AGREEMENT BETWEEN
THE STATE OF NEW MEXICO HUMAN SERVICES DEPARTMENT
AND
MOLINA HEALTHCARE OF NEW MEXICO, INC.
PURSUANT TO THE MEDICARE IMPROVEMENTS FOR PATIENTS AND PROVIDER ACT OF 2008

THIS AGREEMENT is made and entered into by the New Mexico Human Services Department ("HSD"), and Molina Healthcare of New Mexico, Inc. (the "Contractor" or "MA Health Plan") pursuant to the Medicare Improvement for Patients and Provider Act of 2008 ("MIPPA) and resulting regulations.

WHEREAS, HSD is the single state agency authorized by the New Mexico Legislature to administer the State's Medicaid program pursuant to the New Mexico Public Assistance Act, NMSA 1978, §§27-2-1 *et seq.*;

WHEREAS, the Contractor has or will enter into a contract with the Centers for Medicare and Medicaid Services ("CMS") to provide a MA-PD Plan ("MA Agreement"); and

WHEREAS, pursuant to MIPPA, CMS requires the Contractor to enter into an agreement with the State of New Mexico to provide or arrange for benefits to be provided, for which a dually eligible individual is entitled to receive; and

WHEREAS, HSD and the Contractor wish to enter into an agreement which shall outline each party's obligations to provide or arrange for benefits for Dual Eligible Members;

IT IS AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

1.1 The terms used throughout this Agreement have the following meaning, unless the context clearly indicates otherwise or as may be further defined herein:

"**Affiliate**" means with respect to any person or entity, any other person or entity which directly or indirectly controls, is controlled by or is under common control with such person or entity.

"**Coinsurance**" means a percentage of costs normally paid for Covered Services by members of the Contractor's Special Needs Plan ("SNP"). Coinsurance amounts must comply with the terms of the MA Agreement.

"**Cost Sharing Obligations**" mean those financial payment obligations incurred by the State in satisfaction of the deductibles, coinsurance, and co-payments for the Medicare Part A and Part B programs with respect to Dual Eligible Members. For purposes of this Agreement, Cost Sharing Obligations do not include: (1) Medicare premiums that the State is required to pay under the State Plan of the 1115(a) Waiver on behalf of Dual Eligible Members, or (2) wrap-around services that are covered by Medicaid.

"**Co-payments**" mean fixed dollar amounts that Members of the Contractor's SNP normally must pay for a Covered Medical Service provided under such SNP. Co-payments amounts must comply with the terms of the MA Agreement.

"**Deductible**" means fixed collar amounts that the Contractor's Members normally must pay out-of-pocket before the costs of services are covered by the Contractor. Deductibles must comply with the terms of the MA Agreement.

"**Dual Eligible**" means a Medicare managed care recipient who is also eligible for Medicaid, and for whom the State has a responsibility for payment of Cost Sharing Obligations under the State Plan of the 1115(a) Waiver. For purposes of this Agreement, Dual Eligibles are defined as the following categories of recipients: QMB, QMB Plus, SLMB, SLMB Plus, QI, QDWI, and FBDE.

(A) "**Qualified Medicare Beneficiary ("QMB")**" means an individual who is not otherwise Medicare eligible and who is entitled to Medicare Part A, has income that does not exceed 100% of the Federal Poverty Level ("FPL"), and whose resources do not exceed twice the Supplemental Security Income ("SSI") limit. A QMB is eligible for Medicaid payment of Medicare premiums, Deductibles, Coinsurance, and Co-payments except for Medicare Part D. Collectively, these benefits are called "QMB Medicaid Benefits". The QMB benefits covered by this Agreement are limited to the Cost Sharing Obligations as defined by the State Plan or the 1115(a) Waiver.

(B) **"QMB Plus"** - means an individual who is not otherwise Medicare eligible and who is entitled to Medicare Part A, has income that does not exceed 100% of the Federal Poverty Level ("FPL"), whose resources do not exceed twice the Supplemental Security Income ("SSI") limit and who also meets the financial criteria for full Medicaid coverage. QMB Plus individuals are entitled to QMB Medicaid Benefits, plus all benefits available under the State Plan or the 1115(a) Waiver for fully eligible Medicaid recipients.

