MARYLAND TOTAL COST OF CARE MODEL STATE AGREEMENT
Third Amendment

This amendment is made to the Maryland Total Cost of Care Model State Agreement ("Agreement") between the Centers for Medicare & Medicaid Services ("CMS"), and the Governor of Maryland, the Maryland Department of Health ("MDH"), and the Health Services Cost Review Commission ("HSCRC") (collectively, the "State"). The State and CMS are hereinafter collectively referred to as "the Parties."

On July 9, 2018, the Parties executed the Agreement governing their rights and obligations under the Maryland Total Cost of Care Model ("Model"). On December 23, 2019, the Parties amended the Agreement to add an additional Medicare payment waiver which allowed Medicare-enrolled nurse practitioners to certify home health orders for any Maryland Medicare Beneficiary beginning in Model Year (MY) 2 (calendar year 2020), and to change certain CMS reporting provisions under the Model. On March 27, 2020, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (the "CARES Act"). Sections 3708(a) and (b) of the CARES Act will allow physician assistants, nurse practitioners, and other professionals to certify beneficiary eligibility for home health services. As this provision, once implemented, obviated the need for the waivers of Sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Social Security Act and the implementing regulations at 42 CFR § 424.22 specified in paragraph (j) of Appendix G of the Agreement, added by the first amendment to the Agreement, CMS amended the Agreement to specify that these waivers shall be in effect only until the effective date of the regulations implementing Section 3708 of the CARES Act. On May 12, 2020, CMS executed a unilateral amendment to the Agreement to this effect.

The Parties now wish to amend the Agreement to make modifications necessary to specify the requirements for the implementation of the Maryland Primary Care Program ("MDPCP") Track 3, address potential Federally Qualified Health Centers ("FQHCs") participation in MDPCP Track 3, specify the conclusion date of MDPCP Track 1 and Track 2, and extend the time period for which the State may submit to CMS a MDPCP Annual Report.

The Parties therefore agree to amend the Agreement as set forth below.

1. Definitions. Section 1 of the Agreement is amended to incorporate the following definitions:

   "CTO Arrangement" means a contractual arrangement between the MDPCP Practice and a CTO pursuant to which the CTO provides care management services to MDPCP Beneficiaries attributed to the MDPCP Practice Site and performs other CTO Activities that are integral to meeting the MDPCP Practice Site's Care Transformation Requirements.

   "Eligible Beneficiary" means a Beneficiary who:

   a. Is enrolled in both Medicare Parts A and B;

b. Has Medicare as his or her primary payer;
c. Has an address of primary residence within Maryland or a Maryland hospital Primary Service Area;
d. Is not entitled to Medicare on the basis of an end stage renal disease ("ESRD") diagnosis;
e. Is not enrolled in hospice;
f. Is not covered under a Medicare Advantage or other Medicare health plan;
g. Is not institutionalized;
h. Is not incarcerated;
i. Is not assigned or aligned to a participant in any program or model that includes a Medicare FFS shared savings opportunity, or otherwise enrolled in such a program or model, except that an Eligible Beneficiary may be aligned to a Medicare Shared Savings Program ("Shared Savings Program") Accountable Care Organization ("ACO") in which the MDPCP Practice is an ACO participant (as such terms are defined in 42 C.F.R. §425.20), provided that such participation is consistent with the provisions in Article 3.5; and
j. Has not elected to receive Medicaid Health Home Services (as defined in Section 1945(h)(4) of the Act) from a Section 1945 Medicaid Health Home, unless CMS notifies the MDPCP Practice otherwise prior to the start of the applicable Performance Year in a form and manner to be determined by CMS.

"Federally Qualified Health Centers" or **"FQHCs"** means a legal entity identified by an organizational National Provider Identifier (NPI), a CMS Certification Number (CCN), and a Taxpayer Identification Number (TIN), and that is certified as an FQHC as defined under section 1861(aa)(4) of the Act.

"MDPCP Beneficiary" means an Eligible Beneficiary who is attributed to the MDPCP Practice Site by CMS .

"MDPCP Partner CTO" means a CTO that has entered into a CTO Arrangement with the MDPCP Practice.

"MDPCP Partner Practice" means a MDPCP Practice that has entered into a CTO Arrangement with a CTO.

"Performance Based Payments" or **"PBPs"** means a per beneficiary per month (PBPM) amount that is paid prospectively on a quarterly basis to MDPCP Practices participating in Track 3 or CTOs, if applicable.

