



PURCHASING ACKNOWLEDGEMENT and ROUTING FORM

For use with Service Contracts of \$10,000 or greater
Under \$10,000, use Service Contract Form P1-C

552.130

Buyer: Candace Yarbough

Originator

Reviewer: _____

Purchase Order Number

Name: Joann Pacheco

Phone: 972-581-4793

E-mail: jpacheco@dallasisd.org

Date Originated: Jun 19, 2017

To be completed by Purchasing upon approval

Board File # 7.25-62217

RFP #

CY-204968

Requisition # TBD

Department: Financial Services

Contractor Name:	<u>Texas Association of School Boards</u>
Address:	<u>12007 Research Blvd</u>
City, State, Zip:	<u>Austin, Texas 78759</u>
Contact:	<u>Jeff Clemmons</u>
Phone #:	<u>800-580-8272 ext.2220</u>
E-mail Address:	<u>jeff.clemmons@tasb.org</u>
Vendor ID#:	<u>7209</u>

FUND	FUNC	OBJ	SUB	ORG	PIC

DESCRIPTION OF SERVICES TO BE RENDERED
(Be Specific)

TASB, Inc will provide Medicaid Billing Services.

Contract Amount (Not to Exceed): 2% of first 2.5 million

ACKNOWLEDGEMENT SIGNATURES

<u>Joann Pacheco</u> Director - Printed Name	 Director - Signature	<u>9/8/2017</u> Date
<u>Edward Sorola</u> Executive Director - Printed Name	 Executive Director - Signature	<u>9/8/2017</u> Date
<u>Larry Throm</u> Deputy / Chief - Printed Name	 Deputy / Chief - Signature	<u>9/8/2017</u> Date
<u>Justin Hill</u> Executive Director Purchasing - Printed Name	 Executive Director Purchasing - Signature	<u>9/8/2017</u> Date

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MEDICAID BILLING SERVICES AND LICENSE AGREEMENT

The undersigned school district ("District") is a member of the Texas Association of School Boards, Inc. ("TASB") and desires Medicaid billing services through TASB's Special Education Solutions, as provided in this Medicaid Billing Services and License Agreement ("Agreement").

Whereas, District appoints TASB as its Fiscal Agent for the limited purposes set forth in this Agreement and TASB is willing to provide such professional services; and

Whereas, TASB's Special Education Solutions has the special knowledge and skill required to provide Medicaid billing services through its SMART© Service;

Now, therefore, in consideration of the premises and covenants contained herein, the parties agree as follows:

ARTICLE I. DEFINITIONS

The following definitions shall apply to this Agreement, regardless of whether the term is initial capped throughout the Agreement, unless the context indicates otherwise:

- A. "Claim" means the right of District to seek reimbursement from the federal government for a qualifying health and related service or services provided to a Medicaid eligible student meeting eligibility requirements as set forth in the Individuals with Disabilities Education Act ("IDEA").
- B. "Fiscal Agent" means TASB for the limited purposes of performing the services outlined in this Agreement on behalf of District.
- C. "HHSC" means the Texas Health and Human Services Commission or any successor entity.
- D. "Provider" means an individual service provider employed or contracted by the District, who is authorized to treat or otherwise provide health and related services to District's students.
- E. "SHARS" means School Health and Related Services. SHARS is a Medicaid financing program and is a joint program of the Texas Education Agency and HHSC. SHARS allows local school districts to obtain Medicaid reimbursement for certain health-related services provided to students in special education.
- F. "SMART© Program" means the Site-Based Medicaid Administration, Reimbursement, and Tracking software application and related documentation licensed by TASB pursuant to this Agreement. "SMART© Services" means all the services provided to District by TASB under this Agreement. The SMART© Program and SMART© Service are collectively referred to as "SMART."
- G. "TMHP" means the Texas Medicaid and Healthcare Partnership, the organization that receives Claims for Medicaid reimbursement under the SHARS program, or any successor entity.

