

**INDIAN HEALTH CARE PROVIDER PROVISIONS**  
**ATTACHMENT**

The following additional provisions ("**ITU Provisions**") relate specifically to Indian Health Care Providers, as defined below, and the individual health care providers providing services under such programs (collectively, the "**IHCP Providers**"), participating in the network of any product or health benefits plan offered or administered by **Humana**. These ITU Provisions are hereby incorporated by reference into the Agreement. To the extent that any provision of the Agreement or any addendum or attachment thereto is inconsistent with any provision of this Attachment, the ITU Provisions in this Attachment shall supersede all other provisions.

- 1) **Definitions**. For purposes of this Attachment, the following terms and definitions shall apply:
  - a) "**Contract Health Service**" has the meaning given in Section 4(5) of the Indian Health Care Improvement Act ("**IHCIA**"), 25 U.S.C. § 1603(5).
  - b) "**Indian**" means any individual defined at 25 U.S.C. §§ 1603(13), 1603(28) or 1679(a), or at 45 C.F.R. § 155.300(a). The term "Indian" also includes individuals who have been determined eligible as an Indian under 42 C.F.R. § 136.12 and any other 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.
  - c) "**Indian Health Care Provider (IHCP)**" means a health care program operated by the IHS or by a Tribal Health Program, an Indian Tribe, a Tribal Organization, or Urban Indian Organization.
  - d) "**Indian Health Service (IHS)**" means the agency of that name within the U.S. Department of Health and Human Services established by Section 601 of the IHCIA, 25 U.S.C. § 1661.
  - e) "**Indian Tribe**" has the meaning given in Section 4(14) of the IHCIA, 25 U.S.C. § 1603(14).
  - f) "**Tribal Health Program**" has the meaning given in Section 4(25) of the IHCIA, 25 U.S.C. § 1603(25).
  - g) "**Tribal Organization**" has the meaning given in Section 4(26) of the IHCIA, 25 U.S.C. § 1603(26).
  - h) "**Urban Indian Organization**" has the meaning given in Section 4(29) of the IHCIA, 25 U.S.C. § 1603(29).
- 2) **Applicability of Federal Laws**. Federal laws that affect **IHCP Providers** may include, but are not limited to, the following:
  - a) For an IHS provider:
    - i) The Anti-Deficiency Act 31 U.S.C. § 1341;
    - ii) The Indian Self Determination and Education Assistance Act ("**ISDEAA**"); 25 USC § 450 *et seq.*;
    - iii) The Federal Tort Claims Act ("**FTCA**"), 28 U.S.C. § 2671-2680;
    - iv) The Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651-2653;
    - v) The Federal Privacy Act of 1974 ("**Privacy Act**"), 5 U.S.C. § 552a, 45 CFR Part 5b;
    - vi) Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2;
    - vii) The Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), 45 CFR Parts 160 and 164, and its implementing regulations; and
    - viii) The IHCIA, 25 U.S.C. § 1601 *et seq.*

- b) For a provider who is an Indian Tribe or a Tribal Organization:
    - i) The ISDEAA, 25 U.S.C. § 450 *et seq.*;
    - ii) The IHCA, 25 U.S.C. § 1601, *et seq.*;
    - iii) The FTCA, 28 U.S.C. §§ 2671-2680;
    - iv) The Privacy Act, 5 U.S.C. § 552a and regulations at 45 C.F.R. Part 5b;
    - v) HIPAA, 45 C.F.R. Parts 160 and 164, and its implementing regulations; and
    - vi) Section 206(e)(3) of the IHCA, 25 U.S.C. § 1624e(e)(3), regarding recovery from tortfeasors.
  - c) For a provider who is an Urban Indian Organization:
    - i) The IHCA, 25 U.S.C. § 1601, *et seq.*;
    - ii) The Privacy Act, 5 U.S.C. § 552a and regulations at 45 C.F.R. Part 5b;
    - iii) HIPAA, 45 C.F.R. Parts 160 and 164, and its implementing regulations; and
    - iv) Section 206(e)(3) of the IHCA, 25 U.S.C. § 1621e(e)(3), regarding recovery from tortfeasors, as made applicable to Urban Indian Organizations by Section 206(i) of the IHCA.
- 3) **Eligibility. IHCP Providers** are limited to serving individuals deemed eligible for IHCP under federal law and who are enrolled in the relevant **Humana** program or plan. No term or condition of the Agreement or any addendum or attachment thereto shall be construed to change, reduce, expand or alter the eligibility of persons for IHCP services, nor shall be interpreted to require the **IHCP Provider** to serve individuals who are ineligible for services from IHCP. **IHCP Providers** may provide services to ineligible individuals only under certain circumstances set forth in Section 813(c) of the IHCA and in emergencies under Section 813(d) of the IHCA. Pursuant to 45 C.F.R. § 80.3(d), an individual shall not be deemed subjected to discrimination by reason of exclusion from IHCP services limited under federal laws to those individuals eligible for such services. **IHCP Provider** acknowledges that nondiscrimination provisions of federal law may still apply.
- 4) **Non-Taxable Entity**. To the extent **IHCP Provider** is a non-taxable entity, **IHCP Provider** shall not be required by **Humana** to collect or remit any federal, state or local tax.
- 5) **Insurance and Indemnification**.
- a) *IHS*. As an IHS provider, FTCA coverage obviates the requirement that IHS carry private malpractice insurance as 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. 28 U.S.C. § 2671-2680. Nothing in the Agreement or any addendum or attachment thereto shall be interpreted to authorize or obligate any IHS employee to perform any act outside the scope of his or her employment. The IHS provider shall not be required to acquire insurance, provide indemnification, or guarantee that **Humana** will be held harmless from liability.
  - b) *Indian Tribes and Tribal Organizations*. A provider which is an Indian Tribe or a Tribal Organization or an employee of such tribe or tribal organization shall not be required to obtain or maintain professional liability insurance to the extent such Provider is covered by the FTCA pursuant to federal law and regulation. Public Law 101-512, Title III, § 314, as amended by Public Law 103-138, Title III, § 308 (codified at 25 U.S.C. § 450f note), and 25 C.F.R. Part 900, Subpart M, 25 U.S.C. § 458aaa-15(a), and 42 C.F.R. § 137.220. Nothing in the Agreement or any addendum or attachment thereto shall be interpreted to authorize or obligate any such provider to perform any act outside the scope of his or her employment.

