

Health and Human
Services Commission

Form 2039
July 2018-E

Medicaid Provider Agreement for Nursing Facility Services

Klement Healthcare, Inc. Legal Name of Entity (the "Provider")		
2109 South K St., McAllen, TX 78503 Entity's Full Address		
McAllen Transitional Care Center Provider's Facility Name (the "Facility")		
2109 South K St., McAllen, TX 78503 Provider's Facility Full Address		
001028393 (Provider No.)	102065 (Facility No.)	9445 (Cross Reference No.)

I.

The Health and Human Services Commission ("HHSC") is the Texas single state agency for Medicaid services provided under this provider agreement (the "Agreement"). 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.

HHSC and Provider enter into this Agreement for the initial term of four (4) years commencing as of the first date it has been executed by both parties. Thereafter, the term of this Agreement shall automatically renew for successive four (4) year terms, subject to the availability of state appropriations or federal funding, unless terminated as provided for in this Contract.

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, Part 1, Chapter 19, to residents that HHSC 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, 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 Part 1, Chapter 17;
 - 6. Title 40, Texas Administrative Code, Part 1, Chapter 19; and
 - 7. Title 1, Texas Administrative Code, Part 15, Chapter 355.
- C. To comply with the following documents promulgated by HHSC:
 - 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 HHSC's access to resident records or other information relating to residents.
- E. To comply with the Title XIX Texas State Plan for all services provided under this Agreement. Further, Provider by signing this Agreement certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Agreement.

Updating HHSC

- 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 10 business days of a change in ownership or control interest and at any time within 35 days of a written request by 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 HHSC 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 email address of the Provider's contact person or the name of the Provider, if the change is not a change in the Provider's entity, within 14 calendar days of the date of the change.
- C. To keep its provider certifications current by informing HHSC 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 HHSC 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 Texas Administrative Code §99.2 within 14 calendar days of the date of conviction;
 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); and
 4. immediately if the Provider is notified by HHSC that its enrollment application has been denied or abated.

Claims

- A. To accept HHSC'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 HHSC rules.
- B. To submit claims for payment in accordance with HHSC Claims Administrator billing guidelines applicable to the services under the Agreement.
- C. That HHSC 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 HHSC 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 HHSC, HHS, or the Texas Attorney General's Medicaid Fraud Control Unit ("OAG-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 HHSC 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 Nov. 6, 1986, who will perform any labor or services under this Agreement.
- D. To certify and ensure that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of:
1. all persons employed during the Contract term to perform duties within Texas; and
 2. all persons (including contractors).

E. That representatives of HHSC, OAG-MFCU, and HHS may conduct interviews of Provider's 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 HHSC, OAG-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. Unless a longer period is required by applicable law, the Provider will retain legible copies of the Agreement and all related documents, including but not limited to medical records, for a minimum of the longest of the following three periods: (i) 7 years after the Agreement is completed, expires, or is otherwise terminated; (ii) 7 years after all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving the Agreement or documents are resolved, or (iii) the date on which the individual for whom the records relate becomes 21 years of age.
- 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. HHSC 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 HHSC in writing within 10 business days of the date of the change.

Civil Rights

- A. The Provider agrees to comply with state and federal anti-discrimination laws, including without limitation:
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);
 5. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 6. Food and Nutrition Act of 2008 (7 U.S.C. §2011 et seq.); and
 7. System Agency administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.

The Provider agrees to comply with all amendments to the above-referenced laws, and all related regulations. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, 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 C.F.R. Part 80 or 7 C.F.R. Part 15, which prohibit a Provider from adopting and implementing policies and procedures that exclude or limit clients' participation in programs and benefits, on the basis of national origin. Civil rights laws require Providers to provide alternative methods for ensuring access to services for applicants and recipients who are not fluent in English. Provider agrees to take reasonable steps to provide services and information, both orally and in writing and electronically, in appropriate languages other than English;
2. post applicable civil rights posters in areas open to the public informing clients of their civil rights and including contact information for the System Agency's Civil Rights Office. The posters are available on the HHSC website at: <http://hhscx.hhsc.texas.gov/system-support-services/civil-rights/publications>;
3. comply with Executive Orders 13279 and 13559, and their implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by the U.S. Department of Agriculture ("USDA") or HHS shall not discriminate against a program beneficiary on the basis of religion or religious belief. Provider must provide written notice to beneficiaries of their rights;
4. upon request, provide the System Agency's Civil Rights Office with copies of all of the Provider's civil rights policies and procedures; and

5. notify System Agency's Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than 10 calendar days after receipt of a complaint. This notice 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. That if the Provider is a charitable or faith-based Provider under this Contract, it must apprise all residents of the following: "Neither the System Agency's selection of a charitable or faith-based Provider nor the expenditure of funds under this Contract is an endorsement of the Provider's charitable or religious character, practices or expressions. No provider or contractor 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 contractor because of its religious character, you may request a different contractor. If you believe that you have been discriminated against, please discuss the complaint with your contractor or notify your appropriate case manager."

