

LOW INCOME AND NEEDY CARE COLLABORATION AGREEMENT

This Low Income and Needy Care Collaboration Agreement (the "Agreement") is entered into as of the ____ day of _____, 20__ ("Effective Date"), by and among [*Unit of Government*] ("Governmental Entity") and [*Private Hospitals*] (collectively the "Hospitals").

RECITALS:

WHEREAS, the Hospitals and the Governmental Entity collectively provide a significant amount of uncompensated care to low income and needy persons annually;

WHEREAS, the cost of providing care to the Medicaid population continues to grow, increasing the volumes of low income and needy patients who rely on hospital emergency room services as the source of primary healthcare and shifting the burden for care to the Hospitals and the Governmental Entity;

WHEREAS, the Governmental Entity and the Hospitals desire to ensure that low income and needy patients have access to and receive quality hospital services;

WHEREAS, the Governmental Entity and the Hospitals recognize that they need to cooperate to ensure the Hospitals' ability to deliver cost efficient healthcare services to low income and needy patients; and

WHEREAS, the Governmental Entity and Hospitals recognize that it is in the best interests of the low income and needy population to increase funding for the Medicaid population and to access funding to which the Hospitals are eligible under Medicaid supplemental payment principles;

NOW, THEREFORE, in consideration of the promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and agreed, the parties agree as follows:

1.0 REPRESENTATIONS AND WARRANTIES

1.1 Hospital Representations and Warranties. Each Hospital independently represents and warrants that:

- a. It is a corporation or partnership, duly established and created pursuant to applicable law with all requisite power and authority to enter into this Agreement in all respects;
- b. The Hospitals have not made and will not make any payments to the Governmental Entity in consideration for a contribution by the Governmental Entity to fund Medicaid supplemental payments;

- c. The execution, delivery, and performance by the Hospital of this Agreement are within the Hospital's powers, are not in contravention of any other instruments governing the Hospital and have been duly authorized and approved by the Board of Directors of the Hospital as and to the extent required by applicable law;
- d. Neither the Hospital, nor any of its representatives are (i) currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal health care programs"); (ii) convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; or (iii) under investigation or otherwise aware of any circumstances which may result in the exclusion of the Hospital, or any of its representatives, from participation in Federal health care programs;
- e. This Agreement has been duly and validly executed and delivered by the Hospital;
- f. The Hospital's collaboration with the Governmental Entity complies with the applicable laws that govern provider-related donations codified at section 1903(w) of the Social Security Act (42 U.S.C. § 1396b(w)), and Title 42, Code of Federal Regulations, Part 433, subpart B, sections 433.52 and 433.54, as well as the applicable federal laws that govern other impermissible sources of funds, including recycled Medicaid payments, Federal dollars excluded from use as State match, and impermissible taxes; and
- g. The Hospital has not entered into a fee arrangement under which the amount of the Hospital's fee is a percentage of the Hospital's Medicaid payments funded by the Governmental Entity.

1.2 Governmental Entity Representations and Warranties. The Governmental Entity represents and warrants that:

- a. It is a body politic and a political subdivision or agency of the State of Nevada, with all requisite power and authority to enter into this Agreement in all respects;
- b. The Governmental Entity has not received and will not accept any payments from the Hospitals in consideration for a contribution by the Governmental Entity to fund Medicaid supplemental payments;
- c. The execution, delivery, and performance by the Governmental Entity of this Agreement are within its powers, are not in contravention of any other instruments governing the Governmental Entity, and, if applicable, have been duly authorized and approved by the Governmental Entity's governing body as and to the extent required by applicable law;

- d. This Agreement has been duly and validly executed by the Governmental Entity;
- e. The Governmental Entity has public funds available to contribute as the non-federal share of Medicaid payments to the Hospitals, and all public funds contributed comply with the applicable laws that govern provider-related donations codified at section 1903(w) of the Social Security Act (42 U.S.C. § 1396b(w)), and Title 42, Code of Federal Regulations, Part 433, subpart B, sections 433.52 and 433.54, as well as the applicable federal laws that govern other impermissible sources of funds, including recycled Medicaid payments, Federal dollars excluded from use as State match, and impermissible taxes; and
- f. The Governmental Entity has not entered into a fee arrangement under which the amount of the Governmental Entity's fee is a percentage of the Governmental Entity's contribution of funding for Medicaid UPL payments to the Hospitals.

