

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

Pursuant to 42 U.S.C. § 1973gg-9(b), the Alabama State Conference of the National Association for the Advancement of Colored People (“Alabama NAACP”) on June 13, 2012 sent a letter to, *inter alia*, Ms. Stephanie McGee Azar, Esq. in her capacity as Acting Commissioner of the Alabama Medicaid Agency (“Alabama Medicaid”), and Ms. Beth Chapman in her capacity as Alabama Secretary of State (“the Secretary”), alleging violations of the National Voter Registration Act, (“NVRA”), 42 U.S.C. § 1973gg-5. Specifically, with respect to Alabama Medicaid, the letter alleged serious deficiencies in Alabama Medicaid’s implementation of Section 7 of the NVRA, which resulted in Alabama Medicaid’s failure to provide federally-required voter registration services to its clients; and informed Ms. Azar and Ms. Chapman of Alabama NAACP’s intent to sue if the alleged violations were not addressed within the statutory notice period. The letter was addressed directly to Ms. Chapman who, in her official capacity as Secretary of State, was at the time Alabama’s chief elections official and thereby responsible for the state’s compliance with the NVRA.

After being informed of these alleged violations of the NVRA, representatives from Alabama Medicaid and the Secretary expressed their strong desire to ensure compliance with Section 7 of the NVRA and to work with Counsel for the Alabama NAACP towards that end. The Alabama NAACP and Alabama Medicaid now desire to resolve this matter, as it relates to the Medicaid program, without the need to resort to litigation. In consideration of the Alabama NAACP’s agreement not to sue and the waiver of any attorneys’ fees or costs incurred in connection with the negotiation, implementation, and monitoring of this Agreement, Alabama Medicaid and the Secretary agree to implement and maintain the procedures and practices outlined in this Settlement Agreement. Provided, however, that nothing in this Agreement shall be construed, in the event of a breach of this Agreement by Alabama Medicaid or the Secretary, to prevent Alabama NAACP from bringing a lawsuit pursuant to 42 U.S.C. s. 1973gg-9 or based upon breach of this Agreement, or to prevent Alabama NAACP from pursuing attorneys’ fees and costs as permitted by 42 U.S.C. s. 1973gg-9 or other applicable law in connection with such a lawsuit (provided that Alabama NAACP does not seek any attorneys’ fees for time spent negotiating, implementing, or monitoring this Agreement as noted above). Neither Alabama Medicaid nor the Secretary admit any liability or any violation of the NVRA or any other law, and Alabama NAACP maintains its allegations of widespread past and ongoing violations of Section 7 of the NVRA by Alabama Medicaid.

The procedures and practices described in Sections III through IX and Section XI below shall be implemented within 15 business days of execution of the Agreement or at such other specific times as delineated herein.

The parties acknowledge that any provision within the Agreement for which satisfaction of a deadline, or the performance of a procedure and practice, requires receipt of pre-marked or pre-coded agency specific NVRA forms from the Secretary of State, that

Medicaid shall not be held responsible for the satisfaction of the deadline or the performance of a procedure and practice until the expiration of that time period found in Section VIII.B.

## II. DEFINITIONS

- A. "Alabama Medicaid" means the Alabama Medicaid Agency and includes, without limitation, its offices, agents and employees.
- B. "Alabama Medicaid employees" means employees of Alabama Medicaid who have responsibilities regarding Section 7 of the National Voter Registration Act, 42 U.S.C. § 1973gg-5, and/or state implementing statutes and regulations including, without limitation, those who are responsible for interacting with individuals regarding the provision of public assistance benefits, those who are responsible for interacting with clients at point of entry, the supervisors of such employees, and NVRA coordinators.
- C. "Client" means any individual who is applying for or receiving public assistance benefits through or from any Alabama Medicaid office.
- D. "Covered transaction" means each time a client applies to Alabama Medicaid for public assistance benefits pursuant to 42 C.F.R. § 435.916, renews or recertifies for public assistance benefits, or submits a change of address, whether in-person, or via the telephone, facsimile, mail, or electronically.
- E. "Frontline staff person" means an Alabama Medicaid employee who is responsible for interacting with individuals regarding the provision of public assistance benefits and/or is responsible for interacting with clients at point of entry.
- F. "Medicaid central office" means central office of Alabama Medicaid, which oversees the Medicaid district offices in Alabama.
- G. "Medicaid district offices" means the offices of Alabama Medicaid through which individuals may apply for public assistance benefits, renew or recertify their public assistance benefits, or change their address with regard to the receipt of public assistance benefits, including all Alabama Medicaid employees working in those offices and any individuals involved in intakes who work outside those offices but are affiliated with a particular office.
- H. "Public assistance benefits" means those benefits available under the State of Alabama's Medicaid program.

- I. "Secretary" means the Alabama Secretary of State and includes, without limitation, the Secretary of State's officers, agents and employees.
- J. "Voter preference form" means the form, often referred to as a "declination form," that is required pursuant to Section 7 of the NVRA, 42 U.S.C. § 1973gg-5(a)(6)(B), and includes a question about voter registration and contains boxes for public assistance applicants and clients to check in response.
- K. "Voter preference question" means the following question, mandated by Section 7 of the NVRA, 42 U.S.C. § 1973gg-5(a)(6)(B)(i): "If you are not registered to vote where you live now, would you like to register to vote here today?"
- L. "Voter registration application" means either the form mandated in Section 9 of the NVRA, 42 U.S.C. § 1973gg-7(a)(2) or the equivalent Alabama form, including the mail-in voter registration application and the agency-based voter registration application as defined below.
  - 1. "Agency-based voter registration application" means a voter registration application that indicates that the application is "agency-based." The current version of the agency-based voter registration application is also known as the "NVRA-1B."
  - 2. "Mail-in voter registration application" means a voter registration application that may be mailed without an envelope and is pre-addressed to election officials.

