

**ARKANSAS DEPARTMENT OF HUMAN SERVICES**  
**PERFORMANCE BASED CONTRACTING**  
**710-25-057**  
**Physical Therapy-SEAHDC**

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

- I. Contractor **must** comply with all statutes, regulations, codes, ordinances, and licensure or certification requirements applicable to Contractor, Contractor's agents, employees, and subject matter of the contract. Failure to comply shall be deemed unacceptable performance.
- II. Except as otherwise required by law, Contractor agrees to indemnify and hold harmless 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 Contractor's performance or lack of performance.
- III. During the contract term, the Division/Office will complete sufficient performance evaluation(s) to determine if Contractor's performance is acceptable.
- IV. The State **shall** have the right to modify, add, or delete Performance Standards throughout the contract term, should the State determine it is in its best interest. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include the vendor's input so as to establish reasonably achievable standards.
- V. The contract program deliverables and performance indicators to be performed by Contractor are:

| Service Criteria <sup>i</sup>   | Acceptable Performance  | Damages for Insufficient Performance <sup>ii</sup>  |
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| <p><b>A. <u>Provider Documentation</u></b></p> <ol style="list-style-type: none"> <li>1. The Physical Therapist (PT) must maintain all licensing requirements as established by the State of Arkansas throughout the contract period.</li> <li>2. The PT must maintain a current negative tuberculosis (TB) skin test or provide certification from a licensed physician that PT is TB-free.</li> </ol> | <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>1<sup>st</sup> Incident: An acceptable Corrective Action Plan (CAP) shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard Vendor Performance Report (VPR) in the vendor file, and contract termination.</p> |

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| <p><b>B. <u>Physical Therapy</u></b><br/> The PT shall provide direct physical therapy at the frequency stated in the client's twenty-four (24) hour schedule and Individual Program Plan (IPP) according to planned physical therapy programs prescribed by the physical therapist and approved by the interdisciplinary team. At minimum, the PT shall report the client's progress on therapy objectives on a monthly basis and on or before a deadline approved by the SEAHDC.</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>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p> |
| <p><b>C. <u>Training</u></b><br/> As determined necessary by SEAHDC, the PT must train SEAHDC staff involved in the care of the resident(s) served through physical therapy techniques. The PT-provided trainings must emphasize interventions and techniques to restore, maintain, and prevent regression of physical/cognitive function of the patient/residents. The PT shall consult with staff to plan appropriate activities/exercises, self-help skills, and use of special rehabilitation equipment.</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>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>In addition to the above penalties, DHS reserves the right to impose</p>  |

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| <p><b>D. Evaluations</b><br/>The PT shall complete an evaluation on each individual within fourteen (14) calendar days of receiving the referral. The PT must provide the following services:</p> <ol style="list-style-type: none"> <li>1. Administer any needed testing,</li> <li>2. Complete the interpretation,</li> <li>3. Recommend a course of treatment, and</li> <li>4. Provide a report summarizing the finding of the evaluation.</li> </ol> <p>Physical therapy plans must be developed in conjunction with each individual's Interdisciplinary Team in compliance with ICF/IID regulations and CARF standards.</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>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p> |

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| <p><b>E. Reporting Requirements</b></p> <ol style="list-style-type: none"> <li>1. Annually and according to deadlines agreed upon by SEAHDC, the PT shall generate, in compliance with ICF/IID regulations and CARF standards, reports containing the following documentation: <ol style="list-style-type: none"> <li>a. Progress reports,</li> <li>b. Treatment plans, short-term goals and objectives,</li> <li>c. Long-range goals and objectives,</li> <li>d. Discharge planning and demonstrated need for the person to continue services.</li> </ol> </li> <li>2. PT must develop and maintain an IPP record of all therapist services that meet ICF/MR regulations ICF standard W319.</li> <li>3. PT must immediately report incidents in accordance with DHS Policy 1090 and other applicable federal and state laws and regulations.</li> </ol> | <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>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p> |
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| <p><b>F. Meetings</b></p> <p>The PT shall attend the following as required by the SEAHDC:</p> <ol style="list-style-type: none"> <li>1. Initial Individual Program Planning sessions,</li> <li>2. Special Interdisciplinary Team meetings,</li> <li>3. Medical staff meetings, and</li> <li>4. Conferences as required by the SEAHDC.</li> </ol> | <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>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> |

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| <p><b>G. <u>Additional Specifications</u></b></p> <ol style="list-style-type: none"> <li>1. The PT <b>must</b> perform functions as specified by the SEAHDC, in accordance with all Federal, State, institutional procedures, policies, guidelines, administrative orders, directives and applicable regulations, including Health Insurance Portability and Accountability Act (HIPAA) as applicable to the SEAHDC.</li> <li>2. The PT must immediately notify the SEAHDC administrator of any changes in PT licensure.</li> <li>3. The PT shall participate in the SEAHDC new employee orientation program prior to the provision of services.</li> <li>4. The PT shall provide the facility with a copy of his or her criminal background check, drug screening, and TB skin test. The PT must be cleared for work at the SEAHDC prior to his or her attendance at orientation.</li> </ol> | <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>1<sup>st</sup> Incident: An acceptable CAP shall be due to DHS within ten (10) business days of the request.</p> <p>2<sup>nd</sup> Incident: A two-hundred fifty dollar (<b>\$250</b>) penalty will be assessed for each instance of Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>3<sup>rd</sup> Incident and above: A five-hundred dollar (<b>\$500</b>) penalty will be assessed for Insufficient Performance. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Vendor.</p> <p>In addition to the above penalties, DHS reserves the right to impose additional penalties including without limitation, withholding payment on future invoices until Vendor is in full compliance, maintaining a below standard VPR in the vendor file, and contract termination.</p> |
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| <p><b>H. <u>Conflict of Interest Mitigation</u></b><br/> Vendor <b>shall</b> 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 <b>shall</b> 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>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>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 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>I. <u>Transition Planning</u></b><br/> 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>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.</p> <p>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>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>If Vendor fails to meet the acceptable performance standard, DHS may issue a below standard VPR maintained in the vendor file. Final payment may be withheld from Vendor until all elements of the transition are satisfied as determined by DHS.</p>  |

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| <p><b>Arkansas Freedom of Information Act (FOIA) (Ark. Code Ann. § 25-19-101 et seq.):</b><br/> Contractor shall cooperate with DHS requests for information and documents that DHS requires to fulfil a FOIA request.</p> <p>Contractor shall timely provide all documents in its possession or control to DHS that match the request made by DHS.</p> <p>Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. § 25-19-103(7)(A).</p> <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> | <p>For each failure to meet performance standard, DHS may impose:</p> <ol 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, as determined by DHS.</li> </ol> <p>DHS may elect to calculate penalties/damages differently per occurrence.</p> <p>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> <p>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 the vendor file, and contract termination.</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, respond to, or cure the insufficiency to the satisfaction of the State. The State **may** waive damages if it determines there were extenuating factors beyond Vendor's control that hindered the performance of services of it is in the State's best interest. 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 agency's direction regarding the required compensation process.

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 Nothing in this table is intended to set forth all obligations of the 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.