

THE UNIVERSITY OF HOUSTON SYSTEM PROFESSIONAL MEDICAL LIABILITY BENEFIT PLAN

(Effective February 23, 2023)

ARTICLE I PURPOSE

The purpose of The University of Houston System Professional Medical Liability Plan (the "Plan") is to provide certain health care providers and students of the University of Houston System with professional liability indemnity from and against medical liability claims pursuant to the authority granted to the Board of Regents of the University of Houston System by Section 59.01 of the Texas Education Code.

ARTICLE II DEFINITIONS

Unless otherwise required by the context, the following definitions shall control:

A. ***Plan Participant*** shall mean:

1. Staff physicians who are medical doctors appointed to the faculty of an institution of the System to provide services at a correctional health facility, and medical doctors employed in health services at and by a general academic institution of the System to provide services at a correctional health facility;
2. Residents and fellows enrolled in a residency program or fellowship at a correctional health facility at a System medical school who are duly licensed, credentialed, and registered to practice their profession;
3. Medical doctors appointed to the faculty of a medical school or clinic of the System to work at a correctional health facility on a part-time or volunteer basis, and who either devote their total professional service to such appointments or provide services to patients at a correctional health facility by assignment from the department chair. For purposes of the Plan, such persons are "Plan Participants" only when providing services to patients in conjunction with supervision of medical students or residents by assignment from the department chair and shall become Plan Participants only as provided in Article IV, Section 2;
4. Medical students of a medical school of the System and only when participating (with prior approval of such medical school) in a patient-care program of a duly accredited medical school at a correctional health facility under the direct supervision of a faculty member of the medical school conducting such program;
5. Healthcare professional staff members and faculty of an institution in the System who are licensed, certified, or registered to provide patient care at a correctional health facility; and
6. System institutions against which a Liability Claim, as that term is defined in Article II.B. below, is made that arises from the treatment or lack of treatment by a Plan Participant in 1-5 above.

B. ***Liability Claim*** means a claim, lawsuit, or cause of action based upon treatment or lack of treatment within the United States of America, its territories or possessions, that departs from accepted standards of medical care which proximately results in injury to or death of a

patient, whether the claim or cause of action sounds in tort or contract, subject to the exclusions described in Article V, Section 4, below.

- C. **Disciplinary and Licensing Actions** means any disciplinary, licensing, or similar administrative proceeding brought against a Plan Participant by a Texas licensing or healthcare professional regulatory agency for the Plan Participant's profession or a Texas quality review or regulatory body that relates to or arises from professional services at a correctional health facility, except those excluded pursuant to Article V, Section 4.
- D. **System** means the University of Houston System.
- E. **Board** means the Board of Regents of the University of Houston System.
- F. **Fund** means the University of Houston System Self-Insurance Fund established by the Board.
- G. **Administrator** means the Vice Chancellor of Legal Affairs and General Counsel.
- H. **Damages** mean all damages, including damages for death, which are payable because of injury to which the Plan applies, but does not include exemplary or punitive damages.
- I. **Coverage** means the liability indemnity and legal representation afforded Plan Participants by this Plan.
- J. **Annual Enrollment Period** begins on the date the Plan Participant has a System appointment and meets the conditions for participation under Article IV below and ends on August 31st after enrollment begins.
- K. **Professional Services** means medical or health care and treatment at a correctional health facility.
- L. **Plan Year** means the twelve-month period beginning on September 1 and ending on August 31 of each year.

ARTICLE III APPLICABILITY OF PLAN PROVISION

The coverage afforded by this Plan is subject to the particular terms, conditions, and limitations (including, but not limited to limits of liability) of this Plan and the interpretation thereby by the Board or the Administrator. Notwithstanding any other language of the Plan, the coverage afforded by the Plan applies only to Liability Claims and Disciplinary and Licensing Actions arising out of or relating to incidents, transactions, or events related to the provision of Professional Services at a correctional health facility occurring on or after February 23, 2023.

ARTICLE IV CONDITIONS FOR PARTICIPATION

Section 1

Each Plan Participant on the effective date of the Plan, and each person who becomes a Plan Participant thereafter, as long as this Plan remains in effect, shall participate in the Plan provided, that

- A. A medical doctor employed in health services at and by a general academic institution of the System shall not become a participant unless and until
 1. Such institution files with the Administrator a written application, on behalf of such

medical doctors, for participation in the Plan, and

2. Such application is approved and accepted by the Administrator.

Section 2

Plan Participants as defined in Article IIA.3 above shall become participants in the Plan upon written designation by the department chair or approved delegee of the institution with the approval of the Administrator.

