

**Department of Aging and Disability Services
FYs 2014 and 2015 PERFORMANCE CONTRACT**

This Performance Contract (this Contract) is by and between the Texas Department of Aging and Disability Services (DADS), a state agency created pursuant to Texas Human Resources Code (THRC), Chapter 161, and _____, the Local Authority (LA), a community center, created by Texas Health and Safety Code (THSC), Chapter 534, Subchapter A. This Contract shall be effective from September 1, 2013, through August 31, 2015, except that those provisions which require additional actions after the expiration of this Contract shall continue as provided in the provisions.

ARTICLE I. RECITALS

WHEREAS, pursuant to THSC §533.035(a) and §534.054, the LA is the designated local mental retardation authority for the local service area (LSA) consisting of the following counties:
_____;

WHEREAS, pursuant to THSC §533.035(a), DADS hereby delegates to the LA the authority and responsibility for planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of intellectual and developmental disability (IDD) services in the most appropriate and available setting to meet individual needs in the LSA; and

THEREFORE, for the consideration set forth herein, DADS and the LA hereby enter into this Contract to ensure the provision of IDD services in accordance with THSC §534.054, and agree to fulfill their respective responsibilities set forth herein.

ARTICLE II. REQUIREMENTS OF THE LOCAL AUTHORITY

A. AUTHORITY FUNCTIONS

The LA shall:

1. Conduct local planning, develop policy, coordinate, develop and allocate resources, and provide oversight for IDD services in the LSA in accordance with Attachment H (Authority Functions); and
2. Supervise and ensure the provision of IDD services identified in Attachment F (Description of IDD Services) to consumers identified in Attachment E (Description of Consumers), within the LSA.

B. GENERAL PROGRAM

The LA shall:

1. Provide services to all consumers without regard to the consumer's criminal history;
2. Provide consumer benefits assistance in accordance with Attachment L (Consumer Benefits Assistance Requirements) and comply with THSC §533.008(e) regarding consumer benefits training;
3. Ensure all service coordinators are able to access and use:
www.hhs.state.tx.us/tirn/tirnhome.shtml;

4. As requested by DADS, assist in transferring a consumer's ICF/IID Program, HCS or TxHmL Program services, or financial management services agency services from one provider to another due to closure of the provider's facility or termination of the provider's contract;
5. Provide meaningful access to its programs, services, and activities and ensure adequate communication through language assistance services for consumers and legally authorized representatives (LARs) with limited English proficiency, sensory impairments, and/or speech impairments; and
6. Cooperate with other LAs, Area Agencies on Aging (AAAs), and DADS local community services regional offices to ensure efficient access and intake processes for all DADS services and programs.
7. **This Contract and its attachments include many references to CARE (Client Assignment and Registration). Certain functions of CARE will transition to new data management systems during this contract term. The impacted functions and the effective date of the transition will be communicated to the LA at a later date. Such communication will include a crosswalk identifying the data management system to the applicable contract provision. The provisions of the crosswalk (relating to which data management system applies) shall take precedence over those identified in the contract.**

C. IDD SERVICES

The LA shall:

1. Meet the quarterly Service Targets identified in Attachment A (Service Targets) and quarterly performance measures and outcome targets as identified in Attachment B (Performance Measures and Outcome Targets);
2. Obtain written approval from DADS prior to using contract funds to:
 - a. develop a new residential program location; or
 - b. provide residential services to a consumer;
3. Comply with the following Medicaid-related items:
 - a. Contract with DADS to participate in Targeted Case Management (TCM) (i.e., service coordination for Medicaid recipients) and contract with HHSC to participate in Administrative Claiming;
 - b. Limit its participation as a waiver program provider to the capacity indicated in the CARE Action Code C70, except that DADS may grant a temporary increase in the enrollment capacity as a result of appropriate documentation of consumer choice;
 - c. Perform the enrollment for the waiver programs in accordance with Attachment K (Medicaid Program Enrollment Requirements) and DADS rules governing the HCS Program and the TxHmL Program;
 - d. Perform the Medicaid Estate Recovery Program responsibilities in accordance with Attachment R (Medicaid Estate Recovery Program); and
 - e. Refrain from providing TCM to a consumer who is receiving TCM through the local mental health authority;

4. Assist a resident of a state supported living center (SSLC) with completing a move from the SSLC within 180 days after the IDT refers the resident for community placement (as indicated on the CARE XPTR report HC023200);
5. Provide services to consumers referred by the Texas Youth Commission, pursuant to 37 TAC Chapter 87, Subchapter B, Special Needs Offender Programs, §87.79, (relating to Discharge of Non-sentenced Offenders with Mental Illness or Mental Retardation);
6. Ensure the provision of all required services identified in Attachment F (Description of IDD Services) each quarter;
7. Submit all required service encounters per the *IDD Service Grid Instructions*, *DADS Service Grid* and *Field Definitions*, and submit supplemental assignment data in CARE as necessary to ensure accuracy of individual consumer service record;
8. Review annually with each consumer currently receiving General Revenue services or the consumer's LAR the *Explanation of IDD Services and Supports* referenced in Attachment M (Options for IDD Services and Supports); and
9. Ensure the LA staff monitoring a consumer, who is on community placement status from an SSLC, complies with the applicable requirements of §2.278 of 40 TAC Chapter 2, Subchapter F (Continuity of Services—State Mental Retardation Facilities). The LA shall submit the first written report required by §2.278 to the SSLC within the first 90 days after the consumer has moved from the SSLC and submit subsequent reports at least every 90 days thereafter for the duration the LA is responsible for monitoring the consumer in accordance with §2.278.

