

## **BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (“Agreement”) is entered into by and between the **DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI** (hereinafter “DOM”), and **MISSISSIPPI STATE DEPARTMENT OF HEALTH** (hereinafter “Business Associate”), hereinafter collectively referred to as the Parties, and enters this agreement for the sole purpose of analyzing whether Medicaid enrollment numbers in each county in Mississippi can be determined not to be individually identifiable health information pursuant to 45 C.F.R. §164.514(b)(1). In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, and in order to comply with all legal requirements for the protection of this information, the Parties therefore agree as follows:

### **I. RECITALS:**

- a. DOM is a state agency that acts both as an employer and as a Health Plan for public benefit with a principal place of business at 550 High Street, Suite 1000, Jackson, MS 39201.
- b. Business Associate is a state agency, or governmental entity with a principal place of business 570 East Woodrow Wilson Drive, Jackson, MS 39216.
- c. Pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 (as amended by the Genetic Information Nondiscrimination Act (“GINA”) of 2008 and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (“ARRA”) of 2009) and its implementing regulations, including 45 C.F.R. Parts 160 and 164, Subparts A and E (“Privacy Rule”), and Subparts A and C (“Security Rule”):
  - i. DOM, as a Covered Entity is required to enter into this Agreement to obtain satisfactory assurances that Business Associate will comply with and appropriately safeguard all Protected Health Information (“PHI”) used, disclosed, created, or received by Business Associate for or on behalf of DOM, and
  - ii. Certain provisions of HIPAA and its implementing regulations apply to Business Associate in the same manner as they apply to DOM and such provisions must be incorporated into this Agreement;
  - iii. Moreover, Business Associate is also a Covered Entity in its role as a healthcare provider. As such, Business Associate hereby agrees to protect any PHI used, disclosed, created, or received by Business Associate on behalf of DOM.
- d. DOM desires Business Associate to provide an analysis regarding whether Medicaid enrollment numbers in each county in Mississippi can be determined not to be individually identifiable health information pursuant to 45 C.F.R. §164.514(b)(1). This would involve both the disclosure of PHI by DOM to Business Associate and the creation or use of PHI by

Business Associate for or on behalf of DOM. Business Associate desires to perform the function stated in this paragraph, which involves the exchange of information. This agreement constitutes the only agreement between the Parties regarding the purpose described herein, and there is no underlying Service Agreement.

- e. For purposes of this Agreement, the PHI disclosed to Business Associate shall be Medicaid enrollment numbers in each county in Mississippi.

## **II. DEFINITIONS:**

- a. “Breach” shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and subject to the exceptions set forth in 45 C.F.R. § 164.402.
- b. “Business Associate” shall mean Mississippi State Department of Health, including all workforce members, representatives, agents, successors, heirs, and permitted assigns.
- c. “Confidential Information” is construed broadly to mean all DOM information and data of any kind, including, but not limited to:
  - i. All data that is collected, stored, processed, or generated by or on behalf of DOM;
  - ii. Any information from which an individual may be uniquely identified, including, without limitation, an individual’s name, address, telephone number, social security number, birth date, account numbers, and healthcare information;
  - iii. Protected Health Information (PHI) as defined by 45 C.F.R. § 160.103;
  - iv. Personally Identifiable Information (PII) which is defined by the United States Government Accountability Office (GAO) as, “any information about an individual maintained by an agency, including, any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and, any other information that is linked or linkable to an individual, such as a medical, education, financial, and employment information”;
  - v. All data provided to DOM by the Social Security Administration (SSA);
  - vi. All data and information provided to DOM by a Contractor, including data and information the Contractor originally received from a subcontractor;
  - vii. Any reference to the identity, physical location, and financial information of a DOM employee and any other personal information protected by federal and Mississippi law;

- viii. Any reference to the identity, physical location, financial information, and medical services of a DOM provider and any other DOM provider information protected by federal and Mississippi law;
  - ix. All non-public DOM information, including financial statements, projections, business plans, trade secrets, data, business records, emails, letters, telephone calls, memoranda, customer lists, supplier agreements, partnership or joint venture agreements, service agreements and contracts, sales and marketing plans, employee lists, policies and procedures, information relating to processes, techniques, technologies, software programs, source codes, schematics, designs, server and network configurations; and,
  - x. Any or all other sensitive, confidential, or proprietary information that has been classified, marked, or announced as sensitive, confidential, or proprietary, or which, because of the circumstances of disclosure or the nature of the information itself, would be reasonably understood to be sensitive, confidential, or proprietary.
- d. "Covered Entity" shall mean the Division of Medicaid in the Office of the Governor, an administrative agency of the State of Mississippi.
  - e. "Data Aggregation" shall have the same meaning as the term "Data aggregation" in 45 C.F.R. § 164.501.
  - f. "Designated Record Set" shall have the same meaning as the term "Designated record set" in 45 C.F.R. § 164.501.
  - g. "Disclosure" shall have the same meaning as the term "Disclosure" in 45 C.F.R. § 160.103.
  - h. "DOM" shall mean the Division of Medicaid in the Office of the Governor, an administrative agency of the State of Mississippi.
  - i. "Health Plan" shall have the same meaning as the term "Health plan" in 45 C.F.R. § 160.103.
  - j. "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
  - k. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.
  - l. "Protected Health Information" shall have the same meaning as the term "Protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or for or on behalf of DOM.
  - m. "Required by Law" shall have the same meaning as the term "Required by law" in 45 C.F.R. § 164.103.

- n. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- o. "Security Incident" shall have the same meaning as the term "Security incident" in 45 C.F.R. § 164.304.
- p. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- q. "Service Agreement" shall mean any applicable Memorandum of Understanding ("MOU"), agreement, contract, or any other similar device, and any proposal or Request for Proposal ("RFP") related thereto and agreed upon between the Parties, entered into between DOM and Business Associate.
- r. "Standard" shall have the same meaning as the term "Standard" in 45 C.F.R. § 160.103.
- s. "Unsecured Protected Health Information" shall have the same meaning as the term "Unsecured protected health information" in 45 C.F.R. § 164.402.
- t. "Use" shall have the same meaning as the term "use" in 45 C.F.R. § 160.103.
- u. "Violation" or "Violate" shall have the same meaning as the terms "Violation" or "violate" in 45 C.F.R. § 160.103.

All other terms not defined herein shall have the meanings assigned in HIPAA and its implementing regulations.

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:**

- a. Business Associate agrees to not use or disclose PHI or other Confidential Information other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with the Security Rule, to prevent use or disclosure of PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or other Confidential Information by Business Associate in Violation of the requirements of this Agreement.
- d. Business Associate agrees to notify DOM without unreasonable delay, and no later than seventy-two (72) hours after discovery of any actual or suspected Breach of Unsecured PHI, all in accordance with 45 C.F.R. § 164.410. The notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all Individuals whose Unsecured PHI is reasonably believed by Business Associate to have been Breached along with any other available information that is required to be included in the notification to

the Individual, HHS, and/or the media, all in accordance with the data Breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 and 164, Subparts A, D, and E.

- e. Once an actual or suspected Breach is reported to DOM, Business Associate agrees to provide a written assessment to determine whether the incident is reportable within ten (10) working days. An impermissible use or disclosure of protected health information is presumed to be a Breach unless the Covered Entity or Business Associate, as applicable, demonstrates there is a low probability the PHI has been compromised or one of the exceptions to the definition of Breach applies, all in accordance with 45 C.F.R. §164.410.
- f. Business Associate agrees to notify DOM without unreasonable delay, and no later than seventy-two (72) hours after discovery, any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, and any Security Incident of which it becomes aware.
- g. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI or Confidential Information on behalf of the Business Associate agree to the same restrictions and conditions that apply to the Business Associate with respect to such information, in accordance with 45 C.F.R. §§ 164.308 and 164.502.
- h. Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Business Associate agree to comply with the applicable requirements of the Security Rule and Privacy Rule by entering into a Business Associate Agreement, in accordance with 45 C.F.R. §§ 164.308, 164.314, 164.502, and 164.504, and Business Associate shall provide DOM with a copy of all such executed agreements between Business Associate and Business Associate's subcontractors. Business Associate understands that submission of their subcontractors' Business Associate Agreement(s) to DOM does not constitute DOM approval of any kind, including of the use of such subcontractors or of the adequacy of such agreements.
- i. Business Associate agrees to provide access, at the request of DOM, and in the time and manner designated by DOM, to PHI in a Designated Record Set, to DOM or, as directed by DOM, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- j. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that DOM directs or agrees to pursuant to 45 CFR § 164.526 at the request of DOM or an Individual, and in the time and manner designated by DOM.
- k. Business Associate agrees to document such Disclosures of PHI and information related to such Disclosures as would be required for DOM to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate agrees to retain such documentation for at least six (6) years after the date of disclosure. The provisions of this section shall survive termination of this Agreement for any reason.
- l. Business Associate agrees to provide to DOM or an Individual, in a time and manner designated by DOM, information collected in accordance with section (III)(j) of this

Agreement, to permit DOM to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.