### III. STAFFING

#### A. *Alabama Medicaid NVRA Coordinator.*

Alabama Medicaid shall designate a "Medicaid NVRA Coordinator" to ensure implementation of voter registration services within Alabama Medicaid, to monitor compliance with Section 7 of the NVRA statewide, and to assist Medicaid district offices in identifying and solving problems as they arise. This need not be a full-time position or require the hiring of new/additional staff. The Medicaid NVRA Coordinator's responsibilities shall include:

- 1. Familiarity with all Alabama Medicaid voter registration requirements, procedures, and materials such that (s)he is qualified and prepared to assist District NVRA Coordinators and other agency personnel with questions or challenges related to the agency's administration of NVRA-compliant voter registration services;

2. maintaining an up-to-date list of District NVRA Coordinators (defined below). If the Medicaid NVRA Coordinator learns at any time that a District NVRA Coordinator position is unfilled, he or she shall appoint an individual to fill that position within fifteen business days after the vacancy occurs;
3. coordinating and overseeing compliance with the requirements of Section 7 of the NVRA, Alabama's implementing statutes and regulations, and the provisions of this Agreement, including requirements related to supplies, computer processes, training, procedures, oversight, and reporting, as detailed in Sections IV-VIII and XI of this Agreement. The coordination responsibilities shall involve regular communication with the Secretary and the District NVRA Coordinators to ensure that Alabama Medicaid fully complies with the requirements of Section 7 and the provisions of this Agreement;
4. once per year, distributing to each Medicaid district office signs obtained from the Secretary advising the public of the right to register to vote at that site, along with a request to display the signs; and responding to any notification that signs are lacking in a particular Medicaid district office by sending that office a new sign and requesting that the office display it; and
5. providing every District NVRA Coordinator with a complete list of voter registration deadlines for federal elections for the coming year by December 31 of each year and distributing promptly any supplemental lists of additional registration deadlines for federal elections received from the Secretary of State throughout the year.

B. *Alabama Medicaid District NVRA Coordinators.*

Alabama Medicaid shall designate a "District NVRA Coordinator" for each Medicaid district office to ensure implementation of and compliance with Section 7 of the NVRA. This need not be a full-time position or require the hiring of new/additional staff. In the event any District NVRA Coordinator position becomes vacant, the Medicaid NVRA Coordinator shall appoint a person to fill the position as soon as practicable, but in any event no later than 15 business days after the vacancy occurs. District NVRA Coordinators' responsibilities shall include:

1. reading and understanding all Alabama Medicaid voter registration requirements, procedures, and materials as applicable to his or her Medicaid district office;

2. coordinating and overseeing implementation and compliance with the requirements of Section 7 of the NVRA, Alabama's implementing statutes and regulations, and the provisions of this Agreement by Alabama Medicaid offices in their district, including requirements related to supplies, training, procedures, oversight, and reporting, as detailed in Sections V-VIII and XI;
3. answering questions from the public relating to voter registration services provided by the Medicaid district office;
4. compiling and transmitting all data for the monthly reports, aggregated by individual office, to the Alabama Medicaid NVRA Coordinator (see Section VIII);
5. In addition to the foregoing responsibilities, District NVRA Coordinators shall be responsible for monitoring their Medicaid district office compliance and implementation of the following:
  - a. all Alabama Medicaid voter registration requirements, procedures, and materials as applicable to his or her position;
  - b. answering questions from the public relating to voter registration at Medicaid district offices;
  - c. compiling and providing completed voter registration applications to the District NVRA Coordinator for transmission to the county board of registrars; and
  - d. monitoring staff compliance and addressing corrective actions with staff supervisors for consideration during employee evaluations.

C. *Secretary of State NVRA Coordinator*

The Secretary shall maintain at all times a statewide "SOS NVRA Coordinator" to ensure implementation of Section 7 of the NVRA, to monitor compliance with Section 7 of the NVRA statewide and to assist in identifying and solving NVRA compliance problems as they arise. This need not be a full-time position or require the hiring of new/additional staff. In the event the SOS NVRA Coordinator position becomes vacant, the Secretary shall appoint a person to fill the position as soon as practicable, but in any event no later than 15 business days after the vacancy occurs. The SOS NVRA Coordinator's responsibilities shall include:

1. Providing support and guidance (including technical expertise) to Alabama Medicaid, including the Alabama Medicaid NVRA Coordinators, to assist them in identifying what is required to

implement and comply with Section 7 of the NVRA, Alabama's implementing statutes and regulations, and the provisions of this Agreement;

2. serving as a liaison between the Secretary, Alabama Medicaid, and local election authorities regarding NVRA compliance at Alabama Medicaid offices;
3. timely review of the Secretary and Alabama Medicaid reports related to voter registration at Alabama Medicaid offices;
4. prompt reporting of suspected or known compliance problems at particular Alabama Medicaid offices to the Alabama Medicaid NVRA Coordinator;
5. consulting regularly with the Alabama Medicaid NVRA Coordinator regarding office-level compliance and any corrective action plans, including providing to the Alabama Medicaid NVRA Coordinator the number of total voter registration applications generated from each District Medicaid office each month; and
6. providing the Alabama Medicaid NVRA Coordinator with a complete list of voter registration deadlines for federal elections for the coming year by December 20 of each year and any supplemental lists of additional registration deadlines for federal elections as necessary.

#### **IV. MAIL-IN VOTER REGISTRATION APPLICATIONS**

The Secretary shall create and provide a coded mail-in voter registration application that identifies the source of the mail-in voter registration application as originating from a particular public assistance agency (in this case Alabama Medicaid) to facilitate comprehensive tracking of voter registration services provided by Alabama Medicaid and other Alabama public assistance agencies.

