

**NORTH DAKOTA MEDICAID EXPANSION PROGRAM
REGULATORY REQUIREMENTS APPENDIX
FOR
GENERAL SUBCONTRACTOR**

This North Dakota Medicaid Expansion Program Regulatory Requirements Appendix for General Subcontractor ("Appendix") supplements and is made part of the existing Agreement between Blue Cross Blue Shield of North Dakota ("BCBSND") and Subcontractor. In consideration of the mutual promises of the parties and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree to the provisions set forth in this Appendix.

1. APPLICABILITY. The requirements of this Appendix apply to Subcontractor's provision of services related to the North Dakota Medicaid Expansion Program. This Appendix complies with 42 C.F.R. §438.230 and all applicable Medicaid laws and regulations, including any other applicable state or federal law, sub-regulatory guidance and State Contract provision, that are appropriate to the service or activity delegated to Subcontractor under this Appendix.

2. DEFINITIONS. Unless otherwise defined in this Appendix, all capitalized terms shall be as defined in the Agreement. For purposes of this Appendix, the following terms shall have the meanings set forth below; provided, however, in the event any definition set forth in this Appendix or the Agreement is inconsistent with any definitions under the State Contract, the definitions shall have the meaning set forth in the State Contract.

Centers for Medicare & Medicaid Services ("CMS") means the federal agency (and its designated agents) within the United States Department of Health and Human Services ("DHHS") responsible for federal oversight of the Medicaid, Medicare, and Children's Health Insurance Programs.

Enrollee means a Medicaid Expansion recipient who is enrolled with BCBSND.

Enrollment Broker means the STATE's designated contractor that performs functions related to choice counseling, enrollment, and disenrollment of potential Enrollees and Enrollees into Medicaid Expansion.

Medicaid Expansion means the group of individuals covered under Medicaid as set forth in Section 2001(a)(1) of the ACA (42 U.S.C. §1396a(a)(10)(A)(viii)) and as amended by Section 10201 of the Patient Protection and Affordable Care Act as codified at Section 1902(k)(2) of the Social Security Act (42 U.S.C. §1396a(k)(2)) and for which the State of North Dakota received CMS approval.

STATE means the State of North Dakota, acting through its North Dakota Department of Human Services, Medical Services Division.

State Contract means the written agreement between STATE and BCBSND regarding requirements for operation and administration of the Medicaid Managed Care Program for North Dakota.

3. DELEGATION, REVOCATION AND SANCTIONS

If BCBSND or the STATE identifies deficiencies or non-compliance in Subcontractor's provision of services under this Appendix or as related to the State Contract, Subcontractor shall take appropriate and timely corrective action. Subcontractor shall comply with any corrective action plan initiated by BCBSND or required by the STATE.

In addition to BCBSND's corrective action and termination rights under this Appendix, BCBSND shall have the right to revoke any functions or activities BCBSND delegates to Subcontractor under this Appendix or impose other sanctions consistent with the State Contract if in BCBSND's reasonable judgment Subcontractor's

performance under this Appendix is inadequate. BCBSND shall also have the right to suspend, deny, and refuse to renew or terminate Subcontractor's services in accordance with the terms of the State Contract and applicable laws and regulations.

4. SUBJECTION TO STATE CONTRACT. This Appendix shall be subject to the material terms and conditions of the State Contract between BCBSND and the STATE and shall also be governed by and construed in accordance with all laws, regulations and contractual obligations incumbent upon BCBSND. If any provision of this Appendix is determined by the STATE to conflict with the State Contract between BCBSND and the STATE, such provision shall be null and void and all other provisions shall remain in full force and effect.

5. APPROVAL OF APPENDIX AND REVISIONS. Subcontractor understands and agrees that the STATE reserves the right in its sole discretion to review and approve or disapprove this Appendix and any revisions thereto. In the event BCBSND is required to amend or supplement this Appendix by statutory or regulatory changes, or as required by the STATE, BCBSND may amend, modify, or update this Appendix from time to time by posting the revised version at the hyperlinked location - <https://www.cambiahealth.com/suppliers>. Any such updates shall become effective thirty (30) days after posting, unless a different effective date is specified in the revised Appendix. BCBSND will use commercially reasonable efforts to provide electronic notice to Subcontractor of any material changes to the Appendix. No other modifications, including but not limited to, alterations, variations, waivers, extensions of the Appendix termination date, or early termination of the Appendix shall be valid.

