

State of Texas §
County of Travis §

**Department of Aging and Disability Services
Medicaid Provider Agreement for Nursing Facility Services**

WINTERHAVEN HEALTHCARE RESIDENCE OPERATOR LLC

(Name of Legal Entity)

WINTERHAVEN HEALTHCARE RESIDENCE

(Name of Facility)

6534 STUEBNER AIRLINE RD

(Street Address)

HOUSTON

TEXAS

77091

(City)

(State)

(ZIP Code)

1027188

004826

4826

(Provider No.)

(Facility No.)

(Cross Reference No.)

I.

The Department of Aging and Disability Services (Department) represents the Health and Human Services Commission (HHSC), the Texas single state agency for Medicaid services provided under this agreement. The Department, as the representative for HHSC, administers the Long-Term Care Program under the Texas Medical Assistance Program in accordance with Title XIX of the Social Security Act and Texas Human Resources Code, Title 2, Chapter 32.

The Department and the above legal entity (Provider) licensed to operate the above nursing facility (facility) enter into this provider agreement (agreement) for the consideration set forth below upon signatures of both parties, effective the **First day of October 2015**, and continuing until terminated as provided herein, in the Department's rules, or in federal rules and laws.

II.

The Provider agrees:

In General

- A. To provide nursing facility services and activities as defined in Title XIX of the Social Security Act and Title 40, Texas Administrative Code (TAC), Part 1, Chapter 19, to residents the Department determines eligible for such services.

- B. To comply with all applicable federal and Texas statutes and rules, including the following:
 - 1. Title 42, Code of Federal Regulations (CFR), Chapter IV;
 - 2. Texas Human Resources Code, Title 2, Chapter 32;
 - 3. Texas Human Resources Code, Title 6, Chapter 102;
 - 4. Texas Health and Safety Code, Title 4, Chapters 242, 250, 253, and 260A;
 - 5. Title 40, Texas Administrative Code (TAC), Part 1, Chapter 19; and
 - 6. Title 1, Texas Administrative Code (TAC), Part 15, Chapter 355.

- C. To comply with the following documents promulgated by the Department:
 - 1. applicable provider manuals or handbooks;
 - 2. applicable billing guidelines; and
 - 3. applicable provider communications, including provider letters, information letters and policy clarifications.

- D. To ensure the confidentiality of individual resident records and other information relating to the resident in accordance with applicable federal and Texas laws and rules. This provision shall not be construed as limiting the Department's access to resident records or other information relating to residents.

Updating DADS

- A. To disclose information on ownership and control, information related to business transactions and information on persons convicted of crimes in accordance with 42 CFR, Part 455, Subpart B, and to submit updated ownership and control disclosures within ten business days of a change in ownership or control interest and at any time within 35 days of a written request by the Department, HHSC or the U.S. Department of Health and Human Services (HHS).

- B. To keep its application for participation in the Medicaid Nursing Facility program current by informing the Department in writing of:
 - 1. a change of ownership or a change in the Provider's legal entity that directly or indirectly changes the legal entity responsible for fulfilling this agreement at least 30 calendar days prior to the date of the change;
 - 2. a change in the name of the person authorized to negotiate, execute, amend or terminate this agreement on behalf of the Provider within 30 calendar days of the date of the change; and
 - 3. a change in the name, telephone number, fax number or e-mail address of the Provider's contact person or the name of the Provider, if the change is not a change in the Provider's legal entity, within 14 calendar days of the date of the change.

- C. To keep its provider certifications current by informing the Department in writing immediately if the Provider learns that any of the certifications were erroneous when submitted and within five business days of a change that causes the certifications to

become erroneous by reason of changed circumstances.

- D. To notify the Department in writing:
1. if the Provider files for bankruptcy within 14 calendar days of the filing date;
 2. if a person with ownership or control interest, a managing employee or an agent, as those terms are defined in 42 CFR §455.101, is convicted of an offense listed in 40 TAC §99.2 or 1 TAC §371.1685 within 14 calendar days of the date of conviction; and
 3. immediately if the Provider is excluded from participation in Medicare, Medicaid or any federal or state health care program in accordance with §1128(a) or (b) of the Social Security Act (42 USC §1320a-7).