D. ADMINISTRATIVE

The LA shall:

1. Provide and expend required local match, as defined in the THSC §534.066, in the amount and percentage indicated on Attachment D (Required Local Match Schedule);
2. Develop an annual budget, in the format of Report III-IDD Budget, using the amounts indicated in Attachments C and D (Allocation Schedule and Required Local Match Schedule, respectively), and earn and expend funds according to that budget;
3. Expend funds allocated by DADS and required local match (the "contract funds") solely for IDD services and administrative overhead authorized in Article II.D.8.;
4. Ensure no contract funds are used to supplement the rate-based payment the LA receives to fund its cost as a provider of waiver programs or ICF/IID programs;

5. Comply in all respects as directed by DADS with the Uniform Grant Management Standards (UGMS), promulgated pursuant to the Uniform Grant and Contract Management Act, TGC, Chapter 783;
6. Obtain prior written approval from DADS for selected items of cost as specified in Attachment V (UGMS Allowable Costs);
7. Comply with the program income requirements in UGMS and:
 - a. Report all sources of program income that meet the criteria defined in the Instructions for Report III-IDD;
 - b. Use program income to offset expenditures within the GR strategies;
 - c. Use program income to offset expenditures, unless the unrestricted fund balance in the prior year is less than 60 days of operations; and
 - d. Restrict the program income used to build reserves to the 60 days of operations level to finance expenditures in the GR strategies;
8. Maintain administrative overhead to perform the requirements of this Contract at a rate not to exceed 10% of the contract funds. If the LA's administrative overhead expenses exceed 10%, the LA shall use earned income or other funds, other than contract funds, to pay for the excess;
9. Maintain accounting systems that comply with UGMS, Subpart C – Post-Award Requirements-Financial Administration. The LA must separately report actual expenditures and actual revenues attributable to Mental Health Adult, Mental Health Children, and IDD Programs. The LA shall report expenditures by object of expense and method of finance in accordance with the strategies indicated in Report III-IDD Budget. On a quarterly basis, the LA is required to reconcile accounting transactions from its general ledger to Report III-IDD Budget by object of expense and method of finance;
10. Use cost accounting to provide a consistent methodology for determining the cost of services, which includes an analysis of provider productivity. Develop and implement management processes for the allocation and development of resources and the oversight of services, as required in Attachment H (Authority Functions);
11. Develop and maintain productivity benchmarks for each service type based on the LA's cost accounting methodology;
12. Obtain a comprehensive financial and compliance audit for the previous state fiscal year prepared in accordance with THSC §534.068, 40 TAC Chapter 1, Subchapter G, and the Texas Health and Human Services Commission's *Guidelines for Annual Financial and Compliance Audits of Community MHMR Centers* (21st Revision - February 2005) (the "Audit Guidelines");
13. Engage the same audit firm for no more than any six (6) consecutive years from the initial date of engagement;
14. Obtain affidavits executed by each board member, on Form A, and by the executive director, on Form B, annually and when changes occur;

15. Comply with requirements of the 2014 General Appropriations Act, Article IX, §17.02 of the 2014 General Appropriations Act (GAA). The following does not limit the requirements:
 - a. GAA, Article IX, Parts 2 and 3, except there is no requirement for increased salaries for LA employees. Upon request, DADS will provide assistance in determining the appropriate classification. In the alternative, the LA may conduct a market analysis or internal study in accordance with THSC, §534.011, to establish salaries for certain positions. However, no contract funds may be used to fund salaries to the extent they exceed the maximum amount of the employee's classification on the salary schedules for the appropriate salary group;
 - b. GAA, Article IX, §6.13, relating to performance rewards and penalties;
 - c. GAA, Article IX, §7.01, relating to budgeting and reporting;
 - d. GAA, Article IX, §7.02, relating to annual reports and inventories;
 - e. TGC, Chapter 556, relating to political activities by certain public entities and individuals;
 - f. TGC, §2102.0091, relating to reports of periodic audits; and
 - g. TGC, §§2113.012 and 2113.101, relating to alcoholic beverages;
16. Make a good faith effort to locate and consider a Historically Underutilized Business (HUB), as defined in TGC §2161.001(2), when subcontracting any portion of this Contract, and submit, in accordance with Attachment N (IDD Submission Calendar), the LA's subcontracts report on the *Annual HUB Sub-Contracting Report* (Form F);
17. Enter and submit accurate data:
 - a. Upon submission of this Contract in Report III-IDD Budget:
 - i. The budget developed in accordance with Article II.D.2; and
 - ii. Projected in-kind local match for this Contract for each fiscal year of the term of this Contract; and
 - b. In accordance with Attachment N (IDD Submission Calendar):
 - i. All data necessary to calculate number of persons served, by type of service; and
 - ii. All data to complete the quarterly Report III-IDD Budget;
18. Submit accurate and timely information to DADS including the information described in Attachment N (IDD Submission Calendar), as follows:
 - a. A completed *Certification Regarding Lobbying* (Form D) and updates as necessary;
 - b. A copy of the LA's quarterly financial statements for the general fund account groups, including the balance sheet and income statement and general fund balance for LA in total, as prepared for presentation to the LA's governing body, and a certification of the accuracy of such statements, on the *Financial Statement Certification* (Form G). The originally signed Form G or a copy of the originally signed Form G is acceptable;
 - c. If requested by DADS, monthly financial data in a format determined by DADS;
 - d. When necessary, a request to amend this Contract, on the *Contract Amendment Request* (Form C);

