

HAWAII MEDICAL SERVICE ASSOCIATION
PARTICIPATING DENTIST AGREEMENT

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HAWAII MEDICAL SERVICE ASSOCIATION PARTICIPATING DENTIST AGREEMENT

THIS AGREEMENT, effective as of March 1, 20XX is by and between Hawaii Medical Service Association (“HMSA”), a Hawaii nonprofit mutual benefit society, and

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(“Participating Dentist”), a _____, and arises out of the following circumstances:

1. HMSA operates and administers dental Plans for the benefit of its Members;
2. HMSA desires to contract with Participating Dentist to provide or arrange Covered Services to Members of HMSA dental Plans; and
3. Participating Dentist desires to contract with HMSA to provide or arrange services as described in Paragraph 2 above.

I. DEFINITIONS

Terms used throughout this Agreement are defined as follows:

- 1.1 **Claim.** A complete billing, or an adjustment to such billing, for Covered Services submitted by Participating Dentist on a form approved by HMSA, or by electronic transmission accepted by HMSA.
- 1.2 **Copayment.** An amount that the Member is required to pay for Covered Services as set forth in the Member’s Plan Document.
- 1.3 **Covered Service.** A dental service or supply that qualifies for payment under the terms of the Member’s Plan Document and meets payment determination requirements set forth in Section 4.2 of this Agreement, or a preventive service that is specifically described as covered in the Member’s Plan Document.
- 1.4 **Eligible Charge.** The Eligible Charge for a Covered Service is the lower of the actual charge as shown on the claim or the charge listed for the service in HMSA’s Schedule of Maximum Allowable Charges (“Schedule”). For a Covered Service that does not have a charge listed in the Schedule, HMSA will in good faith establish the Maximum Allowable Charge. HMSA reserves the right to adjust the charges listed in the Schedule upon 60 days’ written notice to Participating Dentist. Factors considered by HMSA in establishing Maximum Allowable Charges or in making adjustments to the charges may include, but are not limited to, changes in the Honolulu Consumer Price Index (All Items), cost of providing dental care, relative complexity of the service, payments for the service under other private insurance programs, and the competitive environment. The Eligible Charge does not include general excise tax or any other tax.
- 1.5 **Member.** A person who meets applicable eligibility requirements and is enrolled in a Plan.
- 1.6 **Participating Dentist.** A dentist who has entered into a contract with HMSA to provide Covered Services to Members.
- 1.7 **Plan Document.** The document issued by HMSA, an HMSA Affiliate, or other Plan that describes Member Benefits.

- 1.8 Plans. HMSA dental plans that provide benefits for services performed by Participating Dentists, including, but not limited to, Participating Provider Dental Program, Dental Network Program, and federal programs.
- 1.9 Provider Handbook. The HMSA Provider Handbook for Dentists containing information regarding HMSA's operating policies and procedures.

