

Interagency Agreement
Iowa Department of Human Services
And
Iowa Department of Education

I. Background

The Individuals with Disabilities Education Act (IDEA) is a federal law assuring that all students with disabilities will receive the special education and related services to meet their individual needs included in an Individualized Education Program (IEP) developed by a multi-disciplinary team, including the parents. The Iowa Department of Education has oversight responsibility for the provision of special education and related services under the IDEA and state special education statutes and rules. While the primary responsibility remains with educational agencies, other state, federal, local, and private sources of support are utilized to support needed special education and related services (including the resources of other agencies).

The Iowa Medicaid program is a state program of medical assistance for certain low-income children and families. The program receives partial federal funding under Title XIX of the Social Security Act. Under federal funding requirements, certain core medical services, including EPSDT (Early and Periodic Screening, Diagnosis, and Treatment), must be provided for children. Additional services are also included in the State Plan of the Department of Human Services, which administers the Medicaid medical assistance program. Title XXI of the Social Security Act provides partial federal funding for a State Children's Health Insurance Program (CHIP), a reduced-cost health insurance program for children. Iowa's CHIP program, which is also administered by the Department of Human Services, is known as Healthy and Well Kids in Iowa or HAWK-I.

Pursuant to the IDEA [20 U.S.C. § 1412(a)(12)(A)(i)] the IDEA regulations provide that the financial responsibility of certain non-educational public agencies, "including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP)" [34 C.F.R. § 300.154(a)(1)]. However, parents may not be required to "sign up for or enroll in public insurance programs in order for their child to receive a free appropriate public education," including needed special education and related services [34 CFR § 300.154(d)(2)(i)].

The Iowa Department of Education (hereafter referred to as DE) and the Iowa Department of Human Services (hereafter referred to as DHS) are jointly committed to the welfare of Iowa's children and enter into this Interagency Agreement to ensure compliance with the provisions of the IDEA (20 U.S.C. §§ 1400 *et seq.*).

This Agreement is subject to approval by the appropriate federal officials and upon such approval, shall become a part of Iowa's Title XIX and Title XXI State Plans administered by the Department of Human Services and the State Eligibility Document for IDEA administered by the Department of Education.

II. Purpose

The purposes of this Agreement are to:

- Outline the financial responsibilities of the local education agencies (LEAs), area education agencies (AEAs), DE, and the DHS relative to the provision of special education and related services for students with disabilities.
- Clarify overall administrative and programmatic responsibilities as well as the conditions and terms under which LEAs and AEAs shall be reimbursed by DHS for services.
- Outline coordination activities and efforts that will be carried out by the DE and the DHS in order to jointly carry out administrative, programmatic, and funding responsibilities on behalf of services for students with disabilities.

III. Overall Administrative, Programmatic, and Funding Responsibilities

A. It is the responsibility of each LEA and/or AEA to:

- Identify children who are eligible to receive special education and related services under Iowa and federal law.
- Identify special education and/or related services to be provided to each eligible individual, pursuant to an IEP, developed by each eligible individual's IEP Team.
- Assure that special education and/or related services identified in the IEP are provided at no cost to the parents.
- Assure that procedural protections of IDEA are implemented before any change in special education or related services provided to a student with disabilities receiving special education and/or related services.

B. It is the responsibility of the DE to interpret special education rules and regulations and provide oversight to assure that each eligible student with disabilities served by an LEA or AEA receives a free, appropriate public education.

C. It is the responsibility of the DHS to administer the Iowa Medicaid program, the HAWK-I program, and other state human services programs, consistent with applicable state and federal law. In doing so, DHS seeks to work in collaboration with all interested stakeholders, including the DE, the LEAs, and AEAs. Costs of providing medically necessary services will be paid for by the DHS under the Medicaid program, Child Welfare services (i.e., services to protect the child from abuse and neglect, and services to assure a child has a stable permanent family), Healthy and Well Kids in Iowa, or other programs, at established rates, if all requirements of the individual program are met. Such program requirements include application requirements, eligibility requirements, prior authorization procedures as applicable, Court approval as applicable, coverage of the identified special education and/or related service under one of the DHS's programs, provider qualifications and licensure, and standardized claim submission procedures.

DHS shall not deny payment for medically necessary services to an identified child with a disability because the services are also special education and/or related services contained in an IEP. If the child is eligible, the identified service is covered under a DHS program, and all other DHS requirements are met, DHS will support the provision of the services.

D. In accordance with federal and state law, DHS may terminate the provision of services under the Medicaid, Child Welfare, or Healthy and Well Kids in Iowa programs, or under other programs,

through the procedures applicable to the program at issue. If such services have been identified as special education and/or related services in the child's IEP, the LEA or AEA remains responsible for assuring that such services are provided at no cost to the parents and for assuring compliance with the procedural protections of the IDEA before there is any change in special education and/or related services provided.