The mail-in voter registration application shall be provided to Medicaid and other Alabama public assistance agencies pre-coded in a manner that enables the form to be tracked back to a specific agency but cannot be easily identified as originating at that agency by a member of the public.

Upon finalizing the exact method for coding the mail-in voter registration application, the Secretary shall communicate the specifics of the method to Counsel for Alabama NAACP so that Counsel for Alabama NAACP may understand how the system works and properly interpret data resulting from the relevant coding.

**V. INCORPORATION OF VOTER REGISTRATION INTO COMPUTER PROCESSES**

- A. *Conforming agency policies.* Any and all written policies that govern frontline staff person procedures or reference voter registration shall be reviewed and modified to incorporate Sections III-IX and XI of this Agreement within 30 days of execution of this Agreement.
- B. *Integration into computerized systems.*
1. The provision of voter registration services in compliance with the NVRA, Alabama implementing statutes and regulations, and this Agreement shall be incorporated into the computer system created to administer the Health Insurance Exchange required by the Affordable Care Act (if and when such an Exchange is created and is maintained by the Alabama Medicaid Agency) and any other Medicaid computer system developed in the future by which a client may conduct a covered transaction.
  2. The parties to this Agreement recognize that Alabama Medicaid is currently transitioning into a new Eligibility and Enrollment (E & E) computer system, utilizing a single, streamlined application. This transition is a “phased in system” that will be completed in the future. Due to the possibilities of unforeseen issues arising out of the transition of Medicaid programs onto the system, Medicaid shall be afforded an additional 30 days to address any identified issues prior to the issuance of a writing asserting a breach as discussed in Section XII of this Agreement. This additional 30 days shall only apply to issues arising out of the new E & E system and not any other computer system currently utilized in processing a covered transaction as defined by the NVRA.
  3. Alabama Medicaid shall maintain copies of completed voter preference forms as required by the NVRA and state law. In the event of future computer upgrades, Alabama Medicaid will consider computer tracking of responses (“yes”, “no”, and blank) to the voter preference question.
  4. Alabama Medicaid shall provide written guidance to Alabama Medicaid employees detailing the system upgrades within 15 days of the implementation of each upgrade, and any subsequent training on NVRA procedures, policy, or compliance shall include the same guidance.

## VI. TRAINING

### A. Materials

1. The Secretary will update its existing training video in consultation with Counsel for Alabama NAACP and forward this updated version to the Alabama Medicaid NVRA Coordinator no later than 50 days after the execution of this Agreement. The training video shall reflect the requirements of the NVRA, Alabama's implementing statutes and regulations, and this Agreement.
2. Alabama Medicaid will create and/or maintain materials to train its employees about voter registrations responsibilities, which, at a minimum, shall consist of:
  - a. the NVRA training video created by the Secretary of State pursuant to VI.A.1 above, or any updates thereto;
  - b. a Power Point presentation, created by the Alabama Medicaid NVRA Coordinator with input from other relevant Alabama Medicaid staff, the Secretary, and Counsel for Alabama NAACP as noted below, on Alabama Medicaid's NVRA compliance procedures; and
  - c. notification that the District NVRA coordinator is available to answer questions.
3. Alabama Medicaid will consult with Counsel for Alabama NAACP and the Secretary on the content of its Power Point training and incorporate reasonable feedback before finalizing the training. Alabama Medicaid will provide a draft of this Power Point training to Counsel for Alabama NAACP and the Secretary within 30 days of the execution of this Agreement; Counsel for Alabama NAACP will provide feedback within 14 business days of receiving such draft; and Alabama Medicaid shall finalize this Power Point training within 14 business days of receiving such feedback.
4. The training program will be continuously available on Alabama Medicaid's intranet so that any staff person may review it at any time and/or any supervisor may require a member of his/her staff to review it if the supervisor determines that a member of his/her staff is not performing his/her NVRA obligations satisfactorily.

### B. Training Program

1. Each District NVRA Coordinator, frontline staff person, and supervisor of frontline staff persons at Alabama Medicaid will be



required to complete NVRA training (to include the video and Power Point presentation listed in Section VI.A.2) within 30 days of its finalization and then annually thereafter. All Alabama Medicaid employees on annual, sick or other leave at the time when annual training is scheduled shall be trained within fifteen days after their return to active work status.

2. All new Alabama Medicaid employees shall be required to complete the training within fifteen days of hire or before interaction with clients, whichever day is earlier, measured from the employee's start date. Each Alabama Medicaid employee's supervisor will be notified when that employee has completed the training.
  3. Alabama Medicaid shall maintain a record of each Alabama Medicaid employee's history of completing the required training.
  4. District NVRA Coordinators shall be available to answer questions from frontline staff persons both after required trainings and on an ongoing basis.
- C. Incorporation into Regular Trainings. Alabama Medicaid will incorporate compliance with Section 7 of the NVRA into its regular monthly and quarterly trainings as a standing topic. Each such training shall include a reminder to Alabama Medicaid employees of their responsibility to provide voter registration opportunities to clients with every application, renewal, recertification, and change of address.

## VII. PROCEDURES

- A. *Proper maintenance and availability of voter registration materials.*
1. Alabama Medicaid shall ensure that it maintains a sufficient number of voter registration applications, transmittal envelopes, and packing slips required to fulfill its voter registration responsibilities, and that it promptly distributes to each Medicaid district office such materials upon request.
  2. Prior to distribution to clients or other members of the public, all voter registration applications (mail-in or agency-based) should be marked as coming from Alabama Medicaid, and have the requested information on the "For Use By Agency Official Only" portion of the form filled out. The Secretary will provide the necessary forms, pursuant to this Agreement, so as to fulfill this requirement.

