

NCQA Terms of Use for Certain CMS Program/Model Participants

These Terms of Use are a legal agreement between the individual or entity downloading and using certain NCQA measures and specifications (“**Measure Specifications**”) and other NCQA intellectual property, to including but not be limited to NCQA Risk Adjustment Tables and Medication List Directory (“**Other NCQA IP**”) (the Measure Specifications and Other NCQA IP shall be collectively referred to as the “**NCQA Materials**”) to fulfill requirements of certain Centers for Medicare and Medicaid Services (“**CMS**”) programs/models (hereinafter the “**Participant**”) and the National Committee for Quality Assurance (“**NCQA**”). “Participant” means only the individual or legal entity whose authorized acceptance provides agreement to the below terms.

Permitted Use

NCQA grants the Participant permission to use the NCQA Materials for the **sole purpose** of fulfilling the requirements of one or more of the following CMS programs/models, as applicable (collectively, the “Programs”):

- Innovations in Behavioral Health (IBH)
- Making Care Primary (MCP)
- Maryland Total Care of Cost (TCOC)
- Primary Care First (PCF)
- States Advancing All-Payer Health Equity Approaches and Development (AHEAD)
- Vermont All-Payer Accountable Care Organization (ACO)

Any other use, including but not limited to internal quality improvement activities or research, is prohibited. Such uses require purchase of the NCQA Materials from the NCQA Store and/or a custom license from NCQA.

Participant may not provide the NCQA Materials to any other person, entity, organization or association. Except for employees of the Participant, each person, entity, organization or association, **including agents and consultants of the Participant**, is required to separately purchase a license to obtain and access the NCQA Materials. ***For clarity, vendors or consultants of the Participant must obtain a separate license with NCQA to use the NCQA Materials, including to assist the Participant in calculating measure results for the Programs.***

Third-Party Codes

The Measure Specifications expressly exclude all third-party code values contained in the provided value sets (“**Value Sets**”) which are owned, licensed or otherwise provided by third parties and protected under federal copyright laws (“**Third-Party Codes**”).

The Third-Party Codes include, without limitation, CPT® by American Medical Association, LOINC® by Regenstrief Institute, Inc., SNOMED CT® by the International Health Terminology Standards Development Organisation, RxNorm by the U.S. National Library of Medicine and Uniform Billing Codes by the American Hospital Association. These Third-Party Codes may be protected under federal copyright laws and are included in the Measure Specifications with the permission of the copyright owners. Nothing in these Terms of Use shall grant, or shall be

deemed to grant, to Participant a right or license to use, reproduce, distribute, incorporate or display the Third-Party Codes. All uses of such Third-Party Codes may require a license from the copyright owner, which Participant acknowledges and agrees that it is solely responsible for obtaining directly from the copyright owners and that NCQA has no liability or responsibility for such Third-Party Codes or claims arising out of the use thereof by Participant. Participant agrees to defend, indemnify and hold harmless NCQA and its directors, officers, employees and agents from and against any and all liability, loss, cost, expense (including reasonable attorney fees), damage, or claim asserted by any third party alleged to arise out of or otherwise relate to Participant's use, reproduction, distribution, incorporation or display of the Third-Party Codes.

Copyright Notices

The below Measure Certification Disclaimer must be displayed once on each (i) web page and (ii) in each printed document or related publication that displays results/rates from the Measure Specifications.

NCQA Measure Certification Disclaimer

Adjusted Uncertified Measures: A calculated measure result (a "rate") from a HEDIS measure that has not been certified via NCQA's Measure Certification Program, and is based on adjusted HEDIS specifications, may not be called an "Adjusted HEDIS rate" until it is audited and designated reportable by an NCQA-Certified HEDIS Compliance Auditor. Until such time, such measure rates shall be designated or referred to as "Adjusted, Uncertified, Unaudited HEDIS Rates."

Restrictions

Except as expressly authorized or provided for herein, Participant shall:

- a) not delete or in any manner alter any notices, disclaimers or other legends contained in the NCQA Materials or appearing on any documents or other materials obtained with the NCQA Materials;
- b) not use the Third-Party Codes or any portion thereof without an authorized license from the copyright owners;
- c) not authorize or permit any third-party or affiliate, subsidiary or related entity to use the NCQA Materials;
- d) not reverse engineer, decompile or disassemble the NCQA Materials or prepare derivative works from the Measure Specifications or any portion thereof; and
- e) not use the NCQA Materials or any portion thereof for any purpose other than as specifically set forth in these Terms of Use.

Ownership

Title to and full ownership of the NCQA Materials and all intellectual property rights therein (including, but not limited to, all copyrights, patent rights, and trade secret rights) belong to NCQA or NCQA has obtained the necessary rights in the NCQA Materials (except as otherwise set forth regarding third party copyright ownership of portions of the Value Sets) to grant the rights and licenses set forth herein. NCQA's name and logo, and all other names, logos, icons, trademarks, and/or service marks identifying NCQA and its programs, product(s) and services are proprietary trademarks of NCQA and any use not expressly provided for in these Terms of Use is strictly prohibited.

Disclaimer

NCQA MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE NCQA MATERIALS OR ANY OTHER INFORMATION OR MATERIALS DELIVERED PURSUANT TO THESE TERMS OF USE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND NCQA DISCLAIMS AND MAKES NO WARRANTY OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE MEASURE SPECIFICATIONS. THE USE OF THE NCQA MATERIALS IS ENTIRELY AT PARTICIPANT'S OWN RISK AND NCQA SHALL HAVE NO LIABILITY OR RESPONSIBILITY THEREFOR.

Indemnity

PARTICIPANT AGREES TO INDEMNIFY AND HOLD NCQA HARMLESS FROM ANY CLAIMS, LAWSUITS, PROCEEDINGS, COSTS, ATTORNEYS' FEES, DAMAGES OR OTHER LOSSES ARISING OUT OF OR RELATING TO THE PARTICIPANT'S USE OF THE NCQA MATERIALS.

Limitation of Liability

NCQA SHALL HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE OR INTERPRETATION OF THE NCQA MATERIALS, INCLUDING BUT NOT LIMITED TO THE IMPACT, PROVISION OR STANDARD OF MEDICAL CARE, WHETHER OR NOT NCQA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL NCQA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS OR LOSS OF BUSINESS, EVEN IF NCQA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Termination

NCQA may terminate these Terms of Use at any time and without notice if Participant violates any of the terms and conditions hereof. Upon termination, all rights under these Terms of Use will cease.

Miscellaneous

These Terms of Use represent the complete agreement between the parties concerning its subject matter and shall supersede all other agreements, whether written or oral, with respect to such subject matter. Failure to insist on strict performance of any term of these Terms of Use will not operate as a waiver of any subsequent default or failure of performance. If any portion of these Terms of Use is determined by a court of competent jurisdiction or any appropriate legislature or governmental agency to be wholly or partially unenforceable, for any reason, such term shall be deemed to be modified to the minimum extent necessary to comply with such law, ruling or regulation, and the remainder of these Terms of Use shall not be affected thereby. These Terms of Use are deemed to be made under and shall be interpreted in accordance with the laws of the District of Columbia, without regard to its conflict of law principles.