- m. Business Associate agrees that it shall only use or disclose the minimum PHI necessary to provide an analysis regarding whether Medicaid enrollment numbers in each county in Mississippi can be determined not to be individually identifiable health information pursuant to 45 C.F.R. §164.514(b)(1). Business Associate agrees to comply with any guidance issued by the Secretary on what constitutes “minimum necessary” for purposes of the Privacy Rule, and any minimum necessary policies and procedures communicated to Business Associate by DOM.
- n. Business Associate agrees that to the extent that Business Associate carries out DOM’s obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to DOM in the performance of such obligation.
- o. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of DOM available to the Secretary for purposes of determining DOM's compliance with the Privacy Rule.
- p. Business Associate agrees that nothing in this Agreement shall permit Business Associate to access, store, share, maintain, transmit or use or disclose PHI in any form via any medium with any third party, including Business Associate’s subcontractors, beyond the boundaries and jurisdiction of the United States without express written authorization from DOM.
- q. Business Associate agrees that all DOM data shall not be co-mingled with other trading partner’s data, and shall be easily identifiable and exportable. DOM Data shall be stored in an individual structure in accordance with the following: Business Associate shall create an instance (single-tenant) of the particular database software utilized by Business Associate, and only DOM data shall reside in that instance of the database. The intent of this section is not to require separate procurement of hardware specific to DOM, however DOM data must not reside in a database that contains other entities’ data.
- r. Business Associate agrees that all DOM data will be encrypted using industry standard algorithms Triple DES/DESK, AES or SSL/TLS.
- s. Business Associate agrees to comply with the State of Mississippi ITS Enterprise Security Policy, which will be provided upon request.
- t. The provisions of the HITECH Act that apply to Business Associate and are required to be incorporated by reference in a business associate agreement are hereby incorporated into this Agreement, including, without limitation, 42 U.S.C. §§ 17935(b), (c), (d) and (e), and 17936(a) and (b), and their implementing regulations.
- u. Without limitation of the foregoing:

- i. Pursuant to 42 U.S.C. § 17931(a), the following sections of the Security Rule shall apply to Business Associate in the same manner as they apply to DOM: 45 C.F.R. §§ 164.308 (Administrative Safeguards); 164.310 (Physical Safeguards); 164.312 (Technical Safeguards); and 164.316 (Policies and procedures and documentation requirements).
- ii. 42 U.S.C. §§ 17931(b) and 17934(c), and their implementing regulations, each apply to Business Associate with respect to its status as a business associate to the extent set forth in each such section.

#### **IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE:**

- a. General Use and Disclosure Provisions: Subject to the terms of this Agreement, Business Associate may Use or Disclose PHI to provide an analysis regarding whether Medicaid enrollment numbers in each county in Mississippi can be determined not to be individually identifiable health information pursuant to 45 C.F.R. §164.514(b)(1), provided that such Use or Disclosure would not violate what is required by Law or the Privacy Rule if done by DOM, except for the specific Uses and Disclosures set forth below, for the purpose(s) stated in this paragraph.
- b. Specific Use and Disclosure Provisions:
  - i. Business Associate may use PHI, if necessary, for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, only as it relates to the purpose stated in Section IV(a).
  - ii. Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that Disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached.
  - iii. If Business Associate must disclose PHI pursuant to law or legal process, Business Associate shall notify DOM without unreasonable delay and at least ten (10) business days in advance of any disclosure so that DOM may take appropriate steps to address the disclosure, if needed.
  - iv. Business Associate may use PHI to provide Data Aggregation services exclusively to DOM as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

## **V. OBLIGATIONS OF DOM:**

- a. DOM shall provide Business Associate with the Notice of Privacy Practices that DOM produces in accordance with 45 C.F.R. § 164.520, attached hereto as Attachment “A” and wholly incorporated herein, as well as any changes to such Notice of Privacy Practices.
- b. DOM shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. DOM shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- d. DOM shall notify Business Associate of any restriction to the use or disclosure of PHI that DOM has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- e. Permissible Requests by DOM: DOM shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by DOM, except as provided for in section (IV)(b) of this Agreement.

## **VI. TERM AND TERMINATION:**

- a. Term. The effective date of this Agreement is the first date on which the Agreement has been signed by both of the signatories hereto. This Agreement shall terminate when all of the PHI provided by DOM to Business Associate, or created or received by Business Associate on behalf of DOM, is destroyed or returned to DOM.
- b. Termination for Cause. Upon DOM's knowledge of a material Breach or Violation by Business Associate, DOM shall, at its discretion, either:
  - i. Provide an opportunity for Business Associate to cure the Breach or end the Violation and terminate this Agreement, if Business Associate does not cure the Breach or end the Violation within the time specified by DOM, or
  - ii. Immediately terminate this Agreement if Business Associate has Breached a material term of this Agreement and cure is not possible.
- c. Effect of Termination.
  - i. Upon completion of the purpose of this Agreement or termination of this Agreement for Cause, for any reason, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, DOM in accordance with State and Federal retention guidelines. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.



- ii. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to DOM notification of the conditions that make return or destruction infeasible. Upon notification in writing that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **VII. MISCELLANEOUS:**

- a. Statutory and Regulatory References. A reference in this Agreement to a section in HIPAA, its implementing regulations, or other applicable law means the section as in effect or as amended, and for which compliance is required.
- b. Amendments/Changes in Law.
  - i. General. Modifications or amendments to this Agreement may be made upon mutual agreement of the Parties, in writing signed by the Parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. Such modifications or amendments signed by the Parties shall be attached to and become part of this Agreement.
  - ii. Amendments as a Result of Changes in the Law. The Parties agree to take such action as is necessary to amend this Agreement as is necessary to effectively comply with any subsequent changes or clarifications of statutes, regulations, or rules related to this Agreement. The Parties further agree to take such action as is necessary to comply with the requirements of HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.
  - iii. Procedure for Implementing Amendments as a Result of Changes in Law. In the event that there are subsequent changes or clarifications of statutes, regulations or rules relating to this Agreement, or the Parties' compliance with the laws referenced in section (VII)(b)(ii) of this Agreement necessitates an amendment, the requesting party shall notify the other party of any actions it reasonably deems are necessary to comply with such changes or to ensure compliance, and the Parties promptly shall take such actions. In the event that there shall be a change in the federal or state laws, rules or regulations, or any interpretation of any such law, rule, regulation, or general instructions which may render any of the material terms of this Agreement unlawful or unenforceable, or materially affects the financial arrangement contained in this Agreement, the Parties may, by providing advanced written notice, propose an amendment to this Agreement addressing such issues.
- c. Survival. The respective rights and obligations of Business Associate provided for in sections (III)(j) and (VI)(c) of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit DOM to comply with HIPAA, its implementing regulations, and other applicable law relating to the security and privacy of PHI.

- e. Indemnification. Business Associate's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. DOM's liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to DOM or the State under statute.
- f. Disclaimer. DOM makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, its implementing regulations, or other applicable law will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized Use or Disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- g. Notices. Any notice from one party to the other under this Agreement shall be in writing and may be either personally delivered, emailed, or sent by registered or certified mail in the United States Postal Service, Return Receipt Requested, postage prepaid, addressed to each party at the addresses which follow, or to such other addresses provided for in this Agreement, or as the Parties may hereinafter designate in writing. Any such notice shall be deemed to have been given as of the date transmitted.

For DOM:       DOM Privacy Officer  
Office of the Governor, Division of Medicaid  
550 High Street, Suite 1000  
Jackson, MS 39201

For Business Associate:   Chief Health Data, Operations, and Research Officer  
Mississippi State Department of Health  
507 East Woodrow Wilson Drive  
Jackson, MS 39216

- h. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.
- i. Applicable Law. This Agreement shall be construed broadly to implement and comply with the requirements relating to HIPAA and its implementing regulations. All other aspects of this Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. Business Associate shall comply with applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may


be amended or modified. Where provisions of this Agreement differ from those mandated by such laws and regulations, but are nonetheless permitted by such laws and regulations, the provisions of this Agreement shall control.


- j. Non-Assignment and Subcontracting. Business Associate shall not assign, subcontract, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of DOM. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by DOM of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of DOM regarding compensation. Subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that DOM may deem necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties. DOM may assign its rights and obligations under this Agreement to any successor or affiliated entity.
- k. Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior discussions, instructions, directions, understandings, negotiations, agreements, and services for like services. No underlying Service Agreement or other document exists with regard to the purpose of this Agreement.
- l. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors, heirs, or permitted assigns, any rights, remedies, obligations, or liabilities whatsoever.
- m. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any workforce members, contractors, subcontractors, representatives, agents, affiliates, or subsidiaries assisting Business Associate in the fulfillment of its obligations under this Agreement, available to DOM, at no cost to DOM, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DOM, its directors, officers, or any other workforce member based upon claimed Violation of HIPAA, its implementing regulations, or other applicable law, except where Business Associate or its workforce members, contractors, subcontractors, representatives, agents, affiliates, or subsidiaries are a named adverse party.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to be effective on the date provided for in section (VI)(a) of this Agreement.

**Mississippi Division of Medicaid**

**Business Associate**

By:   
\_\_\_\_\_  
Drew L. Snyder  
Executive Director

DocuSigned by:  
By:   
\_\_\_\_\_  
Name: ~~DR. THOMAS DOBBS~~  
Title: State Health Officer

Date: 1/10/2020

Date: 1/1/2020 | 5:20 AM CST

**AMENDMENT #3  
TO THE INTERAGENCY AGREEMENT  
BETWEEN  
THE DIVISION OF MEDICAID  
IN THE OFFICE OF THE GOVERNOR  
STATE OF MISSISSIPPI  
AND  
MISSISSIPPI STATE DEPARTMENT OF HEALTH**

**(First Steps Early Intervention Program)**

**THIS AMENDMENT #3** modifies, revises, and amends the Interagency Agreement between the **DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as "DOM", and the **MISSISSIPPI STATE DEPARTMENT OF HEALTH**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as "Department", for implementation of the First Steps Early Intervention Program (EIP) under Part C of the Individuals with Disabilities Education Act (IDEA) of 2011.