II. OBLIGATIONS OF PARTICIPATING DENTIST

- 2.1 Licensure. Participating Dentist warrants and represents that Participating Dentist is and will remain, throughout the term of this Agreement, the holder of a currently valid, unrestricted, and unconditioned (a) license to practice dentistry in the State of Hawaii, and (b) Drug Enforcement Agency Controlled Substances Registration Certificate and/or Certificate of Registration for Uniform Controlled Substances, if applicable to Participating Dentist's practice.
- 2.2 Required Disclosures. Participating Dentist shall notify HMSA in writing upon the occurrence of any of the events indicated below:
- (a) Participating Dentist's license to practice in the State of Hawaii is suspended, conditioned, revoked, terminated, or subject to terms of probation or other restriction; or
 - (b) Participating Dentist's federal and/or state drug license is suspended, conditioned, revoked, or terminated; or
 - (c) Any disciplinary action is taken against Participating Dentist by the Board of Dental Examiners or a similar agency in any state, or an agency of the federal government; or
 - (d) Participating Dentist is convicted of a fraud or felony; or
 - (e) An act of nature or any event beyond Participating Dentist's reasonable control occurs that substantially interrupts all or a portion of Participating Dentist's business or practice, or that has a materially adverse effect on Participating Dentist's ability to perform his/her obligations hereunder; or
 - (f) Participating Dentist fails to maintain the insurance coverage required under Article VI of this Agreement; or
 - (g) Any malpractice judgment or settlement in which the Participating Dentist is a named defendant; or
 - (h) There is a change in Participating Dentist's business address; or
 - (i) There is a change in Participating Dentist's federal tax identification number; or
 - (j) Participating Dentist plans to terminate his/her practice consistent with Section 7.2; or
 - (k) Participating Dentist's privileges at any medical facility, if any, are suspended, limited, revoked or terminated, subject to terms of probation or other restriction, if any such actions are taken due to the Participating Dentist's failure to meet staff privilege requirements, or voluntarily surrendered in anticipation of any of the foregoing; or
 - (l) There is a change to Participating Dentist's board certification status, if Participating Dentist is board certified; or

(m) Any other situation arises that could reasonably be expected to affect Participating Dentist's ability to carry out his/her obligations under this Agreement.

- 2.3 **Credentialing.** Participating Dentist shall comply with any and all credentialing and recredentialing requirements and procedures as established by HMSA and amended from time to time. Compliance shall be determined by an HMSA committee composed of practicing dentists. Failure to meet credentialing and recredentialing requirements may result in termination in accord with Article VII of this Agreement.
- 2.4 **Standard of Care.** Participating Dentist shall provide Covered Services in accord with generally accepted dental practices and standards prevailing in the applicable professional community at the time of treatment. These standards shall include, but are not limited to, the American Dental Association Infection Control Recommendations for the Dental Office and Dental Laboratory and the Centers for Disease Control and Prevention Recommended Infection Control Practices for Dentistry.
- 2.5 **Nondiscrimination.** Participating Dentist shall render services to Members in the same manner, in accordance with the same standards, and within the same time availability, as for his/her other patients. Participating Dentist shall not refuse to render services to a Member based on the Member's race, sex, sexual orientation, ethnic origin, or religion.
- 2.6 **HMSA Inquiries.** If requested by HMSA, Participating Dentist shall participate in activities that may include dental care evaluation studies, practice pattern analysis based on claims data, audit of dental records, and problem identification and resolution. Participating Dentist agrees to work in good faith with HMSA to implement corrective actions recommended in good faith by an HMSA review committee composed of practicing dentists, and to permit this committee to monitor and evaluate such corrective actions. Failure to participate in these activities shall constitute cause and may result in termination of this Agreement.
- 2.7 **Continuity of Care.** Participating Dentist shall provide appropriate dental information to other providers (a) when referring a Member to another provider, (b) at the Member's request, or (c) at another provider's request in order to ensure continuity of care and to avoid unnecessary duplication of services, unless the Member specifically objects.
- 2.8 **Referral.** Participating Dentist shall use his/her professional judgment when referring Members to other dentists, and such referral decisions shall be based on the best interest of the Member. Participating Dentist is urged, however, to refer Members to other Participating Dentists whenever appropriate and practical for the financial protection of the Member. HMSA shall furnish Participating Dentist with a current copy of HMSA's Directory of Participating Dentists or access to such Directory.
- 2.9 **Dentist-Patient Relationship.** Participating Dentist shall maintain the dentist-patient relationship with each Member for whom he or she provides dental care and treatment and be responsible for the dental care and treatment of such Members. Nothing contained in this Agreement is intended or shall be interpreted: (a) to interfere with the dentist-patient relationship, (b) to discourage or prohibit a Participating Dentist from discussing preventive or treatment options, or (c) to discourage or prohibit providing other dental advice or treatment deemed appropriate by the Participating Dentist.

