



MASSHEALTH
School-Based Medicaid
Program
USER GUIDE

Effective July 2013
(Revised June 2014)

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Overview

This user guide covers the guidelines and mechanisms for Medicaid reimbursement of health-care-related services, as allowable under federal and state Medicaid rules when provided to eligible students under the Individuals with Disabilities Education Act (IDEA).

IDEA requires states to provide free, appropriate public education to all children with disabilities between the ages of three and 22 (22nd birthday is the cut-off date). Under this law, local educational authorities (LEAs) may seek Medicaid reimbursement for Medicaid-related health-care services when provided to an eligible student pursuant to the student's individual education plan (IEP). The conditions under which health-care-related services are covered are described in the Direct Services Reimbursement section of this guide.

In Massachusetts, Medicaid is the MassHealth program. In the Commonwealth, the School-Based Medicaid program is the mechanism by which an LEA that meets the qualifications of a local governmental entity (LGE) may seek Medicaid reimbursement for its provision of eligible services to eligible students. The School-Based Medicaid program also provides a means for LEAs to seek federal reimbursement for the cost of administrative activities associated with MassHealth services, as defined in the School-Based Medicaid provider contract. The University of Massachusetts Medical School (UMMS) is facilitating this project on behalf of MassHealth.

Visit www.mass.gov/masshealth for

- general information about MassHealth; and
- MassHealth provider regulations.

Visit www.mass.gov/masshealth/schools for more information on

- an overview of the School-Based Medicaid program;
- bulletins providing guidance on the School-Based Medicaid program; and
- frequently asked questions about the School-Based Medicaid program.

Becoming a School-Based Medicaid Provider

To participate in MassHealth and bill the Medicaid program for services, an LEA must be enrolled as a MassHealth provider. To enter into a provider contract, an LEA must request a School-Based Medicaid enrollment packet from the MassHealth Provider Enrollment and Credentialing Unit. This packet contains a copy of the provider contract and instructions on becoming a provider.

The MassHealth Provider Enrollment and Credentialing Unit also manages LEA contracts. An LEA should contact the unit to

- inquire about the status of an application;
- obtain more information about the enrollment and credentialing process; and
- inform MassHealth of any material change in any of the information submitted on the application form. Providers are obligated to notify MassHealth of any changes in address or other information supplied in the provider application.

The MassHealth Provider Enrollment and Credentialing Unit may be reached by telephone at 1-800-841-2900 or by e-mail at providersupport@mahealth.net. The mailing address for the unit is given below.

Via US Mail:

MassHealth Customer Service
Attention: Provider Enrollment
and Credentialing
P.O. Box 9118
Hingham, MA 02043

Via Hand Delivery, UPS, FedEx, or courier:

MassHealth Customer Service
75 Sgt. William B. Terry Drive
Hingham, MA 02043

- | |
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| <ol style="list-style-type: none">1. For a copy of the provider contract see Appendix 1 in this guide.2. For contact information for MassHealth Enrollment and Credentialing and MassHealth Customer Service see Appendix 2 in this guide. |
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Direct Service Claiming (DSC)

1.1.Covered Services

In order for services to be covered by the School-Based Medicaid program, the following requirements apply.

- **Random Moment Time Study:** In order to participate in the direct service claiming (DSC) program, a school district must participate in the quarterly, statewide Random Moment Time Study (RMTS), and must have qualified service providers in the direct service cost pool. For additional information about the RMTS, refer to the User Guide for Statewide Random Moment Time Study (RMTS).
- **IDEA/IEP:** Providers may claim only for health-related services provided to students through a valid Individualized Education Plan (IEP), in accordance with IDEA requirements
 - Services provided to students who are covered under Section 504 of the Rehabilitation Act and who **do not** receive services through an IEP **are not covered** under the School-Based Medicaid program.
 - **Note about Parental Authorization:** The U.S. Department of Elementary and Secondary Education (DESE) has informed EOHHS that IDEA requires LEAs to obtain parental consent before submitting claims to MassHealth, including children in the Medicaid eligibility statistics or calculating the annual cost report. For additional information regarding Parental Consent please review the Related Materials box below.
- **Covered Services:** Services must be covered by MassHealth within the School-Based Medicaid program.
- **Provider Qualifications and Supervisory Requirements:** Services must be provided by qualified practitioners. In certain cases, supervisory requirements apply.
- **Authorization of Services:** An appropriate clinician’s authorization of services must be appropriately documented.
- **Health-Related Services:** Service delivery must be appropriately documented.
- **Eligible MassHealth Members:** Services must be delivered to students eligible for MassHealth on the date of service.
- **Proper Documentation:** Documentation records must be maintained and readily available per section 4.2 of the Provider Contract and Documentation of Health-related Services section included in this User Guide.

Related Materials

School-Based Medicaid Program User Guide, School-Based Medicaid
Bulletin 25 (August 2013)
User Guide for Statewide Random Moment Time Study
Department of Elementary and Secondary Education, Special Education
Administrative Advisory SPED 2013-1 (June 13, 2013)

Covered Services

MassHealth will pay for direct services through this program when they are

- included in the student’s IEP;

- medically necessary in accordance with MassHealth regulations;
- furnished by practitioners possessing the qualifications described in Appendix 3 and who are acting within the scope of their license; and
- authorized by physician, nurse practitioner or practitioner of the healing arts as required.

Note: Personal care service providers are not required to be licensed. Covered personal care services are described in detail below.

Personal Care Services

Personal care services consist of physical assistance with activities of daily living or instrumental activities of daily living, as defined below. Please note that personal care services must be authorized by a physician or nurse practitioner, as described in the Authorization of Services section of this document, in order to be reimbursable under the School-Based Medicaid program.

Activities of Daily Living (ADLs)

Activities of daily living include the following.

1. **Mobility:** physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment
2. **Assistance with medications or other health-related needs:** physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered
3. **Bathing/grooming:** physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills
4. **Dressing or undressing:** physically assisting a member to dress or undress
5. **Passive range-of-motion exercises:** physically assisting a member to perform range-of-motion exercises
6. **Eating:** physically assisting a member to eat. This may include assistance with tube-feeding and special nutritional and dietary needs
7. **Toileting:** physically assisting a member with bowel and bladder needs

Instrumental Activities of Daily Living (IADLs)

Instrumental activities of daily living include the following.

1. **Household services:** Physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping
2. **Meal preparation and clean-up:** Physically assisting a member to prepare meals
3. **Transportation:** Accompanying the member to medical providers
4. **Special needs:** Assisting the member with:
 - a. the care and maintenance of wheelchairs and adaptive devices;
 - b. completing the paperwork required for receiving personal care services; and
 - c. other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

Provider Qualifications and Supervisory Requirements

Practitioners may be School-Based Medicaid provider employees/staff or contractors who provide direct services to students. Practitioners for whom there are supervision requirements must be so supervised in order for the service to be reimbursable.

Related Materials

- School-Based Medicaid Bulletin 17 (April 2009)
- School-Based Medicaid Bulletin 18 (November 2009)
- School-Based Medicaid Bulletin 19 (October 2010)

See Appendix 3 of this guide for

- information on MassHealth regulations governing practitioner qualifications;
- current practitioner qualifications; and
- current practitioner supervisory requirements.

Authorization of Services

Additionally, the following services must be prescribed by, referred by, recommended by, ordered by, provided under the direction of, or otherwise authorized in writing by a practitioner as described below.

- Behavioral health services must be recommended by a licensed practitioner of the healing arts within the scope of his/her license.
- Personal care services must be authorized by a physician or nurse practitioner.
- Services provided by a physical therapist, a physical therapy assistant, an occupational therapist, an occupational therapy assistant, a speech and language therapist, a speech-language therapy assistant or an audiology assistant must be recommended by a physician or by a licensed practitioner of the healing arts within the scope of his/her license.

Related Materials

- School-Based Medicaid Bulletin 17 (April 2009)
- School-Based Medicaid Bulletin 18 (November 2009)

Documentation of Health-Related Services

Providers must document all health-related services, as outlined in Municipally Based Health Service, Bulletin 9, dated October 2003. School-Based Medicaid providers may file claims only for those students for whom they have a documented record of Medicaid services delivered. Documentation must be completed for all Special Education health-related Medicaid covered services provided to Medicaid-eligible children. Services provided by assistants must be supervised by a licensed professional, and the documentation must be co-signed by the supervising licensed professional, in accordance with the supervisory requirements for the provider type.

Documentation is required each time a Medicaid service is delivered to a student. One form may be completed on a monthly basis that details each time a service was provided during that month. Documentation records must be maintained and readily available per section 4.2 of the Provider Contract referenced in the grey box below. MassHealth provides a School-Based Medicaid Program Services Documentation Form that may be used to meet this requirement. While use of this form is not required, the provider must maintain documentation in some form for all of the following data elements:

Excerpt from the Commonwealth of Massachusetts Executive Office of Health and Human Services School-Based Medicaid Program Provider Contract

4.2 Record Keeping, Inspection, and Audit

A. **Record Keeping and Retention.** The Provider agrees to make, keep and maintain in a systematic and orderly manner, and have readily retrievable, such records as are necessary to fully disclose the type and extent of all Direct Services and Administrative Activities provided to Members, including, but not limited to, the records described in 130 CMR 450.205 and the records described in federal regulations at 42 CFR 431.107. The Provider further agrees that such records shall be created at the time Direct Services and Administrative Activities are delivered, and that such records shall be retained by the Provider for the period required under 130 CMR 450.205.

- **School District Name/Provider Number:** Name of the school district where services are provided and the provider number used to bill the Medicaid program
- **Student Name:** Student’s complete legal name
- **Date of Birth:** Student’s complete date of birth
- **Student Medicaid Number:** Student’s Medicaid identification number (ID)
- **Date:** The date a Medicaid service is provided to a student
- **Activity/Procedure Note:** A written description of the service provided to the student. This must document the extent and duration of the medical service provided. The use of a documentation coding system or pre-defined documentation description is not acceptable unless there is a detailed written note/report that addresses the extent and duration of the medical service provided. For example, ‘speech therapy’ is not acceptable. ‘Working with a student related to articulation of the *th* sound for 20 minutes’ is acceptable.
- **Group/Individual:** Indicate if the student received services on an individual basis (I) or in a group setting (G).
- **Service Time:** The quantity of service provided to the student. This should be recorded as an amount of time (example: 20 minutes). This can capture the cumulative time the provider spent delivering services over the course of the day.
- **Signatures:** The signature of the medical professional providing services must correspond with generally accepted standards for record keeping within the applicable provider type as they may be found in laws and regulations of the relevant board of registration. Providers whose services require supervision must have documentation co-signed in accordance with the applicable standards for the provider type. Supervisory requirements are found in School-Based Medicaid Bulletin 17, dated April 2009. The LEA may utilize an electronic

documentation format and signature system, in accordance with Municipally Based Health Services Bulletin 10 (January 2004).

It is the responsibility of the provider to ensure that all contractors (including private schools, collaboratives, and Chapter 766 schools) document services appropriately and maintain the required records.

See Appendix 4 for the sample School-Based Medicaid Program Services Documentation Form.

Eligible MassHealth Members

In order for a direct health service that is provided to a student to be reimbursable, the student must be between the ages of three and 22 years, eligible for federal Medicaid reimbursement and enrolled in one of the following coverage types.

For dates of services before January 1, 2014:

In general, eligible MassHealth Members include members up to age 22 who are enrolled in the following aid categories and eligible for federal payment for non-emergency services.

- MassHealth Standard;
- MassHealth CommonHealth;
- MassHealth Family Assistance;
- MassHealth Basic; or
- MassHealth Essential

For dates of services after January 1, 2014:

In general, eligible MassHealth Members include members up to age 22 who are enrolled in the following aid categories and eligible for federal payment for non-emergency services.