ARTICLE II. DUTIES AND RESPONSIBILITIES

TASB shall perform the duties specified in **Exhibit A** (Fiscal Agent Responsibilities). District shall perform the duties specified in **Exhibit B** (District Responsibilities).

ARTICLE III. BILLING SERVICE AUTHORIZATION

A. District designates TASB as its Fiscal Agent to perform the duties set out in this Agreement and, in such capacity, TASB shall be considered a school official under the Family Educational Records Privacy Act ("FERPA"). District authorizes TASB to directly or indirectly process and submit District's Claims to TMHP on behalf of District as set out in this Agreement.

B. TASB's SMART© Services, including its SMART© Program, are not designed or intended to serve as District's official record repository or data archive of its SHARS Claims. As between District and TASB, District is responsible for maintaining its SHARS source documentation to satisfy District's record retention requirements. TASB will take commercially reasonable precautions to preserve and protect District data entered into the SMART© Program for at least three years from the date of submission. While this Agreement is in effect, TASB will cooperate with District in transferring or converting District's Claims information into a useful format, within the capabilities and limitations of TASB's technology systems, within 60 days of District's written request or other agreed time frame.

ARTICLE IV. OWNERSHIP OF AND LICENSE OF SMART© PROGRAM

A. As between TASB and District, TASB is the sole and exclusive owner of the SMART© Program. The SMART© Program is an internet-based software application and this Agreement grants District a non-exclusive, non-transferable license to use and access the SMART© Program for the purposes set forth in this Agreement. District agrees to use the SMART© Program only as permitted by this Agreement and consistent with any additional terms of use or policies that may be published in connection with the SMART© Program from time to time (which terms may not conflict with or diminish District's rights under this Agreement).

B. District will not infringe upon or violate TASB's intellectual property rights in and to the SMART© Program, including any and all copyrights, trademarks, trade names, and trade secrets. District will not reverse engineer, decompile, or create derivative works, or sell, lease or otherwise make the SMART© Program available to any unauthorized person or third party. To the extent District provides feedback, suggestions, or requests changes or improvements to the SMART© Program, District grants to TASB a royalty-free, non-exclusive, perpetual license to use, adapt, sell and otherwise exploit such contribution without restriction.

C. TASB represents that the SMART© Program, and the use by District in accordance with this Agreement, does not and will not infringe on the intellectual property rights of any third party. TASB will protect and indemnify District from any and all claims, assessments, or suits, at law or in equity, including legal expenses, damages, and attorneys' fees, alleging or asserting that the SMART© Program infringes on the proprietary rights of a third party. The foregoing indemnification is conditioned on (1) District providing TASB with written notice of claim, assessment or suit before District incurs any significant expense or obligation relating thereto; (2) TASB having the right to control the defense and any settlement of the dispute, provided that settlement does not impose any financial or other material obligation upon District; and (3) District cooperating in the defense and resolution of the dispute.

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ARTICLE V. COMPENSATION

A. For services rendered under this Agreement, TASB shall be compensated as detailed in **Exhibit C** (Fee Schedule). District and TASB additionally agree that any payment methodology used pursuant to this Agreement does not contain any type of incentive, directly or indirectly, for inappropriately inflating, in any way, Claims submitted on behalf of District.

~~B. District agrees to promptly pay TASB. Nonpayment of fees as required by this Agreement shall constitute a material breach. [Intentionally Deleted]~~ TASB DISD

C. District agrees that all payments and disbursements required of it under this Agreement shall be made from current revenues available to District.

ARTICLE VI. ERRORS AND OMISSIONS

Except as expressly provided otherwise, no accidental errors or omissions upon the part of either party shall relieve the other party of its responsibilities under this Agreement, provided such errors and omissions are reported promptly after discovery.