**WHEREAS**, DOM and Department entered into an Interagency Agreement for the implementation of the First Steps Early Intervention Program (EIP) under Part C of the Individuals with Disabilities Education Act (IDEA) of 2011 (such Interagency Agreement, together with all attachments and amendments thereto, shall be referred to herein as "the Agreement");

**WHEREAS**, the Department's First Steps Early Intervention Program (EIP) serves beneficiaries birth to three (3) years of age that meet the eligibility requirements of a medical diagnosis, exhibit a developmental delay of thirty-three percent (33%) in any one area of development or a twenty-five percent (25%) delay in two (2) or more areas of development or are determined eligible by clinical opinion medically necessary services provided to eligible Medicaid beneficiaries, and eligible under Part C of Individuals with Disabilities Education Act (IDEA).

**WHEREAS**, the need for aforesaid services is ongoing, and DOM and Department extended the Agreement for additional years in accordance with Article IV (Period of Performance) through Amendments one and two and DOM and Department desire to extend the Agreement for an additional year through this Amendment three;

**WHEREAS**, Article XIV (Modification or Amendment) of the Agreement provides that the Agreement may be modified or amended if such modification or amendment is mutually agreed upon in writing by DOM and the Department.

**NOW, THEREFORE**, in consideration of the mutual undertaking and conditions as hereinafter set forth, the Agreement is amended as follows:

1. **Article IV, PERIOD OF PERFORMANCE**, is hereby amended to read as follows:

**IV. PERIOD OF PERFORMANCE:** The term of this Agreement shall commence on July 1, 2020 and shall expire on June 30, 2024, unless this Agreement is terminated pursuant to Article XV (Termination). The Agreement may be extended upon mutual agreement of the parties for a subsequent period of one (1) one-year extension, subject to continuing federal authorization, if needed.

2. **Article XXXII, INSPECTIONS**, is hereby amended to read as follows:

**XXXII. RIGHT OF INSPECTION:** Pursuant to the requirements of Title XIX, Section 1902(a)(27) of the Social Security Act, 42 C.F.R. § 434.6(a)(5) and Section 1128A [42 U.S.C. 1320a-7a] and Miss. Code Ann. §§ 43-13-121 and 43-13-229 (1972, as amended), Department agrees that representatives of CMS, the Office of the Inspector General (OIG), the Comptroller General of the U.S. Government Accountability Office (GAO), the Mississippi Office of the State Auditor, Mississippi Medicaid Fraud Control Unit, DOM, and their authorized representatives shall have the right during regular business hours to inspect, audit, and evaluate Department's books, documents, papers, financial records, data, surveys, and computer databases (herein collectively referenced as "records") pertaining to the extent and cost of services furnished to DOM or eligible recipients. This right also includes timely and reasonable access to the any employees, agent, or contractor of the Department for the purpose of interview and discussion related to such records. Access will be at the discretion of the requesting authority and will be either through review of records or by submission of records to the office of the requester. Department shall cooperate fully with the request from any of the agencies listed above and shall furnish free of charge copies of all requested records including, without limitation, any costs associated with making excerpts or transcripts, copying, reproducing, shipping and/or mailing of records. In accordance with 45 C.F.R. §§ 75.346 and 96.614, the Department shall make available to the HHS awarding agency, the GAO, or any representatives thereof, timely and unrestricted access to any books, documents, papers, and other records of the Department that are pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions. There will be no restrictions on the right of the State or Federal government to conduct whatever examinations and audits are necessary to assure quality, appropriateness or timeliness of services and reasonableness of cost.

3. All other terms, conditions, and provisions set out in the Original Agreement and any preceding Amendments, other those modified and amended herein, which are not in conflict with this Amendment #3, shall remain in full force and effect for the duration of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Amendment #3 to be executed by their duly authorized representatives as follows:

**Mississippi Division of Medicaid**

By:   
Drew L. Snyder  
Executive Director

Date: 5/23/23

**Mississippi Department of Health**

By: Daniel Edney, MD  
Daniel P. Edney, MD, FACP, FASAM  
State Health Officer

Date: 5/12/2023 | 11:47 AM CDT

STATE OF MISSISSIPPI  
COUNTY OF Hinds

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Drew L. Snyder**, in his official capacity as the duly appointed **Executive Director of the Division of Medicaid in the Office of the Governor**, an administrative agency of the State of Mississippi, who acknowledged to me, being first duly authorized by said agency that he signed and delivered the above and foregoing written Amendment #3 for and on behalf of said agency, and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 23<sup>rd</sup> day of May, A.D., 2023.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Sept 23, 2024



STATE OF MS  
COUNTY OF Hinds

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Daniel P. Edney, MD, FACP, FASAM**, in his official capacity as the duly appointed **State Health Officer of the Mississippi Department of Health**, an administrative agency of the State of Mississippi who acknowledged to me, being first duly authorized by said Agency that he duly signed and delivered the above and foregoing written Amendment #3 for and on behalf of said Agency and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 10<sup>th</sup> day of May, A.D., 2023.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

May 9, 2027



**INTERAGENCY AGREEMENT  
BETWEEN THE  
DIVISION OF MEDICAID  
IN THE OFFICE OF THE GOVERNOR  
AND THE  
MISSISSIPPI STATE DEPARTMENT OF HEALTH**

**(Family Planning Waiver)**

**THIS AGREEMENT** made and entered into by and between the **DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI**, herein referred to as "DOM," and the **MISSISSIPPI STATE DEPARTMENT OF HEALTH**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as the "Department."

**WHEREAS**, under and by virtue of Miss. Code Ann. § 43-13-101, *et seq.* (1972, as amended), DOM is designated as the "single state agency" and is authorized and empowered to administer the provisions of the Medical Assistance Program as enacted by the Mississippi State Legislature in compliance with Title XIX of the Federal Social Security Act, as amended, and is authorized to enter into contracts and agreements with other state or federal agencies in effecting an efficient delivery of medical assistance;

**WHEREAS**, under and by virtue of Miss. Code Ann. § 41-3-15, *et seq.* (1972, as amended), the Department is the state agency responsible for administering programs to promote public health, which includes, but is not limited to, family planning services and is authorized to enter into cooperative agreements with any federal, state, public or private agency of the state of Mississippi in connection with carrying out the program of the Department; and,

**WHEREAS**, under and by virtue of Miss. Code Ann. § 43-13-117(13), (1972, as amended), DOM is authorized to cooperate with the Department in the development and implementation of statewide family planning services for eligible individuals.

**NOW, THEREFORE**, in furtherance of the mutual responsibilities of the parties hereto, the Agreement is entered into by and between the parties upon the following terms, provisions, and conditions hereinafter stated:

**I. SCOPE OF WORK:**

- A. The purpose of the Family Planning Waiver (FPW) is to allow the State of Mississippi to extend Medicaid eligibility for family planning and family planning



related services to women who are losing Medicaid pregnancy coverage at the conclusion of sixty (60) days postpartum period and individuals (men and women), ages thirteen (13) through forty-four (44), who have family income at or below one hundred ninety-four percent (194%) of the Federal Poverty Level (FPL) post Modified Adjusted Gross Income (MAGI) and who are not otherwise enrolled in Medicaid, the Children's Health Insurance Plan (CHIP), or have other health insurance coverage that provides family planning services.

- B. The Department and DOM shall coordinate and cooperate with each other to provide family planning and family planning related services to women who are losing Medicaid pregnancy coverage at the conclusion of sixty (60) days postpartum period and individuals (men and women), ages thirteen (13) through forty-four (44), who have family income at or below one hundred ninety-four percent (194%) of the FPL post MAGI conversion, and who are not otherwise enrolled in Medicaid, the Children's Health Insurance Plan (CHIP), or have other health insurance coverage that provides family planning services.
- C. Women and men who are served are allowed to secure specific family planning and family planning related services offered through the Mississippi Medicaid FPW program. Family planning services, medications, and supplies are limited to those services, medications, and supplies whose primary purpose is family planning and which are provided in a family planning setting. Family planning related services, medications, and supplies are defined as those services provided as part of or as follow-up to a family planning visit and are provided because a "family planning related" problem was identified and/or diagnosed during a routine or periodic family planning visit. Four annual visits are allowed during the Federal fiscal year.

**II. PERIOD OF PERFORMANCE:** The term of this Agreement shall commence on January 1, 2021, and shall expire on December 31, 2025, unless this Agreement is terminated pursuant to paragraph VIII (Termination). The Agreement may be renewed for subsequent one-year terms upon the mutual written consent of the parties, but the overall term of this Agreement shall not exceed a total of five (5) years.

**III. COORDINATION OF SERVICES:** The Department shall coordinate the performance of the services to be provided hereunder with and through DOM's Office of Medical Services and consult with such Office on specific courses of action which should be pursued.

- A. The Department and DOM shall coordinate outreach and education through statewide approaches and community-based partnerships to improve family planning participation. DOM must approve all published material regarding FPW services prior to distribution to the public. Specific activities to be coordinated between the Department and DOM are described below:
  - 1. The Department will coordinate with DOM to develop and publish a brochure which outlines the covered family planning and family planning related services and will make it available at local public services offices.
  - 2. The Department will coordinate with DOM staff to develop and/or revise other outreach tools for informing the target population which will include

- but not be limited to flyers, posters, fact sheets, news releases that will be scripted using consistent messages.
3. The Department will continue to provide outreach and education for family planning and family planning related services through radio and television public service announcements (PSAs), direct mail promotion, telephone hotline, community outreach partners, website and newsletters, etc.
  4. The Department will conduct appointment reminders, follow-up missed appointments and monitor patient compliance.
- B. The Department and DOM shall coordinate and cooperate with each other in the provision of family planning and family planning related services to reduce the number of unintended pregnancies and improve birth outcomes. Objectives of the waiver extension project are as follows:
1. Improving the access to and use of Medicaid family planning services by women who have received a Medicaid pregnancy related service.
  2. Improving the access to and use of Medicaid family planning-related services by women and men who are not otherwise eligible for Medicaid.
  3. Improving birth outcomes (e.g., low birthweight) and the health of women in the demonstration population.
  4. Increasing the child spacing interval among female FPW enrollees.
  5. Reducing the number of unintended pregnancies among women enrolled in the FPW.
  6. Reducing the overall pregnancy among teenage women in the demonstration population.
  7. Reducing the number of repeat births among teenage women in the demonstration population.
  8. Decreasing the number of Medicaid deliveries which will reduce the annual expenditures for prenatal, delivery and newborn services.
  9. Increasing the overall savings attributable to providing family planning services by covering women for one-year postpartum.

