

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH



Manisha Juthani, MD
Commissioner

Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

December 30, 2022

The Honorable Patricia Billie Miller
The Honorable Jane M. Garibay
Aging Committee, State Capitol, Room 011
Hartford, CT 06106

The Honorable Catherine A. Osten
The Honorable Toni E. Walker
Appropriations Committee, State Capitol, Legislative Office Building, Room 2700
Hartford, CT 06106

The Honorable Marilyn V. Moore
The Honorable Catherine F. Abercrombie
Human Services Committee, Legislative Office Building, Room 2000
Hartford, CT 06106

The Honorable Mary Daughtery Abrams
The Honorable Jonathan Steinberg
Public Health Committee, Legislative Office Building, Room 3000
Hartford, CT 06106

Dear Committee Chairs:

Enclosed please find the Nursing Home Financial Advisory Committee's Annual Report for calendar year 2022, as required by Section 17b-339(c) of the Connecticut General Statutes. During the 2022 reporting period, and at the time of this submission, Deidre Gifford, MD, MPH, is serving as the Commissioner for the Department of Social Services, and Manisha Juthani, MD, is serving as the Commissioner of the Department of Public Health.

If you have any questions regarding the report, please do not hesitate to contact me at adelita.orefice@ct.gov or 860-509-7101 or Committee Co-Chair, Nicole Godburn, DSS, at Nicole.Godburn@ct.gov or 860-424-5393.



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Sincerely,



Adelita Orefice, MPM, JD
Co-Chair, Nursing Home Financial Advisory Committee
Chief of Staff to the Commissioner
Department of Public Health

cc: Members and Clerks of the Aging, Appropriations, Human Services, and Public Health Committees
Clerk of the Senate
Clerk of the House
Office of Legislative Research
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***REPORT TO THE JOINT STANDING COMMITTEES OF THE GENERAL
ASSEMBLY***

**ON AGING, APPROPRIATIONS, HUMAN SERVICES AND PUBLIC
HEALTH**

**ANNUAL REPORT OF THE NURSING HOME
FINANCIAL ADVISORY COMMITTEE**

January 1, 2023

**Deidre S. Gifford, MD, MPH, Department of Social Services, Commissioner
Manisha Juthani, MD, Department of Public Health, Commissioner**

State of Connecticut

Department of Social Services
55 Farmington Avenue
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Committee Members:

Matthew Barrett, Executive Director, Connecticut Association Health Care Facilities

Barbara Cass, Branch Chief, Healthcare Quality and Safety Branch, Department of Public Health (Co-Chair)

Judith Dowd, Health and Human Services Section Director, Office of Policy and Management

Nicole Godburn, Manager, Reimbursement and Certificate of Need, Department of Social Services (Co-Chair)

Claudio Gualtieri, Undersecretary, Office of Policy and Management

Mag Morelli, President, LeadingAge Connecticut

Michael Morris, Managing Director, Client Services, Connecticut Health and Educational Facilities Authority

Adelita Orefice, Senior Advisor to the Commissioner, Department of Public Health (Co-Chair)

Mairead Painter, Connecticut Long Term Care Ombudsman, Department of Aging and Disability Services

ANNUAL REPORT

Activities from January – December 2022

I. BACKGROUND

Section 17b-339 of the Connecticut General Statutes (C.G.S.)¹ establishes a Nursing Home Financial Advisory Committee to examine the financial solvency of and quality of care provided by nursing homes. During the period covered by this report the committee was co-chaired by Nicole Godburn, Manager, Reimbursement and Certificate of Need (CON), DSS, Barbara Cass, Healthcare Quality and Safety Branch Chief at the Department of Public Health (DPH) and Adelita Orefice, Chief of Staff to the Commissioner of DPH. The committee is currently co-chaired by Adelita Orefice and Nicole Godburn. The committee is composed of representatives of the Office of Policy and Management, the Connecticut Health and Educational Facilities Authority, LeadingAge Connecticut, the Connecticut Association for Health Care Facilities, and the State's Long Term Care Ombudsman. The committee's responsibilities include: (1) evaluating any information and data available, including, but not limited to, (A) quality of care, (B) acuity, (C) census, and (D) staffing levels of nursing homes operating in the state to assess the overall infrastructure and projected needs of such homes; and (2) recommending appropriate action consistent with the goals, strategies, and long-term care needs set forth in the strategic plan developed by the Commissioner of Social Services and the Commissioner of Public Health pursuant to subsection (c) of C.G.S. section 17b-369.

II. NURSING HOME OVERVIEW

A nursing home facility is defined in section 19a-521 of the Connecticut General Statutes² as having the same meaning as provided in section 19a-490, C.G.S., which is as follows: “(1) any chronic and convalescent nursing home or any rest home with nursing supervision that provides nursing supervision under a medical director twenty-four hours per day, or (2) any chronic and convalescent nursing home that provides skilled nursing care under medical supervision and direction to carry out nonsurgical treatment and dietary procedures for chronic diseases, convalescent stages, acute disease or injuries.” As of December 21, 2021, Connecticut had 203³ licensed nursing home facilities of which 194 were Medicaid licensed nursing facilities that ranged in capacity from 25 beds to 345 beds, with a total of 23,524 nursing facility beds⁴.

¹ Section 17b-339 of the Connecticut General Statutes is attached hereto as Appendix 1

² Sections 19a-490 & 19a-521 of the Connecticut General Statutes are attached hereto as Appendix 2

³ DPH elicense data, December 2021

⁴ Connecticut Nursing Facility Bed Census, Department of Social Services, as of December 21, 2021

https://portal.ct.gov/-/media/Departments-and-Agencies/DSS/Medicaid-Nursing-Home-Reimbursement/2021_12_21-December-Bed-Census.pdf

As set forth in Connecticut General Statutes, specifically sections 19a-2a⁵, 19a-493⁶ and 19a-498⁷, the Department of Public Health conducts biennial licensure inspections to ensure compliance with state laws and regulations. In addition to licensure, nursing homes are certified annually by the federal Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS), to ensure compliance with the conditions of participation and federal laws and regulations. As set forth in section 1864 of the Social Security Act⁸, an agreement exists between the Secretary of HHS and the Connecticut Department of Public Health, as the state survey agency. Such agreement includes certification activities that include, in part, inspecting and certifying nursing facilities, applying the appropriate conditions of participation and applicable laws and regulations that ensure quality services. Additional activities include investigating complaints regarding care and service issues for nursing home facilities, which are licensed and/or certified pursuant to the Connecticut General Statutes, the Regulations of Connecticut State Agencies and the Code of Federal Regulations.

The provision of quality care is integral to the nursing home facility inspection process. If non-compliance is identified pursuant to an inspection, such facility must provide a plan of correction to the Department of Public Health that will include, but not be limited to, actions the facility will demonstrate and implement to mitigate risk of recurrence and monitoring to ensure that the plan of correction was effective to ensure sustained compliance.

Acuity of the nursing home patients/residents varies from the chronic and stable to the medically challenged/complex. Nursing home facilities may provide intravenous therapy, medication therapy, respiratory therapy, rehabilitation, wound care and other medically complex modalities. While Connecticut Public Health Code prescribes staffing numbers, staffing varies with the expectation that staffing shall be adequate and meet the needs of the patients/residents that reside in the facility.

Reimbursement for nursing facility care is compensated through patient/resident self-pay, private/commercial insurance or Medicare/Medicaid benefits. DSS' Office of Reimbursement and Certificate of Need is responsible for establishing Medicaid rates and reimbursement. When calculating Medicaid rates, the following costs are calculated: direct labor costs, indirect costs, fair rent, and capital related costs. For a comprehensive overview of Medicaid rate setting for nursing facilities, please refer to <https://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-Nursing-Home-Reimbursement/Medicaid-Nursing-Home-Reimbursement>.

The Connecticut nursing facility payor mix for state fiscal year (SFY) 2020 was as follows: Medicaid 72.60%, Private pay: 9.97%, Medicare: 12.08% and Veterans/Other 5.35%. The rate period of July 1, 2019 through June 30, 2020 identified an average daily Medicaid rate of \$244.74 per day with total Medicaid expenditures for nursing facility services totaling

⁵ Section 19a-2a of the Connecticut General Statutes is attached hereto as Appendix 3

⁶ Section 19a-493 of the Connecticut General Statutes is attached hereto as Appendix 4

⁷ Section 19a-498 of the Connecticut General Statutes is attached hereto as Appendix 5

⁸ The Section 1864 Agreement is attached hereto as Appendix 6.

approximately \$1,449,994,899 in fiscal year 2020⁹. Long-term care accounted for 21.5% of Medicaid expenditures by service category in SFY 2020¹⁰.

Nursing facility census is collected and monitored monthly by DSS' Office of Reimbursement and Certificate of Need. The self-reported nursing facility census as of December 21, 2021 identified an average daily census of 78.46%¹¹. Many factors affect census, including services provided, location, agreements with hospitals, seasonal variations, and long-term services and supports (LTSS) rebalancing activities.

Financial solvency greatly impacts a nursing facility's ability to sustain operations. Challenges include, but are not limited to, occupancy level, labor costs, costs associated with collective bargaining agreements related to the labor force, increases in insurance costs, and materials and supplies costs. These challenges can lead to difficult decisions that result in nursing home facility closures. From 1995 through January 1, 2020, 75 nursing facilities have closed, reducing bed capacity by 7,269 beds¹². In 2021, one nursing home closed bringing the total to 76 closed facilities since 1995.¹³

III. Nursing Home Financial Advisory Committee Activities

In 2022, the Nursing Home Financial Advisory Committee conducted meetings on January 12th, April 13th, July 13th, and October 12th. All meetings were held 9:30 A.M. – 11:30 A.M. virtually, via the platform Microsoft Teams. In accordance with Governor Lamont's Executive Order 7b, all meetings held during the COVID-19 Public Health Emergency (PHE) were recorded and posted within 24 hours on the [Committee's webpage](#). Standing agenda items include updates on (1) nursing home interim rate increase; (2) survey activities/quality issues; (3) receiverships, closures and bankruptcies; and (4) transition to acuity-based reimbursement methodology. During the PHE, state and nursing home COVID-19 response updates was added as a standing item, however, members agreed to remove this agenda item effective July 2022 due to the improving COVID-19 number and infection control conditions in nursing facilities. All meeting agendas, minutes and materials can be found on the Committee's dedicated webpage: <https://portal.ct.gov/DPH/Facility-Licensing--Investigations/Facility-Licensing--Investigations-Section-FLIS/Nursing-Home-Financial-Advisory-Committee>.

⁹ This data is only through SFY 2020 due to flexibility in rate periods resulting from additional funding received during the public health emergency. Source: Department of Social Services <https://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-Nursing-Home-Reimbursement/Medicaid-Nursing-Home-Reimbursement>.

¹⁰ Department of Social Services, report to the Medicaid Medical Assistance Program Oversight Committee, https://www.cga.ct.gov/ph/med/related/20190106_Council%20Meetings%20&%20Presentations/20210108/HUSKY%20Financial%20Trends%20January%202021%20.pdf, January 8, 2021.

¹¹ Latest Bed Census, Department of Social Services, as of December 21, 2021 https://portal.ct.gov/-/media/Departments-and-Agencies/DSS/Medicaid-Nursing-Home-Reimbursement/2021_12_21-December-Bed-Census.pdf

¹² DSS Nursing Facility Closure Report 1995 – 2021 <https://portal.ct.gov/-/media/Departments-and-Agencies/DSS/Medicaid-Nursing-Home-Reimbursement/NF-Closures-January-2021.pdf>

¹³ Connecticut Nursing Facility Bed Census, Department of Social Services, as of December 21, 2021 https://portal.ct.gov/-/media/Departments-and-Agencies/DSS/Medicaid-Nursing-Home-Reimbursement/2021_12_21-December-Bed-Census.pdf

On January 12, 2022, the agenda focused largely on the five standing agenda items as follows:

- (1) COVID-19 update: (1) DPH reported that the Governor issued new Executive Orders (13F and 14B) to address vaccination and boosters in facilities. Over 200 homes have some level of infection present but at far lower rates than during the height of the pandemic. DPH is holding weekly calls with nursing facilities and continuing to monitor low staffing levels. (2) DSS staff provided an overview of the support the agency has provided to nursing facilities throughout the PHE and noted that all of this can be found on the DSS dedicated PHE web page.¹⁴ (3) Staff from the Long Term Care Ombudsman Program (LTOP) reported that they are receiving numerous staffing complaints from residents and family members, and there is some concern that increasing COVID numbers are resulting in staff being moved to COVID units exacerbating the staffing challenges throughout facilities.
- (2) Coronavirus Recovery Fund (CRF) funding update: This is primarily a DSS initiative, but DPH, through survey activities, has worked in collaboration with DSS to make sure money distributed to nursing facilities is being utilized as intended. Focus of this funding is on infection control coaches and infection prevention initiatives, such as eliminating rooms with four or more beds.
- (3) Survey activities/quality issues: DPH shared that in March 2020 the Centers for Medicare and Medicaid Services (CMS) suspended survey activities across the continuum except for cases of immediate jeopardy. CMS has resumed survey activities and DPH has recommenced the agency certification schedule. There is a CMS approved certification “catch-up” plan that DPH is implementing.
- (4) Receiverships, closures, and bankruptcies: DPH staff reported that one facility is in receivership, three homes have closed since February of 2022, and there are zero pending bankruptcies.
- (5) Transition to acuity-based reimbursement methodology: DSS met with the nursing home industry last quarter and held a stakeholder meeting to obtain quarterly shadow rates for each of the buildings. Shadow rates let the homes see what their rates will look like under the new acuity-based reimbursement system. Each home receives a quarterly shadow rate report through a secure portal. A fourth quarter shadow rate will go out to facilities at the end of January. The acuity reimbursement is based off the Minimum Dataset. Nursing facilities already have to submit this information to CMS for Medicare reimbursement, so DSS is leveraging that data. Transition will be phased in over three years, and DSS will be instituting a continuous feedback loop with the facilities.

¹⁴ DSS dedicated PHE web page <https://portal.ct.gov/DSS/Communications/DSS-Response-to-COVID-19>.

- (6) Other Business: There was much discussion among members about low staffing rates and difficulty recruiting and retaining nursing facility staff across job classifications. Members representing the nursing home industry shared their concerns about staffing pools paying higher wages and poaching facility staff. There was a call for legislation to cap staffing pools.

