



**INTERGOVERNMENTAL AGREEMENT  
(Agreement #)**

This Intergovernmental Agreement (“Agreement”) is entered into by and between **Arizona Health Care Cost Containment System (“AHCCCS”)**, the agency of the State of Arizona authorized to administer the Medicaid and behavioral Health systems in the State of Arizona and the \_\_\_\_\_ (the “Public Entity”), a political subdivision, tribal government, or public university. This Agreement shall be effective upon execution by both parties and terminated pursuant to the terms set forth in this Agreement.

**Project Title:** Supplemental Payments to Disproportionate Share Hospitals

WHEREAS, A.R.S. § 36-2903.01(P), permits the Public Entity, as a political subdivision of the State of Arizona, a tribal government, or university under the jurisdiction of the Arizona Board of Regents, to contribute public funds to be used as the non-federal share of supplemental Medicaid payments to disproportionate share hospitals (“DSH payments”), contingent upon the approval by AHCCCS and the Centers for Medicare and Medicaid Services; and,

WHEREAS, the Public Entity, is authorized to [insert citation(s) to the legal authority for the political subdivision to engage in activities - such as the provision of health care services and/or funding for health care services - that it may exercise jointly with AHCCCS] and

WHEREAS, AHCCCS is authorized to make DSH payments under A.R.S. § 36-2903.01(O) and (P); and

WHEREAS, AHCCCS and the Public Entity are authorized by A.R.S. § 11-951 et seq., as well as A.R.S. § 36-2903.01(P), to enter into Intergovernmental Agreements to jointly exercise powers common to the parties or for cooperative action pertaining to reimbursement or advancements of public funds for services performed; and

WHEREAS, the Public Entity and AHCCCS wish to enter into this Agreement in order to permit the Public Entity to provide the non-federal Share of DSH payments.

NOW, THEREFORE, the Public Entity and AHCCCS (collectively, the “Parties”), pursuant to the above and in consideration of the matters hereinafter set forth, do mutually agree as follows:

**(Public Entity)**

**AHCCCS**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name:

Printed Name: Meggan LaPorte, CPPO, MSW

Title:

Title: Chief Procurement Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## TERMS AND CONDITIONS

1. DEFINITIONS: Unless otherwise defined in this Agreement, all terms have the same meaning as set forth in Title 36 of the Arizona Revised Statutes or Title 9, Chapter 22, of the Arizona Administrative Code (A.A.C.) as appropriate.
  - 1.1. Agreement: This document, together with any and all attachments, appendices, exhibits, schedules and future amendments as agreed to by the Parties. The term “Agreement” is synonymous with “Intergovernmental Agreement.”
  - 1.2. AHCCCS: Arizona Health Care Cost Containment System, an agency of the State, which administers the Medicaid program under Title XIX of the Social Security Act and the Children’s Health Insurance Program (CHIP) under Title XXI of the Social Security Act in Arizona.
  - 1.3. CFR: Code of Federal Regulations – the official compilation of federal rules and requirements.
  - 1.4. Public Entity: [insert name of political subdivision of the State of Arizona, tribal government, or university under the jurisdiction of the Arizona Board of Regents].
  - 1.5. CMS: The Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services.
  - 1.6. Day: A calendar day, unless specified otherwise.
  - 1.7. Disproportionate Share Hospital (DSH): a hospital meeting the requirements set forth in 42 U.S.C. § 1396r-4 and Arizona’s State Plan for Medicaid as approved by the Secretary of the United States Department of Health and Human Services.
  - 1.8. DSH Payments: a supplemental payment by AHCCCS pursuant to 42 U.S.C. § 1396r-4 and the terms of Arizona’s State Plan for Medicaid as approved by the Secretary of the United States Department of Health and Human Services.
  - 1.9. Eligible Hospital(s): Hospitals that AHCCCS has determined meet the requirements of and qualify as a Disproportionate Share Hospital and that are listed in Attachment A to this Agreement.
  - 1.10. FFP or Federal Financial Participation: the federal monies that AHCCCS claims from CMS for the federal share of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act.
  - 1.11. Service Year: The period from October 1,2022 through September 30,2023.
  - 1.12. State: The State of Arizona.
  - 1.13. Non-federal Share: The portion of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act, that are not FFP and which meet the requirements of 42 C.F.R. Part 433, Subpart B and any other federal law or regulation applicable to the permissibility of funding sources.

