

**MEMORANDUM OF AGREEMENT**  
Between  
**New Mexico Department of Health**  
And  
**New Mexico Human Services Department**

This Agreement entered into between New Mexico Department of Health (DOH) Family Health Bureau (FHB) and **New Mexico Human Services Department (HSD)**.

IT IS AGREED BETWEEN THE PARTIES

**1. PURPOSE**

Federal Title V Grant requirements stipulate that each state must have a written memorandum of agreement between the Title V agency and the Medicaid agency. The purpose of this agreement is to provide a framework for collaboration and coordination of efforts between the Title V agency (DOH/FHB) and the Medicaid agency (HSD); to provide and promote prompt access to high quality health care and services for pregnant women, infants, children and adolescents; and to provide a mechanism for data sharing with appropriate privacy assurances, for improved administration of DOH and HSD public assistance programs. Working together, these agencies have the capacity to reduce morbidity and mortality among women, infants, children, and adolescents, and to improve the health status of women and children in NM.

**2. SCOPE OF WORK**

A. DOH Responsibilities:

1. Help Medicaid with enrollment and outreach through our public health offices and WIC offices to increase participation in HSD programs;
2. Serve as lead on interagency projects related to maternal or child health topics and consult on MCH issues and policy as requested;
3. Encourage NM providers to enroll with Medicaid;
4. Request the WIC staff to share the applicant or participant name, date of birth, address, phone number(s) and other family or household members who may qualify for the HSD programs. HSD's use of the WIC applicant or participant information shall be limited to establishing the eligibility of WIC applicants or participants for the programs that HSD administers;
5. Participate in joint projects related to maternal child health, development of policies, regulations and quality of care standards for services to pregnant women, infants, children and adolescents, and children and youth with special healthcare needs, such as the Children with Special Healthcare Needs Action Collaborative, the Maternal Mortality Review Committee, the NM Perinatal Collaborative, and others;
6. Work with HSD to implement a process that allows for timely sharing and joint access to critical Medicaid and public health data without duplication of effort, including data analysis and linkage;
7. Assist HSD with developing maternal child health quality standards and performance measures.

B. HSD Responsibilities:

1. Promote enrollment in WIC, Title X family planning, Children's Medical services, and other DOH MCH programs that serve Medicaid clients and ensure that appropriate referrals are made to increase participation in DOH MCH programs;

2. Require managed care organizations contracted with HSD to utilize case management/care coordination services provided by Children's Medical Services;
3. Receive written designation from the Secretary of HSD that it is permitted to share confidential HSD applicant and participant information for FHB program use: As allowed per federal law or rule, HSD will share participant name, date of birth, address, phone number(s) and other family or household members who may qualify for FHB programs;
4. Cooperate with federal guidelines regarding payment for WIC services, such as acknowledging WIC as a supplemental source for special formulas prescribed for infants and children with Medicaid as the primary payer;
5. Support and encourage use of DOH FHB programs for women and children among Medicaid clients and managed care organizations, including payment for program services and midwife services licensed by FHB, as applicable;
6. Assure DOH that HSD will not use the WIC applicant or participant information for any purpose other than as allowed by section 2 (A)(5)(a) to (d) and it will not disclose such information to a third party unless required to do so pursuant to federal law, rule, or court order;
7. Work with DOH to implement a process that allows for timely sharing and joint access to critical Medicaid and public health data without duplication of effort. HSD shall:
  - a) Provide record-level data with identifiers for internal matching and linkages, at least annually, to evaluate and inform New Mexico Medicaid and public health programs and policies. Recent and potential data that may be of mutual priority include, but are not limited to: findings from New Mexico Medicaid claims and eligibility analyses to inform the work of all the FHB program activities; managed care health plans quality measure performance; Title V Needs Assessment and National Performance Measures (NPMs); data on LARC claims and usage; New Mexico State Child Fatality Review (CFR), Fetal and Infant Mortality Review (FIMR), and State Maternal Mortality Review Committee (MMRC) findings; maternal morbidity hospitalization records, and data from birth certificates and Pregnancy Risk Assessment Monitoring System (PRAMS).
  - b) Provide data to DOH/FHB/Family Planning Program on a quarterly basis pertaining to Medicaid Reimbursement by contract sites for Title X 340B using the assigned DOH Pharmacy NPI; and on an annual basis pertaining to Medicaid client counts for females aged 15-44 years of age and females aged younger than 20 who receive family planning services.

3. **ADMINISTERING AGENCY**

The administering agency is the DOH.

4. **COMPENSATION**

HSD will receive no compensation for work described in Article 2.

5. **PROPERTY**

The parties understand and agree that property acquired under this Agreement shall be the property of the DOH.

6. **CLIENT RECORDS AND CONFIDENTIALITY**

- A. HSD shall protect the confidentiality, privacy and security of all confidential information and records and shall not release any confidential information to any other third party without the express written authorization of the client when the record is a client record, or the DOH, unless required to do so pursuant to federal law, rule, or court order.

