



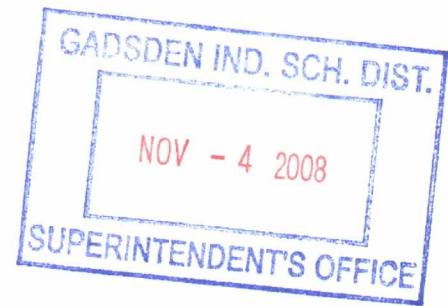
New Mexico Human Services Department

Bill Richardson, Governor
Pamela S. Hyde, J.D., Secretary

Medical Assistance Division
PO Box 2348
Santa Fe, NM 87504-2348
Phone: (505) 827-3103

October 27, 2009

Ms. Cynthia Nava
Superintendent
Gadsden Independent Schools
PO Drawer 70
Anthony, NM 88021



RE: Cost to Schools for Medicaid School-Based Services and Food Storage and Delivery

Dear Superintendent Nava:

Under the auspices of the Medicaid School-Based Services (MSBS) program, New Mexico schools receive reimbursement for direct health and administrative services required to treat Medicaid-eligible students who qualify for special education under the Individuals with Disabilities Education Act (IDEA).

On May 13, 2008 the Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) issued a final report of the *Funding Review of the Medicaid School Based Services Program in New Mexico for the Period October 1, 2004 through September 30, 2005*. In the report, CMS found the current state share funding practices impermissible and recommended that the Human Service Department (HSD) discontinue the current MSBS non-Federal share funding practices for direct medical services in schools.

You received a letter dated July 11, 2008, informing you of the efforts the Public Education Department (PED), the Human Services Department (HSD) and the Department of Finance and Administration (DFA) to develop an alternative funding mechanism for the state share of the Medicaid School Based Services Program. The aforementioned stakeholders met on July 16, 2008 and successfully worked out the details of an alternative funding mechanism. Beginning in State fiscal year 2008, HSD began funding the match for MSBS payments to schools in its general budget. This saved New Mexico schools approximately \$3 million per year.

I am pleased to enclose the new Governmental Services Agreement (GSA) between HSD and your school for the Medicaid School-Based Services (MSBS) program. This GSA is a result of the ongoing collaboration between HSD and New Mexico schools. The GSA lays out not only the responsibilities of the local education agencies (LEAs), regional education cooperatives (RECs), state-funded education agencies (SFEAs) and charter schools, but also HSD's

responsibilities to work jointly with New Mexico schools to ensure the success of the program. HSD has included new additional language that requires schools to:

1. Create an outreach plan to enroll more eligible children in the Medicaid program; and
2. Report quarterly to HSD on the progress of the Medicaid enrollment efforts.

The GSA also includes the charges for food storage and delivery for free/reduced school lunches. We regret that we must implement a charge but, due to the discontinuation of \$500,000 in state funding for this purpose, we have no choice but to charge the schools for this service, as many states in the nation now do.

It is our understanding that the Public Education Department is requesting funding to cover these storage and delivery costs in FY10. If funding is allocated to the Public Education Department for FY10, we anticipate that we will not have to charge schools next year for food storage and delivery.

The charge for each school district is based on the Average Daily Participation (ADP) for the month of March 2008. The charge for school districts that have their commodities delivered from the Human Services Department, Commodities Warehouse will be \$4.50 x ADP. School Districts will be invoiced twice for the school year; once in November 2008 for the first half of the year and again in April 2009 for the second half of the school year.

While we understand that the charge for school food delivery is a new and unexpected cost, it is considerably less than the amount the schools have had to pay for Medicaid school-based services in the past. We appreciate your understanding of our need to charge the schools since we do not have the funding to cover these costs for food storage and delivery.

If you have any questions about the food storage and delivery charges to your school, please contact Mary Oleske, Bureau Chief of HSD Food and Nutrition Services, at 505-841-2696.

Please be advised that the previous Joint Powers Agreement (JPA) with HSD expired on June 30, 2008 and your school's Medicaid provider number has been placed in a hold status pending signature of this GSA. **Once you have signed all four of the enclosed copies of the GSA, it is very important that you return them to the Medicaid School Health Office immediately so that HSD may reinstate your provider number to continue Medicaid reimbursements.**

The Medicaid School Health Office will work closely with your LEA/REC/SFEA/charter school to offer the technical assistance, training and day-to-day guidance as needed, to increase the Medicaid revenues that your LEA/REC/SFEA/charter school is eligible to receive for both direct medical services and administrative activities. As under the previous agreement with HSD, schools are required to reinvest these revenues to support health and health related services for all students.

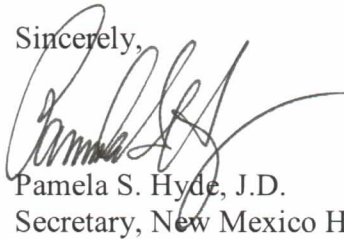
Please mail all four signed copies to:

Medicaid School Health Office
Attention: Angela Esquibel
P.O. Box 2348
2025 S. Pacheco St.
Santa Fe, NM 87504-2348

If you have any questions or concerns about the enclosed GSA, please do not hesitate to contact Angela Esquibel at (505) 476-7123 or, via e-mail, at angela.esquibel@state.nm.us.