**2. PURPOSE.**

The purpose of this Agreement is to set forth the procedures under which the Public Entity will, at its discretion and contingent upon AHCCCS and CMS approval, transfer public funds for use as the non-federal Share of DSH Payments under this Agreement for hospital services rendered from October 1, 2022 through September 30, 2023. It is the intent of the parties that the procedures herein fully comply with federal and state laws, rules, and regulations.

**3. ELIGIBILITY REQUIREMENTS.**

Monies transferred by the Public Entity and used by AHCCCS as the non-federal share of Medicaid expenditures under this Agreement may only be used for permissible DSH Payments and distributed to Eligible Hospitals. AHCCCS will determine which Eligible Hospitals are eligible for DSH Payments for hospital services from October 1, 2022 through September 30, 2023 and the amount of any distribution. Eligibility and distribution amount determinations for DSH Payments will be consistent with applicable federal and state statutes, regulations, rules, and the terms of Arizona's State Plan for Medicaid as approved by the Secretary of the United States Department of Health and Human Services.

**4. AHCCCS RIGHTS AND OBLIGATIONS.**

4.1. Receipt and Distribution of Funds. Consistent with the terms of Arizona's State Plan for Medicaid as approved by the Secretary of the United States Department of Health and Human Services, and state and federal laws and regulations, AHCCCS will use the funds transferred by the Public Entity to distribute an amount equal to the sum of the non-federal Share transferred by the Public Entity under this Agreement and the corresponding FFP to Eligible Hospitals as DSH Payments for hospital services provided from October 1, 2022\_ through September 30, 2023\_ in the amounts shown on Attachment A to this Agreement. The funds transferred under this Agreement may only be used for DSH payments to Eligible Hospitals.

4.2. AHCCCS Payment Recoupment from Eligible Hospital. AHCCCS, upon prior written notice to the Eligible Hospitals, will require Eligible Hospitals receiving DSH payments as a result of this Agreement, to reimburse AHCCCS upon demand and, if not reimbursed upon demand, AHCCCS will deduct from any future payments from AHCCCS otherwise due to the Eligible Hospital(s) any amount:

4.2.1. Received by the Eligible Hospital from AHCCCS as DSH Payments that were based on inaccurate information provided by the Public Entity or the Eligible Hospital, that are found to be for an excluded expense, or that otherwise result in an inaccurate payment.

4.2.2. Paid by AHCCCS for which an Eligible Hospital's books, records, and other documents are not sufficient to clearly confirm that the Eligible Hospital was entitled to the DSH payments.

4.2.3. Paid by AHCCCS for which the Public Entity's books, records, and other documents are not sufficient to clearly confirm that the funds transferred to AHCCCS are public funds which meet the requirements of 42 C.F.R. Part 433, Subpart B and any other federal law or regulation applicable to the permissibility of funding sources.

4.2.4. Identified as a payment that may not be claimed for FFP as the result of a CMS financial management review, deferral, disallowance, or audit.

- 4.3. AHCCCS is responsible for satisfying CMS requirements regarding reporting, adjusting claims for or reimbursing FFP, as necessitated by a recoupment as noted in Section 4.2 of this Agreement, or applicable federal laws, rules, and regulations. This provision does not relieve the Public Entity or an Eligible Hospital from their obligations under Section 4.2 or the obligations under Section 6 of this Agreement.
- 4.4. In the event AHCCCS recoups DSH payments from an Eligible Hospital, AHCCCS will promptly return to the Public Entity, without demand, that portion of the recoupment representing the non-federal Share contributed by the Public Entity under this Agreement. To the extent AHCCCS is obligated to reimburse CMS for FFP for DSH payments (including any interest incurred as a result of an appeal of the disallowance), no portion of any amounts recouped from an Eligible Hospital will be returned to the Public Entity until CMS has been reimbursed for any amounts due to CMS for FFP for DSH payments.
- 4.5. Eligible Hospitals will receive and retain one hundred percent (100%) of all DSH payments.
- 4.6. As a condition of making DSH payments, AHCCCS will require Eligible Hospitals receiving payments as a result of this Agreement to enter into a separate written agreement (Attachment B, the Agreement to Reimburse Impermissible Disproportionate Share Hospital Payments) with regard to the requirements of Section 4.2.

