



STATE OF MARYLAND
DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

DEC 15 2011

The Honorable Edward J. Kasemeyer
Chairman
Senate Budget and Taxation Committee
3 West Miller Senate Office Bldg.
Annapolis, MD 21401-1991

The Honorable Norman H. Conway
Chairman
House Appropriations Committee
121 House Office Bldg.
Annapolis, MD 21401-1991

Re: 2011 Joint Chairmen's Report (p. 193) – Signed Copy of Memorandum of Understanding between DHMH and DHR

Dear Chairmen Kasemeyer and Conway:

In keeping with the requirements of the 2011 Joint Chairmen's Report (p. 193), enclosed is a copy of a signed memorandum of understanding between DHMH and the Department of Human Resources which allows the two agencies to partner in meeting the needs of the Department along with addressing the concerns that were raised in the December 2010 audit of the Medical Care Programs Administration by the Office of Legislative Audits.

If you have any questions or need more information on this subject, please contact Marie Grant, Director of Governmental Affairs at (410) 767-6480.

Sincerely,

Joshua M. Sharfstein, MD
Secretary

Enclosure

cc: Chuck Milligan, DHMH
Ted Dallas, DHR
Tricia Roddy, DHMH
Marie Grant, DHMH

**MEMORANDUM OF AGREEMENT
BETWEEN
MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE
AND
MARYLAND DEPARTMENT OF HUMAN RESOURCES**

This Memorandum of Agreement (“MOA”) is made effective the 1st day of July, 2011 by and between the Maryland Department of Health and Mental Hygiene (“DHMH”) and the Maryland Department of Human Resources (“DHR”).

I. PURPOSE

In accordance with the requirements of Title XIX of the Social Security Act, DHMH is designated as the single State agency to administer a Medical Assistance Program for all eligible persons according to the State Medicaid Plan (the “State Medicaid Plan”) agreed to by DHMH and the U.S. Department of Health and Human Services (“DHHS”). DHR is designated as the single State agency under Title IV-A of the Social Security Act.

This MOA outlines the conditions under which (1) DHR, through its local departments of social services (“LDSS”), will implement Medical Assistance eligibility determinations, (2) DHMH will support DHR’s implementation of Medical Assistance eligibility determinations through DHMH’s regulations, policies and standards, and (3) DHR and DHMH will coordinate their respective efforts and work collaboratively to implement national health care reform in the State of Maryland.

II. TERMS

A. Eligibility Regulations and the Eligibility Determination Process

1. DHMH agrees to:

- a. Promulgate and interpret the regulations governing eligibility for the Medical Assistance Program in accordance with the State Medicaid Plan, the requirements of Title XIX of the Social Security Act, applicable federal regulations, and other official guidance issued by DHHS;
- b. Amend DHMH regulations and policy as necessary;
- c. Consult with DHR about the logistical and operational impact of proposed DHMH regulation and policy changes;
- d. Meet periodically and as needed with DHR about operational, regulatory and policy issues;
- e. Provide as much notice as practicable to DHR before implementing a newly developed regulation, guideline, policy or procedure;
- f. Respond in a timely manner to regulatory and policy questions posed by LDSS;

- g. Maintain joint sign-off authority with DHR for policy correspondence sent to LDSS regarding the Medical Assistance Program's operation and administration, including but not limited to joint sign-off authority for Action Transmittals, Information Memoranda and CARES Bulletins but excluding DHMH Medical Assistance Eligibility Manual Releases and Policy Alerts (collectively, the "Policy Correspondence");
 - h. Provide DHR and each LDSS with access to the DHMH Medical Assistance Eligibility Manual, Manual Releases and Policy Alerts; and
 - i. Reimburse DHR for the documented cost of retaining long-term care case records for three (3) of the six (6) years required by Section II(A)(2)(i) of this MOA.
2. DHR agrees to:
- a. Subject to State appropriations, (i) employ appropriate and adequate professional and technical personnel, (ii) maintain appropriate and adequate resources, including proper documentation, each as essential to support and timely determine Medical Assistance Program eligibility, and (iii) perform problem identification and resolution such as modifying staff and resources accordingly;
 - b. Determine Medical Assistance Program applicants' and recipients' eligibility on a uniform basis throughout the State;
 - c. Seek and accept comments and suggestions from appropriate staff in DHR and LDSS regarding guidelines and procedures and provide such input to DHMH;
 - d. Ensure that each LDSS has access to Medical Assistance program policy and procedures to ensure prompt and correct Medical Assistance Program eligibility determination;
 - e. Monitor in conjunction with DHMH the results of new statutes, regulations, policies, guidelines and procedures;
 - f. Provide all necessary assistance to LDSS in compliance issues;
 - g. Maintain joint sign-off authority by DHR and DHMH for all Policy Correspondence;
 - h. Timely furnish eligibility or other information to DHMH as requested by DHMH, including third party insurance information relating to other potential third party liability of Medical Assistance Program applicants and recipients. Such information may include but is not limited to automobile and other accident insurance coverage, medical malpractice, work related injuries, assaults, lead poisoning, recipient fraud, death of a recipient and voluntary reimbursements to the DHMH Office of the Inspector General;
 - i. Maintain all case records necessary for reporting, auditing, program planning and evaluation for three (3) years, except for long-term care case records that shall be kept for six (6) years, and submit these records, upon request, to DHMH or its counsel, the Office of the Attorney General ("OAG");

