

INTERAGENCY AGREEMENT NO. A-00-07-262

6. Health, in consultation with Human Services, shall develop systems to conduct inter-rater reliability studies. Inter-rater reliability protocols, sampling methodology and review frequency must be acceptable and approved by both Health and Human Services.
5. Health shall provide Human Services documentation on Health's cost allocation between the Medicaid and Medicare Programs as is necessary for Human Services to meet its duties and obligations. Health shall cooperate with Human Services to identify the documentation that is required.

B. Human Services responsibilities:

1. Human Services shall provide ongoing training of health care facility surveyors on the procedures for data collection, completing and reporting findings of the RAI as it pertains to the Medicaid payment system.
2. Human Services shall notify Health of any facilities required to refund overpayments for direct care which were discovered through the Human Services exception review process in a form designed or designated by Health that facilitates citing deficiencies. The format of such notice shall be approved by Human Services.
3. Human Services shall cooperate in the provision of training of NF and SNF/NF providers on the RAI and its use in the facility certification and Medicaid case mix payment system. Training may be provided by state employees or entities with whom Human Services and/or Health has contracted. Human Services shall select and supervise content and training sessions related to the case-mix payment system, and select and/or approve presenters.
4. Human Services and Health shall cooperate in the joint development and maintenance of an Ohio version of a MDS training manual if needed to promote accurate and consistent assessment practices in Ohio. Release of the Ohio MDS training manual is contingent upon approval by both departments.
5. Human Services reserves the right to develop systems and procedures needed to monitor and verify MDS data used in setting Title XIX nursing facility direct care rates and in revising Title XIX payment policies and procedures.

C. MDS 2.0 Data System

1. Health shall have overall responsibility for fulfilling federal requirements for the operation of the MDS 2.0 data system. Health shall administer the data collection process and provide technical assistance to all providers so that providers will be able to timely submit accurate data.
 - a. Health shall maintain an MDS 2.0 Help Desk to respond to facility and software vendor questions related to MDS 2.0 coding and transmission. The Help Desk staff shall have the expertise needed to provide same day response to questions related to dial-in requirements, including Netscape transmission procedures. Health will notify Human Services within 72 hours of any new MDS 2.0 coding instructions, interpretations and/or clarifications given to nursing facility staff either in writing or through the Help Desk. Health shall consult with Human Services on MDS 2.0 questions related to items used in the Medicaid payment system prior to issuing new or revised instructions, interpretations and/or clarification.

Rev. 4/97

TN # 99-004 APPROVAL DATE 11/3/99
SUPERSEDES
TN # 98-016 EFFECTIVE DATE 7/1/99

INTERAGENCY AGREEMENT NO. A-00-07-262

PAGE 11 OF 16

- b. Health shall maintain a Vendor Hot Line to respond to software vendor questions related to the HCFA MDS 2.0 systems specifications and record layout required, and/or recommended edits, testing procedures, etc. Hot line staff shall have the expertise necessary to assist programmers and system analysts in designing/coding software applications for facility use, and shall provide same or next day response to all vendor inquiries.
 - c. Health shall, in coordination with Human Services, maintain and administer a process for correcting key MDS fields identified by HCFA. Health shall process corrections within thirty days of receipt.
 2. Health shall maintain the MDS 2.0 data system. For any MDS diskettes collected, Health shall maintain these original source documents. Health and Human Services shall jointly establish the maintenance schedule for the aforementioned diskettes to ensure compliance with all applicable state and federal requirements.
 3. Health shall ensure Human Services read only access to the data base including the Data Management System on a twenty-four hour per day/seven day per week basis. Full access includes the ability to view, query, browse, print and copy/transfer MDS data to Human Services data bases using established data transfer methods including automatic data replication techniques. Health and Human Services shall mutually agree on a schedule for maintenance down time. Except in an emergency, Health shall notify Human Services of any changes to the agreed upon schedule two weeks prior to the effective time of the change. Within seven days of receipt of such notice Human Services shall notify Health if the change would interfere with the ability of Human Services to carry out its duties and responsibilities. Health shall notify Human Services of emergency unscheduled down time of the data system and provide additional notification if the down time is expected to exceed four hours.
 4. Health shall administer the system, and be fully responsible for system administration, security, and maintenance of the hardware and software. Health will provide Human Services with:
 - a. two-day turnaround for requests for new/changed user IDs for Human Services staff.
 - b. a mechanism to timely add, delete or modify Medicaid provider numbers.
 - c. notification of system enhancements/upgrades. Health shall notify Human Services within 72 hours of receipt of notification of any system changes, upgrades, or enhancements, and shall share all system documentation with Human Services. Implementation of system changes shall be coordinated with Human Services to ensure the accurate transfer of data to Human Services or Medicaid payment purposes.
 5. Health and Human Services shall have the ability to use the MDS 2.0 client-server system to communicate with facilities for the purposes of data collection and analysis, and to use the system as a mechanism to deliver reports to providers including RUG III case mix payment and QI reports. Health shall either establish direct access for Human Services to post notices/reports and download files or provide a mechanism to transfer such data for Human Services. Should Health elect to provide this data transfer service, all files shall be downloaded and all reports shall be posted within 72 hours of receipt by Health.

