

MEMORANDUM OF UNDERSTANDING
AND
AGREEMENT BETWEEN THE
TEXAS HEALTH & HUMAN SERVICES COMMISSION
AND
TEXAS JUVENILE JUSTICE DEPARTMENT
FOR
THE MUTUAL AGREEMENT OF ELIGIBILITY FOR CERTAIN INDIVIDUALS RESIDING
IN HALFWAY HOUSES FOR CHILD HEALTH PLAN COVERAGE OR MEDICAL
ASSISTANCE

This Memorandum of Understanding and Agreement ("MOU"), is made and entered into by and between the Texas Health and Human Services Commission ("HHSC") and Texas Juvenile Justice Department ("TJJJ"), also herein after referred to collectively as "the Parties". This MOU will become effective upon the earlier to occur of these two dates: (a) June 1, 2017, or (b) the date this MOU is signed by both Parties. The term "child" (or collectively "children") as used in this MOU is defined in Section 201.001, Human Resources Code.

PREMISES FOR AGREEMENT

Children who are on parole, probation, or who have been released to the community pending trial (including those under pre-trial supervision) are not considered to be inmates, and are thus not subject to the prohibition on providing Medicaid covered services to inmates.

The Centers for Medicare and Medicaid Services (CMS) issued State Health Official (SHO) letter number 16-007, captioned "To Facilitate successful re-entry for individuals transitioning from incarceration to their communities." SHO letter 16-007 provides that Federal Financial Participation (FFP) is available for covered services for Medicaid-eligible individuals living in state or local halfway houses, unless the individual does not have freedom of movement and association while residing at the facility. SHO letter 16-007 provides specific guidelines for determining whether a facility provides an individual with freedom of movement and association.

By entering into this MOU, the Parties agree to honor the guidance provided by CMS in SHO letter 16-007 by requesting and assessing for medical assistance only for the individuals residing in halfway houses that meet the criteria specified in Section 3 of this MOU. Medicaid services will be provided for those individuals who HHSC determine meet Medicaid eligibility criteria.

SECTION 1- THE PARTIES

1.1 TJJJ is a state agency under Chapter 201, Human Resources Code, which works in partnership with local county governments, the courts, and communities. TJJJ is responsible for ensuring that halfway houses comply with the expectations described in this MOU, in order for eligible individuals to be provided covered Medicaid-services.

1.2 The Executive Director of TJJJ is David Reilly.

1.3 HHSC is a state agency established in accordance with Chapter 531, Texas Government Code, and is responsible for the oversight of all HHSC agencies.

1.4 The Executive Commissioner of HHSC is Charles Smith.

SECTION 2- AGREED PERFORMANCE BY HHSC

This MOU is a "No Cost" agreement between the Parties. HHSC is under no obligation to provide any remuneration to TJJD for services rendered.

SECTION 3- AGREED PERFORMANCE BY TJJD

TJJD shall perform the services described in this MOU at no cost to HHSC.

TJJD agrees that in order for FFP to be available for covered services for Medicaid-eligible individuals living in state or local halfway houses (whether operated by a governmental entity or a private entity), TJJD and Juvenile Probation Departments (JPDs) will ensure that these facilities operate in such a way as to ensure that individuals living there have freedom of movement and association according to the following tenets:

- 1) Residents are not precluded from working outside the facility in employment available to individuals who are not under justice system supervision;
- 2) Residents can use community resources at will, such as libraries, grocery stores, recreational facilities, educational facilities, etc.; and
- 3) Residents can seek health care treatment in the broader community to the same or similar extent as other Medicaid enrollees in the state.

For this purpose, "at will" includes and is consistent with requirements related to operational "house rules" where, for example, the "facility" or "residence" may be closed or locked during certain hours or where residents are required to report during certain times and sign in and out. Similarly, an individual's supervisory requirements may restrict travelling to or frequenting certain locations that may be associated with high criminal activity. It is understood that children will have rules that would not be imposed on adults. For HHSC to assess individuals for medical assistance and claim FFP for Medicaid-covered services furnished to Medicaid-eligible individuals while they are living in a halfway house, TJJD/JPD must ensure that the facility meets the requirements noted above. In addition, TJJD/JPD will not request Medicaid for children residing in a halfway house that does not meet the CMS criteria.