- j. Submit invoices to DHMH for the cost of maintaining long-term care case records for three (3) of the six (6) years required, including record logs and such other detail as is necessary for DHMH to reimburse DHR for the longer retention period; and
- k. Evaluate periodically the need to update the work standard used for evaluation of staff needs within the Medical Assistance Program.

B. Training

1. DHMH agrees to:

- a. Provide basic and specialized Medical Assistance Program eligibility training to appropriate DHR and LDSS personnel as necessary;
- b. Identify strategies to meet training needs and provide DHR opportunities to provide input into proposed DHMH training packages to insure that the information needs of the LDSS are addressed in such trainings;
- c. Coordinate training schedules with DHR; and
- d. Monitor, in conjunction with DHR, the results of training offered to the LDSS and make changes to trainings accordingly.

2. DHR agrees to:

- a. Identify strategies to meet training needs and provide DHMH opportunities to provide input into proposed DHR training packages to insure that the information and needs of the LDSS are addressed;
- b. Provide training, procedures and guidelines to LDSS on how to utilize all necessary electronic systems and sources of information, including federal databases, as appropriate for eligibility determinations;
- c. Monitor, in conjunction with DHMH, the results of training offered to the LDSS and make necessary changes to trainings accordingly; and
- d. Coordinate training schedules with DHMH.

C. Statistical Information and Documentation Issues

- 1. To the extent permitted by applicable law, DHMH agrees to timely furnish to DHR statistical information related to DHR's responsibilities and activities under this MOA, in response to DHR's request for such information.
- 2. DHR agrees to timely furnish statistical information to DHMH in response to a DHMH request for such information.

D. Applicant and Recipient Fair Hearings Under COMAR 10.01.04

1. DHMH agrees to analyze reasons for and results of fair hearings to provide technical assistance to LDSS and to provide training in appropriate areas.
2. DHR agrees to:
 - a. Provide all necessary documentation to appellants and the Office of Administrative Hearings (“OAH”) as required by COMAR 10.01.04 and other applicable law;
 - b. Comply with requests from counsel to DHMH, the OAG, regarding requests for witnesses, documentation and all other necessary and information about Medical Assistance Program eligibility determination cases being appealed to or from OAH;
 - c. Not require a subpoena from the OAG to present documentation or witnesses as described above; and
 - d. Represent the Medical Assistance Program at hearings or appeals when the issues involved concern elements of the determination of Medical Assistance Program eligibility.

E. Fraud

1. DHMH agrees to maintain, in consultation with DHR, procedures for identifying cases suspected of fraud or abuse and referring said cases to the appropriate DHMH unit for review and/or investigation.
2. DHR agrees to:
 - a. Furnish information in a timely manner about cases suspected of fraud or abuse to DHMH;
 - b. Provide DHMH with all records or documentation as may be necessary to complete review and/or investigation; and
 - c. Represent DHR in administrative or court proceedings as custodian of the record and testify to elements of eligibility.

F. Quality Control

1. DHMH agrees to:
 - a. Operate a Medicaid Eligibility Quality Control (“MEQC”) system in accordance with DHHS- issued policy and procedures;
 - b. Routinely provide DHR with eligibility processing information and analysis of MEQC information to the extent DHR Medical Assistance eligibility determinations are reviewed in DHHS-approved annual pilot projects;
 - c. Operate a designated unit to oversee Medical Assistance Program quality assurance and auditing functions (the “Special Monitoring/Projects Unit”); and

- d. Provide notice to DHR respecting Medical Assistance eligibility case information required for:
 - i. Federal Medical Assistance audits including Single State Agency Audits and Payment Error Rate Measurement audits;
 - ii. State Medical Assistance audits, including those performed by the Maryland Office of Legislative Audits (collectively with the federal audits, the “Audits”); and
 - iii. Special Monitoring/Projects Unit activities.