- e. Four (4) copies of a comprehensive financial and compliance audit for the previous state fiscal year: three (3) copies to DADS and one (1) copy to the Office of Inspector General, Single Audit, HHSC, Office of Inspector General, Compliance/Audit, Mail Code 1326, P.O. Box 85200, Austin, TX 78708;
 - f. A Corrective Action Plan (CAP) as required in the Audit Guidelines, 21st Revision. If the independent audit reports and management letter have no findings, then submit a letter stating that corrective action is not necessary;
 - g. Supporting reports, data, work papers, and information, requested by DADS; and
 - h. As necessary, all other submissions described in Attachment N (IDD Submission Calendar);
19. Submit timely monthly encounter data files for all IDD services, which has a rejection rate of less than 1% of the total number of records, in accordance to Attachment N;
 20. Submit accurate and comprehensive monthly encounter data for all IDD services, including all required data fields and values, in accordance with the *IDD Service Grid Instructions*, *DADS Service Grid* and *Field Definitions* as well as procedures and instructions established by DADS;
 21. Submit online the Single Audit Determination Form as required by the Office of Inspector General (OIG) at https://oig.hhsc.state.tx.us/Single_Audit/. If the LA fails to complete the Single Audit Determination Form within the thirty (30) days after notification by OIG to do so, the LA shall be subject to sanctions and remedies for non-compliance with this Contract;
 22. Report aggregate critical incident data via CARE Screen 686 in accordance *the Mental Retardation Authority User Guide* at <http://www2.mhmr.state.tx.us/655/cis/training/MRAGuide.html>;
 23. Retain for six (6) years following the later date of the expiration or termination of this Contract or the termination of services, protected health information and all records, reports, and source documentation related to service event data sufficient to support an audit concerning contracted expense and services, including work papers used to calculate individual costs;
 24. Retain for six (6) years following the expiration or termination of this Contract all documents required under this Contract, including:
 - a. Internal monitoring records of the quality and appropriateness of Medicaid program participation and compliance;
 - b. All accounting and other financial records;
 - c. Real and personal property leases;
 - d. Policies, manuals, and standard operating procedures;
 - e. Provider credentialing records;
 - f. Records relating to insurance policies;
 - g. Employment records;
 - h. Licenses and certifications;
 - i. Records required by DADS;

- j. Subcontracts;
 - k. Records relating to matters in litigation, and
 - l. Claims payment histories;
25. Use CARE to collect, record, and electronically submit information to DADS, and to generate reports concerning performance under this Contract, in accordance with the *CARE Reference Manual*, *CARE User's Manual*, and *CARE Reporting Manual*;
26. Maintain access to the following DADS databases:
- a. Community Services Interest List (CSIL); and
 - b. Service Authorization System Online (SASO);
27. Collect, record, and maintain information in accordance with Attachment J (HCS Interest List Maintenance) and the *HCS Interest List Manual* regarding consumers who have requested HCS services;
28. Authorize DADS, the Department of State Health Services (DSHS), the Health and Human Services Commission (HHSC), and their designees, as well as the State of Texas through any authorized representatives, to have unrestricted access, with reasonable notice, to all facilities, records, data, and other information, including service event data, under the control of the LA or its subcontractors as necessary to enable DADS, DSHS, and HHSC to audit, monitor, and review the LA's compliance with the requirements of this Contract;
29. In compliance with the TGC, §2262.003, agree that:
- a. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract;
 - b. Acceptance of contract funds directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with the contract funds; and
 - c. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to:
 - i. Evaluating the entity's performance under this Contract or subcontract;
 - ii. Determining the state's rights or remedies under this Contract; or
 - iii. Evaluating whether the entity has acted in the best interest of the state;
30. Certify by execution of this Contract that the LA:
- a. Is not currently held in abeyance or barred from the award of a federal or state contract, and that the LA will provide immediate written notification to DADS if the LA becomes held in abeyance or barred from the award of a federal or state contract during the term of this Contract; and
 - b. Under Section 2261.053, Government Code, the contractor (LA) certifies that the individual or business entity named in this contract is not ineligible