(C) "**Specified Low-Income Medicare Beneficiary ("SLMB")**" means an individual who is not otherwise Medicare eligible and who is entitled to Medicare Part A, has income that exceeds 100% FPL but is less than 120% FPL, and whose resources do not exceed twice the SSI limit. The SLMB benefits covered by this Agreement are limited to the Cost Sharing Obligations as defined by the State Plan or the 1115(a) Waiver.

(D) **"SLMB Plus"** means an individual who also meets the financial criteria for full Medicaid Coverage. SLMB Plus individuals are entitled to payment of Medicare Part B premiums, plus all benefits available under the State Plan or the 1115(a) Waiver for fully eligible Medicaid recipients.

(E) "**Qualifying Individual ("QI")**" means an individual who is not otherwise Medicare eligible and who is entitled to Medicare Part A, has income at least 120% FPL but

less than 135% FPL, and resources not exceeding twice the limit for SSI limit and is not otherwise eligible for Medicaid benefits. This individual is eligible for Medicaid payment of the Medicare Part B premium. Medicaid does not pay toward out-of-pocket ("OOP") costs for the deductible, premium, coinsurance, or copayments for Medicare Part D prescription drug coverage.

(F) "**Qualified Disabled and Working Individual ("QDWI")**" is an individual who has lost Medicare Part A benefits due to a return to work, but is eligible to enroll in and purchase Medicare Part A. The individual's income may not exceed 200% FPL and resources may not exceed twice the SSI limit. The individual may not be otherwise eligible for Medicaid. These individuals are eligible for Medicaid payment of the Part A premium.

(G) "**Full Benefit Dual Eligible ("FBDE")**" means an individual who does not meet the income or resource criteria for QMB or SLMB, but is eligible for Medicaid either categorically or through optional coverage groups based on Medically Needy status, special income levels for institutionalized individuals, or home and community-based waivers. Medicaid does not pay toward OOP costs for the deductible, premium, coinsurance, or copayments for Medicare Part D prescription drug coverage.

"**MA Agreement**" means the Medicare Advantage Agreement between the Contractor and CMS to provide Medicare Part C and other health plan services to the Contractor's Members.

"**MA-PD Plan**" means the CMS sponsored Medicare Advantage plan sponsored, issued, or administered by the MA Health Plan as defined at 42 C.F.R. §423.4 and includes, but is not limited to, institutional and Dual Eligible SNPs as defined in the Medicare Advantage Rules.

"**Member**" means an individual enrolled in the Contractor's MA-PD Plan.

"**Other Dual Eligible**" means a Medicare managed care recipient who is also eligible for Medicaid, and for whom HSD does not have a responsibility for payment of Cost Sharing Obligations under the State Plan or the 1115(a) Waiver. For purposes of this Agreement, Other Dual Eligibles are limited to the following categories of recipients: SLMB, QMB only, QDWI, and QI.

"**State Plan**" means the State of New Mexico plan for the Medicaid program as submitted by HSD and approved by the Secretary of the United States Department of Health and Human Services.

"**Subcontract**" means an agreement between the Contractor and a third party under which the third party agrees to accept payment for providing health care services for the Contractor's Members.

"**Subcontractor**" means a third party with which the Contractor has a written agreement to fulfill the requirements of this Agreement. Some examples of subcontractors include:

administrative service providers, clinical and medical service providers, data processing providers, and allied health providers.

"**1115(a) Waiver**" means the State of New Mexico 1115(a) Demonstration Waiver for Centennial Care that was submitted by HSD and approved by the Secretary of the United States De partment of Health and Human Services.

ARTICLE 2 – BENEFITS

2.1 Unless a Dual Eligible is otherwise excluded under federal Medicare Advantage Plan, the Contractor will accept all Dual Eligibles who select the Contractor's MA-PD Plan without regard to physical or mental condition, health status or need for or recipient of health care services, claims experience, medical history, genetic information, disability, marital status, age, sex, national origin, race, color, or religion, and will not use any policy or practice that has the effect of such discrimination.