2. DHR agrees to:

- a. Routinely and in a timely manner provide DHMH case records required for MEQC pilot projects, Special Monitoring/Projects Unit activities, and Audits;
- b. Routinely and in a timely manner provide DHMH with information regarding corrective action taken by DHR for errors in specific cases found during MEQC pilot projects, Special Monitoring/Projects Unit activities, and Audits;
- c. Routinely provide DHMH with information regarding corrective action taken by DHR for specific Medical Assistance cases affected by errors found during review of associated cases;
- d. Ensure timely access by Special Monitoring/Projects Unit and other designated DHMH staff to electronic management reports regarding DHR’s compliance with timeliness and other eligibility processing requirements (e.g., DataWatch); and
- e. Routinely and in a timely manner respond to all requests for reports and requests for information given by Special Monitoring/Projects Unit, including but not limited to requests:
 - i. For audit findings associated with DHR’s determinations of Medical Assistance eligibility and associated Medical Assistance eligibility processing;
 - ii. For access to details underlying compliance reports, including but not limited to identifying subsets of Medical Assistance cases by particular reason codes for case closure or other case manager actions;
 - iii. To participate in testing the Medical Assistance Pre-Review process; and
 - iv. To maintain access for purposes of monitoring the Medical Assistance Pre-Review function.

G. Corrective Action

1. DHMH and DHR jointly agree to:

- a. Review and analyze MEQC results, results of Audits, results of Special Monitoring/Projects activities, and other information in order to determine the underlying causes of errors in eligibility;
- b. Identify corrective action alternatives;
- c. Develop, based on results of a cost/benefit study of the alternatives, a full corrective action plan, enabling management to decide whether to approve a commitment of agency resources for development and implementation;
- d. Implement corrective action, including training where necessary, and monitor the progress of the implementation;
- e. Design and deliver all such training in conformance with the staff responsibilities set out in II, above;
- f. Review and analyze evaluative data supplied by DHR, the MEQC, Special Monitoring/Projects Unit, and the Audits to determine the nature and extent of impact which the corrective action has on errors;
- g. Make specific staff assignments to implement the corrective action required by the review and analysis required above. Training assignments will conform to the staff responsibilities set out in II, above;
- h. Attend meetings of a Corrective Action Panel that comprises individuals from DHR and DHMH, where the meetings are scheduled as necessary, and share best practices; and
- i. Send designated staff to monthly meetings of a committee including representatives of Special Monitoring/Projects, to review the items identified by Special Monitoring/Projects activities, report and review error trends, and maintain communication about progress and effectiveness of corrective actions.

2. DHR and DHMH agree to engage in the following corrective action process:

- a. When DHMH identifies, through Special Monitoring/Projects Unit, an Audit, or otherwise, a problem related to the timeliness, accuracy, retention of information related to Medical Assistance applications, or otherwise regarding Medical Assistance eligibility determinations where the identified problem appears to involve more than one specific Medical Assistance applicant or recipient and is more pervasive in nature (an "Issue"), DHMH shall notify DHR in writing within ten (10) business days of identifying the Issue.
- b. When DHR identifies an Issue, it shall notify DHMH in writing within ten (10) business days of identifying the Issue.
- c. DHR shall have thirty (30) days from the date of the DHMH notification of the identified Issue to (i) notify DHMH in writing that it has cured the Issue or (ii) submit a corrective action plan to DHMH to address the Issue.

- d. DHMH shall review the written submission from DHR related to the Issue and notify DHR in writing within thirty (30) days of DHR's response that DHMH (i) accepts DHR's corrective action plan, if submitted, or (ii) requires changes to the corrective action plan.
- e. If DHR submits a corrective action plan to DHMH that is accepted by DHMH or that DHMH modifies following the submission, DHR agrees to report monthly in writing to DHMH about its compliance with the corrective action plan and any changes, if any, are necessary to such plan to ameliorate the Issue.
- f. If DHR (i) does not submit in a timely manner a corrective action plan, (ii) does not monthly report its compliance with or necessary changes to the corrective action plan, or (iii) insufficiently to DHMH's satisfaction fulfills the corrective action plan, DHMH shall report the matter to the Secretaries of DHMH and DHR to be addressed by such Secretaries through the legislature, budgetary avenues, or otherwise.

