

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: CENTERS FOR MEDICAID AND MEDICAID SERVICES

1. TRANSMITTAL NUMBER:
TN 02-015

2. STATE
Ohio

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID) Title XIX

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 1, 2002

5. TYPE OF PLAN MATERIAL (*Check One*):

NEW STATE PLAN AMENDMENT TO BE CONSIDERED AS NEW PLAN x AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (*Separate Transmittal for each amendment*)

6. FEDERAL STATUTE/REGULATION CITATION:
42 CFR 431, Subpart M

7. FEDERAL BUDGET IMPACT:
a. FFY 2002 \$ -0-
b. FFY 2003 \$ -0-

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.16D, pages 1 through 13

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (*If Applicable*):

Attachment 4.16D, pages 1 through 12

10. SUBJECT OF AMENDMENT:

This amendment contains the interagency agreement between the Ohio Department of Job and Family Services and the Ohio Department of Health for the survey and certification of long term care facilities, enforcement, and resident assessment data collection. This agreement is effective July 1, 2002 through June 30, 2003.

11. GOVERNOR'S REVIEW (*Check One*):

- GOVERNOR'S OFFICE REPORTED NO COMMENT
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

x OTHER, AS SPECIFIED: The Governor's office has delegated review to the ODJFS Director.

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Thomas J. Hayes

14. TITLE:

Director

15. DATE SUBMITTED:

August 20, 2002

16. RETURN TO:

Becky Jackson
Bureau of Health Plan Policy
Ohio Department of Job and Family Services
30 East Broad Street, 27th floor
Columbus, Ohio 43215-3414

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: 8/19/02

18. DATE APPROVED: 10/16/02

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

July 1, 2002

20. SIGNATURE OF REGIONAL OFFICIAL:

Cheryl A. Harris

21. TYPED NAME:

Cheryl A. Harris

22. TITLE: Associate Regional Administrator
Division of Medicaid and Children's Health

23. REMARKS:

RECEIVED
AUG 19 2002
DMCH - IL/IN/OH

**INTERAGENCY AGREEMENT
BETWEEN
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
AND
THE OHIO DEPARTMENT OF HEALTH**

A-03-07-0089

**I.
PURPOSE**

This Agreement is entered into by the Ohio Department of Job and Family Services (hereinafter "ODJFS") and the Ohio Department of Health (hereinafter "ODH") for the purpose of defining the responsibilities of both parties as they relate to administration of the Ohio Medical Assistance program (hereinafter "the Medicaid program"), ODH's survey and certification of long-term care facilities, enforcement actions against long-term care facilities with deficiencies, activities regarding resident assessment data collection and use, and franchise fee assessments.

**II.
AUTHORITY**

This Agreement is written in accordance with and pursuant to :

- Sections 1819, 1902(a)(5), 1902(a)(9), 1902 (a)(33) and 1919(h)(2) of the Social Security Act;
- 42 CFR, parts 483 and 488;
- 42 CFR, part 431, subpart A, D and M;
- 42 CFR part 442, subpart A;
- 45 CFR, parts 80, 84 and 90; and
- Sections 3721.022, 3721.52, 5111.01, 5111.35, 5111.37, 5111.38 and 5111.62 of the Ohio Revised Code.

**III.
RESPONSIBILITIES OF THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES**

A. General

In accordance with Section 1902(a)(5) of the Social Security Act, as amended, 42 CFR 431.610, and the Ohio State Plan for Medical Assistance, and pursuant to Section 5111.01 of the Revised Code, ODJFS is designated as the single state agency responsible for supervising the administration of the Medicaid program under Title XIX of the Social Security Act.

B. Survey, Certification and Complaints

ODJFS shall perform the following duties relating to the certification process for long-term care facilities:

1. Accept and refer to ODH applications submitted by long-term care facilities requesting certification and participation in the Medicaid program.
2. Receive, review, and process all certification and transmittal forms submitted by ODH to ensure the timely certification and re-certification of long-term care facilities.
3. Issue provider agreements in accordance with the certification of compliance set forth by ODH (or if a Medicare-participating facility, the U.S. Department of Health and Human Services, hereinafter referred to as "DHHS".) This shall not be construed to prevent ODJFS from refusing to execute a provider agreement, or from canceling an agreement with a certified facility, if it has determined that such an agreement would not be in the best interests of the recipients or of the State, in accordance with the Ohio Revised Code and Administrative Code, or the facility has failed to meet the civil rights requirements set forth in 42 CFR Part 488.8 and 45 CFR Parts 80, 84 and 90, or other pertinent statutes or regulations.

