



*Delaware Health  
And Social Services*

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**DIVISION OF MANAGEMENT SERVICES**

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PROCUREMENT

DATE: March 1, 2011

HSS 11-034

Children's Health Insurance Program - Payment Error Rate Measurement

for

Department of Health and Social Services  
Division of Management Services

Date Due: April 4, 2011

By 11:00 A.M. Local Time

ADDENDUM # 2  
**Questions and Answers**

**PLEASE NOTE:**

THE ATTACHED SHEETS HEREBY BECOME A PART OF THE ABOVE MENTIONED RFP.

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Bruce Krug  
Procurement Administrator

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Jennifer Harris  
Social Service Administrator

Questions and Answers  
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**Q1.** Are there any incumbent vendors for these services?

**Answer:** PERM audits are completed every three years. Delaware was last reviewed for FFY2009. There are no incumbent vendors since the 2009 project has ended.

**Q2.** What's the budget for this project?

**Answer:** We do not have a specific budget for the project. We are awaiting bidders to determine a reasonable cost for the services.

**Q3.** Will the state or the contractor be responsible for extracting the monthly universe from the Delaware Client Information System (DCIS) system?

**Answer:** The state will extract the monthly universe from DCIS.

**Q4.** Will the contractor be responsible for selecting the monthly sample from the eligibility data provided or will the contractor only be responsible for reviewing the sample pulled by the state?

**Answer:** The contractor will be given the monthly universe and will be responsible for selecting the monthly sample. The contractor will then also be responsible for reviewing the sample.

**Q5.** The current PERM instructions allow the states to test active samples from the complete universe of individuals having eligibility or allow the states to stratify the eligibility date based upon applications, redeterminations, or all others. Will the active samples be selected from one universe or a stratified universe?

**Answer:** The active samples will be selected from one universe and will NOT be stratified. This will be pending approval of Delaware's sampling plan.

**Q6.** The RFP states "Documents used by the contractor to complete reviews should be in Word format and finalized in type – rather than hand written form." Can the contractor utilize excel to document the eligibility requirements and make the appropriate eligibility calculations while summarizing the findings in a Word document?

**Answer:** The contractor can utilize Excel for documenting the eligibility requirement and make summaries available in Word. Delaware is requiring a typed format for ease of sharing documents pertaining to specific reviews.

**Q7.** The RFP provides a list of contractor deliverables. Item #4 states, "All case file documents scanned by the due date for each month's reviews. This would include copied verifications from the state's eligibility files as well as documents completed by the reviewer and obtained during the review." Item #8 provides, "Physical case files use in the review process, including the documents copied from the Department's case files as well as worksheets used in the review process." Is it the State's intention that all case files and associated documents are submitted to the State both in paper and electronic format? If the contractor intends to utilize only electronic files, will meeting requirement #4 also achieve requirement #8?

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**Answer:** Delaware expects that if there are any paper files associated with the reviews, they will be delivered by the contractor to the State at the end of the contract. There may be copied case file documentation, letters or faxes from third parties that will be necessary to complete the review. Delaware expects all documents pertaining to the reviews to be scanned and made available to the state at the time that month's reviews are due to CMS. It is unlikely that all the files will only be electronic when client contact may be necessary to complete a review. In summary, meeting requirement #4 does not achieve requirement #8.

**Q8.** I registered as a vendor and wish to find out if there are any sub-contractor opportunities available?

**Answer:** Delaware is soliciting bids for a contractor for the Children's Health Insurance Program - Payment Error Rate Measurement. The RFP does allow for the primary contractor to propose the use of subcontractors. The entities qualified to bid as primary contractors are identified in Addendum 1 to this RFP.

**Q9.** Does the Delaware Sampling Plan include stratification for active cases?

**Answer:** The sampling plan will NOT include stratification for active cases. We plan to have the contractor sample from one universe.

**Q10.** Will the Department utilize a non-stratified sampling approach for active case reviews?

**Answer:** Delaware will utilize a non-stratified sampling approach for active case reviews.

**Q11.** Will the sampling plan indicate sampling by individual client or by case?

**Answer:** Delaware sampling plan will indicate sampling by individual.

**Q12.** Will the contractor remove the hard copy files from the Department's central location for copying at an alternate location or will the contractor copy all case files at the central location?

**Answer:** The contractor will remove hard copy files from the Department's central location and will copy at a location of the contractor's choosing. Copying resources will not be available at the central location.

**Q13.** "All Contractor staff who have access to client-specific data will have to go through a criminal background check, which involves fingerprinting at a Delaware location." We understand that certain staff members, such as case reviewers with access to the eligibility system, will be subject to this requirement. To estimate travel expenses, does this statement describe each and every staff member who will handle data for PERM eligibility reviews, specifically administrative support staff and IT staff assigned to sample selection and data collection activities?

**Answer:** All staff that will handle data for PERM eligibility reviews will need to go through a criminal background check involving fingerprinting at a Delaware location. This would include staff that may have administrative duties associated with the reviews and IT staff. This is a requirement to work as a contractor for the Department of Health and Social Services.