III. OBLIGATIONS OF HMSA

- 3.1 **Payment.** HMSA shall pay Participating Dentist directly for Covered Services in accord with Article IV of this Agreement.
- 3.2 **Membership Cards.** HMSA shall issue Plan membership cards to Members.

- 3.3 Provider Handbook. HMSA shall furnish Participating Dentist with a copy of, or access to, the Provider Handbook. Participating Dentist shall comply with all policies, procedures, and requirements contained in the Provider Handbook. HMSA reserves the right to amend policies, procedures, and requirements upon 60 calendar days' written notice.
- 3.4 Participating Provider Directory. HMSA shall list Participating Dentist's name in an HMSA Participating Provider Directory and distribute the Directory or make it available to Participating Dentists and Members.
- 3.5 Dental Advisory Committee. HMSA shall establish and maintain an advisory committee composed of Participating Dentists. This committee shall provide input to HMSA regarding various dental issues related to HMSA operations and programs. HMSA will consider recommendations for committee members from individual dentists and dentist organizations in the community.

IV. COMPENSATION

- 4.1 Payment. Except as otherwise provided in this Article IV, Participating Dentist shall accept the Eligible Charge as payment in full for Covered Services. HMSA shall pay directly to Participating Dentist the Eligible Charge minus applicable Copayments, deductibles, and payments from third parties described in Section 4.5 of this Agreement. Payment shall be based on the Member's eligibility and HMSA's policies pertaining to the recognition of the service, whether billed alone or in combination with other services. Upon written request, HMSA will furnish Eligible Charges for those services specified by the Participating Dentist.
- 4.2 Payment Determination.
- (a) A service or supply qualifies for payment under this Agreement if it qualifies for payment under the Member's Plan Document and if HMSA determines that it meets all of the following requirements:
 - (i) Appropriate and necessary for the symptoms, diagnosis, and direct care or treatment of an illness or injury (illness or injury is any bodily disorder, bodily injury, disease, or condition);
 - (ii) Consistent with professionally recognized standards of dental care in the applicable professional community at the time of treatment, and given at the right time and in the right setting;
 - (iii) Not primarily for the convenience of the Member or dentist; and
 - (iv) The most appropriate supply or level of service that can safely be provided.
 - (b) Payment determinations are based on policies developed in consultation with practicing dentists by HMSA Dental Directors. The fact that a dentist may prescribe, order, recommend, or approve a service or supply does not in itself mean that the service or supply meets payment determination requirements, even if it is specifically described in the Member's Plan Document.
 - (c) A preventive service is a Covered Service if it is specifically described as covered in the Member's Plan Document.
 - (d) If there is more than one Covered Service to treat a Member's condition, HMSA's benefit payment may be based on the lower-cost method and Participating Dentist agrees to accept the Eligible Charge of the service rendered as payment in full.

- 4.3 Noncovered Services. If there is a medically appropriate Covered Service to treat a Member's condition and the Member elects to receive a medically appropriate noncovered service listed in the Provider Handbook, HMSA will make payment based on the Eligible Charge of the Covered Service. Participating Dentist may collect from the Member the difference between HMSA's payment and the Participating Dentist's charge.
- 4.4 Prohibition Against Member Billings and Collections. In no event shall Participating Dentist collect from the Member any amount that HMSA is obligated to pay Participating Dentist under the Member's Plan, whether HMSA's nonpayment results from insolvency, HMSA's breach of this Agreement, or any other cause.
- 4.5 Coordination of Benefits and Third Party Collections. Participating Dentist shall cooperate with HMSA for the proper coordination of benefits and in the identification and collection of third party payments such as those from workers' compensation, other dental insurance, auto insurance, and other third party liability sources.
- 4.6 Claims. Claims shall only be submitted under this Agreement for services and supplies rendered (a) personally by the Participating Dentist, or (b) by an employee of the Participating Dentist.