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4. Notify ODH in a timely fashion of all issuances, assignments, amendments, expirations, terminations, and denials of provider agreements.
 5. Receive, process and refer to ODH any complaints regarding alleged violations of certification standards, including, but not limited to, hazards to the health and safety of residents in long-term care facilities participating in the Medicaid program.
 6. Receive, process, and investigate or refer to ODH for investigation, complaints alleging violation of a civil rights requirement by a long-term care facility.
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7. Accept and evaluate recommendations from ODH following ODH's investigation of a long-term care facility's alleged violation of civil rights.
 8. Certify state funds available and submit to The Centers for Medicaid & Medicare Services (CMS), with a copy to ODH, quarterly estimates of expenditures by the forty-fifth (45th) day before the beginning of the quarter covered by the report. ODJFS shall also submit to CMS, Quarterly Expenditure Reports by the thirtieth (30th) day following the end of the quarter.
 9. Notify ODH when ODJFS identifies any discrepancies in a facility's number of certified beds.
 10. Notify ODH when ODJFS receives an initial notice from a facility about a change in the legal entity operating the facility, including sales, leases, corporate mergers, partnership changes, and stock exchanges.

C. Enforcement

ODJFS shall perform the following duties relating to the enforcement process for long-term care facilities:

1. ODJFS will develop any rules or procedures necessary for the functions listed in Section III (C) (2) to Section III (C) (10) of this Agreement in coordination with ODH.
2. ODJFS will establish, maintain, and administer the Residents Protection Fund created by Section 5111.62 of the Revised Code. ODJFS, in coordination with ODH and the Ohio Department of Aging (ODA), will develop rules for maintenance and administration of the Fund and will adopt those rules in accordance with Chapter 119 or Chapter 111 of the Revised Code.
3. ODJFS will collect fines and interest imposed by ODH in accordance with applicable federal and state law and regulation.
4. ODJFS will withhold Medicaid payments for Medicaid-eligible residents of nursing facilities when ODH has issued an order denying payment in accordance with applicable federal and state law and regulation.
5. ODJFS will determine whether Medicaid provider agreements may be issued to nursing facilities under reimbursement-related statutes and rules of the Administrative Code.
6. ODJFS will issue, deny, and terminate provider agreements to nursing facilities in accordance with ODH's decisions regarding the facilities' certification under applicable federal and state law and regulations, guidelines, and procedures, subject to the facilities' compliance with the reimbursement-related requirements referenced in Section III (C) (5) of this Agreement. ODJFS will not provide facilities with adjudication hearings when ODH terminates their Medicaid participation.
7. ODJFS will make available or deny reimbursement to nursing facilities during appeals of ODH enforcement actions in accordance with applicable state and federal law and regulation.
8. ODJFS will decide reimbursement issues arising from operation of nursing facilities by temporary managers and special masters.
9. ODJFS will arrange for transfer of residents of nursing facilities when they are closed or their Medicaid participation is terminated under applicable federal and state law and regulation.

See 4 tab change 10/04/02

Pursuant to Chapter II of the ODJFS Long Term Care Facility Relocation Handbook entitled "Overviews of Inter-Agency Relocation Rules".

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10. **ODJFS** will monitor and oversee **ODH's** operation of enforcement by:
- a. Reviewing the monthly report on enforcement action taken required by Section IV(E)(15) of this Agreement. **ODH** shall submit this report to **ODJFS** upon commencement of enforcement activity.
 - b. Reviewing compliance with the terms of this Agreement, including hiring and training of staff to perform enforcement-related functions, submission to **ODJFS** of specified reports, and completion of documentation that allows **ODJFS** to issue provider agreements as required by applicable state and federal law and regulation.
 - c. Reviewing **ODH's** budgets and expenditures related to enforcement activities, insofar as federal funding of this function is concerned.