- E. DHS retains responsibility for those children under DHS supervision, custody, and guardianship. These are children under the jurisdiction of a Juvenile Court. Decisions and recommendations made by DHS are subject to review and approval by the Court, including but not limited to placement decisions to assure that the child's best interest and community safety are met at all times. Parental involvement and responsibilities of each parent are outlined in the individual child's case permanency plan. Involvement of parents in each child's case is encouraged, but is subject to restrictions ordered by the Juvenile Court. DHS acknowledges that pursuant to 34 C.F.R. § 300.30, neither it nor any of its employees may legally act as the parent or guardian in matters pertaining to the Individuals with Disabilities Education Act.
- F. DHS and DE will work cooperatively to assure that appropriate medical, social, and educational services are provided to eligible students with disabilities in a manner that safeguards parent and student rights. DHS and DE (including agents, contractors, and subcontractors) shall comply with all applicable federal and state laws and regulations regarding the confidentiality of all client records, and the information contained therein. To the extent required by law, DHS and DE agree to obtain written consent from the client, provider, and/or other authorized representative(s) for the release of confidential information to any individual or entity not associated with the administration of the agency's programs. DHS acknowledges that pursuant to 34 C.F.R. § 300.30, neither it nor any of its employees may legally act as the parent or guardian in matters pertaining to the Individuals with Disabilities Education Act.
- G. Subject to confidentiality requirements, it is the intent of DHS and DE that staff from local DHS offices, LEAs, and AEAs will be notified and attend IEP Team meetings, whenever possible, for children where a mutual interest and need for cooperation has been established. DHS will assist in the provision of services for students with disabilities who are in custody or guardianship of DHS by consulting with and participating in IEP team meetings, whenever possible, to assure ongoing communication regarding the instructional, support, and related services and non-educational needs of an identified child.

IV. Dispute Prevention and Resolution

- A. To the extent an LEA or an AEA pays for services that would otherwise be payable under a DHS program, the LEA or AEA may submit and pursue a claim for payment from DHS under the rules governing reimbursement for each individual program. The financial responsibility of each noneducational public agency must precede the financial responsibility of the AEA or LEA. With the exception of Medicaid services, all DHS services require an eligibility determination prior to the provision of services, and DHS will not provide retroactive reimbursement to an LEA or AEA for services provided prior to an eligibility determination. Retroactive reimbursement for Medicaid services provided prior to an eligibility determination is available as of the date of eligibility pursuant to DHS rules on retroactive Medicaid eligibility.
- B. Disputes regarding payments to an LEA or an AEA under DHS programs will follow care review and/or appeal processes for each individual program and then be subject to the appeal process specified in the Iowa Administrative Code 441-Chapter 7.
- C. Disputes regarding the provision of a free appropriate public education to specific eligible individuals shall be resolved pursuant to the procedures contained in the DE's administrative rules of special education.

- D. Disputes within the DE or DHS shall be resolved according to the procedures established by that respective agency.
- E. Concerning disputes between the DE and DHS, an unaffiliated individual or individuals, chosen by the parties to the dispute and based on the nature of the interagency dispute, shall attempt to help the parties resolve the dispute, and the parties commit to pursue good faith efforts to resolve disputes voluntarily. In resolving such an interagency dispute, the DE and DHS may request technical assistance from a variety of sources, including the Office of Special Education Programs, Consortium for Appropriate Dispute Resolution in Special Education (CADRE), the Centers for Medicare and Medicaid Services, and/or the Federal Interagency Coordinating Council. If the dispute involves legal issues, the parties to the dispute may request available assistance from the Office of the Attorney General. If the dispute is not resolved, a DE representative will convene a meeting of the management staff representatives of the parties and their respective agency directors. If all other attempts at dispute resolution fail, the dispute shall be submitted to a board of arbitration pursuant to Iowa Code section 679A.19. The decision of the board of arbitration shall be final.

V. Collaborative Efforts in Support of Administrative, Programmatic, and Funding Responsibilities

Governance and Administrative Support

- A. The DHS and the DE shall maintain a staff position to provide ongoing technical assistance and training for LEAs and AEAs regarding the services provided by DHS and educational agencies. Specifically, this person shall serve as an ombudsperson and work across the DHS and the DE to facilitate the provision of services for students with disabilities and their families. Responsibilities of this person will include, but not be limited to:
- Provision of technical advice and assistance regarding Medicaid (e.g., allowable services, procedures for accessing services, and needed documentation for billing).
 - Work with the above entities in the successful informal and/or formal resolution of disputes regarding such issues as educational vs. medical decisions, and payer of last resorts.
 - Coordination of the work of an advisory group in the identification and resolution of existing and emerging issues regarding Medicaid and/or specific services provided by the DHS and the DE, as well as the AEAs and LEAs.
- B. The DHS and the DE will support stakeholder input that will help resolve existing issues and concerns as well as to proactively anticipate future issues and their solutions.
- C. The DHS and the DE will work collaboratively to streamline paperwork required for approval and/or reimbursement of services provided for students with disabilities and their families by the AEAs and the LEAs. Unnecessary and burdensome paperwork will be eliminated, to the extent possible.
- D. The DHS and the DE will issue joint or coordinated policy and procedure statements on issues such as services that are and are not covered by Medicaid, dispute resolution, rate setting, quality assurance, appeal procedures, parameters or provisions for parents to invoke an appeal, confidentiality of records, required documentation for Medicaid claiming, and oversight/enforcement provisions.
- E. The DE will review and modify, as needed, the current model State IEP form/process to more clearly assist in the documentation of services provided for purposes of Medicaid billing.

