

MEMORANDUM OF AGREEMENT
BETWEEN THE SOUTHWEST REGIONAL EDUCATION COOPERATIVE
AND 21st Century Public Academy

I. PARTIES

This Memorandum of Agreement is made and entered into by and between the Southwest Regional Education Cooperative ("SWREC") and 21st Century Public Academy hereafter the "Local Education Agency" ("LEA").

II. PURPOSE OF AGREEMENT

SWREC and LEA, independent contractors as to each other, hereby agree to work together for the purpose of receiving reimbursement for state-specific Medicaid covered medical services provided to Title XIX-eligible students through the LEA's special education program.

In consideration of the promises in this Memorandum of Agreement, the Parties agree as follows:

III. SCOPE OF WORK AND RESPONSIBILITIES

A. SWREC shall:

1. Provide one (1) person to provide services as the Medicaid Coordinator ("Coordinator") as more fully described below. The Coordinator shall:
 - a. maintains a tracking system of therapists' Medicaid ID and annual license renewal.
 - b. maintains a tracking system of therapists' National Provider Identification ("NPI") numbers and taxonomy codes.
 - c. maintain all records required to be retained by the LEA by Title XIX and produce those records in the event of an audit during the term of this MOA and for a period of six (6) years thereafter.
 - d. maintain familiarity with state and federal rules and guidelines on school Medicaid billing.
 - e. maintains a system for obtaining physician signatures for services for all Medicaid enrolled students.
 - f. monitor the report section of the web-based system described below and notify the LEA when a therapist has not entered data within ten (10) working days from the end of the previous month.

- g. review all remittance advice services submitted by the LEA and identify denied claims for possible rebilling.
 - h. submits updated required data (changes in IEP's, new participants, new providers, etc.) weekly to SIVIC Third-Party Billing Services.
 - i. attend web-based billing training provided by SIVIC Third-Party Billing Services.
 - j. attends update and training sessions when provided by the Medical Assistance Division.
2. Provide updated student and provider data based on the data that SWREC receives from the LEA.
 3. Provide record storage and retention of billing documentation as required by Medicaid.
 4. Verify that all LEA therapists have a professional and Public Education Department ("PED") license and have a current Medicaid number and NPI number.
 5. Provide updated Medicaid enrollment status for students receiving eligible Medicaid services to SIVIC Third-Party Billing Services.
 6. Provide a process for annual physician approval for Medicaid enrolled students receiving services.
 7. Provide a web-based system for collection and electronic submission of student data and Medicaid claims for services that meets all state and federal requirements.
 8. Train therapists as needed on the use of the web-based system.
 9. Provide monthly reports on upcoming IEP expirations and on the status of therapist's logs, to the LEA's Special Education Director.
 10. Provide any other information reasonably requested by the LEA to review Remittance Advice and to re-bill for denied claims.
 11. Require that all staff involved in the preparation and certification of direct and administrative claims, including SIVIC Third-Party Billing Services, attend the State of New Mexico Human Services Department ("HSD") sponsored training sessions concerning Medicaid regulations, policies and procedures, the provision of Medicaid reimbursable services and the preparation and submission of claims pursuant to this Agreement.
 12. Complete and submit Administrative Claiming reports within the required timeframe.

B. The LEA shall:

1. Abide by all IDEA, State of New Mexico, and New Mexico Public Education Department regulations pertaining to students with disabilities.
2. Abide by all State of New Mexico and Federal Medicaid School Based Services program regulations.
3. Provide the Coordinator with a single point of contact at the LEA who will be responsible for providing all data and documentation requested by the Coordinator.
4. Provide the Coordinator with complete, up-to-date, full copies of Individualized Education Plans (“IEPs”) for all Special Education students receiving ancillary services.
5. Provide the Coordinator with updates, amendments, and changes to IEPs as they occur.
6. Provide the Coordinator with any and all information related to the Medicaid program as requested by the Coordinator.
7. Provide the Coordinator with Service Provider information including but not limited to, Medicaid Provider Application, current licenses, NPI numbers, contact information, and supervisor.
8. Mandate that related service providers put all provider notes into the web-based system on a **monthly basis** for all students receiving services and complete all Time Study Surveys as required.
9. Provide payroll and operational budget information to the Coordinator on a quarterly basis when required for the Administrative Claiming.
10. Provide the Coordinator with the name and contact information of the School Nurse.
11. Spend all reimbursement funds on health related services for all students in the LEA in compliance with Medicaid School Based Services (“MSBS”) program requirements; see Appendix S for recommended expenditures.
12. Maintain financial expenditure reports and documentation related to disbursement of Medicaid funds on health services for 7 years.
13. Provide the Coordinator with documentation of MSBS expenditures on a yearly basis.
14. Provide the Coordinator with parent/guardian signatures on Medicaid Consent Forms.