No payment shall be made on any Claims submitted more than one year after the last day on which the services covered by the Claim were rendered unless required by coordination of benefits. Participating Dentist shall not collect payment from Members for any Covered Services with respect to which the one-year claims submission period has expired. Participating Dentist has the right to request a review by HMSA within one year of Participating Dentist's receipt of HMSA's decision to deny or pay the claim.

- 4.7 Refund. Within 30 calendar days of Participating Dentist's receipt of notice from HMSA, Participating Dentist shall refund to HMSA any overpayment made by HMSA to Participating Dentist. HMSA shall have the right to offset the amount of any overpayment not refunded against any future payments due to Participating Dentist from HMSA under this Agreement or any other agreement with HMSA. HMSA has the right of offset under this Section, regardless of whether the Participating Dentist has assigned the right to receive payments under this Agreement or any other agreement with HMSA, or has otherwise directed HMSA to make payments under this Agreement or any other agreement to a third party.

V. RECORDS

- 5.1 Member's Dental Record. In accord with generally accepted dental practices and all applicable federal and state statutory and regulatory requirements, Participating Dentist shall ensure that a dental record is established and maintained for each Member that fully documents dental services rendered and billed.
- 5.2 Access to Records. "Records" are any and all Member records including, but not limited to, dental records, records relating to submission of claims to HMSA or other insurers, radiographs, and billings by Participating Dentist. Participating Dentist shall allow HMSA Dental Directors or their designees access to records for the purposes of HMSA inquiries set forth in Section 2.6 of this Agreement, claims payment verification, and fraud and abuse investigations.

Subject to compliance with applicable federal and state laws, professional standards regarding the confidentiality of dental records, and Plan Documents, Participating Dentist shall upon HMSA's request:

- (a) allow HMSA authorized personnel access to Records on Participating Dentist's premises in a reasonable manner and at a mutually agreeable time within five working days following notice from HMSA;

- (b) transmit Records by telephone or other electronic means to HMSA; or
- (c) provide copies of Records to HMSA.

The Parties agree that failure to promptly provide information as required under this Section 5.2 shall constitute a material breach of this Agreement and may result in termination of this Agreement.

- 5.3 Confidentiality. HMSA and Participating Dentist agree to keep confidential and to take the usual precautions to prevent the unauthorized disclosure of any and all medical and dental records and information required to be prepared or maintained by Participating Dentist or HMSA under this Agreement. Such medical and dental records shall be kept by the provider for a minimum of seven years after the last entry on that record.

VI. INSURANCE

Participating Dentist, at his or her sole cost and expense, shall secure and maintain from an insurance company or indemnity trust, professional and general liability insurance to insure Participating Dentist and his/her shareholders, officers, employees, and agents. General liability shall be an amount adequate for the risk insured against. Professional liability insurance shall have limits of not less than one million dollars (\$1,000,000.00) per occurrence, and not less than one million dollars (\$1,000,000.00) in the aggregate annually. Participating Dentist shall provide certificates of coverage as requested by HMSA, and shall obligate the carrier of each such insurance policy to give HMSA written notice by certified mail at least 30 days prior to cancellation or other termination of such policy.

VII. TERM AND TERMINATION

- 7.1 Term. When executed by both parties, this Agreement shall become effective as of the effective date indicated on page 1 of this Agreement and shall continue in effect until terminated as permitted hereby.
- 7.2 Termination. Except as provided in Section 7.3 of this Agreement, either party may terminate this Agreement by giving the other party at least 60 calendar days' written notice.
- 7.3 Immediate Termination. HMSA shall have the right to terminate this Agreement immediately upon written notice to Participating Dentist due to the revocation, suspension, limitation, condition, or expiration of Participating Dentist's license to practice dentistry. Participating Dentist shall have the right to terminate this Agreement immediately upon written notice to HMSA in the event HMSA files for bankruptcy.
- 7.4 Effect of Termination. As of the date of termination, this Agreement shall be considered of no further force or effect except that such termination shall not release Participating Dentist or HMSA from their respective obligations accruing prior to the date of termination, including, without limitation, the following:
- (a) HMSA's obligation to pay, in accord with the terms of this Agreement, for Covered Services provided to Members prior to termination;
 - (b) Participating Dentist's obligation to retain and to provide HMSA access to Records as set forth in Article V of this Agreement; and
 - (c) Participating Dentist's agreement not to seek compensation from Members for Covered Services provided while this Agreement is in force except for applicable Copayments and deductibles.