- MassHealth Standard;
- MassHealth CommonHealth;
- MassHealth Family Assistance; or
- MassHealth Care Plus

Members who are in the following subcategories are not eligible for federal payment for non-emergency services:

- MassHealth Standard (16, 41, 44, 45, VX, and VW)
- MassHealth CommonHealth (51, 54, 55, E1, E2, E3, E4, ED, EH, EN)
- MassHealth Family Assistance (58, 73, 85, 87, 90, 91, 95, 96, AC, ED, EH, N1, P1, P2, P4, P5, Q1, S2, S3, V1, V2, W9)

Massachusetts provides services through these coverage types to a limited number of individuals who are not eligible for federal payment. Expenditures for individuals who receive services at full state cost are not eligible for the School-Based Medicaid program. Eligible students may be identified through the MassHealth Eligibility Verification System (EVS) (see Section 2 below for details).

Note: The School-Based Medicaid program provides payments to the public entity that has the financial responsibility for providing services to the student. In general, if a student resides in one district and attends school in another, and the district where the student resides is paying for the student to attend school in the other district, only the district in which a student resides may file a Medicaid claim.

If a student is attending a regional vocational/technical or agricultural school or charter school, only the regional vocational/technical or agricultural school district or charter school is eligible to file a Medicaid claim on behalf of the student. The local public school district is not permitted to submit claims for any such student.

The following chart describes a variety of situations that occur with student enrollment and identifies which entity may file a claim.

Financial Responsibility Determination Chart			
Sending School District (SD)	Receiving School District (SD)	School District with Financial Responsibility	District Claiming the Student under Medicaid (included in the Eligibility Statistics)
Public SD	Public SD (School Choice)	Sending Public SD	Sending Public SD
Public SD	Charter School **	Sending Public SD	Charter School
Public SD	Home School	Sending Public SD	Sending Public SD
Public SD	Private School (Sped placement)	Sending Public SD	Sending Public SD
Public SD	Private School (other private/religious school - not a SPED placement)	Private School *	N/A
Public SD	Regional SD (School Choice)	Sending Public SD	Sending Public SD
Public SD	Regional Voc/Tech	Sending Public SD	Regional Voc/Tech
Regional SD	Public SD (School Choice)	Sending Regional SD	Sending Regional SD
Regional SD	Charter School **	Sending Regional SD	Charter School
Regional SD	Home School	Sending Regional SD	Sending Regional SD
Regional SD	Private School (SPED) placement)	Sending Regional SD	Sending Regional SD
Regional SD	Private School (other private/religious school not a Sped placement)	Private School *	N/A *

Regional SD	Regional SD (School Choice)	Sending Regional SD	Sending Regional SD
Regional SD	Regional Voc/Tech	Sending Regional SD	Regional Voc/Tech
Public SD	Any METCO	Receiving METCO SD	Receiving METCO SD
Regional SD	Any METCO	Receiving METCO SD	Receiving METCO SD

Note:

* Private schools are not eligible to participate in the School-Based Medicaid Program.

** Horace Mann Charter schools are part of a **Public** School District.

Refer to the [Municipally Based Health Services Bulletin 8 \(October 2003\)](#).

The provider must verify MassHealth eligibility of each student in order to claim reimbursement for services provided to that student.

1. Eligibility identification for use in Massachusetts School-Based Direct Services Cost Report and in the Massachusetts School-Based Administrative Activities Cost Report: UMMS maintains an electronic system that contains details of individuals between the ages of three and 22 (the 22nd birthday is the cut-off date) who are eligible for federal Medicaid reimbursement and are active MassHealth members as of the fifth day of the first month of each quarter. School-Based Medicaid providers must use this system in order to generate eligibility statistics used in Massachusetts School-Based Direct Services Cost Report and in the Massachusetts School-Based Administrative Activities Cost Report.
2. Eligibility identification for use in per-service claims: Eligibility information is accessible through the MassHealth Eligibility Verification System known as EVS. A provider must complete a Trading Partner Agreement in order to receive an ID and password required to access EVS. EVS provides eligibility information on a daily basis. Providers must verify a student's MassHealth eligibility and coverage type for the date on which a service is provided in order to submit a per-service claim.
3. There are a variety of methods that can be used to access EVS, including through the internet, through an Automated Voice Response system and by using the current HIPAA 5010 electronic transactions. Additional information about these options is available at <http://www.mass.gov/eohhs/provider/insurance/masshealth/claims/eligibility-verification/access>. The 5010 transactions are described in the 270/271 Companion Guide: Health Care Eligibility/Benefit Inquiry and Information Response. This guide is available at www.mass.gov/masshealth/newmmis.

Related Materials

Instruction Guide for Massachusetts School-Based Cost Report
270/271 Companion Guide

Parental Authorization

In February, 2013, the Office of Special Education Programs (OSEP) published in the Federal Register IDEA Part B final regulations that change the requirements in 34 CFR 300.154(d)

related to parental consent to access public benefits or insurance (*e.g.*, Medicaid). These final regulations became effective on March 18, 2013. Visit <http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>.

The Department of Elementary and Secondary Education (DESE) is the state agency responsible for overseeing the IDEA in Massachusetts. DESE has informed EOHHS that the IDEA requires LEAs to obtain parental consent before submitting claims to MassHealth, including children in the Medicaid eligibility statistics, or calculating the annual cost report. Additional information about these new regulations and the new required parental consent form is provided in Administrative Advisory SPED 2013-1 Parental Consent to Access MassHealth (Medicaid), which may be found at http://www.doe.mass.edu/sped/advisories/13_1.html.

It is important that all LEAs ensure that parents understand that providing their consent to allow a school to submit claims to MassHealth does not alter or reduce the benefits that children are entitled to receive from MassHealth. DESE has advised us that once an LEA acquires a consent form compliant with the new regulation, LEAs are not required to obtain consent again in order to submit a claim to MassHealth. That is so even if there is a change in the type or amount of services to be provided to the student, or a change in the cost of the services to be charged to MassHealth.

Related Materials

School-Based Medicaid Bulletin 25 (August, 2013)

Department of Elementary and Secondary Education (DESE) (June 13, 2013)

1.2.Direct Services Reimbursement

Direct Services Claiming (DSC) Final Reimbursement Calculation

Final reimbursement for the DSC component of School-Based Medicaid services is based on Medicaid-allowable actual incurred costs related to service delivery. These expenditures are captured for each State Fiscal Year in the Massachusetts School-Based Direct Services Cost Report. Costs included in this report are costs associated with individuals who provide the provision of direct services under the School-Based Medicaid program. A draft of the Massachusetts School Based Cost Report and related instructions will be available on the School-Based Medicaid Web site (www.mass.gov/masshealth/schools) and by request from UMMS.

Interim Billing

While final reimbursement for the DSC component of the School-Based Medicaid program will be based on actual, incurred Medicaid-allowable expenditures that have been certified using the Massachusetts School-Based Cost Report, the School-Based Medicaid program will pay interim DSC payments according to the following process. Providers must submit per-unit claims for all services for which they seek reimbursement through the cost report as described in Section 2.2A of the provider contract. The majority (if not all) of services provided to students who are included in the statistics section of the cost reports will be claimed through MMIS.

Interim payments are based on per-unit-service claims that School-Based Medicaid providers file with the Medicaid Management Information System (MMIS). School-Based Medicaid providers may submit interim claims only for services that meet the requirements outlined in Section A, Covered Services that are provided to eligible members. Claims for interim payments must be submitted to MassHealth within 90 days of the date of service.

School-Based Medicaid providers must use codes when filing claims for services provided through DSC.

Note regarding the definition of a unit:

- For services billed per 15-minute increment: 1-15 minutes = 1 unit, 16-30 minutes = 2 units, etc.
- For services billed per 30 minutes: 1-30 minutes = 1 unit, 31-60 minutes = 2 units, etc.
- For services billed per hour: 1-60 minutes = 1 unit, 61-120 minutes = 2 units, etc.

Diagnosis Code: As of January 1, 2012, all health care claims must include a valid diagnosis code on the claim. Providers must use the ICD-9-CM diagnosis codes or, if applicable the diagnosis codes from the DSM-IV-TR (Diagnostic and Statistical Manual of Mental Disorders 4th Edition Text Revision) to report student condition at the time of service. Providers may use diagnosis code 315.9 (unspecified delay in development) for all claims to report student general condition.

All School-Based Medicaid providers are required to submit claims electronically. Effective January 1, 2012, the Centers for Medicare & Medicaid Services (CMS) has mandated that the standards for electronic health care transactions must change from version 4010/4010A1 to version 5010. Details about the claim transmission process can be found in the 837 Companion Guide, Health-Care Claim: Professional available at www.mass.gov/masshealth/newmmis. Claims may also be filed individually using the free Direct Data Entry (DDE) system provided by MassHealth on the Provider Online Service Center. Additional information about that option for submitting interim claims is available at www.mass.gov/masshealth/provider-service-center or by contacting providersupport@mahealth.net.

Effective October 1, 2014, claims submitted to MassHealth must include the ICD-10-CM diagnosis code. School-Based Providers may use codes F89 (Unspecified disorder of psychological development) or F81.9 (Developmental disorder of scholastic skills, unspecified) as a default code.

Related Materials

School-Based Provider Bulletin 27 (June 2014) or superseding interim rates/codes publications released by EOHHS
837 Companion Guide

All Provider Bulletin 228 (July 2012) Cost Report Reconciliation

After the close of each fiscal year, MassHealth will reconcile any interim payments made to the School-Based Medicaid provider to the actual, incurred Medicaid-allowable costs/expenditures that the provider has certified using the Massachusetts School-Based Medicaid Cost Report. To do this, the certified costs on the Cost Report are compared to the School-Based Medicaid provider's Medicaid interim claims for services delivered during the reporting period, as documented in NewMMIS.

All School-Based Medicaid Provider's interim claims are reconciled to the total Medicaid-allowable costs based on the certified Cost Report. If the Commonwealth determines it has underpaid a provider, the difference between the value of the interim payment and the value of the certified costs on the Cost Report will be paid to the School-Based Medicaid provider. If the Commonwealth determines that it has overpaid a provider, EOHHS will recoup the amount of the overpayment from the School-Based Medicaid provider.

Administrative Activities Claiming (AAC)

1.3. Included Activities

In order for administrative activities to be claimed by the School-Based Medicaid program, the following requirements apply.

- **Random Moment Time Study:** School-Based Medicaid providers must participate in the Random Moment Time Study (RMTS).
- **Covered Administrative Activity:** The administrative activity must be for the purpose of furthering the Medicaid program and be a type of activity covered by the School-Based Medicaid provider contract.

Random Moment Time Study (RMTS)

In order to participate in the Administrative Activity Claiming (AAC) program, a school district must participate in the quarterly, statewide RMTS. For additional information about the RMTS, refer to the User Guide for Statewide Random Moment Time Study.

Related Materials

Instruction Guide for Statewide Random Moment Time Study

Administrative Activities

Administrative activities that are payable under the School-Based Medicaid program are described in detail in the School Based Medicaid provider contract. These services are

1. performing activities that inform eligible or potentially eligible individuals about MassHealth and how to access it;
2. assisting individuals in becoming eligible for MassHealth;

3. performing activities associated with the development of strategies to improve the coordination and delivery of MassHealth-covered services to school-age children, and when performing collaborative activities with other agencies;
4. making referrals for, coordinating, and/or monitoring the delivery of MassHealth-covered services; and
5. assisting an individual to obtain MassHealth-covered transportation or translation services.

See Appendix 1 for a copy of the Provider Contract.

1.4. Administrative Activity Claims Reimbursement

Final reimbursement for the AAC component of School-Based Medicaid services is based on Medicaid-allowable actual incurred costs related to service delivery. These expenditures are captured for each quarter in the Massachusetts School-Based Medicaid Administrative Claim. The Instruction Guide for School-Based Medicaid Administrative Activity Claims explains how to complete and submit this quarterly Massachusetts School-Based AAC Claim.