2.0 OBLIGATIONS OF THE HOSPITALS

- 2.1 **Agreement to Collaborate with Governmental Entity.** The Hospitals agree to work cooperatively with the Governmental Entity to improve access to health care for low income and needy persons.
- 2.2 **Documentation.** The Hospitals agree to provide the Governmental Entity documentation that demonstrates the amount and types of health care provided by the Hospitals (including low income and needy health care and Medicaid services historically provided in the community) as requested by the Governmental Entity, but no more frequently than quarterly.
- 2.3 **Compliance with State and Federal Law.** The Hospitals agree to retain qualified professionals to ensure healthcare services are provided in compliance with applicable laws.
- 2.4 **Program Participation.** At all times during the term of this Agreement, the Hospitals shall use their best efforts to maintain their qualifications for participation in the Medicaid and Medicare programs.
- 2.5 **Low Income and Needy Care.** The Hospitals will only provide low income and needy care services for which the Governmental Entity does not have a continuing contractual or statutory obligation.

3.0 OBLIGATIONS OF GOVERNMENTAL ENTITY

- 3.1 **Agreement to Cooperate with Hospitals.** The Governmental Entity agrees to work cooperatively with the Hospitals to improve access to health care for low income and needy persons.

- 3.2 **Retrospective Evaluation of Services.** Consistent with its constitutional, statutory and fiduciary obligations, the Governmental Entity may retrospectively evaluate the amount and impact of the Hospitals' low income and needy care delivery and may rely on such historical information in determining whether to continue this Agreement with the Hospitals, whether the Hospitals' participation benefited the community, whether the Hospitals' continued participation is likely to continue to benefit the community and/or to provide accountability to taxpayers.
- 3.3 **Use of Public Revenue.** The Governmental Entity agrees to use public funds for purposes of funding Medicaid supplemental payments authorized under Medicaid State Plan Amendment TN 10-002.

4.0 GENERAL PROVISIONS

- 4.1 **Term and Termination.** Any party may terminate its participation in this Agreement by providing thirty (30) days written notice to the other parties. If a Hospital loses its agreement for participation in either the Medicare or Medicaid program, any party shall have the right to immediately terminate the Agreement as it relates to that Hospital by written notice to all parties. The Agreement shall continue for all parties except the Hospital that lost its agreement for participation in either the Medicare or Medicaid program. In the event any Hospital is the subject of any bankruptcy, receivership, dissolution or liquidation proceeding that remains undismissed for a period of thirty (30) days, then such Hospital's participation in this Agreement shall automatically terminate effective upon such thirtieth day, unless the Hospital obtains the written consent of all parties to this Agreement.
- 4.2 **Notices.** All notices required or permitted hereunder shall be in writing and shall be sufficiently given and deemed to have been received upon personal delivery, by overnight carrier, by email, or by United States mail, postage prepaid, registered or certified mail, addressed to the parties as follows:

Governmental Entity: _____

Hospitals: _____

With a Copy to:

- 4.3 **Relationships between the Parties.** No party hereto is an agent or employee of any other party.
- 4.4 **Governing Law.** This Agreement shall be governed by the laws of the State of Nevada. The Hospitals understand that the Governmental Entity is a political subdivision or agency of the State of Nevada and governed by certain statutes applicable thereto.
- 4.5 **Assignment.** No party may assign any right, obligation, or responsibility under this Agreement.
- 4.6 **No Third Party Beneficiary.** The parties to this Agreement do not intend to establish any third party beneficiary relationships by virtue of this Agreement.
- 4.7 **Compliance with HIPAA and Access to Records.** To the extent applicable to this Agreement, the Hospitals and the Governmental Entity agree to comply with the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d *et seq.* ("HIPAA") and any current and future regulations promulgated under the HITECH Act or HIPAA, including, without limitation, the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transactions Regulations"), all as amended from time to time and, all collectively referred to herein as "HIPAA Requirements". The Hospitals and the Governmental Entity agree not to use or further disclose any Protected Health Information (as defined in the Federal Privacy Regulations) or EPHI (as defined in the Federal Security Regulations), other than as permitted by the HIPAA Requirements and the terms of this Agreement. In addition, the Hospitals and the Governmental Entity agree to comply with any state laws and regulations that govern or pertain to the confidentiality, privacy, security of, and electronic transactions pertaining to, health care information.

As and to the extent required by law, upon the written request of the Secretary of Health and Human Services, the Comptroller General or any of their duly authorized representatives, the Hospitals and the Governmental Entity shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such

services. If the Hospitals or the Governmental Entity carry out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, the Hospitals and the Governmental Entity agree to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. § 1395x(v)(1) and the regulations thereto.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have hereunto set their hand as of the date set forth above.

GOVERNMENTAL ENTITY:

By _____
[Printed Name] _____
[Title] _____

HOSPITALS:

By _____
[Printed Name] _____
[Title] _____

By _____
[Printed Name] _____
[Title] _____

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