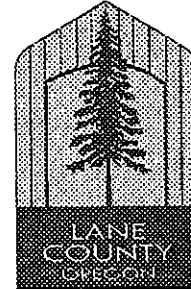


W. 8. C. 1.

AGENDA COVER MEMO

AGENDA DATE: September 30, 2003
TO: Board of County Commissioners
DEPARTMENT: Health & Human Services
PRESENTED BY: Rob Rockstroh



AGENDA TITLE: IN THE MATTER OF DELEGATING AUTHORITY TO THE COUNTY ADMINISTRATOR TO SIGN INTERGOVERNMENTAL AGREEMENT NO. 105664 WITH THE STATE OF OREGON IN THE AMOUNT OF \$2,900,000. (DEPARTMENT OF HEALTH & HUMAN SERVICES)(34)

I. MOTION

TO DELEGATE AUTHORITY TO THE COUNTY ADMINISTRATOR TO SIGN INTERGOVERNMENTAL AGREEMENT NO. 105664 WITH THE STATE OF OREGON IN THE AMOUNT OF \$2,900,000. (DEPARTMENT OF HEALTH & HUMAN SERVICES)(34)

II. ISSUE OR PROBLEM

An intergovernmental agreement with the State of Oregon exceeds the signature authority of the county administrator.

III. DISCUSSION

A. Background / Analysis

Under Title XIX of the Social Security Act, the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low income individuals. Federal Financial Participation (FFP) is the federal government's share for states' Medicaid program expenditures. States may claim FFP for providing administrative activities for proper and efficient administration of this program. The process of claiming administrative costs is referred to as Medicaid Administrative Claiming or MAC.

The State of Oregon has forwarded Intergovernmental Agreement (IGA) No. 105664 for the purpose of MAC. This agreement will allow Lane County to access the FFP funding for services we are already providing. Through this IGA, Lane County Public Health will receive reimbursement for providing outreach, health care coordination, and other medical assistance related administrative activities that support the State's Medicaid Plan. Additional information about the MAC and implementation can be found in the attached IGA.

The IGA term is five years and the allowable billing amount is up to \$2,900,000. Both the term and amount of the agreement are beyond the signature authority of the county administrator, therefore, delegation of authority to sign must be awarded.

B. Alternatives / Options

1. To delegate signature authority to the county administrator to sign an Intergovernmental Agreement No. 105664 with the State of Oregon to allow Lane County to participate in billing for Medicaid administrative services.
2. Not to approve number one above.

C. Recommendation

To approve number one above.

IV. IMPLEMENTATION / TIMING

Upon Board action the Department of Health & Human Services will process the intergovernmental agreement.

V. ATTACHMENTS

Board Order
Intergovernmental Agreement No. 105664

THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDER:) IN THE MATTER OF DELEGATING AUTHORITY TO THE
) COUNTY ADMINISTRATOR TO SIGN INTERGOVERNMENTAL
) AGREEMENT NO. 105664 WITH THE STATE OF OREGON IN
) THE AMOUNT OF \$2,900,000. (DEPARTMENT OF HEALTH &
) HUMAN SERVICES)(34)

WHEREAS, the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals; and

WHEREAS, Federal Financial Participation (FFP) is the federal government's share of the Medicaid program; and

WHEREAS, states may claim FFP for providing administrative activities for the Medicaid program; and

WHEREAS, the State of Oregon, through Intergovernmental Agreement No. 105664, has allowed Lane County to receive FFP for providing administrative activities that support the Medicaid program; and

WHEREAS, Lane Manual Chapter 21 sets forth policy regarding signatory authority of the County Administrator; and

WHEREAS, Intergovernmental Agreement No. 105664 exceeds the signatory authority of the County Administrator.

NOW THEREFORE, IT IS HEREBY ORDERED, that the Board of County Commissioners accept and delegate signature authority for Intergovernmental Agreement No. 105664 in the amount of \$2,900,000 from the State of Oregon.