ARTICLE VII. COMMENCEMENT, AMENDMENT, AND TERMINATION

A. The initial term of this Agreement begins on the Effective Date (set forth at the end of this Agreement) and ends three years later. ~~This Agreement shall automatically renew for successive three-year terms until terminated as set out below.~~ District must hold membership in TASB as a condition precedent to this Agreement becoming effective, and any lapse in TASB membership during the course of this Agreement shall constitute a material breach. [Intentionally Deleted] TASB DISD

B. TASB may amend this Agreement by providing District at least 60 days' written notice of the amendment prior to the amendment's effective date (which shall be stated in the notice). District's continued use of TASB's SMART© Services after the effective date of the amendment will constitute acceptance of the amendment by conduct. District's signature will not be required for the amendment to be effective, although District may opt to terminate the Agreement as set out below.

C. This Agreement may be terminated as follows:

1. If TASB presents an amendment to District pursuant to Article VII.B above, by District giving TASB written notice of termination before the effective date of the amendment.

~~2. Before the Agreement automatically renews for another three-year term, by the terminating party giving the other party at least 60 days' prior written notice of termination.~~ [Intentionally Deleted] TASB DISD

3. During an unexpired three-year term, by District providing TASB with at least 60 days' prior written notice and paying the early termination fee set out in Exhibit C.

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4. By either party due to the other party's material breach of this Agreement. The terminating party shall provide the other party with at least five business days' prior written notice describing the breach and, if desired, offering an opportunity to cure. Termination under this section shall be without prejudice to any other rights or defenses held by either party.

5. By TASB if TASB elects to discontinue or terminate SMART for all clients, then TASB may terminate upon at least 180 days prior written notice to District.

D. District and TASB agree that each will notify TMHP within five working days of both the commencement and termination, by either party, of this Agreement. Termination will not extinguish TASB's right to payment, pursuant to Exhibit C.

E. Upon termination, District will no longer have access to SMART in order to process Claims. District will have up to 180 days to request its Claims data from TASB and TASB will convert or transfer District's data into a useful format, within the capabilities and limitations of TASB's technology systems, and provide to District within 60 days (or other agreed time frame) of District's written request. TASB will destroy District's Claims data upon District's written request, provided that TASB has been fully paid as required by this Agreement. Notwithstanding the foregoing, TASB will be permitted to retain indistinct vestiges of District's data on back-up systems for business continuity purposes, subject to continuing confidentiality requirements of this Agreement and of state and federal law.

ARTICLE VIII. LIMITATION OF LIABILITY; RELATIONSHIP OF PARTIES

A. It is agreed that, to the fullest extent permitted by law, TASB shall not be liable for any consequential or incidental damages (including, without limitation, damages for loss of profits and/or savings, business interruption, loss of business information, or other indirect pecuniary losses) arising from use of or inability to use the SMART© Program. Notwithstanding the foregoing, TASB's liability under this Agreement is limited to the fees paid to TASB under this Agreement with District during the previous year.

B. It is further agreed that TASB is an independent contractor and that nothing in this Agreement shall be construed to create the relationship of employer-employee, fiduciary, partnership or joint venture.

ARTICLE IX. CONFIDENTIALITY

A. TASB Confidential Information

TASB confidential information shall include, but not be limited to, the proprietary SMART© Program, including all related templates, forms, or other documents. TASB maintains that its SMART© Program constitutes protected trade secrets.

B. District Confidential Information

District confidential information shall include, but not be limited to, its SHARS Claim information. The parties acknowledge and agree that FERPA protects the personally identifiable information of students and that SHARS Claims are protected FERPA educational records. District provides confidential student information to TASB solely for the purpose of handling SHARS reimbursements as outlined in this

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Agreement. TASB agrees to comply with FERPA as well as other state and federal laws that protect District's Claim information. TASB will maintain the privacy of District's Confidential Information and will not release it, other than as authorized by this Agreement, unless District gives its written consent.

