment reviews, Member Appeal Procedures, Utilization Management Program procedures, and Quality Management Program procedures established by ACDE, and to follow practice guidelines as described in the Provider Manual, the Agency Contract and the applicable Program manuals. Provider shall permit a representative of ACDE, or its designee, to review medical records concurrently as well as retrospectively. Provider shall provide copies of such medical records, either in paper or electronic form, to ACDE or its designee upon request. The Utilization Management and Quality Management Programs are described in the Provider Manual.
- 4.5. Provider authorizes ACDE to include Provider's and its Group Physicians' name(s), address(es), telephone number(s), medical specialty(ies), hospital affiliations, and other similar information relevant to Provider and/or Group Physicians, Provider's operations and its staff in the ACDE provider directory and in various marketing materials identifying Provider and/or Group Physicians as a provider(s) of services to Members. Provider agrees to afford ACDE the same opportunity to display brochures, signs, or advertisements in Provider's office(s) as Provider affords any other insurance company or other third party payor.
- 4.6. While both parties support Provider's open and active communication with Members concerning Medically Necessary services, available treatment alternatives, benefit coverage information and/or any other information pertaining to the provider-patient relationship, neither Provider nor any of its Group Physicians shall, during the term of this Agreement, and any renewal thereof, solicit or require any Member, either orally or in writing, to subscribe to or enroll in any managed care plan other than ACDE. The provisions of this **Section 4.6** shall similarly apply to Provider's employees, agents and/or contractors (including all Group Physicians).
- 4.7. Provider shall cooperate with ACDE in the identification of other sources of payment available to Members, such as other health insurance, government programs, liability coverage, motor vehicle coverage or worker's compensation coverage, as applicable. Provider shall be responsible for reporting all applicable third party resources to ACDE in a timely manner.

Provider will cooperate with ACDE in coordinating benefits with other payors in accordance with coordination of benefits claim processing rules and requirements outlined in the Provider Manual, the Agency Contract and applicable Program manuals, as amended from time to time. Provider will make a reasonable attempt to determine whether any other payor has primary responsibility for the payment of a claim for services that Provider rendered to a Member and bill that payor before billing ACDE. Unless otherwise prohibited by applicable law, ACDE retains the right to recover payments made to Provider if ACDE determines that another payor is primarily responsible for all or a portion of the claim.

- 4.8 ACDE shall furnish or otherwise make available to Provider a copy of the Provider Manual, as amended from time to time. Provider Manual updates will become effective thirty (30) days from the date of notification, unless otherwise specified in writing by ACDE.
- 4.9 ACDE shall monitor and report the quality of services delivered under the Agreement and initiate a plan of correction, where necessary, to improve quality of care, in accordance with that level of care which is recognized as acceptable professional practice in the respective community in which the Provider practices and/or the standards established by ACDE, the Agency, or their respective designees. Provider shall cooperate with and abide by any corrective action plan initiated by ACDE and/or required by the Agency or any other State or federal regulatory agency with governing authority over the services provided under this Agreement.
- 4.9 Provider agrees that to the extent penalties, fines or sanctions are assessed against ACDE by the Agency or another regulatory agency with governing authority over the services provided under this Agreement as a result of Provider's or any Group Physician's failure to comply with their respective obligations under this Agreement, including but not limited to, failure or refusal to respond to the Agency's request for medical records, credentialing information, and other information required to be provided under this Agreement, Provider shall be responsible for the immediate payment of such penalties, fines or sanctions. In the event such payment is not made in a timely manner to ACDE, ACDE shall have the right to offset claims payments to Provider by the amount owed by Provider to ACDE.
- 4.10 Provider will assist ACDE in providing orientation services to Provider staff, to the extent ACDE may reasonably request.
- 4.11 Fraud and Abuse. Provider recognizes that payments made by ACDE pursuant to this Agreement are derived from federal and State funds, and acknowledges that it may be held civilly and/or criminally liable to ACDE and/or the Agency, in the event of non-performance, misrepresentation, fraud or abuse for services rendered to Members, including but not limited to, the submission of false claims/statements for payment by Provider, its employees or agents. Provider shall be required to comply with all policies and procedures as developed by ACDE and the Agency, including but not limited to the requirements set forth in the Provider Manual and the Agency Contract, for the detection and prevention of fraud and abuse. Such compliance may include, but not be limited to, referral of suspected or confirmed fraud or abuse to ACDE.
- 4.12 Provider Protections.
- (a) ACDE shall not exclude or terminate Provider or a Group Physician from ACDE's provider network because the Provider or Group Physician advocated on behalf of a Member including in the context of a utilization management appeal or another dispute with ACDE over appropriate medical care, provided that such advocacy is consistent with the degree of learning and skill ordinarily possessed by a health care provider practicing in accordance with the applicable standard of care.
 - (b) Provider shall not be excluded or terminated from participation with ACDE due to the fact that the Provider may have a practice that includes a substantial number of patients with expensive medical conditions.
 - (c) Provider shall not be excluded from participation, nor shall this Agreement be terminated, because Provider objects to the provision of or refuses to provide a healthcare service on moral or religious grounds.

5. PROFESSIONAL LIABILITY INSURANCE/ADVERSE ACTIONS:

- 5.1 Provider, at his/her sole expense, shall provide professional liability, comprehensive general liability, and medical malpractice insurance coverage (including coverage for vicarious liability, if any, for the acts of employees, agents and representatives of Provider (including without limitation all Group Physicians)) upon execution of this Agreement and at all times during the term of this Agreement, as follows:
- (a) Amounts and extent of such insurance coverage as deemed necessary by ACDE to insure against any claim or claims for damages arising by reason of personal injury or death occasioned, directly or indirectly, in connection with Provider's performance of any service pursuant to this Agreement; in no event shall such coverage be less than the amounts required by law.
 - (b) Provider shall provide ACDE with written verification of the existence of such coverage upon execution of this Agreement and as otherwise requested by ACDE throughout the term of the Agreement, which may include providing copies of face sheets of such coverage. Provider shall notify ACDE reasonably in advance of any change or cancellation of such coverage.
- 5.2 Provider shall immediately notify ACDE in writing, by certified mail, of any written or oral notice of any adverse action, including, without limitation, litigation, investigation, complaint, claim or transaction, regulatory action or proposed regulatory action, or other action naming or otherwise involving Provider or a Group Physician, or any other event, occurrence or situation which may reasonably be considered to have a material impact on Provider's or a Group Physician's ability to perform Provider's duties or obligations under this Agreement. Provider also shall immediately notify ACDE of any action against any applicable license, certification or participation under Title XVIII or other applicable provision of the Social Security Act or other State or federal law, State and/or DEA narcotic registration certificate, or medical staff privileges at any facility, and of any material change in the ownership or business operations of Provider or a Group Physician. All notices required by this **Section 5.2** shall be furnished as provided in **Section 10.6** of this Agreement.
- 5.3 Provider agrees to defend, indemnify and hold harmless ACDE and its officers, directors and employees from and against any and all claims, costs and liabilities (including the fees and expenses of counsel) as a result of a breach of this Agreement by Provider, the negligent or willful misconduct of Provider and/or Provider's employees, agents and representatives (including without limitation Group Physicians), and from and against any death, personal injury or malpractice arising in connection with the performance of any services by the Provider and all Group Physicians in connection with this Agreement. This section shall survive the termination or expiration of this Agreement for any reason.

ACDE agrees to defend, indemnify and hold harmless Provider and its officers, directors and employees from and against all claims, costs and liabilities (including the fees and expenses of counsel) as a result of ACDE's breach of this Agreement or the negligent or willful misconduct of ACDE and/or ACDE's employees, agents and representatives in connection with ACDE's performance under this Agreement. This section shall survive the termination or expiration of this Agreement for any reason.

6. CONFIDENTIALITY:

ACDE and Provider shall each comply with all applicable State and federal laws respecting the confidentiality of the medical, personal or business affairs of Members acquired in the course of providing services pursuant to this Agreement. Each party shall maintain as confidential and shall not disclose to third parties financial, operating, proprietary or business information relating to the other party which is not otherwise public information. The payment rates in this Agreement are confidential and proprietary and shall not be disclosed by either party. However, nothing herein shall prohibit either party from making any disclosure or transmission of information to the extent that such disclosure or transmission is required by CMS or an applicable state regulatory agency, or is necessary or appropriate to enable the disclosing party to perform its obligations or enforce its rights under this Agreement, or is required by law or legal process. Should disclosure be required by law or legal process, the disclosing party shall immediately notify the other party of the disclosure.