DATED this _____ day of September 2003.

Peter Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 9/23/03 Lane County
J. Koidlaw
OFFICE OF LEGAL COUNSEL



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Administrative Services

Contracts and Procurement Unit

500 Summer Street NE, E03

Salem, OR 97301-1080

(503) 945-5818

Purchasing Fax: (503) 373-7365

Contracts Fax: (503) 373-7889

TTY: (503) 947-5330

AGREEMENT #105664



In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation, and electronic format. To request an alternate format call the State of Oregon, Department of Human Services, Office of Contracts and Procurement at (503) 945-5818 or TTY (503) 945-5928.

INTERGOVERNMENTAL AGREEMENT

This Agreement (the "Agreement") is between the State of Oregon (the "State"), acting by and through its Department of Human Services, hereinafter called "DHS," and

LANE COUNTY
ACTING BY AND THROUGH ITS LOCAL HEALTH DEPARTMENT
125 EAST 8th STREET
EUGENE, OREGON 97401

hereinafter called "LHD" (collectively the "Parties").

I. EFFECTIVE DATE and DURATION

The effective date of the Agreement is the date on which all Parties have signed the Agreement and all governmental approvals have been obtained. Unless terminated or extended, this Agreement shall expire when DHS accepts LHD's completed performance or on **June 30, 2008**, whichever date occurs first. Expiration shall not extinguish or prejudice DHS's right to enforce this Agreement with respect to any breach of a LHD warranty or any default or defect in LHD's performance that has not been cured.

II. BACKGROUND

Under Title XIX of the Social Security Act ("the Act"), the federal government and states share the cost of funding the Medicaid program, which provides medical assistance to certain low-income individuals. Federal Financial Participation ("FFP") is the federal government's share for states' Medicaid program expenditures. States may claim FFP for providing administrative activities that are found to be necessary by the Secretary of the U.S. Department of Health and Human Service for proper and efficient administration of the state Medicaid plan. The process applicable to claiming administrative costs is referred to herein as Medicaid Administrative Claiming or MAC.

"Assisting People to Become Independent, Healthy and Safe"
An Equal Opportunity Employer



DHS and LHD intend to improve health services access and availability for children and families eligible for medical assistance under Medicaid and who reside in the geographic area(s) served by the LHD. Under the Agreement, LHD will perform Title XIX administrative activities, and DHS will reimburse LHD for the cost of performing these administrative activities. LHD will provide, through its own staff and through subcontracts, outreach, health care coordination, and other medical assistance related administrative activities that support DHS's administration of the Title XIX Medicaid Oregon State Plan (the "State Medicaid Plan.").

III. STATEMENT OF WORK

LHD shall directly and through subcontracts approved by DHS, provide to Medicaid-eligible clients, allowable Title XIX administrative activities as follows: (a) Outreach and Application Assistance for the Medicaid Program; (b) Referral, Coordination, Monitoring, and Training of Medicaid Services; (c) Medicaid/Oregon Health Plan ("OHP") transportation and translation; and (d) System Coordination Related to Medicaid Services, (collectively, the "Work"), which are further defined in Exhibit A, attached and hereby incorporated by reference as part of this Agreement.

