

HHSC Contract Number (to be completed by HHSC): _____
[_____] Contract Number (to be completed by HHSC): _____
NF 9-digit Medicaid Contract Number(s) (to be completed by GE): _____
If more than one NF, please list all 9-digit Medicaid Contract Number(s) on an attachment to this agreement

IGT RESPONSIBILITY AGREEMENT
between
The Texas Health and Human Services Commission
and
Non-State Governmental Entity

I. CONTRACTING PARTIES

This Agreement is between the Texas Health and Human Services Commission ("HHSC") and _____ ("Governmental Entity," or "GE") (collectively, "the Parties").

II. BACKGROUND AND PURPOSE

- A. HHSC is the single state agency designated in Texas to administer the medical assistance program known as Medicaid.
- B. On or after March 1, 2015, Medicaid-covered nursing facility ("NF") services will be carved in to managed care, as directed by the 83rd Texas Legislature.
- C. GE is, or owns, a Non-state Government-owned Nursing Facility that has met, or will meet, HHSC's eligibility requirements for the receipt of Minimum Payment Amounts for Eligibility Period One.
- D. As consideration for entering into this Agreement, the Non-state Government-owned Nursing Facility owned by GE will receive the Minimum Payment Amount for qualified Nursing Facility Unit Rate services paid through Medicaid managed care organizations ("MCOs"), provided that the NF meets the requirements of a Qualified Nursing Facility. Medicaid MCOs will pay the Minimum Payment Amount in two installments.
- E. The purposes of this Agreement are:
 - 1. To provide terms and conditions for GE to transfer non-federal Public Funds, to HHSC for use as a portion of the capitation payment for Medicaid MCOs;
 - 2. To describe the expectations of the Parties in the event GE fails to timely transfer funds to HHSC for this purpose; and
 - 3. To 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 GE.

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III. DEFINITIONS

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

1. Base Period- The time period from which data is drawn to calculate the MCOs' capitation rates. For Eligibility Period One, the base period is May 1, 2013 through April 30, 2014.
2. Eligibility Period One- The first period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts, covering dates of service from the later of March 1, 2015, or the date on which nursing facilities are carved in to managed care, to August 31, 2015.
3. First Payment- The payment made in the ordinary course of business by MCOs to Qualified Nursing Facilities for the provision of services to Medicaid recipients.
4. Intergovernmental Transfer (IGT)- A transfer of Public Funds from a Non-state Governmental Entity to HHSC.
5. Managed Care Organization (MCO)- A Medicaid managed care organization contracted with HHSC to provide nursing facility services to Medicaid recipients.
6. Minimum Payment Amount- The minimum payment amount for a Qualified Nursing Facility, as calculated by HHSC.
7. Network Nursing Facility- A nursing facility that has a contract with an MCO for the delivery of Medicaid covered benefits to the MCO's enrollees.
8. Non-state Governmental Entity- A hospital authority, hospital district, health district, city or county.
9. Non-state Government-owned Nursing Facility- A Network Nursing Facility where a Non-state Governmental Entity holds the license and is a party to the nursing facility's Medicaid provider enrollment agreement with the state.
10. Nursing Facility Add-on Services- The types of services that are provided in the nursing facility setting by a provider, but are not included in the Nursing Facility Unit Rate, including but not limited to emergency dental services, physician-ordered rehabilitative services, customized power wheel chairs, and augmentative communication devices.
11. Nursing Facility Unit Rate- The types of services included in the DADS daily rate for nursing facility providers, such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The Nursing Facility Unit Rate also includes applicable nursing facility rate enhancements as described in 1 TAC §355.308 (relating to Direct Care Staff Rate Component), and professional and general liability insurance. Nursing Facility Unit Rates exclude Nursing Facility Add-on Services.
12. Public Funds- Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a non-state

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governmental entity that holds the license and is party to the Medicaid provider enrollment agreement with the state. 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.