At the April 13, 2022 meeting the following business was conducted:

- (1) COVID-19 Update: (1) DPH reported that the agency is maintaining incident command and closely monitoring nursing facilities as the state is seeing an increase in COVID-19 infection numbers due to the onset of a new variant. Currently, facilities have less than a 5% incident rate. DPH also resumed survey activities. (2) The LTCOP reported that they are seeing a slight increase in COVID cases at nursing homes, but residents are not as nervous and feel that they have access to information, vaccination and support from staff. The LTCOP shared information sheets created by DPH with Resident Councils, and this was well received. Low staffing ratios continue to be among the chief concerns reported by residents, families and Regional Ombudsman. The LTCOP is watching staffing ratios and working with facilities. (3) DSS reported that detailed reports related to DSS support of facilities during the PHE can be found on the DSS web page dedicated to the department's COVID-19 response. The following highlights were shared: (a) There was a temporary 10% rate increase for nursing facilities 7/1/1 - 3/31/22 and this has been extended through 6/30/22 using state money to cover April and May and \$10 million in American Rescue Plan funds covering June. (b) \$30 million was set aside to support enhanced pension and health care benefits for nursing facility employees. Through the application process nursing homes submitted \$35 million in requests, therefore, DSS is working with homes to modify applications to remain within the \$30 million allocation amount. (c) \$2.5 million in state funding has been made available for FY 2022 and FY 2023 to support nursing facilities in meeting the social work staffing requirement. Nursing facilities can apply directly to DSS. As of this meeting, approximately twelve homes have applied for the funding. (d) DSS has also made available a direct care rate increase of \$500,000 in state funding for FY 2022 and FY 2023 to assist facilities with meeting minimum staffing requirements. Homes may also apply for this funding through DSS.

Member Discussion on the COVID-19 Updates: The nursing home industry associations noted that the facilities are still operating in the midst of a PHE and at last reporting the highest rates of COVID-19 community spread are in Fairfield, New Haven and New London Counties. The industry has been watching and to date the increase in community spread is not correlating to any increases in nursing facility infection rates. This may be for a few reasons: (1) DPH Commissioner's Public Service Announcements (PSAs) on the need for vaccinations; (2) Vaccination mandates; (3) High nursing facility booster rates; and (4) Employers doing better at being diligent. However, nursing facilities are experiencing the most severe staffing shortage they have in decades. The DPH Commissioner reminded

members that vaccinations rates are at 90% for nursing facility staff and 80% of residents. Need to continue to encourage residents to vaccinate.

- (2) Nursing Home Rightsizing Plan Update: DSS shared that plans were due from nursing homes on April 1, 2022 to receive additional funding if certain conditions were met, one being if any home doesn't reach 85% occupancy how they will be affected by case-mix going forward. DSS is holding open dialogue with nursing facilities on this matter. DSS is developing a public report on the findings of the April plan submissions and will share it at a future date.

Member Discussion: The nursing facility industry associations informed members that homes are anxious to receive the results and remain concerned that the pandemic is having unfavorable impact on their occupancy rates making the information submitted in the April plans potentially unreliable. It was suggested that the state look at homes again once the industry is further into post COVID recovery. Staff shortages are at all-time highs and that is affecting the ability of some nursing homes to accept new residents and increase occupancy rates, weekend staffing is especially problematic. Labor costs are up significantly, and staffing pools are exacerbating the problem. The industry stressed the need to cap staffing pools. DSS staff notes that as of February 2022, the average statewide occupancy rate was 79%. The LTCOP reported that their office is seeing facilities not working to create appropriate discharge plans. They are also monitoring the appropriateness of admissions.

- (3) Receiverships, closures and bankruptcies: DPH staff provided an update on receiverships, closures and bankruptcies. At the time of the report DPH has zero pending bankruptcies, one home in receivership and zero notices of closure.
- (4) Survey activities/quality issues: DPH staff gave the following report: (a) Watching staffing issues closely, especially on weekends. The Temporary Nurse Aide program has been supportive to the industry and there is discussion about whether to extend it beyond the set expiration date. DPH is watching the trajectory of the Temporary Nurse Aides to see if they eventually obtain certification. The numbers of certifications are increasing. (b) Five strike notices were received. Nursing facility strike-plans are due to DPH tomorrow, and DPH is readying for mobilization to ensure resident safety and quality of care. (c) A Wallingford facility was found to have several immediate jeopardies related to neglect, medication management and infection control. An immediate plan of correction was implemented by DPH and a temporary director was instituted but issues persisted. An emergency order to transfer out residents has been done within a seven-day period.
- (5) Transition to acuity-based reimbursement methodology: DSS has established a web page dedicated to the transition to acuity-based reimbursement¹⁵. Tomorrow DSS is hosting a public webinar by Myers and Stauffer to walk through entire case-mix model and how it functions. DSS will also provide updates on implementation and review the shadow rates. Shadow rate documents have been going to homes quarterly to show them what their rate

¹⁵ DSS Acuity-Based Transition web page

would have looked like under the acuity model. The industry noted that it is pleased with the phased-in process and outcome of the acuity-based system.

The July 13, 2022 meeting represented the first meeting since April 2020 when COVID-19 updates were removed from the agenda as a formal standing item of discussion representing a turning point in infection control rates at the facilities and across the state. The meeting focused on updates regarding the following standing agenda items:

- (1) Nursing home rightsizing plan update: As promised at the April meeting, DSS presented the findings of the nursing home plans submitted to DSS on April 1, 2022 as detailed in the public *Report on Connecticut Nursing Home Rebalancing & Efficiency Plans*¹⁶. The report is a data analysis of nursing facility responses to the efficiency plan requirement included in one of the state's financial support packages provided during the COVID-19 PHE. Specifically, facilities were asked to present and discuss ideas regarding 'right-sizing' and rebalancing efforts if a facility did not reach 85% occupancy by that date; has excess beds in its region; or determines that acuity-based reimbursement would adversely impact a facility's financial conditions. Responses varied by facility. While some facilities included detailed information and transformative thinking about future sustainability and current consumer trends, it is disappointing that the vast majority of nursing homes (over 60%) with lower occupancy rates reported no action being taken. Similarly, the vast majority of nursing homes (over 70%) that identified excess beds in the area reported no action being taken¹⁷.

Member Discussion: During discussion on the topic, nursing home industry representatives raised the continuing workforce shortage as negatively impacting the ability of many facilities to accept new admissions and increase their occupancy rates. Legislators in attendance referenced working with the Governor's Workforce Council as a potential solution and asked about other potential avenues for recruiting and retaining a quality workforce.

- (2) Survey activities/quality issues: DPH staff provided the following update: (a) survey activity is beginning to resume at a more regular pace. DPH will have 15 new surveyors on board by the end of the summer and recruitment is ongoing. (b) Quality issues largely driven by staffing shortage are being identified at an unprecedented rate with eleven immediate jeopardies in nine different homes occurring since April 1, 2022. The immediate jeopardies have largely been concerning inadequate staffing and inadequate supervision, medication errors, abuse and neglect, choking and elopements. Although likely due to staffing issues, DPH noted that the department is seeing avoidable incidents and further noted that being short staffed does not negate the responsibility to train staff appropriately and pay additional attention to oversight, especially of new and temporary

¹⁶ The Department of Social Services, Report on Connecticut Nursing Home Rebalancing & Efficiency Plans; July 1, 2022 <https://portal.ct.gov/DSS/Press-Room/Press-Releases/Report-on-Connecticut-Nursing-Home-Rebalancing-and-Efficiency-Plans>.

¹⁷ Ibid.

staff. Managing new staff appropriately is a key piece to addressing these quality issues. For context there were 30-35 investigations that did not result in immediate jeopardies.

- (3) Receiverships, closures, and bankruptcies: DSS staff reported that during the period since the April 2022 meeting there have been zero new receiverships, bankruptcies, or closures.
- (4) Transition to acuity-based reimbursement methodology: DSS reported the transition to case-mix methodology began on July 1, 2022. During the last week of July rate letters DSS will issue letter to homes. There should not be surprises as over last year shadow rates have been provided to the nursing facilities so they could see how their rates would be affected under the case-mix system. DSS will be hosting a series of seminars and stakeholder meetings to support homes with implementing a value-based component of acuity.

Member Discussion: Individuals representing the nursing home industry noted the unprecedented stakeholder input and feedback DSS has engaged in regarding the case-mix transition.

On October 12, 2022, the following standing agenda items were discussed:

- (1) Nursing home rightsizing plan update: DSS staff reported that nursing facilities should be receiving letters with approvals, modifications, or denial of plans within the next two weeks.
- (2) Survey activities/quality issues: DPH staff reported that the number of immediate jeopardies continues rise to unprecedented levels. DPH typically sees twelve immediate jeopardies a year and has seen nineteen this quarter. Common findings include medication errors, not following care plans, and disregarding advanced directives to not administer CPR. DPH is taking immediate action and working closely with the nursing facilities, LTCOP and the nursing home industry associations to address this matter.
- (3) Receiverships, closures, and bankruptcies: DSS staff reported that at this time there is one facility in receivership, zero bankruptcies, and two facilities that have approached DSS regarding closure.
- (4) Transition to acuity-based reimbursement methodology: DSS staff informed members that the transition to the case-mix reimbursement model is ongoing and that facilities will have their rates adjusted quarterly and will receive a letter informing them of their rate shift. Quality will also become an indicator for nursing home reimbursement beginning July 1, 2023. DSS is working closely with the nursing facility associations on this development and has invited DPH to join the conversation as well.
- (5) Vote on 2023 meeting schedule: The Committee unanimously adopted the following meeting schedule for 2023: January 11th, April 12th, July 12th, and October 11th – 9:30 a.m. – 11:30 a.m. via Microsoft Teams.

- (6) Other Business: Representatives of the nursing home industry shared the following: (a) The 4.5% rate increase for staffing went out on July 1, 2022 and that type of increase was appreciated. However, the industry just did a salary survey, and salaries are going up across the workforce creating a pressure point for all nursing homes. (b) The industry is working with the Office of Workforce Strategy and others, but recruitment and retention remains a critical need. The salary survey will be released next month. Entry pay has needed to be increased dramatically, and this is impacting the salary for all other positions. (c) The industry continues to be concerned about inflation present in the nursing facility environment, especially in the area of staffing which is not reflected in their rates. The inflation rates cause financial instability for homes in other areas as well due to increases in the cost of heating oil and food not being considered in rates. Homes relying on Medicaid have no way to increase their prices the way the private industry does to account for increased operating costs. (c) It was noted that the Governor's Office of Workforce Strategy is moving at a much more rapid pace than expected on areas such as CNA training which is great, however, even with the 4.5% rate increase for staffing, employees are losing ground as inflation raises the cost of living for employees causing them to still struggle. This directly affects workforce recruitment and retention.

Conclusion

The continuum of care in Connecticut's long-term services and supports system has broad implications for the overall operations of nursing homes and impacts financial solvency. This fact was further emphasized by the onset of the COVID-19 pandemic in March 2020, as the State experienced a decrease in nursing home occupancy and increased demand for home and community-based services. The long-term impact of the pandemic on the nursing home industry is becoming more apparent as we see the workforce shortages and low occupancy rates continuing as 2022 comes to a close. The need for consumer choice across the system of long-term services and supports has come more into focus, as has the need to stabilize the nursing home industry for those who will require or choose to receive care in a nursing facility to ensure continued access to high-quality nursing facility services.

Connecticut has a robust Money Follows the Person (MFP) program which has assisted many individuals in the transition from a nursing home level of care to a community setting with supports as directed by an individual assessment in place to ensure a safe discharge. The MFP program is a Federal demonstration project dedicated to assuring Connecticut residents access to a full range of high quality, long-term care options that maximize autonomy, choice and dignity. Additionally, Connecticut administers the Community First Choice program, a Medicaid State Plan service option, that has greatly expanded the number of Connecticut residents able to choose to receive care in the community versus a nursing facility. At the time of this writing, Connecticut has submitted a plan to CMS for increased federal Medicaid match available through the American Rescue Plan Act of 2021 to allow states to further enhance their Medicaid home and community-based services system.

Connecticut also has nursing home beds that provide specialized services, such as mechanical ventilation and cardiac rehabilitation that will facilitate discharge from the hospital to the nursing home to a community setting. Notably, assisted living services, the majority of which are not

funded by the Medicaid system, also play a valuable role in the scope of aging services that allows yet another level of supportive care and options for consumers. However, these options have also contributed to the challenges that nursing homes have experienced over time and have the potential to negatively impact patient/resident census, especially private pay, which again has a direct link to financial viability.

In recent years, Connecticut has experienced several nursing home closures that were either voluntary closures or closures pursuant to state receivership and/or state or federal bankruptcy actions. While this has aligned with the long-term services and supports strategic rebalancing plan developed in accordance with C.G.S. section 17b-369, the supply of nursing home beds continues to outstrip demand. Staffing shortages have made it challenging for many nursing facilities to fill beds and recruit and retain sufficient staffing levels to maintain quality of care and increase occupancy.

Future Nursing Home Financial Advisory Committee Activities

The committee will continue to meet in 2023 at least quarterly with the next meetings scheduled for: January 11, 2023, April 12, 2023, July 12, 2023, and October 11, 2023 from 9:30 A.M. – 11:30 – A.M. via Microsoft Teams.

**ANNUAL REPORT OF THE NURSING HOME
FINANCIAL ADVISORY COMMITTEE**

January 1, 2023

APPENDICES

1. Section 17b-339 of the Connecticut General Statutes – Establishes the Nursing Home Financial Advisory Committee
2. Sections 19a-490 and 19a-521 of the Connecticut General Statutes – Defines a nursing home facility
3. Section 19a-2a of the Connecticut General Statutes – Defines the powers and duties of the DPH Commissioner
4. Section 19a-493 of the Connecticut General Statutes – Establishes DPH authority and parameters for conducting initial nursing home licensure and renewals
5. Section 19a-498 of the Connecticut General Statutes - Establishes DPH authority and parameters for conducting Inspections, investigations, examinations, and audits and defines rules regarding records retention
6. The Social Security Act Section 1864 Agreement

Appendix 1

Sec. 17b-339. Nursing Home Financial Advisory Committee. Duties. Membership. Reports. Annual meeting. (a) There is established a Nursing Home Financial Advisory Committee to examine the financial solvency of nursing homes on an ongoing basis and to support the Departments of Social Services and Public Health in their mission to provide oversight to the nursing home industry on issues concerning the financial solvency of and quality of care provided by nursing homes. The committee shall convene not later than August 1, 2014, and consist of the following members: The Commissioner of Social Services, or the commissioner's designee; the Commissioner of Public Health, or the commissioner's designee; the Secretary of the Office of Policy and Management, or the secretary's designee; the executive director of the Connecticut Health and Education Facilities Authority, or the director's designee; the Long-Term Care Ombudsman and two members appointed by the Governor, one of whom shall be a representative of not-for-profit nursing homes and one of whom shall be a representative of for-profit nursing homes. In addition, the Labor Commissioner may appoint a nonvoting member to the committee. The Commissioner of Social Services and the Commissioner of Public Health, or their designees, shall be the chairpersons of the committee.