Thank you for the invaluable work you do in the interest of New Mexico's children and youth. We look forward to continuing our collaborative relationship with your school to increase the resources and services available through the Medicaid School-Based Services program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pamela S. Hyde', with a long, sweeping flourish extending to the right.

Pamela S. Hyde, J.D.
Secretary, New Mexico Human Services Department

cc: Carolyn Ingram, Director, Medical Assistance Division
Angela Esquibel, School Health Office Manager, Medical Assistance Division

**GOVERNMENTAL SERVICES AGREEMENT
FOR THE MEDICAID SCHOOL-BASED SERVICES PROGRAM
BETWEEN
THE NEW MEXICO HUMAN SERVICES DEPARTMENT
AND
GADSDEN INDEPENDENT SCHOOLS**

This Governmental Services Agreement (Agreement) is entered into by and between the New Mexico Human Services Department (HSD) and the above-named local educational agency (LEA), regional educational cooperative (REC) or other state-funded educational agency (SFEA) to enable the LEA, REC or other SFEA to participate in the Medicaid School-Based Services (MSBS) program.

1. RECITALS

- A. New Mexico's MSBS program is a collaborative effort of four state agencies: HSD, the Public Education Department (PED), the Department of Health (DOH), and the Children, Youth and Families Department (CYFD), as set forth in the Multi-Agency Governmental Services Agreement for Medicaid school-based services programs and school-based health centers between HSD, PED, DOH and CYFD.
- B. PED is a participant in the MSBS program as successor to the former State Department of Education (SDE). Pursuant to Chapter 143, New Mexico Laws 2003, until July 1, 2004, all references in law to the State Department of Education shall mean the new Public Education Department.
- C. The parties are empowered to enter into this Agreement to provide services pursuant to Title XIX of the Social Security Act and 42 CFR Part 432, State Personnel Administration.
- D. The Individuals with Disabilities Education Act (IDEA) at 20 USC 1412(a)(12)(A) requires that a mechanism for interagency coordination be in effect in each state between the state educational agency and each other public agency, including the state Medicaid agency, that is otherwise obligated under federal or state law requirements to provide or pay for any services that are mandated under IDEA and are necessary to ensure a free appropriate public education (FAPE) to children with disabilities in New Mexico. Such an interagency agreement between HSD and PED has been in effect since May 9, 2003.
- E. The Medicare Catastrophic Coverage Act of 1988 (P.L.100-360) clarified that Medicaid matching funds are available and may be used for health-related

services covered under the Medicaid State Plan, when those services are provided under IDEA as part of an individualized education program (IEP) or an individualized family service plan (IFSP) for children and youth with disabilities.

- F. HSD may claim federal financial participation (FFP) for administrative activities performed by the LEAs, RECs and other SFEAs, including outreach and coordination, as costs of administering the Medicaid State Plan, pursuant to 42 CFR 430.1, 42 CFR 431.10 and the Centers for Medicare and Medicaid Services (CMS) *Medicaid School-Based Administrative Claiming Guide*, May 2003, and any federal revisions thereto.
- G. The LEA, REC or other SFEA acknowledges that its legal obligation to provide a FAPE to IDEA-eligible children and youth may require it to provide more services than are available under this Agreement through the MSBS program.
- H. The LEA, REC or other SFEA acknowledges that performance of its obligations under this Agreement makes it a "Trading Partner" of HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and federal regulations promulgated thereunder, and that a separate agreement between HSD and the LEA, REC or other SFEA is necessary in order to comport with HIPAA requirements.

2. PURPOSE OF AGREEMENT

The intent of the parties hereto in entering into this Agreement is to improve the health and developmental outcomes of children and youth in New Mexico by providing quality health care and services through the MSBS program and the School Lunch Program and assuring the appropriate use of public funds in accordance with applicable state and federal requirements.

3. ADMINISTERING AGENCY

HSD is the single state agency authorized to administer the Medicaid program in New Mexico pursuant to 42 USC 1396a(a)(5), 42 CFR Section 431.10, and NMSA 1978, § 9-8-12(B). HSD retains all authority and responsibility associated therewith. HSD shall claim federal matching funds for Medicaid-reimbursable direct services and allowable administrative costs related to the MSBS program. All other administrative duties and responsibilities of the parties are set forth below.

4. TERM OF AGREEMENT

This Agreement shall become effective upon signature of both parties and shall cover the period of July, 2008, through June 30, 2012, or until terminated by the parties pursuant to the terms of the Agreement.