to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

31. Comply, and require its subcontractors to comply, with all laws, rules and regulations, current and future, that are applicable to the LA or its subcontractors, including but not limited to the following:
 - a. Rules.
 - i. 40 TAC 1-G (Community Centers);
 - ii. 40 TAC 2-A (Local Authority Notification and Appeal);
 - iii. 40 TAC 2-B (Contracts Management for Local Authorities);
 - iv. 40 TAC 2-C (Charges for Community Services);
 - v. 40 TAC §2.151(1)(F) (Most Appropriate Available Treatment Alternative) and §2.152(e) (Special Considerations);
 - vi. 40 TAC 2-F (Continuity of Services – State Facilities);
 - vii. 40 TAC 2-G (Role and Responsibilities of Local Authority);
 - viii. 40 TAC 2-L (Service Coordination for Individuals with Mental Retardation);
 - ix. 40 TAC 4-A (Protected Health Information);
 - x. 40 TAC 4-C (Rights of Individuals with an Intellectual Disability);
 - xi. 40 TAC 4-D (Administrative Hearings under the Health and Safety Code, Title 7, Subtitle D);
 - xii. 40 TAC 4-K (Criminal History and Registry Clearances);
 - xiii. 40 TAC 4-L (Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);
 - xiv. 40 TAC 5-A (Prescribing of Psychoactive Medication);
 - xv. 40 TAC 5-C (Use and Maintenance of TDMHMR Drug Formulary);
 - xvi. 40 TAC 5-D (Diagnostic Eligibility for Services and Supports — Intellectual Disability Priority Population and Related Conditions);
 - xvii. 40 TAC 9-D (Home and Community-based Services (HCS) Program);
 - xviii. 40 TAC 9-E (ICF/ID Programs — Contracting);
 - xix. 40 TAC 9-N (Texas Home Living (TxHmL) Program);
 - xx. 40 TAC 72-L (MOU-Capacity Assessment for Self-Care and Financial Management);
 - xxi. 40 TAC Chapter 17 (Preadmission Screening and Resident Review (PASRR)); and
 - xxii. 1 TAC Chapter 383 (Interstate Compact on Mental Health and Mental Retardation);
 - b. Federal and State Laws.
 - i. Federal and state anti-discrimination laws as described in Article II.D.43;
 - ii. 42 CFR Part 2 (concerning the confidentiality of alcohol and drug abuse patient records) and 45 CFR Parts 160 and 164 (concerning standards for protected health information (i.e., HIPAA regulations)); and
 - iii. THSC Chapter 85 (concerning HIV/AIDS workplace and confidentiality guidelines);
32. Comply with the special terms and conditions in Attachment I (Special Terms and Conditions), if applicable;

33. Direct all inquiries and requests to DADS concerning or required by this Contract, including requests for amendment, to the Contract Manager or other individual designated as a Point of Contact under Article VI.L, unless otherwise provided in this Contract;
34. As required by 1 TAC Chapter 202, comply with the following portions of the HHSC Enterprise IT Division Policies, Standards & Procedures (which can be found at: <http://hhscx.hhsc.state.tx.us/tech/policy/default.shtml>):
 - a. Security Policy; and
 - b. Security Standards and Guidelines;
35. Use DADS current encryption software when communicating confidential information with DADS. DADS will provide notice to the LA if it changes its encryption software;
36. Develop and maintain an Emergency Plan as prescribed by Attachment W (Emergency Plan Requirements);
37. Comply with the Health and Human Services Contract Council's policy regarding definition and disposition of equipment and controlled assets, which can be found at:
http://hhscx.hhsc.state.tx.us/ContractingSupport/UGMS_1AB.DOC;
38. Establish a public phone number for each county in the LSA to access IDD services and ensure the phone number remains dedicated for that purpose and is not reassigned. The LA may have the same phone number for more than one county. The phone number(s) for the county or counties must be submitted on Form S;
39. Agree that if it permits the use of electronic signatures to document any aspect of the provision of services under this Contract, the LA will maintain appropriate safeguards to assure the authenticity of the electronic records and signatures. The LA agrees that if it permits an electronic signature to be used on a document, the LA cannot challenge the authenticity or admissibility of the signature or the document in any audit, review, hearing, or other proceeding conducted by DADS, HHSC, the State Auditor's Office, a federal funding source, or a federal or state court;
40. Develop internal procedures for:
 - a. processing requests when consumers or their LARs or actively involved family members indicate a preference for a service or support on the Identification of Preferences form (Form 8648); and
 - b. ensuring documentation of the individual's preferences of a service or support exists to substantiate their preference and the date the preference was indicated;
41. Comply with the following provisions related to anti-discrimination laws:
 - a. Comply with state and federal anti-discrimination laws, including without limitation:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
 - ii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);

- iii. Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
 - v. Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
 - vi. Food and Nutrition Act of 2008 (7 U.S.C. §2011 *et seq.*); and
 - vii. The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement.
- b. Comply with all amendments to the above-referenced laws, and all requirements imposed by the regulations issued pursuant to these laws. These laws provide in part that no persons in the United States may, on the grounds of race, color, national origin, sex, age, disability, political beliefs, or religion, be excluded from participation in or denied any aid, care, service or other benefits provided by Federal or State funding, or otherwise be subjected to discrimination.
 - c. Comply with Title VI of the Civil Rights Act of 1964, and its implementing regulations at 45 C.F.R. Part 80 or 7 C.F.R. Part 15, prohibiting a contractor from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting the participation of clients in its programs, benefits, or activities on the basis of national origin. Applicable state and federal civil rights laws require contractors to provide alternative methods for ensuring access to services for applicants and recipients who cannot express themselves fluently in English. LA agrees to ensure that its policies do not have the effect of excluding or limiting the participation of persons in its programs, benefits, and activities on the basis of national origin. LA also agrees to take reasonable steps to provide services and information, both orally and in writing, in appropriate languages other than English, in order to ensure that persons with limited English proficiency are effectively informed and can have meaningful access to programs, benefits, and activities.
 - d. Comply with Executive Order 13279, and its implementing regulations at 45 C.F.R. Part 87 or 7 C.F.R. Part 16. These provide in part that any organization that participates in programs funded by direct financial assistance from the United States Department of Agriculture or the United States Department of Health and Human Services shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
 - e. Upon request, provide HHSC Civil Rights Office with copies of all of the LA's civil rights policies and procedures.
 - f. Notify HHSC's Civil Rights Office of any civil rights complaints received relating to its performance under this Contract. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section must be directed to:
 - HHSC Civil Rights Office
 - 701 W. 51st Street, Mail Code W206
 - Austin, Texas 78751
 - Phone Toll Free: (888) 388-6332
 - Phone: (512) 438-4313
 - TTY Toll Free: (877) 432-7232
 - Fax: (512) 438-5885;

42. Comply with DADS information letters regarding LAs found at <http://www.dads.state.tx.us/providers/MRA/index.cfm#comm> (The LA is encouraged to subscribe to GovDoc on DADS website for notice of recently promulgated DADS information letters); and
43. Comply with all Attachments to this Contract.