7. COOPERATION; RESOLUTION OF DISPUTES:

- 7.1 Cooperation. To the extent compatible with separate and independent management of each, ACDE and Provider shall at all times maintain an effective liaison and close cooperation with each other to provide maximum benefits to Members at the most reasonable cost consistent with high standards of care. ACDE and Provider shall use best efforts to exchange information regarding material matters directly or indirectly related to this Agreement.
- 7.2 Resolution of Disputes. ACDE and Provider shall both fully cooperate in resolving any and all controversies among or between said parties, their employees, agents, or representatives pertaining to their respective duties under this Agreement. Such disputes shall be submitted for resolution in accordance with the provider appeal procedures as referenced in the Provider Manual and ACDE policies and procedures. Neither ACDE nor Provider shall permit a dispute between the parties to disrupt or interfere with the provision of services to Members.

8. TERM; TERMINATION:

- 8.1 The term of this Agreement shall commence as of the Effective Date and, unless earlier terminated in accordance herewith, shall continue for an initial one (1) year term. Thereafter, this Agreement shall automatically renew for successive one (1) year terms unless the Agreement is terminated pursuant to this **Section 8** as set forth herein.
- 8.2 Either party may terminate this Agreement at the end of the initial term or at any time thereafter by providing the other party with at least ninety (90) days prior written notice of its intention to terminate this Agreement. The effective date of termination will be on the first of the month following the expiration of the notice period.
- 8.3 Either party may terminate this Agreement for cause due to a material breach by giving ninety (90) days' prior written notice. The notice of termination for cause will not be effective if the breaching party cures the breach within the first sixty (60) days of the ninety (90) day notice period. In the event that the breaching party does not cure the breach within the sixty (60) day period, the effective date of termination will be the first of the month following the expiration of the ninety (90) day notice period.
- 8.4 Termination of this Agreement for any reason, including without limitation the insolvency of ACDE, shall not release Provider from his or her obligations to serve Members when continuation of a Member's treatment is Medically Necessary.

- 8.5 In the event any change in federal or State laws, rules and regulations or the Delaware Medicaid Program or the Medicare Advantage program would have a material adverse impact on either ACDE or Provider in connection with the performance of this Agreement (the “Mandated Changes”) such that the basis for the financial bargain of this Agreement is undermined, then the affected party shall have the right to require the other, by written notice, to enter into negotiations regarding the affected or pertinent terms of this Agreement while still maintaining the original Agreement purposes. If renegotiated, such terms shall become effective no later than thirty (30) days after the parties have reached agreement on the renegotiated terms. The parties agree to make a good faith attempt to renegotiate the Agreement to the extent necessary to comply with any Mandated Changes. If, after good faith renegotiations, the parties fail to reach an agreement satisfactory to both parties within thirty (30) days of the request for renegotiation, the party requesting such renegotiation may terminate this Agreement upon ninety (90) days prior written notice to the other party.
- 8.6 Notwithstanding the above, ACDE may terminate this Agreement immediately in the event any of the following occur:
- (a) If Provider (or, if Provider is a group, any Group Physician) or a person with an ownership or control interest in Provider is expelled, disciplined, barred from participation in, or suspended from receiving payment under any state’s Medicaid program, Children’s Health Insurance Program (CHIP), the Medicare Program under Section 1128 or 1128A of the Social Security Act or any other federal health care program.
 - (b) If Provider (or, if Provider is a group, any Group Physician) is debarred, suspended or otherwise excluded from procurement or non-procurement activities under the Federal Acquisition Regulations.
 - (c) If Provider (or, if Provider is a group, any Group Physician) is convicted of any felony or of any crime related to the practice of medicine.
 - (d) Upon the loss or suspension of the Provider’s professional liability coverage set forth under **Section 5** of this Agreement.
 - (e) The suspension or revocation of Provider’s license or other certification or authorization necessary for Provider to render Primary Care Services and/or Specialty Care Services, as applicable, or upon ACDE’s reasonable determination that the health, safety or welfare of any Member may be in jeopardy if this Agreement is not terminated.
 - (f) If Provider (or, if Provider is a group, any Group Physician) fails to satisfy any or all of the credentialing requirements of ACDE or fails to cooperate with or abide by the Quality Management Program.
 - (g) If Provider (or, if Provider is a group, a Group Physician) breaches a material provision of this Agreement or is engaged in any conduct which would injure the business of ACDE.
- 8.7 With respect to a Group Physician, if ACDE decides to suspend or terminate the Agreement, ACDE shall give the Group Physician written notice, to the extent required under CMS regulations, of the reasons for the action, including, if relevant, the standards and the profiling data the organization used to evaluate the Group Physician and the numbers and mix of Participating Physicians ACDE needs. Such written notice shall also set forth the Group Physician’s right to appeal the action and the process and timing for requesting a hearing.

- 8.8 Upon termination of this Agreement for any reason, ACDE shall notify affected Members of the termination of Provider (or, if Provider is a group, any Group Physician) in accordance with the notification requirements under **42 C.F.R. §422.111(e)**. Regardless of the reason for termination, Provider shall promptly supply to ACDE all information necessary for the reimbursement of outstanding claims. **42 CFR 434.6(a)(6)**.

9. PROGRAM REQUIREMENTS:

Attached hereto and incorporated herein by reference is **Schedule 9**, setting forth such terms and conditions as are necessary to meet State and Federal statutory and regulatory requirements, and other Agency requirements, of the Program. **Schedule 9** is consecutively sub-numbered as necessary for each Program under which Provider is furnishing services under this Agreement. Provider acknowledges that the specific terms as set forth in **Schedule 9** are subject to amendment in accordance with federal and/or State statutory and regulatory changes to the Program. Such amendment shall not require the consent of the Provider or ACDE and will be effective immediately on the effective date thereof, as set forth in **Section 10.3**. In the event of a conflict between the terms of this Provider Agreement and the requirements set forth in **Schedule 9, Schedule 9** shall control.

10. MISCELLANEOUS:

- 10.1 It is understood that Provider is an independent contractor and in no way is Provider to be considered an employee, agent, or representative of ACDE. It is further understood that Provider provides specified services to Members in exchange for an agreed upon fee. This Agreement shall not create, nor be deemed or construed to create any relationship between ACDE and Provider other than that of independent contractors, contracting with each other solely for the purpose of performing this Agreement and each party shall be liable solely for their own activities and neither ACDE nor Provider shall be liable to any third party for the activities of the other party to this Agreement.
- 10.2 This Agreement, being for the purpose of retaining the professional services of Provider, shall not be assigned, subcontracted, or delegated by Provider without the express written consent of ACDE.
- 10.3 No alterations or modifications of the terms of this Agreement shall be valid unless such alterations or modifications are incorporated into the Agreement through a written amendment, signed by both parties hereto, and attached to this Agreement; provided, however, ACDE may amend this Agreement with 30 days' notice to Provider via a(n) ACDE bulletin or other written communication provided in accordance with the notice provisions in **Section 10.6**, and unless Provider notifies ACDE, as applicable, of any objection, such amendment shall then take effect. Any amendment to this Agreement subject to prior regulatory approval(s) shall be effective once such regulatory approval(s) has been received.

Notwithstanding the foregoing, amendments required because of legislative, regulatory or governmental agency requirements do not require the consent of Provider or ACDE and shall be effective immediately on the effective date thereof. This Agreement remains subject to the approval of the State of Delaware, and may be amended by ACDE to comply with any requirements of the State of Delaware. Provider acknowledges that all Agency requirements, as may be amended from time to time, are incorporated to this Agreement.

- 10.4 This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Delaware.

10.5 This Agreement and its exhibits, appendices, schedules, addenda or other attachments constitute the entire understanding and agreement between the parties concerning the subject matter hereof. This Agreement supersedes all prior written or oral agreements or understandings existing between the parties concerning the subject matter hereof including, but not limited to, any such agreement which may have been previously executed between Provider and ACDE or any of its Affiliates relating to the provision of Covered Services under the Program. In the event of a conflict between the terms of this Agreement and the Provider Manual, the terms of the later document shall control.

