

## ATTACHMENT G: INDIAN HEALTH CARE PROVIDERS

The BH I/DD Tailored Plan shall use the following addendum, without change, with all provider contracts with Indian Health Care Providers (IHCPs).

### 1. PURPOSE OF ADDENDUM; SUPERSESSION.

The purpose of this BH I/DD Tailored Plan Addendum for Indian Health Care Providers (IHCPs) is to apply special terms and conditions necessitated by federal law and regulations to the network IHCPs Contract by and between Trillium Health Resources (herein "BH I/DD Tailored Plan") and CONTRACTOR (herein "Indian Health Care Provider (IHCP)"). To the extent that any provision of the BH I/DD Tailored Plan's network IHCP Contract or any other addendum thereto is inconsistent with any provision of this Addendum, the provisions of this Addendum shall supersede all such other provisions.<sup>1</sup>

### 2. DEFINITIONS.

For purposes of this Addendum, the following terms and definitions shall apply:

- a. "Indian" means any individual defined at 25 U.S.C. §§ 1603(13), 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 C.F.R. § 136.12. This means the individual is a member of a federally recognized Indian tribe or resides in an urban center and meets one or more of the following criteria:
  - i. Is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendant, in the first or second degree, of any such member;
  - ii. Is an Eskimo or Aleut or other Alaska Native;
  - iii. Is considered by the Secretary of the Interior to be an Indian for any purpose;
  - iv. Is determined to be an Indian under regulations issued by the Secretary.

The term "Indian" also includes an individual who is considered by the Secretary of the Interior to be an Indian for any purpose or is considered by the Secretary of Health and Human Services to be an Indian for purposes of eligibility for Indian health care services, including as a California Indian, Eskimo, Aleut, or other Alaska Native.

- b. "Indian Health Care Provider (IHCP)" means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in Section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).
- c. "Managed Care Plan" includes a Managed Care Organization (MCO), Prepaid Ambulatory Health Plan (PAHP), Prepaid Inpatient Health Plan (PIHP), Primary Care Case Management (PCCM) or Primary Case Managed Care Entity (PCCM entity) as those terms are used and defined in 42 C.F.R. 438.2, and any subcontractor or instrumentality of such entities that is engaged in the operation of a Medicaid Managed Care contract.
- d. "Indian Health Service or IHS" means the agency of that name within the U.S. Department of Health and Human Services established by the IHCA Section 601, 25 U.S.C. § 1661.
- e. "Indian tribe" has the meaning given in the IHCA Section 4(14), 25 U.S.C. § 1603(14).
- f. "Tribal health program" has the meaning given in the IHCA Section 4(25), 25 U.S.C. § 1603(25).
- g. "Tribal organization" has the meaning given in the IHCA Section 4(26), 25 U.S.C. § 1603(26).
- h. "Urban Indian organization" has the meaning given in the IHCA Section 4(29), 25 U.S.C. § 1603(29).

### 3. DESCRIPTION OF IHCP.

The IHCP identified in Section 1 of this Addendum is (check the appropriate box):

- IHS.
- An Indian tribe that operates a health program under a contract or compact to carry out programs, services, functions, and activities (or portions thereof) of the IHS pursuant to the ISDEAA, 25 U.S.C. §450 et seq.

<sup>1</sup> Please note that if the contract includes Medicaid and separate CHIP beneficiaries this Addendum can be used for both populations if references to Medicaid are modified to reference both Medicaid and CHIP. If you have a separate managed care contract for CHIP that includes IHCPs, please use this addendum and replace the references to Medicaid with references to CHIP.

- A tribal organization that operates a health program under a contract or compact to carry out programs, services, functions, and activities (or portions thereof) of the IHS pursuant to the ISDEAA, 25 U.S.C. § 450 et seq.
- A tribe or tribal organization that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. § 47 (commonly known as the Buy Indian Act).
- An urban Indian organization that operates a health program with funds in whole or part provided by IHS under a grant or contract awarded pursuant to Title V of the IHCA.

**4. COST SHARING EXEMPTION FOR INDIANS; NO REDUCTION IN PAYMENTS.**

The BH I/DD Tailored Plan shall not impose any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge shall be imposed against an Indian who is furnished an item or service directly by the Indian Health Service, an Indian Tribe, Tribal Organization or Urban Indian Organization or through referral under contract health services.

Payments due to the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization, or a health care IHCP through referral under contract health services for the furnishing of an item or service to an Indian who is eligible for assistance under the Medicaid program may not be reduced by the amount of any enrollment fee, premium, or similar charge, and no deduction, copayment, cost sharing, or similar charge. Section 1916(j) of the Social Security Act, and 42 C.F.R. 447.53 and §457.535. Section 1916(j) of the Social Security Act, and 42 C.F.R. 447.53 and §457.535.

