

**Texas Health and Human Services Commission
Title XIX Vendor Drug Program Pharmacy Provider Contract**

Part 1: Provider Information

A. Provider Name	B. DBA Name (if different than Part 1.A)
C. Vendor ID #	D. Physical Business Address

Part 2: Terms & Conditions

In consideration of the payments authorized under this Contract, the Parties agree to the following terms and conditions:

- A. The Health and Human Services Commission ("HHSC") is the State of Texas agency responsible for administering the Medical Assistance Program operated in accordance with the Title XIX of the Social Security Act ("Medicaid,") including the outpatient drug program ("Vendor Drug Program") for the State of Texas.
- B. The Provider will dispense prescription drugs authorized as covered benefits to persons enrolled in Medicaid ("Recipients") on a vendor basis, in accordance with the terms and conditions of this Contract.
- C. This Contract is effective on the date indicated in Part 3 of this Contract and supercedes all prior pharmacy provider agreements between the Parties. This Contract terminates thirty (30) calendar days following notice by the Provider or HHSC of its intention to terminate the Contract, unless HHSC terminates this Contract without notice for any of the following reasons:
 - 1. The Provider is excluded or debarred from participation from any program established under by a state or federal government pursuant to the following provisions of the Social Security Act: Title XVIII ("Medicare"), Title XIX ("Medicaid"), Title XX ("Block Grants to States for Social Services") or Title XXI ("CHIP"), or the Provider is convicted of an offense involving fraud (see 42 U.S.C. §1320a-7 and Executive Order 12549);
 - 2. The Provider loses its Texas State Board of Pharmacy license or certificate for any reason;
 - 3. The Provider becomes ineligible to participate in the Medicaid program for any reason;
 - 4. The Provider fails to comply with the terms of this Contract and/or standards for participation in the Vendor Drug Program;
 - 5. The Medicaid Fraud Control Unit of the Office of the Attorney General of Texas ("MFCU") or the HHSC Office of Inspector General ("OIG") determines that the Provider has or may be placing the health and safety of a Recipient at risk;
 - 6. A change in federal or Texas law requires a reduction or termination of Medicaid, a benefit or service previously authorized under Medicaid, or any part of a service or benefit authorized under Medicaid; or
 - 7. HHSC determines that the Provider has had no claims activity with the Vendor Drug Program within a six month period.
- D. This Contract incorporates by reference the terms of the *Pharmacy Provider Handbook* ("Handbook"), *Pharmacy Provider Procedures Manual* ("Manual"), the *Texas Drug Code Index* ("Index"), all regulations, rules, policies, or procedures issued by HHSC to regulate the Vendor Drug Program, and all revisions and updates to the aforementioned materials and information. The Provider will comply with such materials and information, and will ensure that employees, agents, and subcontractors who act on the Provider's behalf in fulfillment of the Provider's responsibilities under this Contract comply with such materials and information. HHSC will maintain a link to current copies of the Handbook, Manual, and Index on its website (<http://www.hhsc.state.tx.us/HCF/vdp/vdpstart.html>).
- E. The Provider and its employees, agents and subcontractors are or will become familiar with the following materials and information issued by HHSC to regulate the Vendor Drug Program:
 - 1. Provisions and procedures contained in the Handbook, Manual and Index;
 - 2. Any updates or revisions to the above-referenced materials and any regulations, rules, policies, or procedures;
 - 3. Any notices, bulletins, or information packages issued by HHSC or its designated representatives concerning Medicaid and/or Vendor Drug Program pharmaceutical drug benefits.
- F. The Provider will provide HHSC or its designated representative written notice of the following:
 - 1. Changes to the information contained in the Provider's Medicaid Pharmacy Provider Enrollment Application Form ("the Application"), including but not limited to information on ownership and control, information related to business transactions,

and information on persons convicted of crimes in accordance with the requirements of [42 C.F.R. Part 455](#). The Provider will notify HHSC of changes in ownership and control at least fifteen (15) business days prior to each change. Updates to all other information contained in Application must be submitted within ten (10) business days after the change. The Provider further agrees that the contents of the Application are true, complete and accurate as of the Effective Date of this Contract. The contents of the Application, including all revisions thereto, are hereby incorporated by reference into this Contract. The Provider understands that the failure to keep the information contained in the Application current constitutes a breach of this Contract;

