Issue Paper

DATE:
07/16/21

AGENDA ITEM (ACTION ITEM):
Consider/Approve Contracting with ezEdMed for Medicaid Training and Billing Services for the 2021-2022 school year.

APPLICABLE BOARD POLICY:
01.1 Legal Status of the Board

HISTORY/BACKGROUND:
ezEdMed is a Medicaid billing program that the district has previously contracted with for many years. Due to an increase in the fee rate for ezEdMed, KSBA contracted with a different Medicaid billing program for the 2020/21 school year. The current contracted program through KSBA has had numerous changes, untimely updates and issues with reporting documentation causing frustration for staff. The current fee to continue with KSBA's contracted program is 6%. The new fee rate to return to ezEdMed for 2021/2022 school year is 5%. Due to the decreased cost, improved service and embedded simplified features, we would like to return to utilizing ezEdMed for Medicaid billing for the 2021/2022 school year.

FISCAL/BUDGETARY IMPACT:
Changing to ezEdMed, the district will be charged 5% of all Medicaid reimbursements. During the 2020-2021 school year, the district brought in $307,568.27 through Medicaid reimbursements. As a result, while contracting through KSBA's current billing program, the district was charged 6% for the billing of these claims totaling $18,454.10. If the 2021-2022 school year's billing is equivalent, then the district cost is anticipated to be $15,378.41 (5%) providing a savings of $3,075.69.

RECOMMENDATION:
Approval to Approval of contracting with ezEdMed Medicaid Training and Billing Services for the 2021-2022 school year. It is requested that the Board allow this contract to automatically renew after one calendar year and each subsequent year unless terminated by either party.

CONTACT PERSON:
Danielle Rice

Principal/Administrator	*District Administrator*	*Superintendent*

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

SUBSCRIPTION AGREEMENT

ezEdMed Service

Customer		Original ezEdMed Order Date
Contact	Danielle Rice	
	Contact person for scheduling trainings, obtaining data, email notices, etc.	**Effective Date**
Address	1055 Eaton Drive Fort Wright, KY 41017	
Phone	859-344-8888	
E-mail	Danielle.rice@kenton.kyschools.us	
		Fee
ezEdMed	Percentage of Fee for Service and Cost Reporting Revenue	5%
	Total Fee	**5%**

*Infohandler rate guarantee three (3) years

Subject to the terms and conditions of this Subscription Agreement (including the Subscription Terms attached hereto as Appendix A - Subscription Terms) and the Terms and Conditions that may be found at www.infohandler.com (as may be modified from time to time pursuant to such Terms and Conditions, the "Terms and Conditions"), InfoHandler, Inc. ("InfoHandler") grants Customer named above ("Customer") a non-exclusive, nontransferable and nonsublicensable license to use the Service(s) (as defined above) via the Internet for the Term (as defined in attached Subscription Terms), subject to renewal as described in the Subscription Terms, for the Fee identified above. I understand if our district uses ezEdMed, we may not submit claims for Medicaid reimbursement for therapists who are paid with federal funds.

This Subscription Agreement supersedes and replaces any previously agreed upon ezEdMed contract.

INFOHANDLER.COM, INC.   **ezEdMed Customer**

Signature: _____   Signature: _____   _____

Print Name: Stephen D. Daugherty, CEO   Print Name: _____   _____

Contract Date: _____   Email: _____   _____

APPENDIX A - SUBSCRIPTION TERMS

1. **InfoHandler agrees that** InfoHandler, or its authorized representatives, will provide telephonic and email support to Customer between the hours of 8:00 a.m. and 5:00 p.m. Local Time, during normal business days. InfoHandler will provide a file format to Customer for conversion of data into an appropriate format for importing into the Service. Data returned to InfoHandler in any format other than the provided file format may require additional labor which may be charged at the then current negotiated fee. InfoHandler will provide the initial conversion included in the above fee. InfoHandler will provide one day of training at the above Fee. Additional days of training may be requested at an agreed upon rate. Subsequent yearly training may be requested at the then current Rate(s). InfoHandler has no obligation to provide Customer with hard-copy documentation, upgrades, enhancements, modifications or other support unless specifically contracted for. At Customer's request, within thirty (30) days of termination of this Subscription Agreement, provided Customer is not in breach of this Subscription Agreement and subject to the terms and conditions of this Subscription Agreement, including Section 2(f) below, InfoHandler will make available to Customer a file of "Your Data" (as defined in the Terms and Conditions).