6. COMPLIANCE WITH LAWS. Subcontractor shall comply with all applicable Medicaid laws and regulations, federal and state laws, sub-regulatory guidance, executive orders and the State Contract including, but not limited to, the following to the extent applicable to Subcontractor in performance of this Appendix: Fair Labor Standards Act, Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disabilities Act of 1990 as amended, Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act of 1992, Title IX of the Education Amendments of 1972, Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by Department of Labor regulations at 41 CFR part 60, the Clean Air Act, the Federal Water Pollution Control Act, the Pro-Children Act of 1994, and Section 1557 of the Patient Protection and Affordable Care Act.

7. INDEMNIFICATION BY SUBCONTRACTOR. Subcontractor agrees to indemnify, defend, and hold harmless the STATE, its designees, and Enrollees from and against all claims, damages, causes of action, costs or expenses, including court costs and reasonable attorney fees, to the extent proximately caused by any negligent act or other wrongful conduct of Subcontractor arising from this Appendix. Subcontractor agrees that under no circumstances, including, but not limited to, nonpayment by BCBSND or the STATE, insolvency of BCBSND, breach of this Appendix or the STATE Contract, will Subcontractor bill, charge, seek compensation, remuneration or reimbursement from, or have recourse against, Enrollees or the STATE.

Subcontractor agrees that the obligations of this Section 7 shall survive the expiration or termination of this Appendix regardless of the reason for expiration or termination.

8. TERMINATION. Subcontractor understands and agrees that BCBSND or the STATE may order the immediate termination of this Appendix if it is determined that the Subcontractor: (a) takes any action or fails to prevent an action that threatens the health, safety or welfare of any Enrollee; (b) takes any action that threatens the fiscal integrity of the Medicaid program; (c) has any required license or certification suspended or revoked by any federal agency or is federally debarred or excluded from federal procurement and non-procurement contracts; (d) becomes insolvent; (e) brings a proceeding voluntarily or has a proceeding brought against it involuntarily, under the Bankruptcy Act; (f) materially breaches this Appendix or violates a provision of the State Contract; or (g)

violates state or federal law.

BCBSND and Subcontractor understand and agree that in the event of termination of the State Contract between BCBSND and the STATE for any reasons described in the State Contract, BCBSND must immediately make available to STATE or its designated representative, in usable form, any and all records, whether medical or financial, related to BCBSND's and Subcontractor's activities undertaken pursuant to this Appendix.

Subcontractor shall fully and promptly assist BCBSND in making the records available, in usable form, to the STATE. The provision of such records shall be at no expense to the STATE.

9. SUBCONTRACTS. Subcontractor may not subcontract or delegate any functions of this Appendix without BCBSND's prior written approval, which approval will not be unreasonably withheld. If Subcontractor subcontracts or delegates any functions of this Appendix, the subcontract or delegation agreement must include all of the requirements of this Appendix and the State Contract, to the extent relevant to the duties being performed under the subcontract or delegation agreement. Subcontractor further agrees to promptly amend its subcontracts or delegation agreements to meet any additional requirements that may apply to Subcontractor's services as directed by BCBSND or the STATE.

10. RECORDS RETENTION. To the extent applicable to Subcontractor in performance of this Appendix, and except as otherwise noted in paragraph 2 of this Section 10 or required under state or federal law or the State Contract, Subcontractor shall maintain and retain the following records for a minimum of ten (10) years: (a) base data in 42 C.F.R. §438.5(c); (b) medical loss ratio reports in 42 C.F.R. §438.8(k); the data, information and documentation specified in §438.604, §438.606, §438.608, and §438.610; and Enrollee grievance and appeal records in accordance with §438.416 and will review the information as part of its ongoing monitoring procedures, as well as for updates and revisions to the STATE's quality strategy.