2. An action under [§1128\(a\) or \(b\) of the Social Security Act](#) or [Executive Order 12549](#) taken against the Provider, or any other person defined under the provisions of §1128(a) or (b) of the Social Security Act, that could result in exclusion from the Medicaid Program, within ten (10) business days after receiving a notice of the action; and
3. The suspension or placement of any restriction on the Provider's license or certificate to provide pharmacy services, including complete information regarding any such suspension or restriction, within ten (10) business days after the suspension or restriction.

The Provider agrees to supply the above-referenced information to the following entities at their request: MFCU; Texas Department of Aging and Disability Services; and/or the United States Centers for Medicare and Medicaid Services ("CMS").

G. The Provider will submit claims for payment in accordance with HHSC's billing guidelines and procedures, including electronic claims (see e.g., [1 T.A.C. Part 15, Chapter 354, Subchapter F](#); and applicable provisions of the Handbook and Manual). The Provider understands that payment of claims will be from federal and state funds, and that any falsification or concealment of material fact may be prosecuted under federal and state laws. The Provider agrees that information contained in all claims data submitted by or on behalf of the Provider:

1. Is true, complete and accurate;
2. Can be verified by reference to source documentation maintained by the Provider;
3. Is subject to audit, review, and inspection in accordance with the Handbook, Manual, and Index, and updates or revisions thereto; and
4. Will be for pharmacy services provided at the Physical Business Address set forth in Part 1, Subpart D of this Contract. The Provider may not submit claims pursuant to this Contract for prescriptions filled at other locations owned by the Provider.

H. The Provider will comply with all Texas and federal laws that regulate fraud, abuse, and waste in health care and the Medicaid and Vendor Drug Programs. This includes, without limitation, the following obligations:

1. To keep and maintain all the records necessary for the purchasing and dispensing of Recipient prescriptions, and furnish all reports in such form and scope as HHSC may require. This includes without limitation:
 - (a) All prescription documents, medication invoices and medication acquisition documents;
 - (b) Any other records pertinent to the services for which a claim was submitted, or the claims presented for payment for such services; and
 - (c) All other records required to be maintained by HHSC's standards of participation in the Vendor Drug Program;
2. To cooperate with and assist HHSC, the MFCU, the CMS, the Texas State Auditor's Office ("SAO") and any State of Texas or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting fraud, abuse, or waste in the Medicaid Program or the audit of claims submitted for payment to the Medicaid Program. The Provider must grant any of these agencies and/or their agents, and ensure that their employees, subcontractors and agents grant these agencies and/or their agents:
 - (a) Access to its premises, including immediate access to the files of prescriptions and to the drug acquisition records that pertain to the Title XIX Medical Assistance Program for review and/or audit;
 - (b) Access to a sample of the de-identified prescription files of the Provider's non-Medicaid customers for the purpose of determining a pharmacy provider's usual and customary price. For purposes of this requirement, the Provider may de-identify prescription files for non-Medicaid customers by removing "individually identifiable health information," as defined by [45 C.F.R. §160.103](#). "Individually identifiable health information" does not include information concerning the drug type, quantity, or dosage; National Drug Code (NDC) number; or drug pricing information;
 - (c) Access to all records maintained pursuant to this Contract, including without limitation those maintained pursuant to [42 C.F.R. §431.107](#), and copies of such records free of charge;
 - (d) Access to employees, subcontractors, agents, witnesses and Recipients for purposes of investigating, sanctioning, prosecuting fraud, abuse or waste upon request. The Provider must comply with requests for interviews in the form and the manner requested by the investigating agency. The Provider will ensure by contract or other means that its employees, agents and subcontractors cooperate fully in any investigation. "Subcontractors" are those persons or entities who provide medical goods or services for which the Provider bills the Medicaid program or who provide billing, administrative, or management services in connection with Medicaid-covered services; and
 - (e) Permission to interview the Provider's employees, agents and subcontractors without coercion by Provider and without the presence of the Provider or the Provider's representative or legal counsel unless the interviewee voluntarily agrees to such presence or representation. The Provider must not retaliate against an interviewee who declines such presence or representation. Nothing in this Contract limits an interviewee's right to counsel of his or her choice; and