3. Mail-in voter registration applications shall be available in all Medicaid district offices. In addition to making voter registration available during covered transactions, Alabama Medicaid shall provide a voter registration application to anyone who visits a Medicaid district office who requests an application to register to vote.
4. Alabama Medicaid shall make available to each Medicaid district office signs announcing that voter registration is available and encouraging clients to fill out an application and/or see a frontline staff person for assistance. Alabama Medicaid shall obtain these signs from the Secretary and shall distribute them once per year to each Medicaid district office, along with a request to display the signs. If the Alabama Medicaid NVRA Coordinator is notified or becomes aware that a particular Medicaid district office is not displaying a voter registration sign, the NVRA Coordinator shall send the office a sign and request that the office display it.

- B. *Distribution of forms, in general.* Alabama Medicaid shall automatically distribute a voter registration application with each covered transaction. However in accordance with Section I. above, to the extent this provision is satisfied by the receipt of NVRA forms from the Secretary of State, Medicaid shall not be held responsible for this until the expiration of that time period found in Section VIII.B.

The voter registration application form, which Alabama Medicaid and the Secretary shall design cooperatively to ensure that the form meets the needs of both Alabama Medicaid and the Secretary, in addition to all features necessary to operate as an effective voter registration application, shall be coded as originating from Alabama Medicaid in a manner that cannot be easily identified as such by a member of the public, so as to allow elections officials to credit Alabama Medicaid as the source of the registration while preserving the privacy of clients submitting forms.

Upon finalizing the exact method for coding the voter registration application, the Secretary shall communicate the specifics of the method to Counsel for Alabama NAACP so that Counsel for Alabama NAACP may understand how the system works and properly interpret data resulting from the relevant coding.

- C. *In-office procedures.* Any time a client or prospective client comes into a Medicaid district office to conduct a covered transaction, the following procedures will apply:
1. If the client is applying for or renewing benefits, or registering a change of address:

- a. The client will receive a voter preference form and voter registration application with his or her benefits application or at the time (s)he submits his or her change of address.
  - b. If the client returns the application or change of address form to a frontline staff person, the frontline staff person will check to see if the client has filled out the voter preference form.
  - c. If the client has indicated on the voter preference form that (s)he wishes to register to vote or update his/her address for registration purposes, the worker will provide the equal assistance as described in Section VII.E unless refused.
  - d. If the client prefers not to fill out the voter registration application immediately, the worker will advise him/her that (s)he may take a mail-in voter registration application home with him/her.
2. In the case of a change of address whether in person or remote, a worker will enter such change of address into Medicaid's computer system. This entry shall trigger an automatic mailing of a mail-in voter registration application and cover letter to the client. As a general rule, automatic mailings will be performed every week and will include all covered transactions during the previous week; however, automatic mailings will be performed daily for 20 business days prior to voter registration deadlines for federal elections. The cover letter shall explain that the client may need to fill out a new voter registration application to become or remain properly registered if (s)he is not already registered at his/her new address, and that assistance is available in completing such application. The letter will also include any required statutory language as well as a brief statement about Alabama's photo voter ID requirement and contact information for the Secretary of State's office.
3. Renewals, recertifications, and redeterminations. Medicaid currently has an annual redetermination pursuant to 42 C.F.R. § 435.916. Should Medicaid adopt a more frequent redetermination procedure, initiated by Medicaid, that may result in the termination or alteration of benefits, such redetermination shall be treated as a covered transaction and procedures set forth in this Agreement shall apply. Nothing in this section shall be construed to require Medicaid to distribute forms for any future implementation of procedures requiring interim information gathering where the information requested is not intended to be used to terminate or alter benefits.

- D. *Remote transactions.* Voter registration services shall be integrated into the procedures for processing covered transactions that occur without clients coming into an Alabama Medicaid office. Such covered transactions include, without limitation, those occurring by telephone, facsimile, mail, electronically, or via the Internet.
1. Whenever a client initiates a change of address transaction from outside a district Medicaid office, a worker will enter such change of address into Medicaid's computer system, unless it is entered automatically when a client enters information via the recipient portal (currently MyMedicaid button) on the Alabama Medicaid website. Either method of entry shall trigger an automatic mailing of a mail-in voter registration application and cover letter to the client. As a general rule, automatic mailings will be performed every week and will include all covered transactions during the previous week; however, automatic mailings will be performed daily for 20 business days prior to voter registration deadlines for federal elections. The cover letter, which shall be approved by the Secretary, shall explain that the client may need to fill out a new voter registration application to become or remain properly registered if (s)he is not already registered at his/her new address, and that assistance is available in completing such application.
  2. Any paper benefits applications for transactions initiated from outside a Medicaid office shall include a voter registration application and a voter preference form.
  3. Entry of the application information into the Alabama Medicaid computer system will trigger an automatic mailing of a mail-in voter registration application and cover letter. As a general rule, automatic mailings will be performed every week and will include all covered transactions during the previous week; however, automatic mailings will be performed daily for 20 business days prior to voter registration deadlines for federal elections.
  4. Any renewal notices mailed to a client shall trigger an automatic mailing of, or include, a cover letter approved by the Secretary and a mail-in voter registration application, except that this requirement shall not apply to renewals conducted through the Express Lane process.
  5. With respect to covered transactions occurring via the Internet as well as those that occur through the Health Insurance Exchange computer system (if such a program is developed and maintained by Alabama Medicaid), Alabama Medicaid shall include the voter preference question and a link from which the client may

download a voter registration application along with any downloadable public assistance benefits applications, any downloadable renewal or recertification forms, or any downloadable change of address forms.

The online voter preference question shall contain a "hard stop" requiring the client to select "yes" or "no." In addition, the client will be provided a link at which the client may download a voter registration application and also will be given the opportunity to check a box to indicate that the client would like a voter registration application mailed to him or her. Alabama Medicaid will promptly mail a coded mail-in voter registration application to any client who checks the box requesting that a voter registration application be mailed. If Alabama, in the future, allows electronic voter registration, all options outlined in this paragraph shall remain but the option to connect through a link to the online voter registration application shall also be provided.

