

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
233 North Michigan Avenue, Suite 600  
Chicago, Illinois 60601-5519



MAR 26 2012

David Godfrey, State Medicaid Director  
Minnesota Department of Human Services  
P.O. Box 64983  
St. Paul, MN 55164-0983

Dear Mr. Godfrey:

Enclosed for your records is an approved copy of the following State Plan Amendment:

Transmittal #11-027 - Interagency Agreements  
--Effective Date: January 1, 2012

If you have any additional questions, please have a member of your staff contact Courtenay Savage at (312) 353-3721 or [Courtenay.Savage@cms.hhs.gov](mailto:Courtenay.Savage@cms.hhs.gov).

Sincerely,



Alan Freund  
Acting Associate Regional Administrator  
Division of Medicaid and Children's Health Operations

cc: Lisa Knazan

Enclosure

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>	1. TRANSMITTAL NUMBER: 11-27	2. STATE Minnesota
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
FOR: HEALTH CARE FINANCING ADMINISTRATION	4. PROPOSED EFFECTIVE DATE January 1, 2012	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		

5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN       AMENDMENT TO BE CONSIDERED AS NEW PLAN       AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR §431.615(a)(1)	7. FEDERAL BUDGET IMPACT: a. FFY '12: \$ 5,293,994 b. FFY '13: \$ 5,307,682
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8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.16-A, Agreements #2 and #3	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 4.16-A, Agreement #2
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10. SUBJECT OF AMENDMENT:  
Agreements with Department of Health for Title XIX Responsibilities (Certification and Inspection of ICFs/MR and NFs and Case Mix/Quality Assurance Review)

11. GOVERNOR'S REVIEW (Check One):

GOVERNOR'S OFFICE REPORTED NO COMMENT       OTHER, AS SPECIFIED:  
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED  
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL: 	16. RETURN TO: Lisa Knazan Minnesota Department of Human Services Federal Relations Unit P.O. Box 64983 St. Paul, MN 55164-0983
13. TYPED NAME: Ann Berg	
14. TITLE: Deputy Medicaid Director	
15. DATE SUBMITTED: December 29, 2011	

**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED: 12-29-11	18. DATE APPROVED: March 26, 2012
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**PLAN APPROVED - ONE COPY ATTACHED**

19. EFFECTIVE DATE OF APPROVED MATERIAL: January 1, 2012	20. SIGNATURE OF REGIONAL OFFICIAL: 
21. TYPED NAME: Alan Freund	22. TITLE: Acting Associate Regional Administrator

23. REMARKS:

**STATE OF MINNESOTA  
INTERAGENCY AGREEMENT  
BETWEEN THE DEPARTMENTS OF  
HUMAN SERVICES (DHS) AND HEALTH (MDH)**

**WHEREAS**, the Minnesota Department of Human Services (hereinafter referred to as "DHS") and the Minnesota Department of Health (hereinafter referred to as "MDH") are empowered to enter into interagency agreements pursuant to Minnesota Statutes, §471.59, Subdivision 10; and

**WHEREAS**, DHS is the state agency responsible to help people meet their basic needs by providing or administering health care coverage for Minnesotans. DHS is also the single state agency responsible for administering and monitoring the state plan for Medical Assistance (hereinafter referred to as "MA") pursuant to 42 United States Code (USC), sec. 1396a; and

**WHEREAS**, DHS is the state agency responsible under 42 USC, sec. 1396a for ensuring that only qualified individuals can access MA and under 42 CFR that federal financial participation be provided only to eligible long-term care facilities; and

**WHEREAS**, MDH is the state's official health agency responsible for the development and maintenance of an organized system of programs and services for protecting, maintaining, and improving the health of the citizens of Minnesota. MDH is also designated as the State Survey agency:

- under Section 1902(a)(33) of the Social Security Act (hereinafter referred to as the "Act"), responsible for determining whether facilities meet the requirements for participation in MA as nursing facilities (hereinafter referred to as "NFs"), intermediate care facilities for people with developmental disabilities (hereinafter referred to as "ICFs/DD") or nursing facility/institutions for mental diseases (hereinafter referred to as "NF/IMDs");
- under the Code of Federal Regulations 42 (CFR) 431.610 and 483.410 through 483.480, to implement and enforce these sections pertaining to compliance and complaint investigations of residential facilities that are certified by MDH as NFs or ICFs/DD;
- pursuant to Code of Federal Regulations 42 (CFR) 483.150-156 regarding nursing assistant training and competency evaluations and the establishment of a nursing assistant registry; and

**WHEREAS**, DHS and MDH have mutual and individual responsibilities relating to the survey, licensure, certification, complaint investigations and enforcement of regulations pertaining to Minnesota's residential care facilities, nursing assistant training and competency evaluation programs and maintenance of the nursing assistant registry; and

**WHEREAS**, the United States Department of Health and Human Services (hereinafter referred to as "HHS") has issued regulations concerning the survey and certification of NFs, ICFs/DD, and NF/IMDs, as required by Title XIX of the Act which imposes duties and responsibilities upon DHS and MDH. In order to fulfill these duties and responsibilities, DHS and MDH must delineate functions to be performed and the responsibilities of each agency with respect to the survey, certification and enforcement process for NFs, ICFs/DD and NF/IMDs participating in the Minnesota MA program; and

**WHEREAS**, MDH is responsible to conduct complaint investigations of ICFs/DD in accordance

with 42 CFR §483.410 through §483.480 and Chapter 5 of the State Operations Manual (SOM).