**5. MEMBER OPTION TO SELECT THE IHCP AS PRIMARY HEALTH CARE IHCP.**

The BH I/DD Tailored Plan shall allow any Indian otherwise eligible to receive services from an IHCP to choose the IHCP as the Indian's primary health care provider if the IHCP has the capacity to provide primary care services to such Indian, and any referral from such IHCP shall be deemed to satisfy any coordination of care or referral requirement of the BH I/DD Tailored Plan. Section 1932(h)(1) of the Social Security Act, 42 C.F.R. § 438.14(b)(3) and 457.1209.

**6. CONTRACT TO PAY IHCP.**

The BH I/DD Tailored Plan shall pay the IHCP for covered Medicaid Managed Care services in accordance with the requirements set out in Section 1932(h) of the Social Security Act and 42 C.F.R. §§ 438.14 and 457.1209.

**7. PERSONS ELIGIBLE FOR ITEMS AND SERVICES FROM IHCP.**

- a. Nothing in this Contract shall be construed to in any way change, reduce, expand, or alter the eligibility requirements for services through the IHCP's programs, as determined by federal law including the IHCA, 25 U.S.C. § 1601, et seq. and/or 42 C.F.R. Part 136.
- b. No term or condition of the BH I/DD Tailored Plan's network IHCP Contract or any addendum thereto shall be construed to require the IHCP to serve individuals who are ineligible for services from the IHCP. The BH I/DD Tailored Plan acknowledges that pursuant to 45 C.F.R. § 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for services from the IHCP. IHCP acknowledges that the nondiscrimination provisions of federal law may apply.

**8. APPLICABILITY OF FEDERAL LAWS NOT GENERALLY APPLICABLE TO OTHER PROVIDERS.**

Certain federal laws and regulations apply to IHCPs, but not other providers. IHCPs cannot be required to violate those laws and regulations as a result of serving BH I/DD Tailored Plan members. Applicable provisions may include, but are not limited to, those laws cited within this Addendum.

**9. NON-TAXABLE ENTITY.**

To the extent the IHCP is a non-taxable entity, the IHCP shall not be required by a BH I/DD Tailored Plan to collect or remit any federal, state, or local tax.

<sup>1</sup> Please note that if the contract includes Medicaid and separate CHIP beneficiaries this Addendum can be used for both populations if references to Medicaid are modified to reference both Medicaid and CHIP. If you have a separate managed care contract for CHIP that includes IHCPs, please use this addendum and replace the references to Medicaid with references to CHIP.

## **10. INSURANCE AND INDEMNIFICATION.**

- a. Indian Health Service. The IHS shall not be required to obtain or maintain insurance (including professional liability insurance), provide indemnification, or guarantee that the managed Care Plan will be held harmless from liability. This is because the IHS is covered by the Federal Tort Claims Act (FTCA), which means that the United States consents to be sued in place of federal employees for any damages to property or for personal injury or death caused by the negligence or wrongful act or omission of federal employees acting within the scope of their employment. Nothing in the BH I/DD Tailored Plan network provider Contract (including any addendum) shall be interpreted to authorize or obligate any IHS employee to perform any act outside the scope of his/her employment.
- b. Indian Tribes and Tribal Organizations. A provider which is an Indian tribe or a tribal organization operating under a contract or compact to carry out programs, services, functions, and activities (or portions thereof) of the IHS pursuant to the ISDEAA, 25 U.S.C. § 450, or employee of a tribe or tribal organization (including contractors) shall not be required to obtain or maintain insurance (including professional liability insurance), provide indemnification, or guarantee that the BH I/DD Tailored Plan will be held harmless from liability. This is because Indian tribes and tribal organizations operating under a contract or compact to carry out programs, services, functions, and activities, (or programs thereof) of the IHS pursuant to the ISDEAA, 25 U.S.C. § 450, are covered by the FTCA, which means the United States consents to be sued in place of employees of a tribe or tribal organization (including contractors) for any damages to property or for personal injury or death caused by the negligence or wrongful act or omission of employees acting within the scope of their employment. Nothing in the BH I/DD Tailored Plan network provider Contract (including any addendum) shall be interpreted to authorize or obligate such provider, any employee of such provider, or any personal services contractor to perform any act outside the scope of his/her employment.
- c. Urban Indian Organizations. A provider which is an urban Indian organization shall not be required to obtain or maintain insurance (including professional liability insurance), provide indemnification, or guarantee that the BH I/DD Tailored Plan will be held harmless from liability to the extent the provider attests that it is covered by the FTCA. Nothing in the BH I/DD Tailored Plan network provider Contract or any addendum thereto shall be interpreted to authorize or obligate such provider or any employee of such provider to perform any act outside the scope of his/her employment.

## **11. LICENSURE AND ACCREDITATION.**

Pursuant to 25 USC §§ 1621t and 1647a, the BH I/DD Tailored Plan shall not apply any requirement that any entity operated by the IHS, an Indian tribe, tribal organization or urban Indian organization be licensed or recognized under the State or local law where the entity is located to furnish health care services, if the entity attests that it meets all the applicable standards for such licensure or recognition. In addition, the BH I/DD Tailored Plan shall not require the licensure of a health professional employed by such an entity under the State or local law where the entity is located, if the professional is licensed in another State.