Coordination of Information

- A. The DHS and the DE will identify and/or develop as well as disseminate clear and up-to-date information regarding issues including, but not limited to, allowable services billable to Medicaid, procedures for accessing services, funding parameters, waiver and exception parameters, informal and formal dispute resolution, and the appeal process. Effective dissemination of clear and up-to-date information can help prevent unnecessary appeals.

- B. The DE will work in collaboration with Iowa's parent organizations in the development and dissemination of clear and usable information regarding the above and other identified areas.

Training

The DE and DHS will develop a training plan for dissemination of training materials developed pursuant to this agreement.

Planning

- A. The DHS and the DE commit to ongoing planning of solutions to areas of unmet need concerning services and programs for students with disabilities and their families. The DHS will share and review data with the DE relating to AEA, LEA and Infant & Toddler providers as soon as legally allowed to release the information. This will allow the DE to provide current and accurate information to the service providers.
- B. The DHS and the DE commit to ongoing communication and identification of issues needing legislative support to solve specific administrative and/or programmatic barriers within Iowa.
- C. The DHS and the DE commit to developing policies and procedures to address needs of children with disabilities who are placed by DHS or by court order in a facility in another state. These policies and procedures shall include provisions to ensure adequate communication between the out-of-state facility and the resident AEA and LEA of each child so placed; participation of the resident AEA and LEA in the development of the IEP of each child so placed; participation of each child so placed in the general curriculum; provision of special education and related services by the out-of-state facility in conformance with Iowa statutes, rules, and standards; and timely provision of progress reports (as may be required by the resident AEA and LEA), financial information, and all other information necessary for compliance with the IDEA and its implementing regulations and Iowa's special education statutes and rules.

VI. Amendment

This Agreement may be amended in writing upon mutual consent of the parties.

VII. Confidential Information

Consistent with state and federal laws on confidentiality and privacy, DE and DHS agree to share all information and data necessary to implement this agreement. The DHS and DE recognize that consent will always allow for the sharing of private or confidential information; however, the DE and DHS also recognize there are instances in which such consent is not required.

- A. **Access to Confidential Information.** The DE, including its employees, agents and subcontractors, may have access to confidential information maintained by DHS to the extent necessary to carry out its responsibilities under the Agreement. DE shall presume that all personally identifying information received pursuant to this Agreement is confidential unless otherwise designated by DHS ("Confidential Information"). The DE shall provide to DHS a written description of its policies and procedures to safeguard such Confidential Information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. DE will designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by DE in connection with the performance of the Agreement. DE shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Agreement.

The DHS, including its employees, agents and subcontractors, may have access to confidential information maintained by DE to the extent necessary to carry out its responsibilities under the Agreement. DHS shall presume that all personally identifying information received pursuant to this Agreement is confidential unless otherwise designated by DE ("Confidential Information"). The DHS shall provide to DE a written description of its policies and procedures to safeguard such Confidential Information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. DHS will designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by DHS in connection with the performance of the Agreement. DHS shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Agreement.

- B. **No Dissemination of Confidential information.** No Confidential Information collected, maintained, or used in the course of performance of the Agreement shall be disseminated by DE or DHS, except as authorized by law.
- C. **Subpoena.** In the event that a subpoena or other legal process is served upon DE or DHS for records containing Confidential Information, the agency receiving such legal process shall promptly notify the other agency and cooperate with the other agency in any lawful effort to protect the Confidential Information.
- D. **Reporting of Unauthorized Disclosure.** Either the DE or DHS shall immediately report to the other agency any unauthorized disclosure of Confidential Information.
- E. **Survives Termination.** The obligations of DE and DHS under this section shall survive termination or expiration of this Agreement.


VIII. No Third Party Beneficiaries

Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit DHS and DE.

IX. Terms of the Agreement

This Agreement is effective upon execution by both parties and shall remain in effect for a period of six years from the effective date. Either party may terminate the Agreement upon thirty (30) days written notice to the other party. There shall be annual reviews of the parties' performance of the Agreement and revisions, as necessary, made jointly by both parties.

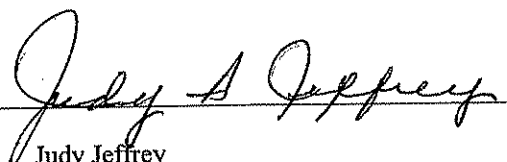
For and on behalf of the
Iowa Department of Human Services

By: 

Charles J. Krogmeier
Director of Human Services

Date 6/23/09

For and on behalf of the
Iowa Department of Education

By: 

Judy Jeffrey
Director of Education

Date 6/8/09