Section 3

Residents and fellows who work additional hours for additional compensation at a correctional health facility affiliated with the System, will be provided coverage as long as it meets the requirements of the Accreditation Council for Graduate Medical Education (including requirements of supervision and restrictions on allowable number of work hours), and the work has previously been identified as part of the resident's or fellow's general training program and fees generated for professional services are deposited in the Fund.

ARTICLE V COVERAGE OF PLAN PARTICIPANTS

Section 1 -- Payments on Behalf of Plan Participants

- A. Except as otherwise provided herein, the System will pay on behalf of each Plan Participant, from monies in the Fund, all sums which the Plan Participant shall become legally obligated to pay as Damages because of a Liability Claim arising from or relating to the exercise of the Plan Participant's employment, duties, or training with the System as a Plan Participant performed in the practice of the Plan Participant's profession at a correctional health facility.
- B. Coverage for Plan Participants as defined in Article IIA. 3 above shall be limited to claims arising from or relating to assigned teaching activities and supervision of medical students, residents and fellows performed within the course and scope of the Plan Participants' assignments at a correctional health facility.
- C. Peer review performed at the request of a credentialing body or a professional society for the purpose of determining quality of care at a correctional health facility is covered provided that any funds generated from the review are deposited into the Fund.
- D. Coverage for Plan Participants for Disciplinary and Licensing Actions shall be limited to legal representation of the Plan Participant by an attorney in a proceeding brought against the Plan Participant by the Texas State Board of Medical Examiners, or other Texas state healthcare professional regulatory board that arises from or relates to a covered activity, subject to the limitation in Section 3 D below and exclusions set forth in Section 4 below.

Section 2 -- Defense of Lawsuits

The System shall have the right and duty to defend any claim or lawsuit against a Participant seeking Damages because of such injury even if any of the allegations of the claim or lawsuit are groundless, false, or fraudulent. The System may make such investigation and settlement of any claim or lawsuit, as it deems appropriate. The System shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the System's liability has been exhausted by payment of judgments or settlements, or monies in the Fund have been exhausted. The System has no duty to defend any claims not covered by the Plan.

Section 3 -- Supplementary Payments

The System will pay from the Fund, in addition to the applicable limit of liability:

- A. All costs and expenses incurred by the System in investigating and defending any lawsuit, all costs taxed against the Plan Participant in any suit defended by the System, and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the System has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of liability of this Plan;
- B. Premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such lawsuit for an amount not in excess of the applicable limit of liability of this Plan, but the System shall have no obligation to apply for or furnish any such bonds.
- C. Reasonable and necessary personal costs and expenses incurred by a Plan Participant at the System's request in assisting the System in the investigation or defense of any claim or lawsuit.
- D. Costs and expenses incurred in connection with the investigation and defense of a Disciplinary and Licensing Action brought against the Plan Participant; however the Plan will not pay more than \$25,000 in costs and expenses on behalf of a Participant for any single proceeding unless in the discretion of the Administrator or their designee there is a determination of necessity to exceed such limitation on costs and expenses up to \$35,000. Furthermore, the Plan will not pay more than \$100,000 for costs and expenses on behalf of a Plan Participant for all such proceedings during an Annual Enrollment Period.

Section 4 -- Exclusions

The System will not defend or indemnify a Plan Participant for:

- A. Injury arising out of or relating to the performance by the Plan Participant of any illegal, dishonest, fraudulent, criminal, or malicious act or omission by the Plan Participant unless the Plan Participant had no reasonable cause to believe their conduct was unlawful or illegal;
- B. Any claims or lawsuits alleging violation of state or federal laws relating to antitrust, fraud and abuse, anti-kickback, and illegal remuneration;
- C. Injury arising out of or relating to any sexual conduct of the Plan Participant, including but not limited to sexual harassment and sexual relations, and including, without limitation, when intentionally or negligently done in connection with any professional service, act or omission, and regardless of whether such conduct is alleged to constitute negligence;
- D. Any injury caused while Plan Participant is acting under the influence of alcohol or controlled substances or as a result of excessive use of therapeutic drugs;
- E. Any use, administration, or prescription of any drug or pharmaceutical disapproved or not yet approved by the United States Food and Drug Administration for treatment for human beings; unless such use, administration or prescription has been approved by the Institutional Review Board of the health care institution where such drug or pharmaceutical was used, administered or prescribed;
- F. Any liability arising out of or relating to any professional or licensed service, act, or omission outside the scope of the Plan Participant's employment with System;
- G. Injury for which the Plan Participant may be held liable as a proprietor, stockholder, owner,