Related Materials

Instruction Guide for Massachusetts School-Based Medicaid Administrative Claims

School-Based Medicaid Payments

School-Based Medicaid interim Direct Service Claiming (DSC) payments and Administrative Activity Claims (AAC) payments are made quarterly. School-Based Medicaid providers will receive notification letters from UMMS detailing the amount that the provider will receive for each program. Direct Service Cost Report payments are made annually.

Providers may access the MassFinance Web site to view payment information, including payment amount and date of issue. The proper vendor code and tax ID are required to access this site. Vendor codes are assigned by MassFinance and each provider should have one. To access your school district's payment information, complete the following steps.

1. Go to www.massfinance.state.ma.us.
2. Click on Vendor Web.
3. Click on Vendor Web Login.
4. Enter vendor code and the last four digits of tax ID number and click on Submit.
5. Click on Payment History.
6. Select department: EHS.
7. Choose Date Range.
8. Click Search.

Claims Monitoring

MassHealth performs several monitoring/quality assurance procedures such as the review and approval of Administrative Activity Claims (AAC), Annual Direct Service Cost (DSC) Reports, and Random Moment Time Study (RMTS) participant lists. Starting in January, 2013, MassHealth expanded monitoring/quality assurance procedures by adding a more in-depth

review to ensure program compliance and integrity. The University of Massachusetts Medical School (UMMS) will be facilitating this project on behalf of MassHealth.

Judge Rotenberg Center, Canton, Massachusetts

The Centers for Medicare & Medicaid Services (CMS) issued guidance in 2012 that Federal Financial Participation (FFP) is not available for services provided by the Judge Rotenberg Center located in Canton, Mass. Do not submit any claims for expenditures associated with the Center, whether for direct service or administrative activity. More information is available in the School-Based Medicaid Bulletin 23 (April 2013).

Related Materials

School-Based Medicaid Bulletin 23 (April 2013)

**Commonwealth of Massachusetts
Executive Office of Health and Human Services
School-Based Medicaid Program
Provider Contract**

between

**Commonwealth of Massachusetts
Executive Office of Health and Human Services**

and

[PROVIDER]

[Date]

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**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
SCHOOL-BASED MEDICAID PROGRAM
PROVIDER CONTRACT**

This Contract dated as of the date that both parties have executed the document, is by and between the Commonwealth of Massachusetts Executive Office of Health and Human Services (hereinafter, “EOHHS”), with a business address of One Ashburton Place, Boston, Massachusetts 02108 and

_____, (the legal name of the School-Based Medicaid Provider, hereinafter, the “Provider”) with a principal place of business located at _____ [Provider’s address].

RECITALS

WHEREAS, EOHHS is the single state agency designated to administer the programs of medical assistance under 42 U.S.C. § 1396 et seq., and M.G.L. c. 118E; and

WHEREAS, the Provider desires to participate in the School-Based Medicaid Program under the terms and conditions set forth in this Contract;

NOW, THEREFORE, in consideration of the mutual obligations contained in this Contract, the parties agree as follows:

DEFINITIONS

The following terms that appear capitalized throughout this Contract shall have the following meanings, unless the context clearly indicates otherwise.

Administrative Activities – Activities performed by a School-Based Medicaid Provider on behalf of the MassHealth program that are necessary for the proper and efficient administration of the Medicaid State Plan, the State Child Health Insurance Program State Plan, and all 1115 Demonstration Projects or other federal waivers within the meaning of Section 1903(a)(7) of the Medicaid Act and 42 CFR §§ 430.1 and 431.15. Administrative Activities are further described in **Section 2.2.B** of this Contract.

Administrative Activities Claiming – The process through which a Provider requests payment based on Medicaid-allowable actual incurred costs related to Administrative Activities.

Direct Services – School-Based Services performed by a School-Based Medicaid Provider pursuant to the terms of this Contract. Direct Services are further described in **Section 2.2.A** of this Contract.

Direct Services Claiming – The process through which a Provider requests payment based on Medicaid-allowable actual incurred costs related to Direct Services.

Eligible Members – MassHealth Members who are eligible for federal payment for non-emergency services.

For dates of services before January 1, 2014:

In general, eligible MassHealth Members include members up to age 22 who are enrolled in the following aid categories and eligible for federal payment for non-emergency services: MassHealth Standard, CommonHealth, Family Assistance, or Basic or Essential Coverage Types.

For dates of services after January 1, 2014:

In general, eligible MassHealth Members include members up to age 22 who are enrolled in the following aid categories and eligible for federal payment for non-emergency services: MassHealth Standard, CommonHealth, Family Assistance, or Care Plus.

Members who are in the following subcategories are not eligible for federal payment for non-emergency services.

- MassHealth Standard (16, 41, 44, 45, VX, and VW);
- MassHealth CommonHealth (51, 54, 55, E1, E2, E3, E4, ED, EH, EN); or
- MassHealth Family Assistance (58, 73, 85, 87, 90, 91, 95, 96, AC, ED, EH, N1, P1, P2, P4, P5, Q1, S2, S3, V1, V2, W9).

Executive Office of Health and Human Services (EOHHS) – The executive department of the Commonwealth of Massachusetts established under M.G.L. c. 6A, § 2 that is the single state agency responsible for the administration of the MassHealth program (Medicaid), pursuant to M.G.L. c. 118E, Titles XIX and XXI of the Social Security Act, and other applicable laws and waivers.

Federal Financial Participation (FFP) – The amount of the federal share of qualifying expenditures made by a School-Based Medicaid Provider for Direct Services and Administrative Activities provided pursuant to this Contract.

Individualized Education Program (IEP) – A written statement, developed and approved in accordance with federal special education law in a form established by the Department of Elementary and Secondary Education, that identifies a student’s special education needs and describes the services a school district shall provide to meet those needs.

Interim Rates – Quarterly payments that may be provided by EOHHS to a School-Based Medicaid Provider for Direct Services.

Local Government Entity – Pursuant to M.G.L. c. 44, § 72, and for purposes of this Contract, a city or town, charter school or regional school district that is responsible, or assumes responsibility, either directly or indirectly through an agency or other political subdivision, for the Non-Federal Share of School-Based Medicaid Program expenditures.

MassHealth – The Medicaid program and the State Children’s Health Insurance Program of the Commonwealth of Massachusetts, administered by EOHHS pursuant to M.G.L. c. 118E, Title XIX of the Social Security Act (42 U.S.C. § 1396), Title XXI of the Social Security Act (42 U.S.C. § 1397), and other applicable laws and waivers.

MassHealth Coverage Type – The MassHealth eligibility category within 130 CMR 505.000 for which an individual is determined eligible.

MassHealth Member (Member) – Any individual determined by EOHHS to meet the requirements of 130 CMR 505.000.

Medicaid State Plan – A comprehensive written statement submitted by EOHHS to the federal Centers for Medicare and Medicaid Services (CMS) pursuant to 42 CFR § 430, Subpart B, describing the nature and scope of the Commonwealth’s Medicaid program and any other information required by 42 CFR § 430, Subpart B.

Medically Necessary – The term defined at 130 CMR § 450.204.

Protected Information (PI) – Personal data, as defined in M.G.L. c. 66A, and any protected health information, as defined in the HIPAA Privacy Rule, that the Provider creates, receives, obtains, uses, maintains, or discloses under this Contract.

School-Based Medicaid Provider (Provider) – A Local Government Entity that provides School-Based Services to Members and performs Administrative Activities on behalf of EOHHS pursuant to this Contract.

School-Based Services – Medically Necessary MassHealth covered services, as delineated in the Medicaid State Plan, which are provided to a Member by a School-Based Medicaid Provider when listed in the Member’s IEP.

School Personnel – A School-Based Medicaid Provider’s salaried and/or contract staff operating under a contractual agreement with the School-Based Medicaid Provider. School Personnel include, but are not limited to, nurses, therapists, special education administrators, social workers, and clerical support.

State Fiscal Year – The 12-month period commencing July 1 and ending June 30 and designated by the calendar year in which the fiscal year ends (e.g., State Fiscal Year 2014 ends June 30, 2014).

PROVIDER RESPONSIBILITIES

The Provider shall comply, to the satisfaction of EOHHS, with: (1) all provisions set forth in this Contract and (2) all applicable provisions of state and federal laws, regulations, and waivers, including MassHealth provider regulations at 130 CMR 450.000 et seq. and any relevant provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

1.5. Provider Eligibility

The Provider must be a Local Government Entity as defined by this Contract.

1.6. Provider Services

A. Direct Services

1. Direct Services consist of the following School-Based Services:

physical therapy, occupational therapy and other services, including services provided by audiologists and services for individuals with speech, hearing and language disorders, performed by, or under the direction of, service providers who meet the qualifications set forth at 42 CFR § 440.110;

nursing services coverable under 42 CFR § 440.80 and 42 CFR § 440.60 ordered by a licensed physician and performed by a registered nurse or licensed practical nurse;

nursing services provided on a restorative basis under 42 CFR § 440.130(d), including services delegated to individuals who receive appropriate teaching, direction, and supervision from a registered nurse or licensed practical nurse;

personal care services coverable and performed by individuals qualified under 42 CFR § 440.167;

services performed by licensed practitioners within the scope of their practice for individuals with behavioral health (mental health and substance abuse) disorders, as defined under state law, and coverable as medical or other remedial care under 42 CFR § 440.60;

diagnostic, screening, preventive, and rehabilitative services covered under 42 CFR § 440.130; and

assessments, as necessary to assess or reassess the need for medical services in a child's treatment plan, and performed by any of the above licensed practitioners within the scope of practice.

2. Federal Financial Participation (FFP) may be available for Direct Services when such services are:
 - a. provided to an Eligible Member;
 - b. listed in the Eligible Member's Individual Education Program (IEP);
 - c. Medically Necessary, as defined by MassHealth regulations;
 - d. furnished by qualified practitioners, as defined by MassHealth regulations and subregulatory guidance, who are acting within the scope of their license; and
 - e. documented as delivered in accordance with MassHealth regulations and subregulatory guidance.

B. Administrative Activities

The following are Administrative Activities that may be eligible for FFP when they are performed by the Provider's School Personnel.

1. **Medicaid Outreach** – this involves informing eligible or potentially eligible individuals about MassHealth and how to access it. This may include bringing potentially eligible individuals into the MassHealth system for the purpose of determining eligibility and arranging for the provision of MassHealth services. This may also include coordinating, conducting, or participating in training events and seminars for outreach staff regarding the benefit of the MassHealth program, and how to assist families in how to access MassHealth services, and how to more effectively refer students for services.
2. **Facilitating/Assisting in the MassHealth Application Process** – this involves assisting individuals in applying for MassHealth.
3. **Provider Networking/Program Planning/Interagency Coordination** – this involves assisting in developing strategies to improve the coordination and delivery of MassHealth covered services to school-age children, including collaborative activities with other agencies.
4. **Individual Care Planning, Monitoring, Coordination and Referral** – this involves making referrals for, coordinating, or monitoring the delivery of MassHealth covered services.
5. **Arrangement of Transportation and Translation Related to Medicaid Services** – this involves assisting Members to obtain MassHealth-covered transportation or translation services that are related to MassHealth covered services.

1.7. Provider Claiming

The Provider shall comply with the following procedures when claiming for Direct Services and/or Administrative Activities.

