

MEDICAID WAIVER SERVICES AGREEMENT (Qualified Organizations)

This Agreement is entered into between the Florida Agency for Persons with Disabilities, hereinafter referred to as "APD," and _____, hereinafter referred to as the "Qualified Organization." Pursuant to the terms and conditions of this Agreement, APD authorizes the Qualified Organization to furnish iBudget Home and Community-Based Services ("HCBS") Medicaid Waiver services to eligible APD clients and receive payment for such services. Qualified Organizations may be authorized to provide services in one or more regions as designated in this Agreement. The services that may be provided in any APD region are limited to the services that the respective Regional Office has authorized.

Regions in which the Qualified Organization is authorized to render services:

Northwest Northeast Central Suncoast Southeast Southern

I. AGREEMENT DOCUMENTS

A. The Medicaid Waiver Services Agreement consists of the terms and conditions specified in this Agreement, any attachments, and the following documents, which are incorporated by reference:

1. *The Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook*, dated _____, and any updates or replacements thereto. The Handbook can be found at the Medicaid fiscal agent's Web Portal: <http://www.mymedicaid-florida.com/>. The Handbook provides the terms and conditions by which the Qualified Organization agrees to be bound.

B. Prior to executing this Agreement and furnishing any Waiver services, the Qualified Organization must execute a Medicaid Provider Agreement with the Agency for Health Care Administration ("AHCA") and be issued a Medicaid Provider number by AHCA. The Qualified Organization must, at all times during the term of this Agreement, maintain a current and valid Medicaid Provider Agreement with AHCA and comply with the terms and conditions of the Medicaid Provider Agreement. Failure to maintain a Medicaid Provider Agreement will result in termination of this Agreement.

II. THE QUALIFIED ORGANIZATION AGREES:

To comply with all of the terms and conditions contained within this Agreement, including all documents incorporated by reference and any attachments.

A. Monitoring, Audits, Inspections, and Investigations

The Qualified Organization will permit persons duly authorized by APD, AHCA, or representatives of either to monitor, audit, inspect, and investigate any client records, payroll and expenditure records (including electronic storage media), papers, documents, facilities, goods, and services of the Qualified Organization that are relevant to this Agreement, and to interview any clients receiving services and employees of the Qualified Organization to assure APD of the satisfactory performance of the terms and conditions of this Agreement.

1. Following such monitoring, audit, inspection, or investigation, APD or its authorized representative, will furnish to the Qualified Organization a written report of its findings and, if deficiencies are found, request for development, by the Qualified Organization, a Corrective Action Plan for needed corrections. The Qualified Organization hereby agrees to correct all noted deficiencies identified by APD, AHCA, or their authorized representatives within the specified period of time identified within the report documentation. Failure to correct noted deficiencies within stated time frames may result in termination of this Agreement.

2. Upon demand and at no additional cost to APD, AHCA, or their authorized representatives, the Qualified Organization will facilitate the duplication and transfer of any records or documents (including electronic storage media), during the required retention period of six years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of six years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to APD.

3. The Qualified Organization agrees to comply and cooperate immediately with APD requests for information, records, reports, and documents deemed necessary to review the rate setting process to ensure that Qualified Organization rates are based on accurate information and reflect the existing operational requirements of each service. Any individual who knowingly misrepresents the information required in rate setting commits a felony of the third degree, punishable as provided in sections 775.082 and 775.083, F.S.

4. The Qualified Organization agrees to comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by APD, the Department of Children and Families, AHCA, or other local, state, or federal agencies.

5. The Qualified Organization agrees to include requirements discussed in this section (Monitoring, Audits, Inspections, and Investigations) in all subcontracts and assignments.

B. Confidentiality of Client Information

The Qualified Organization agrees not to use or disclose any information concerning a client receiving services under this Agreement for any purpose prohibited by state or federal law or regulation, except with the written consent of a person legally authorized to give that consent or when authorized by law. This includes compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, and all applicable regulations provided in 45 CFR Parts 160, 162, and 164; and 42 CFR, Part 431, Subpart F, relating to the disclosure of information concerning Medicaid applicants and recipients.

The computer hard drives used by APD Waiver Support Coordinators must implement Full Disk Encryption software. Any electronically transmitted communications containing any private or confidential information must be encrypted. For other types of electronic data storage devices that store confidential APD client data, such data shall be encrypted using a minimum of a 128-bit encryption algorithm.

