

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Jacobs/Myers</i>	DATE <i>10-14-08</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000205</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Ms. For Kner, Dept</i> <i>Closed 11/3/08, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>11-21-08</i> <input type="checkbox"/> FOIA DATE DUE _____ <input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations

OCT 08 2008

Dear State Health Official:

The purpose of this letter is to solicit your participation and your fiscal agent's participation in a license agreement between The Centers for Medicare & Medicaid Services (CMS) and the American Dental Association (ADA). The ADA owns the copyrights to its Current Dental Terminology (CDT), which is the code set that describes dental services. Since the CDT codes are copyright protected, we have entered into a licensing agreement with the ADA, which permits CMS and its contracting entities to use the CDT codes on a limited basis. Under this agreement, State Medicaid agencies, SCHIPs, and respective fiscal agents may agree to abide by the terms of the agreement and be protected under the agreement without further negotiation with the ADA until 2010 when the agreement expires.

We have enclosed for your review: a copy of a non-binding summary of the agreement; and an election form for submission to us expressing your participation in the agreement.

If you or your fiscal agent wishes to be covered under this agreement please complete the election form and return it to Fran Crystal, Mail Stop S2-01-16, 7500 Security Blvd., Baltimore, Maryland, 21244-1850, within six weeks of receipt of this letter. If we have not heard from you by that time, we will assume you have chosen to negotiate a separate agreement with the ADA.

If you have any questions, please contact Fran Crystal, at (410) 786-1195.

Sincerely,



Dianne H. Heffron

Acting Director

Family and Children's Health Program Group

Enclosures

Page 2 – State Medicaid Director

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children's Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

Christie Ranzewski Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council

Barbara Levine
Director of Policy and Programs
Association of State and Territorial Health Officials

MEDICAID AGENCIES AND SCHIP INCLUSION ELECTION

The Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration and the American Dental Association (ADA) entered into a U.S. Government License Agreement for Use of Current Dental Terminology (CDT™) (Agreement) dated August 1, 2004. Attachment A to the Agreement, as enclosed hereto and made a part hereof (Attachment A), allows certain of CMS's agents and other entities participating in programs administered by CMS (Entities) to include the ADA's Current Dental Terminology (CDT), a coding work of dental nomenclature, as contained in the Healthcare Common Procedure Coding System (HCPCS), in certain documents which may be distributed in hardcopy, on Entities' Internet websites and in other electronic media for use only in CMS programs, as described in the Attachment. The term extends to December 31, 2010. There is no fee for the use of CDT as permitted under Attachment A.

Pursuant to Attachment A the ADA and CMS have agreed that Medicaid agencies and State Child Health Insurance Programs (SCHIPs) and their fiscal agents have the right to be covered under Attachment A as if they were an Entity subject to specific provisions.

In order to use CDT in CMS programs as permitted by Attachment A, your organization, as a Medicaid agency, SCHIP, or their fiscal agent, agrees as follows:

1. You represent that your organization is a Medicaid agency, SCHIP, or their fiscal agent, and that your organization is not excluded from participation in the Agreement by virtue of qualifying as an organization with a contract under Section 1852 of the Social Security Act.
2. You represent that you have read the enclosed Attachment A and agree to abide by all provisions as if you were a covered Entity. You acknowledge Attachment A authorizes use of CDT only for purposes related to participating in CMS programs and that any use or distribution of materials containing CDT codes and descriptions, notes and guidelines that is unrelated to CMS programs requires a separate license agreement with the ADA.
3. You acknowledge that CMS has agreed to notify the ADA if it is aware that your organization is not in compliance with Attachment A. You further acknowledge that your organization will be subject to the appropriate action by the ADA, in the event that your organization is not in compliance with any provisions of Attachment A applicable to Entities.

4. You represent by your signature below that you have authority to enter into the agreement represented by Attachment A on behalf of your organization and that it is binding upon your organization. You acknowledge that the CDT license is only valid after this form is executed, the requested information completed and the form returned to CMS (for forwarding to the ADA).

Agreed: On behalf of

(Type full legal name of your organization)

By _____ Date _____
(Signature)
Print name _____

Organization Type (check as appropriate)

_____ Medicaid agency
_____ SCHIP
_____ Fiscal agent for _____
(Name of applicable Medicaid agency or SCHIP)

Summary of Attachment A to CMS and ADA License Agreement for Use of CDT

- CMS entities have a limited right to include CDT codes, nomenclature and descriptors on certain types of materials maintained on their Internet web sites and electronic media. In this context, CMS entities are defined as CMS agents and other entities participating in programs administered by CMS, *including* Medicare contractors, State Medicaid agencies, State Children's Health Insurance Programs (SCHIP) that are distinct from the Medicaid State agency, fiscal agents, and managed care organizations participating in Medicaid and/or SCHIP programs. These entities do not include Medicare managed care organizations. ((page 6, clause 1)
- CMS entities are permitted *to* include CDT codes, nomenclature and descriptors on the following types of documents maintained on their Internet web sites and electronic media:
 - Local Medical Review Policies
 - Bulletins/ Newsletters
 - Program Memoranda and Billing Instructions
 - Coverage and Coding Policies
 - Program Integrity Bulletins and correspondence
 - Educational/Training Materials
 - Program Integrity Bulletins and correspondence
 - Special mailings containing information that would otherwise be included in the aforementioned publication, but, due to time constraints, require expedited handling
 - Fee Schedules
 - Program/policy handbooks or manuals
 - Computer based training materials
- "Electronic Media" include e-mail, tapes, disk, or CD-ROM (page 6, clause 2 (A)). When conveying electronic media other than through the internet, State Medicaid and SCHIP agencies must print on the outside of the package or package, ship, or e-mail along with such electronic media, a copy of the "shrink wrap end user license" set forth in Exhibit 3.
- The above types of documents should be designed to convey program-specific information to providers and not CDT coding advice, which should be obtained from the official CDT publication (page 6, clause 2 (D)).
- In most cases, entities may not include more than 15 percent of the descriptors in a CDT category of service in their documents. This 15 percent limitation does not apply if the category of service has less than 15 CDT codes, or if the ADA waives this limitation in a particular case (page 7, clause 4 (A)).
- Fee schedules may include CDT codes and nomenclature, but not CDT descriptors (page 7, clause 4 (C)).

- The following notice must appear on the Internet web page including or immediately prior to the initial appearance or display of all or any portion of CDT in the Documents and on the first page of downloaded Documents that include all or any portion of CDT:

Current Dental Terminology (including procedure codes, nomenclature, descriptors and other data contained therein) is copyright © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS Apply.

- Entities must include a "point and click" license on any internet web sites or electronic media that contain all or selected parts of CDT. If an entity is unable to use a point and click license in electronic media, that entity must include a shrink-wrap license if the electronic media contain all or selected parts of CDT. Electronic media containing a limited reference to CDT (e.g., six CDT codes) need not contain the copyright notice (page 8, clause 8 of Attachment A).
- The use of CDT is authorized only for purposes related to participating in CMS programs. Distribution of materials containing CDT codes, nomenclature, or descriptors that are unrelated to CMS programs or incorporate CDT into commercial products requires a separate license agreement with the ADA (page 10, clause 12).
- Medicaid agencies and SCHIPs (and their fiscal agents) have the option of being included in this license agreement. CMS will send Medicaid agencies and SCHIPs copies of the Licensing Agreement and related Amendments along with an inclusion election form. The form needs to be signed and returned to CMS, if the Medicaid agencies, SCHIPs and/or their fiscal agents want to obtain the benefits of CMS's agreement with the ADA. Those agencies that do not wish to be included under this agreement may contact the ADA and enter into a separate license agreement with the ADA (page 10, clause 13).

