

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, the contractor's agents, employees, and 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 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 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. 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 the contractor are:

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<p>Licensure</p> <p>Contractor must be enrolled with Medicaid as a Pediatric Intermediate Care Facility for Intellectual or Developmental Disabilities (ICF/IDD). Medicaid Provider Type: Pediatric ICF/IDD (13-W9), and must remain in good standing with Arkansas Medicaid for the duration of any resulting contract.</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: An acceptable Corrective Action Plan (CAP) 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the 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, 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>
<p>Eligibility</p> <p>Clients referred under this contractor to receive services in an Intermediate Care Facility for Intellectual or Developmental Disability must have a diagnosis of developmental disability or intellectual disability.</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: An acceptable Corrective Action Plan (CAP) 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>In addition to the above</p>

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		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>Compliance</p> <p>All services provided shall be in compliance with Ark. Code Ann. § 20-48-901 and ICF standards as set forth in the DHS Office of Long-Term Care (OLTC) rules and regulations for small ICF/MR facilities and large ICF/MR facilities, and rules for Nursing Homes.</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: An acceptable Corrective Action Plan (CAP) 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the 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, 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>
<p>Preliminary Evaluation</p> <p>Within two (2) business days of accepting a client under this contract, Contractor must conduct a preliminary evaluation of the client to determine if medical necessity will be met for full admission or if DCFS should be notified of discharge.</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: An acceptable Corrective Action Plan (CAP) 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</p>

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		<p>months' payment to the Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the 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, 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>
<p>ICF Services</p> <p>Clients under this contract shall receive the same services as a client who has been fully admitted which includes all services outlined under the Condition of Participation (Section 500 of the 15 Bed or Less Long Term Care Facilities Manual) or the Services Section (Section 300 of the 16 Bed or More Long Term Care Facilities Manual).</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: An acceptable CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>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>Transportation</p>	<p>Acceptable performance is</p>	<p>1st Incident: An acceptable</p>

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<p>Services shall include transportation to and from other necessary services, including without limitation:</p> <ol style="list-style-type: none"> a. Dental care b. Eye care <p>Licenses, permits, and certificates must be maintained in accordance with state and federal laws for each vehicle used to provide transportation including, without limitation, the following:</p> <ol style="list-style-type: none"> a. Vehicle licensing b. Driver's license c. Registration d. Insurance e. Child safety seats f. Seat belts 	<p>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>CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>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>Reporting</p> <p>Contractor shall submit quarterly reports to the DHS Division of Children and Family Services (DCFS) containing the following data, without limitation:</p> <ol style="list-style-type: none"> 1. All in-patient medical services provided to DHS-referred clients for the preceding quarter; 2. All in-patient rehabilitative services provided to DHS-referred clients for the preceding quarter; 3. Progress notes on each DHS-referred client for the preceding quarter; 4. All transportation provided to DHS-referred clients for the preceding quarter; 5. All referrals to outside service providers (i.e. dental or eye care) for DHS-referred clients for the preceding quarter; 6. Date of placement for each DHS-referred client for the preceding quarter; and 7. Acceptance or denial decisions and reasoning for each DHS-referred client for the preceding quarter. 	<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: An acceptable CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>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</p>

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		standard VPR in the vendor file, and contract termination.
<p>Case Management</p> <p>When a client is referred for emergency intermediate care, Contractor must affirmatively assist families and/or division staff (along with any other stakeholders including but not limited to, parents/DCFS, medical providers and DHS staff) to submit the DMS Form 703 and all required documentation.</p> <p>Contractor must be knowledgeable and proficient in the Medicaid/PASSE enrollment process and be committed to ensuring documentation submission is completed expeditiously for all clients referred by or in DCFS custody. Contractor must complete and submit the DMS Form 703 (see Bidders Library and links below) and all accompanying documentation to the Office of Long-term Care within fourteen (14) days from the accepted referral date o the Office of Long Term Care pursuant to 42 CFR 483.20.</p> <p>DCFS referred clients will be moved from the Contract to an assigned PASSE within thirty (30) days of admission.</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>DCFS referred clients will be moved from the Contract to an assigned PASSE within thirty (30) days of admission. DCFS will pay the DCFS-approved Daily Rate for the first thirty (30) days following admission.</p> <p>Beginning Day 31 following a client's admission, half of the set and DCFS-approved Daily Rate will be paid.</p> <p>Also see Scope of Work section 3.1 Payment and Invoicing.</p>	<p>1st Incident: An acceptable CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>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>Criminal Background Checks</p> <p>Contractor will perform criminal background checks on all proposed staff members. No staff member shall be staffed on this project if they have committed an offense that would preclude State employment as a "designated position" if applicable to the underlying contracted services, under Ark. Code Ann. § 21-15-102 or otherwise as a "designated financial or information technology position" pursuant to Ark. Code Ann. § 21-15-111.</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: An acceptable CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p>