A. Direct Services Claiming

1. Final payment for Direct Services is based on Medicaid-allowable actual incurred costs related to service delivery. To receive payment for Direct Services, the Provider must
 - a. unless otherwise directed by EOHHS, Submit all interim claims for direct per-unit-services provided to Medicaid-eligible students with an IEP;
 - b. submit actual costs using the Massachusetts School-Based Direct Services Cost Report on an annual basis and in accordance with timelines issued by MassHealth;
 - c. submit actual costs using the Massachusetts School-Based Direct Services Cost Report in accordance with the Instruction Guide for the Massachusetts School-Based Direct Services Cost Report, issued by MassHealth; and
 - d. participate in the Massachusetts Statewide Random Moment Time Study (RMTS), including
 - 1) designating a single RMTS contact by providing the name, phone number, fax number and email address for this RMTS contact to EOHHS or its designee;

- 2) providing information as requested to EOHHS or its designee related to potential RMTS participants;
 - 3) ensuring that RMTS participants who are engaged in Direct Services Claiming activities on behalf of the Provider have completed the online RMTS training; and
 - 4) ensuring an RMTS response rate of participants who are engaged in Direct Service Claiming activities on behalf of the Provider at a minimum of 85%.
2. EOHHS will provide Interim Rate payments for Direct Services on a quarterly basis. Interim Rate payments are based on per-unit-service claims filed by the Provider in accordance with sub-regulatory guidance and the following requirements.
- a. The Provider shall only submit claims for Interim Rates for Direct Services provided in accordance with **Section 2.2.A** of this Contract.
 - b. After the close of each State Fiscal Year, any Interim Rates paid to the Provider will be reconciled to actual costs as determined by EOHHS based on the Provider's submitted Massachusetts School-Based Direct Services Cost Report. Interim Rates will be reconciled according to the following process.
 - 1) Certified costs on the Massachusetts School-Based Direct Services Cost Report will be compared to the Provider's Interim Rate claims for services delivered during the reporting period, as documented in the Commonwealth's Medicaid Management Information System (MMIS).
 - 2) The Provider's Interim Rate claims will be adjusted to reflect, in the aggregate, the total Medicaid-allowable actual incurred costs based on the certified Massachusetts School-Based Direct Services Cost Report.
 - 3) If EOHHS determines that an underpayment has been made, the difference between the value of the Interim Rate and the value of the certified costs on the Massachusetts School-Based Direct Services Cost Report will be paid to the Provider. If EOHHS determines that an overpayment has been made, EOHHS will recoup the amount of the overpayment from the Provider.

B. Administrative Activities Claiming

Final payment for Administrative Activities is based on Medicaid-allowable actual incurred costs related to Administrative Activities. To receive payment for Administrative Activities, the Provider must

1. submit actual costs using the Massachusetts School-Based Administrative Activities Cost Report on an annual basis and in accordance with timelines issued by MassHealth;
2. submit actual costs using the Massachusetts School-Based Administrative Activities Cost Report in accordance with the Instruction Guide for the Massachusetts School-Based Administrative Activities Cost Report, issued by MassHealth; and
3. participate in the Massachusetts statewide RMTS, including:

- a. designating a single RMTS contact by providing the name, phone number, fax number and email address for this RMTS contact to EOHHS or its designee. The RMTS contact for the Administrative Activities Claiming component of the School-Based Medicaid Program must be the same individual as the RMTS contact for the Direct Services Claiming component (see **Section 2.3.A.1.d**, above);
- b. providing information as requested to EOHHS or its designee related to potential RMTS participants;
- c. ensuring that RMTS participants who are engaged in Administrative Activities Claiming on behalf of the Provider have completed the online RMTS training; and
- d. ensuring an RMTS response rate of participants who are engaged in Administrative Activities Claiming on behalf of the Provider at a minimum of 85%.

C. Claims Repayment and Disallowance of FFP

1. The Provider must repay to EOHHS any amounts resulting from any overpayment, administrative fine, or otherwise, in accordance with this Contract, the MassHealth program's rules and regulations, and all other applicable law.
2. The Provider and EOHHS agree that this Contract, and all previous and subsequent provider contracts or other provider agreements entered into by the Provider and EOHHS, constitute a single transaction for purposes of recovery of amounts owed to the MassHealth program by the Provider and recoupment by EOHHS of amounts owed by the Provider.
3. In the event that a review by either EOHHS or CMS reveals that the Provider did not administer this Contract in accordance with the terms specified herein or applicable state and/or federal laws, EOHHS retains the right to retroactively disallow the FFP claimed and recover the disallowed amount from any FFP paid or due to the Provider as a result of FFP claims processed for Medicaid services delivered under this Contract. Such reviews and subsequent disallowances and recoveries may occur following termination of this Contract.
4. Any costs incurred by EOHHS to generate FFP under these contracts including contingency fees for services will be offset against revenue received by the providers to the extent authorized by M.G.L. c.44, §72.

D. Claims Monitoring

MassHealth performs several monitoring/quality assurance procedures: review and approval of AAC, review of annual DSC Reports, and monitoring of the RMTS participant lists and level of responsiveness. The Provider must cooperate and respond to any federal or state audit and program integrity request made by EOHHS or on behalf of EOHHS.

1.8. Provider Reporting Requirements

A. Massachusetts School-Based Direct Services Cost Report

1. The Provider shall submit a Massachusetts School-Based Direct Services Cost Report to EOHHS or its designee by December 31 of each year. The Provider shall certify annually, through its completed report, its total actual incurred allowable costs/expenditures.
2. The Provider shall ensure that all costs reported on the Massachusetts School-Based Direct Services Cost Report comply with Office of Management and Budget (OMB) Circular A87 (“Cost Principles for State, Local and Indian Tribal Government” Vol. 60, No. 95, Pt II (1995)) codified at 2 CFR § 225.
3. The Provider shall submit an executed copy of the certification form that is provided by the Commonwealth as part of the Massachusetts School-Based Direct Services Cost Report.

B. Massachusetts School-Based Administrative Activities Cost Report

1. The Provider shall capture Administrative Activity costs for each billing quarter in the State Fiscal Year and submit a Massachusetts School-Based Administrative Activities Cost Report to EOHHS, or its designee, by October 15th following the end of the State Fiscal Year in which the activity occurred. The Provider shall certify annually, through its completed report, its total actual incurred allowable costs/expenditures.
2. The Provider shall ensure that all costs reported on the Massachusetts School-Based Administrative Activities Cost Report comply with OMB Circular A87 (“Cost Principles for State, Local and Indian Tribal Government” Vol. 60, No. 95, Pt II (1995)) codified at 2 CFR § 225. The Provider is responsible for certifying 100% of the public expenditure on Direct Services and Administrative Activities, including both the Federal and Non-Federal Share.
3. The Provider shall submit an executed copy of the certification form that is provided by the Commonwealth as part of the Massachusetts School-Based Administrative Activities Cost Report.

1.9. General Provider Responsibilities

- A.** The Provider shall comply with all applicable state and federal requirements for FFP.
- B.** The Provider shall supply EOHHS, within two weeks of the date of the request unless EOHHS instructs otherwise, with all information necessary for EOHHS to seek FFP for the Provider’s School-Based Medicaid expenditures. If an extension is necessary, the provider must inform EOHHS in writing of any extraordinary circumstances at least 10 days prior to the submission deadline.

EOHHS RESPONSIBILITIES

A. Member Report

EOHHS shall make available to the Provider a School-Based Medicaid Eligibility matching process and formula, which the Provider must use to calculate the Medicaid eligibility rates in accordance with the Massachusetts School-Based Direct Services Cost Report and the Massachusetts School-Based Administrative Activity Cost Report. The matching process is provided and supported by UMMS on behalf of EOHHS.

B. Interim Rate Claims Processing

EOHHS or its designee shall, in a timely fashion, process Interim Rate claims received from the Provider pursuant to this Contract that are provided in a format compliant with all applicable Medicaid regulations and the terms of this Contract, and that are submitted according to any timelines established by EOHHS.

C. Direct Service Claiming Reconciliation

EOHHS shall provide Interim Rate payments to the Provider for provision of Direct Services in accordance with **Section 2.4.B** of this Contract. After the close of each State Fiscal Year, EOHHS shall reconcile Interim Rate payments made to the Provider with the actual incurred Medicaid-allowable costs that the Provider has certified using the Massachusetts School-Based Direct Services Cost Report and in accordance with **Section 2.4.B.2** of this Contract.

D. Administrative Activity Claims Processing

EOHHS or its designee shall, in a timely fashion, process Administrative Activity Claims received from the Provider pursuant to this Contract that are provided in a format compliant with all applicable Medicaid regulations and the terms of this Contract, and that are submitted according to any timelines established by EOHHS.

E. Federal Claiming

Notwithstanding anything to the contrary herein, EOHHS shall exercise its discretion to seek FFP for expenditures claimed by the Provider under the terms of this Contract. All payments to the Provider, including Interim Rate payments for Direct Services, are contingent on EOHHS obtaining FFP for the Provider's expenditures. No action or failure to act by EOHHS under this section shall be subject to any administrative or judicial review.

ADDITIONAL TERMS AND CONDITIONS

1.10. Administrative Terms and Conditions

A. Changes to Provider Information

The Provider agrees to notify EOHHS in writing, on a form to be specified by EOHHS, of any changes to the information contained in the Provider's MassHealth provider application, its disclosure statement, this Contract, and any attachments to these documents within 14 days of any such changes. This notice requirement includes, without

limitation, identification of persons convicted of crimes, in accordance with federal regulations at 42 CFR Part 455, Subpart B.

B. Compliance with Billing and Claims Requirements

The Provider shall comply with all billing and claims requirements set forth in this Contract and all provider bulletins, billing instructions and other MassHealth publications and issuances, and must comply with all applicable law regarding the same.

C. Nondiscrimination

The Provider must furnish Direct Services and Administrative Activities to Members without regard to race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law concerning the same.

D. Fair Employment

The Provider must comply with all federal and state applicable law promoting fair employment practices and prohibiting employment discrimination and unfair labor practices. The Provider must not discriminate in employment based on race, color, religion, national origin, disability, age, sex, sexual orientation, or status as a recipient of public assistance, and must comply with all applicable law.

E. Fraud or Abuse

The Provider represents that, as of the effective date of this Contract, it was not under investigation by any authority for fraud or abuse pursuant to federal regulations at 42 CFR Part 455, Subpart A. The Provider shall notify EOHHS within 10 business days of learning that it is under investigation by any authority for fraud or abuse. The Provider shall cooperate with and assist EOHHS and any state or federal agency charged with the duty of identifying, investigating, sanctioning, or prosecuting suspected fraud and abuse.

F. Convictions and/or Fraud or Abuse Liability

The Provider represents that none of its agents or managing employees have: (1) been convicted of any criminal offense relating to their involvement with any program under Medicare, Medicaid or the Title XX services since the inception of those programs (2) have been convicted of any criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

G. Corrective Action Plan

At any point during the Contract, if EOHHS, in its sole judgment, identifies any deficiency in the Provider's performance under the Contract, EOHHS may require the Provider to develop a corrective action plan to correct such deficiency. The corrective action plan must, at minimum

1. identify each deficiency and its corresponding cause;
2. describe corrective measures to be taken to address each deficiency and its cause;
3. provide a time frame for completion of each corrective measure;
4. describe the target outcome or goal of each corrective measure (i.e., how the action taken will be deemed successful);

5. describe the documentation to be submitted to EOHHS as evidence of success with respect to each corrective measure; and
6. identify the person responsible for each corrective measure, and any other information specified by EOHHS.

The Provider shall submit any such corrective action plan to EOHHS and shall implement such corrective action plan only as approved or modified by EOHHS. Under such corrective action plan, EOHHS may require the Provider to (1) alter the manner or method in which the Provider performs any Contract responsibilities, and (2) implement any other action that EOHHS may deem appropriate.

The Provider's failure to implement any corrective action plan may, in the sole discretion of EOHHS, be considered breach of Contract, subject to any and all contractual remedies including termination of the Contract.

H. Prohibited Affiliations and Exclusion of Entities

In accordance with 42 U.S.C. § 1396u-2(d) (1) and 42 CFR § 438.610, the Provider shall not knowingly have an employment, consulting or other agreement for the provision of items and services that are significant and material to the Provider's obligations under the Contract with any person, or affiliate of such person, who is debarred, suspended or otherwise excluded under federal law, regulation, executive order or guidelines from certain procurement and non-procurement activities. Any person who is an employee, consultant, or has a contract with the Provider shall

1. not have any direct or indirect financial interest with such entity; and
2. not have been directly excluded from participation in the program under Titles XVIII or XIX of the Social Security Act, or debarred by any federal agency, or subject to a civil monetary penalty under the Social Security Act.