- B. HSD shall comply with the Federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act) and applicable regulations and all other State and Federal rules, regulations and laws protecting the confidentiality of information. If HSD may reasonably be expected to have access to Departments' Protected Health Information (PHI) as defined by HIPAA, Entity shall execute the HIPAA/HITECH Business Associate Agreement as a separately executed mandatory agreement which is hereby incorporated by reference into and made part of this Agreement. Failure to execute the HIPAA/HITECH Business Associate Agreement when required by the DEPARTMENT shall constitute grounds for termination of this Agreement in accordance with Article 9 of this Agreement.

**7. FUNDS ACCOUNTABILITY**

HSD shall receive no compensation for work described in Article 2.

**8. LIABILITY**

As between the parties, each party will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its employees, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq., NMSA 1978, as amended.

**9. TERMINATION OF AGREEMENT**

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Agreement may be terminated immediately upon written notice to the Entity if the Entity becomes unable to perform the services contracted for, as determined by the DOH or if, during the term of this Agreement, the Entity or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to insufficient appropriation by the Legislature to the DOH. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE ENTITY'S DEFAULT/BREACH OF THIS AGREEMENT.*

**10. APPLICABLE LAW**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978 Section 38-3-1(G). By execution of this Agreement, the Entity acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement. The parties agree to abide by all state and federal laws and regulations.

**11. PERIOD OF AGREEMENT**

This Agreement shall be effective upon approval of both parties, whichever is later and shall terminate on **June 30, 2025** or as stated in **ARTICLE 9, Termination of Agreement**. Any and all amendments shall be made in writing and shall be agreed to and executed by the respective parties before becoming effective.

**12. FEDERAL GRANT OR OTHER FEDERALLY FUNDED AGREEMENTS.**

- A. Lobbying. The Entity shall not use any funds provided under this Agreement, either directly or indirectly, for the purpose of conducting lobbying activities or hiring a lobbyist or lobbyists on its behalf at the federal, state, or local government level, as defined in the Lobbyist

Regulation Act, NMSA 1978, Sections 2-11-1, et. seq., and applicable federal law. No federal appropriated funds can be paid or will be paid, by or on behalf of the Entity, or any person for influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any Department, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of any applicable Federal contract, grant, loan, or cooperative agreement, the Entity shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. Suspension and Debarment. For contracts which involve the expenditure of Federal funds, each party represents that neither it, nor any of its management or any other employees or independent Entities who will have any involvement in the services or products supplied under this Agreement, have been excluded from participation in any government healthcare program, debarred from or under any other Federal program (including but not limited to debarment under the Generic Drug Enforcement Act), or convicted of any offense defined in 42 U.S.C. Section 1320a-7, and that it, its employees, and independent Entities are not otherwise ineligible for participation in Federal healthcare or education programs. Further, each party represents that it is not aware of any such pending action(s) (including criminal actions) against it or its employees or independent Entities. Each party shall notify the other party immediately upon becoming aware of any pending or final action in any of these areas.
- C. Political Activity. No funds hereunder shall be used for any partisan political activity or to further the election or defeat of any candidate for public office.
- D. Grantor and Entity Information.
1. If applicable, funding under this agreement is from the Catalog of Federal Domestic Assistance (CFDA) Program:
    - i. CFDA Number – XXX\_\_\_\_\_. OR N/A
    - ii. Program Title – XXX\_\_\_\_\_. OR N/A
    - iii. AGENCY/OFFICE – XXX\_\_\_\_\_. OR N/A
    - iv. GRANT NUMBER – XXX\_\_\_\_\_. OR N/A
  2. ENTITY'S Dun and Bradstreet Data Universal Numbering System Number (DUNS Number) is XXX\_\_\_\_\_. OR N/A
- E. Entity Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sept. 2013)[Federal Grant funded projects only].
1. This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on Entity employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L.112-239) and FAR 3.908.
  2. The Entity shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
  3. The Entity shall insert the substance of this clause, including this paragraph (3), in all subcontracts over the simplified acquisition threshold.
- F. For contracts and subgrants which involve the expenditure of Federal funds for amounts in excess of \$150,000, requires the Entity to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be

reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- G. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) — For contracts which involve the expenditure of Federal funds, Entities that apply or bid for a contract exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- H. For contracts which involve the expenditure of Federal funds, Entity must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

IN WITNESS WHEREOF the parties have executed this AGREEMENT at Santa Fe, New Mexico. The effective date is upon approval of both parties, whichever is later.

**New Mexico Department of Health**

**NM Human Services Department**

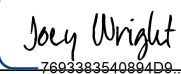
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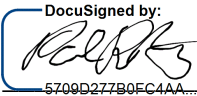
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 Human Services Department  
 Authorized Signature Designee

Date: 5/12/2021

Date: 5/7/2021

**Certified for Legal Sufficiency:**

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 Department of Health  
 Assistant General Counsel

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 Human Services Department  
 General Counsel

Date: 5/7/2021

Date: 5/7/2021