

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

**A-04-07-0075**

**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:

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

**III. RESPONSIBILITIES OF ODJFS**

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 Ohio 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 agreement would not be in the best interests of the recipients of the program.

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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.

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.
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 and Medicare Services (CMS), with a copy to ODH, quarterly estimates of expenditures by the forty-fifth (45<sup>th</sup>) day before the beginning of the quarter covered by the report. ODJFS shall also submit to CMS, Quarterly Expenditure Reports by the thirtieth (30<sup>th</sup>) 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 Article III (C) (2) to Article 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 Ohio 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 Ohio Revised Code.
3. ODJFS will collect fines and interest imposed by ODH in accordance with applicable federal and state laws and regulations.
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 laws and regulations.
5. ODJFS will determine whether Medicaid provider agreements may be issued to nursing facilities under reimbursement-related statutes and rules of the Ohio 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 laws and regulations, guidelines and procedures, subject to the facilities' compliance with the reimbursement-related requirements referenced in Article 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.

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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 laws and regulations pursuant to Chapter IV of the ODJFS Long-Term Care Facility Relocation Handbook entitled "Overview of Inter-Agency Relocation Roles."
10. ODJFS will monitor and oversee ODH's operation of enforcement by:
  - a. Reviewing the monthly report on enforcement action taken required by Article 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 laws and regulations.
  - c. Reviewing ODH's budgets and expenditures related to enforcement activities, insofar as federal funding of this function is concerned.

D. 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.

E. The ODJFS Agreement Manager is the Chief of the Bureau of Long Term Care Facilities.

#### IV. RESPONSIBILITIES OF ODH

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 Ohio 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 dedicated 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/MRs).
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 ten (10) 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 (JCARR).
5. ODH shall submit to ODJFS quarterly estimates of expenditures at least fifty-five (55) 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.
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. *APPROVAL DATE 12/02/03*

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7. The ODH Quarterly Expenditure Reports must be submitted to ODJFS, Bureau of Accounting, within twenty-five (25) days following the end of each calendar quarter.

#### 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 rules.
4. ODH shall submit to ODJFS's Bureau of Long-Term Care Facilities (BLTCF) by the fifteenth (15<sup>th</sup>) 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:
    - (1) Issuance of new licenses or revised licenses and information regarding change of operator.
    - (2) Enforcement Actions (Name of Facility)
    - (3) 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 one (1) 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.
4. ODH shall submit to ODJFS completed copies of all complaint reports concerning Title XIX providers reported to CMS on Form 562 at least monthly.

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## 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 Article IV (A) through (D) of this Agreement, will operate the Medicaid survey and certification process for Nursing Facilities. 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 Nursing Facilities 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 laws and regulations, 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 facility's participation in the Medicaid program no later than twenty-three (23) days from the survey, if the facility does not eliminate the immediate jeopardy.

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6. ODH will issue notice to Nursing Facilities 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 Ohio 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 Nursing Facility 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 Nursing Facilities, 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 fifteenth (15<sup>th</sup>) day of each month, a report of all enforcement action initiated, pending, and completed against Nursing Facilities during the previous month. This report will include, as a minimum, the following information:
  - a. Facility name and location;
  - b. Nature of enforcement action taken;
  - c. Status of action;
  - d. Scheduled hearing dates;
  - e. Hearing status;
  - f. 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.

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### 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 Nursing Facilities.

1. ODH will, upon request, 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 Nursing Facility nurse aides.
  - a. ODH shall notify ODJFS, BLTCF of any state or federal change or new development in Nursing Facility nurse aide training and/or testing which might affect Medicaid reimbursement policy and/or procedure.
  - b. ODH shall provide ODJFS and BLTCF with current listings of all state-approved Nursing Facility 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 partially extended survey;
  - b. Denial of payment for Medicaid or Medicare admissions; or
  - c. A civil money penalty of Five Thousand and 00/100 Dollars (\$5,000.00) 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;

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- 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 twelve (12) months;
- g. Phone numbers; and
- h. Name of legal entity operating the home.

The ODH Agreement Manager is the Chief of the Division of Quality Assurance.