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<p>Privacy and Security 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.</p> <p>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>Contractor shall use protected health information and/or other confidential information only in a manner that is necessary to provide the contracted services.</p> <p>Contractor shall safeguard the use and disclosure of, and restrict access to, protected health information and/or other confidential information.</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: An acceptable CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated from the total payment for the month in which the deficiency took place.</p> <p>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>Payment and Invoicing</p> <p>All invoices shall be forwarded to ssupproviderinvoices@dhs.arkansas.gov</p> <p>Invoices must be submitted by the 10th day of each month and must include dates and a complete description of services provided.</p> <p>Bed Holds. When a child is admitted into a medical facility for an extended period of time, the contractor can bill for up to fourteen (14) calendar days. Any amount of time beyond fourteen (14) calendar days must be approved by DCFS with an explanation of the request</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: An acceptable CAP 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 Vendor for each thirty (30) day period the Vendor is not in full compliance with all contract requirements. The five percent (5%) penalty will be calculated</p>

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<p>and the needs of the child.</p> <p>Daily rate following emergency admission will be the ceiling DCFS- approved contract rate. Starting day thirty-one, DCFS will pay its lower or floor DCFS-approved Contract rate which will be set at half of the higher or ceiling DCFS-approved contract rate.</p>		<p>from the total payment for the month in which the deficiency took place.</p> <p>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>Mandated Reporting</p> <p>Pursuant to 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 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> <ol style="list-style-type: none"> a. A child has been subjected to child maltreatment; b. A child died as a result of child maltreatment; c. A child died suddenly and unexpectedly; or d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. or 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. <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>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>For each failure to report, DHS may impose:</p> <ol style="list-style-type: none"> 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 month in which the deficiency took place; or 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. <p>DHS may elect to calculate penalties/damages differently per occurrence.</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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<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>Conflict of Interest Mitigation</p> <p>Vendor shall comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions. The Vendor shall disclose all actual, apparent, or potential conflicts of interest to DHS within five (5) calendar days of having knowledge of them. The Vendor shall develop a mitigation plan which must be approved and accepted by DHS. Any changes to the approved mitigation plan must be approved in advance by DHS.</p>	<p>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>The Vendor will be fined one thousand dollars (\$1,000) per day for each day past five (5) calendar days for each actual, apparent, or potential conflict of interest it fails to disclose.</p> <p>The 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>Transition Planning</p> <p>Ninety (90) days prior to the contract end date, the 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. 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>The Vendor must maintain one hundred percent (100%) compliance with this item at all times throughout the term of the contract.</p>	<p>If the Vendor fails to meet the acceptable performance standard, DHS may issue a below standard VPR to be maintained in the vendor file.</p> <p>Final payment may be withheld from the vendor until all elements of the transition are satisfied as determined by DHS.</p>

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<p>Arkansas Freedom of Information Act (FOIA) (Ark. Code Ann. § 25-19-101 et seq.):</p> <p>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, the Contractor shall also notify DHS of the request at DHS.FOIA@arkansas.gov.</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> <ul style="list-style-type: none"> 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 month in which the deficiency took place; or 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, as determined by DHS. <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> <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>

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, the vendor will have the opportunity to defend, respond to, or cure the insufficiency to the State's satisfaction. The State **may** waive damages if it determines there were extenuating factors beyond the vendor's control that hindered the performance of services or 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 direction of the agency regarding the required compensation process.

ⁱ 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.

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