I. Disclosure Requirements

1. The Provider shall immediately disclose to EOHHS any non-compliance by the Provider with any provision of this Contract, or any state or federal law or regulation governing this Contract.
2. The Provider shall make the following federally required disclosures in accordance with 42 CFR § 455.100-106, 42 CFR 455.436, 42 CFR § 1002.3, and 42 U.S.C. § 1396b (m)(4)(A) in the form and format and in the timeframes specified in Appendix A, and as requested by EOHHS.
3. The Provider shall comply with all reporting and disclosure requirements of 41 USC § 1396b (m)(4)(A).
4. Unless otherwise instructed by EOHHS, for the purposes of making disclosures set forth in **Sections 4.1.H and I**, the Provider shall fully and accurately complete the EOHHS form developed for such purpose, the current version of which is attached hereto as **Appendix A**.
5. The Provider shall search the U.S. Department of Health and Human Services Office of the Inspector General's List of Excluded Individuals/Entities (LEIE) and the General Services Administration's Excluded Persons List System (EPLS) for the

names of agents or managing employees of the Provider at least monthly to ensure that EOHHS does not pay for services provided by excluded persons or entities.

6. EOHHS may immediately terminate this Contract in whole or in part if the Provider fails to comply with **Sections 4.1.H and I**, or in response to the information contained in the Provider's disclosures. In addition, the Provider shall not be entitled to payment for any MassHealth services for which EOHHS determines federal reimbursement is not available. Any such payments shall constitute an overpayment.

1.11. Recordkeeping, Inspection, and Audit

A. Recordkeeping and Retention

The Provider agrees to make, keep and maintain in a systematic and orderly manner, and have readily retrievable, such records as are necessary to fully disclose the type and extent of all Direct Services and Administrative Activities provided to Members, including, but not limited to, the records described in 130 CMR 450.205 and the records described in federal regulations at 42 CFR § 431.107. The Provider further agrees that such records shall be created at the time Direct Services and Administrative Activities are delivered, and that such records shall be retained by the Provider for the period required under 130 CMR § 450.205.

B. Access to Records; Copies of Records

The Provider agrees to make available, during regular business hours, all pertinent financial books and all records concerning the provision of Direct Services and Administrative Activities to Members, and all records required to be retained pursuant to **Section 4.2.A**, above, to any duly authorized representative of the MassHealth program, EOHHS, the Office of the Massachusetts Attorney General's Medicaid Fraud Division, the Secretary of the U.S. Department of Health and Human Services, or any other state or federal oversight agency authorized by law.

1.12. Data Management and Confidentiality

A. Definitions

All terms used but not otherwise defined in this Contract shall be construed in a manner consistent with the Privacy Rule, the Security Rule, and other applicable state or federal confidentiality or data security laws.

1. Commonwealth Security Information. "Commonwealth Security Information" shall mean all data that pertains to the security of the Commonwealth's information technology, specifically, information pertaining to the manner in which the Commonwealth protects its information technology systems against unauthorized access to or modification of information, whether in storage, processing or transit, and against the denial of service to authorized users, or the provision of service to unauthorized users, including those measures necessary to detect, document and counter such threats.
2. Individual. "Individual" shall mean the person who is the subject of the Protected Information, and shall include a person who qualifies as a personal representative in accord with 45 CFR § 164.502 (g).

3. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164.
4. Protected Information (PI). "Protected Information" shall mean any "Personal Data" as defined in Mass. Gen. Laws c. 66A; any Personal Information" as defined in Mass. Gen. Laws c. 93H; any "Patient Identifying Information" as defined in 42 CFR Part 2; any "Protected Health Information" as defined in the Privacy Rule; and any other confidential individually identifiable information under any federal and state law (including for example any state and federal tax return information) that the Provider uses, maintains, discloses, receives, creates or otherwise obtains under this Contract. Information, including aggregate information, is considered PI if it is not fully de-identified in accord with 45 CFR § 164.514 (a), (b), and (c).
5. Required By Law. "Required By Law" shall have the same meaning as used in the Privacy Rule.
6. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or the Secretary's designee.
7. Security Incident. "Security Incident" shall have the same meaning as used in the Security Rule.
8. Security Rule. "Security Rule" shall mean the Security Standards for the Protections of Electronic Protected Health Information, at 45 CFR Parts 160, 162, and 164.

B. Provider's Obligations

1. The Provider acknowledges that in the performance of this Contract it will receive Member reports, as specified in **Section 3.A** of this Contract, and as such will become a "Holder" of "Personal Data," as such terms are used within M.G.L. c. 66A. The Provider agrees that, in a manner consistent with the Privacy Rule and the Security Rule, as applicable, it shall comply with M.G.L. c. 66A and any other applicable state or federal law governing the privacy or security of any data created, received, obtained, used, maintained, or disclosed under this Contract.
2. The Provider acknowledges that in the performance of Administrative Activities under this Contract it is MassHealth's Business Associate, as that term is used in the Privacy Rule and Security Rule, and that it shall comply with all standards applicable to a Business Associate under such rules. privacy or security law (state or federal) governing Provider's use, disclosure, and maintenance of any PI under this Contract, including but not limited to 42 CFR Part 431, Subpart F; M.G.L. c. 93H; 801 CMR § 3.00; 201 CMR 17; and Executive Order 504. The Provider further agrees that it shall comply with any other privacy and security obligation that is applicable to any PI under this Contract as the result of EOHHS having entered into an agreement with a third party (such as but not limited to the Social Security Administration or the Massachusetts Department of Revenue) to obtain the data, including by way of illustration and not limitation, signing any written compliance acknowledgment or confidentiality agreement or complying with any other privacy and security obligation required by the third party for access to data that EOHHS receives from the third party.

3. The Provider acknowledges that in the performance of Administrative Activities under this Contract it is the Business Associate of EOHHS, as that term is used in the Privacy and Security Rules. The Provider further acknowledges that Title XIII (the HITECH Act) of the American Recovery and Reinvestment Act of 2009 and related modifications to the Privacy and Security Rules issued by the U.S. Department of Health and Human Services on January 25, 2013, at 78 FR 5566 through 5702, with effective date of March 26, 2013, increase the privacy and security obligations of, and impose certain civil and criminal penalties upon, a Business Associate under the Health Insurance Portability and Accountability Act and the Privacy and Security Rules. Further, the HITECH Act and related modifications to the Privacy and Security Rules impose direct responsibility upon the Business Associate as if the Business Associate were a Covered Entity, as that term is used in the Privacy and Security Rules, for certain obligations, including but not limited to
 - a. the obligation to implement administrative, physical, and technical safeguards to protect PI and comply with other Security Rule requirements set forth in such provisions as 45 CFR §§ 164.306, 164.308, 164.310, 164.312, 164.314, and 164.316, and
 - b. the obligation to comply with certain Privacy Rule requirements such as certain breach notification obligations set forth at 45 CFR §§ 164.402, 164.406, 164.408, and 164.410, as applicable to a Business Associate, and certain restrictions obligating a Business Associate to use and disclose Protected Health Information, as that term is used in the Privacy and Security Rules, only if such use or disclosure, respectively, is in compliance with each applicable requirement of 45 CFR § 164.504(e), the Privacy Rule's minimum necessary rule, the limitations in this Contract, and as may be required by law, including disclosures to the Secretary.
4. The Provider acknowledges that its access to, receipt, creation, use, disclosure, and maintenance of any PI covered by this Contract, and any data derived or extracted from such PI, arises from and is defined by the Provider's obligations under this Contract, and that The Provider does not possess any independent rights of ownership to such data.
5. The Provider shall not use or disclose PI other than as permitted or required by this **Section 4.3.B** or as Required By Law, consistent with the restrictions of 42 CFR § 431.306(f), M.G.L. c. 66A, any other applicable federal or state privacy or security law.
6. The Provider shall not engage any agent or subcontractor to perform any activity under this Contract involving PI, unless such engagement is otherwise explicitly permitted under this Contract or unless the Provider first seeks EOHHS's written permission to engage an agent or subcontractor by submitting a written description of the work to be performed by the proposed agent or subcontractor together with such other information as EOHHS may request. If engaging an agent or subcontractor is permitted, the Provider shall ensure that the agent or subcontractor agrees in writing to the same restrictions and conditions that apply to the Provider under this Contract with respect to PI, including but not limited to, implementing reasonable safeguards

- to protect such information. The Provider must ensure that any required written agreement for permitted agents and subcontractors meets all requirements of a business associate agreement, as required for agents and subcontractors of a business associate, under the modifications to the Privacy and Security Rules noted above, including but not limited to 45 CFR § 160.103; 45 § CFR164.502(e)(1)(ii) and (2); and 45 CFR § 164.504(e).
7. The Provider shall ensure that its agents or subcontractors who (i) have access to Personal Information as defined in M.G.L. c. 93H, and Personal Data, as defined in M.G.L. c. 66A, that the Provider uses, maintains, receives, creates or otherwise obtains under this Contract, or (ii) have access to the Provider's systems containing such information or data, sign written certification containing all applicable data security obligations as required by Executive Order 504. Upon EOHHS' request, the Provider shall provide EOHHS with a listing of its agents or subcontractors who have such access and copies of these certifications.
 8. The Provider is solely responsible for its agents' and subcontractors' compliance with this provision and all requirements in this Data Management and Confidentiality section, and shall not be relieved of any obligation because the data was in the hands of its agents or subcontractors.
 9. In addition to any other requirement in this Contract related to data security, the Provider shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PI, and that prevent use or disclosure of such data other than as provided for by this Contract.
 10. All such safeguards must meet, at a minimum, all standards set forth in the Privacy and Security Rules, as applicable to a business associate, and must comply with all Commonwealth security and information technology resource policies, processes, and mechanisms established for access to PI, including any applicable data security policies and procedures established by Executive Order 504, the Information Technology Division, and EOHHS. As one of its safeguards, the Provider shall not transmit PI in non-secure transmissions over the Internet or any wireless communication device. The Provider shall protect from inappropriate use or disclosure any password, user ID, or other mechanism or code permitting access to any database containing PI.
 11. In the event the Provider is granted direct access into any EOHHS systems, databases, or other information technology resources (including the Health Insurance Exchange (HIX)) the Provider shall comply with all security mechanisms and processes established for such access established by EOHHS and any Commonwealth requirements established by Executive Order 504, applicable Commonwealth policies and procedures, and Information Technology Division. The Provider may not permit any employee or agent to access such systems with any personal mobile devices. The Provider shall protect from inappropriate use or disclosure any password, user ID, or other mechanism or code permitting access to any EOHHS systems, databases, or other information technology resources, and shall give EOHHS prior notice of any change in personnel whenever the change requires a termination or modification of

any such password, user ID, or other security mechanism or code, to maintain the integrity of the database.

12. The Provider agrees to allow representatives of EOHHS access to its premises where PI is kept for the purpose of inspecting privacy and physical security arrangements implemented by the Provider to protect such data.
13. Upon request, the Provider shall provide EOHHS with copies of all written policies, procedure, standards and guidelines related to the protection, security, use and disclosure of PI, Commonwealth Security Information, or other confidential information and the security and integrity of its technology resources.
14. The Provider shall make its internal practices, books, and records, including policies and procedures and PI, relating to the use and disclosure of PI received from, or created or received by it on behalf of, EOHHS, available to EOHHS or upon EOHHS's written request, to the Secretary, in a time and manner designated by either EOHHS or the Secretary for purposes of the Secretary determining EOHHS's compliance with the Privacy and Security Rules.

Further, the Provider must comply with any direct obligation that it may have under the Privacy and Security modifications to comply with any request from the Secretary with respect to its direct obligations under, and its compliance with, the Privacy and Security Rules.

15. As used in this subsection, the term Event refers to the following, either individually or collectively: 1) any use or disclosure of PI by the Provider, its subcontractors or agents, not permitted under this Contract, 2) any Security Incident by the same, or 3) any event that would trigger consumer or oversight agency notification obligations under the Privacy Rule, M.G.L. c. 93H, or other similar federal or state data privacy or security laws.