2. **Customer agrees that:**

(a) Customer subscribes to the Service(s) for an initial term ending June 30, 2022, (the "Term"), commencing on the earlier of either the date of subscription signature or the date that InfoHandler (or its authorized representatives) notifies Customer of the activation of Customer's Service(s) account by email to either the email or US Postal Service(s) address listed above (the "Activation Date"). **At the end of the initial one (1) year Term, this Subscription Agreement will automatically renew for successive one (1) year periods (each a "Renewal Term") at InfoHandler's then-current Fee(s) (as defined above unless cancelled by either party in writing not less than ten (10) days prior to the expiration of the applicable Term or Renewal Term.** In the event of termination, no amounts previously paid by Customer to InfoHandler will be reimbursable to Customer and any amounts due and payable prior to such termination will remain the obligation of Customer to InfoHandler. Customer acknowledges that usage policies set forth herein and in the Terms and Conditions may be changed at any time upon at least thirty (30) days prior notice to Customer. All fees pursuant to this Subscription Agreement are irrevocable and nonrefundable. All fees are exclusive of all taxes, levies or duties imposed by taxing authorities; Customer will be solely responsible for payment of all such taxes, levies and/or duties.

For ezEdMed InfoHandler will invoice Customer by email or US Postal Service(s) to the address listed above after each submission in which claims are paid. Payment for all invoices from InfoHandler will be due within thirty (30) days after the date of InfoHandler's invoice. All payments not made when due will bear interest at the rate of one and one-half percent (1.5%) per month, or at the highest contract rate allowed by law, whichever is less, from the due date until paid.

For ezEdMed InfoHandler may elect to return the fee obtained on services that had to be refunded to Medicaid due to an error in the program. InfoHandler may elect not to return the fee obtained on services that had to be refunded to Medicaid due to Customer error.

(b) Customer's account will be considered delinquent if any invoice remains unpaid twenty (20) days after the date due. Customer's access to the Service(s) may be suspended if Customer's account is delinquent. InfoHandler may impose a charge to restore archived data from Customer's delinquent account. Suspension of Customer's access to the Service(s) will not excuse Customer from any obligation to InfoHandler to make payment(s) pursuant to this Subscription Agreement. Subject to the provisions of Section 2(e) below, after payment of the total accelerated amount, Customer will be entitled to restoration of Customer's use of the Service(s) for the remainder of the Term (or the Renewal Term, if applicable).

(c) Customer will abide (and will cause its Users to abide) by the Terms and Conditions. InfoHandler will communicate with Customer's Contact (as defined above, as Customer may change from time to time by written notice to InfoHandler) with respect to issues related to this Subscription Agreement and the Service(s).

(d) If (i) Customer's account is suspended for more than ninety (90) days, (ii) InfoHandler notifies Customer of Customer's breach of this Subscription Agreement (including the Terms and Conditions) and Customer fails to cure such breach within two (2) business days immediately thereafter, or (iii) Customer's access to the Service(s) terminates pursuant to the Terms and Conditions, this Subscription Agreement will be terminated without any obligation on the part of InfoHandler to maintain "Your Data" (as defined in the Terms and Conditions) or to provide a file to you pursuant to Section 1. Termination is not an exclusive remedy and all other remedies will be available whether or not the license granted herein is terminated. Upon expiration or termination of this Subscription Agreement, Customer will immediately cease all use of the Service(s), including the Software and any documentation.

(e) The Service(s) and Software provided to Customer and all information, documents and materials on any websites related to the Service(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All of InfoHandler's websites, corporate names, Service(s) marks, trademarks, trade names, logos and domain names (collectively "Marks") are and will at all times remain the exclusive property of InfoHandler. Nothing in the Subscription Agreement or the Terms and Conditions grants Customer the right or license to use any of the Marks.

(f) Customer will notify InfoHandler immediately of any unauthorized use of Customer's account (including, if applicable, the passwords and accounts of each User accessing the Service(s) by means of an account established by Customer) or any other breach of security.