## **5. THE PUBLIC ENTITY'S RIGHTS AND OBLIGATIONS.**

- 5.1. The Public Entity will transfer to AHCCCS the amount identified in Attachment A to this Agreement which amount shall be used pursuant to Section 4.1 above. The Public Entity warrants that the non-federal Share transferred by the Public Entity to AHCCCS is derived from the public sources identified in Attachment A to this Agreement.
- 5.2. After receiving the funds transferred by the Public Entity under this Agreement, AHCCCS will make DSH Payments to the Eligible Hospitals in the amounts shown on Attachment A to this Agreement pursuant to Section 4.1 hereof. Payments will not be made after the time limits for AHCCCS to file claims for FFP set forth in 45 C.F.R. Part 95, Subpart A as interpreted by the United States Department of Health and Human Services Departmental Appeals Board. In the event AHCCCS cannot make DSH Payments to an Eligible Hospital due to the time limit for claiming FFP, AHCCCS will promptly return to the Public Entity, without demand, the unexpended portion of the non-federal Share contributed by the Public Entity under this Agreement.
- 5.3. Within fifteen (15) days after the date of distribution of the DSH payments to the Eligible Hospitals, AHCCCS will provide the Public Entity a report showing the actual distribution of funds to the Eligible Hospitals.
- 5.4. In the event of a disallowance based on the impermissibility of the transferred funds and the failure of the Eligible Hospital to refund DSH payments as required by Attachment B, AHCCCS shall make diligent efforts to recover the amounts due under Section 4.2 and Attachment B. If AHCCCS is unable to recover the total computable amount associated with such disallowance from the Eligible Hospital within twelve months of AHCCCS's demand for a refund (unless stayed as part of an administrative appeal related to such disallowance), the Public Entity shall, within 30 days of written demand from AHCCCS, make a payment to AHCCCS equal to any difference between the amount not collected from the Eligible Hospital and the amount due to CMS as the

result of the disallowance, including any interest incurred as a result of an appeal of the disallowance.

**6. COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS FOR STATE FINANCIAL PARTICIPATION.**

- 6.1. Public Entity warrants that, consistent with 42 C.F.R. Part 433, Subpart B, and any other federal law or regulation applicable to the permissibility of funding sources, no portion of the funds transferred to AHCCCS are derived from (1) direct or indirect provider-related donations (in cash or in kind), other than bona fide provider-related donations or (2) health care-related taxes other than as permitted in Subpart B and any other federal law or regulation applicable to the permissibility of funding sources.
- 6.2. No pre-arranged agreements (contractual, voluntary, or otherwise) may exist between the health care providers and AHCCCS, the State and/or the Public Entity, or third parties to return and/or redirect any portion of the DSH payments in a manner inconsistent with the requirements in Section 1903(w) of the Social Security Act and its implementing regulations. Payments by health care providers that are the normal operating expenses of conducting business, such as payments related to taxes, including health care provider-related taxes, fees, and business relationships with governments that are unrelated to Medicaid and in which there is no connection to Medicaid payments, are not prohibited by this Agreement.
- 6.3. Public Entity agrees to provide AHCCCS with supporting documentation that provides a detailed description (including but not limited to the amount, source, and uses) and the legal basis for (1) each direct or indirect provider-related donation (in cash or in kind) received by the Public Entity including all bona fide and presumed-to-be bona fide donations, and (2) all taxes collected and transferred by the Public Entity to AHCCCS under this Agreement.
- 6.4. If Public Entity fails to provide supporting documentation required in Section 6.3 of this Agreement, or if any funds transferred by Public Entity are determined to be derived from provider-related donations or health care-related taxes such that CMS adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS immediately, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the impermissible provider-related donation and/or health care-related tax. Immediate payment by the Public Entity does not relieve AHCCCS of its authority under Section 4.2 of this Agreement to pursue recoupment from the Eligible Hospitals or its obligation under Section 4.4 to return to the Public Entity the Non-federal portion of amounts recouped from the Eligible Hospitals.
- 6.5. Public Entity certifies that, consistent with 42 C.F.R. § 433.51(c), and any other federal law or regulation applicable to the permissibility of funding sources, the funds transferred to AHCCCS under this Agreement are not federal funds or are federal funds authorized by federal law to be used to match other federal funds. If any funds transferred to AHCCCS under this Agreement are determined to be federal funds such that the Center for Medicare and Medicaid adjusts future grant awards to AHCCCS or defers or disallows any expenditures claimed by AHCCCS, then Public Entity agrees to reimburse AHCCCS, upon demand by AHCCCS, in the amount of the adjustment or disallowance that is attributable to the transfer of federal funds. Immediate payment by the Public Entity does not relieve AHCCCS of its authority under Section 4.2 of this Agreement to pursue recoupment from the Eligible Hospitals or its obligation under Section 4.4 to return to the Public Entity the non-federal portion of amounts recouped from the Eligible Hospitals.