Subcontractor shall further maintain all files and records related to Enrollees and providers for ten (10) years after the date of final payment under the STATE Contract or until the resolution of all litigation, claims, financial management review, or audit pertaining to the STATE Contract, whichever is longer. Under no circumstances shall Subcontractor destroy or dispose of any such records, even after the expiration of the mandatory ten (10)-year retention period, without the express prior permission of the STATE.

11. INSPECTION AND AUDIT. Subcontractor shall: (a) allow the STATE, CMS, the DHHS Inspector General, the Comptroller General, and their designees, at any time, to audit, evaluate, and inspect any books, records, contracts, computer or other electronic systems of Subcontractor, or of Subcontractor's subcontractors, that pertain to any aspect of services and activities performed under this Appendix and the State Contract, or determination of amounts payable under the State Contract; (2) make available to the STATE, CMS, the DHHS Inspector General, the Comptroller General, and their designees, at any time, for the purposes of an audit, evaluation, or inspection, Subcontractor's premises, physical facilities, equipment, books, records, contracts, computer, or other electronic systems that pertain to any aspect of services and activities performed under this Appendix and the State Contract; and (3) if the STATE, CMS, or the DHHS Inspector General determine that there is a reasonable possibility of fraud or similar risk, at any time allow the STATE, CMS, or the DHHS Inspector General, or their designees, to inspect, evaluate, and audit Subcontractor and Subcontractor's subcontractors at any time. Subcontractor agrees that the right to audit by the STATE, CMS, the DHHS Inspector General, the Comptroller General, and their designees, shall exist through ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.

12. CONFIDENTIALITY AND PRIVACY. Subcontractor agrees and understands that all information, records, data, and data elements collected and maintained for the operation of the Subcontractor, BCBSND and the STATE and pertaining to Enrollees, shall be protected from unauthorized disclosure in accordance with applicable state and federal laws and regulations including, but not limited to, the provisions of 42 C.F.R. Part 431 - subpart F, and 45 CFR Parts 160 and 164, subparts A and E. Subcontractor shall furthermore comply with the terms and conditions of any HIPAA Business Associate Agreement attached to the Agreement or this Appendix. Subcontractor shall

otherwise safeguard Enrollee information in full accordance with 42 C.F.R. §438.224.

13. ENROLLEE RIGHTS. Subcontractor and its permitted subcontractors shall comply with all federal and state laws pertaining to Enrollee rights and privacy and shall observe and respect those rights when providing services to Enrollees. Enrollee rights include, but are not limited to, the following to the extent applicable to Subcontractor's provision of services: (a) the right to receive information about the Medicaid Expansion coverage and benefits in accordance with 42 C.F.R. §438.10; (b) the right to be treated with respect and with due consideration for his or her dignity and privacy; (c) the right to receive information on available treatment options and alternatives, presented in a manner appropriate to the Enrollee's condition and ability to understand; (d) the right to obtain available and accessible covered services under Medicaid Expansion; (e) the right to participate in decisions regarding his or her health care, including the right to refuse treatment; (f) the right to request and receive a copy of their medical records and request that they be amended or corrected, as specified in 45 C.F.R. §164.524 and 45 C.F.R. §164.526; (g) the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in other federal regulations on the use of restraints and seclusion; and (h) the right to be free to exercise all rights and that by exercising those rights, the Enrollee shall not be adversely treated by Subcontractor or its subcontractors.

14. MARKETING ACTIVITIES AND MATERIALS. Subcontractor is expressly prohibited under this Appendix from conducting or engaging in marketing of any kind related to North Dakota Medicaid Expansion without prior written approval from BCBSND. Subcontractor shall comply with state and federal law and the State Contract when conducting or engaging in approved marketing activities.