member of the board of directors, governors or trustees, superintendent, executive officer, department head or medical director of any non-System owned or managed hospital, sanitarium, laboratory, clinic with bed and board facilities, infirmary, nursing home, foundation, surgical center, blood bank, commercial or any other business enterprise whether or not related to patient care and/or treatment; but, this exclusion shall not be applied to responsibilities which require the special expertise or training of a physician or surgeon and which are not principally executive or administrative in nature;

- H. Injury arising out of or relating to the rendering of or failure to render professional services by any other person for whose acts or omissions the Plan Participant may be held liable as a member, partner, officer, director, or stockholder of any professional partnership, association or corporation;
- I. Injury to any employee of the Plan Participant arising out of and in the course of that person's employment by the Plan Participant;
- J. Any obligation for which the Plan Participant or any carrier acting as insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law;
- K. Any liability or indemnity obligation assumed by the Plan Participant under contract or agreement, except to the extent endorsed hereto;
- L. Injury to any employee (past or present) or applicant for employment or patient of the Plan Participant based upon actual or alleged discrimination based on race, religion, color, sex (including gender and pregnancy), national origin, ethnicity, age, military status, genetic information, sexual orientation, gender identity or status, gender expression, or disability;
- M. Damage to property:
 - 1. owned, occupied, or rented by a Plan Participant;
 - 2. used by a Plan Participant;
 - 3. in any Plan Participant's care, custody, or control; or
 - 4. over which a Plan Participant is exercising physical control for any reason;
- N. Any fines, penalties, the return or withdrawal of fees or government payments, including any fines, penalties or costs assessed against a Plan Participant by the Texas State Board of Medical Examiners, or other Texas state healthcare professional regulatory board as a result of a Disciplinary and Licensing Action;
- O. Any award of punitive or exemplary damages, treble or multiple damages;
- P. Any claim arising out of or relating to professional services which occurred prior to the date of this Plan;
- Q. Any claim arising out of or relating to professional services which occurred after the termination of faculty appointment, employment, residency, or student status with the System;
- R. Any claim arising out of or relating to professional services where the professional services were billed for by the Plan Participant and were not deposited in a System account;
- S. Any claim arising out of or relating to professional services performed for professional fees, salaries or other compensation by a Plan Participant that is not part of the Plan Participant's employment with the System or training program;

- T. Legal representation of a Plan Participant before the Texas State Board of Medical Examiners, or other Texas state healthcare professional regulatory board in a Disciplinary and Licensing Action arising out of or relating to any activity that is excluded under this Plan; and
- U. Matters before the Texas Medical Board or other Texas regulatory agency, where, in the judgment of the Administrator or their designee, a potential conflict of interest exists between the Plan Participant and the University of Houston System or its universities with regard to a potential or pending employment or administrative matter.

ARTICLE VI PLAN PARTICIPANTS' OBLIGATIONS

Section 1 -- Notice of Claim, Suit, or Disciplinary and Licensing Action

The Plan Participant shall give written notice to the System as soon as practicable of any claim made against the Plan Participant. The notice shall identify the Plan Participant and contain reasonably obtainable information with respect to the time, place, and circumstances of the injury, including the names and addresses of the patient and of available witnesses. If a claim is made or a lawsuit is brought against the Plan Participant, then the Plan Participant shall immediately forward to the Administrator every demand, notice, summons, or other process received by the Plan Participant in accordance with administrative procedures prescribed or approved by the Administrator.

The Plan Participant shall give written notice to the System as soon as practicable of any Disciplinary and Licensing Action taken against the Plan Participant for which the Plan Participant seeks coverage.

Section 2 -- Cooperation by Plan Participant

The Plan Participant shall cooperate with the System and, upon the System's request, respond to discovery requests, attend meetings with Plan representatives or defense counsel, and attend mediations and trials. Further, the Plan Participant shall cooperate with the System in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Plan Participant because of injury or damage with respect to which coverage is afforded under this Plan. The Plan Participant shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Plan Participant shall not, except at Plan Participant's own cost, and after informing the Administrator in writing, voluntarily make any payment, assume any obligation or incur any expense. The Plan Participant shall not take any affirmative act or omission which may reasonably prejudice the defense of the claim or lawsuit. The taking of any affirmative act or omission which prejudices the defense of the claim or lawsuit shall entitle the System, but not obligate the System, to deny indemnity for any or all claims or lawsuit so prejudiced.