**IV. REPORTING REQUIREMENTS:** The Department shall submit quarterly and annual reports in a format agreed upon by both parties. Reports shall be submitted within twenty (20) days after the last day of each quarter and each year. Reports shall include the following information for Medicaid beneficiaries receiving FPW services through the Department:

1. The number of unduplicated FPW participants by race, age, and gender.
2. The number of FPW beneficiaries who became pregnant by race and age.
3. The number of FPW beneficiaries who tested for a STD/STI and HIV by race, age, and gender.
4. The number of female beneficiaries who received a clinical breast exam.
5. The number of female beneficiaries who obtained a cervical cancer screening.
6. Contraceptive methods by age.
7. Outreach and education efforts.

**V. COST FOR SERVICES:** As full and complete compensation for the services to be provided hereunder, DOM will pay the Department as set forth below:

- A. In providing family planning and family planning related services to the eligible Medicaid population, the Department shall be reimbursed as a provider of medical services through DOM's fiscal agent on an encounter basis for Medicaid beneficiaries.
- B. Claims will be submitted in a CMS-1500 format or the ANSI X12 electronic transmission format utilizing codes established by DOM, or via the Mississippi Envision Web Portal.
- C. If applicable, any oral contraceptives provided by the Department to private providers enrolled with the Department will be at no charge to the provider or the patient.

**VI. BILLING AND DOCUMENTATION OF TIME:** The Department agrees to pay the state matching funds to DOM to match federal funds to support these services. The Department will be responsible for providing matching funds only for the family planning and family planning related services actually provided by the Department and private providers enrolled with the Department to those individuals determined eligible for family planning assistance under the provisions of Miss. Code Ann. § 43-13-115(21) and Title XIX of the Federal Social Security Act. Payment shall be made promptly from monthly billings submitted by DOM which set forth the amount due in state funds. The monthly billing will include an estimate for the Department for the following month based on average claims activity and any state funds expense incurred by the Department. The records substantiating these billings will be subject to audit by the employees of DOM, the Department, the Office of State Audit, or any federal or state cognizance agency with the authority to audit such funds, with adjustments of payments made in accordance with verification of services rendered and expenses incurred.

**VII. NON-ASSIGNMENT AND SUBCONTRACTING:** None of the work to be performed under this Agreement shall be subcontracted other than that which has been currently specified by the Department embracing subcontracted responsibilities or otherwise assigned without prior approval of DOM. Any contract authorized under this Agreement must be in writing with the subcontractor's functions and duties clearly identified. It is specifically agreed that any subcontract let by the Department, after approval of DOM, shall be made subject to the provisions of this Agreement, the federally approved waiver, the precise commitments of the Department as set out herein, and all applicable federal and state laws and regulations. Nothing contained herein shall be construed to exempt a subcontractor from any of the provisions or commitments of this Agreement or the provisions as contained in the Department's proposals to DOM. If the Department should be subcontracting any of the services under this Agreement, it will establish monitoring procedures to review and evaluate the subcontractors' performance and compliance with the terms and conditions of the Agreement. If the Department should subcontract any services under this Agreement, it will assure that Medicaid beneficiaries have freedom of choice of subcontractors/providers for services.

- VIII. MODIFICATION OR AMENDMENT:** Modifications or amendments to this Agreement may be made upon mutual Agreement of the parties, in writing signed by the parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement.
- IX. TERMINATION:** This Agreement shall terminate at any time (1) by mutual consent of the Department and DOM, or (2) upon the giving of thirty (30) days advance written notice to the other party in the manner as prescribed under paragraph XXI (Notices) herein.
- X. AVAILABILITY OF FUNDS:** It is expressly understood and agreed that the obligation of DOM to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of federal and/or state funds. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to DOM, said insufficiencies shall constitute grounds for the voidance of this Agreement, without damage, penalty, cost or expenses to DOM of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Notice of termination under this paragraph need not comply with the thirty (30) day requirement set forth in paragraph VIII (Termination) above.
- XI. WAIVERED SERVICE COMPLIANCE:** The Department and DOM agree to implement and maintain such services and procedures as may be necessary for the proper and orderly administration of the program, including the keeping of all appropriate records (financial and otherwise). In addition, the Department and DOM mutually agree as follows:
- A. DOM will notify the Department in writing of any applicable guidelines and/or regulations established or to be established by DOM or by CMS that will affect this program.
  - B. The Department shall supply DOM with such information as shall be required by CMS and DOM on the impact of the program in accordance with any data collection or similar plan designated by CMS. DOM will provide the Department with timely notice of the information required by CMS.
  - C. DOM and the Department will coordinate their efforts to meet reporting dates and deadlines set by the Federal agency or as defined by DOM and to develop methods of easy exchange of information between the two state agencies on regular dates and as otherwise established by mutual agreement in order that program needs and federal requirements may be met.
  - D. The Department shall schedule and coordinate monthly, or at minimum quarterly, meetings with DOM to discuss and evaluate process, concerns, outreach tools utilized by the Department to promote family planning related services, and other issues related to the FPW Program.
  - E. DOM will maintain a quality assurance process and coordinate with the quality assurance efforts of the Department to ensure a quality family planning program and the delivery of necessary covered services that appropriately address individual

needs. The Department agrees to share data timely upon request by DOM as part of the quality assurance program.

F. As the agency that performs the calculation of vital statistics for the state, the Department agrees to share birth data to ensure State compliance with the birth data reporting requirements under the demonstration. The Department will make available to DOM all documentation and/or records maintained for family planning and family planning related services. The purposes of the quality assurance processes are to:

1. Assure that family planning and family planning related services are accessible to eligible clients.
2. Facilitate access to primary care services to eligible clients by providing referrals, as necessary.
3. To assure that the content of family planning encounters provided through family planning providers follows the guidelines in the Medicaid Family Planning Administrative Code (Title 23: Part 221 Chapter 2: 1115(a) Family Planning and Family Planning Related Waiver Services).
4. Ensure that an effective provider and beneficiary complaint and grievance system is in place.

G. The Department shall assist and cooperate actively with DOM's third party contractors as determined necessary by DOM for the fulfillment of the Department's duties under this Agreement.

**XII. TITLE XIX NONCOMPLIANCE:** It is expressly understood and agreed that the Department will return to DOM any funds paid pursuant to this Agreement that are the subject of any Title XIX noncompliance arising out of or connected with the services. The term "Title XIX noncompliance" shall be construed to mean any failure or inability of DOM through the actions or inactions of the Department for which the Department is responsible under this Agreement to meet the requirements of Title XIX of the federal Social Security Act, and any regulations promulgated by DHHS, CMS, or DOM in connection therewith.

**XIII. SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.

**XIV. CONFIDENTIALITY:** The Department agrees that it shall not use or disclose for any purpose, except as provided for in this Agreement and any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s), any information concerning any recipient of services or provider of services that it may have access to or have knowledge of as a result of providing services to DOM. However, the obligation of confidentiality shall not apply to information that is required to be disclosed pursuant to law or the legal process. If the Department must disclose such information pursuant to law or legal process, the Department shall notify DOM without unreasonable delay and at least five (5)

days in advance of any disclosure so that the Division may take appropriate steps to address the disclosure, if needed. This confidentiality agreement survives the term of the Agreement between DOM and the Department.

- XV. APPLICABLE LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. The Department shall comply with applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified.
- XVI. NON-DISCRIMINATION:** In connection with the performance and obligations of work under this Agreement, the Department understands that DOM is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, political affiliation, ancestry, limited English proficiency, religion, or any other consideration made unlawful by federal, State of Mississippi, or local laws. All such discrimination is unlawful and the Department agrees during the term of the Agreement that the Department will strictly adhere to this policy in its employment practices and provision of services, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and conditions of employment. The Department shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws, regulations, policies, and procedures related to unlawful discrimination, as now existing and as may be amended or modified.
- XVII. RESOLUTION OF FACTUAL DISPUTES:** If possible, any dispute concerning a question of fact arising under this Agreement shall be resolved through good faith negotiations between duly authorized representatives of DOM and the Department.
- XVIII. NON-WAIVER OF BREACH:** No assent, expressed or implied, by the parties hereto to the breach of the provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of this Agreement.
- XIX. NON-WAIVER OF OTHER RIGHTS, POWERS AND REMEDIES:** No delay or omission by either party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this Agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one party to this Agreement of a default by the other party will imply, be construed as or require waiver of future or other defaults.
- XX. INDEMNIFICATION:** The Department's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this

Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to DOM or State under statute. The Department shall require any authorized subcontractor or grantee whose services are engaged under the provisions of this Agreement to indemnify, defend, save, and hold harmless, protect, and exonerate DOM, DOM's employees, agents, and representatives, the Department, the Department's employees, agents, and representatives, and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, and costs of any nature whatsoever (including, without limitation, court costs, investigative fees and expenses, and attorney's fees) arising out of the Agreement by any subcontractor, including, but not limited to, any occurrence, omission or commission of negligence of the agents, servants, and employees of any subcontractor performing services under the provisions of this Agreement. Such indemnification shall, likewise, cover any and all claims or losses resulting to any person or firm injured or damaged by the subcontractors by the publications, translation, reproduction, delivery, performance, use, or disposition of any data process or services rendered under this Agreement in any manner not authorized by the Agreement or the federal or state regulations or state statutes. In DOM's sole discretion, the subcontractor may be allowed to control the defense of any such claim, suit, etc. In the event the subcontractor defends said claim, suit, etc., the subcontractor shall use legal counsel acceptable to DOM. The subcontractor shall be solely responsible for all costs and/or expenses associated with such defense, and DOM shall be entitled to participate in said defense. The subcontractor shall not settle any claim, suit, etc. without DOM's concurrence, which the State shall not unreasonably withhold.