10.6 Written notices to be given hereunder shall be sent by Certified Mail, Return Receipt Requested, or by an overnight delivery service which provides a written receipt evidencing delivery to the address set forth by the party, or by confirmed facsimile followed by written notice through the U.S. postal service. All notices called for hereunder shall be effective upon receipt.

If to Provider:

With a copy to:

If to AmeriHealth Caritas Delaware:

AmeriHealth Caritas Delaware
200 Stevens Dr.
Philadelphia, PA 19113
ATTN: Provider Network Management

With a copy to: General Counsel
AmeriHealth Caritas
200 Stevens Drive
Philadelphia, PA 19113

10.7 Both parties agree that there shall be no discrimination in the performance of this Agreement against any patient or other person as the result of that individual's race, color, religion, gender, sexual orientation, handicap, age, national origin, source of payment, or any other basis prohibited by law.

10.8 The failure of any of the parties to insist upon strict performance of any of the terms of this Agreement shall not be deemed a waiver of any of their respective rights or remedies, and shall not be deemed a waiver of any subsequent breach or default in any of the terms contained in this Agreement.

10.9 In the event that any provision under this Agreement is declared null or void, for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

- 10.10 The parties will use reasonable care and due diligence in performing this Agreement. Provider will be solely responsible for the services provided under this Agreement.
- 10.11 All captions contained in this Agreement are solely for the convenience of the parties hereto and shall not be deemed part of the content of this Agreement.
- 10.12 All terms used in this Agreement are deemed to refer to the masculine, feminine, neuter, singular or plural as the content may require.
- 10.13 Non-Discrimination. Provider shall comply with (i) Title VI of the Civil Rights Act of 1964 and the rules, regulations, and order; (ii) the Rehabilitation Act of 1973 and the rules, regulations, and orders thereunder; (iii) the Americans With Disabilities Act of 1990 and the rules, regulations, and orders thereunder; and (iv) any and all applicable laws, rules and regulations prohibiting discriminatory practices. Furthermore, in accordance with Title VI of the Civil Rights Act of 1964 and the rules, regulations and orders thereunder, Provider shall take adequate steps to ensure that Members 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 Agreement (see 42 U.S.C. 2000d et seq. and 45 C.F.R. Part 80, 2001 as amended).
- 10.14 No Offshore Contracting. No Covered Services under this Agreement may be performed outside of the United States without ACDE's prior written consent. In addition, Provider will not hire any individual to perform any services under this Agreement if that individual is required to have a work visa approved by the U.S. Department of Homeland Security and such individual has not met this requirement.

[SIGNATURES ON FOLLOWING PAGE; REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto, each by its officers duly authorized, hereby affix their hands as of the date written below.

PROVIDER	AmeriHealth Caritas Delaware, Inc.
_____ Print Name	_____ Name
_____ Signature	_____ Signature
_____ Title	_____ Title
_____ Address	_____ Date
_____ National Provider ID Number	Effective Date of Agreement: _____ [To be completed by AmeriHealth Caritas Delaware]
_____ Medicaid ID Number	
_____ Group Tax ID Number	
_____ Group Medicare #/PTAN	
_____ Date	

SAMPLE

APPENDIX A

COVERED SERVICES

Primary Care Services

In Provider's capacity as a Primary Care Provider, Provider shall provide all Primary Care Services to Members who have selected or been assigned to Provider as their Primary Care Provider including the following:

1. All primary ambulatory care visits and routine office procedures;
2. Periodic physical examinations;
3. Routine injections and immunizations, including vaccinations;
4. Arrange for and/or provide inpatient medical care at ACDE participating hospital providers;
5. Referrals, as required, to Specialty Care Providers;
6. Referrals, as required, to ACDE participating providers for lab, radiology and other appropriate services;
7. Provision or arrangement for Primary Care Services twenty-four (24) hours a day, seven (7) days a week; and
8. Exercise primary responsibility for arranging and coordinating the delivery of Medically Necessary health care services to Members.

Specialty Care Services

In Specialty Provider's capacity as a Specialty Care Provider, Provider shall provide all Specialty Care Services to Members including the following:

1. Ambulatory care visits;
2. Arrange for and/or provide inpatient medical care at ACDE participating hospital providers; and
3. Emergency or consultative Specialty Care Services twenty-four (24) hours a day, seven (7) days a week.

APPENDIX B

**PROVIDERS AND OFFICE LOCATIONS
COVERED BY AGREEMENT**

PRIMARY/SPECIALTY CARE PROVIDER(S) PRIMARY/SPECIALTY CARE PROVIDER(S)

Name

PRACTICE LOCATION ADDRESS

PRACTICE LOCATION ADDRESS

Address

Address

City, State, ZIP

City, State, ZIP

Phone Number

Phone Number

APPENDIX C COMPENSATION

Primary Care Provider Compensation

Commencing on the Effective Date, ACDE will compensate Provider for all Primary Care Services rendered by Provider to Members in accordance with the terms of this Agreement at a rate of **100% of the AmeriHealth Caritas Delaware Fee Schedule** in effect on the date that Primary Care Services were rendered, less applicable co-insurance and deductibles. Payments will be made in accordance with Delaware Medicaid payment policies, and with retroactive effective dates as necessary to coincide with the effective dates of changes made by the Agency to its fee schedule. In no event will ACDE's payment exceed Provider's charges.

Specialty Care Provider Compensation

Commencing on the Effective Date, ACDE will compensate Provider for all Specialty Care Services rendered by Provider to Members in accordance with the terms of this Agreement at a rate of **100% of the AmeriHealth Caritas Delaware Fee Schedule** in effect on the date that the Specialty Care Services were rendered, less applicable co-insurance and deductibles. Payments will be made in accordance with Delaware Medicaid payment policies, and with retroactive effective dates as necessary to coincide with the effective dates of changes made by the Agency to its fee schedule. In no event will ACDE's payment exceed Specialty Provider's charges.

**APPENDIX D
PHYSICIAN PROVIDER**

ACDE AFFILIATES

None.

SAMPLE

Schedule 9-1

Federal Requirements – Medicaid and Medicaid Managed Care

(Rev. 7/1/17)

1. No payment will be made to Provider for provider-preventable conditions or health care-acquired conditions. For purposes hereof:
 - a. **Health care-acquired condition** (“HAC”) means a condition occurring in any inpatient hospital setting, identified as a HAC by the Secretary of the U.S. Department of Health and Human Services (“HHS”) under section 1886(d)(4)(D)(iv) of the Social Security Act (the “Act”) for purposes of the Medicare program identified in the State plan as described in section 1886(d)(4)(D)(ii) and (iv) of the Act, other than deep vein thrombosis/pulmonary embolism as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.
 - b. **Other provider-preventable condition** means a condition occurring in any health care setting that meets the following criteria: (i) is identified in the Delaware Medicaid plan; (ii) has been found by the State of Delaware, based upon a review of medical literature by qualified professionals, to be reasonably preventable through the application of procedures supported by evidence-based guidelines (iii) has a negative consequence for the Member; (iv) is auditable; and (v) includes, at a minimum, wrong surgical or other invasive procedure performed on a patient, surgical or other invasive procedure performed on the wrong body part, or surgical or other invasive procedure performed on the wrong patient.
 - c. **Provider-preventable condition** (“PPC”) means a condition that meets the definition of “health care-acquired condition” or an “other provider-preventable condition.”