5. RESPONSIBILITIES OF THE PARTIES

A. HSD shall:

1. Oversee the provision of direct services in the MSBS program, in accordance with federal and state laws and regulations and the Medicaid State Plan, and ensure that no amendments that would render the LEAs, RECs or other SFEAs ineligible to submit claims for Medicaid reimbursement are made to the Medicaid State Plan without first conferring with the LEAs, RECs or other SFEAs.
2. Oversee the implementation of administrative claiming in the MSBS program in accordance with federal and state laws and regulations, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto.
3. In consultation with PED, DOH, CYFD and the LEAs, RECs and other SFEAs, develop regulations, policies and guidelines governing the provision of Medicaid-reimbursable services by the schools to Medicaid-eligible children and youth with IEPs or IFSPs, in accordance with federal and state laws and regulations, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto.
4. Such regulations, policies and guidelines may include, but are not limited to: direct services, covered benefits, claimable and non-claimable administrative activities, time study activity codes, computation of claims, documentation to support claims, quality assurance, dispute resolution, confidentiality, oversight, enforcement and parental involvement.
5. In consultation with PED, DOH, CYFD and the LEAs, RECs and other SFEAs, develop regulations, policies and guidelines governing the necessary qualifications and credentials of personnel who deliver Medicaid-reimbursable services to Medicaid-eligible children and youth with IEPs or IFSPs.
6. In consultation with PED, DOH, CYFD and the LEAs, RECs and other SFEAs, develop and provide training and technical assistance regarding the provision of Medicaid-reimbursable services by the schools to Medicaid-eligible children and youth with IEPs or IFSPs, and the billing of allowable administrative claims, in accordance with federal and state Medicaid regulations, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico*

Medicaid Guide for School-Based Services, and any federal and state revisions thereto.

7. In consultation with PED, DOH, CYFD and the LEAs, RECs and other SFEAs, review all training programs and materials for school-based services to determine accuracy, clarity and relevance, and revise the training programs and materials as necessary in accordance with federal and state Medicaid regulations, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto.
8. In consultation with PED, review the Collaborative Plans, and any revisions thereto, submitted by the LEAs, RECs and other SFEAs in conjunction with this Agreement.
9. Collaborate with the LEA, REC or other SFEA to support the Medicaid outreach and enrollment efforts outlined in the LEA's, REC's or other SFEA's approved Outreach Plan.
10. Provide training in Presumptive Eligibility/Medicaid On-Site Application Assistance (PE/MOSAA) certification to identified LEA, REC or other SFEA staff at least once annually and upon request.
11. Ensure that the LEA, REC or other SFEA is reimbursed for medically necessary direct services provided by the LEA, REC or other SFEA to Medicaid-eligible children who have Medicaid-reimbursable services identified in their IEP or IFSP, pursuant to applicable federal and state Medicaid regulations, policies and guidelines, when those claims are submitted correctly by the LEA, REC or other SFEA.
12. Ensure that the LEA, REC or other SFEA is reimbursed for allowable administrative costs in accordance with applicable federal and state Medicaid regulations, policies and guidelines, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto, when those claims are submitted correctly by the LEA, REC or other SFEA.
13. In cooperation with CMS and the LEA, REC or other SFEA, develop periodic quality assurance reviews, including pre-audit and post-audit procedures, and conduct quality assurance reviews as necessary.
14. Streamline, reduce or eliminate, where possible, the paperwork required for approval of, and reimbursement for, services provided by the LEA, REC and other SFEA to Medicaid-eligible children and youth

who have Medicaid-reimbursable services identified in their IEP or IFSP.

15. Designate specific staff to work with the designated LEA, REC or other SFEA liaison to ensure that the LEAs, RECs and other SFEAs receive timely communications, information and guidelines from HSD concerning the MSBS program, including information about, but not limited to, direct services and administrative claiming.
16. Maintain the confidentiality of records and other information relating to Medicaid recipients in accordance with applicable state and federal laws and regulations, as set forth in Section XI below.
17. Enter into a Trading Partner Agreement with the LEA, REC or other SFEA and abide by its terms, as required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
18. Maintain current fiscal reports of any offsets against an LEA's, REC's or other SFEA's direct and/or administrative claims in accordance with generally accepted accounting principles.

B. The LEA, REC or other SFEA shall:

1. Conduct an evaluation pursuant to 34 CFR 300.532(h) and 6.31.2.10(D)1 NMAC to identify the special education and related-services needs of each IDEA-eligible child or youth, regardless of whether all services identified qualify for Medicaid reimbursement.
2. Develop an individualized education program (IEP) or individualized family service plan (IFSP) for each IDEA-eligible child or youth that provides all of the special education and related services needed to address each child's or youth's identified needs, pursuant to 34 CFR 300.300(a)(3) and 6.31.2.8(A) NMAC, regardless of whether all needed services qualify for Medicaid reimbursement.
3. Secure written consent from the child's or youth's parent, legal guardian or surrogate parent prior to performing any health-related services or procedures.
4. Secure consent from the child's or youth's parent, legal guardian or surrogate parent each time that access to Medicaid reimbursement is sought, pursuant to 34 CFR 300.154(d)(2)(iv)(A), and any federal revisions thereto.
5. Ensure timely compliance with all applicable federal and state Medicaid regulations, policies and guidelines relating to Medicaid-

reimbursable services provided under this Agreement.