**U.S. GOVERNMENT LICENSE AGREEMENT
FOR USE OF CDT**

ATTACHMENT A

1. ADA hereby grants LICENSEE a non-exclusive, royalty-free license authorizing LICENSEE to distribute the WORK to Entities. This distribution agreement will permit Entities, as mandated by LICENSEE requirements, to post or include certain materials that contain the WORK on their web sites or in Electronic Media as defined herein in accordance with the following terms:

2. A) The phrase "Electronic Media" means information sent via e-mail, tapes, disk or CD-ROM. Entities may include CDT codes and nomenclature or descriptors (as defined herein) in the following types of materials (referred to collectively as "Documents") to be included on their Internet web sites and Electronic Media:

- 1) Local Medical Review Policies (LMRP)
- 2) Bulletins/ Newsletters
- 3) Program Memoranda and Billing Instructions
- 4) Coverage and Coding Policies
- 5) Program Integrity Bulletins and correspondence.
- 6) Educational/Training Materials
- 7) Special mailings containing information that would otherwise be included in the aforementioned publications, but due to time constraints require expedited handling
- 8) Fee Schedules (subject to paragraph 4E hereof)
- 9) Program/policy handbooks or manuals
- 10) Computer based training manuals

B) Other materials that may be added to this list based on subsequent amendments to the License Agreement to meet LICENSEE's needs, including the need to reflect LICENSEE obligations with respect to Internet files and data containing the WORK.

C) 1) Entities may provide copies of the Document(s) in Electronic Media to requestors in order to comply with Freedom of Information Act requests provided that only CDT codes and nomenclature as defined herein are included in the Document(s) and the Entities comply with paragraphs 1, 2, 3, 4, 5, 6, 8, and 9 of this Attachment.

2) Entities may provide copies of the Document(s) to the Health and Human Services' Office of Inspector General, the General Accounting Office, and to other Federal and State agencies, provided that the Entities comply with paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of this Attachment. LICENSEE and/or the Entity will notify such Federal and State agencies in writing that its use of the Document(s) is subject to the terms of this Attachment.

D) The Documents should convey Medicare, State Children's Health Insurance Program (SCHIP), or Medicaid specific information and not CDT coding advice. Documents should not be designed to substitute for the CDT book with respect to codes, long descriptions, notes and/or guidelines for any user.

- E) As defined in the CDT manual, (i) “codes” means the Dental Procedure Codes, each of which is comprised of a five character alphanumeric code beginning with the letter “D” that identifies a specific dental procedure, (ii) “nomenclature” means a written, literal definition of a “code”, which is printed in boldface type in the CDT manual, and (iii) “descriptors” means written narratives that provide further definitions and intended uses for various “codes” or series of “codes”. Pursuant to this Attachment, use of the “codes” is also permitted wherever use of CDT “nomenclature” is permitted; and use of the both the “codes” and the “nomenclature” is also permitted wherever use of CDT “descriptors” is permitted.
3. Entities may use CDT codes and nomenclature in their Documents subject to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 hereof.
4. A) Except as specified in 4C, Entities may use CDT descriptors in Document(s), provided that use of CDT descriptors does not exceed over fifteen (15) percent of a Category of Service – e.g., Restorative. The above 15% limitation on the use of CDT descriptors described above shall not apply if the Category of Service of CDT as described has less than fifteen (15) CDT codes. There may be other circumstances where the fifteen (15) percent rule may be waived by the ADA. The ADA and LICENSEE will address requests for waivers on a case-by-case basis. The ADA will respond by letter or other written notification of its decision regarding any such written waiver request from LICENSEE or its Entities.
- B) For purposes of calculating the amount of “use” of CDT descriptors as permitted herein, each distinct document, such as an individual issue of a Document, is evaluated separately. The ADA agrees to provide counts (total and fifteen (15) percent) of the number of CDT codes included in the CDT Book Category of Service sections on an annual basis to LICENSEE and/or its Entities in order to assist Entities in their compliance with this Attachment.
- C) Fee Schedules may include CDT codes and nomenclature. In no event shall any Fee Schedule contain CDT descriptors. This prohibition includes, but is not limited to, Fee Schedules with listings of CDT codes and/or descriptors, with or without associated fees, and the annual new codes and descriptors included in the CDT book (unless the Category of Service of TCDT as described has less than fifteen CDT codes). Further, in no event shall a Fee Schedule be designed to substitute for the CDT book for an individual user.
5. LICENSEE shall develop samples of permitted formats of display of CDT to be used by Entities as contemplated by this Attachment. The formats shall emphasize the requirements of this Attachment and the License Agreement including the requirements of copyright notices, separation of CDT material and non-CDT material via distinct sections, typography or text, and/or by separate listings of CDT where such listings are permitted. Such sample formats shall be attached to this Attachment as Exhibit 1 and made a part of this Attachment. LICENSEE shall distribute such formats to Entities to implement this Attachment.

6. The following copyright notice shall appear on the Internet web page including or immediately prior to the initial appearance or display of all or any portion of CDT in the Documents and on the first page of downloaded Documents that include all or any portion of CDT:

Current Dental Terminology, fourth edition (CDT) (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS Apply.

Notwithstanding the foregoing, e-mail communications containing a limited reference to CDT codes (e.g., six CDT codes) need not contain the copyright notice.

7. Subject to paragraph 8 below, Entities must include a point and click license (with the same terms as contained in Exhibit 2) on their Internet web sites and in any Electronic Media that they distribute to users outside their organizations, if the web site or Electronic Media contains any Document that includes all or any portion of CDT. Notwithstanding the foregoing, Electronic Media containing a limited reference to CDT codes (e.g., six CDT codes) need not contain the copyright notice.

A) “Point and click” license, as required by this Attachment, means a license that appears on a computer screen or web page and includes a computer program or web page mechanism that requires users to indicate whether they accept the terms of the license by pointing their cursor and signaling, by clicking, that they accept the terms of said license prior to access to CDT.

B) At the Entity’s option, this “point and click” license must appear either before initial access is granted to any group of web pages within an Entity’s web site that contain CDT (e.g., before a section of bulletins or LMRPs, etc) or prior to each Document that contains all or any portion of CDT. Additionally, the “point and click” license must appear before each file download containing all or any portion of CDT.

C) Computer-based training modules that function as software must include an embedded point and click license containing the provisions of Exhibit 2 if they contain CDT codes, descriptions, notes or guidelines. The software shall include a mechanism that requires the acceptance of the point and click license before installation of the program. The provisions of paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 12 of this Exhibit also apply to computer-based training modules.

D) Entities may include additional terms in the point and click license described herein provided they do not conflict with the terms of Exhibit 2, and provided they do not expose the ADA to liability or jeopardize any ADA rights in CDT including copyright and trademark. Entities shall revise the referenced point and click licenses upon reasonable notice from LICENSEE in order to protect the ADA’s rights including copyright and trademark in CDT and to comply with U.S. governmental rights provisions, after the ADA notification to LICENSEE.

