CLIN 09 UHA 00205

Department of Health Care Policy and Financing
Contract Routing Number
3509-9181

CONTRACT AMENDMENT NO. 1

Original Contract No. 1407-0120, CLIN 07 UHA 00141, dated November 1, 2006
Bilateral Change Order Letter No. 1, 1407-9197, CLIN 07 UHA 00170, dated May 30, 2007
Bilateral Change Order Letter No. 2, 1408-9138, CLIN 08 UHA 00125, dated May 30, 2007
Bilateral Change Order Letter No. 3, 1407-9198, CLIN 07 UHA 00171, dated May 30, 2007
Bilateral Change Order Letter No. 4, 1408-9148, CLIN 08 UHA 00140, dated August 30, 2007
Bilateral Change Order Letter No. 5, 3508-9195, CLIN 08 UHA 00207, dated May 20, 2008
Bilateral Change Order Letter No. 6, 3508-9206, CLIN 08 UHA 00203, dated June 20, 2008
Bilateral Change Order Letter No. 7, 3509-9165, CLIN 09 UHA 00194, dated September 9, 2008
Bilateral Change Order Letter No. 8, 3509-9194, CLIN 09 UHA 00203, dated March 4, 2009

1. PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called "Contract") is entered into by and between ACS State Healthcare, LLC, 9040 Roswell Road, Suite 700, Atlanta, Georgia 30350 (hereinafter called "Contractor"), and the STATE OF COLORADO, acting by and through the Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203 (hereinafter called "Department" or the "State").

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The Department shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

The parties entered into the Contract for the Fiscal Agent to provide, maintain and operate the Department's Medicaid Management Information System (MMIS). The purpose of this Amendment is to modify how Pharmacy PAR overage charges are calculated, authorize the assignment of payment only, amend the security and access provision, amend the scope of work, add the debarment and suspension clause and the indemnification clause and replace the Special Provisions.

4. CONSIDERATION

Consideration for this Amendment consists of the payments to be made hereunder and the obligations, promises, and agreements herein set forth.

5. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6. MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

a. Section 4, Consideration, on the table stating maximum amounts of funds available, the column heading that currently reads: "Pharmacy Prior Authorizations (PA) over 1628/Month*" shall be changed to read as follows: "Pharmacy Prior Authorizations (PA) over 19,536/Year*".

b. Add the following Section 5.1:

5.1 **Assignment of Payment Only**. ACS State Healthcare, LLC assigns its right to receive all payments due and payable under this Contract to the following assignee, which shall be made by Electronic Funds Transfer in accordance with the instructions below:

ACS Lending Inc.
P.O. Box 201322
Dallas, Texas 75320-1322
(770) 829-1187

<u>ACH Instructions</u>
ACS Lending, Inc.
Wells Fargo Bank San Francisco
420 Montgomery Street
San Francisco, CA 94163
Depository Transit and Account Number as on file with State of Colorado,
Corporation Authorization Agreement for Automatic Deposits (ACH Credits)

Nothing in this assignment is, nor shall be construed as, an acceptance by the State of Colorado of an assignment or novation of the obligations for performance of ACS State Healthcare, LLC as set forth in the Contract. This assignment shall apply only to those payments due and owing but not yet distributed to ACS State Healthcare, LLC, by the State, under this Contract. ACS State Healthcare, Inc. relinquishes all rights to payments assigned and paid to ACS Lending, Inc. by the State. Payments are subject to the acceptance of the financial institution designated above.

The State agrees to the assignment of payments to ACS Lending, Inc., a Delaware General Corporation, under this Contract, with the express understanding that ACS Lending, Inc. is receiving payments as an accounts receivable collection

point only and that ACS Lending is acting neither as a lessor or third party beneficiary under this Contract. As such, all provisions for vendor and tax offset programs under the State of Colorado law remain enforceable. ACS Lending, Inc. shall have no rights under this Contract other than those expressly stated herein. The State retains the right under the contract to offset, withhold or deduct payment, to ACS State Healthcare, LLC pursuant to the terms of the Contract. If it is found that through enacting this assignment that the State's right to offset payments to ACS State Healthcare, LLC is invalidated, this section 5.1, Assignment of Payment Only, shall be null and void in its entirety in accordance with section 35, Severability.

c. Section 11, Security and Access, shall be changed to read as follows:

11. **Security and Access**. Contractor shall provide physical and logical protection for State and Contractor hardware, software, applications and data that meet or exceed federal and state statute, rule or regulation and industry standards. Contractor shall provide State with a copy of compliance audits to include the SAS-70 audits for sites referenced in Memorandum of Negotiation, Exhibit D, within 30 days of publication. The contractor shall consult with the State regarding any audit recommendations. Further, Contractor shall provide the State with access, subject to Contractor's reasonable access security requirement, as approved by the State, seven (7) days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of State data and maintaining State systems. In the event of a privacy or security breach involving Contractor's equipment, network, or facilities, Contractor shall promptly notify all persons whose data was compromised.

d. Add the following as Section 53:

53. **Debarment and Suspension**. If this is a covered transaction or the contract amount exceeds $100,000, the Contractor certifies to the best of its knowledge and belief that it and its principals and subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency.

This certification is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available at law or by contract, the Department may terminate this Contract for default.

The Contractor shall provide immediate written notice to the Department if it has been debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency.

The terms "covered transaction," "debarment," "suspension," "ineligible," "lower tier covered transaction," "principal," and "voluntarily excluded," as used in this paragraph have the meanings set out in 2 CFR Part 180 and 376.

The Contractor agrees that it will include this certification in all lower tier covered transactions and subcontracts that exceed $100,000.

e. Add the following as Section 54:

54. **Indemnification**. The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

f. Requirement 4.4.14.1.9.13, page 132 of Exhibit A, shall be changed to read as follows: "Identify duplicate claim transactions on pharmacy claims, based on a comparison of at least NDC code(s), date of service, provider, and client."

g. Requirement 4.4.16.1.10, page 146 of Exhibit A, shall be changed to read as follows: "Establish policies and guidelines to be followed by provider using Pro-DUR.".

h. Special Provisions, pages 26 and 27, are replaced with Special Provisions, pages 26 and 27, dated January 1, 2009, which are attached hereto and incorporated herein.

7. EFFECTIVE DATE OF AMENDMENT

The effective date hereof is upon approval of the State Controller or their delegate.

8. ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9. AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available to the Department by the federal government, state government and/or grantor.

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THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR:
ACS State Healthcare, LLC
Legal Name of Contracting Entity

By: _____
Signature of Authorized Officer

Date: 5/4/2009

BRETT JAKOVAC
Printed Name of Authorized Officer

VP OF OPERATIONS
Printed Title of Authorized Officer

STATE OF COLORADO:
Bill Ritter, Jr., Governor

By: _____
Joan Henneberry, Executive Director
Department of Health Care Policy and Financing

Date: 5/8/09

LEGAL REVIEW:
John W. Suthers, Attorney General

By: N/A

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER:
David J. McDermott, CPA

By: _____

Date: 5/13/09