To the extent that Alabama Medicaid enrolls clients who initially applied for services through a federally-facilitated health benefits Exchange, Alabama Medicaid will furnish these clients with voter registration services that fully comply with the NVRA and the terms of this Agreement, either by providing these services directly or by ensuring that these services are provided by the federal Exchange. To the extent that Alabama Medicaid receives applications from Alabama residents and then forwards any denied applications to a federal Exchange for consideration of additional health benefits programs, this shall be considered a covered transaction that requires the provision of voter registration services that fully comply with the NVRA and the terms of this Agreement.

- E. *Equal assistance.* Frontline staff persons will provide clients with the same degree of assistance in filling out voter registration applications as they would for filling out one of the agency's own forms, unless declined by the client. At a minimum, frontline staff persons will provide assistance to each client in completing the voter registration application when such assistance is requested by the client. If any frontline staff person makes an affirmative offer of assistance with filling out a benefits application to any client that offer shall include an offer to assist with the voter registration application. During in-office covered transactions, frontline staff persons shall check to see if the client has filled out the voter preference form. If the client has indicated on the voter preference form that (s)he wishes to register to vote or update his/her address for registration purposes, the worker will offer assistance in filling out the voter registration application and examine filled-out voter registration

applications for basic completeness and a signature, and ask the client to complete any piece that is obviously missing.

Any time a client is mailed a voter registration application (including, but not limited to, transactions described in Section VII.D), the client shall be provided notice in writing that voter registration assistance is available in person at the Medicaid office. The letter will also include any required statutory language as well as a brief statement about Alabama's photo voter ID requirement and contact information for the Secretary of State's office.

When a voter registration application is provided electronically as part of a computer-based transaction, an electronic explanatory notice regarding the availability of assistance shall also be provided.

- F. *Transmittal of voter registration applications.* Alabama Medicaid employees shall transmit all filled-out voter registration applications collected by the agency each week to the local board of registrars on Friday of that week. Any applications collected during the week that were not included within the Friday transmittal shall be transmitted the following Monday. This procedure will ensure that all applications are transmitted within five days of receipt in the Alabama Medicaid district office. Pursuant to 42 U.S.C. § 1973gg-6(a)(1)(C) and Alabama regulations, voter registration applications collected by Alabama Medicaid at any time up to the official close of voter registration for any given federal election shall be deemed timely and, when transmitted according to the procedure above, shall be treated as a voter registration application filed with the local board of registrars in advance of the deadline. Alabama Medicaid shall transmit all applications to the board of registrars within the specified time frame, regardless of completeness. Additionally, whenever Alabama Medicaid employees transmit applications to the board of registrars, they will simultaneously send a copy of the transmittal form to the Secretary of State.
- G. *Corrective action.* If an Alabama Medicaid employee determines, at any point, that a client did not receive a voter registration application as required under Section 7 of the NVRA, Alabama implementing statutes and regulations, or this Agreement, the employee shall notify the District NVRA Coordinator immediately. Within five days of receiving such notice, the District NVRA Coordinator shall send a remedial mailing to the client and enclose a voter registration application and explanatory notice. The explanatory notice shall advise the client that (i) (s)he is receiving the mailing because (s)he may not have been offered the opportunity to apply to register to vote, (ii) that the mailing does not affect the individual's registration status if the individual is already registered to vote at the individual's current address, (iii) that receipt of the mailing

does not indicate any information about the individual's eligibility to register to vote, and (iv) that assistance in completing the form is available from Alabama Medicaid employees. Alabama Medicaid shall maintain a copy of the letter in the client's file.

- H. *Maintenance of voter preference question responses.* All responses to the voter preference question (either on form NVRA-1A or through an online benefits application containing the voter preference question) which are actually received by Alabama Medicaid will be maintained for a minimum of two years pursuant to Alabama Administrative Code § 820-2-2-.06(3), and Medicaid shall provide to the Secretary access to all such voter preference question responses.
- I. *Express Lane.* In an effort to reduce paperwork and burdens on clients, Alabama Medicaid has introduced "Express Lane" procedures that enable clients to demonstrate eligibility and apply for Medicaid contemporaneously while applying to and based upon information furnished to the Department of Human Resources in applications for the Supplemental Nutrition Assistance Program and/or Temporary Aid to Needy Families, and without any additional interactions with Alabama Medicaid. In this circumstance, the following procedures shall govern:
1. *Initial application.* When a client is deemed eligible for Medicaid and is enrolled in that program based upon an application to the Department of Human Resources (and without any further interaction with the Medicaid Agency), this application process is deemed to be a single covered transaction. To the extent that Alabama Medicaid has knowledge that voter registration was not offered to any particular clients by the Department of Human Resources, Medicaid shall offer voter registration services to these clients.
  2. *Renewals and re-certifications.* When a client's eligibility in Medicaid is renewed based on information provided during a renewal with the Department of Human Resources (and without any further interaction with the Medicaid Agency during the renewal process), this renewal is deemed to be a single covered transaction. To the extent that Alabama Medicaid has knowledge that voter registration was not offered to any particular clients by the Department of Human Resources, Medicaid shall offer voter registration services to these clients.
  3. *Changes of Address.* When Medicaid updates a client's address based upon information that a client provided to the Department of Human Resources, this is deemed a single covered transaction. To the extent that Alabama Medicaid has knowledge that voter

registration was not offered to any particular clients by the Department of Human Resources, Medicaid shall offer voter registration services to these clients. Any changes of address processed as a result of direct contact with Alabama Medicaid shall be deemed a separate covered transaction and shall result in a voter registration application being automatically mailed to the client's new address according to the procedures described in Sections VII.B or VII.C above.