**WHEREAS**, MDH is authorized by the HHS to carry out the provisions of Section 1864 of the Social Security Act, Title XVIII, which authorizes MDH to carry out the functions related to the survey and certification of providers; and

**WHEREAS**, the intent of this Agreement is to achieve the goals of these programs and to comply with relevant state and federal regulations by delineating the functions to be performed and the responsibilities of DHS and MDH.

**NOW, THEREFORE, it is agreed:**

**I. MDH'S DUTIES: MDH shall:**

- A. Coordinate with the DHS contract manager, the sharing of communications from CMS that represent a change in policy or procedure with regards to the performance of contracted duties. MDH shall provide to DHS: copies of any written notices, letters or other documents received from CMS/HHS regarding these changes or with regards to state agency performance of duties and CMS State Agency performance results. For purposes of this agreement, MDH compliance with notification requirements shall be met if notice is provided to the designated contract manager.
- B. Conduct surveys, licensure, certification and complaint investigations in accordance with federal requirements for NFs, ICFs/DD, and NF/IMDs to determine provider eligibility for participation in the MA program. The requirements specified in 42 CFR 431.610(f) and (g) and the survey and certification and enforcement regulations specified in 42 CFR 488.300-488.456 shall be complied with as part of the survey and compliance process. The implementation of these regulations shall be consistent with the MA State Plan.
- C. Impose remedies as specified under federal law for facilities that do not meet the requirements of participation in the MA program. For those facilities where sanctions for non-compliance with MA requirements such as; termination, state monitoring, denial of payment, or the imposition of monetary penalties have been recommended or imposed, MDH shall concurrently notify the DHS contract manager and the facility of the remedy imposed. MDH shall notify the DHS contract manager within two business days, in cases where a facility has been notified of an immediate jeopardy.
- D. Routinely provide to DHS information obtained in any MDH review and/or survey of a NF, ICF/DD, or NF/IMD relative to noncompliance with the applicable rules, federal regulations or procedures.
- E. Be responsible for collecting and providing to DHS data, reports and information related to: survey, certification and compliance, nursing assistant training and competency evaluation, the nursing assistant registry, and/or other activities covered under this agreement, as may be deemed useful and necessary by DHS. Data shall be provided in formats and according to schedules mutually agreed upon by DHS and MDH.

- F. Provide to DHS, within available resources, policy consultation and/or support on issues related to the duties and provisions outlined in this agreement.
- G. Be responsible for conducting periodic educational programs; within available resources, for the staff, residents (or their representatives), and representative organizations of facilities referred to in this agreement, to present current regulations, procedures and policies related to the survey, certification and enforcement process.
- H. As a condition of this agreement, comply with action plans included in the annual survey and certification quality improvement report required under Minnesota Statutes, Section 144A.10, subdivision 17. MDH will notify the DHS contract manager when the annual report has been published on the MDH website.
- I. Maintain records of all information and reports used in determining whether facilities meet federal requirements of participation. MDH shall retain information in accordance with federal and state records retention schedules.
- J. MDH shall provide the DHS provider enrollment area summary information concerning certification of new providers, provider terminations and changes in facility bed count or ownership.
- K. Designate state-approved nursing assistant competency evaluation programs for persons seeking employment in certified nursing facilities. MDH may contract with outside vendors for a statewide program to administer the state-approved competency evaluation program. MDH shall review any preliminary agreement with an outside vendor with the DHS contract manager prior to the final execution of the contract. MDH or its contractor shall review and re-approve nursing assistant training and competency evaluation programs at a frequency and using a methodology consistent with federal regulations. MDH shall establish procedures for and maintain the security of the state-approved competency evaluation program.
- L. Maintain a registry of individuals who have satisfactorily completed an approved nursing assistant competency evaluation program or an approved nursing assistant training and competency evaluation program, in accordance with federal regulations.
- M. The MDH Office of Health Facility Complaints shall conduct timely investigations of complaints regarding nursing facility resident abuse, neglect or misappropriation of resident property by a nursing assistant providing services in a nursing facility, in accordance with 42 CFR 488.335. MDH shall report each confirmed case of resident abuse, neglect or misappropriation of resident property by a nursing assistant to the Minnesota Nursing Assistant Registry within ten days of substantiation of the incident.
- N. The MDH Office of Health Facility Complaints shall conduct an investigation of complaints regarding nursing facility resident abuse, neglect or misappropriation of resident property, by any other individual providing services in a nursing facility, in accordance with 42 CFR 488.335. MDH shall report each confirmed case of resident abuse, neglect or misappropriation of resident property by any other person

providing services in a nursing facility, to the appropriate licensing authority, board or other authorities within ten days of substantiation of the incident.