15. FRAUD WASTE AND ABUSE/COMPLIANCE PROGRAM. To the extent Subcontractor is delegated responsibility for coverage of services and payment of claims under this Appendix, Subcontractor shall implement and maintain, as described 42 C.F.R. §438.608, the following arrangements and procedures designed to detect and prevent fraud, waste, and abuse:

a. A compliance program that includes, at a minimum, all of the following elements: (i) written policies, procedures, and standards of conduct that demonstrate compliance with all applicable requirements and standards under the State Contract, as well as all federal and state requirements, related to program integrity; (ii) a designated Compliance Officer who shall report to the CEO and Board of Directors and is responsible for developing and implementing policies and procedures designed to ensure compliance with program integrity requirements; (iii) a Regulatory Compliance Committee, consisting of members of the Board of Directors, which is responsible for oversight of the compliance program; (iv) a system for training and education for the Compliance Officer, directors, managers, and employees regarding the compliance program and program integrity-related requirements; (v) effective lines of communication between the Compliance Officer and employees; (vi) enforcement of compliance program standards and program integrity-related requirements through well-publicized disciplinary guidelines; and (vii) a system of dedicated staff with established and implemented procedures for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues as they are raised, investigation of potential compliance problems identified in the course of self-evaluation and audits, correction of identified compliance problems promptly and thoroughly (or coordination of suspected criminal acts with law enforcement agencies) to reduce the potential for recurrence, and ongoing compliance with program integrity-related requirements.

b. Procedures for promptly notifying BCBSND when Subcontractor: (i) identifies or recovers overpayments, which includes specifying the overpayments due to potential fraud; (ii) receives information about changes in an Enrollee's circumstance that may affect the Enrollee's eligibility, including changes in the Enrollee's residence and death of an Enrollee; or (iii) receives information about a change in a network provider's circumstances that may affect the network provider's eligibility to participate in the program, including the termination of the provider agreement with BCBSND.

- c. Provisions to regularly verify, by sampling or other methods, whether services that have been represented to have been delivered by network providers were received by Enrollees.
- d. A mechanism for a network provider to report to BCBSND when it has received an overpayment, to return the overpayment to BCBSND within sixty (60) calendar days after the date on which the overpayment was identified, and to notify BCBSND in writing of the reason for the overpayment.
- e. BCBSND's retention policies for the treatment of recoveries of all overpayments from BCBSND to a provider, including specifically the retention policies for the treatment of recoveries of overpayments due to fraud, waste, or abuse.
- f. The process, timeframes, and documentation required for reporting the recovery of all overpayments.
- g. The process, timeframes, and documentation required for payment of recoveries of overpayments to STATE in situations where BCBSND is not permitted to retain some or all of the recoveries of overpayments.

Subcontractor shall cooperate and facilitate STATE's conduct of periodic on-site visits. At the time of such visits, Subcontractor shall assist STATE or its designee in activities pertaining to an assessment of all facets of Subcontractor's services pertaining the State Contract, including, but not limited to, financial, administrative, clinical, pharmacy, and claims processing functions and the verification of the accuracy of all data submissions to STATE as described herein. Subcontractor shall respond to requests for information associated with such on-site visits in a timely manner and shall make senior managers available for on-site reviews.

16. EXCLUDED INDIVIDUALS AND SUBCONTRACTORS. Subcontractor certifies to the best of its knowledge and belief that neither it nor any of its employees or subcontractors have been convicted of crimes described in Section 1128(b)(8)(B) of the Social Security Act or debarred, suspended, or otherwise lawfully prohibited from participating in any federal health care program. Subcontractor shall screen its employees, potential employees and subcontractors to determine such criminal convictions and debarment or exclusion from participation in: Medicare, Medicaid, CHIP, or any federal healthcare program; the Federal Acquisition Regulation; or non-procurement activities under implementing guidelines and regulations under Executive Order No. 12549. Subcontractor shall not employ any individual or subcontract with any entity that has been convicted, debarred or excluded as described herein.

Subcontractor shall conduct, at a minimum, a search of the following as part of its screening process: Office of Inspector General List of Excluded Individuals/Entities, and The System of Award Management, monthly to capture exclusions and reinstatements that have occurred since the previous search. Any exclusion information discovered shall be reported to BCBSND immediately, but in no event later than two (2) days from discovery, to ensure BCBSND's timely reporting to the STATE.

