

IGT RESPONSIBILITY CONTRACT
BETWEEN
THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION
AND
NON-STATE GOVERNMENTAL ENTITY

This Contract is between the Texas Health and Human Services Commission (“**HHSC**”) and Midland County Hospital District d/b/a Midland Memorial Hospital, (“**Governmental Entity**”) (individually, a “**Party**” and collectively, “the **Parties**”).

I. LEGAL AUTHORITY

This Contract is entered into pursuant to Chapters 531 and 791 of the Texas Government Code.

II. BACKGROUND AND PURPOSE

- A. HHSC is the single state agency designated in Texas to administer the medical assistance program known as Medicaid.
- B. HHSC administers the Network Access Improvement Program (“**NAIP**”) through Medicaid managed care organizations (“**MCOs**”). The Centers for Medicare and Medicaid Services (“**CMS**”) has determined that NAIP payments meet the following definition of “pass-through payments” contained in 42 C.F.R. §438.6(a):

[A]ny amount required by the State to be added to the contracted payment rates, and considered in calculating the actuarially sound capitation rate, between the MCO, PIHP, or PAHP and hospitals, physicians, or nursing facilities that is not for the following purposes: A specific service or benefit provided to a specific enrollee covered under the contract; a provider payment methodology permitted under paragraphs (c)(1)(i) through (iii) of this section for services and enrollees covered under the contract; a subcapitated payment arrangement for a specific set of services and enrollees covered under the contract; GME payments; or FQHC or RHC wrap around payments.

Under NAIP, MCOs will be required by HHSC to provide pass-through payments to eligible Public Hospitals.

- C. The purpose of this Contract is to:
 - 1. Provide terms and conditions for the Governmental Entity to transfer non-federal Public Funds to HHSC for use as the non-federal share of NAIP pass-through payments; and

2. Describe the process that will be used to reconcile the non-federal percentage of payments from HHSC to the MCOs with the amount of funds transferred to HHSC from the Governmental Entity.

III. DEFINITIONS

For purposes of this Contract, the following terms have the meanings as described below:

- A. Intergovernmental Transfer (“**IGT**”) -- A transfer of Public Funds from a Non-state Governmental Entity to HHSC.
- B. Managed Care Organization (“**MCO**”) -- A Medicaid managed care organization contracted with HHSC to provide health care services to Medicaid recipients.
- C. Non-state Governmental Entity -- A hospital authority, hospital district, health district, city or county.
- D. Public Hospital -- The hospital owned and operated by the Governmental Entity.
- E. Public Funds -- Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the Governmental Entity that owns and operates the Public Hospital. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

IV. CONTRACT PERIOD AND RECONCILIATION PERIOD

- A. The term of this Contract (the “**Contract Period**”) begins on September 1, 2023, and ends on August 31, 2024.
- B. The Contract Period may be modified by written agreement between the Parties.

V. CONTRACT AMOUNT

- A. For each Medicaid managed care program and service area in which the Public Hospital participates in a NAIP pass-through payment arrangement, HHSC's managed care contract with participating MCOs will require the MCOs to allocate a fixed percentage of the capitation rates to the Public Hospital's NAIP payments (the “**NAIP Rate Component**”).
- B. The non-federal percentage of the NAIP Rate Component equals 100 percent minus the applicable Federal Medical Assistance Percentage for Medicaid for Texas in effect when HHSC incurs the expense.
- C. The Parties agree this Contract will not exceed \$4,581,214.00 (“**Contract Amount**”), which equals (1) the non-federal percentage of the pass-through payment amount plus 10 percent, and (2) the non-federal percentage of the risk margin, administrative fee, and any other NAIP-related amounts HHSC is required to pay each applicable MCO pursuant to

the associated managed care contract between HHSC and the MCO. The Contract Amount is subject to the provisions of Section VI.A. and Article VII.

VI. STATEMENT OF SERVICES TO BE PERFORMED

A. Governmental Entity's responsibilities under this Contract include the following:

1. Beginning on August 10, 2023, and continuing on the tenth day of each month through July 10, 2024, the Governmental Entity will transfer to HHSC an amount equal to at least one-twelfth of the Contract Amount. If at any time during the Contract Period, HHSC determines that the Contract Amount is likely to exceed the amount described in Section V.C., HHSC will notify the Governmental Entity in writing of a revised amount that the Governmental Entity must transfer on the tenth day of each month remaining in the Contract Period.
2. The Governmental Entity will transfer to HHSC any shortfall amount calculated as described in Article VII within 30 days of receipt of HHSC's notice.

B. HHSC's responsibilities under this Contract include the following:

1. HHSC will provide the Governmental Entity with the NAIP Rate Component for each applicable MCO, Medicaid managed care program, and service area in which the Public Hospital participates in NAIP.
2. HHSC will perform the reconciliation processes described in Article VII.