(b) The committee shall (1) evaluate any information and data available, including, but not limited to, (A) quality of care, (B) acuity, (C) census, and (D) staffing levels of nursing homes operating in the state to assess the overall infrastructure and projected needs of such homes, and (2) recommend appropriate action consistent with the goals, strategies and long-term care needs set forth in the strategic plan developed pursuant to subsection (c) of section 17b-369 to the Commissioner of Social Services and the Commissioner of Public Health. The Commissioner of Social Services shall submit quarterly reports to the committee concerning pending nursing home requests for interim rate increases. Such reports shall, without identifying any requesting facility by name, list the amount of each increase requested, the reason for the request and the rate that will result if the request is granted.

(c) Not later than January 1, 2015, and annually thereafter, the committee shall submit a report on its activities to the joint standing committees of the General Assembly having cognizance of matters relating to aging, appropriations and the budgets of state agencies, human services and public health, in accordance with the provisions of section 11-4a.

(d) Not later than October 1, 2014, and quarterly thereafter, the committee shall meet with the chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies, human services and public health to discuss activities of the committee relating to the financial solvency of and quality of care provided by nursing homes.

Appendix 2

Sec. 19a-490. (Formerly Sec. 19-576). Licensing of institutions. Definitions. (a) "Institution" means a hospital, short-term hospital special hospice, hospice inpatient facility, residential care home, nursing home facility, home health care agency, home health aide agency, behavioral health facility, assisted living services agency, substance abuse treatment facility, outpatient surgical facility, outpatient clinic, an infirmary operated by an educational institution for the care of students enrolled in, and faculty and employees of, such institution; a facility engaged in providing services for the prevention, diagnosis, treatment or care of human health conditions, including facilities operated and maintained by any state agency; and a residential facility for persons with intellectual disability licensed pursuant to section 17a-227 and certified to participate in the Title XIX Medicaid program as an intermediate care facility for individuals with intellectual disability. "Institution" does not include any facility for the care and treatment of persons with mental illness or substance use disorder operated or maintained by any state agency, except Whiting Forensic Hospital;

(b) "Hospital" means an establishment for the lodging, care and treatment of persons suffering from disease or other abnormal physical or mental conditions and includes inpatient psychiatric services in general hospitals;

(c) "Residential care home" or "rest home" means a community residence that furnishes, in single or multiple facilities, food and shelter to two or more persons unrelated to the proprietor and, in addition, provides services that meet a need beyond the basic provisions of food, shelter and laundry and may qualify as a setting that allows residents to receive home and community-based services funded by state and federal programs;

(d) "Home health care agency" means a public or private organization, or a subdivision thereof, engaged in providing professional nursing services and the following services, available twenty-four hours per day, in the patient's home or a substantially equivalent environment: Home health aide services as defined in this section, physical therapy, speech therapy, occupational therapy or medical social services. The agency shall provide professional nursing services and at least one additional service directly and all others directly or through contract. An agency shall be available to enroll new patients seven days a week, twenty-four hours per day;

(e) "Home health aide agency" means a public or private organization, except a home health care agency, which provides in the patient's home or a substantially equivalent environment supportive services which may include, but are not limited to, assistance with personal hygiene, dressing, feeding and incidental household tasks essential to achieving adequate household and family management. Such supportive services shall be provided under the supervision of a registered nurse and, if such nurse determines appropriate, shall be provided by a social worker, physical therapist, speech therapist or occupational therapist. Such supervision may be provided directly or through contract;

(f) "Home health aide services" as defined in this section shall not include services provided to assist individuals with activities of daily living when such individuals have a disease or condition that is chronic and stable as determined by a physician licensed in the state;

(g) "Behavioral health facility" means any facility that provides mental health services to persons eighteen years of age or older or substance use disorder services to persons of any age in an outpatient treatment or residential setting to ameliorate mental, emotional, behavioral or substance use disorder issues;

(h) "Alcohol or drug treatment facility" means any facility for the care or treatment of persons suffering from alcoholism or other drug addiction;

(i) "Person" means any individual, firm, partnership, corporation, limited liability company or association;

(j) "Commissioner" means the Commissioner of Public Health or the commissioner's designee;

(k) "Home health agency" means an agency licensed as a home health care agency or a home health aide agency;

(l) "Assisted living services agency" means an agency that provides, among other things, nursing services and assistance with activities of daily living to a population that is chronic and stable;

(m) "Outpatient clinic" means an organization operated by a municipality or a corporation, other than a hospital, that provides (1) ambulatory medical care, including preventive and health promotion services, (2) dental care, or (3) mental health services in conjunction with medical or dental care for the purpose of diagnosing or treating a health condition that does not require the patient's overnight care;

(n) "Multicare institution" means a hospital that provides outpatient behavioral health services or other health care services, psychiatric outpatient clinic for adults, free-standing facility for the care or treatment of substance abusive or dependent persons, hospital for psychiatric disabilities, as defined in section 17a-495, or a general acute care hospital that provides outpatient behavioral health services that (1) is licensed in accordance with this chapter, (2) has more than one facility or one or more satellite units owned and operated by a single licensee, and (3) offers complex patient health care services at each facility or satellite unit. For purposes of this subsection, "satellite unit" means a location where a segregated unit of services is provided by the multicare institution;

(o) "Nursing home" or "nursing home facility" means (1) any chronic and convalescent nursing home or any rest home with nursing supervision that provides nursing supervision under a medical director twenty-four hours per day, or (2) any chronic and convalescent nursing home that provides skilled nursing care under medical supervision and direction to carry out nonsurgical treatment and dietary procedures for chronic diseases, convalescent stages, acute diseases or injuries; and

(p) "Outpatient dialysis unit" means (1) an out-of-hospital out-patient dialysis unit that is licensed by the department to provide (A) services on an out-patient basis to persons requiring dialysis on a short-term basis or for a chronic condition, or (B) training for home dialysis, or (2) an in-hospital dialysis unit that is a special unit of a licensed hospital designed, equipped and staffed to (A) offer dialysis therapy on an out-patient basis, (B) provide training for home dialysis, and (C) perform renal transplantations.

Sec. 19a-521. (Formerly Sec. 19-602). Nursing home facilities. Definitions. As used in this section and sections 19a-522 to 19a-534a, inclusive, 19a-536 to 19a-539, inclusive, 19a-550 to 19a-554, inclusive, and 19a-562a, unless the context otherwise requires:

- (1) "Nursing home facility" has the same meaning as provided in section 19a-490;
- (2) "Department" means the Department of Public Health;
- (3) "Commissioner" means the Commissioner of Public Health or the commissioner's designated representative; and
- (4) "Residential care home" has the same meaning as provided in section 19a-490.

Appendix 3

Sec. 19a-2a. Powers and duties. The Commissioner of Public Health shall employ the most efficient and practical means for the prevention and suppression of disease and shall administer all laws under the jurisdiction of the Department of Public Health and the Public Health Code. The commissioner shall have responsibility for the overall operation and administration of the Department of Public Health. The commissioner shall have the power and duty to: (1) Administer, coordinate and direct the operation of the department; (2) adopt and enforce regulations, in accordance with chapter 54, as are necessary to carry out the purposes of the department as established by statute; (3) establish rules for the internal operation and administration of the department; (4) establish and develop programs and administer services to achieve the purposes of the department as established by statute; (5) enter into a contract, including, but not limited to, a contract with another state, for facilities, services and programs to implement the purposes of the department as established by statute; (6) designate a deputy commissioner or other employee of the department to sign any license, certificate or permit issued by said department; (7) conduct a hearing, issue subpoenas, administer oaths, compel testimony and render a final decision in any case when a hearing is required or authorized under the provisions of any statute dealing with the Department of Public Health; (8) with the health authorities of this and other states, secure information and data concerning the prevention and control of epidemics and conditions affecting or endangering the public health, and compile such information and statistics and shall disseminate among health authorities and the people of the state such information as may be of value to them; (9) annually issue a list of reportable diseases, emergency illnesses and health conditions and a list of reportable laboratory findings and amend such lists as the commissioner deems necessary and distribute such lists as well as any necessary forms to each licensed physician and clinical laboratory in this state. The commissioner shall prepare printed forms for reports and returns, with such instructions as may be necessary, for the use of directors of health, boards of health and registrars of vital statistics; and (10) specify uniform methods of keeping statistical information by public and private agencies, organizations and individuals, including a client identifier system, and collect and make available relevant statistical information, including the number of persons treated, frequency of admission and readmission, and frequency and duration of treatment. The client identifier system shall be subject to the confidentiality requirements set forth in section 17a-688 and regulations adopted thereunder. The commissioner may designate any person to perform any of the duties listed in subdivision (7) of this section. The commissioner shall have authority over directors of health and may, for cause, remove any such director; but any person claiming to be aggrieved by such removal may appeal to the Superior Court which may affirm or reverse the action of the commissioner as the public interest requires. The commissioner shall assist and advise local directors of health and district directors of health in the performance of their duties, and may require the enforcement of any law, regulation or ordinance relating to public health. In the event the commissioner reasonably suspects impropriety on the part of a local director of health or district director of health, or employee of such director, in the performance of his or her duties, the commissioner shall provide notification and any evidence of such impropriety to the appropriate governing authority of the municipal health authority, established pursuant to section 19a-200, or the district department of health, established pursuant to section 19a-244, for purposes of reviewing and assessing a director's or an employee's compliance with such duties. Such governing authority shall provide a written report of its findings from the review and

assessment to the commissioner not later than ninety days after such review and assessment. When requested by local directors of health or district directors of health, the commissioner shall consult with them and investigate and advise concerning any condition affecting public health within their jurisdiction. The commissioner shall investigate nuisances and conditions affecting, or that he or she has reason to suspect may affect, the security of life and health in any locality and, for that purpose, the commissioner, or any person authorized by the commissioner, may enter and examine any ground, vehicle, apartment, building or place, and any person designated by the commissioner shall have the authority conferred by law upon constables. Whenever the commissioner determines that any provision of the general statutes or regulation of the Public Health Code is not being enforced effectively by a local health department or health district, he or she shall forthwith take such measures, including the performance of any act required of the local health department or health district, to ensure enforcement of such statute or regulation and shall inform the local health department or health district of such measures. In September of each year the commissioner shall certify to the Secretary of the Office of Policy and Management the population of each municipality. The commissioner may solicit and accept for use any gift of money or property made by will or otherwise, and any grant of or contract for money, services or property from the federal government, the state, any political subdivision thereof, any other state or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant or contract. The commissioner may establish state-wide and regional advisory councils. For purposes of this section, "employee of such director" means an employee of, a consultant employed or retained by or an independent contractor retained by a local director of health, a district director of health, a local health department or a health district.

Appendix 4

Sec. 19a-493. (Formerly Sec. 19-578). Initial license and renewal. Prior approval for change in ownership. Multicare institution. Regulations. (a) Upon receipt of an application for an initial license, the Department of Public Health, subject to the provisions of section 19a-491a, shall issue such license if, upon conducting a scheduled inspection and investigation, the department finds that the applicant and facilities meet the requirements established under section 19a-495, provided a license shall be issued to or renewed for an institution, as defined in section 19a-490, only if such institution is not otherwise required to be licensed by the state. If an institution, as defined in subsections (b), (d), (e) and (f) of section 19a-490, applies for license renewal and has been certified as a provider of services by the United States Department of Health and Human Services under Medicare or Medicaid programs within the immediately preceding twelve-month period, or if an institution, as defined in subsection (b) of section 19a-490, is currently certified, the commissioner or the commissioner's designee may waive on renewal the inspection and investigation of such facility required by this section and, in such event, any such facility shall be deemed to have satisfied the requirements of section 19a-495 for the purposes of licensure. Such license shall be valid for two years or a fraction thereof and shall terminate on March thirty-first, June thirtieth, September thirtieth or December thirty-first of the appropriate year. A license issued pursuant to this chapter, unless sooner suspended or revoked, shall be renewable biennially (1) after an unscheduled inspection is conducted by the department, and (2) upon the filing by the licensee, and approval by the department, of a report upon such date and containing such information in such form as the department prescribes and satisfactory evidence of continuing compliance with requirements established under section 19a-495. In the case of an institution, as defined in subsection (d) of section 19a-490, that is also certified as a provider under the Medicare program, the license shall be issued for a period not to exceed three years, to run concurrently with the certification period. Except in the case of a multicare institution, each license shall be issued only for the premises and persons named in the application. Such license shall not be transferable or assignable. Licenses shall be posted in a conspicuous place in the licensed premises.

(b) (1) A nursing home license may be renewed biennially after (A) an unscheduled inspection conducted by the department, (B) submission of the information required by section 19a-491a, and (C) submission of evidence satisfactory to the department that the nursing home is in compliance with the provisions of this chapter, the Public Health Code and licensing regulations.

(2) Any change in the ownership of a facility or institution, as defined in subsection (c) of section 19a-490, owned by an individual, partnership or association or the change in ownership or beneficial ownership of ten per cent or more of the stock of a corporation which owns, conducts, operates or maintains such facility or institution, shall be subject to prior approval of the department after a scheduled inspection of such facility or institution is conducted by the department, provided such approval shall be conditioned upon a showing by such facility or institution to the commissioner that it has complied with all requirements of this chapter, the regulations relating to licensure and all applicable requirements of the Public Health Code. Any such change in ownership or beneficial ownership resulting in a transfer to a person related by blood or marriage to such an owner or beneficial owner shall not be subject to prior approval of

the department unless: (A) Ownership or beneficial ownership of ten per cent or more of the stock of a corporation, partnership or association which owns, conducts, operates or maintains more than one facility or institution is transferred; (B) ownership or beneficial ownership is transferred in more than one facility or institution; or (C) the facility or institution is the subject of a pending complaint, investigation or licensure action. If the facility or institution is not in compliance, the commissioner may require the new owner to sign a consent order providing reasonable assurances that the violations shall be corrected within a specified period of time. Notice of any such proposed change of ownership shall be given to the department at least ninety days prior to the effective date of such proposed change. For the purposes of this subdivision, "a person related by blood or marriage" means a parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For the purposes of this subdivision, a change in the legal form of the ownership entity, including, but not limited to, changes from a corporation to a limited liability company, a partnership to a limited liability partnership, a sole proprietorship to a corporation and similar changes, shall not be considered a change of ownership if the beneficial ownership remains unchanged and the owner provides such information regarding the change to the department as may be required by the department in order to properly identify the current status of ownership and beneficial ownership of the facility or institution. For the purposes of this subdivision, a public offering of the stock of any corporation that owns, conducts, operates or maintains any such facility or institution shall not be considered a change in ownership or beneficial ownership of such facility or institution if the licensee and the officers and directors of such corporation remain unchanged, such public offering cannot result in an individual or entity owning ten per cent or more of the stock of such corporation, and the owner provides such information to the department as may be required by the department in order to properly identify the current status of ownership and beneficial ownership of the facility or institution.