- 6.6. Public Entity certifies that the funds transferred to AHCCCS as described in this Agreement are made voluntarily and that neither the State nor AHCCCS has through statute, rule, or otherwise required the Public Entity to provide the funding.

## **7. GENERAL PROVISIONS.**

- 7.1. Entire Agreement. This document, its attachments, and appendices, including any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the Parties, and supersedes all other understandings, oral or written.
- 7.2. Exercise of Rights. Failure to exercise any right, power or privilege under this Agreement will not operate as a waiver thereof, nor will a single or partial exercise thereof preclude any other or further exercise of that or any other right, power, or privilege.
- 7.3. Contract Term. Notwithstanding the facts that certain AHCCCS or Public Entity obligations under this Agreement occur after the Term hereof, the parties agree that the Term of this Agreement commences when signed by both parties and continues through the later of conclusion of: (1) any payment reconciliations required by the State Plan or (2) audits of DSH payments as required by 42 CFR Part 447, Subpart E.
- 7.4. Compliance with Laws, Rules, and Regulations. AHCCCS, the Public Entity, Eligible Hospitals, and their subcontractors must comply with all applicable federal and state laws, rules, regulations, standards, and Executive Orders, without limitation to those designated within this Agreement.
  - 7.4.1. Non-Discrimination. The parties shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out their duties pursuant to this Agreement. The Parties shall comply with the provisions of Arizona Executive Order 2023-01, incorporated into this Agreement by reference, as if set forth in full herein.
  - 7.4.2. ADA. The parties shall comply with all applicable provisions of the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008 (together, "the Acts"), 42 U.S.C. 12101-12213, and all applicable federal regulations under the Acts, including 28 CFR Parts 35 and 36.
- 7.5. Choice of Law. The laws and regulations of the State of Arizona govern the rights of the Parties, the performance of this Agreement, and any disputes arising from the Agreement.
- 7.6. Compulsory Arbitration. Any action relating to this Agreement must be brought by arbitration to the extent required by A.R.S. § 12-1518 or in an appropriate court. Any arbitration award will be enforced in an appropriate court.
- 7.7. Amendments. This Agreement, including its term, may be modified only through a duly authorized written amendment, executed with the same formality as the Agreement.

7.8. Notice. Any notice required by the terms of the Agreement and any questions regarding the duties and obligations of this contract shall be directed to:

7.8.1. For AHCCCS:

Meggan LaPorte, CPPO, MSW  
Chief Procurement Officer  
Phone: 602-417-4538  
Email: [Procurement@azahcccs.gov](mailto:Procurement@azahcccs.gov)

7.8.2. For the Public Entity:

[insert name and contact information for the appropriate individual at the Public Entity]

7.8.3. AHCCCS and the Public Entity will give notice by regular mail or any other means reasonably anticipated to provide actual notice to the other party of any change of the address, telephone number, name of the authorized signatory or designee; or name and/or address of the person to whom notices are to be sent.

7.9. Termination. Pursuant to A.R.S. § 38-511, either party to this Agreement may terminate this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of, agent of, or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation will be effective when AHCCCS or the Public Entity receives written notice of the cancellation unless the notice specifies a later time.