2. Maryland Primary Care Program. Section 10 of the Agreement is amended in its entirety to read as follows:

a. ***Maryland Primary Care Program ("MDPCP").*** *CMS will implement the MDPCP from MY1 through MY8, unless the duration of the MDPCP is modified pursuant to Section 10.f. With the exception of MY 4(2022), CMS will accept applications from primary care practices and Care Transformation Organizations ("**CTOs**") for participation in the MDPCP on an annual basis through MY6 (2024). Beginning in MY3 (2021), with the exception of MY 4(2022), CMS will accept applications from FQHCs for participation in the MDPCP on an annual basis through MY6 (2024). Practices, FQHCs, and CTOs that are eligible to participate in the MDPCP must sign an MDPCP Participation Agreement with CMS in order to participate in the MDPCP. Beginning in MY5 (2023), CMS will implement MDPCP Track 3 in accordance with Article 2(d).*

b. ***Care Management Fees ("CMFs").*** *CMS will pay primary care practices, FQHCs, and CTOs participating in MDPCP Tracks 1 and 2 a risk-stratified per-beneficiary per-month CMF based on their number of MDPCP Beneficiaries. Beginning in MY4 (2022), CMS will also pay primary care practices, FQHCs, and CTOs participating in MDPCP Tracks 1 and 2 a Health Equity Advancement Resource and Transformation ("**HEART**") payment for certain MDPCP Beneficiaries as part of the CMF.*

c. ***Other Primary Care Payments.*** *CMS will pay those primary care practices, FQHCs, and CTOs participating in the MDPCP Tracks 1 and 2 that do not participate in the Medicare Shared Savings Program as an ACO an at-risk Performance Based Incentive Payment ("**PBIP**") on a per-beneficiary per-month basis, which must be repaid to CMS in whole or in part by MDPCP participants that fail to meet the applicable utilization and quality targets. CMS will also pay primary care practices and FQHCs participating in Track 2 of the MDPCP a comprehensive primary care payment ("**CPCP**") calculated in accordance with the terms of the MDPCP Participation Agreements.*

d. ***MDPCP Track 3.*** *Beginning in MY5 (2023) and through December 31, 2026 (the end of MY8), CMS will implement MDPCP Track 3.*

    i. ***General.*** *CMS will implement MDPCP Track 3 for the remainder of the MDPCP Performance Period. MDPCP Track 3 per beneficiary per month payment amounts for Performance Year 2023 are based on January 2022 MDPCP Track 2 per beneficiary per month payment amounts.*

    ii. ***MDPCP Track 3 Payments and Performance Based Adjustment ("PBA").***

1. ***Total Primary Care Payment.*** *CMS will pay primary care practices participating in MDPCP Track 3: (1) a flat visit fee ("**FVF**") paid at the time of service; and, (2) a population-based payment ("**PBP**"), paid prospectively on a quarterly basis. The FVF and PBP together are defined as a Total Primary Care Payment ("**TPCP**"). CMS will pay CTOs that partner with practices participating in MDPCP Track 3 a portion of the PBPs paid to each of the partner practices, as specified by the CTO Arrangement.*

2. ***HEART Payment.*** *CMS will pay primary care practices participating in MDPCP Track 3 a prospective quarterly HEART payment on a per beneficiary per month basis for certain MDPCP Beneficiaries in accordance with the applicable MDPCP Participation Agreement. CMS will pay MDPCP Partner CTOs a portion of each of their MDPCP Partner Practice's HEART payment, as specified by the CTO Arrangement. CMS will not apply the PBA to an MDPCP Track 3 participant's HEART payment.*

3. ***Performance Based Adjustment ("PBA").*** *CMS will hold MDPCP Track 3 primary care practices' Total Primary Care Payment at risk through the PBA. A practice participating in MDPCP Track 3 may have its Total Primary Care Payment adjusted by negative 10% to positive 25% based on its performance on certain quality, utilization, and efficiency measures as specified in the applicable MDPCP Participation Agreement and MDPCP payment methodology guidance. CMS and the State may agree to modify the amount of risk applied to the TPCP through the PBA in future MYs.*

