

**ARKANSAS DEPARTMENT OF HUMAN SERVICES  
PERFORMANCE BASED CONTRACTING**

Pursuant to Ark. Code Ann. § 19-11-267 et. seq., the selected contractor shall comply with performance-based standards. Following are the performance-based standards that will be a part of the contract and with which the contractor must comply for acceptable performance to occur under the contract.

- I. The contractor must comply with all statutes, regulations, codes, ordinances, and licensure or certification requirements applicable to the contractor or to the contractor's agents and employees and to the subject matter of the contract. Failure to comply shall be deemed unacceptable performance.
- II. Except as otherwise required by law, the contractor agrees to hold the contracting Division/Office harmless and to indemnify the contracting Division/Office for any additional costs of alternatively accomplishing the goals of the contract, as well as any liability, including liability for costs or fees, which the contracting Division/Office may sustain as a result of the contractor's performance or lack of performance.
- III. During the term of the contract, the Division/Office will complete sufficient performance evaluation(s) to determine if the contractor's performance is acceptable. The damages set forth below are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.
- IV. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include the input of the vendor so as to establish standards that are reasonably achievable.
- V. The contract program deliverables and performance indicators to be performed by the contractor are:

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<p>Contractor must comply with all requirements of governmental agencies that license, certify, or regulate the Arkansas Health Center (AHC) and the Division of Youth Services (DYS). This includes labeling all medications and providing the necessary equipment for a medication administration system. The Contractor shall provide routine medications as well as having a system in place for floor stock medications, as needed (PRN) medications, and emergency/urgently needed medications.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with no citations of violation or deficiencies with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>A three percent (3%) penalty will be assessed in the following month's payment to the provider for each instance of non-compliance with all requirements of the contract. The three percent (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in Vendor's file, and contract termination.</p>
<p>Contractor shall provide medications in unit dose packaging, medication review, and billing to the appropriate Medicaid, Medicare Part D, or private insurance(s) for medications not covered by the applicable Medicaid, or Medicare Part D plan. The Contractor must be able to directly bill vendor programs such as Medicaid, Medicare, and private insurance companies or other payer sources before invoicing. If the vendor programs are not directly billable or billable to other payor services, then the division shall be billed for this service.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with no citations of violation or deficiencies with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>1st Incident: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>A three percent (3%) penalty will be assessed in the following month's payment to the provider for each instance of non-compliance with all requirements of the contract. The three percent (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the</p>

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		right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.
<b>Essential Services</b>	<p>Acceptable performance is defined as one hundred percent (100%) with zero instances of non-compliance documented by DHS throughout the course of the contract.</p> <p>Medication orders dispensed for the prescribed duration.</p> <p>Packaged and labeled as specified.</p> <p>Provide or arrange compounded medications as needed.</p>	<p>A three percent (3%) penalty will be assessed in the following month's payment to the provider for each instance of non-compliance with all requirements of the contract. The three (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including, without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<b>Technical Functionality</b>	<p>Acceptable performance is defined as no more than three (3) verified shortages and/or inaccurate dispensing counts per month.</p> <p>Interface with each division's electronic health records.</p> <p>Adheres to privacy and security regulations.</p> <p>Accurate counts of prescriptions and over-the-counter medications dispensed and in inventory.</p>	<p>A five percent (5%) penalty will be assessed for each shortage occurrence of more than three (3) times per month. The five percent (5%) penalty will be applied to the identified month in which the shortage took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a</p>

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	Routinely checks medication list for allergies and interactions.	below standard VPR in Vendor's file, and contract termination.
<b>Medication Delivery Requirement</b>	<p>Acceptable performance is defined as one hundred percent (100%) timeliness with zero instance of non-compliance throughout the duration of the contract.</p> <p>Timely and accurate deliveries.</p>	<p>A three percent (3%) penalty will be assessed in the following months' payment to the provider for each instance of non-compliance with all requirements of the contract. The three percent (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<b>Pharmacy Services</b>	Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.	<p>A three percent (3%) penalty will be assessed in the following months' payment to the provider for each instance of non-compliance with all requirements of the contract. The three (3%) penalty for each instance will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>

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<b>General Responsibilities</b>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <p>Assist pharmacy consultant as needed in educating nursing staff.</p> <p>Timely and responsive.</p>	<p>1st Incident: A Corrective Action Plan (CAP) acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A five percent (5%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period Vendor is not in full compliance with all requirements of the contract. The five percent (5%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<b>Customer Service</b>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p> <p>Provide product information and samples.</p> <p>Conduct monthly visits with facilities.</p> <p>Resolve delivery issues as they arise.</p>	<p>1st Incident: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A three percent (3%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period Vendor is not in full compliance with all requirements of the contract. The three percent (3%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p>