(c) (1) A multicare institution may, under the terms of its existing license, provide behavioral health services or substance use disorder treatment services on the premises of more than one facility, at a satellite unit or at another location outside of its facilities or satellite units that is acceptable to the patient receiving services and is consistent with the patient's assessment and treatment plan.

(2) Any multicare institution that intends to offer services at a satellite unit or other location outside of its facilities or satellite units shall submit an application for approval to offer services at such location to the Department of Public Health. Such application shall be submitted on a form and in the manner prescribed by the Commissioner of Public Health. Not later than forty-five days after receipt of such application, the commissioner shall notify the multicare institution of the approval or denial of such application. If the satellite unit or other location is approved, that satellite unit or location shall be deemed to be licensed in accordance with this section and shall comply with the applicable requirements of this chapter and regulations adopted under this chapter.

(3) The Commissioner of Public Health may adopt regulations, in accordance with the provisions of chapter 54, to carry out the provisions of this subsection. The Commissioner of Public Health may implement policies and procedures necessary to administer the provisions of this subsection while in the process of adopting such policies and procedures as regulation, provided the commissioner prints notice of intent to adopt regulations in the Connecticut Law

Journal not later than twenty days after the date of implementation. Policies and procedures implemented pursuant to this section shall be valid until the time final regulations are adopted.

Appendix 5

Sec. 19a-498. (Formerly Sec. 19-582). Inspections, investigations, examinations and audits. Retention of records. (a) Subject to the provisions of section 19a-493, the Department of Public Health shall make or cause to be made a biennial licensure inspection of all institutions and such other inspections and investigations of institutions and examination of their records as the department deems necessary.

(b) The commissioner, or an agent authorized by the commissioner to conduct any inquiry, investigation or hearing under the provisions of this chapter, shall have power to inspect the premises of an institution, issue subpoenas, order the production of books, records or documents, administer oaths and take testimony under oath relative to the matter of such inquiry, investigation or hearing. At any hearing ordered by the department, the commissioner or such agent may subpoena witnesses and require the production of records, papers and documents pertinent to such inquiry. If any person disobeys such subpoena or, having appeared in obedience thereto, refuses to answer any pertinent question put to such person by the commissioner or such agent or to produce any records and papers pursuant to the subpoena, the commissioner or such agent may apply to the superior court for the judicial district of Hartford or for the judicial district wherein the person resides or wherein the business has been conducted, setting forth such disobedience or refusal, and said court shall cite such person to appear before said court to answer such question or to produce such records and papers.

(c) The Department of Mental Health and Addiction Services, with respect to any behavioral health facility or alcohol or drug treatment facility, shall be authorized, either upon the request of the Commissioner of Public Health or at such other times as they deem necessary, to enter such facility for the purpose of inspecting programs conducted at such facility. A written report of the findings of any such inspection shall be forwarded to the Commissioner of Public Health and a copy shall be maintained in such facility's licensure file.

(d) In addition, when the Commissioner of Social Services deems it necessary, said commissioner, or a designated representative of said commissioner, may examine and audit the financial records of any nursing home facility, as defined in section 19a-521, any residential care home, as defined in section 19a-521, or any nursing facility management services certificate holder, as defined in section 19a-561. Each nursing home facility, residential care home and nursing facility management services certificate holder shall retain all financial information, data and records relating to the operation of the nursing home facility or residential care home for a period of not less than ten years, and all financial information, data and records relating to any real estate transactions affecting such operation, for a period of not less than twenty-five years, which financial information, data and records shall be made available, upon request, to the Commissioner of Social Services or such designated representative at all reasonable times. In connection with any inquiry, examination or investigation, the commissioner or the commissioner's designated representative may issue subpoenas, order the production of books, records and documents, administer oaths and take testimony under oath. The Attorney General, upon request of said commissioner or the commissioner's designated representative, may apply to the Superior Court to enforce any such subpoena or order.

Appendix 6



DEPARTMENT OF HEALTH & HUMAN SERVICES

HEALTH CARE FINANCING ADMINISTRATION

DEPT. OF PUBLIC HEALTH
AND ADDICTION SERVICES

Office of the
Regional Administrator

MAR - 7 1994

Region I
John F. Kennedy Federal Bldg.
Government Center
Boston, MA 02203

ANSWERED

REFERRED

FILED

Susan Addiss, Commissioner
Department of Health Services
150 Washington Street
Hartford, Connecticut 06106

Dear Ms. Addiss:

The enclosed transmittal will serve as notice of the intention of the Health Care Financing Administration to update the 1864 Agreement to reflect changes as a result of legislation. These modifications are effective beginning October 1, 1993.

This notice is made in accordance with Article VII(B) of the current Agreement, which permits the Secretary to modify the Agreement to incorporate changes in the State's functions and responsibilities as a result of changes to the Act or regulations. These modifications merely update the Agreement to reflect changes as a result of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) and the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88).

Under Section 1864(a) of the Social Security Act (the Act), as amended by Section 4154(d) of OBRA 90 (PL 101-508), the States having Section 1864 Agreements with the Secretary are now obligated to perform inspections of laboratories, and other related activities, to determine compliance with the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88) whether or not the laboratories also participate in Medicare.

Accordingly, a transmittal containing the updated sections of the 1864 Agreement is enclosed. The transmittal cover sheet specifies and summarizes all changes and lists the changed pages for incorporation into the Agreement.

Several Articles of the Agreement have been updated to reference the Code of Federal Regulations (CFR) Title 42, Chapter IV, in addition to the references to Section 1864, 1874, and related provisions of the Act. These updates to the current agreement are necessary to maintain consistency with the law and to reflect the increased State agency responsibilities accruing as a result of changes in the law.

DEPARTMENT OF HEALTH	
HOSPITAL & MEDICAL CARE DIVISION	
RECEIVED	
MAR 10 1994	
ANSWERED	_____
REFERRED	_____
FILED	_____

DEPARTMENT OF HEALTH	
REGIONAL ADMINISTRATOR	
RECEIVED	
MAR 17 1994	
ANSWERED	_____
REFERRED	_____
FILED	_____

TRANSMITTAL OF REVISED PAGES OF THE SECTION 1864 AGREEMENT

The Section 1864 Agreement has been updated to reflect legislative charges as a result of PL100-360 and PL100-485 (home health agency toll-free hotline and complaint investigation), PL100-578 (Clinical Laboratory Improvement Amendments of 1988) and, PL101-508 (screening mammography).

The attached revised pages should be added or substituted for designated pages in the current Agreement, as indicated in the following instruction.

<u>REVISED MATERIAL</u>	<u>REVISED PAGES</u>	<u>REPLACED PAGES</u>
Cover Sheet and Index	1-ii (2 pages)	first 2 unnumbered pages
Articles I-II	1-5b (7 pages)	1-5 (5 pages)
Article IX	13 (1 page)	13 (1 page)
Article XV	18-19 (2 pages)	18 (1 page)

SUMMARY OF REVISIONS

Article I, Definitions and Delegations:

- (1) updates the supplier category by changing "independent laboratory" to "laboratory" (PL100-578) and adding screening mammography (PL101-508).
- (2) adds a definition for "other entity" to include laboratory (PL100-578), and
- (3) updates the definitions for "general instructions" and "regulations" to encompass legislative changes (PL100-578).

Article II, Functions to be Performed by the State, is updated to include:

A. Under Section 1864 of the Act

- (1) requirements of the Clinical Laboratory Improvement Amendments of 1988 (PL100-578) and the Code of Federal Regulations, Title 42, Chapter IV, and
- (2) home health agency toll-free hotline and complaint investigation maintained by the State (PL100-360 and PL100-485).

G. Effect of State and Local Licensing Requirements, provides for licensure of laboratories by States whose licensure programs have been approved by the Secretary under Section 353 of the Public Health Service Act.

Article IX, Cost of Administration, is updated to include Section M, which addresses the applicability to activities carried out in meeting the requirements of the Clinical Laboratory Improvement Amendments of 1988 (PL100-578) and the Code of Federal Regulations, Title 42, Chapter IV.

Article XV, Clauses Incorporated by Reference, is updated to include the Federal Acquisition Regulations (FAR) Clause entitled Electronic Funds Transfer, 52.232-28.2

Agreement Identifier Code: HCFA-85-CT-10/1/93 update

AGREEMENT BETWEEN

The Secretary of Health and Human Services

and

The State of Connecticut

To carry out the provisions of Sections 1864, 1874, and related provisions of the Social Security Act, as amended.

The Secretary of Health and Human Services, hereinafter referred to as the Secretary, and the State of Connecticut, (Department of Health & Addiction Services, Hospital and Medical Care Administration), hereinafter referred to as the State, hereby

agree to the following terms:

INDEX

Article No.	Title	Page No.
I.	Definitions and Delegations	1
II.	Functions to be Performed by the State	3
III.	Compliance with Regulations and General Instructions	5b
IV.	Organization and Personnel	6
V.	Evaluation	7
VI.	Term of Agreement	9
VII.	Modification of Agreement	9
VIII.	Termination of Agreement	9
IX.	Cost of Administration	10
X.	Subcontracting	13
XI.	Transfer of Funds Through Letter of Credit	15
XII.	Examination of Records	15
XIII.	Confidential Nature and Limitations on Use of Information and Records	16
XIV.	Disputes	16
XV.	Clauses Incorporated by Reference	18

Article I
DEFINITIONS AND DELEGATIONS

A. Definition of terms for the purpose of this Agreement:

1. "Secretary" means the Secretary of Health and Human Services or the Secretary's delegate, unless otherwise specified.
2. "Act" means Title XVIII of the Social Security Act, as amended.
3. "HCFA" means the Health Care Financing Administration.
4. "Provider" or "provider of services" means an institution, or distinct part of an institution, facility or agency defined in the Act and includes but is not limited to:
 - a. Hospitals

(1) General	(8) Maternity or Obstetric
(2) Short term	(9) Eye, Ear, Nose and Throat
(3) Children's and Adolescent/Children's	(10) Cancer/Oncology
(4) Christian Science Sanatoriums	(11) Psychiatric
(5) Medical-surgical	(12) Rehabilitation
(6) Orthopedic	(13) Long term
(7) Gynecological	(14) Swing Bed (Hospital providers or extended care services)
 - b. Skilled nursing facilities
 - c. Home health agencies
 - d. Providers of outpatient physical therapy and/or speech pathology services
 - e. Comprehensive outpatient rehabilitation facilities
 - f. Hospices
5. "Supplier" or "supplier of services" means an individual or entity whose services are described in the Act and includes but is not limited to:
 - a. Laboratories as defined in Section 1861(s) of the Act and in 42 CFR 493.2.
 - b. Suppliers of portable x-ray services
 - c. End-stage renal disease treatment facilities

- d. Chiropractors
- e. Rural health clinics
- f. Physical therapists in independent practice
- g. Ambulatory surgical centers
- h. Screening mammography services

6. "Other entity" means an individual or unit whose health services are not described in the Act, but are described in a related Federal law and includes but is not limited to:

Laboratories as defined in CLIA (P.L. 100-578). (N.B. this definition encompasses the provisions of Section 1861(s) of the Act as well as including many laboratories that do not participate in Medicare.)

7. "General instructions" means operating manuals, related written instructions, and guidelines of general application issued by the Secretary pursuant to the Act and regulations in respect to matters covered by this Agreement. A general instruction for purposes of this Agreement may not be issued below the level of the Secretary's designee (i.e., Director of the Office of Survey and Certification, Regional Administrator or Associate Regional Administrator).
8. "Regulations" unless otherwise specified means those regulations promulgated by the Secretary pursuant to the Act and codified in the Code of Federal Regulations, Title 42, Chapter IV.
9. "Federal Acquisition Regulation", as used in this contract, means those parts of the Federal Acquisition Regulation (FAR), as codified in Title 48, Chapter 1 of the Code of Federal Regulations, and includes the Department of Health and Human Services Acquisition Regulation. The term FAR as reference is made hereinafter, applies as in effect on the effective date of this Agreement and as may be modified on or before each June 15 thereafter for any renewal period.
10. "State" means the State which is a party to this Agreement and includes the State survey agency.
11. "State survey agency" refers to that component within the State government which has the primary responsibility for the performance of the functions under this Agreement.

12. "Subcontract" means any contract, agreement, purchase order, or lease (including leases of real property) to obtain space, supplies, equipment, or services under this Agreement; the term "subcontractor" means any holder of one or more subcontracts. "Subcontract" does not include an agreement between the State survey agency and other State or local government agencies.
13. "Trust Fund" means either the Federal Hospital Insurance Trust Fund established by Section 1817(a) of the Act or the Federal Supplementary Medical Insurance Trust Fund established by Section 1841(a) of the Act, or both, as may be appropriate in the context of this Agreement.

B. Federal delegations of authority for the purpose of this Agreement:

The Secretary of Health and Human Services has delegated the authority for the administration of this Agreement, except for the authority to terminate the Agreement under Section 1864 of the Act, to the Administrator of the Health Care Financing Administration. This authority has been redelegated by the Administrator to the Deputy Administrator and to the Associate Administrator for Operations, and has been further redelegated to the Deputy Associate Administrator for Operations and the Regional Administrators. The Regional Administrator may retain the authority or redelegate it further to an Associate Regional Administrator.

Certain responsibilities for the administration of the Act have been or may be delegated to the Inspector General of the Department of Health and Human Services or to other components of the Department.

Article II
FUNCTIONS TO BE PERFORMED BY THE STATE

A. Under Section 1864(a) of the Act

1. The State upon request of the Secretary shall certify whether or not providers/suppliers within the State that are participating or are asking to participate under the Act or under CLIA, comply with all applicable definitions and requirements in the Act and in implementing regulations.

In performing certification related duties, the functions of the State include, but are not limited to:

- (a) identifying potential providers and suppliers of services within the State;
- (b) explaining the requirements and conditions for qualifying as a provider or supplier of services;

- (c) surveying for the purpose of certifying to the Secretary compliance or non-compliance of providers and suppliers of services and resurveying such entities, at such times and manner as the Secretary may direct;
- (d) explaining requirements for an acceptable plan of correction for cited deficiencies; and
- (e) forwarding to the Secretary a completed Statement of Deficiencies and Plan of Correction, HCFA Form 2567, that is acceptable to the Secretary for each provider and supplier surveyed or resurveyed.