8. If an Entity is unable to use a point and click license in Electronic Media, such Entity shall include a "shrink-wrap license" (with the same terms as contained in Exhibit 3) in any Electronic Media that it distributes to users outside its organization whenever such Electronic Media contains any Document that includes all or any portion of CDT. Notwithstanding the foregoing, Electronic Media containing a limited reference to CDT codes (e.g., six CDT codes) need not contain the copyright notice.

A) A "shrink-wrap license," as required by this Attachment, means a license that is printed on the outside packaging of the Electronic Media, or packaged and shipped or emailed along with such Electronic Media; provided, however, the shrink-wrap license must be conspicuous and the user of the Electronic Material must be able to see and read the entire text of the shrink-wrap license prior to installing the Electronic Media on a computer system.

B) Entities may include additional terms in the shrink-wrap license described herein provided they do not conflict with the terms of Exhibit 3 and provided they do not expose the ADA to liability or jeopardize any ADA rights in CDT, including copyright and trademark rights. Entities agree to revise the license in Exhibit 3, upon reasonable notice from LICENSEE, in order to protect the ADA's rights including copyright and trademark rights in CDT and to comply with U.S. governmental rights provisions, after ADA notification to LICENSEE.

9. A) Bulletins/Newsletters posted on an Entity's Internet web site before the date the Entity receives written notification from LICENSEE of the requirements of this Attachment (as required by paragraph 11 of this Attachment) do not need to comply with paragraph 7 hereof, provided that the applicable copyright notice is contained therein as required by the Agreement.

B) Except for Bulletins/Newsletters, all Documents posted on an Entity's Internet web site *more than* six (6) weeks from the date Entity receives written notification from LICENSEE pursuant to paragraph 11 of this Attachment must conform to paragraph 4 hereof, whether such Documents are newly issued or revised. Except for Bulletins/Newsletters, all Documents posted on the Entity's Internet web site *less than* six (6) weeks from the date the Entity receives written notification from LICENSEE of the requirements of this Attachment pursuant to paragraph 11 of this Attachment must conform with paragraph 4 of this Attachment by no later than twelve (12) months after the effective date of the Attachment.

C) In no event may the Documents described in 9A and/or 9B be designed to substitute for the CDT Book for any user. LICENSEE agrees to work with the ADA to address any unauthorized Documents to protect ADA's copyright in CDT.

10. Entities may not charge a fee for distribution of Document(s) over the Internet or by electronic media, except that training materials including CDT distributed over the Internet or by electronic media may be distributed for no more than their cost. Should the need arise, the parties agree to negotiate in good faith to allow distribution of other Document(s) over the Internet at no more than their cost. Entities may distribute Electronic Media that include Document(s) containing over fifteen (15) percent of a section or subsection of CDT at no more than their cost.

11. LICENSEE will convey the requirements of this Attachment and provide a copy of the Attachment to the Entities through Program Memoranda or other normal mode of program communications as soon as possible but in no event later than eight (8) weeks after the Effective Date of this License Agreement. LICENSEE shall be responsible for ensuring Entity compliance with the provisions of this Attachment through its normal mechanism of ensuring LICENSEE program compliance.
12. This Attachment authorizes use of CDT only for purposes related to participating in LICENSEE programs. Distribution of materials containing CDT codes and descriptions that are unrelated to LICENSEE programs, including, but not limited to, incorporation of CDT into commercial products, shall require a separate license agreement with the ADA.
13. Medicaid agencies and SCHIPs and their fiscal agents shall have the option to agree to the license under this Attachment as if they were “Entities,” as defined herein, subject to the following.
 - A) LICENSEE shall send all Medicaid agencies and SCHIPs a written notification with a copy of the Attachment not later than eight (8) weeks after the Effective Date of this Attachment notifying them in writing of all terms of this Attachment. This written notification shall include a form, which shall be subject to the approval of the ADA, where said Medicaid agencies and SCHIPs and their fiscal agents may agree to the terms of this Attachment as if they were Entities. (Form)
 - B) LICENSEE shall provide the ADA with copies of the Forms after they are executed by the respective Medicaid agencies and SCHIPs and their fiscal agents.
 - C) The parties acknowledge that Medicaid agencies and SCHIPs and their fiscal agents shall have the right to be covered by this Attachment, or if it so elects, it may attempt to negotiate a separate agreement with the ADA.
 - D) LICENSEE shall notify the ADA if it is aware that a Medicaid agency or SCHIP or fiscal agent that has elected to be subject to the terms of this Attachment is not in compliance with this Attachment.
 - E) A Medicaid agency, SCHIP and/or fiscal agent that has agreed to be subject to the terms of this Attachment will be subject to the appropriate action by the ADA, in the event that such Medicaid agency and/or fiscal agent is not in compliance with any provisions of this Attachment applicable to Entities.
14. Upon written request by any Entity that entered into an agreement with the ADA regarding the specific subject matter of this Attachment, the ADA shall cancel said applicable agreement(s) to allow said Entity the benefit of this Attachment. The ADA shall notify said Entities of this provision as soon as practical after the Effective Date of this Attachment.

EXHIBIT 1

Sample CDT 2009/2010 Descriptor

D0120 periodic oral evaluation – established patient

An evaluation performed on a patient of record to determine any changes in the patient's dental and medical health status since a previous comprehensive or periodic evaluation. This includes an oral cancer evaluation and periodontal screening where indicated and may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedures separately.

The dental procedure code, nomenclature and descriptor above has been obtained, or appears verbatim from the *Current Dental Terminology, (CDT-2009/2010)*. CDT (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. CDT-2009/2010 (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS apply.

Sample CDT-2009/2010 Descriptor in a Document

Guidelines for Administering the Dental Benefit – Diagnostic Procedures.

Clinical oral evaluations are covered diagnostic procedures that must be distinguished from preventive (e.g., dental prophylaxis) procedures. The following CDT procedure code is most common:

Periodic evaluation is an eligible procedure. Benefits are limited to twice annually for each covered member. The date of service should be actual date of the examination.

D0120 periodic oral evaluation-established patient

An evaluation performed on a patient of record to determine any changes in the patient's dental and medical health status since a previous comprehensive or periodic evaluation. This includes oral cancer evaluation and periodontal screening where indicated and may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedure separately.

*The dental procedure code, nomenclature, and descriptor above has been obtained or appears verbatim from the Current Dental Terminology CDT-2009/2010. CDT 2009/2010 (including procedure codes, definitions (descriptors), and other data) is copyrighted by the American Dental Association. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS apply.

Sample CDT 2009/2010 Nomenclature in a Fee Schedule
Revised 2009 National Dental Diagnostic Procedures Fee Schedule

*CDT-2009/2010 Code	*Nomenclature	Scheduled Amount
D0120	periodic oral evaluation-established patient	\$XX
D0140	limited oral evaluation-problem focused	\$XX
D0150	comprehensive oral evaluation-new or established patient	\$XX
D0160	detailed and extensive oral evaluation-problem focused, by report	\$XX
D0210	intraoral - complete series (including bitewings)	\$XX
D0230	intraoral - perapical first film	\$XX
D0272	bitewings - two films	\$XX
D0274	bitewings - four films	\$XX

* The CDT 2009/2010 Code and Nomenclature above have been obtained, or appears verbatim from the *Current Dental Terminology (CDT)*. CDT-2009/2010. CDT4 - 2009/2010 (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS apply.

