

DRAFT
INTERLOCAL AGREEMENT
Between the Health and Human Services Commission
and [Anchor]

SECTION 1. PARTIES TO THE AGREEMENT

This Agreement (“Agreement”) is made and entered into by and between the Health and Human Services Commission (“HHSC”) and the [Anchor] (Collectively, “Parties”; individually “Party”). This Agreement is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Texas Government Code, Chapter 791.

SECTION 2. TERM OF AGREEMENT

The period for performance of this Agreement shall commence effective on or after September 1, 2012 (the “Effective Date”), and shall terminate on August 31, 2014 (the “Expiration Date”), unless the Parties otherwise agree to terminate the Agreement before the Expiration Date or renew the Agreement.

SECTION 3. PURPOSE OF AGREEMENT

3.1 HHSC is the single state agency in Texas to administer the Medicaid program. In December 2011, HHSC received approval for a Medicaid demonstration called the Texas Transformation and Quality Improvement Program Section 1115 Waiver (the “Waiver”).

3.1.1 Among other things, the Waiver contemplates a Delivery System Reform Incentive Payment (“DSRIP”) Pool, which will allow for payments to Performing Providers to “enhance access to health care, the quality of care, and the health of the patients and families” in the Texas health system.

3.1.2 Performing Providers are organized into a Regional Healthcare Partnership (“RHP”) which is administratively aided by an Anchor.

3.1.3 In accordance with agreements between HHSC and CMS, an Anchor may receive a one-time DSRIP payment in recognition of its previous and continuing service as Anchor.

3.2 [Anchor] is the Anchor for RHP [X].

3.2.1 [Anchor] is not an enrolled Medicaid provider.

3.2.2 [Anchor] has performed its duties as Anchor for RHP [X] by aiding in the organization and submission of the RHP Plan.

3.2.3 [Anchor] will continue to discharge its duties as Anchor according to the Texas Administrative Code, the Program Funding and Mechanics Protocol, and the RHP Planning Protocol until the expiration of the Waiver or until a mutually agreed upon time.

3.3 The Social Security Act requires each state to provide a share of Medicaid payments. Because DSRIP payments are Medicaid payments, such payments require the State to supply the non-federal share of Medicaid payments.

3.3.1 According to Chapter 531.021 of the Texas Government Code, HHSC is charged with administering Medicaid funds. Additionally, one of HHSC's goals is to maximize federal funds through the efficient use of available state and local resources.

3.4 HHSC and [Anchor] believe that the respective missions of each Party can be most efficiently and effectively achieved through a cooperative effort of the Parties.

3.4.1 [Anchor] is facilitating the advancement of the Medicaid program by providing HHSC the non-federal share of a DSRIP payment.

3.4.2 HHSC is aiding [Anchor] in the advancement of regional healthcare initiatives under the Waiver by designating the [Anchor] as Anchor

3.5 The purpose of this Agreement is to provide terms and conditions for [Anchor] to transfer funds to HHSC for use as the non-federal share of a one-time DSRIP payment for recognition of its performance as anchor for RHP [X]. Under Chapter 531.039 of the Texas Government Code, HHSC has the authority to enter into contracts to necessary to perform its powers or duties.

SECTION 4. AGREEMENT PERFORMANCE

HHSC and [Anchor] mutually agree as follows:

4.1 [Anchor] shall transfer to HHSC an amount up to the non-federal share of the one-time DSRIP payment (the one-time DSRIP payment will equal \$[xxxxxxx]).

4.2 The funds provided will be used by HHSC exclusively as the non-federal share of payments to [Anchor].

4.3 Any transferred funds that HHSC is unable to use in conformance with Paragraph 4.2 of this Section, shall be retained by or refunded to [Anchor].

4.4 If any funding associated with the payments provided for in Subsection 4.2 is determined to constitute an impermissible provider donation requiring a reduction in the states' quarterly expenditure claims pursuant to 42 C.F.R §433.67(b), HHSC shall recoup from [Anchor], as appropriate, an amount equal to the payment(s) with which such funding is associated (including both the federal and non-federal share) and shall reduce its expenditure claim to CMS by the total amount of the recoupment. HHSC shall return the associated non-federal share to [Anchor].

4.5 If the full amount of federal financial participation ("FFP") for DSRIP Pool payments to [Anchor] funded by transfers from [Anchor] is disallowed by the federal government for any reason other than the existence of impermissible provider donations, HHSC shall recoup the total amount (federal and non-federal share) of such payments, as appropriate. HHSC shall return the associated non-federal share to [Anchor].

4.6 If FFP for DSRIP Pool payments to [Anchor] funded by transfers from [Anchor] is partially disallowed by the federal government for any reason, HHSC shall recoup the federal share only of such payments, as appropriate.

4.7 The rights and obligations of [Anchor] are no greater or less in regard to recoupment than is provided for hospitals in Texas Administrative Code Section 355.8201(l) (relating to Recoupment)

SECTION 5. ADDITIONAL TERMS OF AGREEMENT

5.1 Neither Party is reimbursing the other Party for any costs under this Agreement.

5.2 The rights, duties, obligations and interests of the Parties set out herein shall not be assigned or transferred.

5.3 Nothing herein shall be construed to create any personal liability on the part of any officer, employee, or agent of either Party hereto.

5.4 Nothing herein shall be construed to create any liability by [Anchor] or HHSC for personal or property damage that may occur through activities conducted as a result of this Agreement.

5.5 It is intended that nothing in this Agreement be construed to violate any provision of the laws and/or regulations of the United States of America or the State of Texas; all acts done hereunder shall be done in such manner as may conform thereto. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Agreement or the application thereof to any person or circumstance is held to be invalid, the remainder of this Agreement shall nevertheless be valid, and the Parties hereby declare that this Agreement would have been executed without such invalid word, phrase, clause, paragraph, sentence, part, portion, or provision. All the terms and provisions of this Agreement are to be construed to effectuate the purpose, powers, rights, functions, and authorities herein set forth.

5.6 Any alterations, modifications, additions, or deletions to this Agreement shall be in writing and executed by all Parties to this Agreement.

5.7 All oral or written agreements between the Parties hereto relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained herein.

SECTION 6. NOTICES

6.1 Absent notice to the contrary in writing, all communications to [Anchor] shall be sent to.

6.2 Absent notice to the contrary in writing, all communications to HHSC shall be sent to the attention of Kyle M. Janek, MD, Executive Commissioner for Health and Human Services, Texas Health and Human Services Commission, Brown-Heatly Bldg., 4900 North Lamar Blvd., Austin, TX 78751. By signature hereon, the individuals below represent and warrant they are duly authorized representatives of their respective agencies and have the authority to bind their respective agencies in a contractual agreement:

**HEALTH AND HUMAN SERVICES
COMMISSION**

[ANCHOR]

By: _____
Kyle M. Janek, M.D.
Executive Commissioner

By: _____

Date: _____

Date: _____