Immediately upon becoming aware of an Event, the Provider shall take all appropriate action necessary to: 1) retrieve, to the extent practicable, any PI involved in the Event, 2) mitigate, to the extent practicable, any known harmful effect of the Event and 3) take such further action as may be required by any applicable state or federal law concerning the privacy and security of PI involved in the Event. As soon as possible, but in any event no later than two business days following the date upon which the Provider becomes aware of the non-permitted use or disclosure, the Provider shall verbally report the Event to EOHHS, and shall follow such verbal report within five business days with a written report outlining the Event with the following details:

- a. the date of the Event, if known or if not known, the estimated date;
 - b. the date of the discovery of the Event;
 - c. the nature of the Event, including as much specific detail as possible describing the Event (for example, cause, contributing factors, chronology of events) and the nature of the PI involved (for example, types of identifiers involved such as name, address, age, social security numbers or account numbers; or medical or financial or other types of information); include any sample forms or documents that were involved in the Event to illustrate the

type of PI involved (with personal identifiers removed or redacted), and include any policies and procedures, standards, guidelines, and staff training relevant to the event or to the types of PI involved in the Event;

d. the exact number of individuals whose PI was involved in the Event, if known, or if not known, a reasonable estimate based on the known facts, together with a description of how the exact or estimated number of individuals was determined (If different types of PI was involved for different individuals, please categorize the exact or estimated numbers of individuals involved according to type of PI);

e. a summary of the nature and scope of the Provider's investigation of the Event;

f. the harmful effects of the Event known to the Provider, all actions the Provider has taken or plans to take to mitigate such effects, and the results of all mitigation actions already taken; and

g. a review of and any plans to implement changes to the Provider's policies and procedures, including staff training, to prevent such event in the future, include copies of all written policies and procedures reviewed or developed or amended in connection with the Event.

If within the timeframes specified, the Provider is unable to gather and confirm all details surrounding the Event, the Provider shall explain the factors delaying its investigation, provide as much detail as possible, and outline actions it intends to take to further gather and confirm facts surrounding the Event. Upon EOHHS' request, provide further information and clarify any issues or questions that EOHHS may have regarding the Event.

Upon EOHHS' request, the Provider shall take such further actions as identified by EOHHS, to further mitigate, to the extent practicable, any harmful effect of the Event. Any actions to mitigate harmful effects of privacy or security violations undertaken by the Provider on its own initiative or pursuant to EOHHS' request under this paragraph shall not relieve the Provider of its obligations to report such violations as set forth in other provisions of this Contract.

16. In the event that termination of this Contract for a material breach of any obligation regarding PI is not feasible, or if cure is not feasible, EOHHS may report such breach or violation to the Secretary.

17. Consumer Notification

In the event the consumer notification provisions of 45 CFR § 164.400 through 164.410, M.G.L. c. 93H, or similar notification requirements in other state or federal laws are triggered by a data breach involving the Provider, its employees, agents, or subcontractors, the Provider shall promptly comply with its obligations under such laws. If EOHHS determines, in its sole discretion, that it is required to give such notifications, the Provider shall, at EOHHS' request, assist EOHHS in undertaking all actions necessary to meet consumer notification requirements and in drafting the consumer notices and any related required notices to state or federal agencies for EOHHS review and approval, but in no event shall the Provider have the authority to

- give these notifications on EOHHS behalf. The Provider shall reimburse EOHHS for reasonable costs incurred by EOHHS associated with such notification, but only to the extent that such costs are due to: (i) the Provider failure to meet its responsibilities under, or in violation of, any provision of this Contract, (ii) the Provider violation of law, (iii) the Provider negligence, (iv) the Provider failure to protect data under its control with encryption or other security measures that constitute an explicit safe-harbor or exception to any requirement to give notice under such laws, or (v) any activity or omission of its employees, agents, or subcontractors resulting in or contributing to a breach triggering such laws.
18. If during the term of this Contract the Provider obtains access to any Commonwealth Security Information, the Provider is prohibited from making any disclosures of or about such information, unless in accord with the express written instructions of EOHHS. If the Provider is granted access to such information in order to perform its obligations under this Contract, the Provider may only use such information for the purposes for which it obtained access. In using the information for such permitted purposes, the Provider shall limit access to the information only to staff or agents necessary to perform the permitted purposes. While in possession of such information, the Provider shall apply all privacy and security requirements set forth in this **Section 4.3**, as applicable to maintain the confidentiality, security, integrity, and availability of such information. Notwithstanding any other provision in this **Section 4.3**, the Provider shall report any non-permitted use or disclosure of such information to EOHHS immediately within 24 hours. The Provider shall immediately take all reasonable and legal actions to retrieve such information if disclosed to any non-permitted individual or entity; shall include a summary of such retrieval actions in its required report of the non-permitted disclosure; and shall take such further retrieval action as EOHHS shall require. Notwithstanding **Section 4.3.G** below, the Provider may not retain any Commonwealth Security Information upon termination of this Contract, unless such information is expressly identified in any retention permission granted in accord with **Section 4.3.G**, below. If retention is expressly permitted, all data protections stated herein survive termination of this Contract and shall apply for as long as the Provider retains the information.
19. The Provider shall immediately report to EOHHS, both verbally and in writing, any instance where PI or any other data obtained under this Contract is requested, subpoenaed, or becomes the subject of a court or administrative order or other legal process. If EOHHS directs the Provider to respond to such requests, the Provider shall take all necessary legal steps to comply with M.G.L. c. 66A, Medicaid regulations including 42 CFR § 431.306 (f), and any other applicable federal and state law, including objecting to the request when appropriate to comply with M.G.L. c. 66A, 42 CFR § 431.306 (f), 42 CFR Part 2, and any other applicable federal and state law. The Provider shall fully cooperate and assist EOHHS in its response or challenge. In no event shall the Provider's immediate reporting obligations under this paragraph be delayed beyond two business days preceding the return date in the subpoena or legal process, or two business days from obtaining such request for data, whichever is shorter.

20. The Provider shall provide EOHHS, or upon EOHHS' request, the Individual, with access to or copies of any PI maintained by it, as shall be necessary for EOHHS to meet its obligation under 45 CFR § 164.524 to provide an Individual with access to certain PI pertaining to the Individual. Such access or copies shall be provided to EOHHS or to the Individual at a reasonable time and manner to be specified by EOHHS in the request and as shall be necessary for EOHHS to meet all time and other requirements set forth in 45 CFR § 164.524. In the event the Provider receives a request for access directly from an Individual, the Provider shall, within two business days of receipt of such request, notify EOHHS and proceed in accord with this paragraph.
21. The Provider shall make any amendment(s) to PI that EOHHS requests in order for EOHHS to meet its obligations under 45 CFR § 164.526. Such amendments shall be made promptly in a manner specified in, and in accord with any time requirement under, 45 CFR § 164.526. In the event the Provider receives a request for amendment directly from the Individual, the Provider shall, within two business days of receipt of such request, notify EOHHS, and shall only make any amendment in accord with EOHHS' instructions.
22. The Provider shall document all disclosures of PI, and required information related to such disclosures, as would be necessary for EOHHS to respond to a request by an Individual for an accounting of disclosures of PI and related information in accord with 45 CFR § 164.528. In the event the Provider receives a request for an accounting directly from an Individual, the Provider shall, within two business days of receipt of such request, notify EOHHS and proceed in accord with this paragraph. Within 10 business days of EOHHS' request, the Provider shall make a listing of such disclosures and related information available to EOHHS, or upon EOHHS' direction to the Individual.
23. The Provider shall make its internal practices, books, and records, including policies and procedures and PI, relating to the use and disclosure of PI received from, or created or received by it on behalf of, EOHHS, available to EOHHS or upon EOHHS' request, to the Secretary, in a time and manner designated by either EOHHS or the Secretary for purposes of the Secretary determining EOHHS' compliance with the Privacy Rule.
24. Within five days of this Contract's effective date, the Provider shall provide EOHHS in writing with the name of an individual(s), who shall act as Privacy and Security Officer(s) and be responsible for compliance with this **Section 4.3.B**. The Provider shall also notify EOHHS in writing within five business days of any transfer of such duties to other persons within its organization.
25. Within thirty days of execution of this Contract, the Provider shall provide EOHHS, an accurate list of electronic and paper databases containing PI, together with a description of the various uses of the databases. The Provider shall update such lists as necessary in accord with the addition or termination of such databases.

C. Permitted Uses and Disclosures by the Provider

Except as otherwise limited in this Contract, the Provider is prohibited from disclosing any PI, unless required by law, in accord with this Contract, or otherwise instructed by EOHHS in writing. The Provider is permitted to use PI only to perform functions, activities, or services for, or on behalf of, EOHHS as noted above provided such use or disclosure would not violate the Privacy Rule if done by EOHHS or not violate the minimum necessary policies and procedures of EOHHS. In performing functions, activities, or services for or on behalf of EOHHS, the Provider represents that it will only request from EOHHS an amount of PI that it reasonably believes is the minimally necessary to perform the function, activity, or service for which it is needed under this Contract and to the extent this Contract authorizes the Provider to request PI from other covered entities on EOHHS' behalf, the Provider shall only request an amount of PI that it reasonably believes is the minimally necessary to perform the function, activity, or service for which the PI is needed under this Contract.

D. Specified Use and Disclosure for Management and Administration or to Carry Out Legal Responsibilities

1. Except as otherwise limited in this **Section 4.3**, the Provider may use PI for its proper management and administration or to carry out its legal responsibilities.
2. Except as otherwise limited in this **Section 4.3**, the Provider may disclose PI for its proper management and administration or to carry out its legal responsibilities, provided that: 1) disclosures are: a) Required By Law, or b) the Provider obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law (consistent with the restrictions of 42 CFR § 431.306 (f) and M.G.L. c. 66A) or for the purpose for which it was disclosed to the person, and 2) the person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.
2. 3. Except as otherwise limited in this **Section 4.3**, the Provider may use PI to provide Data Aggregation services to EOHHS as permitted by 42 CFR § 164.504 (e) (2) (i) (B).

A. Obligations of EOHHS

1. EOHHS shall notify the Provider of any limitation(s) in its notice of privacy practices issued in accord with 45 CFR § 164.520, to the extent that such limitation may affect the Provider's use or disclosure of PI.
2. EOHHS shall notify the Provider of any changes in, or revocation of, permission by Individual to use or disclose PI, to the extent that such changes may affect the Provider's use or disclosure of PI.
3. EOHHS shall notify the Provider of any restriction to the use or disclosure of PI that it has agreed to in accord with 45 CFR § 164.522, to the extent that such restriction may affect the Provider's use or disclosure of PI.

B. Termination for Breach of Privacy and Confidentiality

1. Notwithstanding any other provision in this Contract, EOHHS may terminate this Contract, immediately upon written notice, if EOHHS determines, in its sole discretion, that the Provider has materially breached any of its obligations set forth in Section 4.3 or any other provision of this Contract pertaining to the security and privacy of any PI provided to the Provider under this the Contract.
2. Prior to terminating this Contract as permitted above, EOHHS, in its sole discretion, may provide an opportunity for the Provider to cure the breach or end the violation. If such an opportunity is provided, but cure is not feasible, or the Provider fails to cure the breach or end the violation within a time period set by EOHHS, EOHHS may terminate the Contract immediately upon written notice.
3. In the event that termination of this Contract for a material breach of any obligation regarding PI is not feasible, or if cure is not feasible, EOHHS shall report such breach or violation to the Secretary.