Rev. 4/97

TN #~~97-004~~ APPROVAL DATE 11/3/99
SUPERSEDES
TN #~~98-016~~ EFFECTIVE DATE 7/1/99

VI.
MONTHLY MEETINGS

Health's Division of Quality Assurance and Human Services' Bureau of Long Term Care Facilities shall meet monthly or as agreed to, to discuss issues related to Health's and Human Services' responsibilities as set forth in this Agreement.

VII.
PROBLEM RESOLUTION

- A. Either Human Services' Chief of the BLTCF or Health's Chief of the Division of Quality Assurance shall immediately notify the other of any problems they believe may jeopardize the state's ability to meet federal fiscal, program, or procedural requirements. This notification shall be made in writing, in the form of a "decision memo." The notification will include a request to schedule, within ten working days, a meeting to address the problem.

The agency requesting the meeting should be prepared to:

- Clearly describe the problem;
- Identify the scope or extent of the problem;
- Recommend action needed to solve the problem; and
- Provide a rationale for the recommended action.

To facilitate discussion, the agency requesting the meeting should distribute a "decision memo" in advance of the meeting. A "decision memo" is a one to two page memorandum using the following format:

- ISSUE:
- RECOMMENDATION(S):
- BACKGROUND:
- RATIONALE:
- ACTION REQUIRED: -BY HEALTH OR HUMAN SERVICES

If a meeting cannot be arranged within ten (10) working days of receipt of a decision memo, the agency receiving the memo should respond, in writing, either accepting the recommendation or proposing an alternative.

All decision memos between agencies shall be exchanged at the Bureau/Division Chief level even though the problem discussed may be within an operational unit.

- B. If, in either agency's judgment, insufficient progress in meeting any requirements outlined in this agreement is being made then either agency may request that the Director of Health, the Director of Human Services, and the Governor's Executive Assistant for Health and Human Services or other designee, meet to determine an appropriate resolution of the problem.
- C. In the event that a federal disallowance is either threatened or assessed against the State as a result of an

Rev. 4/97

TN # 99-004 APPROVAL DATE 11/3/99
SUPERSEDES
TN # 98-016 EFFECTIVE DATE 7/1/99

INTERAGENCY AGREEMENT NO. A-00-07-262

PAGE 13 OF 16

alleged failure to meet federal fiscal, program, or procedural requirements, or any requirements outlined in this agreement, either agency may request that the Director of Health, the Director of Human Services, and the Governor's Executive Assistant for Health and Human Services or designee, meet to determine an appropriate resolution to the problem.

- D. Human Services may take such other action as necessary to protect the best interests of Medicaid recipients or of the State.

**VIII.
GENERAL PROVISIONS**

A. Effective Dates

This agreement will become effective July 1, 1999, and will remain in effect until June 30, 2000, subject to the cancellation provisions contained in this contract.

B. Cancellation by Notice

1. This agreement may be canceled by either party upon at least sixty (60) days advance written notice of cancellation to the other party. Notice of cancellation shall be sent or otherwise delivered to the following persons: if Health is canceling the agreement, to Director, Ohio Department of Human Services, 30 East Broad street, 32nd Floor, Columbus, Ohio 43266-0423; or, if Human Services is canceling the agreement, to Director, Ohio Department of Health, 246 North High Street, Columbus, Ohio 43266-0588.
2. This agreement may be terminated immediately in the event there is a loss of funding or disapproval by a federal administrative agency. In the event termination is pursuant to this paragraph (B)(2), a notice specifying the reasons for termination shall be sent as soon as possible after the termination in accordance with the procedures set forth in Article V., paragraph (B)(1).

C. Breach and Default

Upon breach or default of any of the provisions, obligations, or duties embodied in this agreement, the parties may exercise any administrative, contractual, equitable, or legal remedies available, without limitation. The waiver of any occurrence of breach or default is not waiver of such subsequent occurrences of breach or default, and the parties retain the right to exercise all remedies mentioned herein.

D. Amendments

This agreement may be modified or amended provided that any such modification or amendment is in writing and is signed by the directors of Health and Human Services. It is agreed, however, that any amendments to laws, rules, or regulations specifically pertinent to the conduct of survey and certification or enforcement will automatically modify the provisions of this agreement, without the necessity for executing a written amendment.

E. Equal Employment Opportunity

In carrying out this Agreement, Health shall not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability, or Vietnam-era

Rev. 4/97

TN # ~~99-004~~ APPROVAL DATE 11/3/99
SUPERSEDES
TN # ~~98-016~~ EFFECTIVE DATE 7/1/99

INTERAGENCY AGREEMENT NO. A-00-07-262**PAGE 14 OF 16**

veteran status. Health shall ensure that applicants are hired, and that employees are treated during employment without regard to their race, religion, national origin, ancestry, color, sex, sexual orientation, age, disability, or Vietnam-era veteran status. Such action shall include, but not be limited to the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

Health agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that Health complies with all applicable federal and state non-discrimination laws.