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		<p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Privacy &amp; Security</b></p> <p>A. Contractor shall ensure and maintain compliance with the most current version of Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH), The Privacy Act of 1974, Arkansas Personal Information Protection Act (A.C.A. § 4-110-104), and other Federal and State privacy and security standards. Prior to award, Contractor must complete and sign a Business Associate Agreement (BAA). The State of Arkansas Security and Privacy policies can be found at:  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1001.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1001.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1003.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-1003.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4002.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4002.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4008.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4008.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4009.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-4009.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5000.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5000.pdf</a>  <a href="https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5010.pdf">https://humanservices.arkansas.gov/wp-content/uploads/DHS-Policy-5010.pdf</a></p> <p>B. Contractor shall disclose any breaches of privacy or security by contacting the DHS Information Technology Security Office within one (1) business day of the breach at  DHS.IT.Security.Team@dhs.arkansas.gov.</p>	<p>Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<p>1st Incident: A CAP acceptable to DHS shall be due to DHS within ten (10) business days of the request.</p> <p>2nd Incident: A five percent (5%) penalty will be assessed in the following months' payment to the provider for each thirty (30) day period Vendor is not in full compliance with all requirements of the contract. The five percent (5%) penalty will be calculated from the total payment for the identified month in which the deficiency took place.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>

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<p>C. Contractor shall use protected health information and/or other confidential information only in a manner that is necessary to provide the services required in this solicitation.</p> <p>D. Contractor shall safeguard the use and disclosure of, and restrict access to, protected health information and/or other confidential information.</p> <p>E. Contractor must maintain confidentiality and meet any applicable Privacy Act of 1974, Health Insurance Portability and Accountability Act (HIPAA), and Health Information Technology for Economic and Clinical Health (HITECH) Act requirements. Prior to award, the Contractor must complete and sign a Business Associate Agreement (BAA).</p>		
<p><b>Payment and Invoicing</b>  All invoices for the AHC shall be mailed or delivered to the Business Office when medication is delivered to the units. Mailing address:  <i>Arkansas Health Center  6701 Highway 67  Benton, AR 72015-8489</i></p> <p>All invoices for DYS shall be mailed to DYS Finance:  PO Box 1437 S501, Little Rock, AR 72203</p> <p>Invoices must include the following: Patient name, name of medication, RX number, date filled, notation as RX, OTC, or wound product, and the amount owed (not covered by insurance). Invoices must have a total per patient, the total owed by facility not covered by insurance, the National Average Drug Acquisition (NADAC) pricing or Wholesale Average Cost (WAC), and the percentage discount applied.</p> <p>Contractor shall be responsible for the payment of state and federal taxes and Federal Insurance Contributions Act (FICA) with regards to wages received.</p> <p>Contractor shall be responsible for all meals, lodging, and any other expense accrued during required travel.</p>	<p>Acceptable performance is defined as ninety-eight percent (98%) accuracy each quarter.</p>	<p>If less than ninety-eight percent (98%) of all invoices submitted in a quarter are deemed accurate upon DHS review, there will be damages equal to five percent (5%) of the amount of the total invoices for the quarter. The Contractor will issue a credit memo to DHS for the five percent (5%) penalty.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, monetary damages, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<p><b>Mandated Reporting</b>  Pursuant to Ark. Code Ann. §§ 12-18-402</p>	<p>Acceptable performance is defined as one hundred</p>	<p>For each failure to report, DHS may impose:</p>

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<p>(b)(10) and 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents shall immediately make a report to the Child Abuse Hotline or the Adult Maltreatment Hotline (based on type of maltreatment) if Contractor or any of its employees, agents, or Subcontractors' employees and agents, while performing duties under this contract, have reasonable cause to suspect that:</p> <ul style="list-style-type: none"> <li>a. A child has been subjected to child maltreatment;</li> <li>b. A child died as a result of child maltreatment;</li> <li>c. A child died suddenly and unexpectedly; or</li> <li>d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.</li> </ul> <p>or</p> <ul style="list-style-type: none"> <li>e. An endangered person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment.</li> </ul> <p>A privilege or contract shall not prevent a person from reporting maltreatment when he or she is a mandated reporter and required to report under this section.</p> <p>An employer or supervisor of a mandated reporter shall not prohibit an employee or a volunteer from directly reporting maltreatment to the Hotline.</p> <p>An employer or supervisor of a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting maltreatment to the Hotline.</p> <p>Pursuant to Act 531 of 2019, Ark. Code Ann. §§ 12-18-402 (b)(10) and 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.</p>	<p>percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.</p>	<ul style="list-style-type: none"> <li>1. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or</li> <li>2. A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS. DHS may elect to calculate penalties/damages differently per occurrence.</li> </ul> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, requiring a CAP, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in Vendor's file, and contract termination.</p>
<b>Performance Bonding</b>	Acceptable performance is	Damages shall be one