C. Confidentiality Obligations

1. The receiving party of Confidential Information shall: (a) at all times protect it from unauthorized disclosure with the same degree of care that it uses to protect its own confidential information, and in no event using less than commercially reasonable care; and (b) use it only to the extent necessary to exercise rights or fulfill obligations under this Agreement. Each party shall limit the disclosure of the other party's Confidential Information to those of its agents, employees, and contractors with a need to access such Confidential Information for a party's exercise of its rights and obligations under this Agreement, provided that all such agents, employees, and contractors are subject to disclosure and use restrictions at least as protective as those set forth herein. Each party's obligations set forth in this Article IX shall remain in effect during the term of this Agreement and for as long as the receiving party retains Confidential information after expiration or termination of this Agreement.

2. A receiving party may provide the disclosing party's Confidential Information to a court or governmental body pursuant to a valid court order, subpoena, law or regulation, provided that the receiving party: (a) promptly notifies the disclosing party of such requirement as far in advance as possible to the extent advanced notice is lawful; and (b) provides reasonable assistance to the disclosing party in any lawful efforts by the disclosing party to resist or limit the disclosure of such Confidential Information.

3. The parties agree that the receiving party's disclosure of Confidential Information except as provided herein may result in irreparable injury for which a remedy in money damages may be inadequate. Thus, the parties agree that in the event of such disclosure or threatened disclosure, the disclosing party may be entitled to seek an injunction to prevent the breach or threatened breach without the necessity of proving irreparable injury or the inadequacy of money damages, in addition to remedies otherwise available to the disclosing party at law or in equity.

ARTICLE X. REPRESENTATIONS AND WARRANTIES

A. District and its Providers will submit to TASB, as Fiscal Agent, true and correct Claim information that contains only those services, supplies, and equipment actually provided to recipients. TASB will rely upon information furnished by District and its Providers and District agrees that TASB will not be required to verify the accuracy of the information. District further agrees that TASB will not be responsible for ensuring that District or its Providers adhere to applicable laws and regulations. As between TASB and District, it shall be District's duty to supervise its Providers.

B. Both parties understand that Claims will be paid from federal and state funds and that any concealment or falsification of material facts by either party is subject to prosecution under federal and state law, the imposition of fines or penalties, and the recoupment of any illegitimate payments.

C. Both parties represent and agree as follows:

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1. This Agreement is executed with full knowledge and understanding of its terms and meanings and the individual signing this Agreement is authorized to do so; and

2. This Agreement may be executed in multiple counterparts, each of which shall serve as an original and all of which will constitute the same instrument. A facsimile or imaged signature shall be enforceable as an original.

D. DISTRICT UNDERSTANDS AND AGREES THAT SMART IS PROVIDED "AS IS" AND "AS AVAILABLE." TASB DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TASB MAKES NO WARRANTY THAT ITS PRODUCTS OR SERVICES UNDER THIS AGREEMENT WILL BE UNINTERRUPTED OR ERROR FREE.

ARTICLE XI. MISCELLANEOUS

A. This Agreement is governed by the laws of the State of Texas. ~~and venue for any action arising out of this Agreement lie in Travis County, Texas.~~ [Intentionally Deleted] ~~TX~~ TASB _____ DISD

B. This Agreement comprises the entire Agreement between the parties concerning the subject matter of this agreement.

C. The provisions of Articles Article V (Compensation), VIII (Limitation of Liability; Relationship of Parties), IX (Confidentiality), and X (Representations and Warranties) shall survive the termination of this Agreement.

D. Any previous Medicaid Billing Services Agreement between the parties is hereby superseded and this Agreement shall control as of its Effective Date of this Agreement.

E. If any portion of this Agreement shall be declared or held unenforceable for any reason, the remaining portions hereof shall continue in full force and effect.

F. The parties agree that, in the event of a lawsuit relating to this Agreement, the prevailing party is entitled to recover reasonable attorney's fees.

[Signatures on following page]

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Execution of Agreement; Counterparts; Electronic Signatures.