ARTICLE III. REQUIREMENTS OF DADS

A. FUNDING AND ADJUSTMENTS

1. DADS shall authorize the Texas Comptroller of Public Accounts Office (the Comptroller) to release funds indicated on Attachment C (Allocation Schedule), for fiscal year 2014 as follows: 40% at the commencement of the first quarter, 30% at the commencement of the second quarter, and 15% at the commencement of the third and fourth quarters.
2. DADS may adjust the LA's reported service performance as necessary to correct inaccuracies.
3. DADS may adjust the allocation of contract funds that supports programs refinanced to Medicaid during the term of this Contract.
4. The annual GR allocations include the state match for Medicaid Administrative Claiming (MAC) in Attachment C and DADS may adjust those amounts if the LA does not fulfill the requirements of the LA's contract for MAC.
5. This Contract is contingent upon the continued availability of funding. If funds indicated on Attachment C (Allocation Schedule) become unavailable through lack of appropriations, budget cuts, transfer of funds between health and human service agencies, amendment to the General Appropriations Act, agency consolidation, or for any other disruption of current appropriated funding for this contract, DADS may restrict, reduce, or terminate funding under this Contract. DADS will provide prior written notice to the LA, when feasible, of any action taken under this provision.
6. The term of this Contract is for two fiscal years as defined in Article VI.A. DADS contract funds and service targets are appropriated by fiscal year for this Contract. The contract funds and service targets for the second fiscal year will be added to this Contract by a contract amendment prior to the beginning of the second fiscal year.
7. If the LA is not able to expend the allocations within the fiscal year in a reasonable and allowable manner, as determined by DADS, then DADS may, at any time after consultation with the LA, reduce the allocation for the fiscal year and reallocate to other LAs, and may also reduce the allocation for future fiscal years.
8. Any payments due under this Contract will be applied towards any debt that the LA owes to the State of Texas.

B. GENERAL REQUIREMENTS

DADS shall:

1. Consider requests from the LA to allow 90 days to make significant changes to the LA's information system required by a contract amendment that affects the LA's information system;
2. Direct all requests and inquiries concerning this Contract to the LA's Executive Director, or other individual designated as the Point of Contact under Article VI.L;
3. Designate a DADS employee to oversee management of this Contract and to communicate official clarifications to this Contract;
4. Make available technical assistance for services, functions, and other requirements of this Contract, upon written request from the LA's Executive Director and approval by DADS;
5. Monitor the LA for programmatic and financial compliance with this Contract. Monitoring activities may include but are not limited to on-site reviews and desk reviews of documents submitted by the LA and data submitted electronically by the LA. Reviews include elements related to quality assurance, priority population, Medicaid waiver authority requirements, and financial records and reports. When possible, DADS will coordinate on-site reviews with DSHS;
6. Conduct exit conferences with designated representatives of the LA prior to distributing findings by DADS' monitors, auditors, or other staff conducting audits or reviews; however, DADS is not required to conduct exit conferences in cases of investigations involving possible criminal activity; and
7. Maintain and make available formats necessary for the LA to complete Report III-IDD Budget and its instructions without amending this Contract.

ARTICLE IV. NON-COMPLIANCE BY LA

A. REMEDIES AND SANCTIONS

1. Remedies. DADS may impose one or more of the remedies described below for non-compliance with a contract requirement:
 - a. Require the LA to submit a Corrective Action Plan (CAP) to DADS for approval. The LA must submit the CAP to the Contract Manager within 30 calendar days after receiving a notice of deficiency. The CAP must include the following:
 - i. The date by which the deficiency will be corrected. For a quality assurance review, the date may not exceed 90 days after the day of the exit conference unless DADS approves an additional amount of time prior to the expiration date. For any other deficiency, the date may not exceed 90 days after the date of the notice of deficiency unless DADS approves an additional amount of time prior to the expiration date. DADS may designate the timeframe to correct the deficiency;
 - ii. Identification of the party responsible for ensuring the deficiency is corrected;