SECTION 4 - CONFIDENTIAL INFORMATION

4.1 The Parties agree that each agency is required, under several applicable federal and state laws, to ensure the protection of confidential information that each agency is authorized to access to complete their mission objectives. The information each agency acquires and maintains is entered into accessible databases to administer the programs assigned to them by law. The Parties remain responsible for the reasonable protection of such confidential information and will seek appropriate methods of transferring such information to each other to meet the requirements of Section

531.02418, Government Code, during the term of this MOU.

4.2 HHSC maintains information concerning applicants and recipients for purposes directly connected with the administration of a state plan for medical assistance. HHSC is required to keep client information confidential pursuant to Section 1396a(a)(7), Title 42, United States Code. Texas law provides protections for Medicaid and the Children's Health Insurance Program client information, found in Sections 12.003 and 21.012, Human Resources Code. Finally, there is certain client confidential information that is and must be afforded special treatment and protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (42 U.S.C. §1320d-8), the Texas Medical Records Privacy Act (Texas Health and Safety Code, Chapter 181), and the Texas Identity Theft Enforcement and Protection Act (Texas Business and Commerce Code, Chapter 521).

4.3 TJJD maintains confidential juvenile offender data for statistical, research, and administrative purposes. Juvenile justice information is considered confidential under the Family Code and other applicable state, federal, and administrative laws that govern juvenile offender records. Access to juvenile records, files, or data is restricted to individuals or entities specifically authorized by law or pursuant to an order of the court. The statutory provisions governing the disclosure and dissemination of juvenile justice information maintained by TJJD are set forth in Chapter 58 of the Family Code and other applicable statutory provisions. For purposes of this MOU, TJJD may grant access to juvenile justice information to any agency under the authority of HHSC for research and statistical purposes or for any other approved purpose, pursuant to Section 58.0072(c)(3), Family Code, or other applicable statutory provisions. No exceptions to disclosure under the Texas Public Information Act are waived by the exchange, disclosure, or dissemination of juvenile justice information under this MOU.

4.4 The Parties will comply with all applicable privacy, security and breach notification laws, regulations and rules, including without limitation HIPAA, the Texas Medical Records Privacy Act, the Texas Identity Theft Enforcement and Protection Act and the Texas Human Resources Code, to safeguard and protect each other's confidential information in performing the requirements of Section 531.02418, Government Code. The Parties may execute any agreements to ensure the safe use and transmission of confidential information.

SECTION 5- CHANGES AND AMENDMENTS

This MOU may be amended or modified only by a written agreement that is signed by an authorized representative of each of the Parties. Any alterations, additions, or deletions to the terms of this MOU required by changes in federal or state law or by regulations are automatically incorporated into this MOU without written amendment hereto and will become effective on the date designated by such law or by regulation.

**SECTION 6- TERMINATION OF
AGREEMENT**

6.1 This MOU will remain in effect as needed until terminated by either Party for necessity, convenience, or breach of contract. A Party must provide the other Party with thirty (30) days written notice of its intention to terminate this MOU.

6.2 Upon mutual agreement of the Parties, any or all of the conditions or arrangements enacted by this MOU may be amended. If a Party desires to modify this MOU, the moving Party will notify the other Party in writing and, within thirty (30) days, the representatives of the Parties will meet and seek to reach agreement on the proposal.

6.3 In the event federal or state laws or regulations should be amended or judicially interpreted to render the continued fulfillment of this MOU by either Party substantially unreasonable or impossible, then the Parties will be discharged from any further obligations under this MOU, except for the equitable settlement of the respective accrued interests or obligations incurred up to the effective date of the close-out of this MOU.

SECTION 7- PERIOD OF AGREEMENT

This MOU will become effective upon the earlier to occur of these two dates: (a) June 1, 2017 or (b) the date this MOU is signed by both Parties. This MOU will remain in effect until terminated, as noted in Subsection 6.1.

The undersigned Parties bind themselves to the faithful performance of this MOU.

**Texas Health and Human Services
Commission**

By: 

Name: Wayne Salter
Associate Commissioner
Title: Access and Eligibility Services

Date: 4/17/17

Texas Juvenile Justice Department

By: 

Name: David Kelley
Title: E. J.

Date: 3/31/17