4. ***PBA for CTOs.*** *CMS will apply the PBA to a CTO's PBP. CMS will not apply the PBA to the HEART payment portions the CTO may have received from its MDPCP Partner Practices.*

iii. ***Potential FQHC Participation in MDPCP Track 3.***

1. *FQHCs are not eligible to participate in MDPCP Track 3 for MY5 (2023), and thereafter unless CMS approves a proposal for FQHC participation as discussed in Section 10.e.ii.2.*

2. *The State may submit to CMS a proposal for FQHC inclusion in MDPCP Track 3 no later than 18 months prior to the start of the*

MY for which FQHCs could participate in Track 3. CMS will make best efforts to approve, deny, or request additional information within 90 business days of receipt of the proposal from the State. If CMS approves of the proposal, CMS will prepare for FQHC participation in MDPCP Track 3 at the start of the agreed upon Model Year.

3. *If the State does not submit a proposal for FQHC participation in MDPCP Track 3 or CMS does not approve the State's proposal for FQHC participation in MDPCP Track 3, FQHCs participating in the MDPCP may continue to participate in MDPCP Track 2 through the end of MY8.*

e. ***MDPCP Practice Transitions.*** *CMS will issue a final Request for Applications for MDPCP Practice applicants in MY5 (2023) for MY6 (2024) participation. For MDPCP Practices, MDPCP Track 1 is scheduled to conclude on December 31, 2023 (the end of MY5) and MDPCP Track 2 is scheduled to conclude on December 31, 2025 (the end of MY7).*

f. ***State MDPCP Annual Report.*** *For MYs1 (2019) and 2 (2020), the State may submit to CMS an annual report on the MDPCP within 180 days of the last day of each Model Year, or by such other deadline specified by CMS ("**MDPCP Annual Report**"). For MY3 (2021) through MY8 (2026), the State may submit to CMS an MDPCP Annual Report no later than one year of the last day of each Model Year, or by such other deadline specified by CMS. The State's MDPCP Annual Report may include the following:*

   i. *Suggested ways in which CMS can improve operations under the MDPCP, such as modifications to participating practices' care transformation requirements.*

   ii. *Suggested utilization and quality measures for purposes of the PBIP that align with those used for purposes of the hospital quality and value-based payment program under the Hospital Payment Program (Section 8.d), the Care Redesign Program (CRP) (Section 9), and the Outcomes-Based Credits (Section 7).*

   iii. *Recommendations to CMS on components of the MDPCP implementation that are appropriate for delegation to the State.*

g. ***Beneficiary Attribution.*** *Under the MDPCP, CMS will attribute Medicare FFS Beneficiaries to MDPCP-participating primary care practices and FQHCs for*

purposes of determining payments under the MDPCP. CMS will not attribute Medicare FFS Beneficiaries who are also eligible for Medicaid and are enrolled in the Maryland Medicaid Chronic Health Home program (under Section 1945 of the Act) to participating primary care practices or FQHC unless the MDPCP is modified pursuant to Section 10.f to allow for the attribution of such beneficiaries.

h. ***Modifications.*** *The State may request modifications to the MDPCP, including but not limited to participation requirements, payment methodology and amounts, performance measures, and the number of practices. CMS will modify its implementation to the extent practicable to accommodate the State's request. If other payers voluntarily participate in the MDPCP, the State will not use Medicare or Medicaid payments to calculate payments or incentives made by private payers.*

3. Effective Date. This Amendment shall be effective when it is signed by the last Party to sign it (as indicated by the date associated with that Party's signature).

4. Effect of Amendment. All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any inconsistency between the provisions of this amendment and the provisions of the Agreement, the provisions of this amendment shall prevail.

[SIGNATURE PAGE FOLLOWS]

Each Party is signing this amendment on the date stated above that Party's signature. If a Party signs this amendment, but fails to date a signature, the date that the other Parties receive the signing Party's signature will be deemed to be the date that the signing Party signed this amendment.

CENTERS FOR MEDICARE & MEDICAID SERVICES

Date: 8-17-22

By: Elizabeth Fowler

Liz Fowler, Director, Center for Medicare and Medicaid Innovation

GOVERNOR OF MARYLAND

Date: 8/15/22

By: _____

Lawrence Joseph Hogan, Jr., Governor

MARYLAND DEPARTMENT OF HEALTH

Date: July 28, 2022

By: Dennis R. Schrader

Dennis R. Schrader, Secretary of Health

HEALTH SERVICES COST REVIEW COMMISSION

Date: August 3, 2022

By: Adam Kane

Adam Kane, Esq., Chairman