17. CONFLICT OF INTEREST. Subcontractor shall not have any interest that conflicts with the performance of services required under this Appendix, or that may otherwise be anticompetitive. Without limiting the generality of the foregoing, Subcontractor shall not have any financial, legal, contractual, or other business interest in any entity performing Medicaid Expansion enrollment functions for the STATE, the Enrollment Broker, and subcontractors, if any. If any potential or actual conflict of interest arises, Subcontractor shall immediately notify BCBSND with a description of the potential or actual conflict and a plan of action for how the potential or actual conflict of interest will be avoided or remedied by Subcontractor. Subcontractor understands that the STATE has sole discretion in determining the existence of a conflict of interest, and Subcontractor shall provide BCBSND and STATE with any information that may be relevant to Subcontractor's financial, legal, contractual, or other business interests as related to the conflict of interest upon request.

18. BYRD ANTI-LOBBYING. Subcontractor will comply with the following requirements related to lobbying:

- a. Subcontractor certifies to the best of Subcontractor's knowledge and belief, pursuant to 31 U.S.C. Section 1352, that no federally appropriated funds have been paid or will be paid to any person by or on Subcontractor's behalf for the purpose of influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the award of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, appendix, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for the purpose of influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, Subcontractor shall immediately notify BCBSND and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

19. INSURANCE. Subcontractor certifies that Subcontractor has secured, at a minimum and will keep in force during the term of this Appendix, from insurance companies, government self-insurance pools, or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages as applicable to Subcontractor's services provided under this Appendix:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- b. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- c. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Appendix.
- d. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- e. Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Subcontractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, Subcontractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

- a. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the STATE. The policies shall be in form and terms approved by the STATE.
- b. The duty to defend, indemnify, and hold harmless the STATE under this Appendix shall not be limited by the insurance required in this Appendix.
- c. The State of North Dakota and its agencies, officers, and employees shall be endorsed on the

commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Appendix or by the contractual indemnity obligations of BCBSND.

d. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the STATE.

e. Subcontractor shall furnish a certificate of insurance to BCBSND prior to commencement of this Appendix. A renewal certificate shall be provided ten (10) days prior to coverage expiration. An updated, current certificate of insurance shall be provided in the event of any change to a policy. All endorsements shall be provided as soon as practicable.

f. Subcontractor shall provide at least thirty (30)-day notice of any cancellation or material change to the policies or endorsements. Subcontractor shall provide on an ongoing basis, current certificates of insurance during the term of this Appendix. A renewal certificate must be provided ten (10) days prior to coverage expiration.

20. OPEN RECORDS LAWS. Subcontractor understands that the STATE is subject to the North Dakota open records laws found in North Dakota Century Code chapter 44-04, and the STATE may be required to disclose to the public upon a valid request certain records it receives, either directly from Subcontractor or indirectly through BCBSND or its designee as required by the State Contract, related to Subcontractor's Medicaid Expansion services. Subcontractor shall, in the provision of its services under this Appendix, clearly identify to BCBSND and the STATE in an ongoing manner whether records are deemed confidential. Subcontractor shall clearly and conspicuously label any such records as "CONFIDENTIAL." Subcontractor further understands that the STATE has sole discretion to determine whether Subcontractor's records previously identified as confidential are protected from mandatory public disclosure under a specific exception to the North Dakota open records laws, and Subcontractor shall hold BCBSND harmless from any public disclosure by the STATE. Subcontractor agrees to contact BCBSND immediately upon receiving a request for information under the open records laws and to comply with BCBSND's and the STATE's instructions on how to respond to the request.

21. PERFORMANCE IN THE UNITED STATES. All services provided by Subcontractor under this Appendix shall be performed within the United States.

22. BACKGROUND CHECK REQUIREMENTS. Unless subject to other requirements, at minimum every five (5) years, Subcontractor shall conduct a criminal background check on all current employees who have access to Enrollee protected health information and shall conduct a background check of potential employees. Subcontractor shall, upon request, provide BCBSND or STATE with a satisfactory criminal background check or an attestation that a satisfactory criminal background check has been completed for any of Subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of the State Contract.

23. ENTIRE CONTRACT. The Parties acknowledge and agree that the terms and provisions contained in this Appendix constitute an appendix to the Agreement and are incorporated into and made a part thereof. Except as modified as modified herein, all other terms and conditions of the Agreement remain in full force and effect.