EXHIBIT 2

POINT AND CLICK LICENSE FOR USE OF "CURRENT DENTAL TERMINOLOGY" ("CDT")

End User License Agreement

These materials contain *Current Dental Terminology* (CDT), copyright © 2008 American Dental Association (ADA). All rights reserved. CDT is a trademark of the ADA.

THE LICENSE GRANTED HEREIN IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. BY CLICKING BELOW ON THE BUTTON LABELED "I ACCEPT", YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO ALL TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

IF YOU DO NOT AGREE WITH ALL TERMS AND CONDITIONS SET FORTH HEREIN, CLICK BELOW ON THE BUTTON LABELED "I DO NOT ACCEPT" AND EXIT FROM THIS COMPUTER SCREEN.

IF YOU ARE ACTING ON BEHALF OF AN ORGANIZATION, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACT ON BEHALF OF SUCH ORGANIZATION AND THAT YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT CREATES A LEGALLY ENFORCEABLE OBLIGATION OF THE ORGANIZATION. AS USED HEREIN, "YOU" AND "YOUR" REFER TO YOU AND ANY ORGANIZATION ON BEHALF OF WHICH YOU ARE ACTING.

1. Subject to the terms and conditions contained in this Agreement, you, your employees and agents are authorized to use CDT only as contained in the following authorized materials and solely for internal use by yourself, employees and agents within your organization within the United States and its territories. Use of CDT is limited to use in programs administered by Centers for Medicare & Medicaid Services (CMS). You agree to take all necessary steps to ensure that your employees and agents abide by the terms of this agreement. You acknowledge that the ADA holds all copyright, trademark and other rights in CDT. You shall not remove, alter, or obscure any ADA copyright notices or other proprietary rights notices included in the materials.

2. Any use not authorized herein is prohibited, including by way of illustration and not by way of limitation, making copies of CDT for resale and/or license, transferring copies of CDT to any party not bound by this agreement, creating any modified or derivative work of CDT, or making any commercial use of CDT. License to use CDT for any use not authorized herein must be obtained through the American Dental Association, 211 East Chicago Avenue, Chicago, IL 60611. Applications are available at the American Dental Association web site, <http://www.ADA.org>.

3. Applicable Federal Acquisition Regulation Clauses (FARS) \Department of Defense Federal Acquisition Regulation Supplement (DFARS) Restrictions Apply to Government Use. Please click here to see all U.S. Government Rights Provisions. [Text for "X" should appear when user clicks on the foregoing text link]

4. ADA DISCLAIMER OF WARRANTIES AND LIABILITIES. CDT is provided “as is” without warranty of any kind, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. No fee schedules, basic unit, relative values or related listings are included in CDT. The ADA does not directly or indirectly practice medicine or dispense dental services. The sole responsibility for the software, including any CDT and other content contained therein, is with (insert name of applicable entity) or the CMS; and no endorsement by the ADA is intended or implied. The ADA expressly disclaims responsibility for any consequences or liability attributable to or related to any use, non-use, or interpretation of information contained or not contained in this file/product. This Agreement will terminate upon notice to you if you violate the terms of this Agreement. The ADA is a third party beneficiary to this Agreement.

5. CMS DISCLAIMER. The scope of this license is determined by the ADA, the copyright holder. Any questions pertaining to the license or use of the CDT should be addressed to the ADA. End Users do not act for or on behalf of the CMS. CMS DISCLAIMS RESPONSIBILITY FOR ANY LIABILITY ATTRIBUTABLE TO END USER USE OF THE CDT. CMS WILL NOT BE LIABLE FOR ANY CLAIMS ATTRIBUTABLE TO ANY ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE INFORMATION OR MATERIAL COVERED BY THIS LICENSE. In no event shall CMS be liable for direct, indirect, special, incidental, or consequential damages arising out of the use of such information or material.

The license granted herein is expressly conditioned upon your acceptance of all terms and conditions contained in this agreement. If the foregoing terms and conditions are acceptable to you, please indicate your agreement by clicking below on the button labeled “I ACCEPT”. If you do not agree to the terms and conditions, you may not access or use the software. Instead, you must click below on the button labeled “I DO NOT ACCEPT” and exit from this computer screen.

I ACCEPT

I DO NOT ACCEPT

TEXT FOR X:

“U.S. Government Rights. This product includes CDT, which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois, 60611. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.”

EXHIBIT 3

SHRINK WRAP LICENSE FOR USE OF "CURRENT DENTAL TERMINOLOGY", FOURTH EDITION ("CDT™")

End User License Agreement

These materials contain *Current Dental Terminology, Fourth Edition* (CDT), copyright © 2008 American Dental Association (ADA). All rights reserved. CDT is a trademark of the ADA.

THE LICENSE GRANTED HEREIN IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF ALL TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT. BY INSTALLING THESE SOFTWARE MATERIALS ON A COMPUTER SYSTEM, YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO ALL TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL TERMS AND CONDITIONS SET FORTH HEREIN, DO NOT INSTALL OR USE THE SOFTWARE AND PROMPTLY RETURN THE SOFTWARE, ALONG WITH ITS PACKAGING AND ANY ACCOMPANYING DOCUMENTATION, TO THE SENDER.

IF YOU ARE ACTING ON BEHALF OF AN ORGANIZATION, YOU REPRESENT THAT YOU ARE AUTHORIZED TO ACT ON BEHALF OF SUCH ORGANIZATION AND THAT YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT CREATES A LEGALLY ENFORCEABLE OBLIGATION OF THE ORGANIZATION. AS USED HEREIN, "YOU" AND "YOUR" REFER TO YOU AND ANY ORGANIZATION ON BEHALF OF WHICH YOU ARE ACTING.

1. Subject to the terms and conditions contained in this Agreement, you, your employees and agents are authorized to use CDT only as contained in the following authorized materials and solely for internal use by yourself, employees and agents within your organization within the United States and its territories. Use of CDT is limited to use in programs administered by Centers for Medicare & Medicaid Services (CMS). You agree to take all necessary steps to ensure that your employees and agents abide by the terms of this agreement. You acknowledge that the ADA holds all copyright, trademark and other rights in CDT. You shall not remove, alter, or obscure any ADA copyright notices or other proprietary rights notices included in the software.

2. Any use not authorized herein is prohibited, including by way of illustration and not by way of limitation, making copies of CDT for resale and/or license, transferring copies of CDT to any party not bound by this agreement, creating any modified or derivative work of CDT, or making any commercial use of CDT. License to use CDT for any use not authorized herein must be obtained through the American Dental Association, 211 East Chicago Avenue, Chicago, IL 60611. Applications are available at the American Dental Association web site, <http://www.ADA.org>.

3. This product includes CDT, which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois, 60611. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS

227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (June 1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

4. **ADA DISCLAIMER OF WARRANTIES AND LIABILITIES.** CDT is provided "as is" without warranty of any kind, either expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose. No fee schedules, basic unit, relative values or related listings are included in CDT. The ADA does not directly or indirectly practice medicine or dispense dental services. The sole responsibility for the software, including any CDT and other content contained therein, is with (insert name of applicable entity) or the CMS; and no endorsement by the ADA is intended or implied. The ADA expressly disclaims responsibility for any consequences or liability attributable to or related to any use, non-use, or interpretation of information contained or not contained in this file/product. This Agreement will terminate upon notice to you if you violate the terms of this Agreement. The ADA is a third party beneficiary to this Agreement.