No reduction in payment will be made for a PPC when the condition existed prior to the initiative of treatment for that patient by Provider. Provider shall identify PPCs when submitting claims for payment or, if no claim will be submitted, if Medicaid payment would otherwise be available for the course of treatment in which the PPC occurred, or as otherwise required by the State. **42 CFR §§438.3(g), 434.6(a)(12) and 447.26.**

2. Physician Incentives. Provider shall disclose to ACDE annually any Physician Incentive Plan (PIP) or risk arrangements Provider may have with physicians, either within Provider’s group practice or other physicians not associated with Provider’s group practice, even if there is no substantial financial risk between ACDE and the physician or physician group. The term “substantial financial risk” means a financial risk set at greater than twenty-five percent (25%) of potential payments for Covered Services, regardless of the frequency of assessment (i.e., collection) or distribution of payments. The term “potential payments” means simply the maximum anticipated total payments that the physician or physician group could receive if the use or cost of referral services were significantly low. **42 CFR §§438.3(i), 422.208, 422.210.**
3. Provider Discrimination Prohibited. ACDE may not, with respect to Provider participation, compensation or indemnification under this Agreement, discriminate against Provider to the extent that the Provider is acting within the scope of his, her or its license or certification under applicable State law, solely on the basis of that license or certification. Without limiting the foregoing, ACDE shall not discriminate against Provider for serving high-risk populations or specializing in conditions that require costly treatment. Nothing herein shall be construed to: (i) require ACDE to contract with

Provider if not necessary to meet the needs of Members; (ii) preclude ACDE from using different reimbursement amounts for different specialties or for different practitioners in the same specialty; or (iii) preclude ACDE from establishing measures that are designed to maintain quality of services and control costs and are consistent with ACDE's responsibilities to Members. **42 CFR §§438.12, 438.214(c).**

4. **Member Rights.** Provider shall adhere to all applicable Federal and State laws that pertain to Member rights, and shall take such rights into account when furnishing services to Members. **42 CFR §438.100(a)(2).**
5. **Provider-Member Communications.** Nothing in this Agreement shall be construed to prohibit, restrict or impede Provider's ability to freely and openly discuss with Members, within the Provider's lawful scope of practice, all available treatment options and any information the Member may need in order to decide among all relevant treatment options, including but not limited to the risks, benefits and consequences of treatment or non-treatment, regardless of whether the services may be considered Covered Services in accordance with this Agreement. Further, nothing in this Agreement shall be construed to prohibit, restrict or impede Provider from discussing Medically Necessary care and advising or advocating appropriate medical care with or on behalf of a Member, including: information regarding the nature of treatment options, risks of treatment, alternative treatments or the availability of alternative therapies, consultation or tests that may be self-administered, and the Member's right to participate in decisions regarding his or her care, including the right to refuse treatment and to express preferences about future treatment decisions. **42 CFR §438.102(a).**
6. **Member Hold Harmless.** Provider shall accept the final payment made by ACDE as payment in full for Covered Services provided pursuant to this Agreement. Provider agrees that in no event, including, but not limited to, nonpayment by the Agency to ACDE, nonpayment by ACDE to Provider, the insolvency of ACDE, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, solicit or accept any surety or guarantee of payment, or have any recourse against Members or persons other than ACDE acting on their behalf (including parent(s), guardian, spouse or any other person legally, or potentially legally, responsible person of the Member) for Covered Services listed in this Agreement. This provision shall not prohibit collection of supplemental charges or co-payments on ACDE's behalf made in accordance with terms of an enrollment agreement between ACDE and Members.

Provider further agrees that:

- a. this hold harmless provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of Members; and that
- b. this hold harmless provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Provider and Members or persons acting on their behalf.

42 CFR §§438.106, 447.15.

7. **Coverage and Payment for Emergency Services.** ACDE shall cover and pay for Emergency Services rendered by Provider and obtained when a Member had an Emergency Medical Condition, or when a representative of ACDE has instructed the Member to seek Emergency Services. **42 CFR §438.114(c)(1)(ii).**

8. Timely Access. Provider shall meet Agency standards for timely access to care and services, taking into account the urgency of the need for services. Provider shall offer hours operation to Members that are no less than the hours of operation offered to commercial enrollees or comparable to Medicaid fee-for-service, if Provider serves only Medicaid enrollees. Provider services shall be available 24 hours a day, 7 days a week, when medically necessary. Provider shall provide physical access, reasonable accommodations, and accessible equipment for Members with physical or mental disabilities. **42 CFR §438.206(c)**.
9. Excluded Providers. Pursuant to **42 CFR §438.214(d)**, ACDE may not employ or contract with providers, or have a relationship with a person or entity that is excluded from participation in Federal health care programs under either Section 1128 or 1128A of the Act. ACDE may not knowingly have a Prohibited Relationship (defined hereinafter) with the following: (a) an entity or individual that is debarred, suspended or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549; or (b) an individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR §2.101 of a person described in **subparagraph 9(a)**. For purposes of this **paragraph 9**, "Prohibited Relationship" includes a subcontractor of ACDE and a network provider or person with an employment, consulting or other arrangement with ACDE for the provision of items or services that are significant and material to ACDE's obligations under the Agency Contract. Provider shall comply with the disclosure, screening and enrollment requirements of **42 C.F.R. Part 455, Subparts B and E** and, upon reasonable request, provide such information to ACDE in accordance with the requirements specified therein. **42 CFR §§438.608(b), 438.610**

Provider represents and warrants that neither it, nor any of its contractors or employees who will furnish goods or services under the Agreement, directors or officers, or any person with an ownership interest in Provider of five percent (5%) or more, is or ever has been: (i) debarred, suspended or excluded from participation in Medicare, Medicaid, the State Children's Health Insurance Program (SCHIP) or any other Federal health care program; (ii) convicted of a criminal offense related to the delivery of items or services under the Medicare or Medicaid program; (iii) had any disciplinary action taken against any professional license or certification held in any state or U.S. territory, including disciplinary action, board consent order, suspension, revocation, or voluntary surrender of a license or certification; or (iv) debarred or suspended from participation in procurement or non-procurement activities by any federal agency (collectively, "Sanctioned Persons"). Provider shall screen all employees and contractors who will furnish goods or services under this Agreement to determine whether they have been excluded from participation in any Federal health care program, by searching applicable Federal and State databases (including but not limited to the OIG's LEIE and the NPDB) upon initial employment or engagement of or contracting with a contractor, employee, director or officer, and on a monthly basis thereafter.

Provider shall immediately notify ACDE upon knowledge by Provider that any of its contractors or employees who furnish goods or services under the Agreement, directors, officers or owners has become a Sanctioned Person, or is under any type of investigation which may result in their becoming a Sanctioned Person. In the event that Subcontractor cannot provide reasonably satisfactory assurance to ACDE that a Sanctioned Person will not receive payment from ACDE under this Agreement, ACDE may immediately terminate this Agreement. ACDE reserves the right to recover all amounts paid by ACDE for items or services furnished by a Sanctioned Person. Further, and without limiting Provider's indemnification obligations set forth elsewhere in this Agreement, to the extent penalties, fines or sanctions are assessed against ACDE as a result of Provider's having a relationship with a Sanctioned Person, Provider shall be responsible for the immediate payment of such penalties, fines or sanctions. In the event such payment is not made in a timely manner to

ACDE, ACDE shall have the right to offset claims payments to Provider by the amount owed by Provider to ACDE.

10. State and Federal Regulator Access. Provider acknowledges that the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS), Office of the Inspector General, the Comptroller General, the Agency, and their designees may at any time inspect and audit any records or documents of Provider pertinent to this Agreement, including those pertaining to the quality, appropriateness and timeliness of services; and may at any time inspect the premises, physical facilities and equipment where Medicaid-related activities or work is conducted. The right to audit under this paragraph exists for ten (10) years from the final date of the Agency Contract or from the completion of any audit, whichever is later. **42 CFR §§434.6(a)(5), 438.3(h)**.
11. Provider shall safeguard information about Members as required by Part 431, Subpart D of 42 CFR. **42 CFR §434.6(a)(8)**.
12. Any permitted subcontracts entered into by Provider in order to carry out its obligations under this Agreement must be in writing and fulfill the requirements of 42 CFR Part 438 that are appropriate to the service or activity delegated under the subcontract, in accordance with 42 CFR §438.230. **42 CFR §§434.6(a)(11), (b), 438.3(k)**.
13. Provider must retain, as applicable, the following information for a period of not less than ten (10) years:
 - a. Member grievance and appeal records in 42 CFR §438.416;
 - b. Base data used to determine capitation rates, in 42 CFR §438.5(c);
 - c. MLR reports in 42 CFR §438.8(k); and
 - d. The data, information and documentation specified in 42 CFR §§438.604, 438.606, 438.608 and 438.610.**42 CFR §438.3(u)**.
14. Provider shall maintain and share, as appropriate, an enrollee health record in accordance with professional standards. **42 CFR §438.208(b)(5)**.
15. To the extent Provider conducts UM activities on behalf of ACDE, Provider's compensation under this Agreement shall not be structured so as to provide incentives for Provider to deny, limit or discontinue medically necessary services to any Member. **42 CFR §438.210(e)**.
16. Delegation. The following provisions shall apply to the extent any of ACDE's activities or obligations under the Agency Contract are delegated to Provider:
 - a. The delegated activities and related reporting responsibilities will be specified in the Agreement or in a separate delegation contract;
 - b. Provider agrees to perform the delegated activities and reporting responsibilities in company with ACDE's Agency Contract obligations;

- c. ACDE may impose corrective actions, up to and including revocation of the delegated activities or obligations, in instances where the Agency or ACDE determine that Provider has not performed satisfactorily.
- d. To the extent Provider is delegated responsibilities for coverage of services and payment of claims, Provider shall implement and maintain arrangements or procedures that are designed to detect and prevent fraud, waste and abuse that meet the requirements of **42 CFR §438.608(a)**.