In making certifications the State shall apply the appropriate conditions of participation for providers and conditions for coverage for suppliers of services, including standards for life safety from fire, and other requirements incorporated by reference in the regulations. The application of such conditions, standards and requirements shall be in accordance with the nationally uniform survey procedures established in regulations and general instructions.

2. The State shall maintain:

(a) a toll-free hotline to:

- (1) collect, maintain, and update information on participating home health agencies; and
- (2) receive complaints and answer questions with respect to home health agencies.

(b) a unit for investigating such complaints that possesses enforcement authority and has access to relevant information.

B. Under Sections 1864(c) and 1865(a) of the Act

At the request of the Secretary, the State shall conduct validation surveys of institutions accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association on a selected sample basis, or because of substantial allegations of the existence of significant deficiencies. Complaints received by the State concerning accredited institutions shall be reported to the Secretary. To the extent that the Secretary finds it desirable, and in the interest of maintaining uniformity of results, representatives of the Secretary may join with the State in conducting validation surveys. The State shall assist the Secretary's representatives in investigating, documenting, and resolving differences between the findings reported by accrediting bodies and those obtained in validation surveys. The State shall similarly conduct validation surveys of providers and suppliers, accredited by other accrediting organizations on the same basis in accordance with regulations and general instructions of the Secretary.

C. Under Section 1874 of the Act

1. The State shall certify to the Secretary whether:
 - (a) Suppliers of portable x-ray services performing diagnostic x-ray tests described in Section 1861(s)(3) of the Act, meet the requirements of the Act and regulations;
 - (b) Chiropractors furnishing the services and supplies described in Sections 1861(s)(1) and 1861(s)(2)(A) of the Act, meet the requirements of Section 1861(r)(5), including whether such chiropractors are licensed or otherwise legally authorized to perform such services, and whether they meet the uniform minimum standards prescribed by the Secretary;
 - (c) End-stage renal disease treatment facilities meet the requirements of Section 1881 of the Act and implementing regulations prescribed by the Secretary;
 - (d) Physical therapists furnishing individuals with outpatient physical therapy or speech pathology services in such therapists' offices or in such individuals' homes meet the requirements of Section 1861(p) of the Act, and implementing regulations prescribed by the Secretary (including whether such physical therapists meet State licensure requirements); and
 - (e) Laboratories performing diagnostic laboratory services described in Sections 1861(s)(3), (13), (14) and (15) of the Act, meet the requirements of the Act, and regulations.
 - (f) Screening mammography services meet the requirements of Sections 1834 (c)(3) and 1861 (jj) of the Act and regulations prescribed by the Secretary.
2. The State shall assist the Secretary in collecting financial interest information that providers and suppliers are required to furnish pursuant to the Act and regulations.

D. Under Section 1819(e) and (g) of the Act

The State shall perform the prescribed functions related to skilled nursing facilities and the survey and certification process as set forth in the Act, regulations and program issuances.

E. Under the Code of Federal Regulations, Title 42, Chapter IV

1. The State shall perform the following functions related to the certification of laboratories:

(a) performing at least biennial inspections of each laboratory (except those qualifying for certificates of waiver or inspected by accreditation bodies) to assess compliance, including:

- (1) identifying and reporting of deficiencies;
- (2) evaluating personnel qualifications;
- (3) monitoring laboratory participation in an approved proficiency testing program; and
- (4) evaluating plans of correction and conducting related follow-up surveys.

(b) submitting recommendations to the Secretary concerning issuance of certificates, certificates of waiver and enforcement activity, as well as recommending sanctions;

(c) conducting validation surveys of a representative sample (specified by the Secretary) of laboratories inspected by accreditation organizations; and

(d) conducting surveys as required by the Secretary, such as complaint surveys or some surveys in certificate of waiver laboratories.

2. Exception: If the State operates an accreditation program approved by the Secretary, the Secretary will perform the validation surveys.

F. Under the Prospective Payment System (PPS)

The State shall conduct surveys of providers or parts of providers in connection with requests for exemption for PPS.

G. Effect of State and Local Licensing Requirements

The State shall certify whether or not a provider or supplier is eligible or continues to be eligible for participation in or coverage under the Medicare program. Licensure of laboratories by those States whose licensure programs have been approved by the Secretary under Section 353 (p) of the Public Health Service Act will suffice as certification for CLIA purposes.

H. Real Party in Interest

In the performance of the functions described in this Agreement, the State acts on behalf of the Secretary as a Federal contractor, carrying on for the Secretary, the administrative responsibilities imposed pursuant to law by applying and enforcing Federal standards. The Secretary, however, is the real party in interest in administering the program through this Agreement.

I. Records

The State, or any local governmental agency performing any function of the State under this Agreement, shall maintain pertinent survey, certification, statistical, or other records for a period of at least four (4) years after the date of such record.

J. Reports

The State shall make reports in the form and containing such information as the Secretary may require, and shall comply with such general instructions or regulations as the Secretary may issue regarding the accuracy of such reports. Where feasible and practicable such reporting requests will provide lead time that will facilitate any necessary adjustments in workload planning.

Article III

COMPLIANCE WITH REGULATIONS AND GENERAL INSTRUCTIONS

The State shall comply with such regulations and general instructions as the Secretary may prescribe for the administration of this Agreement. When feasible and practicable the State will be requested to apply its program knowledge and experience to participate in the development of general instructions.

Article IV
ORGANIZATION AND PERSONNEL

A. Organization

1. The State shall organize most of the functions under this Agreement within a single State survey agency.
2. The State shall provide facilities and employ qualified personnel necessary to carry out the functions under this Agreement. The placement of survey personnel within the State survey agency, or any other agency of the State dedicated to fulfilling the functions of this Agreement, shall be subject to the approval of HCFA.
3. With prior written authorization of the Secretary, the State may utilize the services, facilities, and records of any other State agency or local governmental agency to assist the State survey agency in carrying out the functions authorized by this Agreement. Only the reasonable and necessary costs incurred by such agencies in furnishing to the State survey agency such services, facilities, or records, may be allowed under this Agreement, in accordance with Article IX.

B. Personnel

1. Personnel of the State performing functions under this Agreement shall meet the Federal surveyor qualification standards specified in general instructions.
2. Upon request of the Secretary, personnel employed or utilized by the State in carrying out the functions under this Agreement will participate in programs designed to develop and maintain the proficiency of personnel directly involved in survey or certification activities. These programs include but are not limited to surveyor orientation, basic surveyor training, and specialty surveyor training. Survey personnel will attend meetings, conferences, or training programs within or outside the State as may be required by the Secretary.
3. The State shall require any local governmental agency performing services pursuant to Paragraph A, section 2, of this Article to follow the general instructions applicable to surveyor qualifications and the merit system standards applicable to the State.

4. Standards for a merit system of personnel administration consistent with the Federal regulation in 5 CFR, Chapter I, Subpart F - Standards for a Merit System of Personnel Administration, shall be maintained by the State and made applicable to personnel in any State or local agency involved in the performance of this Agreement.

Article V EVALUATION

- A. The Secretary has the right periodically to evaluate the State's performance under this Agreement. The Secretary may maintain onsite representatives with the State or a subcontractor for the duration of any such evaluation.
- B. When an evaluation is made by the Secretary on the premises of the State or a subcontractor, the State shall provide, and shall require its subcontractor(s) to provide, all reasonable facilities and assistance for the safety and convenience of the Secretary's representatives in the performance of their functions. The State shall furnish to the Secretary such records and reports as the Secretary may require to evaluate the State's performance under this Agreement. All evaluations by the Secretary shall be performed in such a manner as will not unduly delay the State's functions under this Agreement.
- C. The Secretary makes evaluations primarily through a planned program of Federal surveys of providers and suppliers previously surveyed by the State and through its national State Agency Evaluation Program (SAEP).

The SAEP is designed to evaluate the manner and extent to which the State meets performance standards. Major operational specifics for the performance standards are detailed in the State Operations Manual (HCFA Pub. 7).

The performance standards include, but are not limited to the following:

1. Organization and staffing of the State survey agency to enable fulfillment of the functions required under this Agreement.
2. Surveys are planned, scheduled, conducted, and processed timely.
3. Survey findings are supportable.
4. Certifications are fully documented, and consistent with applicable law, regulations, and general instructions.
5. Current written internal operating procedures are consistent with program requirements.

6. A plan of correction is requested from a provider/supplier having deficiencies that do not pose an immediate and/or serious threat to patients, or do not limit the capacity to furnish care or services. The State follows up with providers and suppliers until deficiencies are corrected.
 7. When certifying noncompliance, adverse action procedures set forth in regulations and general instructions are adhered to.
 8. Supervisory reviews and evaluations of surveyor performance are made routinely.
 9. Required financial and budget reports are submitted on time and completed in accordance with general instructions.
 10. All expenditures and charges to the program are substantiated to the Secretary's satisfaction.
 11. Actual survey and certification activities are consistent with the annual activity plan and workload estimate approved by HCFA.
 12. The performance of agencies utilized to perform specific functions under this Agreement are monitored.
 13. Ongoing surveyor training programs develop and maintain surveyor proficiency.
 14. Results of complaint investigations against providers and suppliers are considered in making certification decisions.
- D. If a formal evaluative report is prepared that reflects deficiencies in the State's performance under this Agreement or proposes corrective action to be taken by the State, the Secretary shall:
1. furnish a copy to the State; and
 2. discuss any corrective actions proposed in the report with the State in order to establish reasonable and practicable time frames for implementation.
- E. When the Secretary determines that the State is not able or is not willing to perform part or all of the functions and responsibilities prescribed in this Agreement, the Secretary may terminate the Agreement in whole or in part, in accordance with Article VIII.

Article VI
TERM OF AGREEMENT

- A. This Agreement shall begin on October 1, 1991, and end on September 30, 1992. The Agreement is automatically renewed for periods of one (1) year unless the Secretary or the State gives written notice of its intention not to renew the Agreement at least 90 days from the end of the current term.
- B. Any notice under Paragraph A of this Article shall be deemed to have been given upon the date such notice was mailed, as established by the postmark or other appropriate evidence of the date of transmittal. Whenever the State gives notice of its intention not to renew this Agreement it shall, prior to mailing such notice, notify the appropriate HCFA Regional Administrator, by telephone or other oral communications, of its intention not to renew this Agreement.

Article VII
MODIFICATION OF AGREEMENT

- A. This Agreement may be modified at any time by mutual written consent of the Secretary and the State.
- B. The Secretary may modify this Agreement to incorporate changes in the State's functions and responsibilities as a result of changes to the Act or regulations.
- C. Prior to any modification under Paragraph B of this Article, the Secretary shall consult with the State and participate in planning for adjustments which might be necessary. Thereafter, the Secretary shall provide the State written notice that the modification is to be made not more than 90 days after the date specified in the notice (or such other date as may be required by statute). If the State notifies the Secretary within 10 days of receipt of the Secretary's notification, the State may terminate this Agreement not less than 90 days after the date specified in the notice and shall not be required to implement any modification of this Agreement provided for in such notification during such 90 day period.

Article VIII
TERMINATION OF AGREEMENT

- A. This Agreement may be terminated at any time by mutual written consent of the parties to the Agreement.
- B. The State may terminate this Agreement at any time upon 180 days written notice to the Secretary.
- C. If the Secretary determines that the State is not able or willing to carry out part or all of the functions under this Agreement (including a determination that the State has failed to meet a performance standard(s) as described in Article V and detailed in the State Operations Manual), the Secretary may terminate the Agreement in whole or in part, or exclude specific classes of providers and/or suppliers identified in Article I from the State's survey and certification functions under this Agreement, or otherwise limit or decrease its scope.
- D. If this Agreement is terminated pursuant to the terms of this Article, the State shall be paid the allowable costs incurred in terminating this Agreement in accordance with Article IX, Paragraph F.

- E. If this Agreement is terminated or nonrenewed by either the Secretary or the State, the State shall use its best efforts to accomplish an orderly transition of its functions under this Agreement to the successor survey entity.

Article IX
COST OF ADMINISTRATION

- A. The Secretary's fiscal obligation under this Agreement is contingent upon the apportionment to the Secretary of appropriated funds for the applicable fiscal year from which payment for the cost of performing the functions of this Agreement can be made. No legal liability on the part of the Secretary for any payment, nor any legal obligation of the State to perform, may arise until the State receives notice from the Secretary that funds have been made available for this Agreement. Moreover, in no event shall the Secretary's obligation under this Agreement exceed the amount of funds which have been obligated to this Agreement.
- B. The State will be given sufficient opportunity prior to the beginning of every Federal fiscal year to prepare a State survey agency activity plan and budget estimate based on HCFA's activity plan and budget estimate for that forthcoming Federal fiscal year. On this basis, the State will submit to the Secretary, at such time and in such form as the Secretary may prescribe, a budget request that provides an estimate of costs to be incurred by the State (through the State survey agency and other State and local agencies) for performing the functions under this Agreement for the period corresponding to the Federal fiscal year that begins on October 1 and ends on September 30. The budget request will include cost estimates accompanied by such supporting documents as may be prescribed by the Secretary.
- C. The Secretary will not reimburse the State for any costs attributable to the general expenses of the State in carrying out functions of State government which are not related to this Agreement. The State budget request must equitably apportion the costs attributable to expenses incurred by the State for conducting activities related to but distinguishable from, activities conducted under the Act and this Agreement. The Secretary will reimburse the State for HCFA's fair share of the costs attributable to such planning and other efforts as the State may perform directed towards the coordination of activities in carrying out this Agreement and other activities related to the provision of services similar to those for which payment may be made under the Act, or related to the facilities and personnel required for the provision of services, or related to improving the quality of such services. The Secretary will determine the amount of such costs allocable to this Agreement on the basis of information submitted by the State, setting forth the plans proposed for coordinating its functions under this Agreement with such other activities.

- D. The Secretary and the State will negotiate the amount of the annual budget, and any revisions thereto, based on the budget request submitted by the State. After the negotiations between the Secretary and the State on the amount of the annual budget, or any revisions thereto, the Secretary will issue a notice specifying such budget in an amount calculated to pay the costs of administering this Agreement. Such budgeted amount for the purpose of obligation of funds by the Secretary shall be a ceiling which the State may not exceed without the prior written approval of the Secretary.

The State may, at any time during the fiscal year, submit appropriate revisions to the estimated amount of its budget as a result of any modification to this Agreement or functions thereunder. The Secretary will determine if a revision to the amount of the estimated budget is appropriate and on that basis will make any adjustments to the budgeted amount.