D. Reimbursement

In consideration of the services rendered in accordance with a currently effective Interagency Agreement, **ODJFS** shall reimburse **ODH**, upon proper invoicing and preparation of Intrastate Transfer Vouchers (ISTV), the Federal share of the actual costs allowable under applicable federal regulations and guidelines associated with the performance of **ODH's** duties and responsibilities. Reimbursement shall occur within 30 (thirty) business days of receipt of the ISTV by **ODJFS**.

This amount shall not exceed the level of federal financial participation available for the execution of this Agreement of \$11,900,000.00 (eleven million, nine hundred thousand dollars and no cents); such reimbursement may not exceed the amount of the federal survey and certification grant for the portions of federal fiscal years 2002 and 2003 which comprise state fiscal year 2003. **ODH** shall submit the ISTV to **ODJFS's** Office of Fiscal Services, 30 East Broad Street, 30th floor, Columbus, Ohio 43215-3414.

E. Notification of Changes to Ohio Administrative Code

ODJFS shall notify **ODH** of rule changes related to this Agreement not later than 10 (ten) days before initial filing of said rules with the Joint Committee on Agency Rule Review.

IV.

RESPONSIBILITIES OF THE OHIO DEPARTMENT OF HEALTH

A. General

1. In accordance with Sections 1902(a)(9) and 1902 (a)(33) of the Social Security Act, 42 CFR 431.610, Section 3721.022 of the Revised Code, and the Ohio State Plan for Medical Assistance, **ODH** is designated as the state health standard setting authority and state health survey agency responsible for certifying and determining compliance of long-term care facilities with the requirements for participation in the Medicaid program.
2. As the designated survey agency, **ODH** shall perform the following duties specifically related to the survey and certification of skilled nursing facilities (SNFs), or nursing facilities (NFs), and intermediate care facilities for the mentally retarded/developmentally disabled (ICF/MR).
3. In accordance with 42 CFR Part 488, Subparts A, E, and F and 42 CFR Part 431, Subpart M, conduct on-site surveys as frequently as required by Medicaid statutes and regulations to determine compliance.
4. **ODH** shall notify **ODJFS** of rule changes related to this Agreement no later than 10 (ten) days prior to submission of said rules to the Public Health Council or filing of the rules with the Joint Committee on Agency Rule Review.
5. **ODH** shall submit to **ODJFS** quarterly estimates of expenditures at least 55 (fifty-five) days before the beginning of the quarter covered by the report. The above shall be submitted in accordance with federal and state guidelines unless otherwise specified in writing.

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6. ODH shall make available upon request any additional accounts, records, or other information as required by ODJFS, DHHS, the U.S. Accounting Office, the Auditor of State, or their agents, to substantiate any estimate, expenditures, or report as necessary for auditing purposes to verify the allowability of expenditures under this Agreement.
7. The ODH Quarterly Expenditure Reports must be submitted to ODJFS, Bureau of Accounting, within 25 (twenty five) days following the end of each calendar quarter.

B. Survey and Certification

1. ODH shall document findings regarding a facility's non-compliance with any Medicaid certification requirement, including a listing of deficiencies and findings as specified in 42 CFR 431, Subpart M.
2. ODH shall notify ODJFS, in writing, of certification determinations for new and existing facilities and of any changes in the status of certification for existing facilities.
3. Upon determining the facility's compliance or non-compliance with Medicaid participation requirements, ODH shall certify to ODJFS the facility's compliance status and take necessary action in accordance with 42 CFR Parts 431, 442, and 488 and applicable state law and rule.
4. ODH shall submit to ODJFS's Bureau of Long-Term Care Facilities (BLTCF) by the 15th (fifteenth) day of each month, certification status and reconciliation reports for ODH's preceding month, which shall include:
 - a. Long-Term Care Adverse Actions;
 - b. Certification Activity Summary;
 - c. Summary of Certifications Due with Federal Financial Participation (FFP) At Risk, including Facility's Name and Number;
 - d. Licensure Activity including:
 - i. Issuance of new licenses or revised licenses and information regarding change of operator.
 - ii. Enforcement Actions (Name of Facility)
 - iii. Closed Homes (Name of Facility)
 - e. Changes in the legal entity operating the facility, including initial notices of sales, leases, mergers, partnership changes, and stock exchanges.
5. ODH shall provide ODJFS with 1 (one) copy of the statement of deficiencies and plan of correction for each facility and any letters to a long-term care facility regarding adverse administrative action.
6. ODH shall take action to ensure that appropriate survey staff attend required hearings.