**II. DHS'S DUTIES:** DHS shall:

- A. Monitor the timeliness of physician certification in NFs, ICFs/DD, NF/IMDs, and of physician re-certification plans in ICFs/DD.
- B. Issue MA provider agreements to NFs, ICFs/DD, and NF/IMDs certified by MDH.
- C. Routinely provide to MDH information obtained by any DHS audit process of a NF, ICF/DD, or NF/IMD relative to noncompliance with licensing and/or certification requirements.
- D. Maintain a separate dedicated account for the collection and disbursement of civil monetary penalty (CMP) funds. DHS shall ensure that these funds are not intermingled with other department or state administrative or general funding and adhere to all federal requirements under 42 CFR 488 and Section 6111 of the Patient Protection and Affordable Care Act. DHS shall ensure that all projects are approved by the federal Centers for Medicare and Medicaid Services (CMS) and pay for approved projects in a timely manner utilizing these funds. The DHS contract manager shall provide the MDH with quarterly reports on the CMP account fund balance.

**III. JOINT AGENCY'S DUTIES:**

- A. MDH and DHS shall both, upon receipt of a complaint involving a facility that is certified as an ICF/DD facility, forward copies of the complaint to the other agency within one business day of receipt of the complaint. MDH and DHS agree that if both agencies are investigating the same complaint, investigative efforts, including site visits, will be coordinated to the extent possible and that at the conclusion of any such investigation, each agency shall forward to the other agency a copy of its findings, conclusions, determinations, and actions.
- B. The Joint Civil Monetary Penalty (CMP) Committee, with DHS as the lead agency and operating in a manner consistent with CMS guidelines; consisting of representatives from DHS, MDH, the Office of Ombudsmen for Long-Term care, and industry and public representatives as appointed by the Commissioner of MDH, shall make decisions related to the implementation and use of the CMP funds.

**IV. CONSIDERATION AND TERMS OF PAYMENT**

- A. **Quarterly Estimates.** MDH shall submit to DHS estimates for anticipated costs (federal share) for all survey, certification and other activities performed under this agreement. MDH shall submit to DHS estimates for the anticipated federal share of these costs on a quarterly basis, to be submitted no later than 55 days prior to the beginning of each quarter. For purposes of this contract, the term "quarter" shall mean a period of three months ending on the last day of March, June, September and December.
- B. **Monthly Invoices.** MDH shall submit to DHS monthly invoices requesting the anticipated

federal share needed for only that month's expenditures for the activities performed under this agreement. These estimates shall identify expenditures eligible for state and federal financial participation and must itemize costs at both the 50% and 75% rates of federal financial participation.

C. **Monthly Payments.** DHS will submit monthly payments to MDH based on these invoices within 10 days of receipt, up to the amount available as awarded by the federal awarding agencies. If federal awards are insufficient, DHS will make payments up to the federal funds available and make additional payments as federal awards are received.

D. **Non-Federal Share.** MDH shall provide the non-federal share of all expenditures for which federal revenue is claimed. In addition, MDH shall ensure that all non-federal matching funds shall be from sources other than federal funds or funds used to match other federal funds.

E. **Accrual Based Quarterly Expenditure Reports.** Following the end of each quarter, MDH shall submit accrual based quarterly expenditure reports to DHS. These reports shall include all costs attributable to MDH in order to carry out the functions of this agreement, but shall exclude the costs of licensing activities. The reports shall be prepared in compliance with all applicable federal regulations and requirements including: Title XIX of the Social Security Act, Code of Federal Regulations Titles 42 and 45, OMB Circular A-87 Cost Principles For State, Local and Indian Tribal Governments, and applicable provisions contained within the State Medicaid manual, to ensure that costs claimed for federal reimbursement shall be accurate and reflect actual costs incurred only for the services provided under this agreement. These expenditure reports shall identify expenditures eligible at both the 50% and 75% rates of federal financial participation and shall be submitted no later than twenty five (25) days following the end of each quarter.

F. **Preparation of Reports.** All estimated cost reports, actual expenditure reports and other reports shall be prepared in accordance with budget and accounting standards adopted by the State of Minnesota. MDH shall furnish or make available information on any accounts, expenditures or reports as requested by DHS or as may be necessary for audit purposes.

G. **Final Reconciliation of Expenditures.** Following the end of the federal fiscal year, MDH shall prepare and submit to DHS a final reconciliation of all expenditures to all payments received during that fiscal year for the survey, certification and other activities performed under this agreement. DHS shall provide MDH copies of the federal quarterly award documents to facilitate this reconciliation. MDH shall submit this reconciliation report to DHS no later than 90 days following the end of the federal fiscal year.

