

## ACCEPTANCE OF TERMS AND CONDITIONS

This Acceptance sets forth the general terms and conditions the Recipient agrees to in receiving American Recovery Plan Act (ARPA) Section 9817 Home and Community Based Services (HCBS) Provider Capacity Building and Service Waitlist Reduction grant funding.

1. “Applicable Law” means all applicable federal, state, and local laws, rules, ordinances, regulations, orders, guidance, and policies in place at agreement execution as well as any and all future amendments, changes, and additions to such laws as of the effective date of such change. Applicable Law includes, without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services (e.g., Iowa Code Ch. 216 and Iowa Code § 19B.7). For employment, this would include equal employment opportunity and affirmative action, and the use of targeted small businesses as subcontractors of suppliers. The language found in 41 CFR 60.1-4 is included by reference. The term Applicable Law also encompasses the applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Office of the Chief Information Officer. “Applicable Law” includes all applicable federal guidance regarding expenditure of such funds, as such guidance may be amended or updated from time to time.
2. “Iowa Medicaid” means the business unit of the Iowa Department of Health and Human Services, which administers the Iowa Medicaid Assistance Program pursuant to Iowa code Ch. 249A.
3. “Payment” means the funds distributed by Iowa Medicaid pursuant to Section 9817 of the American Rescue Plan Act of 2021 (Pub. L. 117-2).
4. “Recipient” means the healthcare provider, whether an individual or an entity, receiving the Payment.
5. “State” means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions.
6. The Recipient represents, warrants, and certifies that it:
  - a) Is enrolled with Iowa Medicaid and the managed care plans to deliver qualified services.
  - b) Had paid claims during SFY2023 for one or more of the procedure codes listed.
  - c) Will continue to provide qualified services after July 1, 2024.
  - d) Has not permanently ceased providing patient care directly or indirectly.
  - e) With respect to Medicare, any state Medicaid program, and any Federal health care program, the Recipient is not:
    - (i) suspended or excluded from participation.
    - (ii) suspended from receiving payments.

- (iii) under any other sanction or penalty.
7. The Recipient shall only use the Payment for expenses that comport with all Applicable Law and that:
- a) are related to compensation for employees engaged in direct service delivery. Compensation for the purposes of this grant means payment to direct care staff delivering services and may include recruitment and retention payments, wage differentials, monetary incentive payments, and other non-monetary incentive payments (gas cards, gym membership). \*Fifty Percent (50%) of the funds received must be spent on compensation to employees engaged in HCBS direct service delivery.
  - b) are related to marketing and advertising costs related to HCBS direct service recruitment initiatives.
  - c) are related to training and credentialing costs for employees engaged in direct service delivery that increase the employee's knowledge skills and ability to deliver high quality services.
  - d) are related to HCBS participant relocation costs not otherwise compensated through the through the Money Follows the Person (MFP) program or other funding source.
  - e) are related to other expenses directly related to service expansion and that have not been reimbursed from another source.
8. Overpayments and Penalties.
- a) The Recipient must spend Payment funds for allowable purposes on or before March 31, 2025. Any funds not spent for allowable purposes within that time constitute an overpayment.
  - b) Payment funds received by a Recipient in error constitute an overpayment.
  - c) Payment funds that the Recipient spends contrary to Applicable Law (hereinafter "improper expenditures") constitute an overpayment. The Recipient shall pay any penalties related to improper expenditures, including penalties assessed against the Recipient and penalties assessed against the State. If the Recipient fails to pay any penalty imposed on it by the State related to improper expenditures, the unpaid penalty constitutes an overpayment. If a penalty is assessed to the State related to improper expenditures, the Recipient shall pay the State the amount of the penalty and failure to pay the penalty constitutes an overpayment.
  - d) Overpayments are subject to audit and/or recoupment.
  - e) The provider shall report and return the overpayment as required by Iowa Code § 249A.39.
9. Unless otherwise required by law, if the Recipient owes the State any monies, including but not limited to monies owed to the State under this or any other agreement, under a judgment, or by operation of any other law, the State may, in its sole discretion, offset such sums against any sum owed to the Recipient under this agreement.
10. The Recipient shall submit reports and/or supporting data as either State or federal authorities determine to ensure compliance with Applicable Law related to the

Payment, and such reports shall be in such form, with such content, as specified by the requester.

