MEMORANDUM OF UNDERSTANDING
between
THE SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES
and
THE SOUTH DAKOTA DEPARTMENT OF EDUCATION
2009

1.0 Parties:

This Memorandum of Understanding (MOU) is between the Department of Education, hereinafter referred to as "Education" and the Department of Social Services hereinafter referred to as "Social Services."

2.0 Objective:

The objectives of the MOU are to establish a framework for local education agencies to seek reimbursement for Medicaid eligible children receiving a medically necessary covered service and to outline the coordination between these agencies as agreed upon by the directors of the respective divisions and programs.

Activities under the MOU shall be performed in accordance with South Dakota law, Administrative Rules of South Dakota governing the Special Education, Part B of IDEA, and the Medical Assistance Program, Titles XIX and XXI of the Social Security Act, and in conformity with regulations promulgated by the U.S. Department of Education (USED) and Health and Human Services (HHS) .

3.0 Responsibilities and Coordination of Services Procedures:

Each agency will identify personnel at the state level responsible for liaison with the other agency. Designated personnel will recommend operational procedures and priorities defining services, and scope. Liaison staff will resolve problems or issues in accordance with the dispute resolution process outlined in this MOU. The liaison staff will recommend necessary policy clarification and procedures to carry out the terms of this MOU, consistent with the ARSDs for Education and Social Services.

Education will assume the responsibility for notifying school districts of the content of this agreement, as well as assist and provide consultation to local educational units in developing needed procedures or mechanisms to carry out the terms of this MOU. Social Services agrees to assist school districts in enrolling as Medical Assistance providers.

Social Services will continue to provide instructions and technical assistance through scheduled provider training sessions to school districts on an as needed basis. Education will assist Social Services in contacting local school districts and scheduling training sessions as requested. Social Services will be responsible to determine recipient eligibility for the Medical Assistance Program.

A school district may use the Medical Assistance benefits to provide for or pay for services required to ensure a free appropriate public education (FAPE). School districts may not require parents to sign up for or enroll in the Medical Assistance program in order for their child to receive FAPE under Part B of the IDEA. Claims submitted to and paid for by the Medical Assistance Program will be subject to all Medicaid third-party liability laws, rules, and policies of the federal government and Social Services. When private health insurance is in place and a claim is submitted by a school district to Medical Assistance for payment, the claim will be paid and private health insurance reimbursement will be sought by Social Services.

School districts may not require parents to incur an out-of-pocket expense for private health insurance, such as the payment of a deductible or co-pay amount incurred in filing a claim for services. They may not use a child's benefits if that use will decrease available lifetime coverage or any other insured benefit. A child's benefits may not be used if it will result in the family paying for services that would otherwise be covered by the public insurance program and that are required outside of the time the child is in school. It may not be used if it will increase the premiums or lead to the discontinuation of benefits or insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

The school district must obtain parental consent each time that access to public benefits or private health insurance is sought. It will be assumed that claims submitted to Medical Assistance have appropriate consent. It is the responsibility of Education to monitor parental consent to bill public benefits or private health insurance. The school district must notify parents that their refusal to allow access to their public benefits or private health insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

4.0 Definitions:

(1) "Cooperative Educational Service Unit (Co-op)"- a unit created by two or more school districts meeting the standards of SDCL 13-5-31 Cooperative educational service units.

(2) "Covered Service"- services which meet the requirements of ARSD 67:16:37 School districts.

(3) "Department of Social Services"- the agency who administers the South Dakota Medicaid Program.

(4) "Department of Education"- the agency responsible for administering special education programs.

(5) "Local Education Agency"- an agency approved or accredited by the South Dakota Board of Education.

(6) "School District"- a local education agency or a Co-op which meets the standards of ARSD 67:16:37 School districts.

(7) "Federal Financial Participation (FFP)"- the federal share of costs.

(8) "FAPE"- free appropriate public education.

(9) "IDEA"- Individuals with Disabilities Education Act of 2004.

(10) "Interagency Agreements/Obligation of Noneducational Public Agency" – ARSD 24:05:14

5.0 Conditions and Terms of Reimbursement:

Payment for services provided by the school district are in accordance with ARSD 67:16:37 School districts and shall be limited to the FFP portion of the established rate for the service provided.

6.0 Certification of Match:

The submission of a claim by a school district in accordance with ARSD Article 67:16 Covered Medical Services shall act as certification that the required expenditure of local matching funds as per 42 CFR 433.51 Public funds as the State share of financial participation has occurred.

7.0 Dispute Resolution:

During the pendency of the dispute resolution procedures described herein, Education, in accordance with ARSD 24:05:14 - Administration, will ensure that services required to provide free appropriate public education (FAPE) will continue. Disputed service(s) currently being provided will continue until the outcome of the dispute resolution process. The implementation of disputed service(s) not previously provided will be pursuant to a decision through the described resolution process.

1. All attempts will be made to resolve disputes at the lowest possible level.
2. When disputes cannot be resolved by designated department representatives, a written explanation of the dispute will be sent to the Director of Special Education, Special Education Programs and the Director of the Division of Medical Services. These individuals, in consultation with each other, shall review the issues and make a determination as to how the dispute should be resolved. The decision will be shared in writing with each level involved within twenty (20) calendar days of receipt of request for the determination and will include reasons for the decision. If they are unable to

reach resolution, they will refer the issue to the Secretary of the Department of Education and the Secretary of the Department of Social Services.

3. If a resolution is not obtained by the Director of Special Education Programs and Director of the Division of Medical Services, the Secretary of the Department of Education and the Secretary of the Department of Social Services will jointly make a final determination with 30 calendar days.

8.0 Arrangements for periodic review of the MOU:

This MOU shall be reviewed at least every three years and evaluated as to the need for modifications or amendments by mutual determination of the involved agencies.

The terms of this memorandum of understanding (MOU) shall begin on this 30th day of June, 2009 and shall remain in effect until modifications are deemed necessary and mutually acceptable changes are negotiated.

Agreed to this 30th day of June, 2009.

Tom Oster

Tom Oster
Secretary,
Department of Education

Deborah K. Bowman
Secretary,
Department of Social Services