



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

**MAINECARE/MEDICAID PROVIDER AGREEMENT**

This is a Provider Agreement for participation in the MaineCare/Medicaid program. This Agreement is made by and between the State of Maine Department of Health and Human Services (“Department”), 11 State House Station, Augusta, ME 04333-0011, and

Date:        /        /

Legal Name of Applicant or Provider (hereinafter jointly referred to as “Provider”)		Business Name (if different than legal name)
Business Telephone Number		
Taxpayer Identification Number	National Provider Identifier(s)	MaineCare Provider Number(s), if applicable
Business Address (number, street)		Nine-digit ZIP code
City	State	
Mailing Address (number, street, P.O. BOX number)		Nine-digit ZIP code
City	State	
Pay-to-Address (number, street, P.O. BOX number)		Nine-digit ZIP code
City	State	
Physical Location of Additional Sites Associated with this Agreement		

The Provider agrees to comply with all of the following terms and conditions:

## **A. GENERAL REQUIREMENTS**

**1. Conditions of Participation.** As a condition of participation or continued participation as a provider in MaineCare, the Provider agrees to comply with the provisions of the Federal and State laws and regulations related to Medicaid, the provisions of the MaineCare Benefits Manual (“MBM”), 10-144 C.M.R. Ch. 101, the terms and conditions of the Provider Enrollment Packet, including all attachments, completed by the Provider, which is incorporated herein by reference, and the terms and conditions of this Provider Agreement (“Agreement”).

### **2. Changes in Federal or State Laws or Regulations.**

- a) Any change in Federal or State law or regulation that conflicts with or modifies any term of this Agreement will automatically become a part of this Agreement on the date such a change in statute or regulation becomes effective.
- b) If the Provider objects to the application of the change in Federal or State law or regulation, it must notify the Department within thirty (30) calendar days of the effective date of the change that it will terminate the Agreement as set forth in Chapter I of the MBM. Failure to so notify the Department will be deemed acceptance of the change in law or regulation as part of this Agreement.

**3. Independent Capacity.** The parties agree that in the performance of this Agreement, the Provider, including any officers, directors, agents and employees of the Provider, shall act in an independent capacity and not as officers, agents or employees of the State. The Provider further understands and agrees that it is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

### **4. Subletting, Assignment or Transfer.**

- a) The Provider shall not subcontract, transfer, assign, or otherwise convey this Agreement or any portion thereof, or any of its rights, title, interest, including the Department billing number issued to the Provider, or obligations under the Agreement, without written request to and prior written consent from the Department. The Provider shall not reassign its MaineCare claims in a manner prohibited by 42 C. F. R. § 447.10.
- b) No subcontracts, assignments or transfers shall in any case release the Provider of its legal obligations or other liability under this Agreement, unless otherwise provided by law.
- c) Any subcontracts approved by the Department will bind the subcontractor to compliance with applicable Federal and State laws and regulations and all legal obligations or other liability under this agreement.
- d) The Department, in its sole discretion, will determine whether a change of name, location or ownership may be recognized by the Department by amendment to this Agreement or whether this change will require a new Agreement to be executed.

**5. Certification.**

- a) The Provider certifies that no individual practitioners, owners, directors, officers or employees of the Provider or any other organization on whose behalf the Provider is signing this Agreement, or any contractor retained by the Provider or any of the aforementioned persons, is currently subject to sanction under Medicare or MaineCare or debarred, suspended or excluded under any other Federal agency or program, or is otherwise prohibited from providing services to Medicare or MaineCare members (“Members”).
- b) The Provider further certifies that at the time that this Agreement is executed neither it nor any of its employees, group members or agents has engaged in any activities prohibited by 42 U.S.C. § 1320a-7b or has been the subject of a criminal conviction or disciplinary action that would disqualify it, its employees, group members or agents from providing services to Members.
- c) The Provider agrees that, should it become aware of information of exclusions, convictions, disciplinary actions or other conduct as described in A. 5. a) and b) above, it will notify the Department of such information within the time prescribed in Chapter I of the MBM.
- d) The Provider understands that engaging in activity prohibited by 42 U.S.C. § 1320a-7b may result in sanctions or termination of this Agreement, in accordance with applicable Federal and State laws and regulations.

**6. Licensing, Certification and Professional Standards.**

- a) The Provider will adhere on a continuing basis to all applicable Federal and State laws and regulations related to licensing, accreditation, certification and registration and to adhere to other professional standards governing medical care and services, as well as policies and procedures set forth in the MBM, as these may be amended from time to time.
- b) Possession of a valid license, accreditation, certification or registration, where required by statute or regulation, in good standing throughout the duration of the Agreement, is a condition precedent to the Provider’s participation in MaineCare. Failure to obtain and maintain such license, accreditation, certification or registration as required shall constitute grounds for the Department to terminate, or refuse to extend or renew this Agreement.