The Indian Tribe or Tribal Organization provider shall not be required to acquire insurance, provide indemnification, or guarantee that **Humana** will be held harmless from liability.

- c) *Urban Indian Organizations.* To the extent an **IHCP Provider** that is an Urban Indian Organization is covered by the FTCA pursuant to Section 224(g)-(n) of the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act, Public Law 104-73, codified at 42 U.S.C. § 233(g)-(n) and 42 C.F.R. Part 6, such Provider shall not be required to obtain or maintain professional liability insurance. Nothing in the Agreement or any addendum or attachment thereto shall be interpreted to authorize or obligate any such provider to perform any act outside the scope of his or her employment. The Urban Indian Organization provider shall not be required to acquire insurance, provide indemnification, or guarantee that **Humana** will be held harmless from liability.

6) **Provider Licensure.**

- a) *IHS.* States may not regulate the activities of IHS-operated health care programs nor require that IHS providers be licensed in the state where they are providing services, whether the IHS provider is working at an IHS-operated facility or has been assigned to a health care program of an Indian Tribe, Tribal Organization, or Urban Indian Organization. IHS individual providers shall hold state licenses during the term of this Agreement in accordance with applicable federal law, and IHS facilities shall be accredited in accordance with federal statutes and regulations.
- b) *Indian Tribes and Tribal Organizations.* Section 221 of the IHCIA, 25 U.S.C. § 1621t, exempts a health care provider employed by an Indian Tribe or Tribal Organization from the licensing requirements of the state in which such tribe or organization performs services, provided the health care provider is licensed in any state.
- c) *Urban Indian Organizations.* To the extent that any Urban Indian Organization health care provider is exempt from state regulation, such provider shall be deemed qualified to perform services under the Agreement and all addenda and attachments thereto, provided such provider is licensed to practice in any state. The Parties agree that these federal laws apply to the Agreement and any addendum or attachment thereto.

7) **Dispute Resolution.** In the event of any dispute arising under this Agreement or any addendum or attachment thereto, the Parties agree to meet and confer in good faith to resolve any such disputes prior to resolution of disputes through the process identified in the Agreement.

- a) *IHS.* If the **IHCP Provider** is an IHS provider, the laws of the United States shall apply to any dispute that cannot be resolved by and between the Parties in good faith. Notwithstanding any provision in the Agreement, the IHS provider shall not be required to submit any disputes between the Parties to binding arbitration.
- b) *Indian Tribes, Tribal Organizations, and Urban Indian Organizations.* If the **IHCP Provider** is an Indian Tribe, Tribal Organization or Urban Indian Organization provider, any dispute that cannot be resolved by and between the Parties in good faith shall be submitted to the dispute resolution procedure set forth in the Agreement or any addendum or attachment thereto.

8) **Governing Law.** The Agreement and all addenda or attachments thereto shall be governed and construed in accordance with federal law of the United States. In the event of a conflict between such Agreement and all addenda and attachments thereto and federal law, federal law shall prevail. Nothing in such Agreement and all addenda and attachments 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.

9) **Medical Quality Assurance Requirements.** To the extent **Humana** imposes any quality assurance requirements on IHCP Provider, any such requirements applicable to the **IHCP Provider** shall be subject to Section 805 of the IHCIA, 25 U.S.C. § 1675.

- 10) **Claims Format.** **Humana** shall process claims from the **IHCP Provider** 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 an **IHCP Provider** based on the format in which it was 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.
- 11) **Payment of Claims.** **Humana** shall pay claims from **IHCP Provider** in accordance with Section 206 of the IHCA, 25 U.S.C. § 1621e. **Humana** shall be deemed compliant with this Section 206 to the extent **Humana** and **IHCP Provider** mutually agree to the rates or amounts specified in the Agreement as payment in full.
- 12) **Hours and Days of Service.** The hours and days of service of the **IHCP Provider** shall be established by the **IHCP Provider**. **Humana** and the **IHCP Provider** may negotiate and agree on specific hours and days of service. **IHCP Provider** shall provide written notification of its hours and days of service upon **Humana's** request.
- 13) **Coordination of Care.** **IHCP Provider** shall comply with coordination of care and referral obligations set forth by **Humana** except where such referrals would conflict with federal law or referral requirements that apply to Contract Health Services. **IHCP Provider** shall notify **Humana** when such circumstances occur.
- 14) **Sovereign Immunity.** Nothing in this Agreement or in any addendum or attachment thereto shall constitute a waiver of federal or tribal sovereign immunity.
- 15) **Endorsement.** An endorsement of a non-federal entity, event, product, service, or enterprise may be neither stated nor implied by the **IHCP Providers** or their employees in their official capacities and titles. Such agency names and positions may not be used to suggest official endorsement or preferential treatment of any non-federal entity under this agreement.