This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

The exchange of the copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" ("pdf") from, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signature of the Parties transmitted by facsimile, Pdf or other electronic means shall be deemed to be their original signatures for all purposes. [Addition] TASB DISD

WHEREFORE, the below parties have caused this Medicaid Services and Billing License Agreement to be duly executed and such Agreement will commence on the following

Effective Date September 1, 2017

Client District:

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Larry R. Throm
Signature

9/13/17

Date

Larry R. Throm
Printed Name

Chief Financial Officer
Title

APPROVED AS TO FORM:

By: [Signature]
School Attorney

Texas Association of School Boards, Inc.

Mark A. Wey
Signature

9/8/17

Date

Mark Wey, Director
Special Education Solutions

EXHIBIT A

FISCAL AGENT RESPONSIBILITIES


TASB, as District's Fiscal Agent, will have the following responsibilities:

- 1) If required by TMHP or HHSC, enroll and be approved as a Third Party Billing Vendor before submitting Claims on behalf of District.
- 2) Supply District with access to the SMART© Program and related online user documentation.
- 3) Submit student information monthly to HHSC or TMHP for electronic eligibility match. Provide District with current eligibility report.
- 4) Provide user training, software training, provider training and ongoing program review that corresponds and aligns with the SHARS program and utilization of the TASB billing software. Training may be provided via webinar, conference call, recorded training material, and/or in person as agreed by both parties. Up to three days of training are available within the first year of this Agreement and up to two days are available annually thereafter. Extra training is available by agreement and subject to an additional fee.
- 5) Provide assistance to District in resolving rejected or denied Claims.
- 6) Support SMART© Services by:
 - a. Maintaining a toll-free hotline during normal TASB business hours.
 - b. Updating the SMART© Program in response to changes in law or regulations.
 - c. Maintaining appropriate records and files, including commercially reasonable safe site storage of Claims data, under TASB's custody or control.
- 7) Submit Claims data to TMHP.
- 8) Provide reports on a periodic basis on general activity.
- 9) Provide District with access to its Claims data and records under TASB's custody or control.
- 10) Assist District in the preparation of its annual cost report, including the review of RMTS (Random Moment Time Study) provider listings, analysis of District's financial data, IEP (Individualized Education Program) and transportation ratios, responses to variances, and other necessary or related information.

EXHIBIT B

DISTRICT RESPONSIBILITIES

District will have the following responsibilities:

- 1) Obtain any necessary written consent from the parents or legal guardians of students in order for District to submit SHARS Claims.
- 2) Complete and submit any required Medicaid enrollment forms and Medicaid provider agreements.
- 3) Obtain Medicaid provider identification number.
- 4) Execute automated billing agreement and Electronic Remittance and Status ("ER&S") agreement as required by TMHP to allow TASB to file Claims and receive ER&S reports (HIPAA Form 835 or its successor) electronically on District's behalf. TASB shall serve as District's exclusive agent for purposes of submitting Claims and receiving ER&S reports, and District agrees that it will not designate any other person or entity as its agent for these purposes on an ER&S agreement or other TMHP or HHSC form while this Agreement is in effect.
- 5) Verify student eligibility for each Claim submitted.
- 6) Comply with any and all requirements set forth by TEA and HHSC regarding the SHARS program, including but not limited to provider procedures as outlined in the current *TMHP Medicaid Provider Procedure Manual*, or any successor manual thereof.
- 7) Submit to TASB all required data to create and maintain student and service provider files. Update information as necessary.
- 8) Input all required data into the SMART© Program to create and maintain student, therapist, and service files.
- 9) Input all required data into the SMART© Program for each session for which Medicaid reimbursement will be sought.
- 10) ~~Input all required data to TASB electronically before the date on which the Claim will expire. For Claims not submitted electronically, submit completed service tickets/session notes to TASB to facilitate Claim creation. Service tickets/session notes should be received at TASB at least 60 days before the date on which the Claim will expire. TASB assumes no responsibility for any Claims submitted after this time period.~~ Input or submit all required data to TASB, electronically or via paper session note or imported files, in sufficient time to be processed. To enable proper handling and processing both by TASB and TMHP/HHSC, TASB assumes no responsibility for any Claims submitted less than 60 days prior to January 3rd following the close of federal year end or before the date on which the Claim expires.  TASB _____ DISD
- 11) Execute any certificates of compliance, including but not limited to letters certifying local expenditures, as required by TMHP or HHSC.