H. **Revised Expenditures.** Revised expenditure reports can and shall be submitted by MDH when appropriate and in compliance with the regulations and requirements cited in item E. DHS will make additional payments to MDH, if necessary, based on either the final reconciliation or revised quarterly expenditure reports and to the extent federal awards are available. If overpayments have been made for the prior operating year, based on the final reconciliation, MDH shall refund the overpayment to DHS within 5 business days from the date the accounting codes are provided by DHS to MDH.

I. **CMP Projects.** DHS shall transfer funds to MDH for approved CMP projects where MDH is the lead agency. Upon project completion, MDH shall submit to DHS all required proof of expenses and documentation.

J. **Payment Upon Termination of Agreement.** If this agreement is terminated, any funds paid to MDH under this agreement that have not been expended in accordance with the provisions of this

agreement before the due date of termination and any property purchased with funds paid to MDH under provisions of this agreement, shall be accounted for in accordance with standards established by the State of Minnesota governing disposition of such property and funds.

- V. **CONDITIONS OF PAYMENT** All services provided by MDH pursuant to this agreement shall be performed to the satisfaction of DHS, as determined at the sole discretion of its authorized representative.
- VI. **TERMS OF AGREEMENT** This agreement shall be effective on **January 1, 2012** or upon the date that the final required signature is obtained by the MDH, pursuant to Minnesota Statutes, Section 16C.05, Subd 2, whichever occurs later and shall remain in effect until **June 30, 2013**, or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.
- VII. **CANCELLATION** This agreement may be canceled by DHS or MDH at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, MDH shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.
- VIII. **AUTHORIZED REPRESENTATIVES** DHS's authorized representative for the purposes of administration of this agreement is Robert Held, Director of the Nursing Facility Rates and Policy (NFRP) Division or his successor. MDH's authorized representative for the purposes of administration of this agreement is Susan Winkelmann, Assistant Director of the Division of Compliance Monitoring or her successor. MDH hereby designates **Thomas S. Johnson**, Director of Budget and Operations for the Compliance Monitoring Division or his successor/s in office, as MDH Contract Manager for the responsibility of administering this interagency agreement and monitoring compliance with provisions contained herein. DHS hereby designates **Munna Yasiri**, State Programs Administrator Director or her successor/s in office, as DHS Contract Manager for the responsibility of administering this interagency agreement, monitoring compliance with provisions contained herein, for the administration of the CMP fund and committee, as liaison to CMS, and for compliance with applicable regulations. These persons and/or their designees and successors in office shall schedule and hold meetings on a semi-annual basis to discuss the activities covered by this agreement. Each representative shall have final authority for acceptance of services of the other party and shall have responsibility to insure that all payments due to the other party are made pursuant to the terms of this agreement.
- IX. **ASSIGNMENT** Neither MDH nor DHS shall assign or transfer any rights or obligations under this agreement without the prior written consent of the other party.
- X. **AMENDMENTS** Any amendments to this agreement shall be in writing, and shall be executed by the same parties who executed the original agreement, or their successors in office.
- XI. **LIABILITY** The parties agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other and the results thereof. Each party's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.
- XII. **INFORMATION PRIVACY PROTECTION**

For purposes of executing its responsibilities and to the extent set forth in this Agreement, MDH will be considered part of the "welfare system," as defined in Minnesota Statutes §13.46, subdivision 1. The MDH's employees and agents will have access to private or confidential data maintained by DHS only to the extent necessary

to carry out the responsibilities under this Agreement. Both agencies agree to comply with all relevant requirements of the Minnesota Government Data Practices Act (hereinafter "Data Practices Act," Minnesota Statutes, Chapter 13) in providing services under this Agreement. MDH's representative or his/her successor is the responsible authority in charge of all data collected, used, or disseminated by DHS in connection with the performance of this Agreement. DHS's representative or his/her successor is the responsible authority in charge of all data collected, used, or disseminated by DHS in connection with the performance of this Agreement. See Minnesota Statutes section 13.46, subdivision 10.

Duty to ensure proper handling of data: MDH and DHS shall be responsible for training their respective employees who are authorized to access and use the data collected and used under the terms and for the purposes specified in this Agreement. This responsibility includes ensuring that staff is properly trained regarding:

- The Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13, and in particular, §13.46 ("welfare data");
- The Minnesota Health Records Act, Minn. Stat. §§144.291-144.298;
- Federal law and regulations that govern the use and disclosure of substance abuse treatment records, 42 USCS § 290dd-2 and 42 CFR § 2.1 to § 2.67;
- The Health Insurance Portability Accountability Act ("HIPAA"), 45 CFR Parts 160 and 164 (if applicable);
- Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17931); and
- Any other applicable state and federal statutes, rules, and regulations affecting the collection, storage, use and dissemination of private or confidential information.