C. Complaints

1. ODH shall receive and investigate complaints alleging a long-term care facility's non-compliance with Medicaid participation requirements, jeopardy to the health and safety of any long-term care facility residents, or a facility's failure to meet a civil rights requirement.
2. ODH shall provide to ODJFS the CMS Form 562, which identifies each complaint filed, and provides the name of the Medicaid long-term care facility, the type of complaint, and the time frame for completing the complaint investigation.
3. ODH shall comply with the time frames and requirements set forth in the State Operations Manual pertaining to the investigation of complaints.

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4. **ODH** shall submit to **ODJFS** completed copies of all complaint reports concerning Title XIX providers reported to CMS on Forms 562 at least monthly.

D. Appeals

ODH shall conduct an appeal process in accordance with applicable state law and rule, 42 CFR 431, Subpart D, and the State Operations Manual for facilities whose certification has been denied, terminated, or not renewed or in which other remedies have been imposed.

E. Enforcement

ODH shall perform the duties listed in this Section relating to the enforcement process for nursing facilities. To the extent that such a delegation is required or permitted by law, **ODJFS** hereby specifically delegates to **ODH** the authority to perform these duties.

1. **ODH**, pursuant to applicable state law and federal regulations, guidelines, and procedures, and Sections IV (A) through (D) of this Agreement, will operate the Medicaid survey and certification process for NFs. **ODH** will adopt any rules and/or procedures necessary for this function. **ODH's** survey and certification responsibilities will include, but are not limited to the following:
 - a. Determination of deficiencies.
 - b. Exit interviews.
 - c. Required notifications following surveys.
 - d. Preparation of statements of deficiencies.
 - e. Informal review of deficiency citations.
 - f. Follow-up surveys when necessary under applicable state law and federal regulations, guidelines, and procedures.
 - g. Complaint investigations under applicable state law and federal regulations, guidelines, and procedures.
2. **ODH**, in accordance with applicable state law and federal law and regulation, will determine which remedies to impose against NFs with deficiencies.
3. **ODH**, in accordance with applicable state and federal law and regulations, will impose remedies against nursing facilities with deficiencies, including the following:
 - a. Termination of Medicaid participation. **ODH** shall take this action by terminating certification.
 - b. Appointment of temporary managers.
 - c. Application to the Court of Common Pleas for injunctions and appointment of special masters.
 - d. Issuance and termination of orders denying Medicaid payments for all Medicaid-eligible residents. **ODH** will immediately notify **ODJFS** of the issuance of such orders.
 - e. Imposition of fines (civil money penalties) and determination of the duration and amount of fines.
4. **ODH** will approve or disapprove plans of correction submitted by facilities, in accordance with applicable state and federal laws and regulations, guidelines, and procedures.
5. In accordance with applicable state and federal law and regulation, unless a condition of immediate jeopardy exists, **ODH** may permit a nursing facility to continue to participate in the Medicaid program for up to six (6) months after the exit interview. When a condition of immediate jeopardy exists, **ODH** will terminate the

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facility's participation in the Medicaid program no later than 23 (twenty-three) days from the survey, if the facility does not eliminate the immediate jeopardy prior to the date set for termination.