4. *Notification of enrollment or renewal.* Whenever a client is enrolled or renewed through the Express Lane process, Alabama Medicaid agency will send that client a letter notifying her of her status. This letter shall indicate that voter registration services, and assistance with such services, are available through Alabama Medicaid and provide the client with specific instructions about how to access such services.

#### **VIII. OVERSIGHT – ALABAMA MEDICAID**

- A. Within 45 days of the execution of this Agreement, Alabama Medicaid will begin to use pre-marked NVRA-1B forms received from the Secretary at Alabama Medicaid offices to ensure that all agency-based voter registration applications submitted by a client, whether the client submits the application by mail or in-person to a Medicaid district office, the Secretary or a local elections office, may be tracked for purposes of reporting and monitoring public assistance voter registration activity as required under Sections VIII and XI of this Agreement and for purposes of reporting voter registration data to the U.S. Election Assistance Commission as required under the NVRA.
- B. Not later than 50 days after the Secretary's issuance of the Invitation to Bid for printing the coded mail-in voter registration applications, as described in IV above, Alabama Medicaid will begin using the coded mail-in voter registration application in the same manner as it currently uses the uncoded mail-in voter registration application (NVRA-2).
- C. Within 45 days of the execution of this Agreement, Alabama Medicaid will track the following information by month and by county:
  1. the number of covered transactions by type (application, renewal/recertification or change of address); and
  2. the number of filled-out voter registration applications transmitted to the appropriate elections authority.



The number of covered transactions and the number of filled-out voter registration applications transmitted to the appropriate elections authority shall be reported each month by the District NVRA Coordinators to the Alabama Medicaid NVRA Coordinator no later than the fifth of the month succeeding the month at issue.

Alabama Medicaid will report the figures tracked pursuant to this paragraph to the SOS NVRA Coordinator on the 10<sup>th</sup> of each month. If the tenth day of the calendar month falls on a weekend or holiday, these reports shall be provided on the next business day thereafter. Other than the number of filled-out voter registration applications transmitted to the appropriate elections authority, the above data values may be retrieved from a computer system or reported each month by District NVRA Coordinators to the Alabama Medicaid NVRA Coordinator.

- D. Each month, Alabama Medicaid shall obtain from the Secretary (and the Secretary shall provide) the total number of voter registration applications received by election officials that are attributed to Alabama Medicaid, including a separate breakdown of the number of agency voter registration application forms received by election officials directly from Alabama Medicaid offices. The Alabama Medicaid NVRA Coordinator shall analyze the data collected in Section VIII.C by comparing, for each county, the number of voter registration applications received by election officials that are attributed to Alabama Medicaid with the number of covered transactions for that office that occurred during the same month, with the office's prior numbers, and with rates across all offices.

The Alabama Medicaid NVRA Coordinator shall review, follow up and/or investigate problems at Medicaid district offices. Potential problems to be investigated or reviewed include, but are not limited to: (i) offices exhibiting unusually low registration rates as compared to their rates during previous reporting periods or to the rates of other offices in the state; (ii) offices for which there is a significant disparity between the reported number of voter registration applications transmitted to elections officials and the number of voter registration applications that elections officials report receiving from Alabama Medicaid; (iii) offices exhibiting potential compliance problems based on information obtained from a site visit, any other auditing procedure, office managers or supervisors, or other appropriate sources; (iv) problems or concerns identified by the SOS NVRA Coordinator by the means set forth in Section IX; and (v) offices that are the subject of a complaint from the public regarding the provision of voter registration.

Where a potential compliance problem is identified for an office, the Alabama Medicaid NVRA Coordinator shall contact the appropriate Medicaid district office to investigate the cause.

During the term of this Agreement, Counsel for Alabama NAACP may provide Alabama Medicaid with a list of up to five offices per quarter that Counsel for Alabama NAACP believes require further review and possible corrective action, with an explanation of the reason for review. In such a case, Alabama Medicaid shall conduct a review of any such offices to determine whether corrective measures are needed and shall communicate the results to the Counsel for Alabama NAACP in the next quarterly report.

E. *Office Reviews*

Alabama Medicaid shall monitor Medicaid district office compliance with Section 7 of the NVRA by integrating NVRA compliance into Alabama Medicaid regular review procedures for Medicaid district offices. Alabama Medicaid will develop a checklist of items to include in on-site reviews, including, checking for the availability of voter registration applications (see Section VII.A), and checking to make sure that frontline staff persons are offering voter registration opportunities to clients in accordance with Section 7 of the NVRA and this Agreement (see Section VII). Such reviews shall take place at each Medicaid district office no less than once every quarter except for cases in which travel has been limited due to financial deficiencies.

F. *Corrective Action.*

Alabama Medicaid shall ensure that any complaints made by the public regarding the provision of voter registration by Medicaid district offices shall be forwarded to the affected office and also forwarded to the Alabama Medicaid NVRA Coordinator and the Secretary.

Alabama Medicaid shall take appropriate corrective action, subject to State personnel law, when it is determined that a particular office or individual employees at a particular Medicaid district office is/are not complying with Section 7 of the NVRA or the provisions of this Agreement, or otherwise are in need of corrective action to assure compliance.

G. *Personnel Policy.*

Alabama Medicaid shall include responsibilities related to voter registration under Section 7 of the NVRA in the job descriptions for the Alabama Medicaid NVRA Coordinator, District NVRA Coordinators, frontline staff persons, and Alabama Medicaid employees who supervise frontline staff persons.

Annual performance reviews of the Alabama Medicaid NVRA Coordinator, County NVRA Coordinators, supervisory Alabama Medicaid employees at Medicaid district offices, and frontline staff persons shall

include compliance with all federal and state laws. Alabama Medicaid progressive discipline procedures shall apply to all Alabama Medicaid staff who do not comply with all federal and state laws and the terms of this Agreement.