Claims

- A. To accept the Department's reimbursement rates as payment in full for the services specified in this agreement to the persons for whom a payment is received, and to make no additional charge to the individual, any member of his or her family or to any other source for any supplementation for such services, unless specifically allowed by Department rules.
- B. To submit claims for payment in accordance with Department and HHSC Claims Administrator billing guidelines applicable to the services under the agreement.
- C. That the Department may make proper adjustments to the Provider's payments from month to month to compensate for prior overpayments, underpayments or payments not made in accordance with the requirements of this agreement. The Provider further agrees the Department may withhold Provider's payments, in whole or in part, because of differences from whatever cause until such differences are resolved.
- D. That the Provider is responsible for payment of any valid audit exceptions found by the Department, HHSC, HHS or the Texas Attorney General's Medicaid Fraud Control Unit (AG-MFCU).
- E. That in accordance with §403.0551, Texas Government Code, and unless otherwise prohibited by any other law, any payments due to the Provider under this agreement will be first applied toward any debt or back taxes the Provider owes the state of Texas. Payments will be so applied until such debts and back taxes are paid in full.

Provisions governing staff and subcontractors

- A. To require any subcontractor to execute documents that binds the subcontractor to comply with the provisions of this agreement. Subcontractor means an individual or entity to which the Provider has contracted with or delegated some of its management functions or responsibilities of providing all or a part of the services required of the Provider under this agreement.

- B. That it is responsible for the behavior of its staff and subcontractors to ensure a violence-free contractual relationship. The Provider understands that any remarks, gestures or actions toward Department employees, volunteers or clients that carry an implied threat of any kind, even if intended to be in jest, will be taken seriously and may lead to corrective action, up to and including terminating this agreement.
- C. To comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for an individual hired on or after November 6, 1986, who will perform any labor or services under this agreement.
- D. That representatives of the Department, HHSC, AG-MFCU and HHS may conduct interviews of Provider personnel, subcontractors and their personnel, witnesses, and clients without a Provider's representative present unless the person interviewed voluntarily requests that the representative be present. The Provider must not coerce its personnel, subcontractors and their personnel, witnesses, or clients to accept representation by the Provider, and the Provider agrees that no retaliation will occur to a person who denies the Provider's offer of representation. Nothing in the agreement limits a person's right to counsel of his or her choice. Requests for interviews are to be complied with in the form and the manner requested. The Provider must ensure by contract or other means that its personnel and subcontractors cooperate fully in any investigation conducted by representatives of the Department, HHSC, AG-MFCU and HHS.

Recordkeeping

- A. To maintain its accounting records in accordance with generally accepted accounting principles (GAAP). GAAP are established by the Financial Accounting Standards Board (FASB).
- B. To keep all records pertinent to the services for which the Provider submits a claim.
 - 1. The Provider must keep adult residents' medical records for a minimum of five years after medical services end.
 - 2. The Provider must keep minor residents' medical records for a minimum of three years after the resident reaches legal age under Texas law.
 - 3. The Provider must keep other records for a minimum of three years after the end of the federal fiscal year in which the services were provided.
 - 4. If any litigation, claim, or audit involving the records begins before the expiration of the retention period, the Provider must keep the records until all litigation, claims or audit findings are resolved. A matter is considered resolved when a final order is issued in litigation or when the Department and Provider enter into a written agreement.

- C. That if this agreement is terminated or the Provider terminates business operations, the Provider must ensure:
1. records are stored and accessible;
 2. someone is responsible for adequately maintaining the records in accordance with the records retention requirements set forth in paragraph B above;
 3. the Department is informed in writing of how and where the records will be maintained and who may be contacted in order to access the records; and
 4. if any information in item 3 above changes, the Provider will notify the Department in writing within 10 business days of the date of the change.

Civil Rights

- A. To comply with state and federal anti-discrimination laws, including:
1. Title VI of the Civil Rights Act of 1964 (42 USC §2000d et seq.);
 2. Section 504 of the Rehabilitation Act of 1973 (29 USC §794);
 3. Americans with Disabilities Act of 1990 (42 USC §12101 et seq.);
 4. Age Discrimination Act of 1975 (42 USC §§6101-6107); and
 5. Department administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

The Provider also agrees to comply with all amendments to the above-referenced laws and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the U.S. may, on the grounds of race, color, national origin, sex, age, disability, political beliefs or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by federal or state funding, or otherwise be subjected to discrimination.