6. **ODH** will issue notice to NFs of remedies being imposed, in accordance with applicable state and federal laws and regulations.
7. **ODH** will provide notice to **ODJFS** of survey results, certification decisions, remedies that have been imposed on nursing facilities, and emergency actions, in accordance with applicable requirements.
8. **ODH** will appoint monitors for nursing facilities in accordance with applicable state and federal laws and regulations.
9. **ODH** will conduct administrative appeal proceedings in accordance with applicable state and federal laws and regulations when imposition of remedies occurs prior to or during the pendency of the adjudication hearing.
10. **ODH** will conduct administrative appeal proceedings in accordance with applicable state and federal laws and regulations when imposition of a remedy will not occur until after the completion of an adjudication hearing.
11. In the case of an emergency as defined in Section 5111.35 of the Revised Code, **ODH** will take all appropriate actions in accordance with applicable state and federal laws and regulations.
12. **ODH** will appoint a temporary manager or petition to the Court of Common Pleas for appointment of a special master when necessary during closure of a NF or after termination of its Medicaid participation, in accordance with applicable state and federal laws and regulations.
13. **ODH** will issue orders denying Medicaid payments to NFs, in accordance with applicable state and federal laws and regulations, when the facilities fail to correct deficiencies in accordance with their plans of correction within three (3) months after the exit interview or when they are cited for substandard quality of care on three consecutive standard surveys. **ODH** will immediately notify **ODJFS** of the issuance of such orders.
14. **ODH** will impose remedies on nursing facilities for purposes of the Medicare program to the extent authorized by federal regulations, guidelines, and procedures.
15. **ODH** will provide **ODJFS**, by the 15th (fifteen) day of each month, a report of all enforcement action initiated, pending, and completed against NFs during the previous month. This report will include, as a minimum, the following information: Facility name and location; nature of enforcement action taken; status of action; scheduled hearing dates; hearing status; and other relevant information agreed upon by **ODH** and **ODJFS**.

F. Records

ODH shall maintain on file all information and reports used in determining each facility's compliance with federal and state standards for a minimum of five (5) years, and shall make such information readily accessible to **ODJFS**, **DHHS**, the U.S. Government Accounting Office, the Auditor of State, and their respective agents. If a compliance review is in progress, or if compliance findings have not been resolved, the records required above shall be retained until final resolution.

G. Delegation of Responsibilities

The certification authority assigned to **ODH** under this Agreement shall not be delegated by **ODH** to any other governmental or private entity. However, **ODH** may subcontract for and utilize the services, facilities, and records of any state or local government agency or qualified private contractor to assist in performing its duties and responsibilities.

Any subcontracts entered into by **ODH** shall be written in accordance with this Agreement, and no subcontract provision shall supersede any statements herein. **ODH** shall submit to **ODJFS** a copy of any subcontract which delegates any of **ODH**'s survey and certification responsibilities for Medicaid.

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1. **ODH**, upon request, will provide **ODJFS** with an update of the total number of individuals on the nurse aide registry. **ODJFS** shall be provided an opportunity to review and provide feedback on all proposed contracts, including revisions and addendums, with the testing service chosen by **ODH** to provide state-administered testing of NF nurse aides.

ODH shall notify **ODJFS**, **BLTCF** of any state or federal change or new development in NF nurse aide training and/or testing which might affect Medicaid reimbursement policy and/or procedure.

ODH shall provide **ODJFS**, **BLTCF** with current listings of all state-approved NF nurse aide training and competency evaluation (TCE) and train-the-trainer (TTT) programs. **ODH** shall also notify **ODJFS** of all TCE and TTT programs for which state approval is revoked.

2. **ODH** is designated as the official contact for the Minimum Data Set (MDS). **ODJFS** and **ODH** shall participate jointly in the MDS Automation Project. **ODH** or **ODJFS** shall notify the other of any state or federal change in the MDS requirements which might affect the State's Plan for implementing the MDS.
3. **ODH** shall disapprove any Nurse Aide Training and Competency Evaluation Program (NATCEP) or competency evaluation program conducted in or by a facility that has been subject to any of the following:
 - a. An extended or partial extended survey;
 - b. Denial of payment for Medicaid or Medicare admissions; or
 - c. A civil money penalty of \$5,000.00 (five thousand dollars and no cents) or more has been assessed against the facility.

Notwithstanding the above, **ODH** may grant a waiver to a facility permitting continued operation of a training program if conditions warrant such a waiver.

H. Franchise Fees

1. In accordance with ORC section 3721.52 by no later than the first day of June, **ODH** will provide **ODJFS** with information required to calculate nursing home franchise fees. The information shall reflect the status current as of the first day of May and include:
 - a. The number of beds in each licensed nursing home;
 - b. The number of beds in each certified skilled nursing facility, nursing facility, or ICF/MR;
 - c. The number of beds in each licensed home for the aged; and
 - d. The number of hospital beds registered as long-term care beds.
2. For each nursing home **ODH** will provide **ODJFS** with the following:
 - a. Facility name;
 - b. Facility address;
 - c. County location;
 - d. Home number as assigned by **ODH**;
 - e. Home type, including certified county operated homes;
 - f. Active or closed status, with closure date for all facilities closed within the preceding 12 (twelve) months;
 - g. Phone numbers; and

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- h. Name of legal entity operating the home.

