

**BOARD OF EDUCATION
BEEVILLE INDEPENDENT SCHOOL DISTRICT**

Agenda Item No. _____

Date: August 21, 2007

Subject: Intergovernmental Cooperative
Agreement and Business Associate
Agreement
1-Sep-07

Submitted by: Linda O'Connell

Related Pages: 6

Supt's Approval: _____

Consent

BACKGROUND INFORMATION:

Beeville ISD participates in the MAC program, therefore these two documents must be submitted for Board approval. The MAC program is Federal Medicaid Reimbursement for Administrative Activities associated with linking students to appropriate Medicaid health related services.

ITEMS ADDRESSED:

The Intergovernmental Agreement is an agreement between Beeville ISD and HHSC (Health & Human Services Commission), indicating that Beeville ISD intends to participate in the MAC program and participate in the quarterly MAC activities. A new MAC Intergovernmental Agreement will need to be signed for each school year that Beeville ISD participates. The Business Associate Agreement is an agreement between Beeville ISD and HHSC that maintains compliance with the Health Insurance Portability and Accountability Act (HIPPA).

RECOMMENDED ACTION:

Approve the Intergovernmental Cooperative Agreement and the Business Associate Agreement in order for Beeville ISD to continue to participate in the MAC program.

BUDGETARY INFORMATION:

None

INTERGOVERNMENTAL COOPERATION AGREEMENT

THIS AGREEMENT is entered into by and between the state agencies shown below as contracting parties, pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Chapters 771 and 791, Texas Government Code.

I. MEDICAID ADMINISTRATION

Beeville Independent School District hereafter referenced as "ISD" agrees to perform Medicaid Administrative activities on behalf of the Health and Human Services Commission (HHSC) to improve the availability, accessibility, coordination and appropriate utilization of preventive and remedial health care resources to Medicaid eligible students and their families. These activities will be in accordance with the policies and procedures set forth in the State of Texas Implementation Guide and its appendices issued by HHSC. Allowable activities under Medicaid administration are described in detail in Appendix A Medicaid Administrative Claiming Time Study Codes, attached hereto and incorporated herein for all purposes.

The ISD agrees to account for the activities of staff providing Medicaid administration in accordance with the provisions of OMB Circular A-87 and 45 CFR Part 74 and 95, and with the written guidelines issued by HHSC.

The ISD agrees to submit its quarterly participation data using the HHSC standardized Random Moment Time Study (RMTS) system, including a quarterly Participant List, Time Study reporting, Financial expenditure reporting, and Certification form. All financial expenditure data must be submitted to HHSC via the RMTS system within 2 quarter's of the end of the claim period, in order for the ISD's claim to be calculated.

The ISD agrees to provide the expenditures information to include in the quarterly data it submits to HHSC, or its designee, in the manner and written timeframes described in the State of Texas Implementation Guide, as approved by the Center for Medicaid and Medicare Services (CMS).

The ISD agrees to spend the State General Revenue, in an amount equal to the federal match received, for health-related services for clients.

The ISD agrees to designate an employee to act as a liaison with HHSC for issues concerning this Agreement.

II. BASIS FOR CALCULATING REIMBURSABLE COSTS

HHSC agrees to pass through to the ISD no less than ninety-five percent (95%) of Title XIX federal share of actual and reasonable costs for Medicaid Administration provided by its staff for Medicaid administrative activities under this agreement. HHSC reserves the right to retain five percent of the Title XIX federal share of actual and reasonable costs for said Medicaid administration for HHSC's own administrative costs, technical assistance and to establish and maintain an audit reserve fund. These costs shall be based upon a time accounting system which is in accordance with the provisions of OMB Circular A-87 and 45 CFR 74 and 95, the expense and equipment costs necessary to collect data, disseminate information and carry out the staff functions outlined in this Agreement.

HHSC agrees to reimburse the ISD subject to the terms of the MAC Claim Development subsection incorporated in the Texas Time Study Implementation Guide for Direct Services and the Medicaid Administrative Claiming. The rate of reimbursement for allowable administrative activities performed by personnel shall be fifty percent (50%) of such costs.

Changes in federal regulations affecting the matching percentage, or costs eligible for enhanced or administrative match, which become effective subsequent to the execution of the Agreement, will be applied herein as provided in such changes applicable by federal regulations. As HHSC becomes aware of changes in applicable regulations, it will provide such information to the ISD and this Agreement will be amended to reflect the applicable changes in federal regulations.

HHSC agrees to include the ISD's expenditures for Medicaid administration in the claim it submits to CMS for Title XIX federal participation, if said claim is submitted in accordance with written timeframes as laid out in this agreement and the current State of Texas Implementation Guide.