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<p>Contractor <b>shall</b> be required to obtain performance bonds to protect the State's interest as follows:</p> <ol style="list-style-type: none"> <li>1. The amount of the performance bonds <b>shall</b> be one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would be adequate for the protection of the State.</li> <li>2. The State <b>shall</b> require additional performance bond protection when a contract price is increased or modified.</li> <li>3. The additional performance bond <b>must</b> be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request.</li> <li>4. Contractor <b>shall</b> notify the State of any changes, modification, or renewals for the performance bond during the term of the contract. The performance bond documentation must be provided to the State with each required notice.</li> </ol>	<p>defined as one hundred percent (100%) compliance with Service Criteria at all times throughout the contract term as determined by DHS.</p>	<p>percent (1%) per day, calculated using the annual contract amount, for each day Vendor fails to meet the Performance Bonding Requirements specified in Service Criteria.</p> <p>In addition, Vendor's continued failure to meet Service Criteria, may result in a below standard VPR to be maintained in Vendor's file, and contract termination.</p> <p>Failure to provide is a breach of contract and may result in immediate contract termination.</p>
<p><b>Conflict of Interest Mitigation</b>  During the term of this contract, Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. Vendor shall disclose all actual, apparent, or potential conflicts of interest to DHS within five (5) days of having knowledge of them. Vendor shall develop a mitigation plan as requested by DHS which must be approved and accepted by DHS. Any changes to the approved mitigation plan must be approved in advance by DHS.</p>	<p>Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose. Vendor shall be fined ten thousand dollars (\$10,000) for the first failure to comply with the mitigation plan developed by the Vendor and approved by DHS. Each subsequent violation of the mitigation plan shall be twice the amount of the immediately preceding violation fine.</p>
<p><b>Transition Planning</b>  Ninety (90) days prior to the contract end date, Vendor shall submit to DHS a detailed plan for transitioning all contracted services to DHS, or to another vendor selected by DHS to provide the contracted services.</p>	<p>Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If Vendor fails to meet the acceptable performance standard, DHS may issue a below standard VPR to be maintained in Vendor's file. Final payment may be withheld from Vendor until all elements of the transition</p>

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<p>The transition plan shall include provisions for the delivery of all proprietary data collected and/or created during the life of the contract to DHS thirty (30) days prior to the contract end date. All proprietary data collected and/or created during the final thirty (30) days of the contract, or any proprietary data not captured in the initial delivery, shall be delivered to DHS no more than fifteen (15) days following the contract end date.</p>		<p>are satisfied as determined by DHS.</p>
<p><b>Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101 et seq.):</b></p> <ol style="list-style-type: none"> <li>1. Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request.</li> <li>2. Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS.</li> <li>3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A).</li> </ol> <p>Contractor shall timely and accurately respond to FOIA requests made directly to Contractor. See Ark. Code Ann. § 25-19-101 et seq. for specific requirements. For all FOIA requests received, Contractor shall also notify DHS of the request at <a href="mailto:DHS.FOIA@arkansas.gov">DHS.FOIA@arkansas.gov</a>.</p>	<p>Contractor shall respond to FOIA requests timely and accurately one hundred percent (100%) of the time.</p> <p>Contractor shall provide information and documents to DHS upon request in the timeframe specified in the request one hundred percent (100%) of the time. DHS shall have sole determination as to the sufficiency of Contractor's response and provision of documents.</p>	<ol style="list-style-type: none"> <li>1. For each failure to meet performance standard, DHS may impose: <ol style="list-style-type: none"> <li>a. A ten percent (10%) penalty, assessed in the following months' payment for each failure to report. The penalty will be calculated from the total payment for the identified month in which the deficiency took place; or</li> <li>b. A one percent (1%) penalty, assessed in the next payment for each failure to report. The penalty will be calculated from the projected total yearly contract amount for the contract, as determined by DHS.</li> </ol> </li> </ol> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>In addition to the above, Contractor shall be responsible for any penalties, fees, and costs imposed on DHS associated with Vendor's failure to timely and accurately provide the requested information and documents.</p>

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Failure to meet the minimum Performance Standards as specified **may** result in the assessment of damages.

In the event a Performance Standard is not met, Vendor will have the opportunity to defend or respond to, or cure to the satisfaction of the State, the insufficiency. The State **may** waive damages if it determines there were extenuating factors beyond Vendor's control that hindered the performance of services if it is in the best interest of the State. In these instances, the State **shall** have final determination of the performance acceptability.

Should any compensation be owed to the agency due to the assessment of damages, Vendor **shall** follow the direction of the agency regarding the required compensation process.

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<sup>i</sup> Nothing in this table is intended to set forth all obligations of Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.

<sup>ii</sup> The damages set forth are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.