11. The Recipient represents, warrants, and certifies that all information it has provided as part of this application for the Payment, is true, accurate and complete, to the best of its knowledge. The Recipient shall ensure that any information or reporting provided in the future related to this Payment is true, accurate, and complete, to the best of its knowledge. The Recipient acknowledges that any deliberate omission, misrepresentation, or falsification of any information contained in this Payment application or future reports may be punishable by criminal, civil, or administrative penalties, including but not limited to exclusion from or suspension of participation in federal health care programs or the State's Medicaid program, suspension of Iowa Medicaid payments, Iowa Medicaid sanctions, and/or the imposition of fines, penalties, civil damages, and/or imprisonment.
12. The Recipient shall maintain appropriate records and cost documentation including but not limited to, as applicable, documentation described in 45 C.F.R. § 75.302 – Financial management and 45 C.F.R. §§ 75.361 through 75.365 – Record Retention and Access, and other information required by future program instructions to substantiate the reimbursement of costs under this award. The Recipient shall maintain records for a period of five years after the date the Payment is made. The Recipient shall promptly submit copies of such records and cost documentation upon the request of State and/or federal authorities to ensure compliance with these Terms and Conditions.
13. State and/or federal authorities may require, at any time and at their sole discretion, that Recipients have an audit performed. Recipient may be required to comply with other prescribed compliance and review procedures. Recipient shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the requesting party.
14. The Recipient shall indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers, and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements, and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office,) and the costs, expenses, and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this agreement, including but not limited to any claims related to, resulting from, or arising out of:
  - Any breach of this agreement;
  - Any negligent, intentional, or wrongful act or omission of the Recipient or any agent or subcontractor utilized or employed by the Recipient;
  - The Recipient's performance or attempted performance of this agreement, including any agent or subcontractor utilized or employed by the Recipient;
  - Any failure by the Recipient to make all reports, payments, and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees, or costs required by the Recipient to conduct business in the State of Iowa;

- Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any third party.
15. The Iowa Department of Health and Human Services Contingent Terms for Services Contracts posted to the Agency's website at <https://dhs.iowa.gov/contract-terms>, are incorporated herein by reference, including future amendments to such terms. The Recipient shall comply with the Contingent Terms for Services Contracts at all times.
  16. Nothing in these Terms and Conditions shall be construed to eliminate or otherwise modify any terms of the Recipient's Iowa Medicaid Provider Agreement.
  17. The status of the Recipient shall be that of an independent contractor. The Recipient, its employees, agents, and any subcontractors performing under this agreement are not employees or agents of the State or any agency, division, or department of the State simply by virtue of work performed pursuant to this agreement. Neither the Recipient nor its employees shall be considered employees of the State for federal or state tax purposes simply by virtue of work performed pursuant to this agreement. The State will not withhold taxes on behalf of the Recipient (unless required by law).
  18. The Recipient shall comply with, and ensure that its employees, agents, and subcontractors shall comply at all times with all Applicable Law. All such Applicable Law is incorporated into this agreement as of the effective date of the Applicable Law. The Recipient and State expressly reject any proposition that future changes to Applicable Law are inapplicable to this agreement.
  19. The Recipient, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by Applicable Law. Upon the State's written request, the Recipient shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and non-discrimination and accessibility plans and policies regarding services to clients as required under Iowa Admin. Code Ch. 11-121. The Recipient, its employees, agents, and subcontractors shall also comply with all Applicable Law regarding business permits and licenses that may be required.
  20. In the event the Recipient contracts with third parties for the performance of any of the Recipient obligations under this agreement, the Recipient shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this agreement and the Recipient shall include in all of its subcontracts a clause that so states. The State shall have the right to request the removal of a subcontractor for good cause.
  21. Notwithstanding anything in this agreement to the contrary, the Recipient's failure to fulfill any requirement set forth in this agreement is a material breach of this agreement and the State may cancel, terminate, or suspend in whole or in part this agreement. The State may further declare the Recipient ineligible for future state contracts in accordance with authorized procedures or the Recipient may be subject to other sanctions as provided by law or rule.
  22. This agreement shall not be amended in any way by use of terms and conditions in