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**Q14.** “Systems: The CHIP program uses an on-line eligibility system called the Delaware Client Information System (DCIS), which maintains client data and calculates eligibility. The successful bidder will have access to the data in this system. The CHIP Program also uses an on-line information system to process claims and maintain records of amounts paid for client services. The successful bidder will have access to this Medicaid Management Information System in order to retrieve claims data on cases in the sample.” How will this access be provided? Will the contractor be given remote access via secure VPN or other secure means?

**Answer:** Vendor access to the Delaware Client Information System (DCIS) and Medicaid Management Information System (MMIS) is provided through a Citrix Secure Gateway (CSG). Individuals are provided a personal login account with user name and password. To utilize the systems, Citrix XenApp software (available on the internet for free download) needs to be installed on the user’s PC and the PC must have internet access.

**Q15.** Will DCIS and/or MMIS training be available to the contractor?

**Answer:** The contract manager will work with the contractor to assure that training on the systems will be available.

**Q16.** Is the contractor responsible for building the monthly universe and selecting the sample?

**Answer:** The contractor will be responsible for selecting the sample. Delaware will provide the universe.

**Q17.** Will the Contractor be allowed to transport the physical files to their office location for scanning and imaging?

**Answer:** The contractor will be allowed to transport physical files to their office for scanning and imaging.

**Q18.** Approximately how many local offices are there?

**Answer:** There are approximately 49 office locations.

**Q19.** Do beneficiary interviews need to occur or just verification of what is in the case file?

**Answer:** Delaware is required to follow CMS PERM regulations to guide the reviews. The contractor will be expected to be familiar with the regulations. Currently, interviews are not required on all case reviews. If the file is missing information, client contact may be necessary to obtain the missing information. This may include interviewing the client.

**Q20.** Is there any requirement to verify anything of the systems or data, vs. going out in the field to talk to guardians, parents etc. (conduct reviews according to PERM requirements). For pricing purposes, please provide information on the number of interviews or scope of field work envisioned by the state.

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**Answer:** Delaware is required to follow CMS PERM regulations. The contractor will be expected to be familiar with the regulations. Currently, a review of the eligibility decision at the time of the last action by the state is required. If mandatory information is missing and the review can not be completed without this information, the contractor will need to make contact with the client or responsible family member to obtain the necessary verification to complete the review. This can be achieved by mail, telephone or field visits. Since the contact with clients will occur on cases with missing information, Delaware can not reasonably anticipate how many cases have missing information. Delaware will be doing the CHIP reviews for the first time in FFY2012.

**Q21.** Which functions does the State expect the contractor to be able to execute from the State-provided computer and onsite systems access?

**Answer:** There are systems access issues when using Delaware's eligibility system outside of the state's network. Delaware has the office available for the contractor to use the system from inside the state network to access some of the eligibility information. For example, CHIP beneficiary notices can not be printed or viewed from outside the state network.

**Q22.** Is it the State's intent for all work to occur in Delaware?

**Answer:** It is not the State's intent for all work to occur in Delaware. Some work in Delaware will be necessary including retrieval of physical case files.

**Q23.** "All information technology used in accessing, transmitting and storing data identifiable to any individual client, must comply with Department of Technology and Information (DTI) policies and standards, DHSS Information Technology (IT) Standards (see website links in Attachment X) and Federal HIPPA standards.

If applicable to this contract, does the statement above also include the following configuration guidance from the links in attachment X: DHSS .NET Development Manual<<http://www.dhss.delaware.gov/dhss/dms/irm/files/dhssdotnetmanual.pdf>> and DHSS .NET Web Application Template Manual<<http://www.dhss.delaware.gov/dhss/dms/irm/files/DhssWebApplicationTemplateDocumentation.pdf>>?

**Answer:** The statement does include the specified documents, but much of their content is directed to web development practices when developing systems for DHSS.

**Q24.** Will industry guidance such as NIST or DISA Security Technical Information Guides (STIGs) meet the intent of this statement? (Referencing Q23)

**Answer:** While adherence to industry security standards may meet many Federal, State and DHSS requirements, vendors are responsible to assure that Federal, State and DHSS requirements are met where they apply to any aspects of the project.

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**Q25.** All Contractor staff who have access to client-specific data will have to go through a criminal background check, which involves fingerprinting at a Delaware location. The cost for this must be borne by the Contractor. If “access to” is interpreted literally, then any network administration personnel in charge of maintenance of a network containing “client specific data” would be required to be fingerprinted in addition to those handling the “client specific data” in performance of the “Contractor Requirements” and “Contractor Deliverables.” Is this correct?

**Answer:** All contract personnel that will work on Delaware’s project would need to pass the criminal background check.

**Q26.** Is “client specific data” or other data obtained from DHHS considered “State IT resources” or does this term refer specifically to physical IT systems such as the New Castle office and state-owned computer referenced on page 9? (RFP Section II. Scope of Services, Contractor Responsibilities, i.)

**Answer:** The term “State IT resources” is not intended to refer to data, however any State data transported or stored with a vendor’s IT resources must be protected the same as is required for the same data with State IT resources.

**Q27.** What is the cost of fingerprinting?

**Answer:** Currently, the cost is \$10. The fingerprints are then passed on to the FBI for a Federal background check. The cost of this is \$18.

