

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

(School Based Administrative Claiming)

THIS AGREEMENT made and entered into by and between **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 DEPARTMENT OF EDUCATION**, 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, under and by virtue of Miss. Code Ann. § 43-13-117(A)(5), as amended, DOM is authorized to cover the cost of the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program, including the costs of school-based EPSDT programs, under Title XIX of the Federal Social Security Act, as amended;

WHEREAS, DOM received approval from the Centers for Medicare and Medicaid Services (CMS) for a School Based Administrative Claiming Program to promote access to health care for students in the public school systems, prevent costly or long term health care problems for at risk students, and coordinate students' health care needs with other providers; and,

WHEREAS, under and by virtue of Miss. Code Ann. § 37-3-5, as amended, the Department is charged with the execution of all laws relating to the administrative, supervisory, and consultative services to the public schools and agricultural high schools of the State of Mississippi.

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:** This Agreement shall apply only to School Based Administrative Claiming activities between DOM and the Department. The Department agrees to perform the following services for DOM: the Department, as DOM's designated agent, shall be

responsible for School Based Administrative Claiming activities, as approved by CMS in the Mississippi School Based Administrative Claiming Guide. The CMS approved Mississippi School Based Administrative Claiming Guide is attached hereto as Exhibit "A" and wholly incorporated herein.

- II. PERIOD OF PERFORMANCE:** The term of this Agreement shall commence on July 1, 2016, and shall expire on June 30, 2018, unless this Agreement is terminated pursuant to Paragraph VII (Termination). The Agreement may be extended for up to two (2) one (1) year terms if mutually agreed upon in writing by both parties and subject to continuing federal authorization.
- III. COORDINATION OF SERVICES:** The Department shall coordinate the performance of the services to be provided hereunder with and through DOM's Office of Finance, and consult with such office on specific courses of action, which should be pursued.
- IV. BILLING AND DOCUMENTATION OF TIME:** The Department will promptly submit School Based Administrative Claiming invoices to DOM quarterly, and shall include all records necessary to substantiate these billings. The Department shall retain nine percent (9%) of the participating district school based administrative claiming total invoice amounts for administrative costs of operating the school based administrative claiming program. 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.
- V. 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 program, 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.
- VI. 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.

- VII. 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.
- VIII. 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 VII (Termination) above.
- IX. 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) so as to insure the continuation of the program in accordance with the CMS approved School Based Administrative Claiming Guide and policies established or to be established by the Division or by CMS that are now applicable or later made applicable to this Program. The Department further agrees to perform the responsibilities set out in the approved School Based Administrative Claiming Guide and agrees to faithfully perform its assigned duties on the financial basis as set out herein. The Division agrees that it will carry out its responsibilities as set forth in the School Based Administrative Claiming Guide as approved by CMS. 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. DOM shall supply at least monthly, to the Department such information as may be necessary or required on eligible Medicaid recipients to which this Agreement applies.
 - C. 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, including the review of training materials, observation of training, and the overall random moment time study process. The Department shall also supply DOM with copies of audit files upon request in accordance with the School Based Administrative Claiming Guide. DOM will provide the Department with timely notice of the information required by CMS.
 - D. 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.

E. 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 as authorized under DOM's federally approved School Based Administrative Claiming program.

X. 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.

XI. UNSATISFACTORY WORK: If, at any time during the contract term, the service performed or work done by the Department is considered by DOM to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, the Department shall, on being notified by DOM, immediately correct such deficient service or work. In the event the Department fails, after notice, to correct the deficient service or work immediately, DOM shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of the Department.

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 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. 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 the 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. HIPAA/FERPA:** All activities under this Agreement 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 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 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 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, or any party claiming an interest in the Agreement on behalf of, or under, the rights of the parties following termination. DOM agrees to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232(g) to the extent that it is applicable.

- 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 School Based Administrative Claiming in the local school districts. 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 (6) 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 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.

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 Section 31-7-13 of the Mississippi Code of 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.

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.

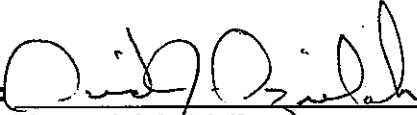
XXXI. SUCCESSOR LIABILITY: The rights, privileges, benefits, and obligations created by this Agreement and by operation of law extend to and accrue and are obligatory upon the parties hereto, their permitted assigns or successors.

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.

XXXIII. ADDITIONAL DISCLOSURES: In addition to the disclosures required by federal law, the Department shall disclose at the request of DOM, and in a reasonable time and manner determined by DOM, its organizational structure for purpose of providing the services described herein, including any affiliates or related entities that would not be considered subcontractors under this Agreement.

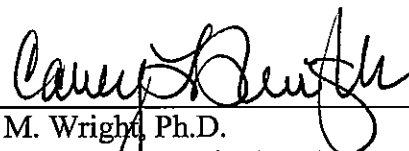
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as follows:

Mississippi Division of Medicaid

By: 
David J. Dzielak, Ph.D.
Executive Director

Date: 12/18/17

Mississippi Department of Education

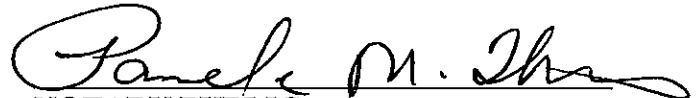
By: 
Carey M. Wright, Ph.D.
State Superintendent of Education

Date: 1/4/18

**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, **David J. Dzielak, Ph.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 18th day of December, A.D., 2017.



NOTARY PUBLIC



**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, **Carey M. Wright, Ph.D.**, in her official capacity as the duly appointed **State Superintendent of Education** of the **Mississippi Department of Education**, an administrative agency of the State of Mississippi who acknowledged to me, being first duly authorized by said Department that she duly signed and delivered the above and foregoing written Agreement for and on behalf of said Department 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 4th day of January, A.D., 2018.


NOTARY PUBLIC