- XXI. THIRD PARTY ACTION NOTIFICATION:** The Department shall give DOM prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Department by any entity that may result in litigation related in any way to this Agreement.
- XXII. NOTICES:** Any notice from one party to the other under this Agreement shall be in writing and shall be sent to the other party by U.S. Mail, postage prepaid, at its principal business address, unless changed by either party hereto by written notice similarly given.
- XXIII. STRICT PERFORMANCE:** It is expressly understood and agreed that strict performance of the terms and provisions of this Agreement shall be deemed the essence of this Agreement.
- XXIV. FORCE MAJEURE:** Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, the Department shall notify DOM immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless DOM determines it to be in its best interest to terminate the Agreement.

**XXV. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996:**

All activities under this Agreement regarding the exchange of information and data between DOM and the Department shall be performed in accordance with any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties and all applicable federal and/or State of Mississippi laws, rules, and/or regulations including the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (as amended by the Genetic Information Nondiscrimination Act (GINA) of 2008 and the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (ARRA) of 2009) and its implementing regulations at 45 C.F.R. Parts 160, 162, and 164, involving electronic data interchange, code sets, identifiers, and the security and privacy of protected health information, as may be applicable to the services under this Agreement. Each party to this Agreement shall treat all data and information to which it has access under this Agreement as confidential information to the extent that confidential treatment of same is required under federal and State of Mississippi law and any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties, and shall not disclose same to a third party without specific written consent of the other party. In the event that either party receives notice that a third party requested divulgence of the confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the confidential or otherwise protected information, the party shall promptly inform the other party and thereafter respond in conformity with such subpoena as required by applicable State of Mississippi and/or federal law, rules, regulations, and any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties. The provision herein shall survive the termination of the Agreement for any reason and shall continue in full force and effect and shall be binding upon both parties and their agents, employees, successors, assigns, subcontractors, or any party claiming an interest in the Agreement on behalf of, or under, the rights of the parties following termination.

**XXVI. INSPECTIONS:** The Department agrees that representatives of the Comptroller General, CMS, the General Accounting Office, the State Auditor, DOM and their authorized representatives shall have the right during regular business hours to inspect and copy the Department's books and records pertaining to the extent and cost of services furnished to DOM or eligible recipients. The Department shall cooperate fully with the request from any of the agencies listed above and shall furnish free of charge copies of all requested records.

**XXVII. RECORDS RETENTION AND AUDIT PROCEDURES:** The Department shall maintain financial records, supporting documents, statistical reports, and all other records pertinent to this program for a period of six (6) years from the day of the last payment made by the DOM to the Department. However, if audit, litigation, or other legal action by or on behalf of the State or Federal Government has begun that is not completed at the end of the six (6) year period, or if audit findings, litigation, or other legal action has not been resolved at the end of the six (6) year period, the records shall be retained until resolution.



**XXVIII. OTHER PROVISIONS:** The Department hereby agrees to all of the provisions and requirements as set forth in the State Plan for Medical Assistance approved by the State of Mississippi and by the Secretary of the United States Department of Health and Human Services, pursuant to Title XIX of the Social Security Act, and understands those provisions and requirements are also incumbent on the Department.

**XXIX. COMPLIANCE WITH MISSISSIPPI EMPLOYMENT PROTECTION ACT (MEPA):** The Department represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1 *et seq.* of the Mississippi Code Annotated (Supp. 2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Department agrees to maintain records of such compliance. Upon request of the State and approval of the Social Security Administration or Department of Homeland Security when required, the Department agrees to provide a copy of each such verification. The Department further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws. The Department understands and agrees that any breach of these warranties may subject the Department to the following:

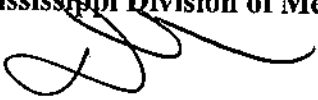
- A. Termination of this Agreement for services and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public;
- B. The loss of any license, permit, certification, or other document granted to the Department by an agency, department, or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. Both. In the event of such cancellation/termination, the Department is liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

**XXX. TRANSPARENCY MISSISSIPPI:** This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Where applicable, this Agreement is also subject to the America Accountability and Transparency Act of 2009 (P.L. 111-5), and Miss. Code Ann. § 31-7-13 (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement is required to be posted to the Department of Finance and Administration’s independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by the Department as trade secrets, or other proprietary information, including confidential vendor information or any other information, which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted by the Department.

- XXXI. SUCCESSOR LIABILITY:** The rights, privileges, benefits, and obligations created by this Agreement and by operation of law extend to and accrue and are obligatory upon the parties hereto, their assigns or successors.
- XXXII. PUBLIC RECORDS ACT:** Notwithstanding any provision to the contrary contained herein, it is recognized that DOM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended). If a public records request is made for any information provided to DOM pursuant to the Agreement, DOM shall promptly notify the disclosing party of such request and will respond to the request in accordance with the procedures and limitations set forth in applicable law. The disclosing party may promptly institute appropriate legal proceedings to protect its information. No party to the Agreement shall be liable to the other party for disclosures of information required by court order or required by law.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as follows:

**Mississippi Division of Medicaid**

  
By: \_\_\_\_\_  
Drew L. Snyder J.D.  
Executive Director

Date: 12/16/20

**Mississippi State Department of Health**

DocuSigned by:  
  
By: \_\_\_\_\_  
A625010E91DF427...  
Thomas E. Dobbs III, M.D., M.P.H.  
State Health Officer

Date: 1/27/2021 | 12:32 PM CST

STATE OF MISSISSIPPI  
COUNTY OF ~~HINDS~~ Madison

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Drew L. Snyder J.D.**, in his official capacity as the duly appointed **Executive Director of the Division of Medicaid in the Office of the Governor**, an administrative agency of the State of Mississippi, who acknowledged to me, being first duly authorized by said agency that he signed and delivered the above and foregoing written Agreement for and on behalf of said agency, and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 16<sup>th</sup> day of December A.D., 2020.

*Shelby J. Berryman*  
NOTARY PUBLIC



STATE OF MISSISSIPPI  
COUNTY OF \_\_\_\_\_

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Thomas E. Dobbs III, M.D., M.P.H.**, in his official capacity as the **State Health Officer of the Mississippi State Department of Health**, an administrative agency of the State of Mississippi, who acknowledged to me, being first duly authorized by said Department that he duly signed and delivered the above and foregoing written Agreement for and on behalf of said Department and as to its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2020.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_

**AMENDMENT #1  
TO THE INTERAGENCY AGREEMENT  
BETWEEN  
THE DIVISION OF MEDICAID  
IN THE OFFICE OF THE GOVERNOR  
STATE OF MISSISSIPPI  
AND  
MISSISSIPPI STATE DEPARTMENT OF HEALTH**

**(Emergency Ground Ambulance Reimbursement)**

**THIS AMENDMENT #1** modifies, revises, and amends the Interagency Agreement between the **DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as "DOM", and **MISSISSIPPI STATE DEPARTMENT OF HEALTH**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as "Department". The parties agree to continue this Agreement to allow for the purpose of utilizing funds in the Mississippi Trauma Care Systems Fund to pay the state match for the enhanced reimbursement fees related to Emergency Ground Ambulance.

**WHEREAS**, DOM and Department entered into an agreement beginning July 1, 2020, to enhance fees for the reimbursement rate of emergency ground ambulance services above 70% of the Medicare rate;

**WHEREAS**, the need for aforesaid services is ongoing, and DOM and Department desire to renew the contract for a successive one (1) year term in accordance with Article II (TERM) through this Amendment one; and,

**WHEREAS**, Article VI (Modification or Amendment) of the Agreement provides that the Agreement may be modified or changed if such modification or change is mutually agreed upon in writing, signed by the Division and the Department, and approved as required by law.

**NOW, THEREFORE**, in consideration of the mutual undertaking and conditions as hereinafter set forth, the Agreement is amended as follows:

**1. Article II, TERM, is hereby amended to read as follows:**

**II. TERM:** The term of this Agreement shall commence on July 1, 2020 and shall expire on June 30, 2024, unless terminated earlier by any party in accordance with Article VII (Termination). This Agreement may be renewed for successive one (1) year terms if mutually agreed upon in writing by DOM

and the Department, but the overall term of the Agreement shall not exceed a total of five (5) years.

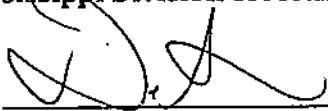
2. All other terms, conditions, and provisions set out in the Original Agreement, other those modified and amended herein, which are not in conflict with this Amendment #1, shall remain in full force and effect for the duration of the Agreement.