2.2 The Contractor shall provide the MA-PD plan to all Dual Eligibles who select the Contractor's MA-PD Plan and are qualified to receive such services under the eligibility requirements of such MA-PD Plan. For calendar year 2014, the Contractor will offer the MA-PD Plan in the counties identified on Exhibit A. For each subsequent year, the Contractor will notify HSD of any changes to the information required under this section by September 1.

2.3 The Contractor will not be required to pay for any specific Medicaid benefits under this Agreement. This provision does not limit or otherwise restrict the Contractor's obligations to arrange for or provide care coordination as outlined in this Agreement.

2.4 The Contractor will identify for Dual Eligible Members in the Contractor's Summary of Benefits those benefits the Member may be eligible for under the State Plan and/or the 1115(a) Waiver that are not required under the Member's MA-PD Plan and coordinate access to such benefits as outlined in this Agreement. To facilitate this process, HSD will provide the Contractor with the State Plan/1115(a) Waiver benefits at the request of the Contractor, as outlined in Exhibit B, at the beginning of the contract year and will provide updated State Plans and 1115(a) Waiver Amendments should the plans/waiver change during the course of the contract year. The Contractor will provide a copy of the Summary of Benefits to HSD thirty (30) calendar days after the Contractor receives notice from CMS that the Summary of Benefits has been approved.

2.5 The Contractor and HSD shall use reasonable best efforts to coordinate care of Dual Eligible Members. The Contractor shall assist in the coordination and access of needed Medicaid benefits for Dual Eligible Members through the Contractor's case manages, care coordinators, or other staff. Consistent with the Contractor's model of care, coordination of Dual Eligible Members by the Contractor shall include the following:

(A) Identifying for Dual Eligible Members of the SNP in the Contractor's Summary of Benefits those benefits the Member may be eligible for under the State Plan

and/or the 1115(a) Waiver that are not covered services under the Member's Dual SNP to the extent that HSD has provided State Plan/1115(a) Waiver benefit information pursuant to the notice requirements set forth in Section 8.8 of this Agreement.

(B) Providing Dual Eligible Members with information (including contact information) to access Medicaid benefits upon the Dual Eligible Member's request or as identify by the case coordinator or other Contractor staff.

(C) Coordinate access to Medicaid covered services upon the Dual Eligible Member's request or as identified by the Contractor's care coordinator. Such coordination may include identification and referrals to needed services, assistance in care planning, and assistance in obtaining appointments for needed services.

(D) Identifying Medicaid participating providers for the Dual Eligible Members to the extent HSD has provided such information as outlined in Section 8.8 of this Agreement.

(E) Making information available to the Contractor's network providers regarding Medicaid so that they may assist Dual Eligible Members to receive needed services not covered by Medicare.

(F) Providing information to the Contractor's network providers about coordination of Medicaid and Medicare benefits for Dual Eligible Members.

2.6 HSD will provide contact and resource information, to the extent available, for the State Plan or the 1115(a) Waiver to the Contractor that allows the Contractor to access information regarding the State Plan/1115(a) Waiver, including the State Plan or the 1115(a) Waiver Medicaid benefits, Medicaid providers, State Plan/1115(a) Waiver case managers, and the State Plan's waiver program(s).

2.7 Enrollee Liability for Payment.

(A) Neither the Contractor nor any of its Subcontractors or network providers may collect any additional payment for Cost Sharing Obligations from a Dual Eligible Member other than amounts specified in the State Plan, the 1115(a) Waiver or otherwise permitted by federal law or regulation.

(B) The Contractor shall notify its Subcontractors and network providers (via a provider manual, provider bulletin, or other contractual document) that they may not seek additional payments for Cost Sharing Obligations from HSD or Dual Eligible Members for health care services rendered to Dual Eligible Members.

2.8 Third-Party Liability.

(A) In the event a specific benefit is covered by both the Contractor and HSD, HSD shall be the payor of last resort.