**Q28:** What is the cost for the background check?

**Answer:** The background check is \$45.

**Q29:** How long does the process for background checks take to complete?

**Answer:** The background check is for the State of Delaware as well as a Federal background check. The State part takes 2-4 weeks. The FBI review can take up to 12 weeks. Delaware will allow contractors to begin work upon delivery of verification that they have been fingerprinted and the background check process has been started by State Bureau of Identification. However, their continued engagement is conditional on delivery of both State and Federal criminal history reports and approvals of both by DHSS.

**Q30:** Where are the “Delaware locations” for fingerprinting?

**Answer:** The closest location to the contract manager is below. The PERM case manager can set up an appointment for each contract employee.

Delaware State Police  
SBI North Office – Troop 2  
100 LaGrange Avenue  
Newark, DE 19702  
302-834-2620

## Questions and Answers

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**Q31.** If the contractor works with physical files, how often should they be returned to the state, or should all files be returned at the end of the contract as stated?

**Answer:** The contractor's PERM case files that are created as a result of the PERM review are due back to the state at the end of the contract. The Department's beneficiary case files would be due back to the Department within a week of retrieval from the local office pick-up site. These files are necessary for case work in the local offices.

**Q32.** "The following items, if required in response to this RFP, are to be included in a separate section of your proposal and marked as confidential. These items are: 1) any financial information relating to the company or organization (not the RFP pricing or budget); 2) Organization Charts."

This is contradictory to the direction in Section VI. General Instructions for Submission of Proposals, A. Number of Copies Required - where it states to include "...any required confidential financial or audit information relating to the company and not specifically to the proposal may be copied separately to three (3) additional CDs (Each labeled "Corporate Confidential Information")."

How does the contractor determine whether or not financial information or organization charts are required? If it is determined that they are required, the statement directs the contractor to include them in a separate section of the proposal marked as confidential versus to three (3) additional CDs. Please clarify.

**Answer:** An allowance for confidential CD's is made to provide bidders an opportunity to provide information of a confidential nature not directly related to the core proposal. Proposals become the property of the State of Delaware and as such the general public has access to proposals through the Freedom of Information Act (FOIA). Information identified as confidential at the time of submission may be withheld from release provided the DHSS Procurement Administrator and / or the Delaware Attorney General's office concur the information is of a confidential nature. The core proposal should make reference to any files residing on the CD's labeled confidential. Note: The full contents of all proposals are held in confidence until a contract resulting from the RFP is fully executed.

**Q33.** "The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt." Is the reference to "agencies and school districts" accurate?

**Answer:** Yes. Delaware Code allows for all State agencies and school districts to utilize another agency's contract provided all involved parties are in agreement. Also, DHSS is the agency referenced in the statement for this project and is making a commitment to process payments within 30 days.

**Q34.** "Appendix G is a copy of the standard boilerplate contract for the State of Delaware, Delaware of Health and Social Services, Division of Management Services. This boilerplate will be the one used for any contract resulting from this Request for Proposal. If a bidder has an objection to any contract provisions or the RFP and its procurement provisions, objections shall be stated in the Transmittal Letter of the bidder's proposal."

In order to be compliant with the required content, what should be included in the contractor's response for this section?

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**Answer:** The contract boilerplate is provided as a courtesy for review by a prospective bidder's legal department and is not required to be included in a bidder's proposal. The boilerplate contains the core language for all DHSS contracts. As a rule DHSS does not deviate from the language in the boilerplate, but if a prospective bidder has any MINOR concerns with the boilerplate language, those concerns should be noted in the cover letter.

**Q35.** If the contractor is to include the boilerplate, must it be signed? If so, how are any proposals to changes in the boilerplate language handled?

**Answer:** See Answer to question 34. The boilerplate should not be signed. Only the selected bidder will sign a contract.

**Q36.** Should the budget section be a part of the proposal file, or should Budget be its own file on the CD?

**Answer:** The budget section location will be left to the discretion of the prospective bidder. The proposal can be one continuous file or the budget can be its own file.

**Q37.** RFP states: All prices, terms, and conditions contained in the proposal will remain fixed and valid for one year after proposal due date. RFP also states: Prices quoted in the proposal shall remain fixed and binding on the bidder at least through Sept 15, 2011. What is the correct timeframe for the prices, terms and conditions to remain valid?

**Answer:** The correct timeframe for the all prices, terms, and conditions in the proposal to remain fixed is one year after proposal due date.

**Q38.** The boilerplate lists several DHSS Memoranda (#'s 36, 40, 46) that the contractor must agree to comply with, and are to be Appendices to the contract. Would DHSS provide links to these documents or the documents themselves so that they may be reviewed?

**Answer:** The three DHSS Memoranda (36, 40 and 46) mentioned in the boilerplate are at the end of Addendum 2 for review. It should be noted that none of them are pertinent to this project.

**Q39.** RFP Section VI. General Instructions for Submission of Proposals, A. Number of Copies Required, p.18 RFP states: "Two (2) original CDs (Each Labeled as "Original") and six (6) CD copies (Each labeled as "Copy"). In addition, any required confidential financial or audit information relating to the company and not specifically to the proposal may be copied separately to three (3) additional CDs (Each labeled "Corporate Confidential Information"). All CD files shall be in PDF and Microsoft Word formats. Additional file formats (i.e. .xls, .mpp) may be required as requested."