Minimum necessary access to data:

The MDH and DHS shall comply with the "minimum necessary" access and disclosure standards set forth in the Data Practices Act. The dissemination of "private" and/or "confidential" data on individuals is limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See Minnesota Statutes, §13.05, subd. 3.

MDH and DHS shall:

- (1) Not use or further disclose the information other than as permitted or required for the administration of this Agreement or as required by law;
- (2) Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of information available to the other agency and/or the Secretary of the HHS for purposes of determining compliance with all applicable regulations;
- (3) Document disclosures of protected information and provide this information to the other agency as would be required for the other agency to respond to a request for an accounting of such disclosures;
- (4) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with the other agency, and notify the other agency of any limitation(s), restrictions, changes, or revocation of permission to use or disclose such information;
- (5) Use appropriate safeguards to prevent use or disclosure of the information by its employees other than as provided for by this Agreement;
- (6) Report any use or disclosure of the information not provided for by this Agreement of which it becomes aware;
- (7) Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides private or confidential data, agree to be bound by the same restrictions and conditions that apply to them with respect to such information;
- (8) Upon completion, expiration or termination of this Agreement, return or destroy all protected information

received from the other agency, unless return or destruction is not feasible. If return or destruction is not feasible, each agency will extend the protections of this agreement to the information collected during the course of this Agreement.

Release of data

No private or confidential data created, collected, received, stored, used, maintained or disseminated in the course or performance of this Agreement will be disseminated except as authorized by statute, either during the period of this Agreement or hereafter. Each party shall be independently responsible for compliance with any requirements of the Health Insurance Portability Accountability Act ("HIPAA," 45 CFR §§160 and 164), and neither party will be liable for any violation of any provision of HIPAA indirectly or directly arising out of, resulting from, or in any manner attributable to actions of the other party or its employees or agents.

The MDH and DHS agree that each is independently responsible for complying with the Minnesota Data Practices Act, Minnesota Statutes Chapter 13, and that each party will be responsible for its own acts and those of its employees and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party or its employees, or the results thereof.

**XIII.** This agreement shall be read in a manner consistent with Title XIX of the Social Security Act and with Minnesota Statutes Chapters 256B, 144 and 144A, and the regulations and rules promulgated thereunder, and with other policy and directives issued by HHS.

**XIV. OTHER PROVISIONS**

None.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound  
thereby APPROVED:

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by  
Minn. Stat. §§ 16A.15 and 16C.05*

By: \_\_\_\_\_ N/A \_\_\_\_\_

Date: \_\_\_\_\_

CFMS Contract No: \_\_\_\_\_ N/A \_\_\_\_\_

**2. MDH**

By: *[Signature]*  
*(with delegated authority)*

Title: *Fed Grant Admin.*

Date: *12/20/11*

**3. DHS**

By: *[Signature]*  
*(with delegated authority)*

Title: *Deputy Commissioner*

Date: *12/23/11*

**Distribution:**

DHS

MDH

DHS - Contracts Section

**STATE OF MINNESOTA  
INTERAGENCY AGREEMENT  
BETWEEN THE DEPARTMENTS OF  
HUMAN SERVICES (DHS) AND HEALTH (MDH)**

**WHEREAS**, the Minnesota Department of Human Services (hereinafter referred to as "DHS") and the Minnesota Department of Health (hereinafter referred to as "MDH") are empowered to enter into interagency agreements pursuant to Minnesota Statutes, §471.59, Subdivision 10; and

**WHEREAS**, DHS is the state agency responsible to help people meet their basic needs by providing or administering health care coverage for Minnesotans. DHS is also the single state agency responsible for administering and monitoring the state plan for Medical Assistance (hereinafter referred to as "MA") pursuant to 42 United States Code (USC), sec. 1396a; and

**WHEREAS**, DHS is the state agency responsible under 42 USC, sec. 1396a for ensuring that only qualified individuals can access MA and under 42 CFR that federal financial participation be provided only to eligible long-term care facilities; and

**WHEREAS**, MDH is the state's official health agency responsible for the development and maintenance of an organized system of programs and services for protecting, maintaining, and improving the health of the citizens of Minnesota. MDH is also designated as the State agency:

- under Section 1902(a)(33) of the Social Security Act (hereinafter referred to as the "Act"), responsible for determining whether facilities meet the requirements for participation in MA as nursing facilities (hereinafter referred to as "NFs"), intermediate care facilities for people with developmental disabilities (hereinafter referred to as "ICFs/DD") or nursing facility/institutions for mental diseases (hereinafter referred to as "NF/IMDs"); and
- pursuant to Minnesota Statutes, Section 144.0724 to establish, administer and review resident reimbursement classifications, is responsible for the development and maintenance of the MDS tool which is used to determine Minnesota MA nursing home reimbursement rates, as well as serve as the repository for this data; and

**WHEREAS**, DHS and MDH have mutual and individual responsibilities relating to the Case Mix review program which assesses resident level of care and is used to determine NF reimbursement rates and the review of NF/IMDs to determine their eligibility to receive federal funding under the MA program; and

**WHEREAS**, the intent of this Agreement is to achieve the goals of these programs and to comply with relevant state and federal regulations by delineating the functions to be performed and the responsibilities of DHS and MDH in the case mix program and the review of NF/IMDs.