Notwithstanding the foregoing, ACDE maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of the Agency Contract. **42 CFR §438.230(b)(c)**.

17. Provider agrees to comply with all applicable Medicaid laws, regulations (including applicable sub-regulatory guidance) and Agency Contract provisions. Provider agrees that:
- a. The State, CMS, the HHS Inspector General, the Comptroller General, or their designees have the right to audit, evaluate and inspect any books, records, contracts, computer or other electronic system of Provider, or of any subcontractors, that pertain to any aspect of services and activities performed, or determination of amounts payable under the Agency Contract.
 - b. Provider will make available, for purposes of an audit, evaluation or inspection under **subparagraph 17(a)**, its premises, physical facilities, equipment, books, records, contracts, computer or other electronic systems relating to ACDE's Members.
 - c. The right to audit under **subparagraph 17(a)** will exist through ten (10) years from the final date of the Agency Contract or from the date of completion of any audit, whichever is later.
 - d. 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 Provider at any time.

42 CFR §438.230(c)(2), (3)

18. ACDE may terminate this Agreement immediately upon notification from the Agency that Provider cannot be enrolled in the State Medicaid program, or if Provider has not enrolled in the State Medicaid Program within 120 days of the effective date of this Agreement. **42 CFR §438.602(b)(2)**.

Schedule 9-2A

Delaware Department of Insurance Requirements

1. No definition within this Agreement or any other provision of this Agreement shall be construed so as to conflict with the definitions or provisions contained in CDR 18-1400-1403. **CDR 18-1400-1403, Section 7.3.**
2. Nothing in this Agreement shall be construed as a provision or non-disclosure clause prohibiting Provider from giving Members information regarding diagnoses, prognoses and treatment options. **18 Del. C. §6414.**
3. ACDE shall not refuse to contract with or compensate Provider for Covered Services solely because Provider has in good faith communicated with one or more of Provider's current, former or prospective patients regarding the provisions, terms or requirements of ACDE's products or services as they relate to the needs of Provider's patients. **18 Del. C. §6415.**
4. In the event of non-payment by ACDE, Provider will not seek compensation or have any recourse against any Member. In accordance therewith:
 - a. Provider agrees that in no event, including but not limited to non-payment by ACDE or intermediary, insolvency of ACDE or intermediary, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Member or a person (other than ACDE or intermediary) acting on behalf of the Member for services provided pursuant to this Agreement. This Agreement does not prohibit Provider from collecting coinsurance, deductibles or co-payments, as specifically permitted by ACDE, or fees for non-Covered Services delivered on a fee-for-service basis to Members. Notwithstanding the foregoing, Provider and Member may agree to continue non-Covered Services solely at the expense of the Member, as long as the Provider clearly informs the Member that ACDE will not cover such services.
 - b. In the event of ACDE's or intermediary's insolvency or other cessation of operations, Covered Services to Members will continue through the period of time for which a premium has been paid to ACDE on behalf of the Member or until the Member's discharge from an inpatient facility, whichever time is greater. Covered Services to Members confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their continued confinement in an inpatient facility is no longer medically necessary.

The foregoing provisions shall be construed in favor of the Member, shall survive the termination of this Agreement regardless of the reason for termination, including the insolvency of ACDE, and shall supersede any oral or written contrary agreement between Provider and a Member or the representative of a Member if the contrary agreement is inconsistent with the hold harmless and continuation of Covered Services provisions required by **paragraphs 4.a and 4.b** above.

CDR 18-1400-1403, Sections 7.1 – 7.3, 8.3.

5. ACDE shall not: (a) offer incentives to Provider to provide less than Medically Necessary services to a Member; (b) penalize Provider because the Provider, in good faith, reports to State authorities any act or practice by ACDE that jeopardizes Member health or welfare; or (c) engage in any other practices prohibited by applicable provisions of Title 18 of the Delaware Code and regulations promulgated thereunder. **CDR 18-1400-1403, Section 10.0.**

SAMPLE

Schedule 9-2B

Delaware Medicaid Requirements (Delaware Department of Health and Social Services)

The requirements set forth in this **Schedule 9-2B** shall at all times comply with the minimum requirements for participation agreements set forth in the Agency Contract, as in effect from time to time. References and citations in this **Schedule 9-2B** are to the December 2015 model Agency Contract (“Agency Contract”); ACDE may amend this **Schedule 9-2B**, in accordance with **Section 9** of the Agreement, to maintain compliance with the Agency Contract.

1. This Agreement is subject to the review and approval of the State’s Department of Health and Social Services (“DHSS”). Any changes to this Agreement that may materially affect Members shall be approved by DHSS prior to execution. **Agency Contract §3.10.1.2.**
2. This Agreement shall be revised as necessary pursuant to the direction of DHSS. **Agency Contract §3.10.1.3.**
3. Nothing in this Agreement shall be deemed to terminate or reduce the legal responsibility of ACDE to the State of Delaware (the “State”) to ensure that all activities under the Agency Contract are carried out. **Agency Contract §3.10.1.4.**
4. Nothing in this Agreement shall be construed as a covenant-not-to-compete, or to require Provider to not provide services for any other managed care organization (“MCO”). **Agency Contract §3.10.1.5.**
5. Nothing in this Agreement shall be deemed to prohibit or otherwise limit Provider from entering into a contractual relationship with another MCO, nor include any incentive or disincentive that encourages Provider not to enter into a contractual relationship with another MCO. **Agency Contract §3.10.1.6.**
6. Nothing in this Agreement shall be construed as a compensation term that discourages Provider from serving any specific eligibility category or population covered by the Agency Contract. **Agency Contract §3.10.1.7.**
7. In accordance with 42 CFR 438.102, nothing in this Agreement shall be deemed to prohibit or otherwise restrict Provider, if Provider is acting within the lawful scope of practice, from advising or advocating for a Member who is a patient of the Provider. **Agency Contract §3.10.1.8.**
8. Provider may not arbitrarily deny or reduce the amount, duration or scope of required services solely because of the Member’s diagnosis, type of illness or condition. **Agency Contract §3.10.2.1.3.**
9. Provider shall render services in accordance with Medical Necessity as defined in the Agency Contract. **Agency Contract §3.10.2.1.4.**
10. Provider shall comply with applicable access requirements, including but not limited to appointment and wait times as referenced in **Section 3.9.17** of the Agency Contract. **Agency Contract §3.10.2.1.8.**
11. If Provider performs laboratory services, Provider shall meet all applicable requirements of the Clinical Laboratory Improvement Amendments (CLIA) of 1988, including either a CLIA

certification or waiver of certification with a CLIA identification number. **Agency Contract §3.10.2.1.9.**