RFP Section VI. General Instructions for Submission of Proposals, F. Proposals Become State Property RFP states: "All proposals become the property of the State of Delaware and will not be returned to the bidders. The State will not divulge any information identified as confidential at the time of proposal submission provided the information resides solely on the CD (s) marked confidential."

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RFP Section VI. General Instructions for Submission of Proposals, M. Confidentiality and Debriefing, p.21 paying specific attention to the bold italicized sentences

RFP states: *“The Procurement Administrator shall examine the proposal to determine the validity of any written requests for nondisclosure of trade secrets and other proprietary data identified in conjunction with the Attorney General’s Office. After award of the contract, all responses, documents, and materials submitted by the offeror pertaining to this RFP will be considered public information and will be made available for inspection, unless otherwise determined by the Director of Purchasing, under the laws of the State of Delaware. All data, documentation, and innovations developed as a result of these contractual services shall become the property of the State of Delaware. Based upon the public nature of these Professional Services (RFP) Proposals a bidder must inform the state in writing, of the exact materials in the offer which CANNOT be made a part of the public record in accordance with Delaware’s Freedom of Information Act, Title 29, Chapter 100 of the Delaware Code.”*

These three sections appear to contradict one another. If a contractor believes their entire proposal, budget and any other applicable or required content is found to be proprietary and confidential, how do they handle the information?

**Answer:** See answer to question 32

**Q40.** Does the entire proposal response become confidential if put on the “Company Confidential Information” CDs?

**Answer:** No. See answer to question 32.

**Q41.** If putting the entire response onto the Confidential CDs dictates that all information is confidential, would the State still expect to receive the two (2) original and six (6) copies all marked as Confidential Information?

**Answer:** A proposal will not be considered if the submission requirements in the RFP are not followed.

**Q42.** Must the contractor also inform the state in writing (in addition to putting the information on CDs marked as confidential) what exact materials cannot be made part of the public record?

If the answer to Q42 is yes, where should this information be included?

**Answer:** See answer to question 32

## Delaware Health and Social Services

Policy Memorandum 36

September 24, 2008

**Subject: Standardized Requirements During the Development Phase of Community Based Residential Homes for the DHSS/Division**

### **I. Background:**

DHSS has funded and supported community based residential homes and supervised apartments, for people with disabilities, for many years. The DHSS believes that community based residential options provide individuals with more opportunities to become valued citizens, develop self-worth and self-direction and engage in lifestyles that are healthy and productive. Community based residential homes support the mission of the DHSS; "To improve the quality of life for Delaware's citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations."

### **II. Purpose:**

The purpose of this policy is to delineate minimal requirements of contractors who are engaging in a contractual agreement to develop community based residential arrangements for those individuals served by Divisions within DHSS. This policy seeks to enhance the transparency of the operations within DHSS Divisions and their contractors.

### **III. Application:**

This policy applies to all DHSS Divisions who support community based housing to individuals qualified to receive their services. The policy also applies to individuals/entities that enter into a contractual arrangement (*contractors*) with the DHSS/Division to develop a community based residential home(s) and apartment(s). Contractors shall be responsible for their subcontractors' adherence with this policy and related protocol(s) established by the applicable Division.

### **IV. Procedures:**

1. Contractors shall obtain written approval from the DHSS/Division prior to their acquisition of a site selected for development.
2. Contractors shall develop community based residential homes and supervised apartments efficiently and within a timely manner so as to avoid excessive delays for the individuals planning to transition into the home.
3. Contractors shall ensure that the development site does not present safety hazards to residents or neighbors or create appearances that degrade neighboring properties.

4. Contractors shall adhere to the Fair Housing Act which makes discrimination unlawful for “protected” persons with disabilities (i.e., treated less favorably than people without disabilities). Community based residential homes and supervised apartments shall meet the design and construct requirements set forth in the Fair Housing Act.
5. Contractors shall adhere to all applicable local and state housing codes, including zoning laws, permitting procedures and historical preservation requirements.
6. Contractors shall secure all applicable business licenses, certificates and insurance coverage prior to the development of a community based residential housing. They shall further ensure that the aforementioned remain active.
7. Contractor shall obtain the required licensing/certification and Fire Marshal inspection prior to occupancy.
8. The Contractor’s conduct shall mirror community standards, ethical principles and professional standards. Business practices shall not degrade the individuals who will live in the community based residential home, the DHSS or the Division or be cause for community insult or offense.
9. The applicable Division shall monitor housing contract standards with the Contractor, to ensure compliance.
10. The applicable Division(s) shall monitor compliance with standards/regulations associated with the development of housing, environment and safety issues.
11. The applicable Division’s Quality Assurance/Improvement unit shall serve as a resource to the Contractor re: issues concerning residential licensing/certification and occupancy readiness.

**V. Responsibility**

1. Each Division who supports community based residential homes and supervised apartments shall develop procedures/protocols that are consistent with this DHSS policy and make such procedures/protocols available to Contractors of community based residential homes.
2. Contractors with the DHSS/Division are responsible for ensuring that subcontractors they employ adhere to the requirements set forth in this policy and the applicable Division’s procedures/protocol.