6. Ensure timely compliance by health care providers with all applicable state licensing and other regulatory or credentialing requirements for providing health-related services under this Agreement.
7. Permit only qualified personnel approved by the HSD Medical Assistance Division in accordance with the MSBS program regulations to provide Medicaid-reimbursable, health-related services to Medicaid-eligible children and youth under this Agreement.
8. Collaborate with local community health and human services providers to develop and implement a Collaborative Plan that identifies health needs within the community and outlines strategies to meet those needs. The LEA, REC or other SFEA shall review the Collaborative Plan, as needed, with the community health and human services providers, make any necessary changes and submit a revised Collaborative Plan to HSD. The Collaborative Plan shall be submitted to HSD for review and approval in conjunction with this Agreement and shall be resubmitted to HSD for review and approval every two years.
9. Develop and submit an Outreach Plan to HSD every two years that describes how the LEA, REC or other SFEA will inform, assess and enroll families seeking Medicaid coverage. The LEA's, REC's or other SFEA's Outreach Plan must be part of its Collaborative Plan, as described in paragraph 8 above, and must specifically:
 - a. Identify the individual(s) within or working with the LEA, REC or other SFEA who will maintain active PE/MOSAA certification and perform PE/MOSAA activities;
 - b. Establish a goal number of PE/MOSAA applications per year, based on the LEA's, REC's or other SFEA's student population and health insurance demographics; and
 - c. Describe the LEA's, REC's or other SFEA's commitment to reporting Medicaid outreach and enrollment statistics to HSD quarterly, as set forth in paragraph 10 below.
10. Report Medicaid outreach and enrollment statistics to HSD quarterly, including: the number of PE/MOSAA applications completed during the preceding quarter; the names and identifying information of individuals for whom PE/MOSAA applications were completed during the preceding quarter; the dates that PE/MOSAA applications were sent to the HSD Income Support Division (ISD) during the preceding quarter; a listing of events and initiatives targeting families for Medicaid enrollment held by the LEA, REC or other SFEA during the

preceding quarter; and the number of family referrals to non-Medicaid public assistance programs made during the preceding quarter.

11. Use the equivalent of earned Medicaid reimbursements from both direct services and administrative claiming to improve and expand health and health-related services provided by the schools and the community for children, youth and families, as outlined in the Collaborative Plan referenced in paragraph 8 above.
12. Report expenditures of earned Medicaid reimbursements from both direct services and administrative claiming to PED annually, or upon request by PED, and in accordance with timeframes and deadlines established by PED.
13. Appoint a program liaison and, as necessary, a backup alternate for each LEA, REC or other SFEA, who will be responsible for receiving and disbursing all communications, information and guidelines from HSD regarding the MSBS program, including information about, but not limited to, direct services and administrative claiming.
14. Maintain the confidentiality of records and other information relating to Medicaid recipients in accordance with applicable state and federal laws and regulations, as set forth in Section 11 below.
15. Ensure that all staff involved in the preparation and certification of direct and administrative claims, including the LEA's, REC's or other SFEA's third party billing agent(s), if applicable, attend HSD-sponsored training sessions concerning Medicaid regulations, policies and procedures, the provision of Medicaid-reimbursable services and the preparation and submission of claims pursuant to this Agreement.
16. In consultation with HSD, PED, DOH and CYFD, review all training programs and materials for the MSBS program to determine accuracy, clarity and relevance, in accordance with federal and state Medicaid regulations, the *CMS Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto.
17. Ensure that all training materials and training programs developed by the LEA, REC or other SFEA, or by the LEA's, REC's or other SFEA's third party billing agent(s), if applicable, regarding the MSBS program are approved by HSD prior to distribution.
18. Ensure that all materials disseminated by the LEA, REC or other SFEA, or by the LEA's, REC's or other SFEA's third party billing agent(s), if applicable, to parents, legal guardians and surrogate

parents regarding the MSBS program are approved by HSD prior to distribution.

19. Coordinate and document the coordination of services provided to Medicaid-eligible children and youth under this Agreement with other health care services provided outside the MSBS program, including, but not limited to, non-school-based occupational therapy, speech therapy, physical therapy, nursing, case management and behavioral health services, whether provided through a managed care organization (MCO), home- and community-based waiver program, fee-for-service provider, or other health care entity.
20. Cooperate with each child's primary care provider (PCP) to coordinate the care rendered by the LEA, REC or other SFEA, and provide documentation of such cooperative efforts to HSD upon request, in accordance with applicable federal and state Medicaid regulations.
21. Refer Medicaid-eligible children and youth with an IEP or IFSP to the child's or youth's PCP for an Early and Periodic Screening, Diagnosis and Testing (EPSDT) screen (well-child examination) and immunizations, as appropriate. For children and youth enrolled in managed care, coordinate the child's or youth's care through the MCO as follows:
 - a. Coordinate the provision of health and related services with the child's or youth's PCP; and
 - b. Refer a student with multiple and complex special health care needs to the MCO on an as-needed basis for care coordination, as set forth in Medicaid regulations at 8.305.9.9 NMAC.
22. Prepare and submit all direct service and administrative claims on forms developed and approved by HSD, in accordance with federal and state Medicaid regulations, policies and guidelines, the *CMS Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto.
23. Take responsibility for the accuracy and completeness of all direct service claims and allowable administrative claims submitted for payment, pursuant to the Provider Participation Agreement and as required of all Medicaid providers, prior to submission of the claim to HSD.
24. Designate a specific individual and, as necessary, a backup alternate,

who will supervise the preparation and submission of the LEA's, REC's or other SFEA's direct service claims and, as required of all Medicaid providers, certify that the claims contain true, accurate and complete information and are supported by appropriate documentation.