- 7.5 Appeal of Termination. Participating Dentist's right to appeal termination of the Agreement is set forth in Article VIII of this Agreement. Except for immediate termination, upon HMSA's receipt of Participating Dentist's request for appeal, any termination of this Agreement is suspended until the dispute is resolved. If an immediate termination is appealed, the termination remains in force until the dispute is resolved.

VIII. DISPUTE RESOLUTION

This Article VIII applies to all sections of this Agreement, notwithstanding reference in selected sections.

8.1 Administrative Appeal.

- (a) Disputes Other Than Termination (Section 7.2) or Immediate Termination (Section 7.3) of This Agreement. If Participating Dentist disagrees with a decision by HMSA, Participating Dentist shall submit a written request for review by an HMSA committee within one year of Participating Dentist's receipt of notice of such decision. The review committee shall convene within 60 calendar days of HMSA's receipt of the request for review. Participating Dentist may appear to present evidence or testimony before a review committee. Participating Dentist will be notified of the review committee's decision within 10 working days following the hearing.
- (b) Termination of This Agreement. Participating Dentist shall submit a written request for appeal within 60 calendar days of receipt of a notice of termination from HMSA. A review committee composed of practicing dentists shall convene within 30 calendar days of HMSA's receipt of the request for appeal. Participating Dentist may appear to present evidence or testimony before the committee. Either party may, at its option, be represented by counsel or another representative at the appeal. Participating Dentist will be notified of the review committee's decision within five working days following the hearing.
- (c) Neither HMSA nor Participating Dentist shall be represented by an attorney or other representative at the administrative appeal pursuant to this Section 8.1, except as provided in Section 8.1(b) above. Both HMSA and Participating Dentist may be represented by counsel or another representative at arbitration in accord with Section 8.2 below.

- 8.2 Arbitration Upon Exhaustion of Administrative Appeal. HMSA and Participating Dentist agree that, except for disputes related to HMSA's Schedule of Maximum Allowable Charges, any and all claims, disputes, or causes of action arising out of this Agreement or its performance, or in any way related to this Agreement or its performance, including but not limited to any and all claims, disputes, or causes of action based upon contract, tort, statutory law, or actions in equity, shall be resolved by binding arbitration as set forth in this Agreement.

Within 30 calendar days following Participating Dentist's exhaustion of administrative remedies described in Section 8.1 above, Participating Dentist shall submit a written request for arbitration to Legal Services at HMSA in Honolulu, Hawaii. The arbitration shall be conducted by an independent arbitration service mutually selected by HMSA and Participating Dentist. If HMSA and Participating Dentist are unable to agree upon an arbitration service within 30 calendar days of HMSA's receipt of Participating Dentist's request for arbitration, HMSA shall select the arbitration service.

The arbitration shall be conducted by a single arbitrator in accord with the rules of the arbitration service selected above and Hawaii Revised Statutes, Chapter 658. HMSA and Participating Dentist shall promptly appoint a single arbitrator in accord with procedures of the arbitration service selected above. Each party will pay its own attorney and witness fees. Both parties shall share the fees and costs of the arbitrator and arbitration service equally. The decision of the arbitrator shall be final and binding on both parties.

8.3 Disputes Related to HMSA's Schedule of Maximum Allowable Charges. The determination of charges in HMSA's Schedule of Maximum Allowable Charges shall be at HMSA's sole discretion. Participating Dentist's right to review and arbitration does not include the right to contest any charge included in HMSA's Schedule of Maximum Allowable Charges.