- iii. The actions that have been or will be taken to correct the deficiency; and
 - iv. A description of the systematic change and monitoring system implemented to ensure the deficiency does not re-occur, including the frequency of the monitoring and the party responsible for monitoring;
 - b. Impose special conditions or restrictions following identification of the LA as High Risk, as described in Article IV.D.;
 - c. Require the LA to retain a consultant or obtain technical training or assistance or managerial assistance;
 - d. Establish additional prior approvals for expenditure of contract funds;
 - e. Require submission of additional, more detailed financial or programmatic reports; and/or
 - f. Impose any other remedies provided by law.
2. Mandatory Sanctions. DADS will impose sanctions as described below:
- a. Recoup contract funds from the LA, for failing to meet a quarterly Service Target identified in Attachment A (Service Targets), based on the statewide case rate. The statewide case rate is the ratio of statewide contract funds to total statewide budgeted costs for each target, as determined by DADS. Services not counted toward service target performance may be considered in determining the LA's liability for recoupment;
 - b. Impose penalties for failing to meet a quarterly outcome target for a performance measure identified in Attachment B (Performance Measures and Outcome Targets) in accordance with the penalty chart in 4. below;
 - c. Impose penalties for failing to correct a finding on an annual quality assurance review within the timeframe stated in the CAP that was accepted to correct the finding. DADS will consider the LA's non-compliance from the previous fiscal years when imposing penalties in this subsection 2.c. in accordance with the penalty chart in 4. below;
 - d. Impose penalties for failing to implement a CAP within the timeframe stated in the CAP that was accepted to correct the LA's failure to submit information in any item described in Article II.D.18.a.-g. and II.D.19. in accordance with Attachment N (IDD Submission Calendar). Penalties will be imposed in accordance with the penalty chart in 4. below; and
 - e. Impose penalties for failing to ensure the provision of a required IDD service quarterly as stipulated by Article II.C.6. in accordance with the penalty chart in 4. below.
3. Discretionary Sanctions. DADS may impose one or more of the sanctions described below for non-compliance with a contract requirement:
- a. Impose penalties for failing to comply with any contract requirement except those described in 2.b.-e. above, in accordance with the penalty chart in 4. below;
 - b. Impose penalties for failing to correct a finding within the timeframe stated in the CAP that was accepted to correct the finding, except for a finding from a quality assurance review as provided for in 2.c. above;
 - c. Temporarily withhold contract funds pending resolution of issues of non-compliance with contract requirements or indebtedness to the United States or to the State of Texas.;
 - d. Permanently withhold allocated funds, or require the LA to return contract funds for:
 - i. Unallowable, undocumented, inaccurate, or improper expenditures;

- ii. Failure to comply with contract requirements; or
 - iii. Indebtedness to the United States or to the State of Texas;
 - e. Reduce the contract term;
 - f. Limit allocations to monthly distributions;
 - g. Require removal of any officer or employee of the LA:
 - i. Who has been convicted of the misuse of state or federal funds, fraud, or illegal acts that are a contraindication to continued performance of obligations under this Contract, as determined by DADS; or
 - ii. Who has committed an egregious violation of policies and procedures of the terms of this Contract, as determined by DADS;
 - h. Suspend all or part of this Contract. Suspension is, depending on the context, either: (1) the temporary withdrawal of the LA's authority to obligate contract funds pending corrective action by the LA or pending a decision to terminate or amend this Contract; or (2) an action taken to immediately exclude a person from participating in contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. The LA's costs resulting from obligations incurred by the LA during a suspension are not allowable unless expressly authorized by the notice of suspension;
 - i. Deny additional or future contracts or renewals with the LA; and
 - j. Terminate this Contract, as described in Article IV.F.
4. DADS will use the following penalty chart for imposing penalties for mandatory sanctions described in 2.b., 2.c., 2.d., and 2.e. above, and for the discretionary sanctions described in 3.a and 3.b. above. Adjusted annual allocation means any adjustments made to the total annual allocation that are not one-time funding adjustments. A one-time funding adjustment is an amount that will not be calculated into the next fiscal year's allocation. The penalty chart will be applied separately to each of the six sanctions.

LA Total Adjusted Annual Allocation	Failure to Correct
Up to \$1.5 million	\$1,000
Not to exceed	\$6,000
Up to \$3 million	\$2,000
Not to exceed	\$12,000
Greater than \$3 million	\$3,000
Not to exceed	\$18,000

If the LA reaches the "Not to Exceed" amount, DADS will require the LA's Board of Trustees to pass a resolution to obtain assistance as described in Article IV.A.1.c. DADS retains the right to impose discretionary sanctions for additional violations.

- 5. Payments to LA may be withheld to satisfy any recoupment or penalty imposed by DADS.
- 6. Penalties may not be paid from contract funds or interest earned from contract funds.

B. PROCEDURES FOR IMPOSING REMEDIES AND SANCTIONS

- 1. The Contract Manager shall send to the LA notice of the LA's alleged contract non-compliance and the specified remedy or sanction to be imposed.

2. The LA may submit a written request for an informal review to the DADS LA Section Director of the imposition of a *remedy*. The request for the informal review must be received within ten (10) business days after the date of receipt of the notice. The request for informal review must demonstrate that the allegation of non-compliance is invalid or that the allegation does not warrant the imposition of the remedy. If a timely request for informal review is not submitted, DADS will impose the remedy. A timely request for informal review of a remedy based on failure to submit information in accordance with Attachment N (IDD Submission Calendar) must include written proof that the LA submitted the information by the due date.
3. The LA may submit a written request for reconsideration to the Sanction Action Review Committee of the imposition of a discretionary or mandatory sanction at: DADS COS, Attn: SARC Chair, Mail Code W340, P.O. Box 149030, Austin, TX 78714-9030. The request for reconsideration must be received within ten business days after the date of receipt of the notice. The request for reconsideration must demonstrate that the allegation of non-compliance is invalid or that the allegation does not warrant the imposition of the sanction. If a timely request for reconsideration is not submitted, DADS will impose the sanction. A timely request for reconsideration of a sanction based on failure to submit information in accordance with Attachment N (IDD Submission Calendar) must include written proof that the LA submitted the information by the due date.
4. The DADS LA Section Director shall notify the LA in writing of DADS' final determination.
5. If DADS' final determination is to uphold the sanction, the LA shall remit to DADS any monetary amounts assessed within 30 days following the date specified in the notice of alleged non-compliance or DADS' final determination, whichever date is later, or interest will accrue on the unpaid amounts at the rate of 5% per annum.