A. LHD Responsibilities. LHD shall:

1. Utilize the specific Time Study Activity Codes as set forth in Exhibit A ("Activity Codes"), approved by DHS and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid ("CMS") to document all time spent on all activities listed in Exhibit A and to claim all costs under this Agreement for allowable Medicaid administrative activities.
2. Provide training to its employees and subcontractors on the implementation of the Time Study and Activity Codes to ensure LHD's employees and subcontractors make claims only for allowable Medicaid administrative activities.
3. Submit all MAC information to the Multnomah Education Service District ("MESD") for MESD's preparation of claiming information documents and subsequent MAC claims to DHS. In accordance with its agreement with DHS, MESD will prepare and submit quarterly to LHD and DHS a claiming information document for LHD's review and approval, and upon LHD's approval of the claiming information document, MESD will forward LHD's MAC claim to DHS. Also in accordance with its agreement with DHS, ~~MESD will provide technical assistance and training to LHD, its employees, all LHD~~ subcontractors and LHD subcontractors' employees on the use of MESD's web-based time study tool for preparing LHD's claiming information documents and MAC claims. If the agreement between DHS and MESD expires or terminates prior to the expiration or termination of this Agreement, LHD shall be responsible for creating its own claiming information documents and MAC claims and shall submit its MAC claims to DHS.
4. Provide MESD with its actual and current cost pool data, including the total number of staff in the cost pool, and Medicaid eligible percentage for the claimed quarter within 30 days after the end of each quarterly claiming period. Cost pool data includes: the name, title, job description, salary, and other personnel expenses for each individual employee and subcontractor, including each employee of subcontractor; the percentage of time each employee and subcontractor, including each employee of subcontractor, spends on the coded activities listed in Exhibit A; costs attributable to each employee's or subcontractor's, including each employee of subcontractor, position providing the work.

5. Review and notify DHS Contract Administrator and MESD in writing of its approval or disapproval of the quarterly claiming information document produced by MESD within two weeks of receipt of each claiming information document. LHD shall send such notices to DHS Contract Administrator at the address indicated Part V, General Provisions, Section L, Written Notice, subsection 1.

At the time of notification of disapproval of a quarterly claiming information document, LHD must provide corrected information to DHS Contract Administrator and MESD.

6. Ensure that all MAC claims for the Work are in accordance with requirements applicable to MAC claims in OMB Circular A-87 and the State Medicaid Plan, which are incorporated herein by this reference. The Work for which LHD claims reimbursement must be directly related to the administration of the State Medicaid Plan for FFP to be available.
7. Obtain DHS's prior written approval of any subcontracts proposed by LHD for the purpose of carrying out the Work under this Agreement. LHD shall provide DHS with signed copies of the subcontracts executed for this purpose.
8. Monitor subcontracts to ensure that the Medicaid administrative activities and costs being tracked and billed to LHD by subcontractors are allowable and related to the purpose of this Agreement.
9. Monitor compliance with the requirements of this Agreement and maintain all records that support the quarterly claiming information documents and MAC claims for the Work performed, including but not limited to; position details, cost information, Time Study results, records to indicate that services were requested and the extent of services provided, other resources that have been applied to offset costs, and any other information applicable to the Work provided under this Agreement.
10. Upon request from DHS, the Oregon Department of Justice, Medicaid Fraud Unit, the Secretary of State's Office, or the federal government, make available all records that support the quarterly MAC claims to DHS for Work performed.
11. Assure that Medicaid eligible children and families receiving assistance under this Agreement are free to accept or reject Medicaid services and are free to receive such services from an enrolled provider of their choice unless otherwise restricted to a provider of the Oregon Health Plan by DHS.
12. Reimburse DHS for the State match portion of Medicaid funds paid to LHD for MAC claims submitted to DHS, the DHS intergovernmental charge, and the service charges as more specifically described in Part IV.
13. Use the DHS-provided Medicaid-eligible percentage for LHD's county in its cost calculations unless another statistically based calculation has been approved by DHS.

B. DHS responsibilities. DHS shall:

1. Upon notification from LHD of its approval of the claiming information document produced by MESD, submit the resulting MAC claim to the federal government for payment.

2. Pay the MESD service charges to MESD on behalf of the LHD with the funds provided to DHS by LHD per Part IV, Section E(2)(c) of this Agreement.
3. Assist LHD in the review of and provide comments on the subcontracts between LHD and its subcontractors to carry out Work under this Agreement. DHS's review of subcontracts is not made for the purpose of providing legal advice to LHD. DHS will provide written approval of any subcontracts proposed by the LHD.
4. Provide assistance to LHD in the identification of Medicaid administrative activities eligible for reimbursement under this Agreement and reimburse LHD as described in Part IV, Consideration
5. Provide LHD and its subcontractors training and technical assistance on the implementation of the Time Study and Activity Codes.
6. Assist LHD in responding to any federal Medicaid compliance issues.