**NOW, THEREFORE, it is agreed:**

**I. MDH'S DUTIES: MDH shall:**

- A. Coordinate with the DHS contract manager, the sharing of communications that represent a change in policy or procedure with regards to the performance of contracted

duties. MDH shall provide to DHS: copies of any written notices, letters or other documents regarding these changes or with regards to state agency performance of duties. For purposes of this agreement, MDH compliance with notification requirements shall be met if notice is provided to the contract manager or their designee.

- B. Establish and implement resident reimbursement classifications in accordance with Minnesota Statutes 144.0724 and 256B.438.
- C. Maintain a case mix review system based on the federally required Minimum Data Set (MDS) and upgrade as needed to ensure compliance with the latest version of the MDS. Develop software programs using the MDS 3.0, to perform all data extraction, classification, notification, review, and audit functions required for the determination of nursing home rates and the transmission of this data to DHS. Maintain an electronic archival system of all case mix manuals, case mix policies, procedures and forms documenting and dating any changes and making all archival documents available to DHS upon request.
- D. Conduct audits of resident reimbursement classifications, pursuant to Minnesota Statutes, Section 144.0724, subd. 9.
- E. Conduct NF Quality Improvement/Quality Measure (QI/QM) audits.
- F. Conduct up to 16 NF reviews annually of NF/IMDs or potential NF/IMDs identified by DHS. These reviews will utilize IMD classification criteria.
- G. Be responsible for collecting and providing to DHS data, reports and information related to: case mix resident reimbursement classifications, Minimum Data Set (MDS), Quality Improvement/Quality Measures, and the NF/IMD review process, and/or other activities covered under this agreement, as may be deemed useful and necessary by DHS. Data shall be provided in formats and according to schedules mutually agreed upon by DHS and MDH. This data shall be utilized to develop outcome and performance measurements, administer contracts for services as mandated by Minnesota Statutes 256B.434 and 256B.435, and otherwise determine value, results, and outcomes for long-term care purchasing and determine eligibility for participation in the MA program. MDS data sharing shall be in accordance with the CMS/MDH/DHS Data Use Agreement.
- H. Provide staff in sufficient number (subject to budgetary limitations) and of composition and qualifications to ensure that the requirements of this agreement are met. If sufficient resources are not available to meet these staffing requirements, MDH shall notify DHS and a coordinated effort shall be made to obtain sufficient resources from the state legislature and/or CMS.
- I. Provide to DHS, within available resources, policy consultation and/or support on issues related to the duties and provisions outlined in this agreement.
- J. Be responsible for conducting periodic educational programs, within available resources, for the staff, residents (or their representatives), and representative organizations of facilities referred to in this agreement, to present current regulations, procedures and policies related to the case mix process.

- K. Retain records of information in accordance with federal and state record retention schedules.

**II. DHS'S DUTIES:** DHS shall:

- A. Designate up to 16 NF/IMDs or potential NF/IMDs to be reviewed annually by MDH. DHS will provide this information by October 1<sup>st</sup> of each year. Upon request, DHS will provide in-service training on IMD classification criteria to MDH staff assigned to perform these reviews.
- B. Inform the MDH case mix staff of issues concerning the payments file provided by MDH or other issues requiring investigation by MDH staff.