## **IX. OVERSIGHT – SECRETARY OF STATE**

### *A. Data Collection and Review.*

1. The SOS NVRA Coordinator shall collect from local elections officials or its centralized database the following data monthly by county:
  - a. total number of voter registration application forms received by election officials that are attributable to Alabama Medicaid (those that were transmitted by Medicaid District offices plus coded mail-in voter registration applications received); and
  - b. total number of new and updated voter registrations that result from voter registration applications received by election officials from Alabama Medicaid.

2. The SOS NVRA Coordinator will review and analyze monthly data from Alabama Medicaid (see Section VIII.C above). That analysis shall include a comparison of the voter registration numbers reported by Alabama Medicaid with the voter registration numbers reported by the local election officials or pulled from the centralized database, as well as voter registration numbers and rates reported by other public assistance agencies in the state.

Review, follow up and/or investigate problems at Medicaid district offices. Potential problems to be investigated or reviewed include, but are not limited to: (i) offices exhibiting unusually low registration rates as compared to their rates during previous reporting periods or to the rates of other offices in the state; (ii) offices exhibiting potential compliance problems based on information obtained from a site visit, any other auditing procedure, office managers or supervisors, or other appropriate sources; (iii) offices suggested for review by Counsel for Alabama NAACP; and (iv) offices that are the subject of a complaint from the public regarding the provision of voter registration.

3. Following that review, the SOS NVRA Coordinator shall coordinate any necessary follow-up and corrective action with the Alabama Medicaid NVRA Coordinator.

4. The Secretary shall incorporate the data collected pursuant to Sections VIII.C and IX.A.1 of this Agreement into its biennial report to the federal Elections Assistance Commission.
- C. *Site visits.* Each month the Secretary will conduct a telephone meeting with the three lowest-performing Medicaid offices for the previous month, determined by registration rates (the number of submitted voter registration applications attributed to the office divided by the number of covered transactions in that office). If any office is one of the three lowest performing offices twice in one quarter, (1) the Secretary will conduct a site visit to that office during the following quarter, and (2) the Secretary will call the next lowest-performing office(s) that month rather than the office(s) with the repeat low performance, such that three offices are called every month. Provided, however, that the Secretary is not required to conduct a site visit at a low-performing office that has been visited within the previous six months. If the Secretary determines that the ranking of a particular office among the bottom three may be related to factors other than compliance with the provisions of this Agreement, the Secretary shall consult with Counsel for the Alabama NAACP regarding such determination. If Counsel for the Alabama NAACP agrees with the Secretary's determination, the Secretary is not required to visit that particular office and shall visit any office that is then one of the three lowest performing offices (once the office that was subject to consultation is removed) twice in one quarter in its place.

**X. CODIFYING PROCEDURE GOVERNING CURING INCOMPLETE VOTER REGISTRATION APPLICATIONS**

Within six months of the execution of this Agreement, the Secretary shall promulgate a regulation that codifies the existing procedure among county registrars that such registrars shall attempt to cure incomplete voter registration applications by contacting the applicants before rejecting such applications.

**XI. REPORTING TO COUNSEL FOR ALABAMA NAACP**

- A. *Alabama Medicaid Quarterly Reporting.* Alabama Medicaid, in cooperation with the Secretary on or before the fifteenth day of January, April, July and October after this Agreement is executed and thereafter until the expiration of this Agreement, shall provide the below-listed items for the three months immediately preceding the month to Counsel for Alabama NAACP. If the fifteenth day of the calendar month falls on a weekend or holiday, these reports shall be provided on the next business day thereafter:

1. a report in Excel spreadsheet format or a format that can be easily converted to Excel containing the following data, by Medicaid district office, for the preceding month:
    - a. the number of covered transactions by type (application, renewal, recertification or change of address);
    - b. the number of filled out voter registration applications transmitted to the appropriate elections authority; and
    - c. the number of voter registration applications distributed by each county.
  2. Any investigations or corrective actions undertaken during the preceding quarter, as detailed in Sections VIII.D and VIII.F;
  3. All trainings conducted during the quarter;
  4. All evaluation reports pursuant to Sections VIII.E that note any deficiencies;
  5. A general summary of all other efforts undertaken by Alabama Medicaid to advance NVRA compliance or promote the provision of voter registration services;
  6. in the first quarterly report, the information listed below, which also shall be reported upon any change in its content:
    - a. the identity of the Alabama Medicaid NVRA Coordinator;
    - b. the identities of District NVRA Coordinators;
    - c. the checklist and any other worksheets or documents related to compliance with Section 7 of the NVRA developed for use in on-site reviews at Medicaid district offices; and
    - d. any other checklists, worksheets, or other documents related to compliance with Section 7 of the NVRA developed for use by the Medicaid district offices and/or the Medicaid central office; and
  7. in the second quarterly report, confirmation that training of Alabama Medicaid employees has occurred in all districts, as detailed in Section VI above.
- B. *SOS Monthly Reporting.* No later than the fifteenth day of each month, or, if the fifteenth day falls on a weekend or holiday, the following business day, the Secretary shall report to Counsel for Alabama NAACP, in Excel spreadsheet format or a format that can be easily converted to Excel, the

following data for the preceding month, by Alabama Medicaid District office:

1. the number of covered transactions; and
2. the number of total Medicaid-coded voter registration applications received by elections officials.