**7. Prohibition of Rebate, Refund or Discount (Kickbacks).**

- a) The Provider will not offer, give, furnish, or deliver any rebate, refund, commission, preference, patronage dividend, discount or any other gratuitous consideration in connection with the rendering of services to a Member.
- b) The Provider will not solicit, request, accept or receive any rebate, refund, commission, preference, patronage, dividend, discount or any other gratuitous consideration in connection with the rendering of services to any Member or take any other action or receive any other benefit prohibited by 42 U.S.C. § 1320a-7b or the MBM.

- c) The Provider will not make any referrals prohibited by 42 U.S.C. § 1395nn *et seq.* or 22 M.R.S. §2081 *et seq.*

**8. Disclosure by providers: Information related to business transactions.**

- a) Provider agrees to furnish to the Department or to the Secretary of the United States Department of Health and Human Services on request, information related to business transactions in accordance with paragraph (b) of this section.
- b) A provider must submit, within 35 days of the date of a request by the Secretary or the Department, full and complete information about:
  - i. The ownership of any subcontractor with whom the provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
  - ii. Any significant business transactions between the provider and any wholly owned supplier, or between the provider and any subcontractor, during the 5-year period ending on the date of the request.
- c) Federal Financial Participation (FFP) is not available in expenditures for services furnished by providers who fail to comply with a request made by the Secretary or the Department under paragraph (b) of 42 CFR §455.105 or under § [420.205](#) (Medicare requirements for disclosure).

FFP will be denied in expenditures for services furnished during the period beginning on the day following the date the information was due to the Secretary or the Department and ending on the day before the date on which the information was supplied.

**9. Lobbying.**

- a) No Federal or State appropriated funds shall be expended by the Provider in violation of Federal or State law for influencing or attempting to influence, as prohibited by Federal or State law, an officer or employee of any Federal or State agency, a member of Congress or State Legislature, or an officer or employee of Congress or State Legislature in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into any cooperative agreement; or the extension, continuation, renewal, amendment or modification of any agreement, grant or cooperative agreement. By signing this Agreement, the Provider declares that it has not engaged in such lobbying activities prohibited by 31 U.S.C. § 1352.
- b) If any other funds have been or will be paid to any person in connection with any of the covered actions specified in Section A. 8. of this Agreement, the Provider must complete and submit a “Disclosure of Lobbying Activities” form available at: <http://www.whitehouse.gov/omb/grants/#forms>.

**10. Deficit Reduction/False Claims Act.** The Provider will comply with Section 6032 of the Deficit Reduction Act of 2005, codified at 42 U.S.C. § 1396a (a) (68), and the requirements of the False Claims Act 31 U.S.C. § 3729 *et seq.* Providers subject to this provision are responsible for developing written policies, handbooks and education as required by Chapter I, Appendix 3, of the MBM for all employees

that include detailed information about the False Claims Act and any other provisions required by 31U.S.C. § 3729 *et seq.* or 42 U.S.C. § 1396a (a) (68).

**11. State Employees not to Benefit/Conflict of Interest.** The Provider shall assure that no individual employed by the State, at the time this Agreement is executed or any time thereafter, shall be admitted to any share or part of this Agreement or to any benefit that might arise from the Agreement, directly or indirectly, due to his or her employment by or financial interest in the Provider or any affiliate of the Provider, as prohibited by 5 M.R.S.A. § 18 or 17 M.R.S. A. § 3104 without the written consent of the State Purchases Review Committee.

**12. Information Provided to the Department.**

- a) The Provider will supply the Department with complete and accurate information in the Provider Enrollment Packet, including any attachments, and throughout the term of this Agreement, when and in the manner required by the MBM, including but not limited to, information regarding ownership and control, required by 42 C.F.R. Part 455, Subpart B, and licensure.
- b) The Provider agrees that failure to provide complete and accurate information required by this Agreement, the MBM and other applicable Federal and State laws and regulations may result in the imposition of the sanctions set out in Federal and State laws and regulations, including but not limited to, termination of this Agreement and recoupment or offset of reimbursement. Intentional falsification or concealment of a material fact may also result in referral of the Provider for prosecution under Federal and State laws.

**13. Notices and Information to Provider.** The Department will send notices and information to the Provider using the contact information on file with the Provider Enrollment Unit, when and in the manner required by the MBM. It is the Provider's responsibility to keep its contact information up-to-date.