- an Invoice or other ancillary transactional document. To the extent that language in a transactional document conflict with the terms of this agreement, the terms of this agreement shall control.
23. There are no third-party beneficiaries to this agreement. This agreement is intended only to benefit the State and the Recipient.
  24. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this agreement without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this agreement shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.
  25. The Recipient may not assign, transfer, or convey in whole or in part this agreement without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Recipient shall be considered an assignment. The Recipient may not delegate any of its obligations or duties under this agreement without the prior written consent of the Iowa Medicaid. The Recipient may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Recipient under this agreement.
  26. This agreement represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made that is not included in this agreement.
  27. Nothing in this agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this agreement.
  28. If the Recipient is a joint entity, consisting of more than one individual, partnership, corporation, or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, for any default of activities and obligations, and for any fiscal liabilities.
  29. Except as specifically provided for in a waiver signed by duly authorized representatives of the State and the Recipient, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the agreement shall not be construed as affecting any subsequent right to require performance or to claim a breach.
  30. Any notices required by the agreement shall be given in writing by registered or

certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to Recipient at the mailing address maintained by the Iowa Medicaid or to the State as follows:

**Iowa Department of Health and Human Services**

**Attn: Director**

**1305 E. Walnut, 5th Floor**

**Des Moines, IA 50319**

- a) From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party. Each such notice shall be deemed to have been provided:
  - At the time it is actually received in the case of hand delivery;
  - Within one day in the case of overnight delivery, courier or services such as Federal Express with guaranteed next-day delivery; or
  - Within five days after it is deposited in the U.S. Mail.
31. The various rights, powers, options, elections, and remedies of any party provided in this agreement, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.
32. If any provision of this agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this agreement.
33. The Recipient represents and warrants that:
  - It has the right, power, and authority to enter into and perform its obligations under this agreement.
  - It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this agreement and this agreement constitutes a legal, valid, and binding obligation upon itself in accordance with its terms.
34. All the terms, provisions, and conditions of the agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.
35. The Recipient shall maintain accurate, current, and complete records of the financial activity of this agreement which sufficiently and properly document and calculate all charges billed to the State during the entire term of this agreement, which includes any extensions or renewals thereof, and for a period of at least seven (7) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven (7) 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 seven (7) year period, whichever is later. The Recipient shall permit the State, the Auditor of the State of Iowa or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the Recipient relating to orders, invoices or payments, or any other documentation or materials pertaining to this agreement, wherever such records may be located. The Recipient shall not impose a charge for audit or examination of the Recipient's books and records. Based on the audit findings, the State reserves the right to address the Recipient's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this agreement require compliance with the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or other similar provision addressing proper use of government funds, the Recipient shall comply with these additional records retention and access requirements:
- Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this agreement require matching funds, cash contributions made by the Recipient and third-party in-kind (property or service) contributions, these funds must be verifiable from the Recipient's records. These records must contain information pertaining to agreement amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.
  - The Recipient shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
  - The Recipient, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the State.
  - The Recipient shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring, and evaluating its program.
36. The Recipient shall retain all non-medical and medical client records for a period of seven (7) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code § 614.1(9), whichever is greater.
37. The State may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Recipient shall submit one (1) copy of the audit report to the Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the State. The Recipient shall submit with the audit report a copy of the separate letter to management addressing a deficiency in internal control and/or material findings, if provided by the auditor. The Recipient may be required to comply with other prescribed compliance and review procedures. The Recipient shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the State.

38. If the Auditor of the State of Iowa notifies the State of an issue or finding involving the Recipient's noncompliance with laws, rules, regulations, and/or contractual agreements governing the funds distributed under this agreement, the Recipient shall bear the cost of the Auditor's review and any subsequent assistance provided by the Auditor to determine compliance. The Recipient shall reimburse the State for any costs the State pays to the Auditor for such review or audit.
  
39. By executing this agreement, the Recipient certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (2) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code § 423.1(42) and (43). The Recipient also acknowledges that the State may declare the agreement void if the above certification is false. The Recipient also understands that fraudulent certification may result in the State or its representative filing for damages for breach of this agreement.