**III. CONSIDERATION AND TERMS OF PAYMENT**

- A. **Quarterly Estimates.** MDH shall submit to DHS estimates for anticipated costs (federal share) for all MDS, quality assurance review and other activities performed under this agreement. MDH shall submit to DHS estimates for the anticipated federal share of these costs on a quarterly basis, to be submitted no later than 55 days prior to the beginning of each quarter. For purposes of this contract, the term "quarter" shall mean a period of three months ending on the last day of March, June, September and December.
- B. **Monthly Invoices.** MDH shall submit to DHS monthly invoices requesting the anticipated federal share needed for only that month's expenditures for the activities performed under this agreement. These estimates shall identify expenditures eligible for state and federal financial participation and must itemize costs at both the 50% and 75% rates of federal financial participation.
- C. **Monthly Payments.** DHS will submit monthly payments to MDH based on these invoices within 10 days of receipt, up to the amount available as awarded by the federal awarding agencies. If federal awards are insufficient, DHS will make payments up to the federal funds available and make additional payments as federal awards are received.
- D. **Non-Federal Share.** MDH shall provide the non-federal share of all expenditures for which federal revenue is claimed. In addition, MDH shall ensure that all non-federal matching funds shall be from sources other than federal funds or funds used to match other federal funds.
- E. **Accrual Based Quarterly Expenditure Reports.** Following the end of each quarter, MDH shall submit accrual based quarterly expenditure reports to DHS. These reports shall include all costs attributable to MDH in order to carry out the functions of this agreement. The reports shall be prepared in compliance with all applicable federal regulations and requirements including: Title XIX of the Social Security Act, Code of Federal Regulations Titles 42 and 45, OMB Circular A-87 Cost Principles For State, Local and Indian Tribal Governments, and applicable provisions contained within the State Medicaid manual, to ensure that costs claimed for federal reimbursement shall be accurate and reflect actual costs incurred only for the services provided under this agreement. These expenditure reports shall identify expenditures eligible at both the 50% and 75% rates of federal financial participation and shall be submitted no later than twenty five (25) days following the end of each quarter.
- F. **Preparation of Reports.** All estimated cost reports, actual expenditure reports and other reports shall be prepared in accordance with budget and accounting standards adopted by the State of Minnesota. MDH shall furnish or make available information on any accounts, expenditures or reports as re-

quested by DHS or as may be necessary for audit purposes.

**G. Final Reconciliation of Expenditures.** Following the end of the federal fiscal year, MDH shall prepare and submit to DHS a final reconciliation of all expenditures to all payments received during that fiscal year for the activities performed under this agreement. DHS shall provide MDH copies of the federal quarterly award documents to facilitate this reconciliation. MDH shall submit this reconciliation report to DHS no later than 90 days following the end of the federal fiscal year.

**H. Revised Expenditures.** Revised expenditure reports can and shall be submitted by MDH when appropriate and in compliance with the regulations and requirements cited in item E. DHS will make additional payments to MDH, if necessary, based on either the final reconciliation or revised quarterly expenditure reports and to the extent federal awards are available. If overpayments have been made for the prior operating year, based on the final reconciliation, MDH shall refund the overpayment to DHS within 5 business days from the date the accounting codes are provided by DHS to MDH.

**I. Payment Upon Termination of Agreement.** If this agreement is terminated, any funds paid to MDH under this agreement that have not been expended in accordance with the provisions of this agreement before the due date of termination and any property purchased with funds paid to MDH under provisions of this agreement, shall be accounted for in accordance with standards established by the State of Minnesota governing disposition of such property and funds.

**V. CONDITIONS OF PAYMENT** All services provided by MDH pursuant to this agreement shall be performed to the satisfaction of DHS, as determined at the sole discretion of its authorized representative.

**VI. TERMS OF AGREEMENT** This agreement shall be effective on **January 1, 2012** or upon the date that the final required signature is obtained by the MDH, pursuant to Minnesota Statutes, Section 16C.05, Subd 2, whichever occurs later and shall remain in effect until **June 30, 2013**, or until all obligations set forth in this agreement have been satisfactorily fulfilled, whichever occurs first.

**VII. CANCELLATION** This agreement may be canceled by DHS or MDH at any time, with or without cause, upon thirty (30) days written notice to the other party. In the event of such a cancellation, MDH shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed.

**VIII. AUTHORIZED REPRESENTATIVES** DHS's authorized representative for the purposes of administration of this agreement is Robert Held, Director of the Nursing Facility Rates and Policy (NFRP) Division or his successor. MDH's authorized representative for the purposes of administration of this agreement is Susan Winkelmann, Assistant Director of the Division of Compliance Monitoring or her successor. MDH hereby designates **Thomas S. Johnson**, Director of Budget and Operations for the Compliance Monitoring Division or his successor/s in office, as MDH Contract Manager for the responsibility of administering this interagency agreement and monitoring compliance with provisions contained herein. DHS hereby designates **Munna Yasiri**, State Programs Administrator Director or her successor/s in office, as DHS Contract Manager for the responsibility of administering this interagency agreement, monitoring compliance with provisions contained herein, for the administration of the CMP fund and committee, as liaison to CMS and for compliance with applicable regulations. These persons and/or their designees and successors in office shall schedule and hold meetings on a semi-annual basis to discuss the activities covered by this agreement. Each representative shall have final authority for acceptance of services of the other party and shall have responsibility to insure that all payments due to the other party are made pursuant to the terms of this agreement.