Health shall, in all solicitations or advertisements for employees placed by or on behalf of Health, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, sexual orientation, Vietnam-era veteran status, disability or age. Health shall incorporate the foregoing requirements of this paragraph in all of its Contracts for any of the work prescribed herein, and shall require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

F. Confidentiality of Information

Human Services and Health agree that they shall not use any information, systems, or records made available to either party for any purpose other than to fulfill the obligations specified herein. Human Services and Health specifically agree to comply with state and federal confidentiality and information disclosure laws, rules, and regulations applicable to programs under which this agreement is funded, including but not limited to Sections 149.43, 3721.031, and 5111.61 of the Revised Code, Sections 1902(a)(5), (a)(9) and (a)(33), 1819(h)(1) and (h)(2) of the Social Security Act, 42 CFR Part 431, Subparts A and B and 42 CFR Part 442, Subpart A. The terms of this paragraph shall be included in any subcontracts executed by either party for work under this agreement.

G. Compliance with Federal and State Laws, Rules and Regulations

Human Services and Health agree to comply with all federal and state laws, rules, regulations, and auditing standards which are applicable to the performance under this agreement.

H. Partial Invalidity

A judicial or administrative finding, order, or decision that any part of this agreement is illegal or invalid shall not invalidate the remainder of the agreement.

I. Records Retention

All records relating to costs, work performed, and supporting documentation for invoices submitted to Human Services by Health along with copies of all deliverables submitted to Human Services pursuant to this agreement shall be retained and made available by Health for audit by the State of Ohio (including, but not limited to, Human Services, the Auditor of State of Ohio, Inspector General, or duly authorized law enforcement officials) and agencies of the United States government for a minimum of six (6) years after final payment under this agreement.

J. Audit Exceptions

1. Human Services shall be responsible for receiving, replying to, and arranging compliance with any audit

Rev. 4/97

TN # 99-004 APPROVAL DATE 11/3/99
 SUPERSEDES
 TN # 98-016 EFFECTIVE DATE 7/1/99

INTERAGENCY AGREEMENT NO. A-00-07-262

PAGE 15 OF 16

exception found by any state or federal audit of this agreement as it pertains to federal funding or Human Services funding of this agreement. Human Services timely shall notify Health of any adverse findings which allegedly are the fault of Health. Upon receipt of notification by Human Services, Health will cooperate fully with Human Services and timely prepare and send to Human Services its written response to the audit exception.

2. Health shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. Human Services shall be liable for any audit exception that results solely from its acts or omissions in the performance of this agreement. In the event that the audit exception results from the acts or omissions of both Health and Human Services, the financial liability for the audit exception shall be shared by the parties in proportion to their relative fault. In the event of a dispute concerning the allocation of financial liability for audit exceptions, the parties agree that the dispute shall be referred to the Office of the Governor for a final, binding determination which allocates financial liability.
3. For the purpose of this section, the term "audit exception", shall include federal disallowances and deferrals.

K. Liability (other than Audit Exceptions)

To the extent permissible by law, Health agrees to hold Human Services harmless from any and all liability, suits, losses, judgments, damages, or any other demands brought as a result of the actions or omissions of Health in the performance of this agreement. Human Services agrees to hold Health harmless from any and all liability, suits, losses, judgments, damages, or any other demands brought as a result of the actions or omissions of Human Services in the performance of this agreement.

L. Child Support Enforcement

Health agrees to cooperate with Human Services and any Ohio Child Support Enforcement Agency (CSEA) in ensuring that employees of Health meet child support obligations established under state law. Further, by executing this agreement, Health certifies present and future compliance with any court order for the withholding of support which is issued pursuant to Sections 3113.21 to 3113.217 of the ORC.

M. Drug-Free Workplace

By executing this agreement, Health certifies and affirms that, as applicable to Health, any subcontractor and/or independent contractor, including all field staff associated with the project agree to comply with all applicable state and federal laws regarding a drug-free workplace. Health shall make a good faith effort to ensure that all Health employees, while working on State, county or private property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

N. Public Assistance Work Program Participants

By executing this agreement, Health agrees to cooperate with ODHS and each County Department of Human Services in providing employment and other work opportunities for recipients of assistance under Chapter 5107 of the Revised Code and recipients of food stamps who are required by law to obtain employment or participate in a work program activity.

Rev. 4/97

TN #99-004 APPROVAL DATE 11/3/99
SUPERSEDES
TN #98-016 EFFECTIVE DATE 7/1/99

INTERAGENCY AGREEMENT NO. A-00-07-262

Entirety of Agreement

All the terms and conditions of this agreements are embodied herein. No other terms and conditions will be considered a part of this agreement unless expressly agreed upon in writing and signed by both parties.

P. Certification of Availability of Funds

All obligations in this agreement are subject to Section 126.07 of the Ohio Revised Code.

APPROVED BY:


JACQUELINE ROMER-SENSKY
Director
Ohio Department of Human Services
30 East Broad Street
32nd Floor
Columbus, Ohio 43266-0423


J. NICK BAIRD, M.D.
Director
Ohio Department of Health
246 North High Street
7th Floor
Columbus, Ohio 43266-0118

ate: 6-29-99

Date: 6/25/99

Rev. 4/97

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