IV. CONSIDERATION

A. Summary of Medicaid Payment Methodology

Under Title XIX of the Act, the federal government and states share the cost of providing allowable Medicaid administrative activities. The state share for Medicaid administrative activities LHD will provide under this Agreement is 50% (fifty percent) of the total allowable costs attributable to Medicaid Administrative activities. DHS will pay LHD the total allowable costs of providing Medicaid administrative activities in arrears on a quarterly basis. LHD shall then reimburse DHS 50% (fifty percent) of the total allowable costs of providing Medicaid administrative activities, which represents the State match portion of the Medicaid expenditures. The State match funds LHD transfers to DHS shall be public funds that are not federal funds, or shall be federal funds authorized by federal law to be used to match other federal funds. DHS will claim the FFP amount from CMS.

Allowable administrative Medicaid costs are separate from any other direct Medicaid or other services that may be provided by LHD pursuant to separate Medicaid funding agreements or authorizations. Duplicate payments are not allowable when determining administrative costs under Medicaid. ~~Payments for allowable activities must not duplicate payments that have been or should have been included and paid as part of a rate for services, part of a capitation rate, or through some other local, State or federal program.~~ Medicaid administrative costs may not be claimed for activities that are integral parts or extensions of medical services. Furthermore, in no case shall LHD be reimbursed more than the actual cost of the activities claimed by LHD under this Agreement

- B. Payment for all Work performed under this Agreement shall be subject to the provisions of ORS 293.462. The maximum not to exceed amount payable to LHD for providing Medicaid administrative activities under this Agreement is **\$2,900,000.00**. LHD shall reimburse DHS 50% (fifty percent) of the amounts paid to LHD under this Agreement for the State match portion, as specified in Part IV, Section E, Sub-section 1 and 2 (a) below.
- C. DHS will only pay for Work performed and documented in accordance with Part III and otherwise permitted by Medicaid.

- D.** For purposes of this Agreement, all MAC claims submitted to DHS by MESD are deemed to be submitted by LHD. LHD shall submit MAC claims for Medicaid allowable administrative activities only. Medicaid does not pay for administrative expenditures related to, or in support of, services that are not included in the State Medicaid Plan, the Oregon Health Plan, or services which are not reimbursed under Medicaid. In addition, Medicaid does not pay for health care services that are rendered free of charge to the general population. Thus, any administrative activity which supports the referral, coordination, planning of screening or services that are provided free to the general population would not be considered as Medicaid administration.
- E.** LHD shall submit to MESD quarterly, in arrears, all cost pool data, utilizing the MESD web-based time study tool, for the Medicaid administrative costs claimed under this Agreement. LHD shall determine the amount of Medicaid administrative costs according to the federal formula, which is found in the Medicaid School Based Administrative Claiming Guide, May 2003, and provided to the LHD by DHS.
1. DHS will reimburse LHD in arrears on a quarterly basis for the total allowable costs of providing Medicaid administrative activities
 2. LHD shall reimburse DHS quarterly upon invoice from DHS for:
 - a. The State match portion which is equal to 50% (fifty percent) of the amount claimed by LHD and accepted by DHS for the total allowable Medicaid administrative costs; and
 - b. A DHS quarterly intergovernmental charge of 1.5% (one and one-half percent) of the total quarterly amount of each MAC claim for providing Medicaid administrative activities
 - c. An amount equal to the MESD's service charge of \$5.00 per person for each employee, including all subcontractors and subcontractors' employees, included in the LHD's cost pool data.
- F.** DHS Contract Administrator shall submit the approved quarterly MAC claim to the following DHS supervising representative:

Pat Cary, Medical Assistance Programs
Oregon Department of Human Services
500 Summer Street NE, 3rd Floor
Salem, OR 97301

- G.** LHD certifies by its signature to this Agreement that for the purposes of 42 CFR § 433.51, the funds it transfers to DHS pursuant to this Agreement are public funds that are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.
- H.** LHD shall be financially responsible for the final amount of any claim for services provided under this Agreement that CMS or DHS finds unallowable under the Medicaid program. In the event CMS or DHS finds any costs claimed by LHD unallowable, DHS shall provide LHD written notice identifying the amount that must be refunded to CMS or DHS. Within thirty (30) calendar days of DHS's notice, LHD shall either (1) Make a payment to DHS for the full amount of the unallowable cost identified by DHS in its notice; or (2) Notify DHS in writing that LHD wishes to repay the unallowable amount from future payments or other means. DHS may then offset the unallowable amount from future payments owed to LHD under this Agreement, or any

payment to LHD from DHS under any other contract or agreement between LHD and DHS, present or future. Nothing in this Section shall be construed as a waiver by either party of any process or remedy that might otherwise be available. The rights and remedies of DHS set forth in this Section shall not be exclusive and are in addition to any other rights and remedies provided to DHS by law or under this Agreement.

V. GENERAL PROVISIONS

A. Amendment

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by the Parties. This Agreement shall not be amended after the expiration date. No amendment to this Agreement shall be effective until it has been signed by all Parties and all necessary governmental approvals have been obtained.

B. Subcontracts and Assignments

LHD shall not enter into any subcontracts for any of the Work required by this Agreement, or assign or transfer any of its interests in this Agreement without the prior written consent of DHS. DHS's consent to any subcontract shall not relieve LHD of any of its duties or obligations under this Agreement. In addition to any other provisions DHS may require, LHD shall include in any permitted subcontract under this Agreement a requirement that subcontractor be bound by the following Sections of this Agreement as if the subcontractor were LHD:

1. Part III, Sections (A)(1), (2), (3), (4), (5), (6), (9), (10), (11), (12) and (13);
2. Part IV, Section (D);
3. Part V, Sections (A), (D), (F), (G), and (J).

C. Termination

1. This Agreement may be terminated at any time by mutual written consent of both Parties, or by either Party upon thirty (30) days notice, in writing, and delivered by certified mail or in person.
2. In addition, DHS may terminate this Agreement, in whole or in part, immediately upon notice to LHD, or at such later date as DHS may establish in such notice, under any of the following conditions:
 - a. Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Work under this Agreement is prohibited or DHS is prohibited from paying for such Work from the planned funding source;
 - b. DHS fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to pay for the Work;
 - c. LHD commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the

Work as to endanger LHD's performance under this Agreement in accordance with its terms, and fails to correct such breach, default, or failures within ten (10) calendar days after delivery of DHS's notice or such longer period as DHS may specify in such notice.

3. LHD's Tender Upon Termination: Upon receiving a notice of termination, LHD shall immediately cease all activities under the Agreement, unless expressly directed otherwise by DHS in the notice of termination. Upon termination, LHD shall deliver to DHS all Agreement documents, information, works-in-progress and other property that are or would be deliverables had this Agreement been completed.

D. Indemnity

TO THE EXTENT PERMITTED BY THE OREGON CONSTITUTION AND BY THE OREGON TORT CLAIMS ACT, EACH PARTY SHALL INDEMNIFY, WITHIN THE LIMITS OF THE TORT CLAIMS ACT, THE OTHER PARTY AGAINST LIABILITY FOR DAMAGE TO LIFE OF PROPERTY ARISING FROM THE INDEMNIFYING PARTY'S ACTIVITY UNDER THIS AGREEMENT, PROVIDED THE INDEMNIFYING PARTY SHALL NOT BE REQUIRED TO INDEMNIFY THE OTHER PARTY FOR ANY SUCH LIABILITY ARISING OUT OF THE WRONGFUL ACTS OF EMPLOYEES OR AGENTS OF THE OTHER PARTY.