C. EMERGENCY ACTION

In an emergency, DADS will immediately impose a sanction by delivering written notice to the LA by any verifiable method when the LA's act or omission is endangering or may endanger the life, health, welfare, or safety of a consumer.

Whether the LA's conduct or inaction is an emergency will be determined by DADS on a case-by-case basis and will be based upon the nature of the non-compliance or conduct.

D. IDENTIFICATION OF HIGH RISK

DADS may identify the LA as High Risk in accordance with the UGMS, Grant Administration, Section III, Subpart B, paragraph .12, Office of Budget and Management Circular A-110, Subpart B, paragraph .14, and DADS policies. DADS will inform the LA of the identification as High Risk in writing. DADS will state the effective date of the identification as High Risk, the nature of the issues that led to the identification as High Risk, and any special conditions or restrictions. The identification as High Risk remains in effect until DADS has determined that the LA has taken corrective action sufficient to resolve the issues that led to the identification as High Risk.

E. MANAGEMENT TEAM

DADS may appoint a manager or management team to manage and operate the LA in accordance with THSC §§534.038-534.040 if the Commissioner finds that the LA or an officer or employee of the LA:

1. Intentionally, recklessly, or negligently failed to discharge the LA's duties under this Contract;
2. Misused state or federal money;
3. Engaged in a fraudulent act, transaction, practice, or course of business;
4. Endangered or may endanger the life, health or safety of a consumer;
5. Failed to keep fiscal records or maintain proper control over the LA's assets as prescribed by TGC, Chapter 783 and this Contract;
6. Failed to respond to a deficiency in a review or audit;
7. Substantially failed to operate within the functions and purposes defined in the LA's center plan; or
8. Otherwise substantially failed to comply with THSC Chapter 534, Subchapter A or DADS rules.

F. TERMINATION

1. If DADS determines the LA is unable or unwilling to fulfill any of its requirements under this Contract to ensure the provision of services or exercise adequate control over expenditures or assets, DADS may initiate termination of this Contract in whole or in part, as follows:
 - a. DADS shall provide 30 days written notice of proposed termination to the LA;
 - b. The LA may request a hearing to appeal the proposed termination;
 - c. If the LA files a timely request for a hearing, the hearing shall be conducted in accordance with 1 TAC Chapter 357, Subchapter I, and 40 TAC Chapter 91; and
 - d. In lieu of contract termination, DADS may appoint a manager or management team to manage and operate the LA in accordance with THSC §§534.038-534.040.
2. DADS and LA may mutually agree to terminate this Contract, in whole or in part.
3. The LA may terminate this Contract in whole and without cause by giving 90 days written notice to DADS and submitting a transition plan that ensures there is no disruption in services to consumers.

ARTICLE V. NON-COMPLIANCE BY DADS

If DADS fails to perform any responsibility set forth in this Contract the LA may send notice of such failure to DADS. DADS shall respond to the LA in writing within 30 days following receipt of the notice.

ARTICLE VI. MISCELLANEOUS PROVISIONS

A. TERM OF CONTRACT

The term of this Contract is September 1, 2013, through August 31, 2015.

B. WAIVER

Acceptance by either party of partial performance or failure to complain of any action, non-action, or default under this Contract shall not constitute a waiver of either party's rights hereunder.

C. VENUE

Proper venue for any litigation arising from this Contract shall be Travis County.

D. AMENDMENTS

This Contract may only be amended by written agreement between DADS and the LA. Amendments will be signed by the DADS delegated signature authority and the LA's Executive Director, unless written notice otherwise is provided pursuant to Article VI.K.

E. ENTIRE AGREEMENT

This Contract contains the entire understanding of the parties.

F. SURVIVAL

The expiration or termination of this Contract shall not affect the rights and obligations of the parties accrued prior to the effective date of expiration or termination and such rights and obligations shall survive and remain enforceable.

G. ASSIGNMENT

Neither party may assign any of its rights or obligations, in whole or in part, under this Contract without the written consent of the other party, and such consent may be withheld for any reason by either party, except as otherwise provided by law.

H. INDEPENDENT CONTRACTOR

In the performance of all services hereunder, the LA shall be deemed to be and shall be an independent contractor of DADS and, as such, shall not be entitled to any benefits applicable to employees of DADS. The LA shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants, and agents.

I. SIGNIFICANT CHANGE

If, as a result of a change to a rule, or state or federal law, the contractual obligations of the LA are materially changed or a significant financial burden is placed on the LA, the parties may negotiate in good faith to amend this Contract.

J. REFERENCES

Captions contained in this Contract are for reference purposes only and do not affect the meaning of this Contract. Unless otherwise noted, all references in this Contract to "days" mean calendar days. A day that is referenced as a "business" day means any day other than a Saturday, a Sunday or a day in which DADS Offices located at 701 W. 51st Street, Austin, Texas, are authorized or obligated by law or executive order to be closed.

K. NOTICE

Any notice given under this Contract shall be made by any method of delivery that verifies receipt of the notice. Notice shall be sent to the address shown on the execution page or as otherwise agreed by the parties.