- E. If at any time it appears to the State that the budgeted amount is not sufficient to cover costs incurred and estimated to be incurred in the fiscal year, the State shall so notify the Secretary promptly. Such notification may be by telephone or telegraph with later confirmation by letter and will contain proposals as to how costs expected to be incurred may be reduced. The Secretary and the State will promptly negotiate ways and means of resolving the matter for the purpose of ensuring that the State will not incur costs in excess of the budgeted reduction of functions to be performed by the State, a combination of both, or such other ways and means as may be agreeable to the parties. If, after negotiating in good faith, the parties are unable to find a satisfactory solution to the matter, the Secretary will give the State written notice as to what measures to take in order to avoid incurring costs in excess of the budgeted amount.

Notwithstanding any other provisions of this Agreement, if the Secretary notifies the State to abate the performance of a function, there shall be no obligation on the part of the Secretary for costs incurred by the State in the performance of such function beyond the effective date of the notice to abate or the date such notice is received, whichever is later.

However, the allowability of any costs incurred by the State in the implementation of any such abatement directed by the Secretary will be governed by the provisions of the Federal Acquisition Regulation applicable to termination costs.

- F. The Secretary is not obligated to reimburse the State for costs incurred in excess of the budgeted amount. The State is not obligated to incur costs in excess of the budgeted amount until the Secretary notifies the State, in writing, that the budgeted amount has been increased.

- G. Subject to the foregoing provisions of this Article, the Secretary shall pay to the State the total amount of allowable costs incurred by the State in the performance of this Agreement. The costs allowable under this Agreement will be determined in accordance with Subpart 31.6 of the Federal Acquisition Regulation.

The FAR provides that the allowability of costs under the Agreement will be determined in accordance with Office of Management and Budget Circular No. A-87, "Cost Principles for State and Local Governments."

- H. The State shall comply with applicable regulations and general instructions for property purchased with funds provided under this Agreement. Funds provided by the Secretary under this Agreement will be used solely for the reasonable and necessary costs of the State in performing the functions authorized by this Agreement.
- I. If the State utilizes any service or material purchased or contracted for pursuant to this Agreement for purposes other than those authorized by the Agreement, the cost of such service or material will prorated, pursuant to State Operations Manual procedures issued by the Secretary and applicable cost principles. Only that part that is attributable to the performance of functions authorized by this Agreement may be considered a reasonable and necessary cost for the performance of this Agreement.
- J. The State shall submit to the Secretary a report, including supporting data, of the allowable costs incurred by it during each quarter of the Federal fiscal year. This report is due to the Secretary no later than 30 days after the close of the quarter in which such costs were incurred.

Negotiations on the amount of administrative costs of the State to be allowed by the Secretary shall be undertaken by the Secretary and the State, based upon the State's quarterly statements.

Such items of costs on which the Secretary and the State are unable to agree will continue to be negotiated and, if not resolved, are subject to a subsequent determination by the Secretary in accordance with Paragraph K of this Article. To the extent unpaid, such amounts which are agreed upon shall be paid promptly by the Secretary.

- K. If the Secretary and the State are unable to agree upon a final amount of the administrative costs of the State for a particular quarter or other period, the Secretary shall issue a final determination of the amount of such administrative costs for such period and inform the State of such costs, with a full explanation of the exceptions taken to the State's report of its allowable costs.

The State may appeal the final determination in accordance with the provisions of Article XIV of this Agreement, entitled "Disputes." Where a particular cost or type of cost is disallowed by final determination of the Secretary, and the State is not in agreement with the Secretary's disallowance, the State shall, for any subsequent claims, abide by the decision of the Secretary and agrees not to be reimbursed pending resolution of any amounts of such costs. Until the issue is resolved, the State shall segregate such costs from all others, and specify the amounts of such costs on all subsequent claims. Any funds withdrawn through the letter of credit in excess of the amount finally determined to be allowable must be returned promptly to the Secretary.

- L. The State shall furnish or make available such supplemental accounts, records, or other information as may be requested by the Secretary to substantiate any estimates, expenditures, or reports as may be necessary for auditing purposes, or to verify the allowability of the State's expenditures under this Agreement.
- M. All sections in this article are applicable for activities carried out by the State under the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) and the Code of Federal Regulations, Title 42, Chapter IV. The State shall submit a separate budget request and cost report for CLIA '88 activities, and the Secretary will reimburse the State for those costs incurred in performing the functions referred to in Article II, Section D, which are allowable under the terms of this Agreement.

Article X SUBCONTRACTING

- A. The State shall not enter into any subcontract to perform any of the functions set forth in Article II of this Agreement unless such subcontract receives the prior written approval of the Secretary.
- B. The State shall not enter into any subcontract under this Agreement not controlled by Paragraph A of this Article, if any part of the cost of the subcontract is allocable to this Agreement and if the subcontract provides for payment on a cost-plus-fixed-fee-basis, regardless of amount, or where the estimated cost of such subcontract exceeds, or is expected to exceed \$25,000, without the prior written approval of the Secretary.

- C. Any modification to a subcontract which requires the prior written approval of the Secretary must be submitted to the Secretary for prior written approval.
- D. If the State enters into a subcontract, or modifies an existing subcontract without the prior written approval of the Secretary, where required, the Secretary is not obligated to reimburse the State for costs incurred with respect to such subcontract or modification.
- E. The requirement for prior written approval may be waived by the Secretary in writing, where requiring such approval is administratively impracticable and the State secures the waiver in advance of entering into or modifying a subcontract. In addition, the Secretary may ratify any subcontract in writing. Such ratification shall constitute the approval of the Secretary.
- F. Prior written approval given by the Secretary with respect to a subcontract or modification hereto does not constitute a determination of the allowability of costs, unless so stipulated.
- G. The State shall select subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Agreement.
- H. For any subcontract or modification of a subcontract entered into or renewed under this Agreement, where the estimated cost to this Agreement under the subcontract exceeds \$500,000 and is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the State shall, in accordance with Subpart 15.8 of the Federal Acquisition Regulation, require the subcontractor to submit written cost or pricing data and certify that the cost or pricing data submitted were accurate, complete, and current prior to the entry into the subcontract or modification of a subcontract. The State shall, through inclusion in all such subcontracts, require subcontractors to maintain full and complete accounting records, support costs or pricing data submitted as aforesaid, to require subcontractors to provide for full access by the State, the Secretary, and the Comptroller General of the United States for the purpose of examining the accuracy of cost or pricing data submitted as aforesaid, and in accordance with Subpart 15.8 of the Federal Acquisition Regulation, to agree to a reduction in price if the cost of pricing data submitted are found to be defective.
- I. No subcontract under this Agreement may provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under limitations in subsection 16.301-3 of the Federal Acquisition Regulation.

Article XI
TRANSFER OF FUNDS THROUGH LETTER OF CREDIT

- A. The Secretary will provide for an advance of funds by a letter of credit to the State's designated commercial bank to authorize the withdrawal of funds from the United States Treasury in accordance with the governing Treasury instruction 31 CFR Part 205 (Circular No. 1075). Each letter of credit will authorize the State's commercial bank to process payment vouchers drawing on funds made available through the Federal Reserve Bank or branch. More specific Letter of Credit procedures are provided to each State via the Departmental Federal Assistance Financing System Users Guide.
- B. The letter of credit will specify a maximum monthly amount that may be withdrawn during each month by the State. Such amounts will normally be 1/12 of the approved annual budget unless the Secretary and the State have agreed to other allotments of payment. Amounts available for withdrawal but not withdrawn in any month may be carried over to the following months within the fiscal year. The authorized official of the State may make withdrawals only to the extent that funds are currently needed to meet estimated expenditures. Withdrawals may not be made to the extent that cash on hand or in banks renders further withdrawals unnecessary or premature. If the amount specified in the letter of credit is not sufficient to meet estimated expenditures, the letter of credit may be modified by the Secretary.

Article XII
EXAMINATION OF RECORDS

- A. The Secretary and the Comptroller General of the United States or a duly authorized representative, until three (3) years after final payment under this Agreement or for any other period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, "Contractor Records Retention," has access to and the right to examine any of the State's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement.
- B. The State agrees to include in first-tier subcontracts under this Agreement a clause to the effect that the Secretary and the Comptroller General or a duly authorized representative, until three (3) years after final payment under the subcontract or for any other period specified in FAR Subpart 4.7, has access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this Article, excludes (1) purchase orders not exceeding \$10,000; and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

- C. The periods of access and examination in Paragraphs A and B above for records relating to (1) appeals under Article XIV; (2) litigation or settlement of claims arising from the performance of this Agreement or; (3) costs and expenses of this Agreement to which the Secretary or the Comptroller General or a duly authorized representative has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally disposed of.

Article XIII

CONFIDENTIAL NATURE AND LIMITATIONS ON USE OF INFORMATION AND RECORDS

- A. The State shall adopt policies and procedures to ensure that information contained in its records and obtained from the Secretary or from any provider or supplier of service will be disclosed only as provided in the Act or regulations.
- B. The Privacy Act of 1974, 5 U.S.C. 552a, is applicable to this Agreement in accordance with Paragraph A(11) of Article XV.

Article XIV

DISPUTES

- A. This Agreement is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), referred to in this Article as the "CDA."
- B. Except as provided in the CDA, all disputes arising under or relating to this Agreement shall be resolved under this Article.
- C. "Claim," as used in this Article, means a written demand or written assertion by one of the parties to this Agreement seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Agreement. A claim arising under an Agreement, unlike a claim relating to that Agreement, is a claim that can be resolved under an Article of the Agreement that provides for the relief sought by the claimant. However, a written demand or written assertion by the State seeking the payment of money exceeding \$50,000 is not a claim under the CDA until certified as required by Paragraph D, section 2 of this Article. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the CDA. The submission may be converted to a claim under the CDA, by complying with the submission and certification requirements of this Article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- D. 1. A claim by the State shall be made in writing and submitted to the Secretary for a written decision. A claim by the Government against the State shall be subject to a written decision by the Secretary.

2. For State claims exceeding \$50,000, the State shall submit with the claim a certification that:
 - (a) the claim is made in good faith;
 - (b) supporting data are accurate and complete to the best of the State's knowledge and belief; and
 - (c) the amount requested accurately reflects the contract adjustment for which the State believes the Government is liable.
3. The certification shall be executed by:
 - (a) the State official in charge of the State survey agency or the agency of which the State survey agency is a component; or
 - (b) as appropriate, an official of the State having overall responsibility for the conduct of the State's affairs.
- E. For State claims of \$50,000 or less the Secretary must, if requested in writing by the State, render a decision within 60 days of the request. For State certified claims over \$50,000, the Secretary must, within 60 days, decide the claim or notify the State of the date by which the decision will be made.
- F. The Secretary's decision shall be final unless the State appeals or files a suit as provided in the CDA.
- G. The Government shall pay interest on the amount found due and unpaid from (1) the date the Secretary receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that day is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the CDA, which is applicable to the period during which the Secretary receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- H. The State shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Secretary.

Article XV
CLAUSES INCORPORATED BY REFERENCE

The following clauses are hereby incorporated into and are made a part of this Agreement. For purposes of these clauses, the term "Contractor" means the "State," and "Contracting Officer" or "Project Officer" means the "Secretary" or "Secretary's designee."

A. Federal Acquisition Regulation (FAR) Clauses (48 CFR Chapter 1)

<u>Title</u>	<u>FAR Reference</u>
1. Officials Not To Benefit	52.203-1
2. Gratuities	52.203-3
3. Restrictions on Subcontractor Sales to the Government	52.203-6
4. Anti-Kickback Procedures	52.203-7
5. Requirement for Certificate of Procurement Integrity--Modification	52.203-9
6. Limitation on Payments to Influence Certain Federal Transactions	52.203-12
7. Price Reduction for Defective Cost or Pricing Data 52.215-22	
8. Price Reduction for Defective Cost or Pricing Data--Modifications	52.215-23
9. Subcontractor Cost or Pricing Data	52.215-24
10. Subcontractor Cost or Pricing Data--Modifications	52.215-25
11. Utilization of Small Business Concerns and Small Disadvantaged Business Concerns	52.219-8
12. Small Business and Small Disadvantaged Business Subcontracting Plan	52.219-9
13. Utilization of Women-Owned Small Businesses	52.219-13
14. Utilization of Labor Surplus Area Concerns	52.220-3
15. Notice to the Government of Labor Disputes	52.222-1
16. Convict Labor	52.222-3
17. Equal Opportunity	52.222-26
18. Affirmative Action for Special Disabled and Vietnam Era Veterans	52.222-35
19. Affirmative Action for Handicapped Workers	52.222-36
20. Employment Reports on Special Disabled and Vietnam Era Veterans	52.222-37
21. Clean Air and Water	52.223-2
22. Drug Free Workplace	52.223-6
23. Privacy Act Notification	52.224-1
24. Privacy Act	52.224-2
25. Restrictions on Contracting with Sanctioned Persons	52.225-13
26. Rights in Data - General	52.227-14
27. Limitation on Withholding of Payment	52.232-9

28. Assignment of Claims	52.232-23
29. Protest After Award	52.233-3
30. Notice of Intent to Disallow Costs	52.242-1
31. Government Property	52.245-5
32. Clauses Incorporated by Reference	52.252-2

B. Department of Health and Human Services Acquisition
Regulation (HHSAR) Clauses (48 CFR Chapter 3)

<u>Title</u>	<u>HHSAR Reference</u>
1. Required Insurance	352.228-70
2. Withholding of Contract Payments	352.232-9
3. Litigation and Claims	352.233-70
4. Final Decisions on Audit Findings	352.242-71
5. Paperwork Reduction Act	352.270-7

X-AG-1

AGREEMENT Identifier Code: HCFA-85-CT

AGREEMENT BETWEEN

The Secretary of Health and Human Services

and

The State of Connecticut

To carry out the provisions of Sections 1864, 1874, and related provisions of the Social Security Act, as amended.