VII. RECONCILIATION

HHSC will complete the reconciliation (referred to as the "**Reconciliation Period**") in multiple parts:

A. HHSC will confirm that the amount owed by the Governmental Entity under this Contract equals the amount actually paid by the Governmental Entity under this Contract by completing a reconciliation in multiple parts, as follows:

1. For each Medicaid program and service area in which the Public Hospital participates in NAIP, HHSC will determine the non-federal percentage of the NAIP Rate Component expended by HHSC for the Contract Period by multiplying the NAIP Rate Component by the total member months included in the Contract Period. Total member months include any adjustments to enrollment that occurred for the Contract Period prior to the reconciliation.
2. HHSC will compare the amount transferred by the Governmental Entity to HHSC for the Contract Period to the non-federal percentage of the NAIP Rate Component expended by HHSC for the Contract Period.
 - a. If the amount transferred by the Governmental Entity exceeds 102% of the non-federal percentage of the NAIP Rate Component expended by HHSC:

- I. HHSC will refund the difference between the amount transferred and 102% of the amount expended by HHSC; and
 - II. HHSC will return any excess funds following the reconciliation described in Section VII.C.
- b. If the amount transferred by the Governmental Entity is less than 102% of the non-federal percentage of the NAIP Rate Component expended by HHSC, HHSC will notify the Governmental Entity of the amount of the shortfall. The Governmental Entity will have 30 days to transfer the shortfall to HHSC, unless HHSC, at its sole discretion, extends the deadline.
- B. The Reconciliation Period will end no later than August 31, 2026. HHSC may complete interim reconciliations between August 31, 2024, and August 31, 2026, as updated enrollment data for the Contract Period, as reflected in adjusted member months, becomes available. HHSC will follow the process described in Section VII.A. for such interim reconciliations.
- C. HHSC will complete the final reconciliation no later than August 31, 2026, to ensure that payments under this Contract are based on final enrollment figures for the Contract Period.
1. For each Medicaid program and service area in which the Public Hospital participates in NAIP, HHSC will determine the non-federal percentage of the NAIP Rate Component expended by HHSC for the Contract Period by multiplying the NAIP Rate Component by the total member months included in the Contract Period. Total member months include any adjustments to enrollment that occurred subsequent to a reconciliation.
 2. HHSC will compare the amount transferred by the Governmental Entity to HHSC for the Program Period to the non-federal percentage of the NAIP Rate Component expended by HHSC for the Contract Period.
 - a. If the amount transferred by the Governmental Entity exceeds the non-federal percentage of the NAIP Rate Component expended by HHSC, HHSC will refund the excess and the amount retained under Section A.2.a.II. of this Article VII;
 - b. If the amount transferred by the Governmental Entity is less than the non-federal percentage of the NAIP Rate Component expended by HHSC, HHSC will notify the Governmental Entity of the amount of the shortfall. The Governmental Entity will have 30 days to transfer the shortfall to HHSC, unless HHSC, at its sole discretion, extends the deadline.

VIII. TERMINATION

- A. HHSC may terminate this Contract at any time, in its sole discretion, by providing written notice to the Governmental Entity through the individual identified in Section X.A.

IX. ADDITIONAL TERMS

- A. The services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the Parties.
- B. The services contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.
- C. The proposed arrangements serve the interest of efficient and economical administration of state government.
- D. All acts required under this Contract will be done in conformity with federal and state laws and regulations.
- E. If any portion of this Contract is held to be invalid or unenforceable, the remainder of the Contract remains valid and enforceable.
- F. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code (Resolution of Certain Contract Claims Against the State) will be used by the Governmental Entity to attempt to resolve any claim for breach of the Contract.
- G. This Contract may only be amended or modified by written agreement of the Parties.
- H. Information related to the performance of this Contract may be subject to Chapter 552 of the Texas Government Code (Public Information Act) and will be withheld from public disclosure or released to the public only in accordance therewith. The Governmental Entity shall make any information required under the Public Information Act available to HHSC in portable document file (".pdf") format or any other format agreed between the Parties.
- I. This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. The Governmental Entity irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY HHSC OR GOVERNMENTAL IMMUNITY BY THE GOVERNMENTAL ENTITY.
- J. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-

enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

- K. Neither Party shall assign or subcontract the whole nor any part of the Contract, including any right or duty required under it, without the other Party's prior written consent. Any assignment made contrary to this shall be void.
- L. All terms of this Contract will survive during any period where the Contract is going through reconciliation.

X. NOTICE

- A. All communications to the Governmental Entity under this Contract will be sent to:

Name: Stephen Bowerman
Title: President/Chief Operations Officer
Address: 400 Rosalind Redfern Grover Parkway
Midland, Texas 79701

- B. All communications to HHSC under this Contract will be sent to Victoria Grady, Director of Provider Finance, Health and Human Services Commission, North Austin Complex, 4601 W. Guadalupe St., Austin, TX 78751.

XI. SIGNATURE AUTHORITY


Each Party represents and warrants that the person executing this Contract on its behalf has full power and authority to enter into this Contract. Any services or work performed by the Governmental Entity before this Contract is effective or after it ceases to be effective are performed at the sole risk of the Governmental Entity. By signing this Contract, the person signing on behalf of the Governmental Entity certifies that this Contract has not been altered, amended, or changed from the version of the Contract sent by HHSC to the Governmental Entity.

SIGNATURE PAGE FOLLOWS

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SIGNATURE PAGE FOR HHSC CONTRACT NO. HHS001339400007

**Texas Health and Human Services
Commission**

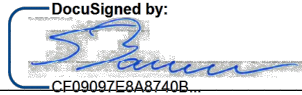
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Shannon Kelley

Deputy Executive Commissioner, Managed Care

Signature Date: July 20, 2023

Governmental Entity

By:  CE09097E8A8740B...

Name: Stephen Bowerman

Title: President/CEO

Signature Date: July 20, 2023

THE FOLLOWING ATTACHMENT IS HEREBY INCORPORATED BY REFERENCE:

ATTACHMENT A – SFY 2024 NAIP PROGRAM FINANCIAL ASSUMPTIONS