**VI. Effective:**

This policy shall be effective immediately.

\_\_\_\_\_  
Vincent P. Meconi, Secretary

\_\_\_\_\_  
Date

## DELAWARE HEALTH AND SOCIAL SERVICES

DHSS Policy Memorandum Number 40

March 10, 2008

**Subject: Criminal Background Check Policy**

### **I. Purpose**

Delaware Health and Social Services is committed to providing a safe and secure environment for our patients, residents and employees. Additionally, the Delaware Code (Title 16, sec. 1141) requires criminal background checks of all individuals seeking work in long term care facilities. To that end, it is the policy of DHSS to conduct criminal background checks for all persons hired or promoted into any permanent or temporary position with any long term care or psychiatric facility operated by the DHSS. The Delaware Psychiatric Center is licensed as a hospital and while the Code does not require criminal background checks for employees of the DPC, long standing policy and practice mandates a criminal background check on all prospective employees at the Psychiatric Center.

### **II. Scope**

This policy applies to all applicants and employees of the five facilities operated by DHSS. Under this policy, a criminal background check is required for any current employee who applies for another position within a DHSS facility or laterally transfers or promotes into another position within any DHSS facility. In addition, a criminal background check can be conducted on an employee if an employee takes a voluntary demotion or where there is a reasonable suspicion that a staff person has been recently been involved in criminal activity.

If an applicant has been convicted of any crime, a review of the individual's complete record must be considered prior to permanent hire. If an applicant has been convicted of a disqualifying crime as enumerated by regulations promulgated by the Division of Long Term Care Residents Protection (DLTCRP) in accordance with Delaware Code, Title 16, sec. 1141(b)(e), that applicant is deemed unsuitable for employment, unless the time parameters surrounding the conviction(s) have eliminated that automatic bar to employment. See Addendum A for a list of disqualifying crimes and conviction time parameters.

This policy covers all full-time and part-time permanent, limited term, temporary and casual/seasonal positions providing direct care, or serving within the facilities operated by DHSS. This policy also applies to all positions and temporary positions filled directly by contractors, vendors, and other entities providing services at DHSS facilities

### **III. Policy**

A criminal background check will be conducted for all newly-hired employees for positions within DHSS facilities. The Division of Long Term Care Residents Protection (DLTCRP) is responsible for completing a criminal background check and review of the Adult Abuse Registry. Once the review has been completed, the DLTCRP will send a letter to the facility's Human Relations Representative outlining the applicant's status. A facility director may extend an offer of employment to an applicant prior to the completion of the criminal background check but that offer is conditional until the Director of Management Services or his/her designee reviews the criminal background check and determines that no adverse action will be taken based upon information contained in that report.

Although a disqualification is possible, a previous conviction does not automatically disqualify an applicant from consideration from employment within a DHSS facility. The Director of Human Resources and the Division Director or designee will together consider the following factors in determining whether a candidate is eligible for employment with DHSS:

1. the relevance of the conviction to the duties and responsibilities of the position for which selected;
2. the nature of the conviction(s);
3. the age of the candidate when the illegal activity occurred;
4. the dates of the convictions; and
5. the candidate's record since the date(s) of the conviction(s).

A pardon has no impact on a conviction. It may, however, be used as a consideration in the criteria above. However, if an applicant fails to reveal any previous conviction, he/she will be disqualified from employment in that or any other position at DHSS for falsification of an application.

If the facility director desires to retain the applicant, he or she may forward a request through the Director of Management Services for final consideration by the Cabinet Secretary.

#### **IV. Procedure**

When a hiring manager reaches the final selection stage in the hiring process, the applicant will be given a "DHSS Terms and Conditions of Employment" form authorizing the DLTCRP to conduct a criminal background check. The applicant is then sent to the state police for fingerprinting and initiation of the criminal background check process. The hiring manager then sends the completed and signed form to Human Resources staff person for the respective facility. Human Resources will submit the request to DLTCRP for processing. Refusal to provide a completed and signed DHSS Terms and Conditions of Employment form will be considered sufficient grounds to discontinue any employment consideration for that candidate.

When the investigation is complete, the DLTCRP will submit a report on each applicant

to the facility's HR representative. If the criminal background check reveals a criminal history, HR will review and notify the facility director.

The facility director or designee will conduct an additional inquiry to determine the nature of the offense(s) and other circumstances surrounding the criminal record. It is expected that the investigation of an applicant will not take longer than ten days to complete. Applicant information is confidential personnel information, and all parties having access to this information will maintain it as confidential.

If adverse action is contemplated, based on information revealed in the criminal background report, the HR representative will inform the hiring manager and or HR Director to implement due process proceedings. The hiring manager will in turn notify the employee immediately verbally and in writing.

## **V. Responsibility**

It shall be the responsibility of the affected Division Directors to ensure that they, their staff and contractors adhere to the procedures outlined in this policy as written.

It shall be the responsibility of contractors and vendors to conduct criminal backgrounds checks on their employees prior to their assignment to a DHSS facility.