Section 3 -- Nonassignability of Interest in Plan

The Plan Participant's interest under this Plan is nonassignable. If any Plan Participant shall die or be adjudged incompetent, then this Plan shall thereupon terminate automatically as to such Plan Participant, but shall indemnify and defend the legal representative of such Plan Participant's estate as a Plan Participant with respect to liability previously incurred and covered by this Plan.

ARTICLE VII LIMITS OF LIABILITY

The Plan's liability shall not exceed the limits of liability stated below, and such stated limits shall be applied as follows:

1. A single "per claim" limit of liability shall be applicable to a Liability Claim regardless of the number of claimants or Plan Participants involved.

a. A single "per claim" limit of liability shall apply to claims involving injuries to more than one patient such as in obstetrical services to the mother and fetus/child or children, a single "per claim" limit of liability shall be applicable for all such claims and resulting lawsuits.

b. A single "per claim" limit of liability shall apply to all claims by both the patient and by the family members or the heirs or estate of such patient, including derivative claims, claims for loss of consortium, claims of beneficiaries under the Texas Wrongful Death Statute and claims for mental anguish and related injuries associated with bystander perception or reaction to the injuries sustained by the patient.

c. Plan coverage limits of liability will not be stacked, added, or combined in any manner to increase liability under this Plan even though multiple claimants, multiple claims or injuries, multiple lawsuits, or annual periods may be involved within a Liability Claim.

2. The "Annual Aggregate" for all claims for all Plan Participants is the maximum amount of money the Plan will pay to indemnify all Plan Participants for all Liability Claims arising during any one Plan Year.

Limits of Liability Schedule

The following limits shall apply unless lower liability limits are set by law, in which case the lower limits shall apply:

Per Claim Limitation - Plan liability shall be limited to \$1,000,000.00 per claim regardless of the number of the claimants or Plan Participants involved in an incident.

Annual Aggregate - \$3,000,000 for all Liability Claims for all Plan Participants during any one Plan Year.

The above limits of liability for Plan Participants, as defined in Article II A 1 - 5 only, may be exceeded upon determination of necessity and with the conditions of participation determined by the Administrator or their designee.

ARTICLE VIII OTHER COVERAGE

Section 1 -- Coverage

When the Plan Participant has other professional liability coverage which is stated to be applicable to the loss on an excess or contingent basis, the amount of the System's liability under this Plan shall not be reduced by the existence of such insurance.

Section 2 -- Insurance

When both this Plan and insurance apply to the loss on the same basis, whether primary, excess or contingent, the System shall not be liable under this Plan for a greater proportion of the loss than that stated in the applicable contribution provision below:

A. **Contribution by Equal Shares.** If all such valid and collectible insurance provides for contribution by equal shares, then the System shall not be liable for a greater proportion of such loss than would be payable if each such insurer contributes an equal share until the

share of each insurer or the Plan equals the lowest applicable limit of liability under any one policy or the Plan or the full amount of loss is paid, and with respect to any amount of loss not so paid, the remaining insurers or the Plan then continue to contribute equal shares of the remaining amount of the loss until each such insurer or the Plan has paid its limit in full or the full amount of the loss is paid.

- B. ***Contribution by Limits.*** If any of such insurance does not provide for contribution by equal shares, then the System shall not be liable for a greater proportion of such loss than the applicable limit of liability under this Plan for such loss bears to the total applicable limit of liability of all valid and collectible insurance and the Plan against such loss.

ARTICLE IX MODIFICATION AND TERMINATION

Section 1 -- Rights of Participants

The Board may terminate the Plan at any time or from time to time, may amend, alter, or suspend the Plan in whole or in part, as to all persons eligible to participate hereunder, or any class or groups of such persons, provided such action shall not impair any rights accrued prior to the effective date of such termination, amendments, alterations, or suspension. Any such termination, amendments, alterations, or suspension shall be effective on the date of the Board action unless a later date is specified by the Board. The Administrator shall promptly give notice of any such termination, amendment, alteration, or suspension to all Plan Participants affected thereby.

Section 2 -- Termination in Event of Mandatory Participation in Other Indemnity or Insurance Programs

It is an express condition of the Plan that if the System is required by law, or by a collective bargaining or other agreement, to contribute toward another plan, program, or scheme providing professional liability insurance or indemnity benefits for a class or group of Plan Participants, then this Plan will terminate forthwith as to such class or group of Plan Participants.