15. To the extent allowed by the Constitution and laws of the State of New Mexico, the SWREC will be indemnified from liability in cases where the LEA does not, or has not, complied with all applicable laws and regulations.
16. Not purport to bind SWREC to any contract or obligation not assumed under this Agreement by SWREC unless the LEA has express written authority to do so, and then only within the strict limits of that authority.

IV. COMPENSATION

- A. For the services rendered, LEA agrees to pay the SWREC compensation as follows:
 1. All reimbursements and administrative claiming for Medicaid services will be collected by the SWREC from the Medical Assistance Division.
 2. From the reimbursements and administrative claiming revenue, the SWREC will withhold the following percentages:
 - a. Twelve percent (12%) of each revenue source (reimbursements and administrative claiming) to the SWREC as compensation for Medicaid Coordination services.
 - b. Eight (8%) percent for SIVIC Third Party Billing Services will be assessed on the reimbursement revenue only.
- B. Pursuant to the Governmental Services Agreement between SWREC and the State of New Mexico HSD, the New Mexico HSD will withhold at the current non-federal (state) share as calculated by HSD from all quarterly adjustments beginning July 1, 2015 with subsequent withholding to be calculated by New Mexico HSD and amended to this contract. The SWREC will pay the balance received to the LEA on the following terms:
 - a. SWREC will pay the LEA after all deductions for compensation to SWREC have been made on a quarterly basis on April 15, July 15, October 15 and January 15.
 - b. The first payment will be made on the first quarterly payment date after this Agreement has been in effect for at least one (1) full quarter.
 - c. Because of the time study surveys, SWREC cannot guarantee an amount to be repaid to LEA and represents that it will be subject to evaluation once all of the revenue generated from the time study surveys has been accounted. The revenue paid to the LEA will be at a variable rate based on a combination of LEA's payroll, direct services reimbursement, and the results of the time study surveys.

V. TERM AND TERMINATION

- A. The Parties enter into this Agreement for the period beginning July 1, 2020 and ending June 30, 2021 by the authorized LEA Representative or until such time as either party terminates this Agreement as provided in this section.
- B. This Agreement may be terminated by either party for any reason upon thirty (30) days prior written notice. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.
- C. Either party may terminate this Agreement without prior notice for cause, including but not limited to; any breach of this Agreement; loss of or disciplinary actions against professional licenses; termination of or decrease in reimbursement; negligence toward the LEA clients; failure to comply with relevant laws, rules, regulations, or standards; or failure to produce documents or reports upon request as indicated in this Agreement.

VI. CONFIDENTIALITY

- A. Neither SWREC nor the LEA shall make any confidential information concerning Medicaid participants available to any individual or organization other than the Parties to this Agreement unless the Medicaid participant or the participant's parent or legal guardian has given written consent to its release, or release of the information is ordered by a court of competent jurisdiction or is otherwise excepted under federal or state law.
- B. SWREC and the LEA shall comply with all applicable confidentiality requirements under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") regarding the privacy of individually identifiable health information, and shall ensure that any use or disclosure of medical records and other health information that identifies a particular child or youth receiving services shall be in accordance with HIPAA privacy requirements to the extent these requirements are applicable.
- C. SWREC and the LEA shall comply with all applicable confidentiality requirements of the Family Educational Rights and Privacy Act ("FERPA") and Individuals with Disabilities Education Act ("IDEA") regarding the release of personally identifiable information contained in students' educational records. If such records contain personally identifiable health information, the health information is also protected under HIPAA.
- D. SWREC shall require that SIVIC Third-Party Billing Services also complies with all applicable HIPAA, FERPA, and IDEA confidentiality requirements.
- E. The confidentiality provisions in this Agreement shall be binding on all parties, their agents, successors and assigns.

VII. MISCELLANEOUS

- A. LIABILITY.** Neither party shall be liable for any indirect, special, or consequential damages arising in any manner from the scope of work and responsibilities other than as contemplated in this Agreement nor for claims not contemplated by the terms of the Agreement nor any speculative or remote damages or species of damage claims not recognized in the State of New Mexico. No term of this Agreement shall be interpreted as an Agreement of SWREC to indemnify or provide tort liability insurance for the LEA. The LEA may be covered by the Public School Insurance Authority Act [§§ 22-29-1 to 22-29-10 NMSA 1978].
- B. RECOUPMENT.** In the event of a disallowance of all or part of any claim submitted on behalf of the LEA due to failure to provide the SWREC with complete and accurate student and provider information, fraud, or failure to abide by all applicable state and federal laws and regulations, SWREC's sole obligation shall be to refund the portion of its fees associated with the disallowed amount. Repayment of any additional funds, other than the SWREC's fees associated with the disallowed amount will be the LEA's responsibility.
- C. DISPUTES.** In the event that the SWREC or the LEA shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties. In the event the parties are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred. Venue for any mediation or lawsuit arising under this contract shall be in Bernalillo County, New Mexico. No provision of this Agreement shall waive any immunity or defense.
- D. MODIFICATIONS.** This agreement shall not be altered, changed or amended except by an instrument in writing executed by the parties.
- E. NOTICES.** All notices or communications related to this Agreement shall be in writing and shall be deemed served when the notice of communication is actually received. All notices and communications shall be sent by certified mail, return receipt requested, or via a hand delivery service.
- F. WAIVER.** Any failure of a party to require strict performance by the other party shall not operate as consent to or waiver of any subsequent failure or breach by the non-breaching party.
- G. SEVERABILITY.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction or arbitrator, the remaining provisions shall continue to apply as written.