C. Effect of Termination

1. Except as provided immediately below in subsection (2), upon termination of this Contract for any reason whatsoever, the Provider shall, at EOHHS' option, either return or destroy all PI and other data obtained or created in any form under this Contract, and the Provider shall not retain any copies of all such PI and data in any form. This provision shall apply to all PI and other data in the possession of the Provider's subcontractors or agents, and the Provider shall ensure that all such PI and data in the possession of its subcontractors or agents has been returned or destroyed and that no subcontractor or agent retains any copies of such PI and data in any form. In no event shall the Provider destroy any PI or other data without first obtaining EOHHS' approval.
2. If the Provider determines that returning or destroying PI or other data is not feasible, the Provider shall provide EOHHS with written notification of the conditions that make return or destruction not feasible. If, based on the Provider's representations, EOHHS concurs that return or destruction is not feasible and permits the Provider to retain such data, the Provider shall extend all protections set forth in this Contract to all such PI or data and shall limit further uses and disclosures of such data to those purposes that make the return or destruction of such data not feasible, for as long as the Provider maintains the PI and other data. In the event destruction is permitted, the Provider shall destroy PI in accord with standards set forth in NIST Special Publication 800-88, Guidelines for Media Sanitization, all applicable state retention laws, all applicable state and federal security laws (including the HITECH Act), and all state data security policies including policies issued by EOHHS and the Information Technology Division. All paper copies of PI must be shredded or otherwise destroyed to a degree that will render the copies unreadable, un-useable, and indecipherable without the possibility of reconstruction. Within five days of any permitted destruction, the Provider shall provide EOHHS with a written certification that destruction has been completed in accord with the required standards and that the Provider and its subcontractors and agents no longer retain such data or copies of such data. This provision shall apply to all PI in the possession of the Provider's

subcontractors or agents, and the Provider shall ensure that all such data in the possession of its subcontractors or agents has been returned or destroyed and that no subcontractor or agent retains any copies of such data in any form, in accord with EOHHS's instructions.

3. Notwithstanding any other provision concerning the term of this Contract, all protections pertaining to any PI or other data covered by this Contract shall continue to apply until such time as all such PI and data is returned to EOHHS or destroyed, or if return or destruction is not feasible, protections are applied to such PI and data in accord with subsection (2) immediately above.

D. Survival

Notwithstanding any other provision concerning the term of this Contract, all protections pertaining to any PI covered by this Contract shall continue to apply until such time as all such data is returned to EOHHS or destroyed, or until any period of storage following the termination of this Contract is ended, or if return or destruction is not feasible, protections apply as described above.

2.2. General Terms and Conditions

A. Administrative Procedures Not Covered

Administrative procedures that are not provided for in this Contract may be set forth where necessary in separate memoranda from time to time.

B. Applicable Law

The term "applicable law," as used in this Contract, includes, without limitation, all federal and state law and the regulations, policies and procedures of the MassHealth program, as existing now or during the term of this Contract. All applicable law is hereby incorporated into this Contract by reference.

C. Assignment

The Provider shall not assign or transfer any liability, responsibility, obligation, duty, or interest under this Contract.

D. Authority

The execution of this Contract has been duly and validly authorized so that this Contract, when signed below, will be the valid and binding acts and obligations of the Provider and EOHHS in accordance with all of the terms and provisions hereof.

E. Breach of Duty

In the event the Provider fails to meet its obligations under this Contract or has otherwise violated the laws, regulations, or rules that govern the MassHealth Program, EOHHS may take any or all action under this Contract, law, or equity. Without limiting the above, if EOHHS determines that the continued participation of the Provider in the MassHealth Program may threaten or endanger the health, safety, or welfare of Members or compromise the integrity of the MassHealth Program, EOHHS, without prior notice, may immediately terminate this Contract, suspend the Provider from participation, withhold any future payments to the Provider, or take any or all other actions under this Contract,

law, or equity. The Provider is responsible for any direct, consequential, incidental, or other damages EOHHS and the Commonwealth suffer as a result of the Provider's breach of its obligations hereunder, or damages arising out of or in connection with the Provider's performance of the Contract.

F. Compliance with Laws

The Provider shall comply with all applicable statutes, orders, and regulations promulgated by any federal, state, municipal, or other governmental authority relating to its property, employer practices and the conduct of operations.

G. Effect of Invalidity of Clauses

If any clause or provision of this Contract is in conflict with any state or federal law or regulation, that clause or provision shall be null and void and any such invalidity shall not affect the validity of the remainder of this Contract.

H. Entire Contract

This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof including all appendices hereto, and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. The terms of this Contract shall prevail notwithstanding any variances with the terms and conditions of any written or verbal communication subsequently occurring, except as otherwise provided herein.

I. Governing Law

This Contract, including all rights, obligations, matters of construction, validity, and performance, is governed by the laws of the Commonwealth of Massachusetts.

J. Indemnification

The Provider shall indemnify and hold harmless EOHHS and the Commonwealth from and against any and all liability, loss, damage, costs, or expenses which EOHHS or the Commonwealth of Massachusetts may sustain, incur, or be required to pay for third party claims or suits, arising out of or in connection with the Provider's breach of its obligations under the Contract, or any negligent action or inaction or willful misconduct of the Provider, or any person employed by the Provider, or any of its subcontractors, provided that the Provider is notified of any claim within a reasonable time from when EOHHS becomes aware of the claim and the Provider is afforded an opportunity to participate in the defense of such claim.

K. Interpretation

Any ambiguity in this Contract shall be resolved to permit EOHHS to comply with the Privacy or Security Rules, HIPAA, M.G.L. c. 66A, M.G.L. c. 93H, and any other applicable law pertaining to the privacy, confidentiality, or security of PI or other data.

L. Massachusetts Appropriations Law

All Contract payments hereunder are subject to appropriation and will be limited to the amount appropriated therefore to the extent permitted under applicable state and federal laws.

M. No Third-Party Enforcement

No person not executing this Contract shall be entitled to enforce this Contract against a party hereto regarding such party's obligations under this Contract.

N. Privacy and Security Amendments

The Provider agrees to take such action as is necessary to amend this Contract in order for EOHHS to comply with any requirements of the Privacy or Security Rules, the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA), and any other applicable law pertaining to the privacy, confidentiality, or security of PI or other data. Upon EOHHS' request, the Provider agrees to enter promptly into negotiations for any amendment as EOHHS, in its sole discretion deems necessary for EOHHS' compliance with any such laws. The Provider agrees that, notwithstanding any other provision in this Contract, EOHHS may terminate this Contract immediately upon written notice in the event the Provider fails to enter into negotiations for and to execute any such amendment.

O. Provider Capacity

The Provider agrees that the Provider, and the officers, directors, employees, and agents of Provider, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Commonwealth of Massachusetts.

P. Regulatory References

Any reference in this Contract to a section in the Privacy or Security Rules or other regulation or law refers to that section as in effect or as amended.

Q. Section Headings

The headings of the sections of this Contract are for convenience only and will not affect the construction hereof.

R. Severability

The terms of this Contract shall be construed, to the extent possible, to be consistent with applicable federal and state laws and regulations. Any determination that any provision of this Contract is invalid, illegal, or unenforceable in any respect will not affect the validity, legality, or enforceability of any other provision of this Contract.

S. Sovereign Immunity

Nothing in this Contract will be construed to be a waiver by EOHHS or the Commonwealth of Massachusetts of its rights under the doctrine of sovereign immunity and the Eleventh Amendment to the United States Constitution.

T. Subcontracts

The Provider will remain fully responsible for meeting all of the requirements of the Contract regardless of whether the Provider subcontracts for the performance of any Contract responsibility. No subcontract will operate to relieve the Provider of its legal responsibility under the Contract. The Provider agrees to require that any individual or entity with which it contracts to provide Direct Services comply with all relevant

statutory, regulatory, or contractual requirements regarding the delivery of such services and to actively monitor the quality of care provided to Members under any subcontracts.

U. Survival

The obligations of the Provider under **Sections 4.3.G** and **4.6.C** of this Contract shall survive the termination of this Contract.

V. Venue

Any and all actions arising out of or relating to this Contract will be brought, maintained, and enforced in a state or federal court in the Commonwealth of Massachusetts, which shall have exclusive jurisdiction and venue over such actions.

W. Waiver

EOHHS will not be deemed to have waived any of its rights under the terms of this Contract, unless such waiver is set forth in a written amendment to this Contract executed by the parties. No delay or omission on the part of EOHHS in exercising any right will operate as a waiver of such right or any other right. A waiver by EOHHS on any occasion will not be construed as a bar to or waiver of any right or remedy on any future occasion. The rights and remedies of EOHHS herein are cumulative and are in addition to any other rights or remedies that EOHHS may have at law or in equity.

2.3. Contract Term

The term of this Contract commences on the date that both parties sign it, and continues until terminated as set forth in this Contract or under applicable law, and subject to the Provider's satisfactory performance, as determined by EOHHS, of all duties and obligations under this Contract. Notwithstanding the effective period of the Contract as herein described, the Provider shall remain contractually obligated to pay EOHHS any amounts that EOHHS determines the Provider owes pursuant to **Section 2.4.B.2** or any disallowance of FFP determined pursuant to **Section 4.2.C** of this Contract.

2.4. Termination of Contract

A. Termination with Cause

EOHHS may terminate this Contract for cause immediately upon written notice to the Provider for reasons that include, but are not limited to, the following.

- 3.** 1. The Provider
 - a. is no longer a Local Government Entity, as defined by this Contract;
 - b. fails to implement a corrective action plan as required by EOHHS in accordance with **Section 4.1.G**; or
 - c. fails to perform any of its obligations under the Contract.
- 4.** 2. Cessation in whole or in part of federal funding for this Contract, provided that termination for this reason shall occur no earlier than the last day of the month in which such funding ceases.

A. Termination without Cause

EOHHS may terminate this Contract without cause upon 30 days' written notice to the Provider.

B. Continued Obligations of the Parties

In the event that this Contract is terminated, expires, or is not renewed for any reason, the Provider shall be responsible for

1. meeting with EOHHS, at EOHHS' request, to resolve all program transition issues;
2. supplying to EOHHS, no later than 90 days after the termination of the Contract, all information necessary for the payment of any outstanding claims determined by EOHHS to be due to the Provider. Any such claims shall be paid to the Provider accordingly; and
5. 3. delivering to EOHHS all funds related to Interim Rate payments in the manner and method directed by EOHHS.

5.1. Amendments

The parties agree to negotiate in good faith to cure any omissions, ambiguities, or manifest errors herein. By mutual agreement, the parties may amend this Contract where such amendment does not violate state or federal statutory, regulatory, or waiver provisions, provided that such amendment is in writing, signed by both parties, and attached hereto.

5.2. Written Notices

Notices to the parties as to any matter hereunder will be sufficient if given in writing and sent by certified mail, postage prepaid, or delivered in hand to the following addresses.

To EOHHS

Rumi Pavlova, Director School-Based and Cross Agency Programs
Massachusetts Executive Office of Health and Human Services
1 Ashburton Place – 11th floor
Boston, MA 02108

Copies to

General Counsel
Massachusetts Executive Office of Health and Human Services
1 Ashburton Place – 11th floor
Boston, MA 02108

To the Provider:

IN WITNESS WHEREOF, the parties have executed this Contract under seal as of the date stated above.

If the Provider is a legal entity other than a person, the person signing this Contract on behalf of the Provider warrants that he or she has the actual authority to bind the Provider.