## **VI. Implementation**

This policy is effective immediately.

Vincent P. Meconi      March 10, 2008  
Vincent P. Meconi, Secretary

Attachment:

Addendum A, List of Disqualifying Crimes and Conviction Time Parameters

Department of Health and Social Services

DHSS Policy Memorandum 46  
Subject: Injury to Clients

August 2009

I. PURPOSE

- a. To protect the right of residents/clients of Delaware Health and Social Services (DHSS) facilities to be free from abuse, neglect, mistreatment, financial exploitation or significant injury.
- b. To require that each Division that has, or contracts for the operation of, residential facilities establish standardized written procedures for the reporting, investigation and follow up of all incidents involving suspected resident/client abuse, neglect, mistreatment, financial exploitation, or significant injury.
- c. To require that all DHSS residential facilities comply with The Patient Abuse Law (Title 16, Chapter 11, section 1131, et seq.) and Title 29, Chapter 79, sections 7970 and 7971 (Attachments I and II); and that all Medicaid and/or Medicare certified long term care facilities and Intermediate Care Facilities for Mental Retardation (ICF/MR) comply with the federal regulations (42 CFR) and State Operations Manual for such facilities. In addition, all residential facilities and Medicaid and/or Medicare certified long term care facilities and Intermediate Care Facilities for Mental Retardation (ICF/MR) comply with Title 11, Chapter 94, Victims Bill of Rights, Subchapter I and Subchapter II. Compliance with Title 11, Chapter 5, Subchapter V Offenses Relating to Children and Incompetants, Subpart A Child Welfare; Sexual Offenses is required by all facilities that provide residential and/or inpatient services to children.
- d. To require that all DHSS residential facilities comply with all applicable state and federal statutes, rules and regulations pertaining to suspected abuse, neglect, mistreatment, financial exploitation, or significant injury. Applicable statutes include Title 11, Chapter 5, Subchapter II Offenses Against the Person, Subpart A Assaults and Related Offenses.

II. SCOPE

- a. This policy applies to anyone receiving services in any residential facility operated by or for any DHSS Division, excluding any facilities/programs in which the only DHSS contract is with the DHSS Division of Social Services Medicaid Program.
- b. This policy is not intended to replace additional obligations under federal and/or state laws, rules and regulations.

### III. DEFINITIONS

- a. Abuse shall mean:
  - 1. Physical abuse the unnecessary infliction of pain or injury to a resident or client. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.
  - 2. Emotional abuse - This includes, but is not limited to, ridiculing or demeaning a resident or client, cursing or making derogatory remarks towards a resident or client, or threatening to inflict physical or emotional harm to a resident or client.
- b. Neglect shall mean:
  - 1. Lack of attention to the physical needs of the resident or client including, but not limited to, toileting, bathing, meals, and safety.
  - 2. Failure to report client or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.
  - 3. Failure to carry out a prescribed treatment plan for a resident or client.
  - 4. A knowing failure to provide adequate staffing (where required) which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the department, all so as to evidence a willful pattern of such neglect. (Reference 16 DE Code, §1161-1169)
- c. Mistreatment shall mean the inappropriate use of medications, isolation, or physical or chemical restraints on or of a resident or client.
- d. Financial exploitation shall mean the illegal or improper use or abuse of a client's or resident's resources or financial rights by another person, whether for profit or other advantage.
- e. Significant Injury is one which is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or functions which cannot be justified on the basis of medical diagnosis or through internal investigation.
- f. Assault (including sexual assault) as defined in Del.Code Title 11 § 611, § 612 and § 613.
- g. Attempted Suicide shall mean an intentional attempt at the taking of one's own life.
- h. SANE – Sexual Assault Nurse Examiner.
- i. Residential Facility shall include any facility operated by or for DHSS which provides supervised residential services, including Long Term Care licensed facilities, group homes, foster homes, and community living arrangements.

- j. Long Term Care Facility is any facility operated by or for DHSS which provides long term care residential services and the Delaware Psychiatric Center.
- k. High managerial agent is an officer of a facility or any other agent in a position of comparable authority with respect to the formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

#### IV. RESPONSIBILITIES

- a. The Director, or his/her designee of each Division within the scope of this policy, is hereby designated as an official DHSS designee under the State Mandatory Patient Abuse Reporting Law.
- b. Each Division will develop written procedures consistent with the standards contained in this policy and which will be activated immediately upon discovery of any suspected abuse, neglect, mistreatment, financial exploitation or significant injury of or to a client of a residential or long-term care facility. These procedures must clearly outline the reporting chain from the witness to the Division Director, and other appropriate parties, to require the expedient relay of information within the required time frames.
- c. These standardized procedures shall also apply when the preliminary inquiry suggests that the assault, significant injury, suspected abuse, neglect, suicide attempt, mistreatment or financial exploitation may have been caused by a staff member of the residential facility, whether on or off the grounds of the residential facility. Suspicion of facility/program negligence (including inadequate supervision resulting in client-client altercations) and incidents involving abuse by persons who are not staff members of the residential facility shall also be reported.
- d. The standardized procedures shall be approved by the appropriate Division Director prior to implementation. The Division Director or designee shall forward a copy of the approved procedures to the Chief Policy Advisor, Office of the Secretary, and other appropriate agencies.
- e. Each Division will require that the standards established in this policy are incorporated in all residential operational procedures and all residential contracts. Each Division shall require that all residents and providers of these programs be informed of their specific rights and responsibilities as defined in the Division's written procedures.
- f. Each Division shall require that all levels of management understand their responsibilities and obligations for taking and documenting appropriate corrective action.
- g. Each Division shall require appropriate training of all staff and contract providers in the PM 46 policy and procedures. Such training shall also include the laws prohibiting intimidation of witnesses and victims (11 Del. C., sections 3532 through 3534) and tampering with a witness or physical evidence (11 Del. C., sections 1261 through 1263 and section 1269).