12. Provider shall maintain complete and accurate medical records in accordance with ACDE's policies. **Agency Contract §3.10.2.1.10.**
13. Provider shall maintain an adequate record system, including, but not limited to, medical and financial records. All records shall be retained for no less than five (5) years from the close of this Agreement or until all evaluations, audits, reviews or investigations or prosecutions are completed, if longer than five years. (See **Section 5.5.3** of the Agency Contract.) **Agency Contract §3.10.2.1.11.**
14. Provider shall give the State or its authorized representative, any Federal oversight agency, such as the U.S. Department of Health and Human Services ("DHHS") and the Department of Justice ("DOJ"), and any other authorized Federal agency, including authorized representatives of the Federal agency, immediate access to Provider's records upon request, including records requested for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring as well as for administrative, civil and criminal investigations or prosecutions. HIPAA does not bar disclosure of protected health information (PHI) to the State, authorized federal agencies, or authorized representatives of the State or Federal agency. (See **Section 5.5.1** of the Agency Contract.) **Agency Contract §3.10.2.1.12.**
15. Provider shall give the State and/or its authorized representatives and the Federal government and/or its authorized representatives during normal business hours the right to enter into the premises of the Provider, to inspect, monitor, audit, or otherwise evaluate the work being performed. (See Section 5.5.2 of the Agency Contract.) **Agency Contract §3.10.2.1.13.**
16. Provider shall cooperate with any State or Federal inspection, evaluation, review, audit or investigation. **Agency Contract §3.10.2.1.14.**
17. ACDE's responsibilities under this Agreement include, but are not limited to, provision of a copy of the Member Handbook and Provider Manual, whether via web or otherwise, and notifying Provider of denied authorizations. **Agency Contract §3.10.2.1.15.**
18. This Agreement may be suspended by ACDE if Provider is suspended by the Delaware Medicaid program. (See **Section 3.16** of the Agency Contract.) **Agency Contract §3.10.2.1.16.**
19. Notwithstanding anything in **Section 8** of this Agreement to the contrary, ACDE may terminate this Agreement only upon written notice to Provider. Such notice shall include: (a) the reasons(s) for the proposed termination; (b) notice that Provider has a right to request a hearing or review by ACDE; (c) a time limit of not less than thirty (30) calendar days within which Provider may request a hearing or review by ACDE; and (d) a time limit for completion of a hearing or review of not more than thirty (30) calendar days after the receipt of the request for a hearing or review. **Agency Contract §3.10.2.1.17.**
20. ACDE shall monitor the quality of services delivered under this Agreement and initiate corrective action where necessary to improve quality of care, in accordance with that level of medical, behavioral health, or LTSS that is recognized as acceptable professional practice in the respective community in which the Provider practices and/or the standards established by the State. **Agency Contract §3.10.2.1.18.**

21. Provider shall cooperate in any QM/QI monitoring, UM, Peer Review and/or Appeal procedures established by ACDE and/or the State, including any remediation or quality improvement activities. **Agency Contract §3.10.2.1.19.**
22. Provider shall comply with corrective action plans initiated or requested by ACDE. **Agency Contract §3.10.2.1.20.**
23. As applicable, Emergency Services shall be rendered without the requirement of prior authorization of any kind. **Agency Contract §3.10.2.1.21.**
24. Provider and ACDE shall keep Member information confidential, in accordance with Federal and State law. **Agency Contract §3.10.2.1.22.**
25. Provider shall timely submit all reports and clinical information required by ACDE. **Agency Contract §3.10.2.1.23.**
26. Provider shall comply with the requirements of the Delaware Prescription Monitoring Program (PMP) and query the PMP to view information about Member usage before prescribing Schedule II or III controlled substances. **Agency Contract §3.10.2.1.24.**
27. ACDE shall only pay Provider for services (a) provided in accordance with the requirements of the Agency Contract, ACDE's policies and procedures implementing the Agency Contract, and State and Federal law; and (b) provided to ACDE's Members. Provider is responsible for ensuring that any applicable authorization requirements are met and for verifying that a Member is eligible for services on the date of service. **Agency Contract §3.10.2.1.25.**
28. Provider shall promptly submit information needed by ACDE to make payment. Provider shall have 120 calendar days from the date of rendering a Covered Service to file a claim with ACDE, except in situations regarding coordination of benefits or subrogation, in which case the Provider is pursuing payment from a third party or if a Member is enrolled in ACDE's MCO with a retroactive eligibility date. In situations of third party benefits, the maximum timeframes for filing a claim shall begin on the date that the third party documented resolution of the claim. In situations of enrollment in ACDE's MCO with a retroactive eligibility date, the timeframes for filing a claim shall begin on the date that ACDE receives notification from the State of the Member's eligibility/enrollment. **Agency Contract §3.10.2.1.26.**
29. ACDE shall pay Provider for Covered Services upon receipt of a clean claim properly submitted by Provider within the required timeframes as specified in **Section 3.18.1** of the Agency Contract. **Agency Contract §3.10.2.1.27.**
30. ACDE shall suspend payment to Provider if directed by the State. (See **Section 3.16** of the Agency Contract.) **Agency Contract §3.10.2.1.28.**
31. Provider shall accept payment or appropriate denial made by ACDE (or, if applicable, payment by ACDE that is supplementary to the Member's third party payor) plus the amount of any applicable Member's cost sharing responsibilities, as payment in full for Covered Services or additional services provided, and shall not solicit or accept any payment from the Member in excess of the amount of applicable Member cost-sharing responsibilities. **Agency Contract §3.10.2.1.31.**

32. If Provider is compensated by ACDE under an arrangement other than a fee-for-service (“FFS”) basis:
- a. If Provider becomes aware for any reason that he/she is not entitled to a payment for a particular Member (a patient dies, for example), Provider shall immediately notify both ACDE and the State by certified mail, return receipt requested; and
 - b. Provider shall promptly submit utilization or encounter data as required by ACDE so as to ensure ACDE’s ability to submit encounter data to the State that meets the same standards of completeness and accuracy as required for proper adjudication of FFS claims.

Agency Contract §3.10.2.1.32.

33. Provider shall comply with the program integrity requirements described in **Section 3.16** of the Agency Contract, including but not limited to identification and reporting of suspected fraud, waste and abuse. **Agency Contract §3.10.2.1.33.**
34. Provider shall comply with Federal and State policy regarding overpayments, including but not limited to reporting overpayments and, when it is applicable, returning overpayments to ACDE within sixty (60) calendar days from the date the overpayment is identified. Overpayments that are not reported and returned within sixty (60) calendar days from the date the overpayment was identified may result in a penalty pursuant to State or Federal law. **Agency Contract §3.10.2.1.34.**
35. Provider shall submit Federal disclosure forms in accordance with **Section 3.16.2** of the Agency Contract. **Agency Contract §3.10.2.1.35.**
36. Any reassignment by Provider of payment must be made in accordance with 42 CFR 447.10. All tax-reporting provider entities shall not be permitted to assign State funds/payments to billing agents or alternative payees without executing a billing agent or alternative payee assignment agreement. The billing agents and alternative payees are subject to initial and monthly Federal exclusion (LEIE) and debarment (EPLS/SAM) screening by the assignee if the alternative payee assignment is on-going. Further, direct and indirect payments to out of country individuals and/or entities are prohibited. **Agency Contract §3.10.2.1.36.**
37. Provider shall screen its employees and contractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, CHIP, or any Federal health care programs (as defined in Section 1128B(f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded or debarred. Provider must immediately report to ACDE any exclusion information discovered. Civil monetary penalties may be imposed against providers who employ or enter into contracts with excluded individuals or entities to provide items or services to members. **Agency Contract §3.10.2.1.37.**
38. Provider understands and agrees that each claim Provider submits to the State or ACDE constitutes a certification that Provider has complied with all applicable Federal and State law (including, but not limited to, the Federal anti-kickback law and the Stark law) and Program requirements, in connection with such claims and the services provided therein. **Agency Contract §3.10.2.1.38.**