E. Independent Contractor; Responsibility for Taxes and Withholding

1. LHD, its members, employees and agents are not officers, employees or agents of the State as those terms are used in ORS 30.265. LHD shall perform all required Work as an independent contractor.
2. LHD shall be responsible for all federal or state taxes applicable to compensation or payments paid to LHD under this Agreement and, unless LHD is subject to backup withholding, DHS will not withhold from such compensation or payments any amount(s) to cover LHD's federal or state tax obligations. LHD is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to LHD under this Agreement, except as a self-employed individual.

F. Compliance with Applicable Law

LHD shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under the Agreement. Without limiting the generality of the foregoing, LHD expressly agrees to comply with the following laws, regulations and executive orders, as they may be amended from time to time during the term of the Agreement, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) The Health Insurance Portability and Accountability Act ("HIPAA"), as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. DHS's performance under this Agreement is conditioned upon LHD's compliance with the provisions of

ORS 279.312, 279.314, 279.316, and 279.320, which are incorporated by reference herein. LHD shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper and recyclable products as contemplated under ORS 279.555.

G. Compliance with Federal Law

1. Equal Employment Opportunity

If this Agreement, including amendments, is for more than \$10,000, then LHD shall, and shall cause all subcontractors to, comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

2. Clean Air, Clean Water, EPA Regulations

If this Agreement, including amendments, exceeds \$100,000 then LHD shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, the U.S. Department of Health and Human Services, and the appropriate Regional Office of the Environmental Protection Agency. LHD shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this Section.

3. Energy Efficiency

LHD shall, and shall cause all subcontractors to, comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

4. Truth in Lobbying

LHD certifies, to the best of the LHD's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of LHD, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress 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.
- b. If any funds other than 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 in connection with this federal contract, grant, loan or cooperative agreement, LHD shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- c. LHD shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when DHS entered this Agreement. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. Resource Conservation and Recovery

LHD shall comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

6. Audits

LHD shall comply and, if applicable, cause all subcontractors to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

7. Debarment and Suspension

LHD shall, and shall cause all subcontractors to, not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

8. Medicaid Compliance

To the extent LHD provides any service whose costs are paid in whole or in part by Medicaid, LHD shall comply with and cause its subcontractors to comply with the federal and state Medicaid statutes and regulations applicable to the service, including but not limited to:

- a. all applicable disclosure requirements set forth in 42 CFR Part 455, Subpart B;
- b. any applicable advance directive requirements specified in 42 CFR § 431.107(b)(4); and
- c. the certification requirements of 42 CFR §§ 455.18 and 455.19.

LHD shall include and cause all subcontractors to include in all contracts with subcontractors receiving Medicaid, language requiring the subcontractor to comply with the requirements set forth in this Section and with the federal laws identified in this Section.

9. Americans with Disabilities Act

LHD shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the delivery of services.

10. Pro-Children Act

LHD shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC § 6081 et. seq.).

H. No Third Party Beneficiaries

DHS and LHD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in the Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

I. Confidentiality of Client Information

1. The Work provided under this Agreement does not include the use of, access to, exchange of or disclosure of personally identifiable health information. Therefore, the Parties reasonably believe that the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 do not apply. This Agreement does not create a "business associate" relationship between the Parties, as that term is used in the HIPAA Privacy Rules. In addition, this Agreement does not require or provide for the use of "standard transactions" as that term is used in the HIPAA Transaction Rules, 45 CFR Part 162. If the Work is revised, or if the federal HIPAA requirements are changed or interpreted in a way that would require this Work to comply with any HIPAA requirement, the Parties may amend this Agreement to address such change or interpretation.

2. The use or disclosure of information concerning the administration of the Medicaid program shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.