The Secretary of Health and Human Services, hereinafter referred to as the Secretary, and the State of Connecticut

(State of Connecticut Department of Health Services),
State Survey Agency

hereinafter referred to as the State, hereby agree to the following terms:

INDEX

Article No.	Title	Page No.
I.	Definitions and Delegations	1
II.	Functions to be Performed by the State	3
III.	Compliance with Regulations and General Instructions	5
IV.	Organization and Personnel	6
V.	Evaluation	7
VI.	Term of Agreement	9
VII.	Modification of Agreement	9
VIII.	Termination of Agreement	9
IX.	Cost of Administration	10
X.	Subcontracting	13
XI.	Transfer of Funds Through Letter of Credit	15
XII.	Examination of Records	15
XIII.	Confidential Nature and Limitations on Use of Information and Records	16
XIV.	Disputes	16
XV.	Clauses Incorporated by Reference	18

Article I
DEFINITIONS AND DELEGATIONS

A. Definition of terms for the purpose of this Agreement:

1. "Secretary" means the Secretary of Health and Human Services or the Secretary's delegate, unless otherwise specified.
2. "Act" means Title XVIII of the Social Security Act, as amended.
3. "HCFA" means the Health Care Financing Administration.
4. "Provider" or "provider of services" means an institution, or distinct part of an institution, facility or agency defined in the Act and includes but is not limited to:

a. Hospitals

- | | |
|--|---|
| (1) General | (8) Maternity or Obstetric |
| (2) Short term | (9) Eye, Ear, Nose and Throat |
| (3) Children's and Adolescent/Children's | (10) Cancer/Oncology |
| (4) Christian Science Sanatoriums | (11) Psychiatric |
| (5) Medical-surgical | (12) Rehabilitation |
| (6) Orthopedic | (13) Long term |
| (7) Gynecological | (14) Swing Bed (Hospital providers of extended care services) |

b. Skilled nursing facilities

c. Home health agencies

d. Providers of outpatient physical therapy and/or speech pathology services

e. Comprehensive outpatient rehabilitation facilities

f. Hospices

5. "Supplier" or "supplier of services" means an individual or entity whose services are described in the Act and includes but is not limited to:

a. Independent laboratories

b. Suppliers of portable X-ray services

- c. End-stage renal disease treatment facilities
 - d. Chiropractors
 - e. Rural health clinics
 - f. Physical therapists in independent practice
 - g. Ambulatory surgical centers
6. "General instructions" means operating manuals, related written instructions, and guidelines of general application issued by the Secretary pursuant to the Act and regulations in respect to matters covered by this Agreement. A general instruction for purposes of this Agreement may not be issued below the level of the Secretary's designee (i.e. Director of the Office of Survey and Certification, Regional Administrator or Associate Regional Administrator).
 7. "Regulations" unless otherwise specified, means those regulations promulgated by the Secretary pursuant to the Act and codified in the Code of Federal Regulations, Title 42, Chapter IV.
 8. "Federal Acquisition Regulation" means those parts of the Federal Acquisition Regulation (FAR) to which reference is made herein-after, as in effect on April 1, 1984, codified in Title 48 of the Code of Federal Regulations, and includes the Department of Health and Human Services Acquisition Regulation.
 9. "State" means the State which is a party to this Agreement and includes the State survey agency.
 10. "State survey agency" refers to that component within the State government which has the primary responsibility for the performance of the functions under this Agreement.
 11. "Subcontract" means any contract, agreement, purchase order, or lease (including leases of real property) to obtain space, supplies, equipment, or services under this Agreement; the term "subcontractor" means any holder of one or more subcontracts. "Subcontract" does not include an agreement between the State survey agency and other State or local government agencies.
 12. "Trust Fund" means either the Federal Hospital Insurance Trust Fund established by Section 1817(a) of the Act or the Federal Supplementary Medical Insurance Trust Fund established by Section 1841(a) of the Act, or both, as may be appropriate in the context of this Agreement.

B. Federal delegations of authority for the purpose of this Agreement:

The Secretary of Health and Human Services has delegated the authority for the administration of this Agreement, except for the authority to terminate the Agreement under Section 1864 of the Act, to the Administrator of the Health Care Financing Administration. This authority has been

redelegated by the Administrator to the Deputy Administrator and to the Associate Administrator for Operations, and has been further redelegated to the Deputy Associate Administrator for Operations and the Regional Administrators. The Regional Administrator may retain the authority or redelegate it further to an Associate Regional Administrator.

Certain responsibilities for the administration of the Act have been or may be delegated to the Inspector General of the Department of Health and Human Services or to other components of the Department.

Article II FUNCTIONS TO BE PERFORMED BY THE STATE

A. Under Section 1864(a) of the Act

1. The State upon request of the Secretary shall certify whether or not providers/suppliers within the State that are participating or are asking to participate under the Act, comply with all applicable definitions and requirements in the Act and in implementing regulations.

In performing certification related duties, the functions of the State include, but are not limited to:

- (a) identifying potential providers and suppliers of services within the State;
- (b) explaining the requirements and conditions for qualifying as a provider or supplier of services;
- (c) surveying for the purpose of certifying to the Secretary compliance or non-compliance of providers and suppliers of services and resurveying such entities, at such times and manner as the Secretary may direct;
- (d) explaining requirements for an acceptable plan of correction for cited deficiencies; and
- (e) forwarding to the Secretary a completed Statement of Deficiencies and Plan of Correction, HCFA Form 2567, that is acceptable to the Secretary for each provider and supplier surveyed or resurveyed.

In making certifications the State shall apply the appropriate conditions of participation for providers and conditions for coverage for suppliers of services, including standards for life safety from fire, and other requirements incorporated by reference in the regulations. The application of such conditions, standards and requirements shall be in accordance with the nationally uniform survey procedures established in regulations and general instructions.

B. Under Sections 1864(c) and 1865(a) of the Act

1. At the request of the Secretary, the State shall conduct validation surveys of institutions accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association on a selected sample basis, or because of substantial allegations of the existence of significant deficiencies. Complaints concerning accredited institutions received by the State shall be reported to the Secretary. To the extent that the Secretary finds it desirable and in the interest of maintaining uniformity of results, representatives of the Secretary may join with the State in conducting validation surveys. The State shall assist the Secretary's representatives in investigating, documenting, and resolving differences between the findings reported by accrediting bodies and those obtained in validation surveys. The State shall similarly conduct validation surveys of providers and suppliers, accredited by other accrediting organizations on the same basis in accordance with regulations and general instructions of the Secretary.
2. Exception. Validation surveys on a selective sample basis of clinical laboratories in accredited hospitals are not covered by this Agreement.

C. Under Section 1874 of the Act

1. The State shall certify to the Secretary whether:
 - (a) Suppliers of portable X-ray services performing diagnostic X-ray tests described in Section 1861(s)(3) of the Act, meet the requirements of the Act and regulations;
 - (b) Chiropractors furnishing the services and supplies described in Sections 1861(s)(1) and 1861(s)(2)(A) of the Act, meet the requirements of Section 1861(r)(5), including whether such chiropractors are licensed or otherwise legally authorized to perform such services, and whether they meet the uniform minimum standards prescribed by the Secretary;
 - (c) End-stage renal disease treatment facilities meet the requirements of Section 1881 of the Act and implementing regulations prescribed by the Secretary;
 - (d) Physical therapists furnishing individuals with outpatient physical therapy or speech pathology services in such therapists' offices or in such individuals' homes meet the requirements of Section 1861(p) of the Act, and implementing regulations prescribed by the Secretary (including whether such physical therapists meet State licensure requirements).
 - (e) Independent clinical laboratories performing diagnostic laboratory services described in Sections 1861(s)(3), (11) and (12) of the Act, meet the requirements of the Act and regulations.
 - (f) Clinical laboratories performing tests (diagnostic laboratory services) or procedures in interstate commerce meet the

requirements of the Clinical Laboratory Improvement Act
(Section 353 of the Public Health Service Act, 42 USC 263a)
and regulations (42 CFR Part 74).

2. The State shall assist the Secretary in collecting financial interest information that providers and suppliers are required to furnish pursuant to the Act and regulations.

D. Under the Prospective Payment System (PPS)

The State shall conduct surveys of providers or parts of providers in connection with requests for exemption from PPS.

E. Effect of State and Local Licensing Requirements

The State shall certify whether or not a provider or supplier is eligible or continues to be eligible for participation in or coverage under the Medicare program whether or not that State's licensure program provides for the licensing of that provider or supplier.

F. Real Party in Interest

In the performance of the functions described in this Agreement, the State acts on behalf of the Secretary as a Federal contractor, carrying on for the Secretary, the administrative responsibilities imposed pursuant to law by applying and enforcing Federal standards. The Secretary, however, is the real party in interest in administering the program established by the Act.

G. Records

The State, or any local governmental agency performing any function of the State under this Agreement, shall maintain pertinent survey, certification, statistical, or other records for a period of at least four (4) years after the date of such record.

H. Reports

The State shall make reports in the form and containing such information as the Secretary may require, and shall comply with such general instructions or regulations as the Secretary may issue regarding the accuracy of such reports. Where feasible and practicable such reporting requests will provide lead time that will facilitate any necessary adjustments in workload planning.

Article III
COMPLIANCE WITH REGULATIONS AND GENERAL INSTRUCTIONS

The State shall comply with such regulations and general instructions as the Secretary may prescribe for the administration of this Agreement. When feasible and practicable the State will be requested

to apply its program knowledge and experience to participate in the development of general instructions.

Article IV
ORGANIZATION AND PERSONNEL

A. Organization

1. The State shall organize most of the functions under this Agreement within a single State survey agency.
2. The State shall provide facilities and employ qualified personnel necessary to carry out the functions under this Agreement. The placement of survey personnel within the State survey agency, or any other agency of the State dedicated to fulfilling the functions of this Agreement, shall be subject to the approval of HCFA.
3. With the prior written authorization of the Secretary, the State, may utilize the services, facilities, and records of any other State agency or local governmental agency to assist the State survey agency in carrying out the functions authorized by this Agreement. Only the reasonable and necessary costs incurred by such agencies in furnishing to the State survey agency such services, facilities, or records, may be allowed under this Agreement, in accordance with Article IX.

B. Personnel

1. Personnel of the State performing functions under this Agreement shall meet the Federal surveyor qualification standards specified in general instructions.
2. Upon request of the Secretary, personnel employed or utilized by the State in carrying out the functions under this Agreement will participate in programs designed to develop and maintain the proficiency of personnel directly involved in survey or certification activities. These programs include but are not limited to surveyor orientation, basic surveyor training, and specialty surveyor training. Survey personnel will attend meetings, conferences, or training programs within or outside the State as may be required by the Secretary.
3. The State shall require any local governmental agency performing services pursuant to Paragraph A, section 2, of this Article to follow the general instructions applicable to surveyor qualifications and the merit system standards applicable to the State.

4. Standards for a merit system of personnel administration consistent with the Federal regulation in 5 CFR, Chapter 1, Subpart F - Standards for a Merit System of Personnel Administration, shall be maintained by the State and made applicable to personnel in any State or local agency involved in the performance of this Agreement.

Article V
EVALUATION

- A. The Secretary has the right periodically to evaluate the State's performance under this Agreement. The Secretary may maintain onsite representatives with the State or a subcontractor for the duration of any such evaluation.
- B. When an evaluation is made by the Secretary on the premises of the State or a subcontractor, the State shall provide, and shall require its subcontractor(s) to provide, all reasonable facilities and assistance for the safety and convenience of the Secretary's representatives in the performance of their functions. The State shall furnish to the Secretary such records and reports as the Secretary may require to evaluate the State's performance under this Agreement. All evaluations by the Secretary shall be performed in such a manner as will not unduly delay the State's functions under this Agreement.
- C. The Secretary makes evaluations primarily through a planned program of Federal surveys of providers and suppliers previously surveyed by the State and through its national State Agency Evaluation Program (SAEP).

The SAEP is designed to evaluate the manner and extent to which the State meets performance standards. Major operational specifics for the performance standards are detailed in the State Operations Manual (HCFA Pub. 7).

The performance standards include, but are not limited to the following:

1. Organization and staffing of the State survey agency enables fulfillment of the functions required under this Agreement.
2. Surveys are planned, scheduled, conducted, and processed timely.
3. Survey findings are supportable.
4. Certifications are fully documented, and consistent with applicable law, regulations, and general instructions.
5. Current written internal operating procedures are consistent with program requirements.

6. A plan of correction is requested from a provider/supplier having deficiencies that do not pose an immediate and/or serious threat to patients, or do not limit the capacity to furnish care or services. The State follows up with providers and suppliers until deficiencies are corrected.
 7. When certifying noncompliance, adverse action procedures set forth in regulations and general instructions are adhered to.
 8. Supervisory reviews and evaluations of surveyor performance are made routinely.
 9. Required financial and budget reports are submitted on time and completed in accordance with general instructions.
 10. All expenditures and charges to the program are substantiated to the Secretary's satisfaction.
 11. Actual survey and certification activities are consistent with the annual activity plan and workload estimate approved by HCFA.
 12. The performance of agencies utilized to perform specific functions under this Agreement are monitored.
 13. Ongoing surveyor training programs develop and maintain surveyor proficiency.
 14. Results of complaint investigations against providers and suppliers are considered in making certification decisions.
- D. If a formal evaluative report is prepared that reflects deficiencies in the State's performance under this Agreement or proposes corrective action to be taken by the State, the Secretary shall:
1. furnish a copy to the State; and
 2. discuss any corrective actions proposed in the report with the State in order to establish reasonable and practicable time frames for implementation.
- E. When the Secretary determines that the State is not able or is not willing to perform part or all of the functions and responsibilities prescribed in this Agreement, the Secretary may terminate the Agreement in whole or in part, in accordance with Article VIII.

Article VI
TERM OF AGREEMENT

- A. This Agreement shall begin on October 1, 1985, and end on September 30, 1986. The Agreement is automatically renewed for periods of one (1) year unless the Secretary or the State gives written notice of its intention not to renew the Agreement at least 90 days before the end of the current term.
- B. Any notice under Paragraph A of this Article shall be deemed to have been given upon the date such notice was mailed, as established by the postmark or other appropriate evidence of the date of transmittal. Whenever the State gives notice of its intention not to renew this Agreement it shall, prior to mailing such notice, notify the appropriate HCFA Regional Administrator, by telephone or other oral communication, of its intention not to renew the Agreement.

Article VII
MODIFICATION OF AGREEMENT

- A. This Agreement may be modified at any time by mutual written consent of the Secretary and the State.
- B. The Secretary may modify this Agreement to incorporate changes in the State's functions and responsibilities as a result of changes to the Act or regulations.
- C. Prior to any modification under Paragraph B of this Article, the Secretary shall consult with the State and participate in planning for adjustments which might be necessary. Thereafter, the Secretary shall provide the State written notice that the modification is to be made not more than 90 days after the date specified in the notice (or such other date as may be required by statute). If the State notifies the Secretary within 10 days of receipt of the Secretary's notification, the State may terminate this Agreement not less than 90 days after the date specified in the notice and shall not be required to implement any modification of this Agreement provided for in such notification during such 90 day period.