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WISCONSIN  
MEDICAID

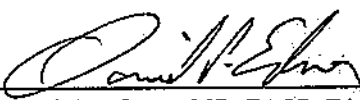
**IN WITNESS WHEREOF**, the parties have caused this Amendment #1 to be executed by their duly authorized representatives as follows:

**Mississippi Division of Medicaid**

By:   
Drew L. Snyder  
Executive Director

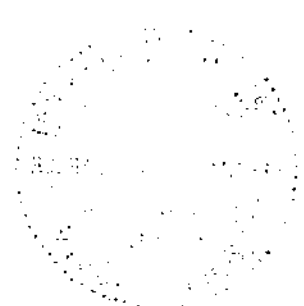
Date: 5/3/2023

**Mississippi Department of Health**

By:   
Daniel P. Edney, MD, FACP, FASAM  
State Health Officer

Date: May 1, 2023

MISSISSIPPI  
MEDICAID



STATE OF MISSISSIPPI  
COUNTY OF Hinds

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Drew L. Snyder**, in his official capacity as the duly appointed **Executive Director of the Division of Medicaid in the Office of the Governor**, an administrative agency of the State of Mississippi, who acknowledged to me, being first duly authorized by said agency that he signed and delivered the above and foregoing written Amendment #1 for and on behalf of said agency, and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 3<sup>rd</sup> day of May, A.D., 2023.

  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

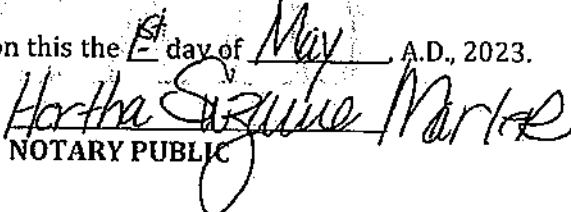
Sept 23, 2024



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Daniel P. Edney, MD, FACP, FASAM**, in his official capacity as the **duly appointed State Health Officer of the Mississippi Department of Health**, an administrative agency of the State of Mississippi who acknowledged to me, being first duly authorized by said Agency that he duly signed and delivered the above and foregoing written Amendment #1 for and on behalf of said Agency and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 9<sup>th</sup> day of May, A.D., 2023.

  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

May 9, 2023



**INTERAGENCY AGREEMENT BETWEEN  
THE DIVISION OF MEDICAID  
IN THE OFFICE OF THE GOVERNOR  
STATE OF MISSISSIPPI  
AND  
THE MISSISSIPPI STATE DEPARTMENT OF HEALTH**

**(Health Facilities Licensure Certification)**

**THIS AGREEMENT** made and entered into by and between the **DIVISION OF MEDICAID IN THE OFFICE OF THE GOVERNOR**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as "DOM," and the **MISSISSIPPI DEPARTMENT OF HEALTH**, an administrative agency of the **STATE OF MISSISSIPPI**, hereinafter referred to as the "Department."

**WHEREAS**, under and by virtue of Miss. Code Ann. § 43-13-101, *et seq.*, as amended, DOM is designated as the "single state agency" and is authorized and empowered to administer the provisions of the Medical Assistance Program as enacted by the Mississippi State Legislature in compliance with Title XIX of the Federal Social Security Act, as amended;

**WHEREAS**, the Department is designated under and by virtue of the provisions of the "Mississippi Health Services Reorganization Act of 1986" as the State agency responsible, interalia, for regulating and licensing nursing care facilities in the State of Mississippi and has entered into an agreement with the Secretary of the United States Department of Health and Human Services, hereinafter referred to as "HHS", under Title XVIII of the Act in carrying out survey and certification functions; and,

**WHEREAS**, DOM is required under its State approved Plan for Medical Assistance, hereinafter referred to as the "Plan," to provide that the State Agency utilized by the Secretary of HHS shall be responsible for establishing and maintaining health standards for private and public institutions in which recipients of medical assistance under the Plan may receive care and services.

**NOW, THEREFORE**, in furtherance of the mutual responsibilities of the parties hereto, the Agreement is entered into by and between the parties upon the following terms, provisions, and conditions hereinafter stated:

**I. SCOPE OF WORK:**

- A.** The Department shall be responsible for carrying out, conducting, and administering survey and certification functions over nursing facilities, intermediate care facilities for individuals with intellectual disabilities (ICF/IID), non-accredited hospitals, laboratories, home health agencies, clinics, psychiatric treatment facilities (PRTFs), and certain other health care facilities in the State of Mississippi, as prescribed by the Centers for Medicare and Medicaid Services



(CMS) Mission and Priority Document, and shall assure that the federal requirements, standards, and conditions of participation as recommended by Titles XVIII and XIX of the Social Security Act and the Federal Regulations adopted in implementation thereof are met on a continuing basis by such health care facilities in obtaining and maintaining certification as qualified providers of services under the Program.

- B. The Department shall assure that federal standards and such forms, methods, and procedures as may be prescribed by the administrator of CMS, HHS, will be used in determining provider eligibility and certification under the Program.
- C. The Department will assure that copies of reports and inspections are completed by inspectors surveying the premises with notations of each specific requirement for which inspection is met or is not met; if a facility is found deficient in meeting the standards, requirements, and conditions of participation, the Department shall require the correction of the deficiencies in assuring the facility's compliance with the standard, requirements, and conditions of participation under the Program.
- D. The Department shall comply with all applicable sections required for notification to DOM in accordance with 42 C.F.R. Part 488 and Chapter 7 of the State Operations Manual (SOM) for CMS/HHS, of all enforcement actions of Medicaid (Title XIX) only and Medicare/Medicaid (Titles XVIII/XIX) nursing facilities. Minimally, in the case of a Medicaid or Medicare/Medicaid certified nursing facility that is found to have a deficiency, which constitutes immediate jeopardy or a no opportunity to correct, the Department shall notify DOM, in writing, of the deficiencies found and all proposed remedies, including effective remedy dates as required by the SOM and federal statutes. The Department shall conduct the State Monitoring remedy when appropriate.
- E. The Department will further ensure that all information and reports used in determining whether federal requirements for participating facilities are being met are maintained on file by the survey agency for easy access by HHS and DOM as may be necessary to meet other requirements under the Plan and for purposes consistent with DOM's effective administration of the Program.
- F. The Department shall notify DOM, in writing, of any training session scheduled with health care facilities participating in the Title XIX programs prior to the scheduled date of such training session.
- G. In carrying out the administrative responsibilities as the Single State Agency under Title XIX of the Social Security Act, DOM shall be authorized to monitor the performance of the survey and certification activities of the Department; in so doing, the Department shall extend to DOM its full and complete cooperation.

- H. The Department shall establish disclosure procedures and keep current and accurate ownership information, certified bed changes, survey reports, findings, and deficiency statements from surveys of health care facilities, laboratories, agencies, clinics, or organizations in accordance with § 1902(a)(36) of the Social Security Act and 42 C.F.R. § 431.115, except as specifically prohibited under 42 C.F.R. § 401.126(b).
- I. The Department is responsible for handling Informal Dispute Resolution and Independent Informal Dispute Resolution in accordance with federal and state law, including but not limited to 42 C.F.R. §§ 488.331, 488.431, and 488.745.
- J. In addition to the survey and certification functions carried out by the Department pursuant to Title XIX and this Agreement, the Department is responsible for certifying all nurse aide training programs that provide the written, oral and clinical skills tests in order to certify nurse aides. The Department shall make on-site visits to each training program making application prior to its certification as a nurse aide training program. The Department shall make on-site visits to at least twenty percent (20%) of the existing approved training programs each year. The Department shall make on-site visits to each training program at least once every five (5) years. The Department shall make additional visits to training programs if requested by DOM. The Department shall maintain documentation for each on-site visit including, but not limited to, the name of the training program, the instructors' names, the date of the visit, the location of the program, a check-list of required supply items and whether or not the program complied, and notes regarding any observation of training. The Department shall maintain the nurse aide registry to include those aides guilty of abuse in accordance with Federal regulations.
- K. Any changes in the supply or equipment items required by the Department for an approved Nurse Aide training program shall be approved in advance by DOM. Any charges for the written, oral, or clinical skills tests for which costs will be passed on to DOM by the facilities shall likewise require advance approval by DOM.
- L. In addition, the Department is responsible for certifying all feeding assistant training programs.
- M. The Department shall notify DOM in writing within ten (10) working days of any of the following occurrences:
1. The certification of a new nurse aide or feeding assistant training program;
  2. Any program that loses its certification;
  3. Any change in the physical location of an approved program; and,
  4. A change in the primary instructor of an approved program.
- N. The Department shall submit reports annually, as needed for changes, and as requested by DOM, to DOM Office of Long Term Care summarizing the activities

that have been conducted. The list should include the names of training programs that have been visited, the changes in the status of any training programs, and the number of hearings conducted.

- O. The Department and DOM shall collaboratively review and evaluate all components of future Civil Money Penalty (CMP) grant applications to determine a recommendation. The Department shall submit recommended applications to CMS in an efficient and timely manner, and shall collaborate with DOM staff in providing all necessary CMP training sessions.
- P. The Department shall be responsible for the following related to the Minimum Data Set (MDS) assessments:
  - 1. Maintain systems for receipt and transfer of MDS Resident Assessment data files to DOM daily, or with every transfer from CMS;
  - 2. Maintain a Registered Nurse in the State RAI Coordinator position;
  - 3. Conduct MDS provider trainings quarterly;
  - 4. Notify DOM of any and all MDS updates, inclusive of monthly RAI calls, with a written report of the call;
  - 5. Assist providers with MDS questions; and,
  - 6. Resolve and merge potential duplicate assessments as needed on the Potential Duplicate spreadsheet submitted by DOM's MDS contractor per applicable deadline.
- Q. The Department shall conduct criminal history records checks on each employee who provides, and/or would provide direct patient care or services to adults or vulnerable persons, as provided in Miss. Code Ann. § 43-11-13 and Miss. Code Ann. § 43-47-7. This criminal background check shall cover, but is not limited to, adult day care center providers, private duty nursing providers, in-home respite providers, personal care providers and case managers. Providers must be able to obtain background checks as needed to meet the frequencies designated by DOM and all background checks must be fingerprint based and include both state and national database searches. The individual must be employed by one of the provider types listed in this section.
- R. The Department shall be the lead agency in the event of a voluntary or involuntary closure of a long term care facility. In collaboration with the Successful Transition Workgroup, the Department shall develop and maintain the Facility Closure – Resident Relocation and Successful Transition Planning Policy. The Department shall be an active participant in the Successful Transition Workgroup.
- S. The Department shall meet all documentation and reporting requirements required under this Agreement, including, but not limited to, those specified in paragraphs I (Scope of Work), IV (Cost for Services/Billing/Documentation of Time), V (Survey Requirements), X (Required/Waivered Service Compliance), XXVI (Records Retention and Audit Procedures), XXVIII (Compliance with MEPA).