39. Provider shall report suspected abuse, neglect and financial exploitation of adults and suspected abuse or neglect of children in accordance with State law. **Agency Contract §3.10.2.1.39.**
40. For DHSP Plus LTSS Members, Provider shall facilitate notification of the Member's case manager by notifying ACDE, in accordance with ACDE's processes, as expeditiously as warranted by the Member's circumstances, of any known significant changes in the Member's condition or care, hospitalizations, or recommendations for additional services. **Agency Contract §3.10.2.1.40.**
41. For Members participating in PROMISE, Provider shall facilitate notification of the Member's DSAMH care manager by notifying DSAMH, in accordance with DSAMH's processes, as expeditiously as by the Member's circumstances, of any known significant changes in the Member's condition or care, hospitalizations, or recommendations for additional services. **Agency Contract §3.10.2.1.41.**
42. Provider shall secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect ACDE's members and ACDE under this Agreement. Provider shall maintain such insurance coverage at all times during the term of this Agreement, and upon execution of this Agreement furnish ACDE with written verification of the existence of such coverage. **Agency Contract §3.10.2.1.42.**
43. Provider agrees to abide by all State and Federal law and program requirements applicable to Provider. This Agreement incorporates by reference all applicable Federal and State law, and revisions of Federal and State law shall automatically be incorporated into this Agreement as they become effective. **Agency Contract §3.10.2.1.43.**
44. ACDE may suspend, deny, refuse to renew or terminate this Agreement in accordance with the Agency Contract (see Section 5.2 of the Agency Contract) and applicable law and regulation. **Agency Contract §3.10.2.1.45.**
45. The State reserves the right to direct ACDE to terminate or modify this Agreement when the State determines it to be in the best interest of the State. **Agency Contract §3.10.2.1.46.**
46. Both parties recognize that in the event of termination of the Agency Contract, Provider shall immediately make available to the State, or its designated representative, in a usable form, any or all records, whether medical or financial, related to Provider's activities undertaken pursuant to this Agreement. The provision of such records shall be at no expense to the State. **Agency Contract §3.10.2.1.47.**
47. **Conflict of Interest.** Provider acknowledges and agrees to abide by the relevant provisions of the Conflict of Interest clause in **Section 5.14.2** of the Agency Contract, the substance of which requires that:
- a. State and Federal employees who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agency Contract may not voluntarily acquire any personal interest, direct or indirect, in the Agency Contract.
 - b. All Stat employees are subject to the provisions of the Agency Contract governing conflicts of interest.

- c. ACDE represents and covenants to the State that ACDE presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services under the Agency Contract; and that, in the performance of the Agency Contract, ACDE shall not employ any person with such known interests. Provider represents and covenants to ACDE that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services under this Agreement; and, in the performance of this Agreement, Provider shall not employ any person with such known interests.
- d. Provider shall disclose information on individuals or corporations with an ownership or control interest in Provider to ACDE upon execution of this Agreement, and within thirty-six (36) days after any change of ownership of Provider.
- e. This Agreement may be terminated by ACDE if it is determined that Provider, its officers, agents, employees or subcontractors, offered or gave wages, compensation, gratuities or gifts of any kind to any officials or employees of the State of Delaware. Provider certifies that no member of or delegate to Congress, or employee of any federal agency has or will benefit financially or materially from this Agreement. In the event this Agreement is terminated under this paragraph, ACDE shall be entitled to pursue the same remedies against Provider as it could pursue in the event of breach of the Agreement by Provider. The rights and remedies provided for in this **paragraph 47** are in addition to any rights and remedies provided under law.

Agency Contract §3.10.2.1.48 (incorporating Agency Contract §5.14.2).

- 48. **Anti-Lobbying.** By signing this Agreement, Provider certifies, to the best of its knowledge and belief, that Federal funds have not been used for lobbying as prohibited by 31 U.S.C. 1352 and 45 CFR Part 93. Provider shall disclose any lobbying activities using non-Federal funds in accordance with 45 CFR Part 93. **Agency Contract §3.10.2.1.48 (incorporating Agency Contract §5.2.13.1.4).**
- 49. At all times during the term of the Agency Contract, Provider shall indemnify and hold the State harmless from all claims, losses, or suits relating to activities undertaken pursuant to the Agency Contract between the State and ACDE. In accordance therewith:
 - a. Provider shall indemnify, defend, protect, and hold harmless the State of Delaware and any of its officers, agents, and employees, and DSHP and DSHP Plus Members and their eligible dependents from:
 - i. Any claims, damages or losses arising from the services rendered by Provider or any subcontractor, person or firm performing or supplying services, materials, or supplies in connection with the performance of this Agreement;
 - ii. Any claims, damages or losses to any person or firm and/or property injured or damaged by erroneous, negligent or willful acts, including disregard of State or Federal law, by Provider, its officers, agents, employees or subcontractors in the performance of this Agreement;
 - iii. Any claims, damages or liability resulting to any person or firm injured or damaged by Provider, its officers, agents, employees, or subcontractors by the

publication, translation, reproduction, delivery, performance, use or disposition of any data processed under this Agreement in a manner not authorized by this Agreement or by Federal or State law;

- iv. Any failure of Provider, its officers, employees or subcontractors to observe Federal or State law, including but not limited to labor law and minimum wage law;
 - v. Any claims, damages or liability resulting from Provider insolvency, inability or failure to pay its officers, agents, employees or subcontractors, or any other person or firm furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement; and
 - vi. Any claims, damages, losses or costs associated with legal expenses, including but not limited to those incurred by or on behalf of the State in connection with the defense of claims for such injuries, losses, claims or damages specified above.
- b. Before delivering services under this Agreement, Provider shall provide adequate demonstration to ACDE that insurance protections necessary to address each of the above risk areas (**paragraphs 49.a.i through 49.a.vi**) are in place. Provider may elect to self-insure any portion of the risk assumed under this Agreement based upon Provider's ability (size and financial reserves included) to survive a series of adverse financial actions, including withholding of payment or imposition of monetary sanctions by ACDE or the State.
- c. Provider shall ensure that no Member is held liable for any of the following:
- i. Provider's debts, in the event of Provider's insolvency;
 - ii. Covered Services provided to the Member, for which the State does not pay ACDE;
 - iii. Covered Services or additional services provided to the Member, for which ACDE or the State does not pay Provider;
 - iv. For any payment in excess of cost-sharing or patient liability responsibilities specified in this Agreement;
 - v. For payments for Covered Services to the extent that those payments are in excess of the amount that the Member would owe if ACDE provided the services directly.

Agency Contract §3.10.2.1.49 (incorporating Agency Contract §5.8).

50. Provider shall comply with requirements mandating provider identification of provider preventable conditions (PPCs) as a condition of payment, including but not limited to reporting all identified PPCs in encounter data submitted to ACDE. Provider acknowledges that ACDE may not and will not pay for PPCs, in accordance with 42 CFR 434.6(a)(12) and 42 CFR 447.26.

Agency Contract §3.10.2.1.50.

51. In addition to any other sanctions or reductions in payments that ACDE may assess on Provider for specific failures to comply with provider participation requirements and that are provided for elsewhere in this Agreement, ACDE may, at its discretion or as directed by the State, impose financial consequences against Provider as appropriate. **Agency Contract §3.10.2.1.51.**

52. Provider is not permitted to encourage or suggest, in any way, that children be placed into State custody in order to receive medical, behavioral or long term services and supports (LTSS) benefits covered by the State. **Agency Contract §3.10.2.1.52.**

53. Provider shall offer hours of operation that are no less than the hours of operation offered to Provider's commercial patients. **Agency Contract §3.10.2.1.53.**

54. **Non-Discrimination.**

a. Provider shall not exclude from participation in, or deny benefits to, or otherwise subject a person to discrimination in the performance of Provider's obligations under this Agreement or in the employment practices of Provider, on grounds of handicap, disability, age, race, color, religion, sex, national origin, or any other status protected by Federal or State law.

b. Provider shall have written procedures for the provision of language interpretation services for any Member who needs such services, including but not limited to Members with limited English proficiency (LEP).

Agency Contract §3.10.2.1.54.