13. Qualified Nursing Facility- A Non-state Government-owned Nursing Facility that meets the eligibility requirements prescribed by HHSC.
14. RUG- For purposes of the First Payment, a resource utilization group under Medicare Part A as established by the Centers for Medicare and Medicaid Services. For purposes of the Second Payment, a resource utilization group under the RUG-III 34 group classification system, Version 5.20, index maximizing, as established by the state and the Centers for Medicare and Medicaid Services.
15. Second Payment- The amount a Qualified Nursing Facility can receive that is equal to the Minimum Payment Amount less adjustments to that amount, as determined by HHSC.

IV. CONTRACT PERIOD

The Agreement begins on the later of March 1, 2015 or the date that nursing facility services become Medicaid managed care benefits, and ends on August 31, 2017. The term of this Agreement may be modified by written agreement between the Parties.

V. CONTRACT AMOUNT

The Contract Amount is the amount of non-federal Public Funds transferred by GE. The Contract Amount is determined as follows:

- A. $\text{Statewide IGT} = \text{Member Months} \times \text{Non-Federal Share} \times \text{Increase in Payment} \times 1.1$
 1. "Statewide IGT" is the total amount of non-federal Public Funds that need to be transferred by all governmental entities to fully fund the difference between the First Payments and Second Payments for all Qualified Nursing Facilities approved by HHSC to receive the Minimum Payment Amount, plus ten percent.
 2. "Member Months" is the total number of member months for all Medicaid MCOs in the state for the state fiscal quarter as estimated by HHSC, in its sole discretion.
 3. "Non-Federal Share" is equal to one-hundred minus the Federal Medical Assistance Percentage for Medicaid for Texas for Federal Fiscal Year 2015. (*See* <http://aspe.hhs.gov/health/reports/2014/FMAP2015/fmap15.pdf>)
 4. "Increase in Payment" is the increase in the MCOs' capitation rates due to the Minimum Payment Amount program described in 1 TAC §353.608 as determined by HHSC, in its sole discretion.

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- B. GE Proportion = Individual UPL for Base Period/Statewide UPL for Base Period
1. “GE Proportion” is the proportion of the Statewide IGT attributed to GE.
 2. “Individual UPL for Base Period” is the total estimated UPL payment, as determined by HHSC in its sole discretion. HHSC will calculate the Individual UPL for the Base Period for all Qualified Nursing Facilities owned by GE that are approved by HHSC to receive the Minimum Payment Amount.
 3. “Statewide UPL for Base Period” is the total estimated UPL payment, as determined by HHSC in its sole discretion. HHSC will calculate the Statewide UPL for the Base Period for all Qualified Nursing Facilities that are approved by HHSC to receive the Minimum Payment Amount.
- C. Contract Amount = Statewide IGT x GE Proportion

VI. STATEMENT OF SERVICES TO BE PERFORMED

- A. By GE: Beginning on or before March 1, 2015, and continuing on or before the first day of each state fiscal quarter of Eligibility Period One, GE will transfer to HHSC an amount equal to the Contract Amount. Transfer dates will be determined by HHSC, in its sole discretion.
- B. By HHSC:
1. HHSC will notify all MCOs that the Qualified Nursing Facilities owned by GE are eligible to receive the Minimum Payment.
 2. HHSC will calculate the Minimum Payment Amount.
 3. HHSC will utilize the Contract Amount to fund the non-federal share of the Second Payment.
 4. HHSC will perform the reconciliation described in Section VIII of this Agreement.

VII. FAILURE BY GE TO TRANSFER FUNDS TO HHSC

If GE does not transfer the full amount described in Section VI.A. of this Agreement for any state fiscal quarter during the Eligibility Period One, all NFs owned by GE will be ineligible to receive the Minimum Payment Amounts described in this agreement for future eligibility periods, subject to Section VIII. Nothing in this contract supersedes other eligibility requirements described in the Texas Administrative Code.

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VIII. RECONCILIATION

HHSC will complete the reconciliation in two parts.