Section 3 -- Termination of Plan Participation

This Plan shall apply to a Plan Participant only so long as such Plan Participant remains qualified to participate in this Plan, provided that cessation of such participation shall not impair any rights accrued under this Plan prior to the effective date of such cessation of qualification.

Section 4 -- Benefits Terminable

All coverage of a Plan Participant under this Plan shall cease at once if the Plan Participant engages in any business or performs any act which in the sole judgment of the Board is prejudicial to the interests of the System.

ARTICLE X ACTION AGAINST SYSTEM

Section 1 -- Conditions Precedent

No action shall lie against the System unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Plan, nor until the amount of the Plan Participant's obligation to pay shall have been finally determined either by judgment against the Plan Participant after actual trial, or by written agreement of the claimant and the Administrator.

Section 2 -- Third-Party Actions

Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement, shall thereafter be entitled to recover under this Plan to the extent of the coverage afforded by this Plan. No person or organization shall have any right under this Plan to join the System as a party to any action against the Plan Participant to determine the Plan Participant's liability, nor shall the System be impleaded by the Plan Participant or the Plan Participant's legal representative. Bankruptcy or insolvency of the Plan Participant or the Plan Participant's estate shall not relieve the System of any of its obligation hereunder.

ARTICLE XI ADMINISTRATION OF PLAN

Section 1 -- Administration

The Plan shall be administered by the Administrator under direction of the Board. The Fund will maintain a minimum balance of \$750,000.

Section 2 -- Administrative Regulations

The Administrator may from time to time prescribe regulations for the administration of this Plan provided that such regulations shall, in the opinion of the Administrator, be consistent with the provisions of this Plan as it may be amended from time to time pursuant to Article IX of this Plan. The Administrator may delegate in writing certain administrative, accounting, and investment functions of the Plan.

Section 3 -- Legal Interpretation

The text of this Plan shall control and the headings to the Articles, Sections and Paragraphs are for reference purposes only, and do not limit or extend the meaning of any of the Plan's provisions. The Plan shall be governed by and construed in accordance with the laws of the State of Texas, excluding its choice of law principles. Any interpretation of the Plan by the Administrator shall be conclusive as between the System and its employees and students, participating Plan Participants, and retired or otherwise terminated Plan Participants, employees and students, and may be relied upon by the System and all parties in interest.

Section 4 -- Counsel and Settlement Authority

Authority to employ counsel, approve attorney fees and expenses, and approve settlement of all claims, including litigation, shall rest with the Administrator, or the Administrator's delegate, subject to any additional approval required by the Board pursuant to any applicable policies of the System.

ARTICLE XII GENERAL PROVISIONS

Section 1 -- Subrogation

In the event of any payment under this Plan, the System shall be subrogated to all of the Plan Participant's rights of recovery thereof against any person or organization and the Plan Participant shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Plan Participant shall do nothing after loss to prejudice such rights.

Section 2 -- Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Plan, or estop the System from asserting any right under the terms of this Plan; nor shall the terms of this Plan be waived or changed, except by written waiver or amendment duly approved by the Board.

Section 3 -- Entirety of Agreement

This Plan embodies all agreements existing between any and all persons and the System or any of its agents relating to this Plan and the coverage afforded hereunder.

Section 4 -- Employment Noncontractual

The System may terminate the appointment, employment, internship, residency, fellowship, or student-school relationship of any Plan Participant as freely and with the same effect as if this Plan were not in operation.

Section 5 -- Actions Against Participant

This Plan or its operations shall not in any way or manner affect any claim or cause of action by the System against a Plan Participant for indemnity or contribution arising out of or relating to any Liability Claim.

Section 6 -- Communications

All notices, reports and statements given, made, delivered or transmitted to a Plan Participant shall be deemed duly given, made, delivered or transmitted when delivered to the Plan Participant, or when mailed by first-class mail, postage prepaid, and addressed to the Plan Participant at the address last appearing on the books of the System. A Plan Participant who changes address shall forthwith give written notice to the System of such change. Written directions, notices and other communications from Plan Participants to the System shall be mailed by first-class mail, postage prepaid, or delivered as follows:

The University of Houston System Office of General Counsel
4302 University Drive
Houston, Texas 77204

Attention: Vice Chancellor and General Counsel

Section 8 -- Effective Date

This Plan shall be effective as of February 23, 2023.