55. Provider shall not use State's name or logos for any materials intended for dissemination to Provider's patients unless said material has been submitted to the State by ACDE for review and has been approved by the State. This prohibition shall not include references to whether or not Provider accepts Medicaid. **Agency Contract §3.10.2.1.55.**

56. Provider's responsibilities with respect to third party liability (TPL) include the obligation to identify TPL coverage, including Medicare and long-term care insurance as applicable; and, except as otherwise provided in the Agency Contract, to seek such TPL payment before submitting claims to ACDE. **Agency Contract §3.10.2.1.56.**

57. **Hospital Providers.** If Provider is a hospital (including a psychiatric hospital):

a. Provider shall cooperate with ACDE in developing and implementing protocols as part of ACDE's nursing facility diversion plan, which shall include, at a minimum, Provider's obligation to promptly notify ACDE upon admission of an eligible Member, regardless of payor source for the hospitalization. As part of the discharge planning process with ACDE's care management staff, hospital Provider will identify Members who may need home health, nursing facility, or home & community-based services (HCBS) upon discharge. Hospital Provider and ACDE will work together in the discharge planning process to ensure that Members receive the most appropriate and cost-effective Medically Necessary services upon discharge. **Agency Contract §3.10.2.1.57.**

b. Provider shall cooperate with ACDE in implementing an inpatient behavioral health UM strategy. Provider shall collaborate with identified outpatient behavioral health providers when admitting Members for acute behavioral health treatment; and, within twenty-four

(24) hours of admission, complete a comprehensive assessment including an assessment of anticipated discharge needs. **Agency Contract §3.10.2.1.58.**

58. Primary Care Providers (PCPs) must meet the requirements applicable to PCPs as set forth in Section 3.9.8.1 of the Agency Contract (“PCP Responsibilities). **Agency Contract §3.10.2.1.59.**

59. Any requirement in this Agreement that is determined by the State to conflict with the Agency Contract shall be null and void, but all other provisions shall remain in full force and effect. **Agency Contract §3.10.2.1.60.**

60. No other terms or conditions agreed to by ACDE and Provider shall negate or supersede the requirements set forth in **paragraphs 1 through 60** of this **Schedule 9-2B.**

61. **Requirements Applicable to Nursing Facilities.** In addition to the requirements set forth in **paragraphs 1 through 60** of this **Schedule 9-2B.** the following requirements shall also apply to Provider if Provider is a nursing facility:

- a. Provider shall promptly notify ACDE and/or other entity as directed by the State, of a Member’s admission or request for admission to Provider’s nursing facility, regardless of payor source for the nursing facility stay, or when there is a change in a Member’s known circumstance. Provider shall also promptly notify ACDE and/or entity as directed by the State, prior to a Member’s discharge. **Agency Contract §3.10.3.1.1.**
- b. Provider shall furnish written notice to the State and ACDE in accordance with State and Federal requirements before voluntarily terminating this Agreement. Provider shall comply with all applicable State and Federal requirements regarding voluntary termination. **Agency Contract §3.10.3.1.2.**
- c. Provider shall notify ACDE immediately when considering discharging a Member, and shall further consult with the Member’s case manager to intervene in resolving issues if possible; and, if not possible, to prepare and implement a discharge and/or transition plan as appropriate. **Agency Contract §3.10.3.1.3.**
- d. Provider shall not request that a Member leave after his/her Medicare benefit days have been exhausted. **Agency Contract §3.10.3.1.4.**
- e. Provider shall notify the Member and/or the Member’s representative (if applicable) in writing thirty (30) calendar days prior to discharge in accordance with State and Federal requirements. ACDE shall notify Provider in writing thirty (30) calendar days prior a Member leaving the facility. **Agency Contract §3.10.3.1.5.**
- f. Provider shall accept payment or appropriate denial made by ACDE (or, if applicable, payment by ACDE that is supplemental to the Member’s third-party payor) plus the amount of any applicable patient liability, as payment in full for services provided; and shall not solicit or accept any payment from the Member in excess of the amount of applicable patient liability. **Agency Contract §3.10.3.1.6.**
- g. Provider’s responsibilities regarding patient liability include but are not limited to collecting the applicable patient liability amounts from Members, notifying the Member’s case manager if there is an issue with collecting a Member’s patient liability

amount, and making good faith efforts to collect payment. **Agency Contract §3.10.3.1.7.**

- h. Provider shall notify ACDE of any change in a Member's medical or functional condition that could impact the Member's level of care for the currently authorized level of nursing facility services. **Agency Contract §3.10.3.1.8.**
- i. Provider shall comply with State and Federal law applicable to nursing facilities, including but not limited to those that govern admission, transfer and discharge policies. **Agency Contract §3.10.3.1.9.**
- j. Provider shall comply with Federal Preadmission Screening and Resident Review (PASRR) requirements, including that a Level I screening be completed prior to admission, a Level II evaluation be completed prior to admission when indicated by the Level I screening, and a review be completed based upon a significant physical or mental change in the resident's condition that might impact the Member's need for or benefit from specialized services. **Agency Contract §3.10.3.1.10.**
- k. Provider shall cooperate with ACDE in developing and implementing protocols as part of ACDE's nursing facility diversion plan, which shall include, at a minimum, Provider's obligation to promptly notify ACDE upon admission or request for admission of an eligible Member, regardless of payor source for the hospitalization. Provider will cooperate with ACDE to identify residents who may want to transition from nursing facility services to HCBS care, and Provider will promptly notify ACDE regarding all such identified Members. Provider and ACDE will work together in assessing the Member's transition potential and needs, and in developing and implementing a transition plan, as applicable. **Agency Contract §3.10.3.1.11.**
- l. Provider will coordinate with ACDE in complying with the requirements in 42 CFR 483.70(j) regarding written transfer agreements, and to use Participating Providers when transfer is medically appropriate, except as authorized by ACDE or for Emergency Services. **Agency Contract §3.10.3.1.12.**
- m. Provider shall immediately notify ACDE of any change in its license to operate as issued by the State as well as any deficiencies cited during the Federal certification process. **Agency Contract §3.10.3.1.13.**
- n. If Provider's nursing facility is involuntarily decertified by the State or CMS, this Agreement will automatically be terminated in accordance with Federal requirements. **Agency Contract §3.10.3.1.14.**
- o. This Agreement shall be assignable from ACDE to the State, or its designee, at the State's discretion upon written notice to ACDE and Provider. Further, Provider agrees to be bound by any such assignment. In the event of such an assignment, the State, or its designee, shall not be responsible for past obligations of ACDE. **Agency Contract §3.10.3.1.15.**

62. **Requirements Applicable to HCBS Providers.** In addition to the requirements set forth in **paragraphs 1 through 60** of this **Schedule 9-2B**, the following requirements shall also apply to Provider if Provider is a HCBS provider:

- a. Provider shall furnish at least thirty (30) calendar days' advance written notice to ACDE in the event Provider is no longer willing or able to provide services to a Member, including the reason for the decision; and shall cooperate with the Member's case manager to facilitate a seamless transition to alternate providers. **Agency Contract §3.10.4.1.1.**
- b. In the event of a provider change from Provider to new HCBS provider, regardless of any other provision in this Agreement, Provider will continue to provide services to the Member in accordance with the Member's plan of care until the Member has transitioned to the new provider, as determined by ACDE, or as otherwise directed by ACDE, which may exceed thirty (30) days from the date of Provider's change notice to ACDE. **Agency Contract §3.10.4.1.2.**
- c. Reimbursement of Provider shall be contingent upon the provision of services to an eligible Member in accordance with applicable Federal and State requirements and the Member's plan of care as authorized by ACDE. Reimbursement must be supported by detailed documentation of service delivery to support the amount of services billed, including at a minimum: the date, time and location of service; the specific HCBS provided; the name of the Member receiving the service; the name of the staff person who delivered the service; the detailed tasks and functions performed as a component of each service; notes for other caregivers (whether paid or unpaid) regarding the Member or his/her needs (as applicable); and the initials or signature of the staff person who delivered the service. **Agency Contract §3.10.4.1.3.**
- d. Provider shall immediately report any deviations from a Member's service schedule to the Member's case manager. **Agency Contract §3.10.4.1.4.**
- e. Upon acceptance by Provider to provide approved services to a Member as indicated in the Member's plan of care, Provider shall ensure that it has staff sufficient to provide the service(s) authorized by ACDE in accordance with the Member's plan of care, including the amount, frequency, duration and scope of each service in accordance with the Member's service schedule. **Agency Contract §3.10.4.1.5.**
- f. Provider shall provide back-up for its own staff if they are unable to fulfill their assignment for any reason, and shall ensure that any back-up staff meet the qualifications for the authorized service. **Agency Contract §3.10.4.1.6.**
- g. Provider shall not require a Member to choose Provider as the provider of multiple services as a condition of providing any service to the Member. **Agency Contract §3.10.4.1.7.**
- h. Provider shall not solicit Members to receive services from Provider. This restriction includes, and shall operate as a prohibition of: (i) communicating with existing HCBS Members via telephone, face-to-face or written communication for the purpose of petitioning the Member to change HCBS providers; or (ii) communicating with hospitals, discharge planners, or other institutions for the purposes of soliciting potential HCBS members that should instead be referred to ACDE as applicable. **Agency Contract §3.10.4.1.8.**
- i. Provider shall comply with ACDE's critical incident management system promulgated pursuant to the Agency Contract. **Agency Contract §3.10.4.1.9.**