The Provider further agrees to:

1. comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 CFR, Part 80, Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The Provider agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits and activities on the basis of national origin. The Provider also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits and activities;
2. comply with Executive Order 13279, and its implementing regulations at 45 CFR, Part 87. These provide in part that any organization that participates in programs funded by direct financial assistance from the U.S. Department of

Agriculture (USDA) or HHS shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief;

3. upon request, provide HHSC's Civil Rights Office with copies of all of the Provider's civil rights policies and procedures; and
4. notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under the Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:

Civil Rights Office
Health and Human Services Commission
701 W. 51st Street Mail Code W206
Austin, TX 78751
Telephone Toll Free: 1-888-388-6332
Telephone: 512-438-4313
TTY Toll Free: 877-432-7232
Fax: 512-438-5885

- B. To comply with Executive Order 111126, entitled Equal Employment Opportunity, as amended by Executive Order 11375 and supplemented by U.S. Department of Labor regulations at 41 CFR Part 60.
- C. That if the Provider is a charitable or faith-based provider under this agreement, it must apprise all residents of the following: "Neither the Department's selection of a charitable or faith-based nursing facility provider nor the expenditure of funds under this agreement is an endorsement of the provider's charitable or religious character, practices or expressions. No nursing facility provider may discriminate against you on the basis of religion, a religious belief or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request a different provider. If you believe that you have been discriminated against, please discuss the complaint with your provider or notify your appropriate case manager."
- D. To provide, upon request, HHSC Civil Rights Office with copies of all its civil rights policies and procedures.

Fraud Prevention

- A. To screen its employees and contractors to determine if they have been excluded from Medicare, Medicaid or any federal or state health care program. The Provider agrees to search monthly the HHS-Office of Inspector General (OIG) and HHSC-OIG List of Excluded Individuals/Entities (LEIE) websites to capture exclusions and reinstatements that have occurred since the last search and to immediately report to HHSC-OIG any exclusion information the Provider discovers. Exclusionary searches for prospective employees and contractors shall be performed prior to employment or contracting.

- B. That no Medicaid payments can be made for any items or services directed or prescribed by a physician or other authorized person who is excluded from Medicare, Medicaid or any federal or state health care program when the individual or entity furnishing the items or services either knew or should have known of the exclusion. This prohibition applies even when the Medicaid payment itself is made to another provider, practitioner or supplier who is not excluded.
- C. That this agreement is subject to all state and federal laws and regulations relating to fraud and abuse in health care and the Medicaid program. As required by 42 CFR §431.107, the Provider agrees to keep any and all records necessary to disclose the extent of services the Provider furnishes to individuals in the Medicaid program and any information relating to payments claimed by the Provider for furnishing Medicaid services. On request, the Provider also agrees to furnish the Department, HHSC, AG-MFCU or HHS any information maintained under 42 CFR §431.107(b). The Provider will furnish copies of this information free of charge.

Sanctions

- A. That the Department may apply, at its discretion, sanctions if the Provider fails to comply with any provision of the agreement, including:
 - 1. recouping overpayments;
 - 2. suspending the Provider's payments;
 - 3. initiating termination of the agreement; and
 - 4. debarment.
- B. That the Department, pursuant to Texas Human Resources Code, Sec. 32.021, may assess monetary penalties against the Provider for violations of this agreement as required by 42 USC. §1396r(h).
- C. That this agreement is dependent on the Facility maintaining a certification of compliance with Medicaid nursing facility standards and program requirements. The Provider acknowledges this agreement automatically terminates on the date the Facility is certified as being out of compliance and that the Provider is not entitled to payment for services provided to Medicaid residents during the time the Facility does not have a certification of compliance with Medicaid standards and program requirements.
- D. That payments to the Provider under this agreement may be withheld during the pendency of a hearing on the termination of this agreement or Medicaid certification of noncompliance until a final decision is issued and all appeals are exhausted.
- E. That in accordance with 42 CFR §455.23, the Department shall suspend all Medicaid payments to the Provider upon notification by HHSC-OIG that a credible allegation of fraud under the Medicaid program is pending against the Provider, unless the Department has good cause not to suspend the payments or to suspend the payments only in part.