V.

RESIDENT ASSESSMENT INSTRUMENT

42 CFR Section 483.20 requires that NFs conduct comprehensive resident assessments consistent with the requirements for each state's specified resident assessment instrument (RAI) and perform quarterly reviews to assure the continued accuracy of the assessments. Ohio has selected the Minimum Data Set (MDS 2.0) as the state-specified RAI and quarterly review document. The Ohio Medicaid NF payment system uses the MDS 2.0 to establish case mix levels of facilities and determine direct care rates.

ODJFS and **ODH** will cooperate in the joint development and implementation of any future changes of the state-specified RAI or quarterly review document, and in the joint development and maintenance of MDS training programs, manuals and other educational materials.

A. ODH Responsibilities:

1. **ODH** shall report to **ODJFS** for all nursing facilities surveyed:
 - a. Assessment-related survey findings; and
 - b. Consolidated resident-specific findings based on the survey sample that was selected in accordance with CMS Guidelines and findings from surveyors' quality of care assessment.

The formats of the survey findings and the resident-specific reports shall be designed by **ODH** in consultation with **ODJFS**. Additional sampling methodology may be used if mutually agreed upon by **ODH** and **ODJFS**. Copies of the findings reports shall be sent to **ODJFS** monthly.

2. **ODH** shall report ICF/MR survey findings to **ODJFS** if such facilities are out of compliance with the federal conditions of participation concerning active treatment (42 CFR 483.440).
3. **ODH** shall cooperate in the provision of training of NF and SNF/NF providers on the RAI and use of the facility certification and Medicaid case mix payment system. Training may be provided by state employees or entities with whom **ODH** and/or **ODJFS** has contracted. **ODH** shall select and supervise content of training sessions related to certification of facilities, including use of resident assessment protocols and triggers, and development of care plans, and select and/or approve presenters.
4. **ODH**, in consultation with **ODJFS**, 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 **ODJFS** and **ODH**.
5. **ODH** shall provide **ODJFS** documentation on **ODH** cost allocation between the Medicaid and Medicare Programs as is necessary for **ODJFS** to meet its duties and obligations. **ODH** shall cooperate with **ODJFS** to identify the documentation that is required.

B. ODJFS Responsibilities:

1. **ODJFS** 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. **ODJFS** shall notify **ODH** of any facilities required to refund overpayments for direct care which were discovered through the **ODJFS** exception review process in a form designed or designated by **ODH** that facilitates citing deficiencies. The format of such notice shall be approved by **ODJFS**.
3. **ODJFS** 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 **ODJFS** and/or **ODH** has contracted. **ODJFS** shall select and supervise

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content and training sessions related to the case-mix payment system, and select and/or approve presenters.

4. **ODJFS** 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. **ODH** shall have overall responsibility for fulfilling federal requirements for the operation of the MDS 2.0 data system. **ODH** shall administer the data collection process and provide technical assistance to all providers so that providers will be able to submit accurate data in a timely manner.
 - a. **ODH** 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. **ODH** will notify **ODJFS** within 72 (seventy-two) 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. **ODH** shall consult with **ODJFS** on MDS 2.0 questions related to items used in the Medicaid payment system prior to issuing new or revised instructions, interpretations and/or clarifications.
 - b. **ODH** shall maintain a Vendor Hot Line to respond to software vendor questions related to the CMS 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. **ODH** shall, in coordination with **ODJFS**, maintain and administer a process for correcting key MDS fields identified by CMS. **ODH** shall process corrections within 30 (thirty) days of receipt.
2. **ODH** shall maintain the MDS 2.0 data system. For any MDS diskettes collected, **ODH** shall maintain these original source documents. **ODH** and **ODJFS** shall jointly establish the maintenance schedule for the aforementioned diskettes to ensure compliance with all applicable state and federal requirements.
3. **ODH** shall ensure **ODJFS** read only access to the data base including the Data Management System on a 24 (twenty-four) hour per day/seven (7) day per week basis. Full access includes the ability to view, query, browse, print and copy/transfer MDS data to **ODJFS** data bases using established data transfer methods including automatic data replication techniques. **ODH** and **ODJFS** shall mutually agree on a schedule for maintenance down time. Except in an emergency, **ODH** shall notify **ODJFS** of any changes to the agreed upon schedule two (2) weeks prior to the effective time of the change. Within seven (7) days of receipt of such notice **ODJFS** shall notify **ODH** if the change would interfere with the ability of **ODJFS** to carry out its duties and responsibilities. **ODH** shall notify **ODJFS** of emergency unscheduled down time of the data system and provide additional notification if the down time is expected to exceed four (4) hours.
4. **ODH** shall administer the system, and be fully responsible for system administration, security, and maintenance of the hardware and software. **ODH** will provide **ODJFS** with:
 - a. two-day turnaround for requests for new/changed user IDs for **ODJFS** staff;
 - b. a mechanism to timely add, delete or modify Medicaid provider numbers; and
 - c. notification of system enhancements/upgrades. **ODH** shall notify **ODJFS** within 72 (seventy-two) hours of receipt of notification of any system changes, upgrades, or enhancements, and shall share all system documentation with **ODJFS**. Implementation of system changes shall be coordinated with **ODJFS** to ensure the accurate transfer of data to **ODJFS** for Medicaid payment purposes.