#### V. RESIDENT ASSESSMENT INSTRUMENT

42 CFR Section 483.20 required that Nursing Facilities 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 Nursing Facility 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 finds; 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 Nursing Facilities and Skilled Nursing Facilities/Nursing Facilities 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 the 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 procedures for Medicaid Programs as is necessary for ODJFS to meet its duties and obligations. ODH shall cooperate with ODJFS to identify the documentation that is required.

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## 3. 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 Nursing Facility and Skilled Nursing Facility/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 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.

## 3. 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 seventy-two (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. 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 thirty (30) 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 twenty-four (24) hour per day/seven (7) days 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.

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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:
- Two-day turnaround for requests for new/changed user ID's for ODJFS staff;
  - A mechanism to timely add, delete or modify Medicaid provider numbers; and
  - Notification of system enhancements/upgrades. ODH shall notify ODJFS within seventy-two (72) 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.
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 seventy-two (72) 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:

- 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 (1) to two (2) page memorandum using the following format:

- Issue:
- Recommendation (s):
- Background:
- Rationale:
- Action Required: - By ODH or ODJFS

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 providing a rationale for not doing so.

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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.

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 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 to the problem.

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.

ODJFS may take such other action as necessary to protect the best interest of Medicaid recipients or of the State.

### VIII. TIME OF PERFORMANCE

#### A. Effective Dates

This Agreement will become effective upon execution and will remain in effect until June 30, 2004, subject to the cancellation provisions contained in this Agreement. This Agreement may be renewed upon satisfactory performance by both parties, upon appropriation of funds for such, and by mutual agreement of the parties.

#### B. Termination

1. This Agreement may be terminated at the convenience of either party without cause upon thirty (30) days written notice of termination to the other party. Notice of termination shall be sent or otherwise delivered to the persons signing this Agreement.
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 of termination pursuant to this paragraph B.2, a notice specifying the reasons for termination shall be sent as soon as possible after the termination to the non-terminating party.
3. Notwithstanding Paragraph B, 1 above, this Agreement may not be terminated at the convenience of either party if the performance under this Agreement is compelled by State or Federal Statute or Executive Order.

### IX. COMPENSATION

- A. 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 Eleven Million, Nine Hundred Thousand and 00/100 Dollars (\$11,900,000.00); such reimbursement may not exceed the amount of the federal survey and certification grant for the portions of federal fiscal years 2003 and 2004 which comprise state fiscal year 2004. ODH shall submit the ISTV to ODJFS's Office of Fiscal Services, 30 East Broad Street, 38<sup>th</sup> floor, Columbus, Ohio 43215.

- B. Payment for any and all services provided pursuant to this Agreement may be contingent upon the availability of federal funds. If the Ohio General Assembly or the federal government disapproves or ceases to continue funding ODJFS for payments due hereunder, this Agreement is terminated as of the date funding expires without notice or further obligation of ODJFS. ODJFS will provide written notice to the other party in this agreement as soon as possible.

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

## X. GENERAL PROVISIONS

### 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 does not constitute waiver of subsequent occurrences, and the parties retain the right to exercise all remedies mentioned herein.

### 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 amendments.*

### Equal Employment Opportunity

In carrying out this Agreement, the parties shall not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, gender, sexual orientation, age, disability, or veteran status. The parties shall ensure that applicants are hired, and that employees are treated during employment without regard to their race, religion, national origin, ancestry, color, gender, sexual orientation, age, disability, or 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.

The parties agree to post in conspicuous places, available to employees and applicants for employment, notices stating that the agencies comply with all applicable federal and state non-discrimination laws. The agencies shall, in all solicitations or advertisements for employees, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, gender, national origin, ancestry, sexual orientation, veteran status, disability or age. The parties agree that the foregoing requirements of this paragraph shall be incorporated in all of its contracts for any of the work prescribed herein.

### 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 both ODJFS and ODH 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 both ODJFS and ODH. The parties agree to current and ongoing compliance with the regulations found at 45 C.F.R. Section 164.512 (d) regarding disclosure of protected health information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The parties agree and acknowledge that the information provided by one or both parties may be considered confidential or proprietary under the laws of the State of Ohio or under federal law. If either party to this Agreement, as public entities, receives a public records request for information related to this document, the party receiving the request (Party "A") will promptly notify the other party (Party "B") of the request. If Party "B" believes there is information that is confidential or proprietary and should not be released, Party "A" will provide a reasonable period of time for Party "B" to seek to have the confidential or proprietary information withheld from the document prior to releasing the document.