5. **CMS DISCLAIMER.** The scope of this license is determined by the ADA, the copyright holder. Any questions pertaining to the license or use of the CDT should be addressed to the ADA. End Users do not act for or on behalf of the CMS. CMS DISCLAIMS RESPONSIBILITY FOR ANY LIABILITY ATTRIBUTABLE TO END USER USE OF THE CDT. CMS WILL NOT BE LIABLE FOR ANY CLAIMS ATTRIBUTABLE TO ANY ERRORS, OMISSIONS, OR OTHER INACCURACIES IN THE INFORMATION OR MATERIAL COVERED BY THIS LICENSE. In no event shall CMS be liable for direct, indirect, special, incidental, or consequential damages arising out of the use of such information or material.

f://hipaa/dental/"CDT SHO2 doc"

Copy #205



State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Forkner
Director

November 3, 2008

Ms. Diane E. Heffron
Acting Director
Family and Children's Health Program Group
Department of Health and Human Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Dear Ms. Heffron:

Enclosed is an executed copy of the election form for the South Carolina Department of Health and Human Services (SCDHHS) to participate in the licensing agreement between the Centers for Medicare and Medicaid Services (CMS) and the American Dental Association (ADA) for the use of CDT codes. By signing this agreement, SCDHHS agrees to abide by the terms of the agreement and be protected under the agreement without further negotiation with the ADA until 2010 when the agreement expires.

If you need any additional information regarding this agreement, please contact Deirdra T. Singleton, General Counsel, at (803) 898-2647.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emma Forkner".

Emma Forkner
Director

EF/sb

Enclosure

MEDICAID AGENCIES AND SCHIP INCLUSION ELECTION

The Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration and the American Dental Association (ADA) entered into a U.S. Government License Agreement for Use of Current Dental Terminology (CDT™) (Agreement) dated August 1, 2004. Attachment A to the Agreement, as enclosed hereto and made a part hereof (Attachment A), allows certain of CMS's agents and other entities participating in programs administered by CMS (Entities) to include the ADA's Current Dental Terminology (CDT), a coding work of dental nomenclature, as contained in the Healthcare Common Procedure Coding System (HCPCS), in certain documents which may be distributed in hardcopy, on Entities' Internet websites and in other electronic media for use only in CMS programs, as described in the Attachment. The term extends to December 31, 2010. There is no fee for the use of CDT as permitted under Attachment A.

Pursuant to Attachment A the ADA and CMS have agreed that Medicaid agencies and State Child Health Insurance Programs (SCHIPs) and their fiscal agents have the right to be covered under Attachment A as if they were an Entity subject to specific provisions.

In order to use CDT in CMS programs as permitted by Attachment A, your organization, as a Medicaid agency, SCHIP, or their fiscal agent, agrees as follows:

1. You represent that your organization is a Medicaid agency, SCHIP, or their fiscal agent, and that your organization is not excluded from participation in the Agreement by virtue of qualifying as an organization with a contract under Section 1852 of the Social Security Act.
2. You represent that you have read the enclosed Attachment A and agree to abide by all provisions as if you were a covered Entity. You acknowledge Attachment A authorizes use of CDT only for purposes related to participating in CMS programs and that any use or distribution of materials containing CDT codes and descriptions, notes and guidelines that is unrelated to CMS programs requires a separate license agreement with the ADA.
3. You acknowledge that CMS has agreed to notify the ADA if it is aware that your organization is not in compliance with Attachment A. You further acknowledge that your organization will be subject to the appropriate action by the ADA, in the event that your organization is not in compliance with any provisions of Attachment A applicable to Entities.

- You represent by your signature below that you have authority to enter into the agreement represented by Attachment A on behalf of your organization and that it is binding upon your organization. You acknowledge that the CDT license is only valid after this form is executed, the requested information completed and the form returned to CMS (for forwarding to the ADA).

Agreed:

On behalf of

South Carolina Department of Health and Human Services

(Type full legal name of your organization)

By

(Signature)

Print name

EMMA FOR KNER

Date 11-3-08

Organization Type (check as appropriate)

X

Medicaid agency

X

SCHIP

Fiscal agent for

(Name of applicable Medicaid agency or SCHIP)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Jacobs/Myers</i>	DATE <i>10-14-08</i>
---------------------------	-------------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>300205</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Ms. For Lner, Dept Cleared 11/3/08, letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>11-21-08</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations

OCT 08 2008

Dear State Health Official:

The purpose of this letter is to solicit your participation and your fiscal agent's participation in a license agreement between The Centers for Medicare & Medicaid Services (CMS) and the American Dental Association (ADA). The ADA owns the copyrights to its Current Dental Terminology (CDT), which is the code set that describes dental services. Since the CDT codes are copyright protected, we have entered into a licensing agreement with the ADA, which permits CMS and its contracting entities to use the CDT codes on a limited basis. Under this agreement, State Medicaid agencies, SCHIPs, and respective fiscal agents may agree to abide by the terms of the agreement and be protected under the agreement without further negotiation with the ADA until 2010 when the agreement expires.

We have enclosed for your review: a copy of a non-binding summary of the agreement; and an election form for submission to us expressing your participation in the agreement.

If you or your fiscal agent wishes to be covered under this agreement please complete the election form and return it to Fran Crystal, Mail Stop S2-01-16, 7500 Security Blvd., Baltimore, Maryland, 21244-1850, within six weeks of receipt of this letter. If we have not heard from you by that time, we will assume you have chosen to negotiate a separate agreement with the ADA.

If you have any questions, please contact Fran Crystal, at (410) 786-1195.

Sincerely,


Dianne E. Heffon

Acting Director

Family and Children's Health Program Group

Enclosures

Page 2 – State Medicaid Director

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
Division of Medicaid and Children's Health

Ann C. Kohler
NASMD Executive Director
American Public Human Services Association

Joy Wilson
Director, Health Committee
National Conference of State Legislatures

Matt Salo
Director of Health Legislation
National Governors Association

Debra Miller
Director for Health Policy
Council of State Governments

Christie Ranszewski Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council

Barbara Levine
Director of Policy and Programs
Association of State and Territorial Health Officials

MEDICAID AGENCIES AND SCHIP INCLUSION ELECTION

The Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration and the American Dental Association (ADA) entered into a U.S. Government License Agreement for Use of Current Dental Terminology (CDT™) (Agreement) dated August 1, 2004. Attachment A to the Agreement, as enclosed hereto and made a part hereof (Attachment A), allows certain of CMS's agents and other entities participating in programs administered by CMS (Entities) to include the ADA's Current Dental Terminology (CDT), a coding work of dental nomenclature, as contained in the Healthcare Common Procedure Coding System (HCPCS), in certain documents which may be distributed in hardcopy, on Entities' Internet websites and in other electronic media for use only in CMS programs, as described in the Attachment. The term extends to December 31, 2010. There is no fee for the use of CDT as permitted under Attachment A.

Pursuant to Attachment A the ADA and CMS have agreed that Medicaid agencies and State Child Health Insurance Programs (SCHIPs) and their fiscal agents have the right to be covered under Attachment A as if they were an Entity subject to specific provisions.