J. Access to Records

LHD shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, LHD shall maintain any other records pertinent to this Agreement in such a manner as to clearly document LHD's performance. LHD acknowledges and agrees that DHS, the Oregon Department of Justice, Medicaid Fraud Unit, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of LHD that are pertinent to this Agreement to perform examinations and audits and to make excerpts and transcripts. LHD shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of seven (7) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

K. Governing Law; Venue; Consent to Jurisdiction

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon, without regard to conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between the State and LHD that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. Provided, however, if a Claim must be brought in a federal forum, then unless prohibited by law it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United State Constitution, or otherwise. LHD, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

L. Written Notice

Except as otherwise expressly provided in this Agreement, any notice to be given shall be in writing by personal delivery, email, facsimile, or mailing the same postage prepaid to DHS or LHD at the address or numbers set forth below or to such other addresses or numbers as either Party may indicate.

1. All notices regarding the Work and deliverables, and payment shall be sent to (DHS Contract Administrator):

Joel Young, DHS Health Services
Office of the State Public Health Officer
800 NE Oregon Street, Suite 930
Portland, Oregon 97232
Phone: 503-731-4017 ext. 875
Fax: 541-731-4078
Email: joel.young@state.or.us

All other notices shall be sent to DHS (DHS Contract Writer):

Tammy L. Hurst, Contracts Coordinator
Department of Human Services
500 Summer Street NE, E-03
Salem OR 97301
Phone: 503-947-5298
Fax: 503-373-7889
Email: tammy.hurst@state.or.us

2. All notices to **LHD** shall be sent to:

Lane County Department of Health & Human Services
Attn: Lynise Wagar, MAC Coordinator
125 East 8th Street
Eugene, Oregon 97401
Phone: 541-682-3777
Fax: 541-682-3804
E-mail: lynise.wagar@co.lane.or.us

and:

Lane County Department of Health & Human Services
Attn: Julie Losco, Program Services Coordinator
125 East 8th Street
Eugene, Oregon 97401
Phone: 541-682-7411
Fax: 541-682-3804
E-mail: julie.losco.co.lane.or.us

Any notice delivered by fax shall be deemed to be received when receipt of the transmission is generated by the transmitting machine. To be effective against DHS, such fax transmission must be confirmed by telephone notice to the DHS persons identified in Section 1 above. Any notice given by e-mail shall be deemed to be given upon actual receipt by the addressee.

Any notice given in writing by personal delivery or mailing the same, postage prepaid, shall be deemed received five (5) days after mailing to LHD or DHS at the address or numbers set forth above. Any communication or notice by personal delivery shall be deemed given when actually received by the intended party.

M. Severability

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular terms or provision held to be invalid.

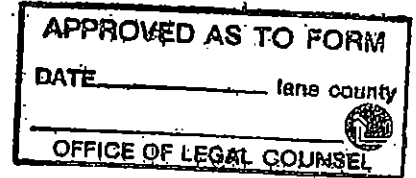
N. Survival

Termination of this Agreement shall not extinguish or prejudice DHS's right to enforce the indemnification, access to records, governing law, venue, and consent to jurisdiction provisions.

O. Merger Clause

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER THEREOF. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES AND ALL NECESSARY STATE APPROVALS HAVE BEEN OBTAINED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE PARTIES, BY THE SIGNATURE BELOW OF THEIR AUTHORIZED REPRESENTATIVES, HEREBY ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

LHD, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT LHD HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.