- h. Each Division shall develop quality assurance/improvement mechanisms to monitor and oversee the implementation of the PM 46 policy and procedures.
- i. Each Division must ensure that all employees of, or contractors for, residential facilities shall fully cooperate with PM 46 investigations.

## V. STANDARDS/PROCEDURES

Standard and consistent implementation of this Department policy is required. Each Division's written procedures shall include the following:

- a. Employee(s) of the residential facility, or anyone who provides services to residents/clients of the facility, who have reasonable cause to believe that a resident/client has been assaulted, abused, mistreated, neglected, subjected to financial exploitation, or has received a significant injury, or attempted suicide shall:
  - 1. Take actions to assure that the residents/client(s) will receive all necessary medical attention immediately, including calling '911' for transportation to the hospital, especially in the cases of assault, sexual assault, and serious physical injury. In the cases of sexual assault, a SANE examination should be completed at the hospital.
  - 2. Take action to report all crimes to the police through the '911' call system. All victims of crimes must be offered the ability to access victim advocate services, either through the police agency or other agencies. Victim advocates can be contacted by calling 1-800-VICTIM1 (1-800-842-8461). The Delaware Helpline can provide advocate information and Contactlifeline can provide confidential accompaniment to the hospital in cases of sexual assault.
  - 3. Take actions to protect the residents/client(s) from further harm.
  - 4. Report immediately to the Division of Long Term Care Residents Protection (if the incident occurred in a long term care facility or if the client was a resident of a long term care facility); and to the Department of Services for Children, Youth and Their Families/Division of Family Services (if the client is a minor, as required under 16 Del. C., section 903). It is essential that the reporting person ensure that the report be made to the appropriate division designee immediately.
  - 5. Report immediately to the facility/program director and the Division's designated recipient(s) of PM 46 reports.
  - 6. Follow up the verbal report with a written initial incident report to the persons/ agencies named in (a) 3 and (a) 4 (above) within 48 hours.
- b. In addition to the above named persons, any other person may make a report to a staff person of the facility or to the Division director or his/her designee. Such a report shall trigger activities under V(a), items 1 through 5.

- c. Each written initial report of assault, suspected abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury (completed by the reporting employee) must include:
  - 1. The name and gender of the resident or client.
  - 2. The age of the resident or client, if known.
  - 3. Name and address of the reporter and where the reporter can be contacted.
  - 4. Any information relative to the nature and extent of the assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury.
  - 5. The circumstances under which the reporter became aware of the assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury.
  - 6. The action taken, if any, to treat or otherwise assist the resident or client.
  - 7. Any other information that the reporter believes to be relevant in establishing the cause of such assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury.
  - 8. A statement relative to the reporter's opinion of the perceived cause of the assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury (whether a staff member or facility program negligence).
- d. The Division's designated recipient of PM 46 reports shall report all allegations of assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, and significant injury, to the Office of the Secretary; the Office of the Attorney General/Medicaid Fraud Control Unit (for Medicaid and/or Medicare certified long term care facilities); the appropriate state licensing agency for the program, if applicable; and the Division Director or designee, within 24 hours of receiving notification of such. In instances where a suspected crime has been committed, the police must be notified immediately and they will take the lead in the investigation of the suspected crime.
- e. In instances where there is immediate danger to the health or safety of a resident/client from abuse, mistreatment or neglect; any sexual assault or alleged sexual assault; any physical abuse that leads to injury; any allegations of verbal abuse; any allegations of vandalism; any allegations of financial exploitation; any suicide; any assault or alleged assault, any suspected criminal action; or if a resident/client has died because of suspected assault, abuse, mistreatment, neglect, suicide, or significant injury, the Division Director or his/her designee shall immediately notify the appropriate police agency. The Division of Long Term Care Residents Protection, and the Office of the Secretary, shall be notified if the police were contacted. Further, the Division Director or his/her designee shall notify the Office of the Attorney General/Medicaid Fraud Control Unit, the Office of the Secretary, the Chief Medical Examiner, if a resident/client has died because of suspected assault, abuse, mistreatment,

neglect, suicide, significant injury, or as a result of any cause identified by 29 Del. C., section 4706 and Title 11, Chapters 5 and 94. In accordance with Title 16 § 5162, the Division Director or his/her designee shall notify the Community Legal Aid Society, Inc within seventy-two hours of the date of any patient or resident death.