In order to use CDT in CMS programs as permitted by Attachment A, your organization, as a Medicaid agency, SCHIP, or their fiscal agent, agrees as follows:

1. You represent that your organization is a Medicaid agency, SCHIP, or their fiscal agent, and that your organization is not excluded from participation in the Agreement by virtue of qualifying as an organization with a contract under Section 1852 of the Social Security Act.
2. You represent that you have read the enclosed Attachment A and agree to abide by all provisions as if you were a covered Entity. You acknowledge Attachment A authorizes use of CDT only for purposes related to participating in CMS programs and that any use or distribution of materials containing CDT codes and descriptions, notes and guidelines that is unrelated to CMS programs requires a separate license agreement with the ADA.
3. You acknowledge that CMS has agreed to notify the ADA if it is aware that your organization is not in compliance with Attachment A. You further acknowledge that your organization will be subject to the appropriate action by the ADA, in the event that your organization is not in compliance with any provisions of Attachment A applicable to Entities.

4. You represent by your signature below that you have authority to enter into the agreement represented by Attachment A on behalf of your organization and that it is binding upon your organization. You acknowledge that the CDT license is only valid after this form is executed, the requested information completed and the form returned to CMS (for forwarding to the ADA).

Agreed: On behalf of

(Type full legal name of your organization)

By _____ Date _____
(Signature)

Print name _____

Organization Type (check as appropriate)

_____ Medicaid agency

_____ SCHIP

_____ Fiscal agent for

_____ (Name of applicable Medicaid agency or SCHIP)

**Summary of Attachment A to
CMS and ADA License Agreement for Use of CDT**

- CMS entities have a limited right to include CDT codes, nomenclature and descriptors on certain types of materials maintained on their Internet web sites and electronic media. In this context, CMS entities are defined as CMS agents and other entities participating in programs administered by CMS, *including* Medicare contractors, State Medicaid agencies, State Children's Health Insurance Programs (SCHIP) that are distinct from the Medicaid State agency, fiscal agents, and managed care organizations participating in Medicaid and/or SCHIP programs. These entities do not include Medicare managed care organizations. ((page 6, clause 1)
- CMS entities are permitted *to* include CDT codes, nomenclature and descriptors on the following types of documents maintained on their Internet web sites and electronic media:
 - Local Medical Review Policies
 - Bulletins/ Newsletters
 - Program Memoranda and Billing Instructions
 - Coverage and Coding Policies
 - Program Integrity Bulletins and correspondence
 - Educational/Training Materials
 - Program Integrity Bulletins and correspondence
 - Special mailings containing information that would otherwise be included in the aforementioned publication, but, due to time constraints, require expedited handling
 - Fee Schedules
 - Program/policy handbooks or manuals
 - Computer based training materials
- "Electronic Media" include e-mail, tapes, disk, or CD-ROM (page 6, clause 2 (A)). When conveying electronic media other than through the internet, State Medicaid and SCHIP agencies must print on the outside of the package or package, ship, or e-mail along with such electronic media, a copy of the "shrink wrap end user license" set forth in Exhibit 3.
- The above types of documents should be designed to convey program-specific information to providers and not CDT coding advice, which should be obtained from the official CDT publication (page 6, clause 2 (D)).
- In most cases, entities may not include more than 15 percent of the descriptors in a CDT category of service in their documents. This 15 percent limitation does not apply if the category of service has less than 15 CDT codes, or if the ADA waives this limitation in a particular case (page 7, clause 4 (A)).
- Fee schedules may include CDT codes and nomenclature, but not CDT descriptors (page 7, clause 4 (C)).

- The following notice must appear on the Internet web page including or immediately prior to the initial appearance or display of all or any portion of CDT in the Documents and on the first page of downloaded Documents that include all or any portion of CDT:

Current Dental Terminology (including procedure codes, nomenclature, descriptors and other data contained therein) is copyright © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS Apply.

- Entities must include a "point and click" license on any internet web sites or electronic media that contain all or selected parts of CDT. If an entity is unable to use a point and click license in electronic media, that entity must include a shrink-wrap license if the electronic media contain all or selected parts of CDT. Electronic media containing a limited reference to CDT (e.g., six CDT codes) need not contain the copyright notice (page 8, clause 8 of Attachment A).
- The use of CDT is authorized only for purposes related to participating in CMS programs. Distribution of materials containing CDT codes, nomenclature, or descriptors that are unrelated to CMS programs or incorporate CDT into commercial products requires a separate license agreement with the ADA (page 10, clause 12).
- Medicaid agencies and SCHIPs (and their fiscal agents) have the option of being included in this license agreement. CMS will send Medicaid agencies and SCHIPs copies of the Licensing Agreement and related Amendments along with an inclusion election form. The form needs to be signed and returned to CMS, if the Medicaid agencies, SCHIPs and/or their fiscal agents want to obtain the benefits of CMS's agreement with the ADA. Those agencies that do not wish to be included under this agreement may contact the ADA and enter into a separate license agreement with the ADA (page 10, clause 13).

**U.S. GOVERNMENT LICENSE AGREEMENT
FOR USE OF CDT**

ATTACHMENT A

1. ADA hereby grants LICENSEE a non-exclusive, royalty-free license authorizing LICENSEE to distribute the WORK to Entities. This distribution agreement will permit Entities, as mandated by LICENSEE requirements, to post or include certain materials that contain the WORK on their web sites or in Electronic Media as defined herein in accordance with the following terms:
2.
 - A) The phrase "Electronic Media" means information sent via e-mail, tapes, disk or CD-ROM. Entities may include CDT codes and nomenclature or descriptors (as defined herein) in the following types of materials (referred to collectively as "Documents") to be included on their Internet web sites and Electronic Media:
 - 1) Local Medical Review Policies (LMRP)
 - 2) Bulletins/ Newsletters
 - 3) Program Memoranda and Billing Instructions
 - 4) Coverage and Coding Policies
 - 5) Program Integrity Bulletins and correspondence.
 - 6) Educational/Training Materials
 - 7) Special mailings containing information that would otherwise be included in the aforementioned publications, but due to time constraints require expedited handling
 - 8) Fee Schedules (subject to paragraph 4E hereof)
 - 9) Program/policy handbooks or manuals
 - 10) Computer based training manuals
 - B) Other materials that may be added to this list based on subsequent amendments to the License Agreement to meet LICENSEE's needs, including the need to reflect LICENSEE obligations with respect to Internet files and data containing the WORK.
 - C)
 - 1) Entities may provide copies of the Document(s) in Electronic Media to requestors in order to comply with Freedom of Information Act requests provided that only CDT codes and nomenclature as defined herein are included in the Document(s) and the Entities comply with paragraphs 1, 2, 3, 4, 5, 6, 8, and 9 of this Attachment.
 - 2) Entities may provide copies of the Document(s) to the Health and Human Services' Office of Inspector General, the General Accounting Office, and to other Federal and State agencies, provided that the Entities comply with paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of this Attachment. LICENSEE and/or the Entity will notify such Federal and State agencies in writing that its use of the Document(s) is subject to the terms of this Attachment.
 - D) The Documents should convey Medicare, State Children's Health Insurance Program (SCHIP), or Medicaid specific information and not CDT coding advice. Documents should not be designed to substitute for the CDT book with respect to codes, long descriptions, notes and/or guidelines for any user.