HHSC agrees to designate an employee to act as liaison with the ISD for issues concerning this agreement.

III. TERM OF AGREEMENT

This agreement is to begin upon execution and shall continue until terminated by either HHSC or the ISD.

This agreement may be terminated by consent of either HHSC or the ISD upon thirty (30) days notice in writing delivered in person or by certified mail.

IV. CERTIFICATIONS

The undersigned contracting parties certify that:

- the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
- the proposed arrangements serve the interest of efficient and economical administration of state government; and
- the services contracted for are not required by Section 21, article XVI of the Texas Constitution to be supplied under a contract awarded to the lowest responsible bidder.

The ISD further certifies that it has sufficient statutory authority to contract for the services described in this contract under Chapter 12, Texas Health and Safety Code.

HHSC further certifies that it has sufficient statutory authority to contract for the services described in this contract under Chapter 531, Texas Government Code.

This agreement is executed by the parties in their capacities as stated below.

RECEIVING AGENCY

HEALTH & HUMAN SERVICES COMMISSION

By: _____

Albert Hawkins

Executive Commissioner

Date: _____

PERFORMING AGENCY

Beeville INDEPENDENT SCHOOL DISTRICT

By: _____

Jm Hardwick Jr.

Superintendent

Date: _____

HHSC
STATE OF TEXAS
COUNTY OF TRAVIS

AGREEMENT
BETWEEN THE
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
AND
Beeville Independent School District
BUSINESS ASSOCIATE AGREEMENT

Compliance with Health Insurance Portability and Accountability Act of 1996
("HIPAA") (42 U.S.C. §§1320d-1320d-8)

This Business Associate Agreement relates to the Agreement between the Health and Human Services Commission ("HHSC") and Beeville ISD ("CONTRACTOR"). It is incorporated by reference into the Intergovernmental Agreement.

(a) Background.

(1) All terms used in this Business Associate Agreement that are not otherwise defined in this Agreement have the same meaning as those terms in the Privacy Rule, 45 C.F.R. parts 160 and 164;

(2) Under the terms of this Agreement, HHSC may provide or make available to CONTRACTOR, or CONTRACTOR may create or receive on behalf of HHSC, certain Confidential Information that is and must be afforded special treatment and protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. §§1320d-1320d-8) in conjunction with goods or services that are being provided to HHSC by CONTRACTOR;

(3) CONTRACTOR will have access to or receive from HHSC or create receive on behalf of HHSC certain electronic protected health information that must be safeguarded in accordance with this Agreement and the security rules adopted by the U.S. Department of Health and Human Services (HHS) under HIPAA, 45 C.F.R. §§ 164.302-.318. CONTRACTOR is a Business Associate as that term is defined in the HIPAA security rules, 45 C.F.R. § 160.103.

(4) CONTRACTOR is a Business Associate of HHSC.

(5) The obligations of CONTRACTOR under this section are in addition to the duties of CONTRACTOR with respect to Confidential Information described elsewhere in this Agreement.

(b) Uses and Disclosures.

Except as otherwise limited by this Agreement, CONTRACTOR may:

(1) Use or disclose Protected Health Information to perform the Services and accomplish the purposes of this Agreement, provided that:

(A) Such use or disclosure would not violate the Privacy Rule if the disclosure were made by HHSC; and

(B) Such use or disclosure is limited to the minimum necessary to accomplish the purposes of the use or disclosure;

(2) Use Protected Health Information for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities;

(3) Disclose Protected Health Information for the proper management and administration of CONTRACTOR or to carry out CONTRACTOR's legal responsibilities if:

(A) Disclosure is required by law; or

(B) CONTRACTOR obtains assurances from the person to whom the information is disclosed that the person will:

(i) Maintain the confidentiality of the Protected Health Information;

(ii) Use or further disclose the information only as required by law or for the purpose for which it was disclosed to the person; and

(iii) Notify CONTRACTOR of any breaches of confidentiality of which the person is aware; and

(4) Use Protected Health Information to provide data aggregation services to HHSC, as that term is defined at 45 C.F.R. §164.501 and permitted by 45 C.F.R. §164.504(e)(2)(i)(B).

(c) CONTRACTOR's commitment and obligations.