## **12. DISPUTE RESOLUTION.**

In the event of any dispute arising under the BH I/DD Tailored Plan's network IHCP Contract or any addendum thereto, the parties agree to meet and confer in good faith to resolve any such disputes. Notwithstanding any provision in the BH I/DD Tailored Plan's network Contract, the IHCP shall not be required to submit any disputes between the parties to binding arbitration.

## **13. GOVERNING LAW.**

The BH I/DD Tailored Plan's network IHCP Contract and all addenda thereto shall be governed and construed in accordance with federal law of the United States. In the event of a conflict between such Contract and all addenda thereto and federal law, federal law shall prevail.

Nothing in the BH I/DD Tailored Plan's network IHCP Contract or any addendum thereto shall subject an Indian tribe, tribal organization, or urban Indian organization to state law to any greater extent than state law is already applicable.

<sup>1</sup> Please note that if the contract includes Medicaid and separate CHIP beneficiaries this Addendum can be used for both populations if references to Medicaid are modified to reference both Medicaid and CHIP. If you have a separate managed care contract for CHIP that includes IHCPs, please use this addendum and replace the references to Medicaid with references to CHIP.

**14. MEDICAL QUALITY ASSURANCE REQUIREMENTS.**

To the extent the BH I/DD Tailored Plan imposes any medical quality assurance requirements on its network IHCPs, any such requirements applicable to the IHCP shall be subject to Section 805 of the IHCA, 25 U.S.C. § 1675.

**15. CLAIMS FORMAT.**

The BH I/DD Tailored Plan shall process claims from the IHCP in accordance with Section 206(h) of the IHCA, 25 U.S.C. § 1621e(h), which does not permit an issuer to deny a claim submitted by a IHCP based on the format in which submitted if the format used complies with that required for submission of claims under Title XVIII of the Social Security Act or recognized under Section 1175 of such Act.

**16. PAYMENT OF CLAIMS.**

The BH I/DD Tailored Plan shall pay claims from the IHCP in accordance Section 1932(h)(2) of the Act and 42 C.F.R. §§ 438.14(c)(2) and 457.1209 and shall pay at either the rate provided under the State plan in a Fee-for-Service payment methodology, or the applicable encounter rate published annually in the Federal Register by the Indian Health Service, whichever is higher.

**17. HOURS AND DAYS OF SERVICE.**

The hours and days of service of the IHCP shall be established by the IHCP. The IHCP agrees that it will consider input from the BH I/DD Tailored Plan as to its hours and days of service. At the request of the BH I/DD Tailored Plan, such IHCP shall provide written notification of its hours and days of service.

**18. COORDINATION OF CARE/REFERRAL REQUIREMENTS.**

The Provider may make referrals to in-network providers and such referrals shall be deemed to meet any coordination of care and referral obligations of the BH I/DD Tailored Plan.

**19. SOVEREIGN IMMUNITY.**

Nothing in the BH I/DD Tailored Plan’s network IHCP Contract or in any addendum thereto shall constitute a waiver of federal or tribal sovereign immunity.

**20. ENDORSEMENT.**

IHS or IHCP names and positions may not be used to suggest official endorsement or preferential treatment of the BH I/DD Tailored Plan.

**APPROVALS**

**For the BH I/DD Tailored Plan:**

**For the IHCP:**

*Date:*

*Date:*

*Signature:*

*Signature:*

<sup>1</sup> Please note that if the contract includes Medicaid and separate CHIP beneficiaries this Addendum can be used for both populations if references to Medicaid are modified to reference both Medicaid and CHIP. If you have a separate managed care contract for CHIP that includes IHCPs, please use this addendum and replace the references to Medicaid with references to CHIP.

**Applicable Federal Laws Referenced in Section 8 of this Addendum**

**(a) The IHS as an IHCP:**

1. Anti-Deficiency Act, 31 U.S.C. § 1341;
2. ISDEAA, 25 U.S.C. § 450 et seq.;
3. Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 2671-2680;
4. Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653;
5. Federal Privacy Act of 1974 (“Privacy Act”), 5 U.S.C. § 552a, 45 C.F.R. Part 5b;
6. IHCIA, 25 U.S.C. § 1601 et seq.

**(b) An Indian tribe or a Tribal organization that is an IHCP:**

1. ISDEAA, 25 U.S.C. § 450 et seq.;
2. IHCIA, 25 U.S.C. § 1601 et seq.;
3. FTCA, 28 U.S.C. §§ 2671-2680;
4. Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653;
5. Privacy Act, 5 U.S.C. § 552a, 45 C.F.R. Part 5b;

**(c) An urban Indian organization that is an IHCP:**

1. IHCIA, 25 U.S.C. § 1601 et seq.
2. Privacy Act, 5 U.S.C. § 552a, 45 C.F.R. Part 5b;
3. HIPAA, 45 C.F.R. Parts 160 and 164.

**Contractor: Legally Authorized Representative**

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