25. Designate a specific individual and, as necessary, a backup alternate, who will supervise the preparation and submission of the LEA's, REC's or other SFEA's administrative claims and, as required of all Medicaid providers, certify that the claims contain true, accurate and complete information and are supported by appropriate documentation.
26. Prepare and submit direct service claims within 120 days from the date of service on forms developed and approved by HSD in accordance with federal and state Medicaid regulations, policies and guidelines. Claims that are not submitted within 120 days may not be reimbursed.
27. Prepare and submit claims for allowable administrative costs within 45 days from the end of the billing quarter, with the exception of the quarter ending June 30, for which claims must be received no later than ten (10) days after the end of that quarter, on forms developed and approved by HSD, in accordance with federal and state Medicaid regulations, policies and guidelines, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto. Claims that are not submitted within these timeframes may not be reimbursed.
28. Provide complete documentation to HSD, when requested, to support direct and administrative claims submitted to HSD, in accordance with federal and state Medicaid regulations, the Provider Participation Agreement, applicable CMS directives, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto.
29. Retain complete documentation to support all claims submitted for direct services and allowable administrative costs for at least six (6) years from the date of creation or until ongoing audit issues are resolved, whichever is later, in accordance with the requirements of the Medicaid Provider Participation Agreement.
30. Cooperate with HSD and/or CMS staff in conducting audits of the LEA's, REC's or other SFEA's direct services and administrative

claims. Make available to HSD and/or CMS all requested documents and personnel for the audit. Respond timely and in writing to HSD's Report of Audit Findings. Develop and implement a Corrective Action Plan if requested by HSD. Any recoupment of claims resulting from the audit may be effected by direct payment or offset against the LEA's, REC's or other SFEA's future direct and/or administrative claims.

31. Enter into a Trading Partner Agreement with HSD and abide by its terms, as required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
32. Certify in writing to HSD that sufficient funds are available to pay the LEA's, REC's or other SFEA's non-federal share, as calculated by CMS, of the Medicaid administrative reimbursements paid to the LEA, REC or other SFEA for the preceding quarter.
33. Participate in the School Lunch Program.

6. PAYMENT

A. Direct Service Claims

HSD shall:

- a. Instruct its Medicaid Fiscal Intermediary to process all direct service claims submitted by the LEA, REC or other SFEA in accordance with federal and state Medicaid regulations, policies and guidelines, in the form and manner set forth by HSD.
- b. Make all approved reimbursements to the LEA, REC or other SFEA at the Medicaid-approved rates.
- c. Reimburse the LEA, REC or other SFEA when it is determined that HSD, or its Medicaid Fiscal Intermediary, is responsible for an error in processing and/or payment of a direct service claim. Such determinations will be made by HSD or, when appropriate, through the dispute resolution process set forth in Section XIV below. Reimbursements may be made by direct payment to the LEA, REC or other SFEA, or by credit against monies owed to HSD by the LEA, REC or other SFEA.

The LEA, REC or other SFEA shall:

- a. Prepare and submit direct service claims to HSD's Medicaid Fiscal Intermediary for all Medicaid-reimbursable direct services provided to

Medicaid-eligible children and youth with IEPs or IFSPs, within 120 days from the date of service in accordance with federal and state Medicaid regulations, policies and guidelines, and the *New Mexico Medicaid Guide for School-Based Services*, November 2004, and any revisions thereto.

- b. Ensure that a complete audit trail exists to support claims and invoices and retain all supporting records and documents for at least six (6) years from the date of creation or until ongoing audit issues are settled, whichever is later, as required by the Medicaid Provider Participation Agreement.
- c. Refund to HSD any payments made to the LEA, REC or other SFEA for direct service claims that are disallowed by CMS or HSD within forty-five (45) days from the date of notice of disallowance from HSD. Such refunds may be made by direct payment to HSD or by offset against future direct and/or administrative claims submitted by the LEA, REC or other SFEA. HSD may initiate procedures to recover any refunds not made to HSD within 45 days from the date of notice of disallowance from HSD.

B. Administrative Claims

HSD shall:

- a. Reimburse **Gadsden Independent Schools** administrative costs in an amount not to exceed **\$300,000.00** for each state fiscal year of this Agreement.
- b. Process all allowable administrative claims submitted by the LEA, REC or other SFEA in accordance with federal and state Medicaid regulations, policies and guidelines, in the form and manner set forth by HSD.
- c. Make all approved reimbursements to the LEA, REC or other SFEA at the Medicaid-approved rates.
- d. Reimburse allowable administrative claims only if the LEA, REC or other SFEA has certified in writing that sufficient funds are available to pay the non-federal share of the Medicaid administrative reimbursements paid to the LEA, REC or other SFEA for the preceding quarter.
- e. Reimburse the LEA, REC or other SFEA when it is determined that HSD is responsible for an error in processing that results in underpayment of an administrative claim. Such determinations will be made by HSD or, when appropriate, through the dispute resolution process set forth in Section XIV below. Reimbursements may be made

by direct payment to the LEA, REC or other SFEA, or by credit against monies owed to HSD by the LEA, REC or other SFEA.