Handling Sensitive Information and Breach Notification

- A. As part of its contract with the Department, Contractor may be receiving or creating sensitive personal information, as section 521.002 of the Business and Commerce Code defines that phrase. Contractor must use appropriate safeguards to protect this sensitive personal information. These safeguards must include maintaining the sensitive personal information in a form that is unusable, unreadable, or indecipherable to unauthorized persons. Contractor may consult the “Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals” issued by the U.S. Department of Health and Human Services to determine ways to meet this standard.
- B. Provider must notify the Department of any unauthorized acquisition of sensitive personal information it receives from the Department under this contract, including any breach of system security, as section 521.053 of the Business and Commerce Code defines that phrase. Contractor must make an initial report to the Department as soon as possible but no later than two business days after discovering the unauthorized acquisition. Contract must follow up the initial report with a final report within 10 business days after the initial report. The final report must be in writing, and if feasible, the final report must identify each individual whose sensitive personal information has been or is reasonably believed to have been involved in the unauthorized acquisition.
- C. Provider must either disclose the unauthorized acquisition or pay the expenses associated with the Department doing the disclosure if:
 - 1. Provider experiences a breach of system security involving information owned by the Department for which disclosure is required under section 521.053 of the Business and Commerce Code; or
 - 2. Provider experiences a breach of unsecured protected health information, as 45 CFR §164.402 defines that phrase, and the department becomes responsible for doing the notification required by 45 CFR §164.404.

The Department may, at its discretion, waive this requirement.

Miscellaneous Requirements

- A. To comply with Texas Health and Safety Code, §85.113 and §85.115 concerning workplace and confidentiality guidelines for persons with AIDS or HIV.
- B. To comply with applicable provisions of the Clean Air Act (42 USC §7401-7671q) and the Federal Water Pollution Control Act (33 USC. §1251-1387), if funding for the agreement exceeds \$100,000.
- C. That in accordance with §2155.4441, Texas Government Code, the Provider shall, in performing any service under this agreement, purchase products and materials produced

in Texas when they are available at a comparable price and in a comparable period of time to products and materials produced outside of Texas.

- D. To make a good faith effort to utilize historically underutilized businesses (HUBs) when subcontracting. Some methods for locating HUBs include using searchable HUB databases at the Texas Comptroller of Public Accounts' website, using websites or other minority/women directory listings maintained by local chambers of commerce, advertising subcontract work in local minority publications or contacting the Department for assistance in locating available HUBs.
- E. That the Provider must not refer to the Department or to the State of Texas in any media release, public announcement, or public disclosure relating to this agreement, including any promotional or marketing materials, in a manner that suggests the Department or the State of Texas endorses, recommends, sponsors, or is collaborating with the Provider.

III.

The Department agrees:

- A. To pay the Provider for services provided under this agreement in amounts and under conditions determined by the Department as defined in this agreement, the applicable provider manual, handbook, policy letter or program rules and standards and in accordance with applicable laws and regulations for all eligible persons receiving such services under the Medical Assistance Program.
- B. To pay the Provider within time limits set by the Department and in accordance with applicable laws and regulations after a proper claim for payment is submitted and approved for payment in accordance with Department and HHSC Claims Administrator billing guidelines.
- C. To adjust payments to the Provider to compensate for prior overpayment or underpayment.
- D. To give the Provider reasonable notice of any impending change in its status as a participating provider, except that nothing in this section shall be construed to deny the Department the right, for failure to comply with this agreement or regulations published in the *Texas Register*, to terminate this agreement, suspend payments or take any other legal remedy available to the Department.
- E. To provide a hearing, in accordance with TAC, Title 1, Part 15, Chapter 357, Subchapter I, to the Provider in the event the Department imposes an adverse action on

the Provider under this agreement.

- F. To make available to the Provider the applicable provider manual and any changes to that manual that change the requirements for participation.
- G. That a religious organization that contracts with the Department does not by contracting with the Department lose the exemption provided under Section 702 of the Civil Rights Act [42 USC §2000E-1(a)] regarding employment practices.