3. To cooperate in HHSC's regular reviews of Recipient records, general audits and utilization reviews.
- I. The records and documents referenced in Part 2, Subparts H(1-2) of this Contract must be retained for a minimum of five years from the Date of Service. The "Date of Service" is defined as the date the Provider prepares, packages, compounds and/or labels the medication. If any litigation, audit, or other contract review process begins before the five year period expires, the Provider will keep the records and documents until all litigation, dispute resolution proceedings, audits, or reviews are resolved. Resolution has occurred when:
 1. There is a final decision in litigation;
 2. When HHSC provides written notification that the audit, review or dispute resolution proceeding is permanently resolved; or
 3. When HHSC and the Provider enter into a written Contract of resolution.
 - J. In accordance with the requirements of [Texas Government Code §2262.003](#), the Provider understands and agrees that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an investigation in connection with those funds. The Provider further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. The Provider will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards.
 - K. Except as provided by HHSC's third-party recovery rules ([1 T.A.C. Part 15, Chapter 354, Subchapter J](#)), the Provider agrees to accept the vendor payment in effect on the date of service as payment in full for pharmaceutical services provided each Recipient. Except as provided in Part 2, Subpart L(3) of this Contract, the Provider will not make additional charges to the Recipient, any member of his or her family, or any other source for supplementation of payment.
 - L. The Provider will:
 1. Not exclude or deny or withhold aid, care, services, or other benefits available under Medicaid to any Medicaid Recipient or otherwise discriminate against a person because of that person's race, color, national origin, gender, age, disability, political or religious beliefs;
 2. Provide services to Recipients in the same manner, by the same methods, and at the same level and quality provided to the general public;
 3. Not charge or pursue payment from a Recipient or any person who is financially responsible for a Recipient for anything other than a co-payment or cost-sharing amount specifically authorized by HHSC under the Vendor Drug Program;
 4. Ensure any personal or medical information regarding a Recipient in the Provider's custody will be maintained in a manner that protects the Recipient's rights of privacy and confidentiality under all applicable Texas and federal laws;
 5. Ensure a Recipient is free to seek and obtain medical, dental, or pharmacy services from a provider of his or her choice;
 6. Ensure that a Recipient's acceptance of any service is voluntary;
 7. Neither solicit, pay, nor offer inducements, remuneration, or other compensation to a Recipient in violation of state or federal anti-kickback laws, or in violation of HHSC's advertising rules ([1 T.A.C. Part 15, Chapter 354, Subchapter F](#));
 8. Not transfer or assign this Contract;
 9. Comply with all laws, rules and regulations applicable to this Contract, as amended or modified, including without limitation:
 - (a) State and federal anti-discrimination laws -- [Title VI of the Civil Rights Act of 1964](#), [Executive Orders 11246](#) and [11375](#) (Public Law 88-352); [Section 504 of the Rehabilitation Act of 1973](#) (Public Law 93-112); the [Americans with Disabilities Act of 1990 \(Public Law 101-336\)](#); [40 T.A.C. Chapter 73](#).
 - (b) Environmental protection laws -- Clean Air Act and Federal Water Pollution Control Act regulations ([Executive Order 11738](#)) and state Clean Air Implementation Plans ([42 U.S.C. §7410 et seq.](#)); Pro-children Act of 1994 ([20 U.S.C. §6081 et seq.](#)); National Environmental Policy Act of 1969 ([42 U.S.C. §4321 et seq.](#) and [Executive Order 11514](#)); Safe Drinking Water Act of 1974 ([21 U.S.C. §349](#); [42 U.S.C. §§300f through 300j-9](#));
 - (c) Immigration Reform and Control Act of 1986 ([8 U.S.C. §1101](#), et seq.) regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986 who will perform any labor or services under this Contract;
 - (d) Health Insurance Portability and Accountability Act (HIPAA) of 1996 (the Parties understand that they are not "business associates" as defined by [45 C.F.R. Parts 160](#) and [164](#));
 - (e) Debarment and suspension and drug-free workplace ([45 C.F.R. Part 76](#)), which includes the requirement that the Provider execute the attached certification upon execution of this Contract and provide written notification immediately if the certification was erroneous when submitted or becomes erroneous by reason of changed circumstances;
 - (f) Delinquent child support payments ([TEX. FAM. CODE §231.006](#)) – which includes the requirement that the Provider to execute the attached certification upon execution of the Contract. The Provider must provide written notice within ten (10) business days if the certification was erroneous when submitted or becomes erroneous by reason of changed circumstances;
 - (g) Federal lobbying (Pub. Law 101-121, Section 319) – which includes the requirement that the Provider to execute the attached certification upon execution of the Contract. The Provider must provide written notice within ten (10) business