(B) Pursuant to the State Plan or the 1115(a) Waiver, HSD, or one of its Subcontractors, will remain financially responsible for Cost Sharing Obligations and Medicaid Benefits for Dual Eligibles who are Members of the Contractor's SNP. HSD, or its Subcontractor, may have financial responsibility for Medicare Part A and/or Part B premiums for Dual Eligibles. HSD is not responsible for payment of Medicare Advantage premiums for mandatory or optional Supplemental Benefits, unless specifically prescribed in the State Plan or the 1115(a) Waiver.

ARTICLE 3 – SHARING OF INFORMATION

3.1 The Contractor and HSD are required to share certain information in order to comply with CMS requirements for a SNP for Dual Eligibles. This information set forth in this Section shall be shared to the extent permitted by law.

(A) HSD shall provide the Contractor with the following:

(1) Access to its Medicaid Eligibility Verification System, an on-line system that the Contractor can access eligibility information through a portal. In addition, the Contractor can determine eligibility using the automated voice response system, or by contacting HSD – Medical Assistance Division ("HSD/MAD") or HSD/MAD's fiscal agent's help desk;

(2) Information on Medicaid provider participation on at least an annual basis by means of providing the Contractor with a data file of such providers; and

(3) Information concerning available benefits on an annual basis, or by May of the preceding year, if CMS requires the Contractor to provide such information in the Contractor's Summary of Benefits.

(B) The Contractor shall provide HSD with the following:

(1) Information regarding verification of Medicare participation for Dual Eligible Members;

(2) On an annual basis, information regarding actual enrollment by month, enrollment projections for the coming year, utilization changes or trends, and access to care for the Contractor's Dual Eligible Members, to be furnished at such time and in such format at mutually agreed upon by the parties;

(3) Information regarding any changes in the Contractor's MA-PD Plan as submitted by the Contractor to CMS in its application for the next contract year; and

(4) Relevant encounter data for Dual Eligibles in a format agreeable by the parties.

ARTICLE 4 – TERM AND TERMINATION

4.1 Term. The term of this Agreement will begin on January 1, 2014 (the "Effective Date") and end on December 31, 2014. Upon expiration of the initial term, the term of this Agreement shall automatically renew for successive twelve (12) month renewal terms on each applicable January 1, unless either party provides the other with written notice of nonrenewal no later than June 1st of the previous year.

4.2 Termination.

(A) This Agreement may be terminated by mutual agreement of the parties. Such agreement must be in writing. The effective date of termination is dependent on any pertinent CMS requirements, including CMS requirements related to notification of Dual Eligible Members.

(B) The Contractor may terminate this Agreement by notifying HSD that it is notified by CMS that the Contractor will not be permitted to continue offering the MA-PD Plans identified in Exhibit A. The termination will be effective on the date specified in the Contractor's notice of termination.

(C) In the event of termination pursuant to this Section, HSD shall continue to provide the Contractor access to the state's eligibility database for purposes of confirming Medicaid eligibility for six (6) months to allow the Contractor to continue to confirm eligibility of Dual Eligible Members. In addition, the parties shall discuss whether to enter into an alternative arrangement for the exchange of Medicaid eligibility information.

ARTICLE 5 – GOVERNING LAWS AND REGULATIONS

5.1 Governing law and venue. This Agreement is governed by the laws of the State of New Mexico and interpreted in accordance with New Mexico law. Venue shall be proper only in a New Mexico court of competent jurisdiction in the county where the Department's main office is located. By execution of this Agreement, the Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits.

5.2 Contractor responsibility for compliance with laws and regulations.

(A) The Contractor is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of its obligations hereunder including, but not limited to, all State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements, and licensing provisions.

(B) The Contractor is responsible for ensuring that each of its employees, agents or subcontractors are properly licensed, certified, and/or have proper permits to perform any activity related to this Agreement.

(C) The Contractor warrants that the activities under this Agreement comply with all applicable Federal, State, County, or other local laws, regulations, codes, ordinances, guidelines, and policies. The Contractor will indemnify the Department from and against any losses, liability, claims, damages, penalties, costs, fees or expenses arising from or in connection with the Contractor's failure to comply with or violate of any such law, regulation, code, ordinance, or policy.