3. **Infringement; Warranties and Disclaimer; Limitation of Liability; Confidentiality.**

(a) During the term of this Agreement, if any portion of the Service(s) or the Software is held by a court of competent jurisdiction to infringe any third party United States intellectual property rights, or if InfoHandler believes that any portion of the Service(s) or the Software infringes any third party United States intellectual property rights, and Customer incurs a liability or expense as a result of such holding, then Customer's sole remedy shall be, and InfoHandler will, at its option: (i) procure for Customer the right to sell or use, as appropriate, the Service(s); (ii) replace the

Service(s) with other noninfringing suitable software and/or Service(s)s; (iii) modify the Service(s); or (iv) remove the Service(s) and refund any payments paid by Customer with respect to any period after the removal of such Service(s), if any.

(b)   PROVIDER WILL USE ALL REASONABLE EFFORTS TO PROTECT "YOUR DATA" (AS DEFINED IN THE TERMS AND CONDITIONS) BEHIND A SECURE FIREWALL SYSTEM, TO CONDUCT DAILY DATA BACKUPS, AND TO STORE WEEKLY FULL-SYSTEM BACKUP IN A SEPARATE, FIRE-SAFE FACILITY. NOTWITHSTANDING THE FOREGOING, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT CUSTOMER IS USING THE SERVICE(S) AND THE SOFTWARE AT CUSTOMER'S SOLE RISK. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED PURSUANT TO A SERVICE(S) LEVEL AGREEMENT OR OTHERWISE IN WRITING, THE SERVICE(S) IS PROVIDED "AS IS" WITHOUT WARRANTY, TERM OR CONDITION OF ANY KIND, AND PROVIDER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SERVICE(S) WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICE(S), OR THE SERVER THAT MAKES THE SERVICE(S) AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE(S) IS DONE AT CUSTOMER'S RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR NETWORK, OR LOSS OF DATA THAT RESULTS FROM USE OF THE SERVICE(S).

(c)   THE TOTAL LIABILITY OF PROVIDER WITH RESPECT TO THE SUBJECT MATTER OF THIS SUBSCRIPTION AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY CUSTOMER TO PROVIDER FOR THE SERVICE(S) UNDER THIS SUBSCRIPTION AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER PROVIDER NOR ITS LICENSORS WILL BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE PROCUREMENT), WHETHER OR NOT FORESEEABLE AND EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER.

(d)   Customer and InfoHandler agree to maintain the confidentiality of any proprietary information received by the other party during, or prior to entering into, this Agreement that a party should reasonably know is confidential or proprietary based on the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information ("Confidential Information"). This section shall not apply to any publicly available or independently developed information or the open source version of any portion of the software used to operate the Service(s). The receiving party of any Confidential Information of the other party agrees not to use Confidential Information for any purpose except as reasonably necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party will protect the secrecy of and avoid disclosure and unauthorized use of the disclosing party's Confidential Information to the same degree that it takes to protect its own Confidential Information.

4.   **Miscellaneous**. Capitalized terms not otherwise defined herein will be as defined in the Terms and Conditions. In the event of any breach of this Subscription Agreement (or the Terms and Conditions) by Customer, (i) InfoHandler will have the right to terminate this Subscription Agreement if such breach has not been cured within thirty (30) days of written notice to Customer specifying the breach, and/or (ii) InfoHandler will have the right to suspend Customer's access to the Service(s). This Subscription Agreement is between InfoHandler and Customer, and (except as expressly provided herein) is not for the benefit of any third party, whether directly or indirectly (including, if applicable, any User accessing the Service(s) by means of an account established by Customer). Either party to this Subscription Agreement may give notice to the other at any time by letter delivered by first class mail or pre-paid post to (i) Customer, at the address set forth above, or (ii) InfoHandler, at 6409 Fayetteville Road, STE-120-309, Durham, NC 27713. All notices will be deemed to have been given two days after mailing or posting (if sent by first class mail or pre-paid post). The failure of either party to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this Subscription Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Subscription Agreement will otherwise remain in full force and effect and enforceable. This Subscription Agreement is not assignable, transferable or sublicensable by Customer except with InfoHandler's prior written consent. THE AGREEMENT AND THESE TERMS AND CONDITIONS WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF OR THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. InfoHandler and Customer agree that any cause of action arising out of or related to this Subscription Agreement must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. Both parties agree that this Subscription Agreement (including the Terms and Conditions) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Subscription Agreement, and that all modifications must be in writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Subscription Agreement.
     No indebtedness of any kind incurred or created by Customer shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness Customer shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.