- E) As defined in the CDT manual, (i) “codes” means the Dental Procedure Codes, each of which is comprised of a five character alphanumeric code beginning with the letter “D” that identifies a specific dental procedure, (ii) “nomenclature” means a written, literal definition of a “code”, which is printed in boldface type in the CDT manual, and (iii) “descriptors” means written narratives that provide further definitions and intended uses for various “codes” or series of “codes”. Pursuant to this Attachment, use of the “codes” is also permitted wherever use of CDT “nomenclature” is permitted; and use of the both the “codes” and the “nomenclature” is also permitted wherever use of CDT “descriptors” is permitted.
3. Entities may use CDT codes and nomenclature in their Documents subject to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 hereof.
4. A) Except as specified in 4C, Entities may use CDT descriptors in Document(s), provided that use of CDT descriptors does not exceed over fifteen (15) percent of a Category of Service – e.g., Restorative. The above 15% limitation on the use of CDT descriptors described above shall not apply if the Category of Service of CDT as described has less than fifteen (15) CDT codes. There may be other circumstances where the fifteen (15) percent rule may be waived by the ADA. The ADA and LICENSEE will address requests for waivers on a case-by-case basis. The ADA will respond by letter or other written notification of its decision regarding any such written waiver request from LICENSEE or its Entities.
- B) For purposes of calculating the amount of “use” of CDT descriptors as permitted herein, each distinct document, such as an individual issue of a Document, is evaluated separately. The ADA agrees to provide counts (total and fifteen (15) percent) of the number of CDT codes included in the CDT Book Category of Service sections on an annual basis to LICENSEE and/or its Entities in order to assist Entities in their compliance with this Attachment.
- C) Fee Schedules may include CDT codes and nomenclature. In no event shall any Fee Schedule contain CDT descriptors. This prohibition includes, but is not limited to, Fee Schedules with listings of CDT codes and/or descriptors, with or without associated fees, and the annual new codes and descriptors included in the CDT book (unless the Category of Service of TCDT as described has less than fifteen CDT codes). Further, in no event shall a Fee Schedule be designed to substitute for the CDT book for an individual user.
5. LICENSEE shall develop samples of permitted formats of display of CDT to be used by Entities as contemplated by this Attachment. The formats shall emphasize the requirements of this Attachment and the License Agreement including the requirements of copyright notices, separation of CDT material and non-CDT material via distinct sections, typography or text, and/or by separate listings of CDT where such listings are permitted. Such sample formats shall be attached to this Attachment as Exhibit 1 and made a part of this Attachment. LICENSEE shall distribute such formats to Entities to implement this Attachment.

6. The following copyright notice shall appear on the Internet web page including or immediately prior to the initial appearance or display of all or any portion of CDT in the Documents and on the first page of downloaded Documents that include all or any portion of CDT:

Current Dental Terminology, fourth edition (CDT) (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS Apply.

Notwithstanding the foregoing, e-mail communications containing a limited reference to CDT codes (e.g., six CDT codes) need not contain the copyright notice.

7. Subject to paragraph 8 below, Entities must include a point and click license (with the same terms as contained in Exhibit 2) on their Internet web sites and in any Electronic Media that they distribute to users outside their organizations, if the web site or Electronic Media contains any Document that includes all or any portion of CDT. Notwithstanding the foregoing, Electronic Media containing a limited reference to CDT codes (e.g., six CDT codes) need not contain the copyright notice.

A) “Point and click” license, as required by this Attachment, means a license that appears on a computer screen or web page and includes a computer program or web page mechanism that requires users to indicate whether they accept the terms of the license by pointing their cursor and signaling, by clicking, that they accept the terms of said license prior to access to CDT.

B) At the Entity’s option, this “point and click” license must appear either before initial access is granted to any group of web pages within an Entity’s web site that contain CDT (e.g., before a section of bulletins or LMRPs, etc) or prior to each Document that contains all or any portion of CDT. Additionally, the “point and click” license must appear before each file download containing all or any portion of CDT.

C) Computer-based training modules that function as software must include an embedded point and click license containing the provisions of Exhibit 2 if they contain CDT codes, descriptions, notes or guidelines. The software shall include a mechanism that requires the acceptance of the point and click license before installation of the program. The provisions of paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10 and 12 of this Exhibit also apply to computer-based training modules.

D) Entities may include additional terms in the point and click license described herein provided they do not conflict with the terms of Exhibit 2, and provided they do not expose the ADA to liability or jeopardize any ADA rights in CDT including copyright and trademark. Entities shall revise the referenced point and click licenses upon reasonable notice from LICENSEE in order to protect the ADA’s rights including copyright and trademark in CDT and to comply with U.S. governmental rights provisions, after the ADA notification to LICENSEE.

8. If an Entity is unable to use a point and click license in Electronic Media, such Entity shall include a “shrink-wrap license” (with the same terms as contained in Exhibit 3) in any Electronic Media that it distributes to users outside its organization whenever such Electronic Media contains any Document that includes all or any portion of CDT. Notwithstanding the foregoing, Electronic Media containing a limited reference to CDT codes (e.g., six CDT codes) need not contain the copyright notice.

A) A “shrink-wrap license,” as required by this Attachment, means a license that is printed on the outside packaging of the Electronic Media, or packaged and shipped or emailed along with such Electronic Media; provided, however, the shrink-wrap license must be conspicuous and the user of the Electronic Material must be able to see and read the entire text of the shrink-wrap license prior to installing the Electronic Media on a computer system.

B) Entities may include additional terms in the shrink-wrap license described herein provided they do not conflict with the terms of Exhibit 3 and provided they do not expose the ADA to liability or jeopardize any ADA rights in CDT, including copyright and trademark rights. Entities agree to revise the license in Exhibit 3, upon reasonable notice from LICENSEE, in order to protect the ADA's rights including copyright and trademark rights in CDT and to comply with U.S. governmental rights provisions, after ADA notification to LICENSEE.

9. A) Bulletins/Newsletters posted on an Entity's Internet web site before the date the Entity receives written notification from LICENSEE of the requirements of this Attachment (as required by paragraph 11 of this Attachment) do not need to comply with paragraph 7 hereof, provided that the applicable copyright notice is contained therein as required by the Agreement.

B) Except for Bulletins/Newsletters, all Documents posted on an Entity's Internet web site *more than* six (6) weeks from the date Entity receives written notification from LICENSEE pursuant to paragraph 11 of this Attachment must conform to paragraph 4 hereof, whether such Documents are newly issued or revised. Except for Bulletins/Newsletters, all Documents posted on the Entity's Internet web site *less than* six (6) weeks from the date the Entity receives written notification from LICENSEE of the requirements of this Attachment pursuant to paragraph 11 of this Attachment must conform with paragraph 4 of this Attachment by no later than twelve (12) months after the effective date of the Attachment.

C) In no event may the Documents described in 9A and/or 9B be designed to substitute for the CDT Book for any user. LICENSEE agrees to work with the ADA to address any unauthorized Documents to protect ADA's copyright in CDT.

10. Entities may not charge a fee for distribution of Document(s) over the Internet or by electronic media, except that training materials including CDT distributed over the Internet or by electronic media may be distributed for no more than their cost. Should the need arise, the parties agree to negotiate in good faith to allow distribution of other Document(s) over the Internet at no more than their cost. Entities may distribute Electronic Media that include Document(s) containing over fifteen (15) percent of a section or subsection of CDT at no more than their cost.