The LEA, REC or other SFEA shall:

- a. Prepare and submit claims to HSD for all allowable administrative costs within 45 days after the end of the billing quarter, with the exception of the quarter ending June 30, for which claims must be received no later than ten (10) days after the end of that quarter, in accordance with federal and state Medicaid regulations, policies and guidelines, the CMS *Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and any federal and state revisions thereto, and certify in writing that sufficient funds are available to pay the non-federal share of the Medicaid administrative reimbursements paid to the LEA, REC or other SFEA for the preceding quarter.
- b. Ensure that a complete audit trail exists by retaining all supporting records and documents for at least six (6) years from the date of creation or until ongoing audit issues are settled, whichever is later, as required by the Medicaid Provider Participation Agreement
- c. Refund to HSD any payments made to the LEA, REC or other SFEA for administrative claims that are disallowed by CMS. Such refunds may be made by direct payment to HSD or by offset against future direct and/or administrative claims submitted by the LEA, REC or other SFEA.

C. School Lunch Program

HSD shall:

- a. Invoice the school district in October and April of each school year at a rate of \$4.50 per Average Daily Participation (ADP) for storage and delivery costs of food provided by the HSD for school lunches.

The LEA, REC or other SFEA shall:

- a. Reimburse **HSD** the ADP in the amount not to exceed **\$47,835.00** for the school year.
- b. Reimburse HSD within 30 days of receipt of the invoice.

7. **SURPLUS FUNDS**

This Agreement shall operate solely on a reimbursement basis.

8. DISPOSITION, DIVISION OR DISTRIBUTION OF EQUIPMENT AND SUPPLIES

All disposition, division or distribution of equipment, materials and supplies for which the LEA, REC or other SFEA is reimbursed pursuant to the terms of this Agreement shall occur in accordance with applicable federal and state laws and regulations.

9. TERMINATION OF AGREEMENT

- A. This Agreement may be terminated by either party upon written notice delivered to the other party no less than sixty (60) days prior to the intended date of termination. Such notice of termination shall neither alter nor negate the performance obligations incurred by either party prior to receipt of the notice.
- B. HSD may terminate this Agreement immediately upon confirmation by the Secretary of HSD of the occurrence of fraud, negligence or abuse in services or claims by the LEA, REC or other SFEA.
- C. If the federal government changes the funding methodology for the New Mexico Medicaid program, state or federal legislation is enacted or Medicaid policy is promulgated that materially changes or modifies either of the parties' obligations under this Agreement, the Agreement will be terminated, effective as of the date HSD receives written notice of the legislative, funding or policy change.

10. FUNDS ACCOUNTABILITY

HSD and the LEA, REC and other SFEA shall maintain fiscal records, as required by applicable federal and state laws and regulations, and follow generally accepted accounting principles. The LEA, REC or other SFEA shall provide copies of such fiscal records to HSD when requested, in accordance with the requirements of the Medicaid Provider Participation Agreement.

11. CONFIDENTIALITY

- A. The LEA, REC or other SFEA shall not make any confidential information concerning Medicaid participants that has been provided to, or developed by the LEA, REC or other SFEA, available to any individual or organization outside the LEA, REC or other SFEA unless the Medicaid participant or the participant's parent, legal guardian or surrogate parent has given written consent to its release, or release of the information is ordered by a court of competent jurisdiction or is otherwise excepted under federal or state law.
- B. The LEA, REC or other SFEA will be solely responsible for any violations of these confidentiality requirements by the LEA, REC or other SFEA, or its agents. HSD will be solely responsible for any violations of these

confidentiality requirements by HSD or its agents. Any liability incurred in connection with the violation of these confidentiality requirements is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27.

- C. The LEA, REC or other SFEA shall: (1) notify HSD promptly of any unauthorized possession, use or knowledge of HSD data, files or other confidential information, (2) promptly furnish to HSD full details of the unauthorized possession, use or knowledge of HSD data, files or other confidential information, (3) assist HSD in an investigation of the matter, and (4) take immediate steps to prevent a reoccurrence.
- D. HSD and the LEA, REC or other SFEA shall comply with all applicable confidentiality requirements under HIPAA regarding the privacy of individually identifiable health information, and shall ensure that any use or disclosure of medical records and other health information that identifies a particular child or youth receiving services under this Agreement shall be in accordance with HIPAA privacy requirements pursuant to 45 CFR Parts 160 and 164, subparts A and E, to the extent these requirements are applicable.
- E. HSD, as the single state Medicaid agency, shall enter into a Trading Partner Agreement with the LEA, REC or other SFEA to ensure compliance with HIPAA requirements.
- F. The LEA, REC or other SFEA shall comply with all applicable confidentiality requirements of the Family Educational Rights and Privacy Act (FERPA) and IDEA regarding the release of personally identifiable information contained in students' educational records. If such records contain personally identifiable health information, the health information is also protected under HIPAA.
- G. Since HSD is an agent providing special services that allow the LEA, REC or other SFEA to carry out its educational responsibilities, pursuant to FERPA regulations at 34 CFR 99.31(a)(1) and IDEA regulations at 34 CFR 300.571(a), the LEA, REC or other SFEA may release personally identifiable information contained in students' educational records to HSD without parental consent when needed to carry out the terms of this Agreement.
- H. The confidentiality provisions in this Agreement shall be binding on all parties, their agents, successors and assigns.