- f. The Division Director or his/her designee shall review the initial incident report and initiate an investigation into the allegations contained in the report. The investigation, with a written report, shall be made within 24 hours, if the Division has reasonable cause to believe that the resident's/client's health or safety is in immediate danger from further assault, abuse, neglect, attempts of suicide, or mistreatment. Otherwise, the investigation and written Investigative Report, up to and including the Division Director's or designee's signed review of the report, shall be made to the Division of Long Term Care Residents Protection (DLTCRP) within 10 days. This timeframe may be extended by DLTCRP if extenuating facts warrant a longer time to complete the investigation. If the facility is a Medicaid-Medicare certified long-term care facility, or an ICF/MR facility, the report of suspected assault, abuse, neglect, mistreatment, financial exploitation, attempted suicide, or significant injury shall be sent to the appropriate authorities, as required in the respective regulations under 42 CFR, within 5 working days of the incident.
- g. The investigative process shall be confidential and not subject to disclosure both pursuant to 24 Del. C., section 1768 and because it is privileged under the governmental privilege for investigative files. Each Investigative Report shall be labeled as confidential and privileged, pursuant to 24 Del. C., section 1768. Each investigation shall include the following:
  - 1. A visit to the facility or other site of incident.
  - 2. A private interview with the resident or client allegedly abused, neglected, mistreated, whose finances were exploited or whose injury was significant.
  - 3. Interviews with witnesses and other appropriate individuals.
  - 4. A determination of the nature, extent and cause of injuries, or in the case of exploited finances, the nature and value of the property.
  - 5. The identity of the person or persons responsible.
  - 6. All other pertinent facts.
  - 7. An evaluation of the potential risk of any physical or emotional injury to any other resident or client of that facility, if appropriate.
- h. A written report (Investigative Report) containing the information identified in V (g) shall be completed within the time frames identified in V (f) and shall include a summary of the facts resulting from the investigation. (Attachment 3)
- i. The Investigative Report shall be sent to the facility director and to the Division Director or designee. The Facility Director and the Division Director or designee shall review the report. If the incident is serious, the

Division Director must review the incident with the Department Secretary prior to the completion of the report. The Facility Director and the Division Director or designee shall indicate in writing their concurrence or non concurrence with the report. If the facts show that there is a reasonable cause to believe that a resident/client has died as a result of the abuse, neglect, mistreatment, or significant injury, the Division Director or designee shall immediately report the matter to the Office of the Attorney General/Medicaid Fraud Control Unit, the Division of Long Term Care Residents Protection, and the Office of the Secretary.

- j. All Investigative Reports shall be forwarded by the reporting division, forthwith, to the Division of Long Term Care Residents Protection. The Division of Long Term Care Residents Protection shall complete the investigation by making a determination of findings and documenting their conclusions.
- k. If a determination is made at the Division level (upon consultation with the Division of Management Services, Human Resources office) that discipline is appropriate, the Investigative Report shall be forwarded to the Human Resources office. Human Resources shall determine the appropriate level of discipline, forward their recommendations to the Office of the Secretary and to the originating division for implementation, and proceed as appropriate.
- l. The Office of the Secretary shall be informed by the Division of Long Term Care Residents Protection, in writing, of the results of the investigation, including the findings and recommendations, within 5 days following the completion of the investigation.
- m. The Division Director or designee shall notify the appropriate licensing or registration board, if the incident involved a licensed or registered professional, and the appropriate state or federal agency, including the appropriate state licensing agency of the program, if applicable, upon a finding of: 1) assault, abuse, mistreatment, neglect, financial exploitation, attempted suicide, or significant injury; 2) failure to report such instances by a licensed or registered professional; or 3) failure by a member of a board of directors or high managerial agent to promptly take corrective action.
- n. The Division Director or designee shall notify the employee, resident/client, the guardian of the resident/client, if applicable, and the incident reporter of the results of the facility-based case resolution, unless otherwise prohibited by law. They shall also advise the parties of the fact that there is a further level of review that will occur through the Division of Long Term Care Residents Protection and/or the Office of the Attorney General/Medicaid Fraud Control Unit.
- o. The Division of Long Term Care Residents Protection shall, at the conclusion of their review of the case, notify the DHSS employee (or the agency director for contract providers), the resident/client, or the guardian of the resident/client, if applicable, and the originating Division Director or designee, of the substantiated or unsubstantiated status of the case,

unless otherwise prohibited by law. The Division of Long Term Care Residents Protection shall also notify the Office of the Attorney General/Medicaid Fraud Control Unit of all substantiated cases.

## VI. IMPLEMENTATION

- a. This policy shall be effective immediately (upon the completion of mandatory departmental training).
- b. In carrying out this policy, all parties must protect the confidentiality of records and persons involved in the case, and may not disclose any Investigative Report except in accordance with this policy.

## VII. EXHIBITS

- a. Attachment 1 - Delaware Code, Title 16, Chapter 11, Sections 1131-1140.
- b. Attachment 2 - Delaware Code, Title 29, Chapter 79, Sections 7970-7971.
- c. Attachment  
t 3 - Investigative Report form
- d. Attachment 4 – Delaware Code, Title 11, Chapters 5 and 94.

Rita M. Landgraf August 2009  
Rita M. Landgraf, Secretary