- A. The first reconciliation will occur no later than 30 days after the end of Eligibility Period One.
1. HHSC will compare the amount transferred by GE to HHSC for Eligibility Period One to the non-federal amount expended during Eligibility Period One by HHSC for all Qualified Nursing Facilities owned by GE that are approved by HHSC to receive the Minimum Payment Amount.
 2. The calculation of the non-federal amount expended during Eligibility Period One by HHSC for all Qualified Nursing Facilities owned by GE that are approved by HHSC to receive the Minimum Payment Amount will be the same as the calculation of the “Contract Amount” described in Section V with two exceptions:
 - a. “Member months” will be revised to reflect actual known member months for the eligibility period. The revision will be conducted no sooner than the day after the last day of the Eligibility Period and no later than 30 days after the end of the eligibility period.
 - b. The “Statewide IGT” will be calculated as Member Months x Non-Federal Share x Increase in Payment. The calculation will not include the additional ten percent included in the calculation of the “Contract Amount.”
 - c. No other changes will be made to the calculation of the “Contract Amount” and no other data points included in the calculation will be updated for purposes of this reconciliation.
 3. If the amount transferred by GE exceeds the non-federal percentage of the amount expended by HHSC, HHSC will refund the excess amount to GE, less two percent of the Contract Amount.
 4. If the amount transferred by GE is less than the non-federal percentage of the amount expended by HHSC, HHSC will notify GE of the amount of the shortfall and of a deadline for GE to transfer the shortfall plus two percent of the Contract Amount to HHSC.

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- B. The second reconciliation will occur no later than August 31, 2017.
1. HHSC will compare the amount transferred by GE to HHSC for Eligibility Period One to the non-federal amount expended during Eligibility Period One by HHSC for all Qualified Nursing Facilities approved by HHSC to receive the Minimum Payment Amount owned by GE:
 2. The calculation of the non-federal amount expended during Eligibility Period One by HHSC for all Qualified Nursing Facilities owned by GE that are approved by HHSC to receive the Minimum Payment Amount will be the same as the calculation described under Subsection A of this Section except that Member Months will be revised to reflect updated actual known member months for the eligibility period. The revision will be conducted sometime during the month of August 2017.
 3. If the amount transferred by GE exceeds the non-federal percentage of the amount expended by HHSC, HHSC will refund the excess amount to GE.
 4. If the amount transferred by GE is less than the non-federal percentage of the amount expended by HHSC, HHSC will notify GE of the amount of the shortfall and of a deadline for GE to transfer the shortfall.
- C. If GE does not timely complete the transfer described in paragraphs A.4. or B.4. of this Section, HHSC will withhold any or all future Medicaid payments from GE until HHSC has recovered an amount equal to the amount of the shortfall under this Agreement and GE will be ineligible for future eligibility periods.

IX. TERMINATION

HHSC may terminate this agreement at any time at its discretion. GE has no termination rights for the duration of the Contract Period.

X. 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. All acts required under this Agreement will be done in conformity with federal and state laws and regulations. If any term of this Agreement conflicts with state law or rule, state law or rule controls.
- D. If any portion of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement remains valid and enforceable.

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- E. The dispute resolution process provided for in Texas Government Code Chapter 2260 (Resolution of Certain Contract Claims Against the State) will be used by the Parties to attempt to resolve any claim for breach of the Agreement.
- F. HHSC shall have the right to audit transactions related to the Minimum Payment Amounts. Such audit right includes, but is not limited to, the examination of any contract or transaction to ensure that no contingent fees, consulting fees, or legal fees are paid for the purpose of, or having the effect of, maximizing Medicaid payments.

XI. NOTICE

- A. All communications to GE will be sent to (GE Contact and address):

- B. All communications to HHSC will be sent to Kyle L. Janek, M.D., Executive Commissioner, Health and Human Services Commission, Brown-Heatly Bldg., 4900 North Lamar Blvd., Austin, TX 78751

The individuals below are authorized representatives of their respective agencies and have the authority to bind their respective agencies in a contractual agreement:

**HEALTH AND HUMAN SERVICES
COMMISSION**

[_____]
Name of G.E.

By: _____
Kyle L. Janek, M.D.
Executive Commissioner

By: _____
Signature

Date: _____

By: _____
Printed

Title: _____

Phone: _____

E-mail: _____

Date: _____