Article VIII
TERMINATION OF AGREEMENT

- A. This Agreement may be terminated at any time by mutual written consent of the parties to the Agreement.
- B. The State may terminate this Agreement at any time upon 180 days written notice to the Secretary.

- C. If the Secretary determines that the State is not able or willing to carry out part or all of the functions under this Agreement (including a determination that the State has failed to meet a performance standard(s) as described in Article V and detailed in the State Operations Manual), the Secretary may terminate the Agreement in whole or in part to exclude specific classes of providers and/or suppliers identified in Article I from the State's survey and certification functions under this Agreement, or otherwise to limit or decrease its scope.
- D. If this Agreement is terminated pursuant to the terms of this Article, the State shall be paid the allowable costs incurred in terminating this Agreement in accordance with Article IX, Paragraph F.
- E. If this Agreement is terminated or nonrenewed by either the Secretary or the State, the State shall use its best efforts to accomplish an orderly transition of its functions under this Agreement to the successor survey entity.

Article IX
COST OF ADMINISTRATION

- A. The Secretary's fiscal obligation under this Agreement is contingent upon the apportionment to the Secretary of appropriated funds for the applicable fiscal year from which payment for the cost of performing the functions of this Agreement can be made. No legal liability on the part of the Secretary for any payment, nor any legal obligation of the State to perform, may arise until the State receives notice from the Secretary that funds have been made available for this Agreement. Moreover, in no event shall the Secretary's obligation under this Agreement exceed the amount of funds which have been obligated to this Agreement.
- B. The State will be given sufficient opportunity prior to the beginning of every Federal fiscal year to prepare a State survey agency activity plan and budget estimate based on HCFA's activity plan and budget estimate for that forthcoming Federal fiscal year. On this basis, the State will submit to the Secretary, at such time and in such form as the Secretary may prescribe, a budget request that provides an estimate of costs to be incurred by the State (through the State survey agency and other State and local agencies) for performing the functions under this Agreement for the period corresponding to the Federal fiscal year that begins on October 1 and ends on September 30. The budget request will include cost estimates accompanied by such supporting documents as may be prescribed by the Secretary.

- C. The Secretary will not reimburse the State for any costs attributable to the general expenses of the State in carrying out functions of State government which are not related to this Agreement. The State budget request must equitably apportion the costs attributable to expenses incurred by the State for conducting activities related to, but distinguishable from, activities conducted under the Act and this Agreement. The Secretary will reimburse the State for HCFA's fair share of the costs attributable to such planning and other efforts as the State may perform directed towards the coordination of activities in carrying out this Agreement and other activities related to the provision of services similar to those for which payment may be made under of the Act, or related to the facilities and personnel required for the provision of services, or related to improving the quality of such services. The Secretary will determine the amount of such costs allocable to this Agreement on the basis of information submitted by the State, setting forth the plans proposed for coordinating its functions under this Agreement with such other activities.
- D. The Secretary and the State will negotiate the amount of the annual budget, and any revisions thereto, based on the budget request submitted by the State. After the negotiations between the Secretary and the State on the amount of the annual budget, or any revisions thereto, the Secretary will issue a notice specifying such budget in an amount calculated to pay the costs of administering this Agreement. Such budgeted amount for the purpose of obligation of funds by the Secretary shall be a ceiling which the State may not exceed without the prior written approval of the Secretary.

The State may, at any time during the fiscal year, submit appropriate revisions to the estimated amount of its budget as a result of any modification to this Agreement or functions thereunder. The Secretary will determine if a revision to the amount of the estimated budget is appropriate and on that basis will make any adjustments to the budgeted amount.

- E. If at any time it appears to the State that the budgeted amount is not sufficient to cover costs incurred and estimated to be incurred in the fiscal year, the State shall so notify the Secretary promptly. Such notification may be by telephone or telegraph with later confirmation by letter and will contain proposals as to how costs expected to be incurred may be reduced. The Secretary and the State will promptly negotiate ways and means of resolving the matter for the purpose of ensuring that the State will not incur costs in excess of the budgeted amount. Such resolution may include an increase in the budget, a reduction of functions to be performed by the State, a combination of both, or such other ways and means as may be agreeable to the parties. If, after negotiating in good faith, the parties are unable to find a satisfactory solution to the matter, the Secretary will give the State written notice as to what measures to take in order to avoid incurring costs in excess of the budgeted amount.

Notwithstanding any other provisions of this Agreement, if the Secretary notifies the State to abate the performance of a function, there shall be no obligation on the part of the Secretary for costs incurred by the State in the performance of such function beyond the effective date of the notice to abate or the date such notice is received, whichever is later.

However, the allowability of any costs incurred by the State in the implementation of any such abatement directed by the Secretary will be governed by the provisions of the Federal Acquisition Regulation applicable to termination costs.

- F. The Secretary is not obligated to reimburse the State for costs incurred in excess of the budgeted amount. The State is not obligated to incur costs in excess of the budgeted amount until the Secretary notifies the State, in writing, that the budgeted amount has been increased.
- G. Subject to the foregoing provisions of this Article, the Secretary shall pay to the State the total amount of allowable costs incurred by the State in the performance of this Agreement. The costs allowable under this Agreement will be determined in accordance with Subpart 31.6 of the Federal Acquisition Regulation. The FAR provides that the allowability of costs under the Agreement will be determined in accordance with Office of Management and Budget, Circular No. A-87, "Cost Principles for State and Local Governments."
- H. The State shall comply with applicable regulations and general instructions for property purchased with funds provided under this Agreement. Funds provided by the Secretary under this Agreement will be used solely for the reasonable and necessary costs of the State in performing the functions authorized by this Agreement.
- I. If the State utilizes any service or material purchased or contracted for pursuant to this Agreement for purposes other than those authorized by the Agreement, the cost of such service or material will be pro-rated, pursuant to State Operations Manual procedures issued by the Secretary and applicable cost principles. Only that part that is attributable to the performance of functions authorized by this Agreement may be considered a reasonable and necessary cost for the performance of this Agreement.
- J. The State shall submit to the Secretary a report, including supporting data, of the allowable costs incurred by it during each quarter of the Federal fiscal year. This report is due to the Secretary no later than 30 days after the close of the quarter in which such costs were incurred.

Negotiations on the amount of administrative costs of the State to be allowed by the Secretary shall be undertaken by the Secretary and the State, based upon the State's quarterly statements.

Such items of costs on which the Secretary and the State are unable to agree will continue to be negotiated and, if not resolved, are subject to a subsequent determination by the Secretary in accordance with Paragraph K of this Article. To the extent unpaid, such amounts which are agreed upon shall be paid promptly by the Secretary.

- K. If the Secretary and the State are unable to agree upon a final amount of the administrative costs of the State for a particular quarter or other period, the Secretary shall issue a final determination of the amount of such administrative costs for such period and inform the State of such costs, with a full explanation of the exceptions taken to the State's report of its allowable costs.

The State may appeal the final determination in accordance with the provisions of Article XIV of this Agreement, entitled "Disputes." Where a particular cost or type of cost is disallowed by final determination of the Secretary and the State is not in agreement with the Secretary's disallowance, the State shall, for any subsequent claims, abide by the decision of the Secretary and agrees not to be reimbursed pending resolution of any amounts of such costs. Until the issue is resolved, the State shall segregate such costs from all others, and specify the amounts of such costs on all subsequent claims. Any funds withdrawn through the letter of credit in excess of the amount finally determined to be allowable must be returned promptly to the Secretary.

- L. The State shall furnish or make available such supplemental accounts, records, or other information as may be requested by the Secretary to substantiate any estimates, expenditures, or reports as may be necessary for auditing purposes, or to verify the allowability of the State's expenditures under this Agreement.

Article X SUBCONTRACTING

- A. The State shall not enter into any subcontract to perform any of the functions set forth in Article II of this Agreement unless such subcontract received the prior written approval of the Secretary.
- B. The State shall not enter into any subcontract under this Agreement not controlled by Paragraph A of this Article, if any part the cost of the subcontract is allocable to this Agreement and if the subcontract provides for payment on a cost-plus-fixed-fee-basis, regardless of amount, or where the estimated cost of such subcontract exceeds, or is expected to exceed \$25,000, without the prior written approval of the Secretary.

- C. Any modification to a subcontract which required the prior written approval of the Secretary must be submitted to the Secretary for prior written approval.
- D. If the State enters into a subcontract, or modifies an existing subcontract without the prior written approval of the Secretary, where required, the Secretary is not obligated to reimburse the State for costs incurred with respect to such subcontract or modification.
- E. The requirement for prior written approval may be waived by the Secretary in writing, where requiring such approval is administratively impracticable and the State secures the waiver in advance of entering into or modifying a subcontract. In addition, the Secretary may ratify any subcontract in writing. Such ratification shall constitute the approval of the Secretary.
- F. Prior written approval given by the Secretary with respect to a subcontract or modification hereto does not constitute a determination of the allowability of costs, unless so stipulated.
- G. The State shall select subcontractors on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Agreement.
- H. For any subcontract or modification of a subcontract entered into or renewed under this Agreement, where the estimated cost to this Agreement under the subcontract exceeds \$500,000 and is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the State shall, in accordance with Subpart 15.8 of the Federal Acquisition Regulation, require the subcontractor to submit written cost or pricing data and certify that the cost or pricing data submitted were accurate, complete, and current prior to the entry into the subcontract or modification of a subcontract. The State shall, through inclusion in all such subcontracts, require subcontractors to maintain full and complete accounting records, support costs or pricing data submitted as aforesaid, to require subcontractors to provide for full access by the State, the Secretary, and the Comptroller General of the United States for the purpose of examining the accuracy of cost or pricing data submitted as aforesaid, and in accordance with Subpart 15.8 of the Federal Acquisition Regulation, to agree to a reduction in price if the cost or pricing data submitted are found to be defective.
- I. No subcontract under this Agreement may provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts may not exceed the fee limitations in subsection 16.301-3 of the Federal Acquisition Regulation.

Article XI
TRANSFER OF FUNDS THROUGH LETTER OF CREDIT

- A. The Secretary will provide for an advance of funds by a letter of credit to the State's designated commercial bank to authorize the withdrawal of funds from the United States Treasury in accordance with the governing Treasury instruction 31 CFR Part 205 (Circular No. 1075). Each letter of credit will authorize the State's commercial bank to process payment vouchers drawing on funds made available through the Federal Reserve Bank or branch. More specific Letter of Credit procedures are provided to each State via the Departmental Federal Assistance Financing System Users Guide.
- B. The letter of credit will specify a maximum monthly amount that may be withdrawn during each month by the State. Such amounts will normally be 1/12 of the approved annual budget unless the Secretary and the State have agreed to other allotments of payment. Amounts available for withdrawal but not withdrawn in any month may be carried over to the following months within the fiscal year. The authorized official of the State may make withdrawals only to the extent that funds are currently needed to meet estimated expenditures. Withdrawals may not be made to the extent that cash on hand or in banks renders further withdrawals unnecessary or premature. If the amount specified in the letter of credit is not sufficient to meet estimated expenditures, the letter of credit may be modified by the Secretary.

Article XII
EXAMINATION OF RECORDS

- A. The Secretary and the Comptroller General of the United States or a duly authorized representative, until three (3) years after final payment under this Agreement or for any other period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, "Contractor Records Retention," has access to and the right to examine any of the State's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement.
- B. The State agrees to include in first-tier subcontracts under this Agreement a clause to the effect that the Secretary and the Comptroller General or a duly authorized representative, until three (3) years after final payment under the subcontract or for any other period specified in FAR Subpart 4.7, has access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this Article, excludes (1) purchase orders not exceeding \$10,000; and (2) subcontracts or

purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

- C. The periods of access and examination in Paragraphs A and B above for records relating to (1) appeals under Article XIV; (2) litigation or settlement of claims arising from the performance of this Agreement or; (3) costs and expenses of this Agreement to which the Secretary or the Comptroller General or a duly authorized representative has taken exception, shall continue until such appeals, litigation, claims, or exceptions are finally disposed of.

Article XIII

CONFIDENTIAL NATURE AND LIMITATIONS ON USE OF INFORMATION AND RECORDS

- A. The State shall adopt policies and procedures to ensure that information contained in its records and obtained from the Secretary or from any provider or supplier of services will be disclosed only as provided in the Act or regulations.
- B. The Privacy Act of 1974, 5 U.S.C. 552a, is applicable to this Agreement in accordance with Paragraph A(11) of Article XV.

Article XIV

DISPUTES

- A. This Agreement is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), referred to in this Article as the "CDA".
- B. Except as provided in the CDA, all disputes arising under or relating to this Agreement shall be resolved under this Article.
- C. "Claim," as used in this Article, means a written demand or written assertion by one of the parties to this Agreement seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Agreement. A claim arising under an Agreement, unlike a claim relating to that Agreement, is a claim that can be resolved under an Article of the Agreement that provides for the relief sought by the claimant. However, a written demand or written assertion by the State seeking the payment of money exceeding \$50,000 is not a claim under the CDA until certified as required by Paragraph D, section 2 of this Article. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the CDA. The submission may be converted to a claim under the CDA, by complying with the submission and certification requirements of this Article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- D. 1. A claim by the State shall be made in writing and submitted to the Secretary for a written decision. A claim by the Government against the State shall be subject to a written decision by the Secretary.
2. For State claims exceeding \$50,000, the State shall submit with the claim a certification that:
- (a) the claim is made in good faith;
 - (b) supporting data are accurate and complete to the best of the State's knowledge and belief; and
 - (c) the amount requested accurately reflects the contract adjustment for which the State believes the Government is liable.
3. The certification shall be executed by:
- (a) the State official in charge of the State survey agency or the agency of which the State survey agency is a component; or
 - (b) as appropriate, an official of the State having overall responsibility for the conduct of the State's affairs.
- E. For State claims of \$50,000 or less the Secretary must, if requested in writing by the State, render a decision within 60 days of the request. For State certified claims over \$50,000, the Secretary must, within 60 days, decide the claim or notify the State of the date by which the decision will be made.
- F. The Secretary's decision shall be final unless the State appeals or files a suit as provided in the CDA.
- G. The Government shall pay interest on the amount found due and unpaid from (1) the date the Secretary receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that day is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the CDA, which is applicable to the period during which the Secretary receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- H. The State shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Secretary.

AGREEMENT Identifier Code: HCFA-85-CT

IN WITNESS WHEREOF, the parties hereby execute this Agreement this

30th day of September, 1985.

State of Connecticut

By: Douglas S. Lloyd M.D.

Douglas S. Lloyd, M.D.

(Name)

Commissioner of Health Services

(Title)

Secretary of Health and Human
Services

By: John D. Kennedy

John D. Kennedy

(Name)

Regional Administrator

(Title)