IX. MISCELLANEOUS PROVISIONS

- 9.1 Amendments. This Agreement may be modified by HMSA by giving 60 calendar days' notice. HMSA may amend this Agreement without advance notice as necessary to comply with federal or state law or revise the Provider Handbook to make routine changes. Routine changes are defined as any changes other than changes that are: 1) substantive and 2) inconsistent with the terms of this Agreement.
- 9.2 Assignment. Neither HMSA nor Participating Dentist shall assign or transfer rights, duties, or obligations under this Agreement without the prior written consent of the other party.
- 9.3 Captions. The captions contained herein are for reference purposes only and shall not affect the meaning of this Agreement.
- 9.4 Cooperation of Parties. Participating Dentist and HMSA agree to meet and confer in good faith on common problems including, but not limited to, those pertaining to Member complaints, customer service, credentialing, authorization, claims and reporting procedures, and information and forms provided to Participating Dentist for use with Members.
- 9.5 Entire Agreement. This Agreement, together with Plan Documents and the Provider Handbook as amended from time to time, contains the entire agreement between the parties and supersedes all prior agreements and negotiations, either oral or in writing, with respect to the subject matter hereof.
- 9.6 Governing Law. This Agreement shall be construed and enforced in accord with the laws of the State of Hawaii.
- 9.7 Legal Compliance. HMSA and Participating Dentist shall comply with all state and federal laws and regulations in performance of this Agreement and obtain approval of all duly constituted government authorities, including the procurement of all licenses and permits required to provide services hereunder.
- 9.8 Members' Appeal Rights. Members' appeal rights are outlined in their Plan Documents.
- 9.9 Notices. Any notice required to be given pursuant to the amendment or termination of this Agreement shall be in writing and shall be sent, postage prepaid, by certified mail, return receipt requested, to HMSA or to Participating Dentist at the address below. The notice shall be effective on the date of delivery indicated on the return receipt.

If to HMSA:

Provider Services
Hawaii Medical Service Association
P. O. Box 860
Honolulu, HI 96808-0860

If to Participating Dentist:

Mailing address as reported by Participating Dentist to HMSA.

- 9.10 Partial Invalidity. If, for any reason, any provision of this Agreement is held invalid, the remaining provisions shall remain in full force and effect.
- 9.11 Relationship of Parties. In the performance of the work, duties, and obligations assumed under this Agreement, it is mutually understood and agreed that each party and its agents, employees, or representatives are at all times acting and performing as independent contractors and that neither party shall consider itself or act as the agent, employee, or representative of the other.

Participating Dentist expressly acknowledges that this Agreement constitutes a contract between Participating Dentist and HMSA, that HMSA is an independent plan operating under a license with the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans (the "Association"), permitting HMSA to use the Blue Cross and Blue Shield Service Mark in the State of Hawaii, and that HMSA is not contracting as the agent of the Association. Participating Dentist further acknowledges and agrees that it has not entered into this Agreement based upon representations by any person other than HMSA and that no person, entity, or organization other than HMSA shall be held accountable or liable to Participating Dentist for any of HMSA's obligations to Participating Dentist created under this Agreement. This paragraph shall not create any additional obligations whatsoever on the part of HMSA other than those obligations created under other provisions of this Agreement.

- 9.12 Responsibility for Acts. Each party is responsible for its own actions.

This Section 9.12 shall survive termination of this Agreement.

- 9.13 Waiver. The waiver by either party of any breach of any provision of this Agreement, of any warranty, or of any representation set forth herein shall not constitute a continuing waiver of any subsequent breach of either the same or any other provision, warranty, or representation of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date(s) written below.

Hawaii Medical Service Association

Participating Dentist

By:

Paul Schnur

Dentist's Signature

Title: VP, Provider Services and Contracting

Date of Signature

Dentist's Date of Signature

Receive Date by HMSA