11. LICENSEE will convey the requirements of this Attachment and provide a copy of the Attachment to the Entities through Program Memoranda or other normal mode of program communications as soon as possible but in no event later than eight (8) weeks after the Effective Date of this License Agreement. LICENSEE shall be responsible for ensuring Entity compliance with the provisions of this Attachment through its normal mechanism of ensuring LICENSEE program compliance.
12. This Attachment authorizes use of CDT only for purposes related to participating in LICENSEE programs. Distribution of materials containing CDT codes and descriptions that are unrelated to LICENSEE programs, including, but not limited to, incorporation of CDT into commercial products, shall require a separate license agreement with the ADA.
13. Medicaid agencies and SCHIPs and their fiscal agents shall have the option to agree to the license under this Attachment as if they were “Entities,” as defined herein, subject to the following.
 - A) LICENSEE shall send all Medicaid agencies and SCHIPs a written notification with a copy of the Attachment not later than eight (8) weeks after the Effective Date of this Attachment notifying them in writing of all terms of this Attachment. This written notification shall include a form, which shall be subject to the approval of the ADA, where said Medicaid agencies and SCHIPs and their fiscal agents may agree to the terms of this Attachment as if they were Entities. (Form)
 - B) LICENSEE shall provide the ADA with copies of the Forms after they are executed by the respective Medicaid agencies and SCHIPs and their fiscal agents.
 - C) The parties acknowledge that Medicaid agencies and SCHIPs and their fiscal agents shall have the right to be covered by this Attachment, or if it so elects, it may attempt to negotiate a separate agreement with the ADA.
 - D) LICENSEE shall notify the ADA if it is aware that a Medicaid agency or SCHIP or fiscal agent that has elected to be subject to the terms of this Attachment is not in compliance with this Attachment.
 - E) A Medicaid agency, SCHIP and/or fiscal agent that has agreed to be subject to the terms of this Attachment will be subject to the appropriate action by the ADA, in the event that such Medicaid agency and/or fiscal agent is not in compliance with any provisions of this Attachment applicable to Entities.
14. Upon written request by any Entity that entered into an agreement with the ADA regarding the specific subject matter of this Attachment, the ADA shall cancel said applicable agreement(s) to allow said Entity the benefit of this Attachment. The ADA shall notify said Entities of this provision as soon as practical after the Effective Date of this Attachment.

EXHIBIT 1

Sample CDT 2009/2010 Descriptor

D0120 periodic oral evaluation – established patient

An evaluation performed on a patient of record to determine any changes in the patient's dental and medical health status since a previous comprehensive or periodic evaluation. This includes an oral cancer evaluation and periodontal screening where indicated and may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedures separately.

The dental procedure code, nomenclature and descriptor above has been obtained, or appears verbatim from the *Current Dental Terminology, (CDT)-2009/2010*. CDT (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. CDT-2009/2010 (including procedure codes, definitions (descriptors) and other data) is copyrighted by the American Dental Association. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS apply.

Sample CDT-2009/2010 Descriptor in a Document

Guidelines for Administering the Dental Benefit – Diagnostic Procedures.

Clinical oral evaluations are covered diagnostic procedures that must be distinguished from preventive (e.g., dental prophylaxis) procedures. The following CDT procedure code is most common:

Periodic evaluation is an eligible procedure. Benefits are limited to twice annually for each covered member. The date of service should be actual date of the examination.

D0120 periodic oral evaluation-established patient

An evaluation performed on a patient of record to determine any changes in the patient's dental and medical health status since a previous comprehensive or periodic evaluation. This includes oral cancer evaluation and periodontal screening where indicated and may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedure separately.

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Sample CDT 2009/2010 Nomenclature in a Fee Schedule
Revised 2009 National Dental Diagnostic Procedures Fee Schedule

*CDT-2009/2010 Code	*Nomenclature	Scheduled Amount
D0120	periodic oral evaluation-established patient	\$XX
D0140	limited oral evaluation-problem focused	\$XX
D0150	comprehensive oral evaluation-new or established patient	\$XX
D0160	detailed and extensive oral evaluation--problem focused, by report	\$XX
D0210	intraoral - complete series (including bitewings)	\$XX
D0230	intraoral - perapical first film	\$XX
D0272	bitewings - two films	\$XX
D0274	bitewings - four films	\$XX

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f://hipaa/dental/"CDT SHO2 doc"



State of South Carolina
Department of Health and Human Services

Doc # 205

Mark Sanford
Governor

Emma Forkner
Director

November 3, 2008

Ms. Diane E. Heffron
Acting Director
Family and Children's Health Program Group
Department of Health and Human Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Dear Ms. Heffron:

Enclosed is an executed copy of the election form for the South Carolina Department of Health and Human Services (SCDHHS) to participate in the licensing agreement between the Centers for Medicare and Medicaid Services (CMS) and the American Dental Association (ADA) for the use of CDT codes. By signing this agreement, SCDHHS agrees to abide by the terms of the agreement and be protected under the agreement without further negotiation with the ADA until 2010 when the agreement expires.

If you need any additional information regarding this agreement, please contact Deirdra T. Singleton, General Counsel, at (803) 898-2647.

Sincerely,

A handwritten signature in cursive script, reading "Emma Forkner".

Emma Forkner
Director

EF/sb

Enclosure

MEDICAID AGENCIES AND SCHIP INCLUSION ELECTION

The Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration and the American Dental Association (ADA) entered into a U.S. Government License Agreement for Use of Current Dental Terminology (CDT™) (Agreement) dated August 1, 2004. Attachment A to the Agreement, as enclosed hereto and made a part hereof (Attachment A), allows certain of CMS's agents and other entities participating in programs administered by CMS (Entities) to include the ADA's Current Dental Terminology (CDT), a coding work of dental nomenclature, as contained in the Healthcare Common Procedure Coding System (HCPCS), in certain documents which may be distributed in hardcopy, on Entities' Internet websites and in other electronic media for use only in CMS programs, as described in the Attachment. The term extends to December 31, 2010. There is no fee for the use of CDT as permitted under Attachment A.

Pursuant to Attachment A the ADA and CMS have agreed that Medicaid agencies and State Child Health Insurance Programs (SCHIPs) and their fiscal agents have the right to be covered under Attachment A as if they were an Entity subject to specific provisions.

In order to use CDT in CMS programs as permitted by Attachment A, your organization, as a Medicaid agency, SCHIP, or their fiscal agent, agrees as follows:

1. You represent that your organization is a Medicaid agency, SCHIP, or their fiscal agent, and that your organization is not excluded from participation in the Agreement by virtue of qualifying as an organization with a contract under Section 1852 of the Social Security Act.
2. You represent that you have read the enclosed Attachment A and agree to abide by all provisions as if you were a covered Entity. You acknowledge Attachment A authorizes use of CDT only for purposes related to participating in CMS programs and that any use or distribution of materials containing CDT codes and descriptions, notes and guidelines that is unrelated to CMS programs requires a separate license agreement with the ADA.
3. You acknowledge that CMS has agreed to notify the ADA if it is aware that your organization is not in compliance with Attachment A. You further acknowledge that your organization will be subject to the appropriate action by the ADA, in the event that your organization is not in compliance with any provisions of Attachment A applicable to Entities.

4. You represent by your signature below that you have authority to enter into the agreement represented by Attachment A on behalf of your organization and that it is binding upon your organization. You acknowledge that the CDT license is only valid after this form is executed, the requested information completed and the form returned to CMS (for forwarding to the ADA).

Agreed: On behalf of

South Carolina Department of Health and Human Services

(Type full legal name of your organization)

By Emma Jule

(Signature)

Date 11-3-08

Print name EMMA FORKNER

Organization Type (check as appropriate)

☒ Medicaid agency

☒ SCHIP

☐ Fiscal agent for

(Name of applicable Medicaid agency or SCHIP)