**14. Advance Directives Requirements.** Providers will comply with 42 CFR Section 431.107(b)(4) which states that the provider must comply with the advance directives requirements for hospitals, nursing facilities, providers of home health care and personal care services, hospices, and HMOs specified in part 489, subpart I, and §417.436(d). Providers will also comply with 18-A M.R.S.A. § 5-801 *et seq.*

**B. SERVICES TO MEMBERS**

**1. Services to Members/Eligibility.**

- a) The Provider will provide services, supplies, or equipment to only those individuals whom the Department has declared eligible for MaineCare services ("Members"), in accordance with provisions contained in this Agreement, in the MBM, in Title XIX and XXI of the Social Security Act, and in all other applicable Federal and State laws and regulations.
- b) In the event of Department error in determination of Member eligibility, and if such error is not based on incorrect information obtained from or through the Provider, the Department will reimburse the Provider, but to no greater extent than reimbursement for eligible Members under this Agreement.

**2. Refusal of Services.** The Provider may refuse to render services to a Member only in accordance with the MBM and this Agreement.

**3. Choice of Provider.** The Provider will assure that the Member is receiving services under this Agreement by the provider of his or her choice, and that referrals to other providers of service will not interfere with a Member's freedom of choice in seeking medical care from any institution, agency, pharmacy or person who is qualified to perform a required service. If a Member is under 18 years of age or mentally incapable of choice of provider, the Provider will assure that the Member's legally authorized representative makes such choices for the Member, unless the Member is authorized to make this choice under Federal or State law.

**4. Nondiscrimination in Member Services.** The Provider agrees that in its performance of this Agreement it will not discriminate in any way against any Member, or in its hiring and employment practices, because of race, color, sex, sexual orientation, religious creed, ancestry, national origin, age, or physical or mental handicap or disability, or any other factor as specified in the Maine Human Rights Act, 5 M.R.S. § 4551 *et seq.*, the Federal Civil Rights Act, 42 U.S.C. § 1981 *et seq.*, The Americans With Disabilities Act of 1990, 42 U.S.C. § 1201, or the Federal Rehabilitation Act, 29 U.S.C. § 504 *et seq.* The Provider will comply with 5 M.R.S. § 784(2) and any and all appropriate Federal and State laws and regulations regarding such discrimination.

**5. Behavioral Health Services.** Independent Practitioners providing Behavioral Health Services pursuant to MBM, Section 65, must comply with the following requirements:

- a) If the Independent Practitioner is using a crisis provider for after-hours coverage, the Independent Practitioner is required to have in place an explicit written agreement for after-hours coverage with the local crisis provider.
- b) The Independent Practitioner will discuss sharing information with other providers of care with the Member in order to assure continuity of care, and the Independent Practitioner will obtain authorization from the Member as necessary.
- c) The Independent Practitioner will participate in treatment planning with other providers as requested.

### **C. RECORD AND DOCUMENTATION REQUIREMENTS**

#### **1. Records and Documentation.**

- a) The Provider will maintain in a systematic and orderly manner, medical and financial records that are necessary to document fully the extent, nature and cost of the services provided to Members receiving assistance under this Agreement, as required by the MBM and applicable professional standards. The records must be maintained in the form, if any, required by the Department.
- b) The Provider will maintain all records necessary to verify compliance with Federal or State laws and regulations regarding licensing, accreditation, certification and registration.

**2. Confidentiality of Records.** The use or disclosure by the Provider of any information concerning Members for any purposes not directly connected with the administration of the MaineCare program and the administration of the Department's or the Provider's responsibilities with respect to services provided under this Agreement is prohibited. The use and disclosure of protected health information is also governed by other applicable Federal and State laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA), so long as these other laws and regulations are not inconsistent with laws and regulations related to the Medicaid/MaineCare program.

**3. Retention of Records.**

- a) The Provider will retain all medical, financial, administrative and other records and documents required by the MBM relating to the Member's medical history, care received and verification of services and products furnished, for at least five (5) years from the date of service.
- b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 5-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 5-year period, whichever is later. If an audit or review of records is initiated within the required retention period, the records must be retained until the audit or review is completed and a settlement, if necessary, has been made. Any retention of records beyond the period required by Section C. 3. a) of this Agreement will be determined by each Provider based on regulation or the usual and customary practice in the specialty or profession, or other laws and regulations.
- c) The Provider acknowledges that failure to maintain all required documentation may result in sanctions set out in the MBM, including the disallowance and recovery by the Department of any amounts paid to the Provider for which the required documentation is not maintained and provided to the Department upon request.