- H. CAPTIONS.** The captions and titles in this Agreement are for convenience only and shall not affect the interpretation or meaning of this Agreement.
- I. MODIFICATION.** This Agreement is the full Agreement between the parties as of the date it is signed. All previous conversations, correspondence, agreements, or representations related to this Agreement are not part of the Agreement. No modifications are binding unless made in writing and signed by an authorized representative of the parties.
- J. APPLICABLE LAW.** This Agreement shall be construed in accordance with the laws of the state of New Mexico.
- K. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTION.**

1. The LEA, by executing this Agreement, certifies to the best of its knowledge and belief that:
 - a. No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and
 - b. If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this Agreement, the LEA shall complete and submit OMB standard form LLL, Disclosure of Lobbying Activities to SWREC.

- c. This certification is material representation of fact upon which reliance is placed when this Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. It shall be a material obligation of the LEA to keep this certification current as to any and all individuals or activities of anyone associated with the LEA during the pendency of this Agreement. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of SWREC, termination of this Agreement.

Vicki Chavez, Executive Director
Southwest Regional Education Cooperative

Date

Authorized School Representative

Date

ASSURANCES

1. Abide by all IDEA, State of New Mexico, and New Mexico Public Education Department regulations pertaining to students with disabilities.
2. Abide by all State of New Mexico and Federal Medicaid School Based Services program regulations.
3. Provide the Coordinator with complete, up-to-date, full copies of Individualized Education Plans (“IEPs”) for all Special Education students receiving ancillary services.
4. Provide the Coordinator with updates, amendments, and changes to IEPs as they occur.
5. Provide the Coordinator with any and all information related to the Medicaid program as requested by the Coordinator.
6. Provide the Coordinator with Service Provider information including but not limited to, Medicaid Provider Application, current licenses, NPI numbers, contact information, and supervisor.
7. Mandate that related service providers put all provider notes, **on a monthly basis**, into the web-based system for all students receiving services and complete all Time Study Surveys as required.
8. Provide payroll and operational budget information to the Coordinator when required for the Administrative Claiming.
9. Provide the Coordinator with the name and contact information of the School Nurse.
10. Spend all reimbursement funds on health related services for all students in the school in compliance with Medicaid School Based Services (“MSBS”) program requirements; see **Appendix A for an example of allowable expenses**.
11. Maintain financial expenditure reports and documentation related to disbursement of Medicaid funds on health services for 7 years.
12. Provide the Coordinator with documentation of MSBS expenditures on a yearly basis.
13. Provide the Coordinator with parent/guardian signatures on Medicaid Consent Forms.

School Administrator Signature:	Date:
Business Manager Signature:	Date:
SPED Coordinator:	Date:

APPENDIX A

(Examples of Allowable Expenses of Medicaid Reimbursement Funds)

- Salaries/Benefits of MSBS staff including coordinator, billing clerk
- Supplies for MSBS office/staff including computers, printers, fax, office supplies
- Additional School Nurse FTEs
- Additional School Social Worker FTEs
- Extend Staff hours:
(.6 SW to 1.0 SW to work with regular ed. students; .5 nurse to 1.0 nurse)
- Contracted Therapists, if not previously paid with other funds
- School Nurse Supplies/Equipment
- Wellness Coordinator FTE, if not previously paid out of other funds
- Behavior redirector FTE
- Staff and supplies for SBHC
- Travel for MSBS staff to attend MSBS meetings and/or trainings, including PE/MOSAA, and conferences
- Conference expenses, if conference related to MSBS/Medicaid or Medical
- Third-Party billing expenses
- Small piece of adaptive equipment, not covered by insurance, for individual student
- ICD-9 Code Books
- Nursing IHP care plan books
- Health Education Materials
- After-School programs if they include nutrition, physical education, and health education components
- Medical Training for Educational Assistants to be Health Assistants
- Items that support good nutrition
- OT, PT, Yoga mats
- Equipment for direct service providers to comply with goals, objectives in IEP, IFSP
- AEDs including replacement batteries, supplies and maintenance