A religious or charitable organization is eligible to be a provider on the same basis as any other private organization. The Provider retains its independence from state and local governments, including the Provider's control over the definition, development, practice and expression of its charitable or religious beliefs. Except as provided by federal law, the Department shall not interpret this agreement to require a charitable or religious organization to alter its form of internal governance or remove religious art, icons, scripture or other symbols. Furthermore, if a religious or charitable organization segregates the government funds provided under this agreement, then only the financial assistance provided by these funds will be subject to audit. However, neither the Department's selection of a charitable or faith-based nursing facility provider nor the expenditure of funds under this agreement is an endorsement of the provider's charitable or religious character, practices or expression. The purpose of this agreement is the provision of nursing facility services; no state expenditures have as their objective the funding of sectarian worship, instruction or proselytization, and no state funds shall be expended for these purposes.

The Department and Provider agree:

- A. That in the event any provision of this agreement becomes unenforceable or void, all other provisions of this agreement will remain in effect.
- B. That the Provider may not transfer or assign this agreement without the express prior written approval of the Department.
- C. That this agreement may be assigned to the Department's successor state agency or agencies.
- D. That the Department may amend this agreement by written notice to the Provider. The Department reserves the right to amend this agreement through execution of a unilateral amendment signed by a Department person with delegated signature authority and provided to the Provider under the following circumstances:
 - 1. to correct an obvious clerical error in the agreement;
 - 2. to incorporate new or revised federal or state statutes, rules or policies;
 - 3. to comply with a court order or judgment; and
 - 4. to change the name of the Provider in order to reflect the Provider's name as recorded by the Texas Secretary of State.

- E. That nothing in this agreement or any conduct by a representative of the Department relating to this agreement shall be construed as a waiver of the state's sovereign immunity to suit.
- F. That neither party to this agreement waives its right to enforce a right under this agreement by failing to enforce or delaying the enforcement of any other right under this agreement.
- G. That the Provider is an independent contractor and not an employee of the Department for any purpose. The Provider and the Department agree that:
 - 1. the Department will not withhold or pay on behalf of the Provider any sums for income tax, unemployment insurance, Social Security or any other withholding, or make available to the Provider any of the benefits, including workers' compensation insurance coverage and health and retirement benefits, afforded to Department employees; and
 - 2. the Provider must indemnify the Department from any liability, including attorneys' fees and legal expenses, incurred by the Department with respect to claims that the Department should have been withholding or making payments on behalf of the Provider or providing benefits to the Provider's employees.
- H. That nothing in this agreement is intended to create a joint venture, a partnership or a principal-agent relationship.
- I. That the Provider assigns to the Department all claims for overcharges associated with this agreement arising under the anti-trust laws of the United States, 15 U.S.C. §§ 1-38, or the anti-trust laws of the state of Texas, Tex. Bus. & Com. Code, §§ 15.01-40.
- J. That in compliance with §2262.003, Texas Government Code:
 - 1. the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract;
 - 2. acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and
 - 3. under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- K. That this agreement shall continue subject to the availability of appropriated funds or until the federal or state governments or both cease to participate in the program.
- L. That any breach or violation of any of the provisions of this agreement or state or federal regulations shall make this entire agreement, at the Department's option,

subject to termination.

M. That the venue for any lawsuit between the Department and the Provider shall be Travis County, Texas.

N. That this agreement may be terminated by:

1. mutual agreement of the Department and the Provider;
2. either party to this agreement by giving 60 calendar days written notice to the other;
3. the Department for reasons set forth in federal or state laws or rules, the terms of this agreement, or the applicable provider manual, handbook, or program standards.
4. the Department if a certification made by the Provider in this agreement is inaccurate or becomes inaccurate; or
5. the Department for good cause.

This agreement is executed by the parties in the capacities stated below.

**Department of Aging
and Disability Services**

**WINTERHAVEN HEALTHCARE RESIDENCE
OPERATOR LLC
dba WINTERHAVEN HEALTHCARE
RESIDENCE**



Signature

10-14-15

Date



Signature – Provider Representative

10/1/15

Date

Mary T. Henderson

Name (print or type)

Joe Neuman

Name of Provider Representative (print or type)

Assistant Commissioner

Title (print or type)

CEO

Title of Provider Representative (print or type)