Maintain and retain contracts with subcontractors for a period of at least five (5) years after the expiration date of the contract. In addition, records of contractors or subcontractors shall be subject to the same record maintenance and retention rules as are all enrolled providers.

Providers must submit within thirty-five (35) days of the Department's request, full and complete information regarding the ownership of any subcontractor with whom the provider has had business transactions totaling twenty-five thousand dollars (\$25,000) or more, during a twelve (12) month period prior to the date of the request. Updates to ownership information will be required on an annual basis.

**4. Utilization Review/Quality Assurance.** The Department may conduct periodic utilization review of services provided under this Agreement. All records, including minutes of Utilization Review/Quality Assurance by the Provider, shall be made available to representatives from the Department. The purpose of such review is to assure the appropriateness, the quality and the timeliness of services delivered. Findings of such reviews will be shared with the Provider and appropriate recommendations and plans for Department action will be discussed with the appropriate administrative and professional staff of the facility or Provider.

**5. Access.**

- a) At all reasonable times during the prescribed retention period, persons duly authorized by the Department or the Federal government, whether employees or under contract, shall have the right to full access to inspect, review, or audit all medical, quality assurance documents, financial, administrative records, and other documents and reports required to be kept under Federal and State laws and regulations by Provider or its sub-contractors, including the records of non-members who reside in facilities that receive MaineCare funds. Those duly authorized also shall have the right to obtain copies of such records at no expense to the Federal or State government.
- b) The Provider and its sub-contractors shall give the Department complete and private access to the Provider's staff and to any resident or Member for the purpose of reviewing the Provider's compliance with this Agreement, the MBM and other applicable Federal and State laws and regulations, including laws or regulations related to licensing and certification.

**D. PROVIDER REIMBURSEMENT**

**1. Reimbursement.** The Department will reimburse the Provider for MaineCare services provided to Members in accordance with the provisions of the MBM. Reimbursement is contingent on the Provider's, its agents' and employees' compliance with applicable Federal and State Medicaid laws and regulations, the MBM, and the terms and conditions of this Agreement, including but not limited to, the following requirements:

- a) Provider Agreement. The Provider must have in effect a written Provider Agreement with the Department that has been properly executed and is in effect.
- b) Prior Authorization. If the Provider fails to seek and receive prior authorization for services, as required by the MBM, it will not receive reimbursement for those services.
- c) Payer of Last Resort. Subject to the third party liability provisions included in Chapter I of the MBM, reimbursement is contingent upon the Provider billing to the Department only as the payer of last resort. The Providers must take all necessary and reasonable measures within the Provider's ability to identify, locate and bill any and all third-party payers, including Medicare, prior to billing MaineCare pursuant to this Agreement.
- d) Payment Only for Medically Necessary Services Rendered. The Provider shall be reimbursed by the Department only for medically necessary care and services actually provided to, or in the case of certain facilities, reserved for an eligible Member under the provisions of this Agreement or the MBM.
- e) Billing Procedures. The Provider must submit bills in accordance with methods and procedures contained in the MBM and billing instructions issued by the Department. The Provider is expressly responsible for understanding and applying applicable regulations and requirements for proper billing. The Provider is also responsible for requesting instruction or training, available from the Department, if uncertain as to the application of these regulations and procedures.

**2. Additional Remuneration Prohibited.** The Provider shall consider the Department's reimbursement as payment in full and shall not charge or accept additional remuneration from any Member, relative, friend, payee, guardian/conservator, attorney of the Member, or any other person, or other State agency, for reimbursed services provided under this Agreement. This section does not prevent the Provider from receiving compensation for non-covered services from the Member, relative, friend, payee, guardian/conservator, attorney of the Member, or from any other person, or other State agency, provided required notice is given in accordance with the MBM.