APPROVED:

LHD:
By: _____ Title: William A. VanVactor Date: _____
County Administrator

DHS:
By: _____ Title: _____ Date: _____

APPROVED as to LEGAL SUFFICIENCY:

By: Email approval by Mary Schnabel-Bray in Contract file. Date: 9/2/2003

REVIEWED/DHS Contracts:

By: _____ Title: _____ Date: _____

REVIEWED/DHS:

By: _____ Title: _____ Date: _____

EXHIBIT A (Revised)

Public Health MAC Time Study Activity Codes

- A1. Outreach and Application Assistance for the Medicaid Program** means: Interviews, group meetings, phone contacts or home visits that inform Medicaid eligible and potentially Medicaid eligible individuals and their families about the benefits and availability of services provided by the Medicaid program. Additionally informing individuals and their families on how to access, use and maintain participation in all health care resources (i.e. Medicaid, Early Periodic Screening and Diagnostic Testing, etc), creating and/or disseminating materials to inform children and families about Medicaid and assisting them to make application for Medicaid eligibility (i.e. collecting information for the Medicaid application, helping to complete necessary forms for the Medicaid application, and updating of forms as necessary if a child or family's circumstances change), related staff travel and paperwork.
- A2. Outreach and Application Assistance for Non-Medicaid Programs** means: Activities that assist the patient/client in gaining access to non-Medicaid services, effectively utilizing social services and community wellness programs. (Included are housing, commodities, food banks, Women's Infant and Children Program ("WIC"), foster care, financial assistance, exercise and weight loss programs, energy assistance, child care, after school programs, friendly visitor and vocational services). Activities that assist the client in applying for these services, including form preparation, related staff travel and paperwork.
- B1. Referral, Coordination, Monitoring, and Training of Medicaid Services** means: Making referrals for and coordinating the delivery of diagnostic and preventive service and treatment for health, vision, dental, developmental, mental health, substance abuse and other Medicaid services. Includes staffing to coordinate Medicaid case plan services (participation in multidisciplinary team meetings, conferencing on health, developmental issues, consultations), gathering background information and supportive information, such as medical histories, writing case plans, or summaries and preparing and/or presenting materials for case review, arranging for health services and coordinating services (i.e. psychological counseling, health, substance abuse counseling and consultation, inpatient services), related staff travel and paperwork.
- B2. Referral, Coordination, Monitoring, and Training of Non-Medicaid Services** means: Making referrals for and coordinating the delivery of social services and community wellness programs (including housing, commodities, food banks, WIC, foster care, financial assistance, exercise and weight loss programs, energy assistance, child care, after school programs, friendly visitor and vocational services) arranging transportation for these services and related staff travel and paperwork.
- C1. Medicaid/OHP transportation and translation** means: Assisting an individual to obtain transportation to services covered by OHP, arranging for or providing translation services to facilitate access to OHP services. Include related paperwork, clerical activities or staff travel required to perform these activities.
- C2. Non-Medicaid/OHP transportation and translation** means: Assisting an individual to obtain transportation to services not covered by Medicaid/OHP, or arranging for or providing translation services related to social, vocational, or educational programs. Include related paperwork, clerical activities or staff travel time required to perform these activities.

- D1. System Coordination Related to Medicaid Services** means: Working internally and with other agencies to improve Medicaid health services, identify gaps in services, expand health and medical services; and improve capacity to engage in medical assistance services and to expand access and linkage to medical and health services and their utilization by medical assistance target populations, gathering information about the target population to improve early identification of health and developmental problems; related staff travel and paperwork..
- D2. System Coordination Related to Non-Medicaid Services** means: Working internally and with other agencies to improve social services, identify gaps in services, expand and improve capacity to engage in non-Medicaid activities, expand access and linkage to non-Medicaid services, their utilization by target populations; related staff travel and paperwork.
- E. Direct Health Care Services** means: Providing direct health care services to a patient, such as well baby checkups, immunizations, disease management, counseling, and including medical case management or other activities that are an integral part or extension of a patient's visit. Included is all related paperwork, clerical activities, staff time, or travel required performing these services.
- F. Other Work Activities** means: All other paid work activities that do not fall under one of the above categories. Time off for vacation, sick leave, family leave, holidays, jury duty, paid lunchtime, comp time, and any other time away from work if the time is paid. Such activities may include payroll, maintaining inventories, developing budgets, general supervision, etc. All related paperwork, clerical activities, or staff travel would also be included.