H. Other Joint Responsibilities

DHMH and DHR jointly agree to:

1. Create and maintain a mechanism for the joint development of processing and instructions for Medical Assistance eligibility determinations;
2. Commit necessary and appropriate resources to the performance of responsibilities under the MOA and provide periodic assessments of the adequacy of the resources committed; and
3. Cooperate in all fiscal, operational, organizational and budgetary matters necessary to effectuate the implementation of national health care reform.

III. DISCLOSURE OF INFORMATION AND CONFIDENTIALITY

1. DHR will safeguard and maintain the confidentiality and privacy of Medical Assistance Program applicants and recipients whose information is disclosed, generated and shared with or to DHR under this MOA.
2. DHR will maintain confidentiality of Medical Assistance Program applicants and recipients whose information is disclosed, generated and shared with or to DHR under this MOA in accordance with:
 - a. Section 1902(a)(7) of the Social Security Act (as further interpreted in federal regulations at 42 CFR § 431.300 to 307);
 - b. The Health Insurance Portability and Accountability Act of 1996, as amended; and
 - c. Maryland Human Services Code § 1-201.
3. DHR will handle subpoenas it receives concerning information about Medical Assistance applicants or recipients in accordance with federal regulations and Maryland Human Services Code § 1-201.

4. Except as otherwise agreed to by the parties, information obtained by DHR regarding Medical Assistance Program applicants and recipients will be used: (a) for preliminary eligibility and final eligibility verification by DHR, and (b) to prosecute participants who fraudulently provided false information to the Medical Assistance Program, and (c) as required or permitted by State law.
5. Due to the confidential nature of the information obtained by DHR under this MOA about Medical Assistance Program applicants and recipients, DHR agrees to take all necessary steps to protect such confidentiality by complying with the following provisions governing their handling of confidential information:
 - a. Information obtained through this MOA regarding Medical Assistance applicants and recipients may only be used for the purposes set forth in this Agreement;
 - b. Except for access otherwise required by law or specifically authorized by DHMH, access to information obtained as a result of this MOA shall be restricted to only those employees or agents of DHR who require the information in their official capacity to perform duties connected with implementation of this Agreement;
 - c. All authorized individuals with access to data obtained as a result of this MOA shall be advised of the confidential nature of the information and the safeguards required to protect the information; and
 - d. Information obtained through this MOA shall be stored and processed so as to protect the confidentiality of the information, and in such a way that unauthorized persons cannot retrieve such records by means of computer, remote terminal, or any other means.

IV. EFFECTIVE DATE, TERMINATION, AND AMENDMENTS

1. This MOA shall be effective as of July 1, 2011 and supersedes any and all previous agreements between DHMH and DHR relating to the LDSS being charged with implementing eligibility determinations for applicants to DHMH's Medical Assistance Program
2. This MOA remains in effect until terminated by either DHMH or DHR in writing; provided, however, that this MOA will terminate immediately if changes in relevant federal and state law and/or regulations render performance hereunder illegal or impossible.
3. This MOA may only be amended by written agreement of both DHR and DHMH.

V. THIRD PARTY DISCLOSURE REQUESTS


DHR agrees not to release any DHMH data or Medical Assistance Program applicant or recipient information to any third party without the express written approval of DHMH unless so ordered by a court or as permitted by law. DHMH agrees to cooperate with DHR in opposing


disclosure of DHMH data or Medical Assistance Program applicant or recipient information to any third party that DHR or DHMH determines is information protected from disclosure under the law. If any party is required to release any information shared under this Agreement, the other party shall be copied on all correspondence related to that release of information.

VI. MISCELLANEOUS

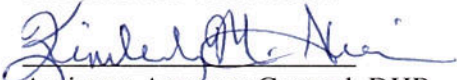
1. Nothing in this MOA may be construed as abrogating the responsibilities imposed by any other agreements between DHMH and DHR.
2. This Agreement shall be governed and construed in accordance with the laws of the State of Maryland.

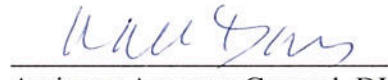
IN WITNESS WHEREOF, the parties have executed this Agreement.


Secretary
Department of Human Resources
Date: 10/3/11


Secretary
Department of Health and Mental Hygiene
Date: 10/31/11

APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE OFFICE OF THE ATTORNEY GENERAL


Assistant Attorney General, DHR
Date: 9/30/11


Assistant Attorney General, DHMH
Date: 10-26-11