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 HHSC, OAG-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 HHSC 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; and
 3. initiating termination of the Agreement.
- B. That HHSC, pursuant to Texas Human Resources Code, §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, HHSC 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 HHSC has good cause not to suspend the payments or to suspend the payments only in part.

Privacy, Security and Breach Notification

- A. To comply with the requirements set forth in this Agreement relating to Texas Health and Human Services System ("HHS System") Confidential Information.
- B. "HHS System Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) provided to or made available to the Provider electronically or through any other means that consists of or includes any or all of the following:
1. Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information;
 2. Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521;
 3. Federal Tax Information;
 4. Personally Identifiable Information;
 5. Social Security Administration Data, including, without limitation, Medicaid information;
 6. All information designated as confidential under the constitution and laws of the State of Texas and of the United States, including the Texas Health & Safety Code and the Texas Public Information Act, Texas Government Code, Chapter 552.
- C. Any HHS System Confidential Information received by the Provider under this Agreement may be disclosed only in accordance with applicable law. By signing this Agreement, the Provider certifies that the Provider is, and intends to remain for the term of this Agreement, in compliance with all applicable state and federal laws and regulations with respect to privacy, security, and breach notification, including without limitation the following:
1. The relevant portions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C;
 2. 42 CFR Part 2 and 45 CFR Parts 160 and 164;
 3. The relevant portions of The Social Security Act, 42 U.S.C. Chapter 7;
 4. The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a;
 5. Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;
 6. OMB Memorandum 07-16;
 7. Texas Business and Commerce Code Chapter 521;
 8. Texas Health and Safety Code, Section 81.006 and Chapters 181 and 611;
 9. Texas Human Resources Code § 12.003;
 10. Texas Government Code, Chapter 552, as applicable;
 11. Title 3 of the Texas Occupations Code, as applicable;
 12. Constitutional and Common Law Privacy; and
 13. Any other applicable law controlling the release of information created or obtained in the course of providing the services described in this Agreement.

The provider further certifies that the Provider will comply with all amending regulations, and relating to those laws, to the extent applicable.

- D. Provider will ensure that any subcontractor of Provider who has access to HHS System Confidential Information will sign a HIPAA-compliant Business Associate Agreement with Provider, and Provider will submit a copy of that Business Associate Agreement to HHSC upon request.

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 HHSC for assistance in locating available HUBs.
- E. That the Provider must not refer to the HHSC 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 HHSC or the State of Texas endorses, recommends, sponsors or is collaborating with the Provider.

III.

HHSC agrees:

- A. To pay the Provider for services provided under this Agreement in amounts and under conditions determined by HHSC 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 HHSC and in accordance with applicable laws and regulations after a proper claim for payment is submitted and approved for payment in accordance with 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 HHSC 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 HHSC.
- E. To provide a hearing, in accordance with Texas Administrative Code, Title 1, Part 15, Chapter 357, Subchapter I, to the Provider in the event HHSC 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 HHSC does not by contracting with HHSC 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, HHSC 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 HHSC'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.

IV.

HHSC 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 HHSC.
- C. That this Agreement may be assigned to HHSC's successor state agency or agencies.
- D. That HHSC may amend this Agreement by written notice to the Provider. HHSC reserves the right to amend this Agreement through execution of a unilateral amendment signed by an HHSC 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 HHSC 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 HHSC for any purpose. The Provider and HHSC agree that:

- 1. HHSC 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 HHSC employees; and
 - 2. the Provider must indemnify HHSC from any liability, including attorneys' fees and legal expenses, incurred by HHSC with respect to claims that HHSC 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 HHSC all claims for overcharges associated with this Agreement arising under the anti-trust laws of the United States, 15 USC §§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 HHSC's option, subject to termination.
- M. That the venue for any lawsuit between HHSC and the Provider shall be Travis County, Texas.
- N. That this Agreement may be terminated by:
- 1. mutual agreement of HHSC and the Provider;
 - 2. either party to this Agreement by giving 60 calendar days written notice to the other;
 - 3. HHSC 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. HHSC if a certification made by the Provider in this Agreement is inaccurate or becomes inaccurate; or
 - 5. HHSC for good cause.

V.

Incorporation by Reference

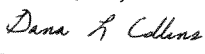
The following attachments to this Agreement are hereby attached and incorporated by reference:

- 1. Attachment A - Form 3720-N, Application for Nursing Facility License and Participation in Title XIX Medicaid
- 2. Attachment B - Form 4732, Nongovernmental Contractor Certification (*not applicable to governmental entities*)
- 3. Attachment C - Form 5871/5871-S, Disclosure of Ownership and Control Statement, whichever is applicable to this Agreement
- 4. Attachment D - General Affirmations
- 5. Attachment E - OMB No. 4040-0007, Federal Assurances - Non-Construction Programs.

VI.

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

Health and Human Services Commission


DocuSigned by:

 Dana L. Collins

02/07/2020
 Date

Dana L. Collins
 Name (print or type)

Director IV
 Title (print or type)

Klement Healthcare, Inc.
 d/b/a McAllen Transitional Care Center


 Signature - Provider Representative

11/4/19
 Date

Soon Burnam
 Name of Provider Representative (print or type)

Treasurer
 Title of Provider Representative (print or type)