- IX. ASSIGNMENT** Neither MDH nor DHS shall assign or transfer any rights or obligations under this agreement without the prior written consent of the other party.
- X. AMENDMENTS** Any amendments to this agreement shall be in writing, and shall be executed by the same parties who executed the original agreement, or their successors in office.
- XI. LIABILITY** The parties agree that each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other and the results thereof. Each party's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

## **XII. INFORMATION PRIVACY PROTECTION**

For purposes of executing its responsibilities and to the extent set forth in this Agreement, MDH will be considered part of the "welfare system," as defined in Minnesota Statutes §13.46, subdivision 1. The MDH's employees and agents will have access to private or confidential data maintained by DHS only to the extent necessary to carry out the responsibilities under this Agreement. Both agencies agree to comply with all relevant requirements of the Minnesota Government Data Practices Act (hereinafter "Data Practices Act," Minnesota Statutes, Chapter 13) in providing services under this Agreement. MDH's representative or his/her successor is the responsible authority in charge of all data collected, used, or disseminated by DHS in connection with the performance of this Agreement. DHS's representative or his/her successor is the responsible authority in charge of all data collected, used, or disseminated by DHS in connection with the performance of this Agreement. See Minnesota Statutes section 13.46, subdivision 10.

**Duty to ensure proper handling of data:** MDH and DHS shall be responsible for training their respective employees who are authorized to access and use the data collected and used under the terms and for the purposes specified in this Agreement. This responsibility includes ensuring that staff is properly trained regarding:

- The Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes Chapter 13, and in particular, §13.46 ("welfare data");
- The Minnesota Health Records Act, Minn. Stat. §§144.291-144.298;
- Federal law and regulations that govern the use and disclosure of substance abuse treatment records, 42 USCS § 290dd-2 and 42 CFR § 2.1 to § 2.67;
- The Health Insurance Portability Accountability Act ("HIPAA"), 45 CFR Parts 160 and 164 (if applicable);
- Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17931);
- Minnesota Statutes §144.0721 related to assessments of care and services to NF residents, and
- Any other applicable state and federal statutes, rules, and regulations affecting the collection, storage, use and dissemination of private or confidential information.

The DHS (State Medicaid agency) has entered into Data Use Agreement number 19717 with the Centers for Medicare and Medicaid Services (CMS), to facilitate administration of a federal health care program and which covers the sharing of data from the long-term care minimum data set (MDS).

### **Minimum necessary access to data:**

The MDH and DHS shall comply with the "minimum necessary" access and disclosure standards set forth in the Data Practices Act. The dissemination of "private" and/or "confidential" data on individuals is limited to "that necessary for the administration and management of programs specifically authorized by the legislature or

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local governing body or mandated by the federal government." See Minnesota Statutes, §13.05, subd. 3.

MDH and DHS shall:

- (1) Not use or further disclose the information other than as permitted or required for the administration of this Agreement or as required by law;
- (2) Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of information available to the other agency and/or the Secretary of the HHS for purposes of determining compliance with all applicable regulations;
- (3) Document disclosures of protected information and provide this information to the other agency as would be required for the other agency to respond to a request for an accounting of such disclosures;
- (4) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with the other agency, and notify the other agency of any limitation(s), restrictions, changes, or revocation of permission to use or disclose such information;
- (5) Use appropriate safeguards to prevent use or disclosure of the information by its employees other than as provided for by this Agreement;
- (6) Report any use or disclosure of the information not provided for by this Agreement of which it becomes aware;
- (7) Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides private or confidential data, agree to be bound by the same restrictions and conditions that apply to them with respect to such information;
- (8) Upon completion, expiration or termination of this Agreement, return or destroy all protected information received from the other agency, unless return or destruction is not feasible. If return or destruction is not feasible, each agency will extend the protections of this agreement to the information collected during the course of this Agreement.

Release of data

No private or confidential data created, collected, received, stored, used, maintained or disseminated in the course or performance of this Agreement will be disseminated except as authorized by statute, either during the period of this Agreement or hereafter. Each party shall be independently responsible for compliance with any requirements of the Health Insurance Portability Accountability Act ("HIPAA," 45 CFR §§160 and 164), and neither party will be liable for any violation of any provision of HIPAA indirectly or directly arising out of, resulting from, or in any manner attributable to actions of the other party or its employees or agents.

The MDH and DHS agree that each is independently responsible for complying with the Minnesota Data Practices Act, Minnesota Statutes Chapter 13, and that each party will be responsible for its own acts and those of its employees and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party or its employees, or the results thereof.

**XIII.** This agreement shall be read in a manner consistent with Title XIX of the Social Security Act and with Minnesota Statutes Chapters 256B, 144 and 144A, and the regulations and rules promulgated thereunder, and with other policy and directives issued by HHS.

**XIV. OTHER PROVISIONS**

None.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound  
thereby APPROVED:

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by  
Minn. Stat. §§ 16A.15 and 16C.05*

By: \_\_\_\_\_ N/A \_\_\_\_\_

Date: \_\_\_\_\_

CFMS Contract No: \_\_\_\_\_ N/A \_\_\_\_\_

**2. MDH**

By: *[Signature]*  
(with delegated authority)

Title: *Fed Grant Admin*

Date: *12/16/11*

**3. DHS**

By: *[Signature]*  
(with delegated authority)

Title: *Deputy Commissioner*

Date: *12/21/11*

Distribution:  
DHS  
MDH  
DHS - Contracts Section

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