**EXECUTIVE OFFICE OF HEALTH
AND HUMAN SERVICES**

PROVIDER
(Legal name of Provider)

BY: _____

(Signature)

BY: _____

(Signature)

(Name and title)

(Name and title)

Date: _____

Date: _____

Appendix 2: Reference Contact Information

Contact Name	For Information On	Contact Information
Massachusetts Department of Elementary and Secondary Education	Individualized Education Plans	Special Education Planning and Policy Development Office E-mail: specialeducation@doe.mass.edu Web-site: http://www.doe.mass.edu/sped/ Telephone: 781-338-3375 Fax: 781-338-3371 Mailing address: 75 Pleasant Street, Malden, MA 02148
Massachusetts Department of Elementary and Secondary Education	Rules regarding sharing educational related information (FERPA) and parental consent	Program Quality Assurance Office Telephone: 781-338-3700 Mailing address: 75 Pleasant Street, Malden, MA 02148
MassHealth Enrollment and Credentialing	<ul style="list-style-type: none"> Obtaining a provider enrollment package Updating your contact information with MassHealth 	E-mail: providersupport@mahealth.net Fax: 617-988-8974 Telephone: 1-800-841-2900 Hours: Monday – Friday 8:00 A.M. – 5:00 P.M. Mailing address: MassHealth, Provider Enrollment and Credentialing, P.O. Box 9118, Hingham, MA 02043
MassHealth Provider and Member Customer Service	<ul style="list-style-type: none"> MMIS Claims submission and processing Claims remittance advice 	MassHealth Customer Service E-mail: providersupport@mahealth.net (for non-member-specific questions only) Telephone: 1-800-841-2900 Hours: Monday – Friday 8:00 A.M. – 5:00 P.M. Mailing address: MassHealth, Provider Services, P.O. Box 9118, Hingham, MA 02043
University of Massachusetts Medical School	<ul style="list-style-type: none"> General School-Based Medicaid questions Information regarding the Massachusetts School-Based Medicaid Cost Report Information regarding AAC claiming Information on quarterly payments Information regarding RMTS 	E-mail: schoolbasedclaiming@umassmed.edu Fax: 508-856-7643 Telephone: 1-800-535-6741 Hours: Monday – Friday 8:00 A.M. – 4:30 P.M. Mailing address: 333 South Street, Shrewsbury, MA 01545

Appendix 3: Provider Qualifications and Supervisory Requirements

The table below describes provider qualification and supervisory requirements for participants in the School-Based Medicaid program. Qualifications and supervisory requirements are often governed by regulations, as referenced below. For clarification, please refer to the Requirements chart below. The regulations define the requirements on the date of service. **Note:** Due to the new Affordable Care Act some of these may have changed in January, 2014.

Practitioner	Relevant Regulation on Qualifications	Relevant Regulation on Supervision	Requirements (as of 5/1/09)
Audiologists	130 CMR 426.404		<p>In State Be currently licensed by the Commonwealth of Massachusetts, Division of Professional Licensure, Board of Registration in Speech-Language Pathology and Audiology.</p> <p>Out of State (1) participate in Medicaid in the audiologist’s own state; (2) be currently licensed by the appropriate licensing agency in its own state; and (3) possess a Certificate of Clinical Competence in Audiology (CCC-A) issued by the American Speech-Language-Hearing Association (ASHA), if any of the following conditions apply (a) the audiologist’s own state does not license independent audiologists; (b) the audiologist’s own state does license independent audiologists, but such licensure is not in full compliance with minimum state licensure requirements, specified in 42 CFR 440.110(3); or (c) the audiologist’s own state does license independent audiologists, but such licensure does not, at minimum, meet the academic and clinical requirements of the CCC-A</p>

Practitioner	Relevant Regulation on Qualifications	Relevant Regulation on Supervision	Requirements (as of 5/1/09)
Counselors	130 CMR 429.424(E)(2)	Must be supervised according to 130 CMR 429.424(E)(1) (supervised by a psychiatrist, a licensed psychologist, licensed independent clinical social worker, psychiatric nurse	<p>All counselors must</p> <ul style="list-style-type: none"> • hold a master's degree in counseling education, counseling psychology, or rehabilitation counseling from an accredited educational institution, and • have had two years of full-time supervised clinical experience in a multidisciplinary mental-health setting subsequent to obtaining the master's degree. (One year of supervised clinical work in an organized graduate internship program may be substituted for each year of full-time experience.)
Hearing Instrument Specialists	130 CMR 416.404		<p>In State Must currently be currently licensed by the Commonwealth of Massachusetts, Division of Professional Licensure, Board of Registration of Hearing Instrument Specialists.</p> <p>Out of State (1) must be currently certified by the National Board for Certification in Hearing Instrument Sciences; (2) must be currently licensed by the appropriate licensing agency in its own state (as applicable); and (3) must participate in Medicaid in his/her own state.</p>
Licensed Practical Nurse (LPN) and Registered Nurse (RN)	130 CMR 414.404(A)		<p>In State Must be currently licensed by the Massachusetts Board of Registration in Nursing</p> <p>Out of State Must be currently licensed in the state in which the nursing services are provided</p>
Occupational Therapists	130 CMR 432.404(B) or 130 CMR 432.405		<p>In State (1) Must be currently licensed by the Massachusetts Division of Registration in Allied Health Professions and be currently registered by the American Occupational Therapy Association (AOTA); or (2) Must be currently licensed by the Massachusetts Division of Registration in Allied Health Professions and be a graduate of a program in occupation therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association, and engaged in the supplemental</p>

Practitioner	Relevant Regulation on Qualifications	Relevant Regulation on Supervision	Requirements (as of 5/1/09)
			<p>clinical experience required before registration by AOTA</p> <p>Out of State</p> <p>(1) Must be currently licensed or registered to practice in his/her own state and be currently registered by the American Occupational Therapy Association (AOTA); or</p> <p>(2) Must be currently licensed or registered to practice in his/her own state and be a graduate of a program in occupation therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association, and engaged in the supplemental clinical experience required before registration by AOTA</p>
Occupational Therapy Assistants	Must be currently licensed by the Massachusetts Board of Registration of Allied Health Professionals	Supervision required by Occupational Therapist in accordance with 259 CMR 3.02(1) through (3)	Must be currently licensed as such by the Board of Registration of Allied Health Professionals
Personal Care Services Providers	A person who provides personal care services cannot be a family member of the individual receiving services, as defined at 130 CMR 422.000.		A family member is defined as “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative” (130 CMR 422.000).
Physical Therapists	130 CMR 432.404(A) or 130 CMR 432.405		<p>In State</p> <p>Licensed by the Massachusetts Division of Registration in Allied Health Professions.</p> <p><i>(Note: If the therapist was registered under the laws of the Commonwealth before January 1, 1966, without having graduated from an approved educational program, he/she must have been certified by the proficiency process sponsored by the Social Security Administration’s Bureau of Health Insurance on or before December 31, 1977.</i></p>

Practitioner	Relevant Regulation on Qualifications	Relevant Regulation on Supervision	Requirements (as of 5/1/09)
			<p>Out of State Must be currently licensed or registered to practice in his/her own state</p>
Physical Therapy Assistants	Must be currently licensed by the Massachusetts Board of Registration of Allied Health Professionals	Supervision required by a Physical Therapist in accordance with 259 CMR 5.02(1) through (3)	Must be currently licensed by the Board of Registration of Allied Health Professionals
Psychiatrists	130 CMR 429.424(A)(1) or 130 CMR 429.424(A)(2)	Individuals who are qualified according to 130 CMR 429.424(A) (2) must be under the direct supervision of a fully qualified psychiatrist.	<p>(1) Must either be a currently certified by the American Board of Psychiatry and Neurology, or be eligible and applying for such certification; or</p> <p>(2) Must be, at minimum, a currently licensed physician in the second year of a psychiatric residency program accredited by the Council on Medical Education of the American Medical Association</p>

Practitioner	Relevant Regulation on Qualifications	Relevant Regulation on Supervision	Requirements (as of 5/1/09)
Psychologists	130 CMR 429.424(B)(1) or 130 CMR 429.424(B)(2)	<p>Individuals who are qualified according to 130 CMR 429.424(B)(2) must be under the direct and continuing supervision of a psychologist meeting the requirements set forth in 130 CMR 429.424(B)(1)</p> <p>Note on Supervision: Psychologists qualified under item (2) above must be under the direct supervision of a fully qualified psychologist, as defined in item (1).</p>	<p>Must be</p> <p>(1) currently licensed by the Massachusetts Board of Registration of Psychologists with a specialization listed in clinical or counseling psychology or a closely related specialty; or</p> <p>(2) trained in the field of clinical or counseling psychology or a closely related specialty; and</p> <p>(i) have a minimum of a master's degree or the equivalent graduate study in clinical or counseling psychology or a closely related specialty from an accredited educational institution;</p> <p>(ii) be enrolled in or have completed a doctoral program in clinical or counseling psychology or a closely related specialty; and</p> <p>(iii) have had two years of full-time, supervised clinical experience subsequent to obtaining a master's degree in a multidisciplinary mental-health setting. (One year of supervised clinical work in an organized graduate internship program may be substituted for each year of experience.) All services provided by such additional staff members must be under the direct and continuing supervision of a psychologist meeting the requirements set forth in 130 CMR 429.424(B)(1).</p>
Social Workers	130 CMR 429.424(C)(1) or 130 CMR 429.424(C)(2)	<p>Social workers who are qualified under 130 CMR 429.424(C) (2) must be under the direct and continuous supervision of an independent clinical social worker.</p> <p>Note on Supervision: Social workers qualified under item (2) must provide services under the direct and continuous supervision of an independent clinical social worker.</p>	<p>(1) Must have received a master's degree in social work from an accredited educational institution and must have had at least two years of full-time supervised clinical experience subsequent to obtaining a master's degree. (2) Must also be currently licensed or have applied for and have a license pending as an independent clinical social worker by the Massachusetts Board of Registration of Social Workers, or</p> <p>(2) Must be currently licensed or applying for licensure as a certified social worker by the Massachusetts Board of Registration of Social Workers and have received a master's degree in social work and completed two years of full-time supervised clinical work in an organized graduate internship program.</p>

Practitioner	Relevant Regulation on Qualifications	Relevant Regulation on Supervision	Requirements (as of 5/1/09)
Speech/ Language Therapists	130 CMR 432.404(C) or 130 CMR 432.405		<p>In State Must be currently licensed by the Massachusetts Division of Registration in Speech-Language Pathology and Audiology and have obtained either a Certificate of Clinical Competence (CCC) from the American Speech, Language, and Hearing Association (ASHA), or a statement from ASHA of certification equivalency.</p> <p>Out of State Must be currently licensed by the provider’s own state in Speech-Language Pathology and Audiology and have obtained either a Certificate of Clinical Competence (CCC) from the American Speech, Language, and Hearing Association (ASHA) or a statement from ASHA of certification equivalency.</p>
Speech- Language Pathology Assistants or Audiology Assistants	Must be currently licensed by the Massachusetts Board of Registration in Speech-Language Pathology and Audiology	Supervision required by a Supervising Speech-Language Pathologist or Supervising Audiologist, in accordance with 260 CMR 10.02	Must be currently licensed by the Massachusetts Board of Registration in Speech-Language Pathology and Audiology

School-Based Medicaid Program Services Documentation Form

School district name

This line captures the name of the school district where services are provided.

Provider no.

This line indicates the provider number used to bill the Medicaid program.

Service period, year

This line indicates the evaluation period during which services are provided. This form is to be completed monthly.

Student name

This line includes the student's complete legal name.

Date of birth

This line includes the student's complete date of birth.

Student's MassHealth ID

This line includes the student's MassHealth identification number.

Date

This column indicates the date a health related service is provided to the student. This should be completed every time a health related service is delivered.

Activity/Procedure Note

In this column, the provider should write a description of the service provided to the student on that date. This must document the extent and duration of the medical service provided.

Individual or Group

This column indicates if the service was delivered to the student on an individual basis (I), or in a group setting (G).

Service Time

This column captures the quantity of service provided to the child. This should be recorded as an amount of time (e.g., 20 minutes). This can capture the cumulative time the provider spent delivering services over the course of the day.

Signatures

The signature of the medical professional authorizing services must comply with generally accepted standards for record keeping within the applicable provider type, as may be found in laws and regulations of the relevant board of registration.

Appendix 5: Table of Interim Billing Codes

For State Fiscal Year 2014 rates and codes refer to [School-Based Medicaid Program Bulletin 27](#), effective October 2013, or any superseding publication. Please note some of the codes (speech related services) were effective on January 1, 2014, due to the Center for Medicare and Medicaid (CMS) guidance. EOHHS reserves the right to change and update the service codes and rates for the School-Based Medicaid Program in future based on changes in Federal or State regulations. Providers are responsible to stay up to date with future bulletins and EOHHS guidance.