TN # 03-016 APPROVAL DATE 12/22/03  
SUPERSEDES  
TN # 03-015 EFFECTIVE DATE 07/01/03

#### Compliance with Federal and State Laws, Rules and Regulations

ODJFS and ODH agree to comply with all federal and state laws, rules, regulations, and auditing standards which are applicable to the performance of this Agreement.

#### Partial Invalidity

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Ohio. Should any portion of this Agreement be unenforceable by operation of statute or by administrative or judicial decision, the operation of the balance of this Agreement is not affected thereby; provided, however, the absence of the illegal provision does not render the performance of the remainder of the Agreement impossible. Should the removal of such an unenforceable provision render the intended performance under this Agreement difficult or nonsensical, but not impossible, the parties shall negotiate in good faith replacement provision(s) in keeping with the objectives of the Agreement and the budgetary and statutory constraints of the parties.

#### 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 or three (3) years after final payment, whichever is longer. If appropriate, ODH must meet the requirements of the federal Office of Management and Budget (OMB) Circular A-87, A-110, A-122 or A-133.

#### i. 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 audit exceptions result 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 will allocate financial liability.

3. For the purpose of this section, the term "audit exception" shall include federal disallowance and deferrals.

#### Liability Requirements (other than audit)

To the extent allowable by law, ODH agrees to be responsible for any liability, suits, losses, judgments, damages or other demands brought as a result of its actions or omissions in performance of this Agreement. ODJFS agrees to be responsible for any liability, suits, losses, judgments, damages or other demands brought as a result of its actions or omissions in performance of this Agreement.

#### J. Child Support Enforcement

ODH agrees to cooperate with any Ohio Child Support Enforcement Agency (CSEA) in ensuring that ODH meet child support obligations established under state law. Further, by executing this Agreement, ODH certify present and continued compliance with any court or administrative order for the withholding of support.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the State of Ohio, this 12/22/03.  
 SUPERSEDES  
 TN #02-01/EFFECTIVE DATE 07/01/03

which is issued pursuant to the applicable sections in Chapters 3119, 3121, 3123, and 3125 of the Ohio Revised Code.

#### 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 including, but not limited to, 29 Code of Federal Regulations (C.F.R.) Part 98 and 45 C.F.R. Part 76 regarding a drug-free workplace. The parties shall make a good faith effort to ensure that all employees will not purchase, transfer, use, or possess illegal drugs or alcohol or abuse prescription drugs in any way while working or while on public property.

#### Public Assistance Work Program Participants

By executing this Agreement, ODH agrees to cooperate with ODJFS and each County Department of Job and Family Services as required by law in providing employment and other work opportunities for recipients of assistance under in the Job Opportunity and Basic Skills (JOBS) program operated pursuant to Sections 5101.80 to 5101.81 of the Ohio Revised Code and recipients of food stamps who are required by law to obtain employment or participate in a work program activity.

#### I. 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.

*Signature Page Follows*

*Remainder of Page Left Intentionally Blank*

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SUPERSEDES  
TN #02-015 EFFECTIVE DATE 07/01/03

**INTERAGENCY AGREEMENT  
SIGNATURE PAGE**

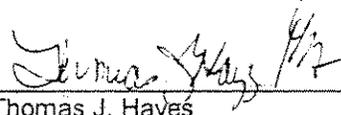
I WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE OF THE SIGNATURE OF THE DIRECTOR OF THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES.

APPROVED BY:

Ohio Department of Health

Ohio Department of Job and Family Services





Nick Baird, M.D.  
Director  
Ohio Department of Health  
16 North High Street  
Columbus, Ohio 43216-0118

Thomas J. Hayes  
Director  
Ohio Department of Job and Family Services  
30 East Broad Street, 32<sup>nd</sup> Floor  
Columbus, Ohio 43215-3414

9.05.03

9-11-03

Date

Date

TN #03-016 APPROVAL DATE 12/22/03  
SUPERSEDES  
TN #02-015 EFFECTIVE DATE 07/01/03