L. POINTS OF CONTACT

The LA shall designate its Executive Director to serve as the LA's single point of contact for all communications between the LA and DADS concerning this Contract. Notwithstanding this provision, the LA may designate an individual other than the Executive Director to serve as the single point of contact by notifying DADS in writing of such other designation.

DADS shall designate a Contract Manager to serve as DADS' single point of contact for all communications between DADS and the LA concerning this Contract. Notwithstanding this provision, DADS may designate an individual other than the Contract Manager to serve as the single point of contact by notifying the LA in writing of such other designation.

M. TRANSFER OF RESPONSIBILITIES

Upon expiration or termination of this Contract, the LA and DADS shall cooperate to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract to DADS or other entity designated by DADS.

N. RETURN OF FUNDS

Upon termination or the end of each fiscal year of this Contract, the LA shall return to DADS all funds allocated under this Contract that have not been encumbered for purposes authorized by this Contract. A transfer to the LA's fund balance or reserves is not a purpose authorized by this Contract.

O. CONTRACT INSTRUCTIONS

Instructions clarifying the preparation requirements of this Contract have been developed by DADS. However, nothing in such instructions shall be interpreted as changing or superseding the terms of this Contract.

P. EXCHANGE OF PROTECTED HEALTH INFORMATION

Except as prohibited by other law, the LA and DADS shall exchange protected health information without consent of consumers in accordance with 45 CFR §164.504(e)(3)(i)(B), THSC §533.009 and 40 TAC Chapter 4, Subchapter A. The LA shall disclose information described in THSC §614.017(a)(2) relating to special needs offenders, to an agency described in THSC §614.017(c) upon request of that agency, unless the LA documents that the information is not allowed to be disclosed under 45 CFR Part 164.

Q. BUY TEXAS

The LA shall purchase products and materials produced in Texas when the products and materials are available at a price and delivery comparable to products and materials produced outside of Texas, as required by TGC, Chapter 2155, §2155.4441.

R. WEB LINK REFERENCES

The referenced web links in this Contract are subject to change without notice. DADS will notify the LA of changes to web addresses when possible.

T. IMMUNITY NOT WAIVED

The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by DADS or the state of Texas of any immunity from suit or from liability that DADS or the state of Texas may have by operation of law.

ARTICLE VII. ACRONYMS

ABL	Adapted Behavior Level
ADA	Americans with Disabilities Act
CAP	Corrective Action Plan
CARE	Client Assignment and Registration System
CFR	Code of Federal Regulations
CRCG	Community Resources Coordination Group for Children
CSIL	Community Services Interest List
DADS	Department of Aging and Disability Services
DARS	Department of Assistive and Rehabilitative Services
DB-MD	Deaf Blind-Multiple Disabilities
DFPS	Department of Family and Protective Services
DID	Determination of Intellectual Disability (formerly DMR)
DSHS	Department of State Health Services
ECI	Early Childhood Intervention
GAA	General Appropriations Act
GR	General Revenue
HCS	Home and Community-based Services Program
HHSC	Texas Health and Human Service Commission
HIPAA	Health Insurance Portability and Accountability Act
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HUB	Historically Underutilized Business
ICD-9	International Classification of Diseases, 9th Revision
ICF/IID	Intermediate Care Facility for Individuals with an Intellectual Disability or Related Conditions
ID	Intellectual Disability
IDD	Intellectual and Development Disability
ID/RC	Intellectual Disability/Related Condition assessment
IDT	Interdisciplinary Team
IPC	Individual Plan of Care
IQ	Intellectual Quotient
IT	Information Technology
LA	Local Authority
LAR	Legally Authorized Representative
LOC	Level of Care
LON	Level of Need
LSA	Local Service Area
MAC	Medicaid Administrative Claiming
MBOW	Intellectual and Development Disabilities and Behavioral Health Outpatient Warehouse
MERP	Medicaid Estate Recovery Program
MOU	Memorandum of Understanding
MSA	Management Service Agreement
OBRA	Omnibus Budget Reconciliation Act

OIG	Office of Inspector General
PASRR	Preadmission Screening and Resident Review
PDP	Person Directed Plan
PHC	Primary Home Care
PI	Promoting Independence
PIDA	Persons with Intellectual Disability Act (formerly PMRA)
PNAC	Planning and Network Advisory Committee
QA	Quality Assurance
RN	Registered Nurse
SASO	Service Authorization System Online
SAVERR	System for Application, Verification, Eligibility Referral and Reporting
SSA	Social Security Administration
SSAS	Single Service Authorization System
SSDI	Social Security Disability Income
SSLC	State Supported Living Center
SSI	Supplemental Security Income
TAC	Texas Administrative Code
TCM	Targeted Case Management (Medicaid-funded service coordination)
TDMHMR	Texas Department of Mental Health and Mental Retardation (Legacy)
TEA	Texas Education Agency
TGC	Texas Government Code
THRC	Texas Human Resources Code
THSC	Texas Health and Safety Code
TxHmL	Texas Home Living
UGMS	Uniform Grant Management Standards
UR	Utilization Review

STATE AUTHORITY	LOCAL AUTHORITY
Department of Aging and Disability Services (DADS)	(Overtyping Name of Local Authority)
Elisa Garza Assistant Commissioner Access and Intake Division	(Overtyping Name) Chair, Board of Trustees*