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- 12) Complete annual cost reports as required by TMHP or HHSC.
- 13) Maintain all source documentation necessary to fully document services for which Claims were filed, the medical necessity of the services, and costs included in any cost reports or other documents used to determine a payment rate or fee.
- 14) Provide contact data for all of District's designated users of the SMART[®] Program. Contact data must include, at a minimum, the names, titles, phone numbers and e-mail addresses of all authorized users. TASB will use this data to provide users with individualized MyTASB accounts and to support those users as needed. District agrees to keep all contact information up-to-date.
- 15) Provide TASB read-only access to District's special education software for purposes of extracting information pertinent to the management of SHARS and Medicaid Information.
- 16) Provide TASB access to the designated SHARS application (Fairbanks system) to assist District in the development and monitoring of cost report data.
- 17) Provide TASB access to information in the District's student information system to facilitate interim billing for SHARS purposes, particularly attendance and demographic data.

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EXHIBIT C

THREE-YEAR TERM FEE SCHEDULE

1) Annual Fees:

- a. Starting with the combined federal fiscal year 2018 interim reimbursement and federal fiscal 2017 cost report reimbursements, the fees for the term of this Agreement will be calculated as follows:
 - i. 2% of the first \$2.5 million of actual reimbursements; and
 - ii. 0.25% of all actual reimbursements above \$2.5 million
- b. Invoicing for interim reimbursement is based on District's receipt of the reimbursements. Invoicing for cost report reimbursements are:
 - i. 50% of the applicable fee in 1(a) above (invoiced upon submission of the cost report); and
 - ii. 50% of the applicable fee in 1(a) above (invoiced when District receives the actual cost reimbursement).

Payment on undisputed amounts is due to TASB within 45 days of the date that District receives an invoice from TASB. An invoice is deemed "received" (a) if sent by first-class U.S. mail, postage pre-paid, three business days after mailing; or (b) if sent by email or fax, the moment it is sent. Late charges, not to exceed the maximum interest allowed by law, will begin to accrue on the 31st day after the due date.

_____ TASB _____ DISD

2) Early Termination Fee:

- a. The pricing offered to District is predicated on a full three-year term. Thus, District will pay TASB an early termination fee if it terminates this Agreement during an unexpired three-year term for reasons other than those permitted by Article VII, Section C1 (amendment), ~~C2 (three-year renewal)~~ [Intentionally Deleted] _____ TASB _____ DISD, or C5 (winding up of SMART). The amount of the early termination fee is an additional one percent (1%) of all Claims reimbursements paid by TMHP throughout the current three-year term of the Agreement. The early termination fee is not intended as a penalty but a reasonable estimate of TASB's actual damages for the premature termination.
- b. The early termination fee is in addition to the amount of fees due through the end of the current quarter during which termination occurs, regardless of the actual date of termination.
- c. ~~If this Agreement replaces a prior unexpired TASB SMART agreement, without interruption, the transfer will not result in an early termination fee.~~ [Intentionally Deleted] _____ TASB _____ DISD
- d. If District terminates this Agreement during an unexpired three-year term and immediately discontinues any further SHARS Medicaid reimbursement program, either on its own or through a third party, no early termination fee will be required. District must cease its SHARS program for a minimum of one year for the early termination fee to be deemed waived.

-END-

Redaction Log

Total Number of Redactions in Document: 1

Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	552.130	Confidentiality of Certain Motor Vehicle Records. a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; or a motor vehicle title or registration issued by an agency of this state or another state or country; or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.	1

Redaction Log

Redaction Reasons by Exemption

Reason	Description	Pages (Count)
552.130	Confidentiality of Certain Motor Vehicle Records. a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country; or a motor vehicle title or registration issued by an agency of this state or another state or country; or a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.	1(1)