CONTRACTOR agrees that it will:

(1) Not use or disclose Protected Health Information provided by, made available by, or created or received on behalf of HHSC other than as permitted or required by this Agreement or as required by law;

(2) Establish and maintain appropriate safeguards to prevent any use or disclosure of Protected Health Information other than as provided for by this Agreement;

(3) Have procedures in place for mitigating, to the maximum extent practicable, any harmful effect of a use or disclosure of Protected Health Information that is contrary to this Agreement or the Privacy Rule;

(4) Immediately report to HHSC any use or disclosure of Protected Health Information not provided for or allowed by this Agreement of which CONTRACTOR becomes aware;

(5) Enter into a subcontract anytime CONTRACTOR proposes to provide or make available Protected Health Information to any subcontractor or agent. Such subcontract or agreement must:

(A) Contain the same terms, conditions, and restrictions on the use and disclosure of Protected Health Information and restrictions on the security of information as contained in this Agreement; and

(B) Be approved as to the form of the terms, conditions, and restrictions by HHSC prior to entering into any such agreement;

(6) Make Protected Health Information in a designated records set available to HHSC or, as directed by HHSC, to the subject of the Protected Health Information, in compliance with the requirements of 45 C.F.R. §164.524.

(7) Make Protected Health Information in a designated records set available for amendment and will incorporate any amendments to this information that HHSC directs or agrees to pursuant to 45 C.F.R. §164.526.

(8) Document and make available to HHSC the Protected Health Information required to provide an accounting of disclosures, in accordance with 45 C.F.R. §164.528.

(9) Make internal practices, books, and records relating to the use or disclosure of Protected Health Information received from, or created or received by CONTRACTOR on behalf of HHSC, available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the privacy regulations.

(10) Return, destroy, or continue to maintain appropriate safeguards for all Protected Health Information received from HHSC or created or received on behalf of HHSC once CONTRACTOR finishes providing goods or services under this Agreement:

(A) If CONTRACTOR destroys the information, it must certify to HHSC that the information has been destroyed;

(B) CONTRACTOR may not elect to destroy information that must be retained under federal or state law; and

(C) CONTRACTOR must maintain appropriate safeguards for the information as long as CONTRACTOR has such Protected Health Information;

(11) Develop and implement a system of sanctions for any employee, subcontractor, or agent who violates this Agreement or the Privacy Rule.

(12) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of HHSC as required by 45 C.F.R. §§ 164.302-.318.

(13) Immediately report to HHSC any security incident of which it becomes aware.

(14) Make internal practices, books, and records relating to the security of information received from or created or received by CONTRACTOR on behalf of HHSC available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining compliance with the security rules.

(15) Develop and implement a system of sanctions for any employee, subcontractor or agent who violates this agreement or the security rules.

(d) *Ownership of Protected Health Information.*

(1) The Protected Health Information shall be and remain the property of HHSC.

(2) CONTRACTOR agrees it acquires no title or rights to the information, including any de-identified information, as a result of this Agreement.

(e) *Injunctive relief; survival of terms.*

(1) Notwithstanding any rights or remedies provided for in the contract, HHSC retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Protected Health Information or a violation of the security rules by CONTRACTOR or any agent, subcontractor, or third party that received information from CONTRACTOR.

(2) The duties and obligations imposed on CONTRACTOR under this section of this Agreement will survive the expiration of the Agreement until all Protected Health Information provided by HHSC to CONTRACTOR, or created or received by CONTRACTOR on behalf of HHSC, is destroyed or returned to HHSC.

(f) *Definitions.*

(1) For purposes of this Business Associate Agreement: a "Business Associate" has the meaning given the term under 45 C.F.R. §160.103.

(2) For purposes of this Business Associate Agreement, "Protected Health Information" has the meaning given the term in 45 C.F.R. §164.501, limited to the information created or received by CONTRACTOR from or on behalf of HHSC.

(g) *General Terms*

(1) Except as otherwise specified in the contract, if any legal action or other proceeding is brought for the enforcement of the contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of the contract, each party will bear their own legal expenses and all other costs incurred in that action or proceeding.

(2) The contract consists of this document and the base contract and constitutes the entire agreement between the parties. There are no understandings or agreements relating to this agreement or the base contract that are not fully expressed in the contract and no change, waiver, or discharge of obligations arising under the contract will be valid unless in writing and executed by the party against whom such change, waiver, or discharge is sought to be enforced.

(3) Any violation by CONTRACTOR of a material term of this agreement will be considered a breach of contract if CONTRACTOR knew of the violation and failed to immediately take reasonable steps to cure it.

(4) HHSC has a right to immediately terminate this agreement and the base contract and seek relief in a court of competent jurisdiction in Travis County, Texas, if HHSC determines that CONTRACTOR has violated a material term of this agreement.

SIGNED this _____ day of _____, 2007.

CONTRACTOR

By: _____

John Hardwick Jr., Superintendent

Printed Name and Title