C. *SOS Quarterly Reporting.* The Secretary, on or before the fifteenth day of January, April, July and October after this Agreement is executed and thereafter until the expiration of this Agreement, shall provide the below-listed items for the three months immediately preceding the report to Counsel for Alabama NAACP and the Alabama Medicaid NVRA coordinator in Excel spreadsheet format or a format that can be easily converted to Excel. If the fifteenth day of the calendar month falls on a weekend or holiday, these reports shall be provided on the next business day:

1. The total number of voter registration application forms received by election officials that are attributable to Alabama Medicaid (those that were transmitted by Medicaid District offices plus coded mail-in voter registration applications received), by county; and
2. The total number of new and updated voter registrations that result from voter registration applications received by election officials from Alabama Medicaid.
3. Analysis of the data described in Sections VIII.C and IX.A.1 and the reviews conducted pursuant to Sections VIII.D and IX.A.2 for the preceding quarter. The analysis shall identify the three lowest performing Medicaid district offices (measured by comparing the number of covered transactions to the number of voter registration applications received by election officials that are attributed to that office), the three Medicaid district offices with the largest shifts (positive or negative) in the rate of voter registration applications attributed to that office, Medicaid district offices exhibiting potential compliance problems based on observation or any other basis, and any other areas of concern related to compliance with Section 7 of the NVRA that the SOS NVRA Coordinator identifies or becomes aware of from others. In addition, the Alabama Medicaid NVRA Coordinator shall review the Secretary's analysis and provide additional analysis based on that review.

- D. All reporting to Counsel for Alabama NAACP shall be electronic, communicated by email, unless otherwise agreed to by the parties to this Agreement. Reporting shall be to Adam Lioz of Demos at [alioz@demos.org](mailto:alioz@demos.org) and Jaliya Faulkner of Sutherland at [jaliya.faulkner@sutherland.com](mailto:jaliya.faulkner@sutherland.com) unless and until Counsel for Alabama NAACP informs Alabama Medicaid and the Secretary directly in writing (including electronically via email) of a change in the person(s) who shall receive the reports and provides a new email address.

## **XII. TERM AND ENFORCEMENT**

This Agreement shall become effective on the date of execution and shall remain in effect until November 30, 2016.

If Counsel for Alabama NAACP conclude that Alabama Medicaid is in breach of this Agreement, Counsel for Alabama NAACP shall notify Alabama Medicaid in writing of the asserted breach. Any notice of breach shall specifically identify the breach of the Agreement. Alabama Medicaid shall then have thirty days to respond to the notice and take action to cure the asserted breach. If Alabama Medicaid does not respond to the notice and take action to cure the asserted breach by the end of 30 days, Alabama NAACP may file an action both under the NVRA and to enforce this Agreement. If the breach is not cured within 45 days of the notice of breach notwithstanding the action taken, Alabama NAACP may file an action both under the NVRA and to enforce this Agreement. This Agreement should not be interpreted to preclude, within such lawsuit, allegations based on the widespread past and ongoing violations of Section 7 of the NVRA by Alabama Medicaid that Alabama NAACP already alleges.

As discussed in Section V.B.2. above, prior to an allegation of breach being asserted related to the implementation of the single, streamlined application process within the E & E computer system, Medicaid shall be afforded 30 days, in addition to the 30 days discussed in the above paragraph (a total of 60 days), to respond to the notice and take action to cure the asserted breach.

## **XIII. SUBMISSION TO SECRETARY OF STATE**

Alabama Medicaid shall file with the Secretary of State, pursuant to Alabama Administrative Code § 820-2-2-.08, any and all changes or amendments to its procedures for conducting voter registration in its offices made as a result of this Agreement.

## **XIV. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original instrument and all of which together shall constitute one and the same Agreement.

**XV. BINDING EFFECT**

The persons signing this Agreement represent that they have the authority to enter into this Agreement on behalf of the respective parties they represent and that this Agreement shall be binding upon the parties hereto.

\_\_\_\_\_  
Governor Robert Bentley

\_\_\_\_\_  
DATE



12-9-13

Stephanie McGee Azar  
General Counsel and Acting Commissioner, Alabama Medicaid Agency

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Jim Bennett  
Secretary of State

\_\_\_\_\_  
DATE



Dec 4, 2013

Benard Smelton  
President, Alabama State Conference of the NAACP

\_\_\_\_\_  
DATE

\_\_\_\_\_  
David Byrne  
Chief Counsel for Governor Bentley

\_\_\_\_\_  
DATE

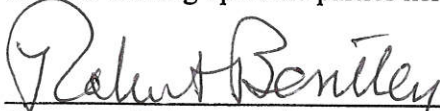
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Jean Brown  
Chief Counsel, Alabama Secretary of State

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DATE

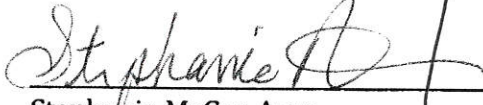


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\_\_\_\_\_  
Governor Robert Bentley

Dec 19, 2013  
DATE

  
\_\_\_\_\_  
Stephanie McGee Azar  
General Counsel and Acting Commissioner, Alabama Medicaid Agency

12-9-13  
DATE

  
\_\_\_\_\_  
Jim Bennett  
Secretary of State


12-10-13  
DATE

  
\_\_\_\_\_  
Benard Simelton  
President, Alabama State Conference of the NAACP

Dec 4, 2013  
DATE

  
\_\_\_\_\_  
David Byrne  
Chief Counsel for Governor Bentley

Dec 19, 2013  
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Jean Brown  
Chief Counsel, Alabama Secretary of State

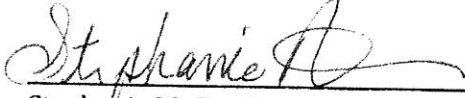
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Governor Robert Bentley

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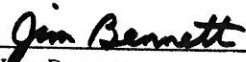


12-9-13

Stephanie McGee Azar

DATE

General Counsel and Acting Commissioner, Alabama Medicaid Agency



12-10-13

Jim Bennett  
Secretary of State

DATE



Dec 4, 2013

Benard Simelton  
President, Alabama State Conference of the NAACP

DATE

\_\_\_\_\_  
David Byrne  
Chief Counsel for Governor Bentley

\_\_\_\_\_  
DATE



December 10, 2013

Jean Brown  
Chief Counsel, Alabama Secretary of State

DATE