12. MONITORING AND OVERSIGHT

- A. To ensure that all participating LEAs, RECs and other SFEAs have in place the requisite guidelines and procedures for program administration, pursuant to the *CMS Medicaid School-Based Administrative Claiming Guide*, May 2003, and the *New Mexico Medicaid Guide for School-Based Services*, and

any federal and state revisions thereto, HSD shall institute five key methods of monitoring and oversight of the MSBS program, as follows:

1. Statewide desk audits will be conducted on 100 percent of the administrative claims submitted quarterly. The desk audits will include a review of the LEA's, REC's or other SFEA's calculations and time study documentation, and a determination of whether the claim is appropriate and the formula has been applied correctly.
2. Onsite visits will be conducted to assess implementation of the Random Moment Sampling (RMS) time study methodology and determine whether the results are reported correctly on the LEA's, REC's or other SFEA's administrative claim. More frequent onsite audits will be conducted, as necessary, based on the outcome of the desk audits.
3. Trends will be identified by HSD based on daily telephone calls and e-mail inquiries from participating LEAs, RECs and other SFEAs. Follow-up trainings will be responsive to the identified trends, and technical assistance will be provided as needed. HSD will also use trends identified through grievance processes and administrative hearings to help plan trainings and direct the focus of the onsite visits.
4. The LEA's, REC's or other SFEA's experience and program understanding will be assessed through pre- and post-tests administered at HSD training sessions.
5. Periodic assessments, onsite visits and targeted technical assistance may be conducted by HSD to assess the completeness of the LEA's, REC's or other SFEA's supporting documentation for both administrative and direct medical services; the LEA's, REC's or other SFEA's coordination of care with MCOs, PCPs, and other health care entities; and the LEA's, REC's or other SFEA's compliance with its Collaborative Plan, as approved by HSD.

13. NOTICE

- A. All notices required to be submitted to HSD under this Agreement shall be sent to the HSD Program/Contract Manager or his/her designee at:

HUMAN SERVICES DEPARTMENT
Attention: School Health Office Manager
P.O. Box 2348
Santa Fe, NM 87504-2348
Telephone: (505) 827-3100 Fax: (505) 476-7043

- B. All notices required to be given to the LEA, REC or other SFEA under this Agreement shall be sent to:

Ms. Cynthia Nava
Gadsden Independent Schools
P.O. Drawer 70
Anthony, New Mexico 88021
Telephone: (575)882-6203 Fax: (575)882-6229

- C. A notice shall be deemed duly given upon delivery, if delivered by hand, or three (3) days after posting, if sent by first class mail, with proper postage affixed. Notices may also be tendered by facsimile transmission, with original to follow by first class mail.

14. ENFORCING COMPLIANCE

- A. When a participating LEA, REC or other SFEA is found to be out of compliance through a desk audit, onsite audit or other means of oversight, the following principles and guidelines will apply:
1. Any claim(s) for the date(s) in question may be recalculated by HSD based on the audit findings, and the recalculated claim approved for payment.
 2. Any claim(s) for the date(s) in question may be denied totally or in part.
 3. The LEA, REC or other SFEA may be required to submit a Corrective Action Plan to HSD, within 30 days from the date of HSD's Report of Audit Findings, stating how the LEA, REC or other SFEA intends to remedy the non-compliance issues identified in the audit report.
 4. The LEA, REC or other SFEA may be required to submit a Directed Corrective Action Plan to HSD, within 30 days from the date of the Report of Audit Findings, stating how the LEA, REC or other SFEA intends to implement the corrective actions directed by HSD to remedy the non-compliance issues identified in the audit report.
 5. Funds required to be reimbursed by the LEA, REC or other SFEA, as a result of HSD's audit findings, may be recouped by direct payment to HSD or by offset against the LEA's, REC's or other SFEA's future direct and/or administrative claims.
 6. The LEA, REC or other SFEA has the right to appeal HSD's audit findings and related issues through the administrative hearing process, pursuant to the Medicaid provider hearing regulations at 8.353.2 NMAC.