days if the certification was erroneous when submitted or becomes erroneous by reason of changed circumstances;

- (h) Texas and federal laws, rules and regulations establishing Medicaid as the payor of last resort; and
- (i) Texas State Board of Pharmacy rules and regulations in effect at the time the prescription is serviced.

M. HHSC will:

1. Pay on a vendor basis, in amounts and under conditions determined by HHSC and established by administrative rule, for pharmaceutical services for all Recipients who HHSC has determined are eligible for such assistance on the Date of Service;
2. Pay clean claims in accordance with applicable federal and state laws, rules and regulations (see e.g., [42 U.S.C. §1396a](#) (a) (37) and [42 C.F.R. §447.45](#)). These laws and regulations give HHSC up to twelve (12) months to pay clean claims; however, HHSC will attempt to pay clean claims submitted electronically or on [Form 3700](#) on a weekly payment cycle, as described in the "Claims Payment" provisions of the Manual. HHSC is not required to pay Provider claims that are under investigation for fraud, abuse, or waste, or are on vendor hold. HHSC may place irregular or erroneous claims on vendor hold until it can adjust such irregularities or errors;
3. Make proper adjustments to Provider payments to compensate for prior overpayment or underpayment;
4. Provide reasonable notice of any impending change in the Provider's status as a participating provider of pharmaceutical services, including notice of cancellation of this Contract if no claims are processed in a six-month period;
5. Provide public notice of any major changes in HHSC rules and regulations applicable to pharmacies and standards for participation in the Vendor Drug Program;
6. Work with the Texas Pharmaceutical Association, its local Pharmaceutical Association components, and the Provider to provide the best pharmaceutical services available within the limitations of the law and available funds; and
7. Provide a contract appeal in accordance with [1 T.A.C. §354.1809](#) in the event HHSC suspends or cancels the Provider's participation in the Vendor Drug Program.

N. This Contract may be amended by mutual agreement of the Parties. In the event federal and/or state laws or other requirements are amended or judicially interpreted so as to render the fulfillment of this Contract unfeasible or impossible, or if the Parties are unable to agree on amendments necessary to enable the substantial continuation of the Contract, then in accordance with the notice requirements of Part 2, Subpart C of this Contract, both the Provider and HHSC may be discharged from further obligation created under the terms of this Contract, except for equitable settlement of the respective accrued interests up to the date of the termination.

O. By signing this Contract, the Provider hereby assigns to HHSC any and all claims for overcharges associated with this Contract that arise under federal and Texas antitrust laws (see [15. U.S.C. §1](#) et seq. and [TEX. BUS & COM. CODE §15.01](#) et seq.).

P. HHSC or another state or federal agency may, consistent with due process, assess a remedy, sanction, penalty, or other action authorized by law, including, but not limited to, payment hold, recoupment, administrative penalties, debarment, suspension, cancellation of contract, or exclusion from participation.

Part 3: Effective Date

The effective date of this Contract is .

Part 4: Signatures

By signing this Contract, the Parties confirms that they have read, understood, and will comply with the terms of this Contract and the applicable requirements of the Medicaid and Vendor Drug Programs.

PROVIDER	TEXAS HEALTH AND HUMAN SERVICES COMMISSION
Name (Signature)	Name
Printed Name & Title	Printed Name & Title Charles E. Bell, M.D. Deputy Executive Commissioner for Health Services
Date	Date