**3. Liability of Provider for Debts Owed to the Department.**

- a) The Provider will report any moneys received in error or in excess of the amount to which the Provider is entitled from the MaineCare program and refund promptly such moneys to the Department, in accordance with the requirements of the MBM.
- b) The Department may collect any debts, including overpayments, through offset or recoupment against amounts owed by the Department to the Provider, or any other method of collecting debts, consistent with relevant statutory and regulatory provisions, including 22 M.R.S.A. § 1714-A. In addition, the Department may utilize any other available method, allowed by law, for the collection of debt. The Department's decision to exercise or not to exercise one method of recovery shall not preclude it from pursuing other methods allowed by law.
- c) The liability for debts owed to the Department by the Provider is enforceable against the Provider, including any person who has an ownership or control interest in the Provider, and against any officer, director or member of the Provider who, in that capacity, is responsible for any control or any management of the funds or finances of the Provider.
- d) The Provider agrees that if it is a provider group, the group and each member of the group, is jointly and severally liable for any breach of this Agreement, and that action by the Department against any of the group members may result in action against all of the members of the provider group.
- e) This Agreement may be terminated solely on the basis of the Provider's unpaid fines, debts, including overpayments and penalty assessments, to Federal, State or local government health care programs.
- f) If a Provider is liable for or has outstanding debts due to the Department and such Provider undertakes to sell or transfer the Provider's operations or business or a substantial portion of the assets of the Provider's operations or business, the Provider must notify the purchaser(s), successor(s), transferee(s) or assignee(s), of such debt or liability; and if such debt or liability is not paid by the Provider prior to the sale or transfer, the purchaser(s), successor(s), transferee(s) or assignee(s) shall withhold a sufficient amount of the purchase money to cover the amount of the liability. A purchaser, successor, transferee or assignee who fails to withhold a sufficient amount of the purchase price may be jointly and severally liable for the payment of the liability or debt due to the Department.

## **E. MISCELLANEOUS PROVISIONS**

- 1. Amendments.** The terms and conditions of this Agreement may be amended only in writing. Amendments must be signed by an authorized representative of the Provider and the Department before they become effective.
- 2. Choice of Law and Forum.** This Agreement is governed in all respects by the laws and regulations of the United States of America and the laws of the State of Maine. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity in Federal or State court, which may be available to the Department or the State of Maine. Any legal proceeding against the State regarding this Agreement must be brought in the State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.
- 3. Indemnification.** The Provider agrees to indemnify, defend and hold harmless the Department, its officers, agents, and employees from and against any and all claims, suits, judgments, liabilities, damages and costs, including reasonable attorney's fees, arising from the intentional conduct, negligent acts or omissions of the Provider, its employees, agents, officers, members or subcontractors in the course of providing services to a Member, or to a person believed to be a Member, pursuant to this Agreement.
- 4. Notices.**

  - a) The Provider shall give the Department immediate notice in writing of any claim, legal action or suit filed by or against the Provider that is related in any way to the Agreement or which may affect the performance of duties under the Agreement, including but not limited to, notice of a bankruptcy action, loss of or change in incorporation or licensure status.
  - b) The Provider shall give the Department immediate notice in writing if the Provider cannot meet their financial obligations to employees or subcontractors for services provided to MaineCare members.
  - b) Any other notices required by this Agreement and the MBM shall be provided in accordance with the requirements of the MBM.
- 5. Waiver.** The failure of the Department to insist, in any one or more instances, upon the performance of the Provider of any of the terms, covenants or conditions of this Agreement or to exercise any of the Department's rights pursuant to this Agreement, or under Federal or State laws and regulations, shall not be construed as a waiver of future performance by the Provider or waiver of the right of the Department to seek sanctions against the Provider for future breaches of the Provider's obligations under the Agreement, or to otherwise enforce the Agreement under a remedy allowed by law. The obligation of the Provider with respect to such future performance shall continue.
- 6. Severability.** Any provision of this Agreement that is contrary to applicable Federal or State laws or regulations is void and unenforceable. The Agreement will be interpreted as if the void provision is omitted. The omission of any provision found to be void will not affect the ability of the parties to enforce the remaining provisions of this Agreement.
- 7. Entire Agreement.** This Agreement, as amended in accordance with E.1), and attachments, if any, contains the entire Agreement of the parties and neither party shall be bound by any statement or representation not contained therein.

**8. Survives Termination.** The Provider's obligations under paragraphs C.1) through C.3), C. 5), D. 3), and E.2) through E.4) survive the termination of this Agreement.

**9. Termination, Suspension and Non-Renewal.** Chapter I of the MBM governs the notices and other procedures related to emergency termination, voluntary termination by either party, termination by the Department for cause, or suspension and non-renewal.

**10. Effective Date and Duration.** The effective date of this Agreement is that date when both the Provider and the Department have executed the Agreement. On its effective date, this Agreement supersedes and replaces any existing contracts or agreements between the parties related to the provision of goods or services to Members pursuant to this Agreement. This Agreement shall remain in full force until it is terminated in accordance with the MBM or as otherwise required by Federal or State laws or regulations.

**IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above and other valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties execute this Agreement, and by their signatures found below, agree to be bound by its terms and conditions.**

By: \_\_\_\_\_  
Provider Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Provider Name (printed)

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Provider Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Provider Name (printed)

\_\_\_\_\_  
Title

By: Department of Health and Human Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director or Designee