5.3 Contractor's Responsibility for Compliance with laws and regulations relating to Confidential Information and Information Security

(A) The Contractor, and all its subcontractors, consultants, or agents performing the activities under this Agreement must comply with the following:

(1) The Federal Information Security Management Act of 2002 (FISMA);

(2) The Health Insurance Portability and Accountability Act of 1996 (HIPAA), its corresponding regulations and as amended;

(3) The Health Information Technology for Technology for Economic and Clinical Health Act (HITECH Act);

(4) Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies;

(5) Social Security Administration (SSA) Office of Systems Security Operations Management Guidelines; and

(6) NMAC 1.12.20, *et seq.*

The Contractor agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws.

5.4 Immigration Reform and Control Act of 1986. The Contractor shall comply with the requirements of the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 (8 U.S.C. §1101, *et seq.*) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this Agreement.

5.5 Compliance with state and federal anti-discrimination laws.

(A) The Contractor agrees to comply with State and Federal anti-discrimination laws, including without limitation:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);

(2) Section 503 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§793 and 794);

(3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);

(4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);

(5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);

(6) Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended (41 U.S.C. §9849);

(7) New Mexico Human Rights Act (NMSA 1978, §28-1-1 *et seq.*); and

(8) HSD's administrative rules, as set forth in the NMAC, to the extent applicable to this Agreement.

The Contractor agrees to comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds or race, color, national origin, ancestry, sex, age, disability, serious medical condition, political beliefs, religion, sexual orientation or gender identity, or spousal affiliation be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.

(B) The Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable State and Federal civil rights laws, including Executive Order 13166, "Improving

Access to Services for Persons with Limited English Proficiency," require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. The Contractor agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. The Contractor also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.

(C) The Contractor agrees to comply with Executive Order 13279, and it's implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(D) Upon request, the Contractor will provide the Department with copies of all the Contractor's civil rights policies and procedures.

(E) The Contractor must notify the Department's General Counsel of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this Section must be delivered to:

New Mexico Human Services Department
Office of the General Counsel
2009 S. Pacheco, Santa Fe, NM 87505-5473
P.O. Box 2348, Santa Fe, NM 87504-2348
Telefax: 505-827-7729

5.6 The parties agree to comply with all relevant provisions of MIPPA, including its implementing regulations.

ARTICLE 6 – IDEMNIFICATION

6.1 The Contractor shall defend, indemnify and hold harmless HSD, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys' fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing

services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but not later than two (2) business days after it receives notice thereof, notify, by certified mail, HSD's General Counsel, and the Risk Management Division of the New Mexico General Services Department.

ARTICLE 7 – DISPUTE RESOLUTION

7.1 General Agreement of the Parties. The parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the parties employ all reasonable and informal means to resolve any dispute under this Agreement. The parties express their mutual commitment to using all reasonable and informal means of resolving disputes prior to invoking a remedy provided elsewhere in this Agreement.

7.2 Duty to Negotiate in Good Faith. Any dispute that in the judgment of any party to this Agreement may materially or substantially affect the performance of this Agreement will be reduced to writing and delivered to the other party. The parties must then negotiate in good faith and use every reasonable effort to resolve such dispute and the parties shall not resort to any formal proceedings unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the parties shall be reduced to writing and delivered to all parties within ten (10) business days.

ARTICLE 8 – MISCELLANEOUS PROVISIONS

8.1 Entire Agreement. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes any prior understandings, agreements or representations, written or oral, relating to the subject matter of this Agreement.

8.2 Signatures and Counterparts. This Agreement will be effective only when signed by both parties. This Agreement may be executed in separate counterparts, each of which will be an original and all of which taken together will constitute one and the same agreement, and a party hereto may execute this Agreement by signing any such counterpart.

8.3 Non-Debarment. The Contractor represents that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any state or federal health care program.

8.4 Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provisions of this Agreement are held to be invalid, illegal or unenforceable under any applicable law or rule, the validity, legality or enforceability of the other provisions of this Agreement will not be affected or impaired thereby.