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5. **ODH** and **ODJFS** 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. **ODH** shall either establish direct access for **ODJFS** to post notices/reports and download files or provide a mechanism to transfer such data for **ODJFS**. Should **ODH** elect to provide this data transfer service, all files shall be downloaded and all reports shall be posted within 72 (seventy-two) hours of receipt by **ODH**.

VI. MONTHLY MEETINGS

ODH's Division of Quality Assurance and **ODJFS's** Bureau of Long-Term Care Facilities shall meet monthly or as otherwise agreed to, to discuss issues related to **ODH's** and **ODJFS's** responsibilities as set forth in this Agreement.

VII. PROBLEM RESOLUTION

- A. Either **ODJFS's** Chief of the BLTCF or **ODH'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 (10) working days, a meeting to address the problem.

The agency requesting the meeting should be prepared to:

1. Clearly describe the problem;
2. Identify the scope or extent of the problem;
3. Recommend action needed to solve the problem; and
4. 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 (1) to two (2) page memorandum using the following format:

1. Issue:
2. Recommendation (s):
3. Background:
4. Rationale:
5. Action Required: - By **ODH** or **ODJFS**

If a meeting cannot be arranged with 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 judgement, insufficient progress in meeting any requirements outlined in this Agreement is being made, then either agency may request that the Director of **ODH**, the Director of **ODJFS**, 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 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 **ODH**, the Director of **ODJFS**, and the Governor's Executive Assistant for Health and Human Services or designee, meet to determine an appropriate resolution to the problems.
- D. **ODJFS** may take such other action as necessary to protect the best interest of Medicaid recipients or of the State.

TN #02-015 APPROVAL DATE
SUPERSEDES
TN #01-011 EFFECTIVE DATE 7/1/02

VIII.
GENERAL PROVISIONS

A. Effective Dates

This Agreement will become effective July 1, 2002, and will remain in effect until June 30, 2003, subject to the cancellation provisions contained in this Agreement.

B. Termination by Notice

1. This Agreement may be terminated by either party upon 30 days written notice of termination to the other party. Notice of termination shall be sent or otherwise delivered to the persons: If **ODH** is terminating the Agreement, to Director, Ohio Department of Job and Family Services, 30 East Broad Street, 32nd floor, Columbus, Ohio 43215-3414; or, if **ODJFS** intends to terminate the Agreement, to Director, Ohio Department of Health, 246 North High Street, 7th floor, Columbus, Ohio 43216-0118.
2. This Agreement may be terminated immediately in the event there is a loss of funding, disapproval by a federal administrative agency, or upon discovery of non-compliance with any federal or state laws, rules or regulations. 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 VIII., 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, 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 the agencies. It is agreed, however, that any amendments to laws, rules, or regulations cited herein will result in the correlative modification of this Agreement, without the necessity for executing written amendment.

E. Equal Employment Opportunity

In carrying out this Agreement, **ODH** 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 veteran status. **ODH** 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.