- T. The Department will also be responsible for completing other functions as deemed necessary by DOM.
- II. **PERIOD OF PERFORMANCE:** The term of this Agreement shall commence on November 1, 2021, and shall expire on September 30, 2026, unless this Agreement is terminated pursuant to paragraph VIII (Termination). The parties shall have the option to extend this Agreement if mutually agreed upon in writing in the form of an amendment and subject to continuing federal authorization, if needed.
- III. **COORDINATION OF SERVICES:** The Department shall coordinate the performance of the services to be provided hereunder with and through the Office of Long Term Care of DOM, and consult with said Office on specific courses of action, which should be pursued.
- IV. **COST FOR SERVICES/BILLING/DOCUMENTATION OF TIME:** As full and complete compensation for the services to be provided hereunder, DOM will pay the Department as set forth below:
- A. For carrying out the Title XIX survey and certification and nurse aide training DOM agrees to reimburse the Department, within budget limitations, for its actual and necessary costs.
  - B. The Department shall submit quarterly reports which set forth in detail the actual expenses incurred that are properly chargeable to the Program and that specifically exclude any costs that are attributable to the Medicare Program, State licensure requirements, or any other activity, project, or program. The Department shall submit all documentation to DOM no later than 45 days of the close of each quarter.
  - C. The Department shall submit to DOM a listing of all completed surveys from the prior month by the fifteenth (15th) day of each month for survey and certification activities.
  - D. The Department shall submit to DOM all CMS 1539 Certification and Transmittals on standard and complaint surveys prior to submitting the quarterly invoice. The Department shall submit the Mississippi State Department of Health Care Providers and Suppliers – State Survey Certification compliance form monthly and prior to submitting quarterly invoices.
  - E. The Department shall submit the following on a quarterly basis: a listing of complaints/incidents/investigations, an updated list of Medicare/Medicaid and Medicaid only nursing facilities that have been determined to have immediate jeopardy and substandard quality of care deficiencies, provider training sessions held, and the recommended CMP grant application titles and dates submitted to CMS.

The Department shall conduct an on-site visit to nursing facilities that plan to provide Ventilator Dependent Care (VDC) services and have submitted an approved Addendum to their Medicaid provider agreement. Upon the Department's determination of the facility having met all VDC requirements they shall notify DOM by electronic mail of their recommendation. In addition, the Department shall document on a Medicare/Medicaid Certification and Transmittal Form CMS 1539, the results of the VDC on-site visit.

- F. The records substantiating these billings will be subject to audit by the employees of DOM, or any state or federal cognizant agency with the authority to audit such funds, with adjustments of payments made in accordance with verification of services rendered and expenses incurred.
- G. The Department shall submit its State Survey Agency's annualized budget request for Title XIX funds for the next federal fiscal year to DOM Office of Long Term Care at the time the same is submitted to CMS for Title XVIII funds.

**V. SURVEY REQUIREMENTS:**

- A. The Department shall provide DOM a copy of any and all findings of health and life safety survey and complaint activities of non-compliance whereby a condition of participation and/or immediate jeopardy is determined for an ICF/IID. All requirements of notification to DOM shall be provided as required by the State Operations Manual (SOM) and federal law.
- B. The Department shall abide by all applicable requirements of 42 C.F.R. Part 442, including the surveying of ICF/IID's for re-certification an average of every twelve (12) months and at least once every fifteen (15) months with notification to DOM in a timely manner.
- C. In the case of a Medicaid-certified psychiatric residential treatment facility, the Department shall provide DOM a copy of any and all findings of survey activities, including initial findings and all activities leading to resolution and/or enforcement of adverse actions deemed by CMS or the Department. DOM shall provide the Department a copy of all certification activities of psychiatric residential treatment facilities, including initial findings and all corrective action leading to resolution. The Department shall provide CMS required forms upon completion to DOM as required by the SOM and federal law.

- VI. NON-ASSIGNMENT AND SUBCONTRACTING:** None of the work to be performed under this Agreement shall be subcontracted other than that which has been currently specified by the Department embracing subcontracted responsibilities or otherwise assigned without prior approval of DOM. Any contract authorized under this Agreement must be in writing with the subcontractor's functions and duties clearly identified. It is specifically agreed that any subcontract let by the Department, after approval of DOM, shall be made subject to the

provisions of this Agreement, the federally approved waiver, the precise commitments of the Department as set out herein, and all applicable federal and state laws and regulations. Nothing contained herein shall be construed to exempt a subcontractor from any of the provisions or commitments of this Agreement or the provisions as contained in the Department's proposals to DOM. If the Department should be subcontracting any of the services under this Agreement, it will establish monitoring procedures to review and evaluate the subcontractors' performance and compliance with the terms and conditions of the Agreement. If the Department should subcontract any services under this Agreement, it will assure that Medicaid beneficiaries have freedom of choice of subcontractors/providers for services.

- VII. MODIFICATION OR AMENDMENT:** Modifications or amendments to this Agreement may be made upon mutual Agreement of the parties, in writing signed by the parties hereto and approved as required by law. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement.
- VIII. TERMINATION:** This Agreement shall terminate at any time (1) by mutual consent of the Department and DOM or (2) upon the giving of thirty (30) days advanced written notice to the other party in the manner as prescribed under paragraph XXI (Notices) herein.
- IX. AVAILABILITY OF FUNDS:** It is expressly understood and agreed that the obligation of DOM to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of federal and/or state funds. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to DOM, said insufficiencies shall constitute grounds for the voidance of this Agreement, without damage, penalty, cost or expenses to DOM of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Notice of termination under this paragraph need not comply with the thirty (30) day requirement set forth in paragraph VIII (Termination) above.
- X. REQUIRED/WAIVERED SERVICE COMPLIANCE:** The Department and DOM agree to implement and maintain such services and procedures as may be necessary for the proper and orderly administration of the program, including the keeping of all appropriate records (financial and otherwise). In addition, the Department and DOM mutually agree as follows:
- A. DOM will notify the Department in writing of any applicable guidelines and/or regulations established or to be established by DOM or by CMS that will affect this program.
  - B. The Department shall supply DOM with such information as shall be required by CMS and DOM on the impact of the program in accordance with any data collection or similar plan designated by CMS. DOM will provide the Department with timely notice of the information required by CMS.

- C. DOM and the Department will coordinate their efforts to meet reporting dates and deadlines set by the Federal agency or as defined by DOM and to develop methods of easy exchange of information between the two state agencies on regular dates and as otherwise established by mutual agreement in order that program needs and federal requirements may be met.
  - D. The parties will hold regularly scheduled interagency conferences to review their mutual responsibilities under this Agreement and methods and procedures for improving and updating the delivered services.
  - E. The Department shall assist and cooperate actively with DOM's third party contractors as determined necessary by DOM for the fulfillment of the Department's duties under this Agreement. DOM will act in good faith and to the best of its ability to give the Department reasonable notice of such activities.
- XI. TITLE XIX NONCOMPLIANCE:** It is expressly understood and agreed that the Department will return to DOM any funds paid pursuant to this Agreement that are the subject of any Title XIX noncompliance arising out of or connected with the services. The term "Title XIX noncompliance" shall be construed to mean any failure or inability of DOM through the actions or inactions of the Department for which the Department is responsible under this Agreement to meet the requirements of Title XIX of the federal Social Security Act, and any regulations promulgated by HHS, CMS, or DOM in connection therewith.
- XII. SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts or other judicial body held to be illegal or in conflict with any law of the State of Mississippi or any federal law, the validity of the remaining portions or provisions shall not be affected and the obligations of the parties shall be construed in full force as if the Agreement did not contain that particular part, term, or provision held to be invalid.
- XIII. CONFIDENTIALITY:** The Department agrees that it shall not use or disclose for any purpose, except as provided for in this Agreement and any applicable Business Associate Agreement, Nondisclosure Agreement, and/or Data Use Agreement, any information concerning any recipient of services or provider of services that it may have access to or have knowledge of as a result of providing services to DOM. However, the obligation of confidentiality shall not apply to information that is required to be disclosed pursuant to law or the legal process. If the Department must disclose such information pursuant to law or legal process, the Department shall notify DOM without unreasonable delay and at least five (5) days in advance days of any disclosure so that DOM may take appropriate steps to address the disclosure, if needed. This confidentiality agreement survives the term of the Agreement between DOM and the Department.