7.10. Records. The Parties, including Eligible Hospitals, agree to retain all financial books, records, and other documents and will contractually require each subcontractor to retain all data and other records relating to the acquisition and performance of the Agreement for a period of five (5) years after the completion of the Agreement. All records are subject to inspection and audit by the Parties at reasonable times. Upon request, the Parties will produce a legible copy of any or all such records.

7.11. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held by a court to be invalid or unenforceable, the remaining provisions continue to be valid and enforceable to the full extent permitted by law.

7.12. Indemnification. Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

7.13. No Third-Party Beneficiaries. Nothing in the provisions of this Agreement is intended to (1) create duties or obligations to or rights in Eligible Hospitals or any other persons or entities not parties to this Agreement or (2) effect the legal liability of either party to the Agreement with respect to Eligible Hospitals or any other persons or entities not parties to this Agreement.



7.14. No Joint Venture. Nothing in this Agreement is intended to create a joint venture between or among the Parties, including the Eligible Hospitals, and it will not be so construed. Neither AHCCCS's nor the Public Entity's employees will be considered officers, agents or employees of the other or be entitled to receive any employment related fringe benefits from the other.

**ATTACHMENT A**

Pursuant to the Agreement:

- (1) the Public Entity has designated the hospitals listed below as Eligible Hospitals,
- (2) the Public Entity has agreed to transfer public funds in the amount specified below as the non-federal Share of DSH Payments to each Eligible Hospital; and AHCCCS has agreed to use the transferred funds to make the DSH Payments specified below:

<b>Eligible Hospital</b>	<b>Non-Federal Share</b>	<b>DSH Payment</b>
[Insert eligible hospital(s)]	\$ 0.00	\$ 0.00
<b>Totals:</b>	\$ 0.00	\$ 0.00

Pursuant to the Agreement, the Public Entity warrants that the amounts transferred under the Agreement are derived from the following sources meeting the requirements of 42 C.F.R. Part 433, Subpart B and any other federal law or regulation applicable to the permissibility of funding sources:

<b>Source</b>	<b>Amount</b>
[Insert source]	\$ 0.00
<b>Total:</b>	\$ 0.00

**ATTACHMENT B**  
**AGREEMENT TO REIMBURSE IMPERMISSIBLE DISPROPORTIONATE SHARE HOSPITAL PAYMENTS**

As a condition of receiving Disproportionate Share Hospital (DSH) Payments from AHCCCS under A.R.S. § 36-2903.01(P), the undersigned Hospital agrees that in the event CMS issues a disallowance of FFP based on a determination that the source of the funds transferred by any Governmental Entity in support of DSH payments to the Hospital are either federal funds, provider-related donations, or health care-related taxes that are not permissible under 42 C.F.R. Part 433, Subpart B, or any other federal law or regulation applicable to the permissibility of funding sources, the Hospital will, upon final exhaustion of any administrative appeal related to such disallowance,:

- (1) refund to AHCCCS within 30 days of written demand an amount of the DSH payments made to the Hospital equal to the total computable amount associated with such disallowance, including any interest incurred as a result of an appeal; and/or
- (2) permit AHCCCS to offset the amount referenced in (1), to the extent it is not refunded, from any amounts otherwise due to the Hospital.

**DEFINITIONS.** As used in this Agreement to Reimburse Impermissible Disproportionate Share Hospital Payments (“Agreement”), the following terms have the following meanings:

AHCCCS: Arizona Health Care Cost Containment System, an agency of the State, which administers the Medicaid program under Title XIX of the Social Security Act and the Children’s Health Insurance Program (CHIP) under Title XXI of the Social Security Act in Arizona.

CMS: The Centers for Medicare and Medicaid Services, a federal agency within the U.S. Department of Health and Human Services.

FFP or Federal Financial Participation: the federal monies that AHCCCS claims from CMS for the federal share of AHCCCS expenditures for the administration of and services paid for through the Medicaid Program, Title XIX of the Social Security Act.

Governmental Entity: local, county, or tribal governments, or universities under the jurisdiction of the Arizona board of regents, or other governmental entities that are legally qualified to participate in funding program expenditures pursuant to A.R.S. § 36-2903.01(P) and that have transferred funds to AHCCCS under that authority.

Hospital: the undersigned Hospital, including the hospital and its employed physicians.

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2024, by:

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of: \_\_\_\_\_ [Name of Hospital]