ODH agrees to post in conspicuous places, available to employees and applicants for employment, notices stating that **ODH** complies with all applicable federal and state non-discrimination laws. **ODH** shall, in all solicitations or advertisements for employees placed by or on behalf of **ODH**, 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. **ODH** 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.

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SUPERSEDES
TN #01-011 EFFECTIVE DATE 7/1/02

F. Confidentiality of Information

The parties 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. The parties specifically agree to be bound by the same standards of confidentiality that apply to the employees of either party and the State of Ohio. The terms of this section shall be included in any subcontracts executed by either party for work under this Agreement. The parties specifically agree to comply with state and federal confidentiality laws and regulations applicable to the programs under which this Agreement is funded. The parties are responsible for obtaining copies of all applicable rules governing confidentiality and for assuring compliance with the rules by employees and contractors of either party.

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

ODH agrees to comply with all federal and state laws, rules, regulations, and auditing standards which are applicable to the performance of 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 **ODJFS** by **ODH** along with copies of all deliverables submitted to **ODJFS** pursuant to this Agreement shall be retained and made available by **ODH** for audit by the State of Ohio (including, but not limited to **ODJFS**, 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 three (3) years after final payment under this Agreement. If an audit is initiated during this time period, **ODH** shall retain such records until the audit is concluded and all issues resolved.

J. Audit Exceptions

1. **ODJFS** shall be responsible for receiving, replying to, and arranging compliance with any audit exception found by any state or federal audit of this Agreement as it pertains to federal or **ODJFS** funding of the Agreement. **ODJFS** shall promptly notify **ODH** of any adverse findings which allegedly are the fault of **ODH**. Upon receipt of notification by **ODJFS**, **ODH** shall fully cooperate with **ODJFS** and timely prepare and send to **ODJFS** its written response to the audit exception.
2. **ODH** shall be liable for any audit exception that results solely from its acts or omissions in the performance of this Agreement. **ODJFS** 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 **ODJFS** and **ODH**, 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 disallowance and deferrals.

K. Liability Requirements (other than audit)

To the extent allowable by law, each agency agrees to hold the other agency harmless from liability, suits, losses, judgments, damages or other demands brought as a result of its actions or omissions in performance of this Agreement. However in the event that an agency is subject to liability, suits, losses, judgments, damages or other demands which are due to the acts or omissions of the other agency, the other agency will not be held harmless.

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L. Resolution of Disputes

The agencies agree that the directors of the agencies shall resolve any disputes between the agencies concerning responsibilities under or performance of any of the terms of this Agreement. In the event the directors cannot agree to an appropriate resolution to the disputes they shall be referred to the Office of the Governor for a final, binding determination resolving the dispute.

M. Child Support Enforcement

ODH agrees to cooperate with ODJFS and any Ohio Child Support Enforcement Agency (CSEA) in ensuring employees of ODH meet child support obligations established under state law. Further, by executing this Agreement, ODH certifies present and compliance with any court order for the withholding of support which is issued pursuant to sections 3113.21 to 3113.217 of the Ohio Revised Code.

N. Drug-Free Workplace

By executing this Agreement, the parties certify and affirm that, as applicable to the parties, 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. The parties shall make a good faith effort to ensure that all 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.

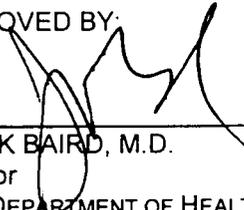
O. Public Assistance Work Program Participants

By executing this Agreement, ODH agrees to cooperate with ODJFS and each County Agency under the jurisdiction of ODJFS as required by law 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.

P. Entirety of Agreement

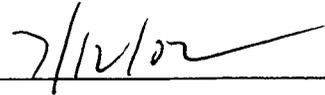
All terms and conditions of this Agreement are embodied herein. No other terms and conditions will be considered a part of this Agreement unless expressly agreed upon in writing and signed by both parties.

APPROVED BY:

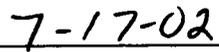


J. NICK BAIRD, M.D.
Director
OHIO DEPARTMENT OF HEALTH
246 North High Street, 7th Floor
Columbus, Ohio 43216-0118

THOMAS J. HAYES
Director
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
30 East Broad Street, 32nd Floor
Columbus, Ohio 43215-3414



Date



Date

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