15. DISPUTE RESOLUTION

- A. Disagreements between HSD and the LEA, REC or other SFEA over any aspect of this Agreement, including Medicaid claims, should initially be addressed through informal discussions between the parties of the Agreement. Such disputes are best resolved informally at the lowest possible organizational levels.
- B. Disputes between HSD and the LEA, REC or other SFEA over Medicaid claims and related issues that cannot be resolved by informal means shall be resolved through HSD's administrative hearing process pursuant to the Medicaid provider hearing regulations at 8.353.2 NMAC.
- C. The LEA, REC or other SFEA may continue to submit direct and administrative claims to HSD during the hearing process; however, if the final hearing decision is not in the LEA's, REC's or other SFEA's favor, the monies HSD has paid on the disputed claims may be recovered by offset against the LEA's, REC's or other SFEA's future direct and/or administrative claims as determined jointly by the LEA, REC or other SFEA and HSD on a case-by-case basis.
- D. If the LEA, REC or other SFEA elects to seek an appeal of the administrative hearing decision with the State District Court, the LEA, REC or other SFEA may not continue to bill HSD for the disputed claims during the judicial appeal process.
- E. The occurrence of disputes between HSD and the LEA, REC or other SFEA concerning direct and/or administrative claims does not negate, suspend, stay or delay the LEA's, REC's or other SFEA's continuing obligation under this Agreement to transfer to PED the state's share of Medicaid reimbursement(s) for direct services paid to the LEA, REC or other SFEA during the preceding quarter.

16. LIABILITY

- A. Neither party shall be responsible for any liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Each party shall be solely responsible for fiscal or other sanctions, penalties or fines occasioned as a result of its own, or its agent's, violation of requirements applicable to the performance of this Agreement. Each party shall be liable for its acts or omissions in accordance with this Agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27.

- B. If CMS orders HSD to repay FFP previously received pursuant to this Agreement, as a result of expenditures found not to be in compliance with federal laws and regulations or the Medicaid State Plan, HSD, with full cooperation of the LEA, REC or other SFEA, agrees to exhaust all reasonable administrative remedies as may be available in contesting CMS' repayment demand.
- C. In the event the federal government ultimately denies FFP for any reimbursement HSD has made to the LEA, REC or other SFEA pursuant to this Agreement, the LEA, REC or other SFEA shall be responsible for repaying the disallowed funds to HSD. Such repayment may be effected by offsets against the LEA's, REC's or other SFEA's future direct and/or administrative claims.

17. CONTINUATION OF PROGRAMS AND FUNDING

This Agreement is contingent upon the continuation of current federal laws and regulations governing federal Medicaid policies and FFP, as they apply to the MSBS program, and upon the availability of sufficient state funding. HSD's determination concerning the sufficiency of state funds available for continuation of the MSBS program shall be final.

18. AMENDMENTS

Any amendments to this Agreement shall be made in writing and shall be effective upon execution by the Secretary of HSD and the Board President or Chairperson of the LEA, REC or other SFEA, or their designees.

19. ENTIRE AGREEMENT

This Agreement incorporates all agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreements or understandings of the parties or their agents, verbal or otherwise, are valid or enforceable unless embodied in this Agreement.

20. CERTIFICATION

Pursuant to CFR, Title 31, Part 19, Appendix A, the LEA, REC or other SFEA certifies, by signing this Agreement, that it and its designees, to the best of their knowledge and belief:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency;

- B. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for: (1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction; or (2) violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state or local government entity with commission of any of the offenses enumerated in Section XX (B) above; and
- D. Have not within a three-year period preceding this Agreement, had one or more public transactions (federal, state or local) terminated for cause or default.

21. DEBARMENT AND SUSPENSION

- A. Pursuant to 45 CFR. Part 76, the LEA, REC or other SFEA certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, State or local) with, commission of any of the offenses enumerated above in this Article 21; (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (federal, state or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.
- B. The LEA's, REC's or other SFEA's certification in Article 21 is a material representation of fact upon which HSD relied when this Agreement was entered into by the parties. The LEA, REC or other SFEA shall provide immediate written notice to HSD's Contract Administrator if, at any time during the term of this Agreement, the LEA, REC or other SFEA learns that its certification in Article 21 was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined

that the LEA's, REC's or other SFEA's certification in Article 21 was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to HSD, HSD may terminate the Agreement.

- C. As required by 45 CFR Part 76, the LEA, REC or other SFEA shall require each proposed first-tier subcontractor whose subcontract will equal or exceed \$25,000, to disclose to the LEA, REC or other SFEA, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any federal department or agency. The LEA, REC or other SFEA shall make such disclosures available to HSD when it requests subcontractor approval from HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any federal department or agency, HSD may refuse to approve the use of the subcontractor.

22. NEW MEXICO EMPLOYEE HEALTH COVERAGE

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(1) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(2) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(3) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:

<http://insurenemexico.state.nm.us/>.

D. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date of execution by all parties below.

GADSDEN INDEPENDENT SCHOOLS

By: _____
Superintendent, Director or Board Chairperson

Date: _____

HUMAN SERVICES DEPARTMENT

By: _____
Pamela S. Hyde, J.D.
Secretary

Date: _____

Approved as to form and legal sufficiency:

By: _____
Paul R. Ritzma
General Counsel

Date: _____