- XIV. APPLICABLE LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. The Department shall comply with applicable federal, state and local laws, regulations, policies and procedures as now existing and as may be amended or modified.
- XV. NON-DISCRIMINATION:** In connection with the performance and obligations of work under this Agreement, the Department understands that DOM is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, political affiliation, ancestry, limited English proficiency, religion, or any other consideration made unlawful by federal, State of Mississippi, or local laws. All such discrimination is unlawful and the Department agrees during the term of the Agreement that the Department will strictly adhere to this policy in its employment practices and provision of services, including, but not limited to, hiring, termination/discharge, promotion/demotion, or other terms and conditions of employment. The Department shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, State of Mississippi, and local laws, regulations, policies, and procedures related to unlawful discrimination, as now existing and as may be amended or modified.
- XVI. RESOLUTION OF FACTUAL DISPUTES:** If possible, any dispute concerning a question of fact arising under this Agreement shall be resolved through good faith negotiations between duly authorized representatives of DOM and the Department.
- XVII. NON-WAIVER OF BREACH:** No assent, expressed or implied, by the parties hereto to the breach of the provisions or conditions of this Agreement shall be deemed or taken to be a waiver of any succeeding breach of the same or any other provision or condition and shall not be construed to be a modification of the terms of this Agreement.
- XVIII. NON-WAIVER OF OTHER RIGHTS, POWERS AND REMEDIES:** No delay or omission by either party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by contract, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either party to this Agreement shall be valid unless set forth in writing by the party making said waiver. No waiver of or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one party to this Agreement of a default by the other party will imply, be construed as, or require waiver of future or other defaults.
- XIX. INDEMNIFICATION:** The Department's tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated § 11-46-1 et seq., including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering the liability or of eliminating any defense available to DOM or State under statute. The Department shall require any



authorized subcontractor or grantee whose services are engaged under the provisions of this Agreement to indemnify, defend, save, and hold harmless, protect, and exonerate DOM, DOM's employees, agents, and representatives, the Department, the Department's employees, agents, and representatives, and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, and costs of any nature whatsoever (including, without limitation, court costs, investigative fees and expenses, and attorney's fees) arising out of the Agreement by any subcontractor, including, but not limited to, any occurrence, omission or commission of negligence of the agents, servants, and employees of any subcontractor performing services under the provisions of this Agreement. Such indemnification shall, likewise, cover any and all claims or losses resulting to any person or firm injured or damaged by the subcontractors by the publications, translation, reproduction, delivery, performance, use, or disposition of any data process or services rendered under this Agreement in any manner not authorized by the Agreement or the federal or state regulations or state statutes. In DOM's sole discretion, the subcontractor may be allowed to control the defense of any such claim, suit, etc. In the event the subcontractor defends said claim, suit, etc., the subcontractor shall use legal counsel acceptable to DOM. The subcontractor shall be solely responsible for all costs and/or expenses associated with such defense, and DOM shall be entitled to participate in said defense. The subcontractor shall not settle any claim, suit, etc. without DOM's concurrence, which the State shall not unreasonably withhold.

- XX. THIRD PARTY ACTION NOTIFICATION:** The Department shall give DOM prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Department by any entity that may result in litigation related in any way to this Agreement.
- XXI. NOTICES:** Any notice from one party to the other under this Agreement shall be in writing and shall be sent to the other party by U.S. Mail, postage prepaid, at its principal business address, unless changed by either party hereto by written notice similarly given.
- XXII. STRICT PERFORMANCE:** It is expressly understood and agreed that strict performance of the terms and provisions of this Agreement shall be deemed the essence of this Agreement.
- XXIII. FORCE MAJEURE:** Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters ("force majeure events"). When such a cause arises, the Department shall notify DOM immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused

by such events, unless DOM determines it to be in its best interest to terminate the Agreement.

**XXIV. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996:**

All activities under this Agreement regarding the exchange of information and data between DOM and the Department shall be performed in accordance with all applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties and all applicable federal and/or State of Mississippi laws, rules, and/or regulations including the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (as amended by the Genetic Information Nondiscrimination Act (GINA) of 2008 and the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of Division A, and Title IV of Division B of the American Recovery and Reinvestment Act (ARRA) of 2009), and their implementing regulations at 45 C.F.R. Parts 160, 162, and 164, involving electronic data interchange, code sets, identifiers, and the security and privacy of protected health information, as may be applicable to the services under this Agreement. Each party to this Agreement shall treat all data and information to which it has access under this Agreement as confidential information to the extent that confidential treatment of same is required under federal and State of Mississippi law and any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties, and shall not disclose same to a third party without specific written consent of the other party. In the event that either party receives notice that a third party requested divulgence of the confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of the confidential or otherwise protected information, the party shall promptly inform the other party and thereafter respond in conformity with such subpoena as required by applicable State of Mississippi and/or federal law, rules, regulations, and any applicable Business Associate Agreement(s), Nondisclosure Agreement(s), and/or Data Use Agreement(s) entered into between the parties. The provision herein shall survive the termination of the Agreement for any reason and shall continue in full force and effect and shall be binding upon both parties and their agents, employees, successors, assigns, subcontractors, or any party claiming an interest in the Agreement on behalf of, or under, the rights of the parties following termination.

**XXV. INSPECTIONS:** The Department agrees that representatives of the Comptroller General, CMS, the General Accounting Office, the State Auditor, DOM and their authorized representatives shall have the right during regular business hours to inspect and copy the Department's books and records pertaining to the extent and cost of services furnished to DOM or eligible recipients. The Department shall cooperate fully with the request from any of the agencies listed above and shall furnish free of charge copies of all requested records.

**XXVI. RECORDS RETENTION AND AUDIT PROCEDURES:** The Department shall maintain financial records, supporting documents, statistical reports, and all other records pertinent to this program for a period of six (6) years from the day of the last payment made

by DOM to the Department. However, if audit, litigation, or other legal action by or on behalf of the State or Federal Government has begun that is not completed at the end of the six (6) year period, or if audit findings, litigation, or other legal action has not been resolved at the end of the six year period, the records shall be retained until resolution.

**XXVII. OTHER PROVISIONS:** The Department hereby agrees to all of the provisions and requirements as set forth in the State Plan for Medical Assistance approved by the State of Mississippi and by the Secretary of the United States Department of Health and Human Services, pursuant to Title XIX of the Social Security Act, and understands those provisions and requirements are also incumbent on the Department.

**XXVIII. COMPLIANCE WITH MISSISSIPPI EMPLOYMENT PROTECTION ACT (MEPA):** The Department represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1 et seq. of the Mississippi Code Annotated (Supp. 2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. The Department agrees to maintain records of such compliance. Upon request of the State and approval of the Social Security Administration or Department of Homeland Security when required, the Department agrees to provide a copy of each such verification. The Department further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all applicable immigration laws. The Department understands and agrees that any breach of these warranties may subject the Department to the following:

- A. Termination of this Agreement for services and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public;
- B. The loss of any license, permit, certification or other document granted to the Department by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. Both. In the event of such termination/cancellation, the Department is liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit to do business in the State.

**XXIX. TRANSPARENCY MISSISSIPPI:** This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Miss. Code Ann. §§ 25-61-1 et seq. (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 et seq. (1972, as amended). Where applicable, this Agreement is also subject to the American Accountability and Transparency Act of 2009 (P.L. 111-5), and Miss. Code Ann. § 31-7-13 (1972, as amended). Unless exempted from disclosure due


to a court issued protective order, a copy of this executed Agreement is required to be posted to the Department of Finance and Administration's independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by Department as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted by Department.

- XXX. PUBLIC RECORDS ACT:** Notwithstanding any provision to the contrary contained herein, it is recognized that DOM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended). If a public records request is made for any information provided to DOM pursuant to the Agreement, DOM shall promptly notify the disclosing party of such request and will respond to the request in accordance with the procedures and limitations set forth in applicable law. The disclosing party may promptly institute appropriate legal proceedings to protect its information. No Party to the Agreement shall be liable to the other party for disclosures of information required by court order or required by law.
- XXXI. SUCCESSOR LIABILITY:** The rights, privileges, benefits, and obligations created by this Agreement and by operation of law extend to and accrue and are obligatory upon the parties hereto, their assigns or successors.
- XXXII. INFEASIBLE OR IMPOSSIBLE PERFORMANCE:** In the event federal and/or state law should be amended or judicially interpreted so as to render the fulfillment of this Agreement on the part of either party infeasible or impossible, or if a party to this Agreement should be unable to agree upon modifying amendments which would be needed to enable substantial continuation of the Title XIX program as a result of amendments or judicial interpretations, then, and in that event, the Department and DOM shall be discharged from further responsibility created under the terms of the Agreement except for equitable settlement or adjustment of the respective accrued interests of the parties to the date of the termination.

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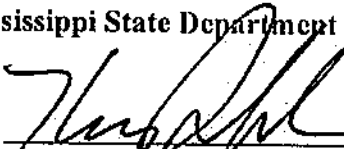
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as follows:

**Mississippi Division of Medicaid**

By:   
\_\_\_\_\_  
Drew L. Snyder, JD  
Executive Director

Date: 10/27/21

**Mississippi State Department of Health**

By:   
\_\_\_\_\_  
Thomas Dobbs, M.D., M.P.H.  
State Health Officer

Date: 10/26/2021

STATE OF MISSISSIPPI  
COUNTY OF HINDS

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Drew L. Snyder, JD**, in his official capacity as the duly appointed **Executive Director of the Division of Medicaid in the Office of the Governor**, an administrative agency of the State of Mississippi, who acknowledged to me, being first duly authorized by said agency that he signed and delivered the above and foregoing written Agreement for and on behalf of said agency, and as its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 27<sup>th</sup> day of October, A.D., 2021.

Shelby J. Berryman  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

Sept 23, 2024



STATE OF MISSISSIPPI  
COUNTY OF Hinds

THIS DAY personally came and appeared before me, the undersigned authority, in and for the aforesaid jurisdiction, the within named, **Thomas Dobbs, M.D., M.P.H.**, in his official capacity as the **State Health Officer of the Mississippi State Department of Health**, an administrative agency of the State of Mississippi, who acknowledged to me, being first duly authorized by said Department that he duly signed and delivered the above and foregoing written Agreement for and on behalf of said Department and as to its official act and deed on the day and year therein mentioned.

GIVEN under my hand and official seal of office on this the 26<sup>th</sup> day of October, A.D., 2021.

Hertha Suzanne Marler  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

May 9, 2023