C. Indemnification

1. The Qualified Organization will be liable for and indemnify, defend, and hold APD, AHCA, and all of their officers, agents, and employees harmless from all claims, suits, judgments, or damages, including attorneys' fees and costs, arising out of any act, actions, neglect, or omissions by the Qualified Organization, its agents, employees, or subcontractors during the performance or operation of this Agreement or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property. The Qualified Organization shall not be liable for that portion of any loss or damages proximately caused by the negligent act or omission of APD or AHCA.

2. The Qualified Organization agrees that its inability to evaluate its liability or its evaluation of liability will not excuse the Qualified Organization's duty to defend and to indemnify within 7 days after notice by APD or AHCA by certified mail. After the highest appeal taken is exhausted, only an adjudication or judgment specifically finding the Qualified Organization not liable shall excuse performance of this provision. The Qualified Organization shall pay all costs and fees, including attorneys' fees related to these obligations and their enforcement by APD or AHCA. APD or AHCA's failure to notify the Qualified Organization of a claim shall not release the Qualified Organization of these duties.

3. If the Qualified Organization is an agency or subdivision of the State, its obligation to indemnify, defend, and hold harmless shall be to the extent permitted by section 768.28, F.S. or other applicable law, and without waiving the limits of sovereign immunity.

D. Insurance

The Qualified Organization agrees to obtain and maintain continuous and adequate liability insurance coverage during the entire term of this Agreement. The Qualified Organization must procure liability insurance with a minimum coverage of \$200,000.00 per claim. At all times, the Qualified Organization shall maintain with APD a current certificate of insurance describing the types and extent of liability insurance obtained pursuant to this Agreement. The Qualified Organization shall cause APD to be named as a certificate holder under each policy of liability insurance maintained by the Qualified Organization pursuant to this Agreement. The limits of coverage under each such policy shall not be interpreted as limiting the Qualified Organization's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in Florida. Such coverage may be provided by a self-insurance program established and operating under Florida law.

E. Payment

Current rate information is available on the Medicaid fiscal agent's website at www.mymedicaid-florida.com. The signatories recognize that APD is limited by appropriation and acknowledge that Florida law requires AHCA and APD to make any adjustment necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act, including but not limited to adjusting fees, reimbursement rates, lengths of stay, number of visits, or number of services, or limiting enrollment. (See sections 393.0662, 409.906, 409.908, F.S.)

F. Return of Funds

The Qualified Organization agrees to be responsible for the timely correction of all billing or reimbursement errors resulting in an overpayment, including reimbursement for services not properly authorized or documented. Reimbursement will be made pursuant to the Florida Medicaid Qualified Organization Reimbursement Handbook, CMS-1500. Federal regulations, 42 CFR § 433.312, require refund of overpayments within 60 days of discovery. AHCA will be the final authority regarding the timeliness of the reimbursement process.

G. Independent Status

The Qualified Organization agrees that it acts at all times in the capacity of an independent service provider and not as an officer, employee, or agent of APD, AHCA, or the State of Florida. The Qualified Organization shall not represent to others that it has the authority to bind the APD or AHCA unless specifically authorized in writing to do so. In addition to the Qualified Organization, this is also applicable to the Qualified Organization's officers, agents, employees, or subcontractors in performance of this Agreement.

H. Change of Contact Information

The Qualified Organization shall notify APD and clients served of any change of name, physical address, mailing address, phone number, email address, or any other contact information within seven (7) calendar days of the change.

I. Non-Transferability

This Agreement is not transferrable. Any change of ownership, as defined in section 409.901(5), F.S., requires the Qualified Organization to comply with the Florida Medicaid change of ownership process described in the Florida Medicaid Provider General Handbook, incorporated by reference in Rule 59G-5.020, *Florida Administrative Code*.

J. Change of Ownership

The Qualified Organization must notify the APD region in which the Agreement was executed, in writing, of the intention to execute a change of ownership at least sixty (60) days prior to any change. A change of ownership may include, but is not limited to any sale, merger, acquisition, or transfer of ownership of the Qualified Organization. Prior to requesting a change of ownership through APD, the Qualified Organization must first complete the change of ownership process with AHCA in accordance with the Provider General Handbook. Failure to complete the change of ownership process with AHCA will result in nonpayment for

any services provided before signing a new Agreement. Clients receiving services must be given an opportunity to receive services from the new owner, purchaser, or transferee, or to select another Qualified Organization at least sixty days before the change is implemented.

K. Public Records

The Qualified Organization shall keep and maintain public records required by APD to perform the service under this Agreement to comply with section 119.0701, Florida Statutes.

Upon request from APD's Custodian of Public Records, the Qualified Organization shall provide APD with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law.

The Qualified Organization shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the Qualified Organization does not transfer the records to APD.

Upon completion of the Agreement, the Qualified Organization shall transfer, at no cost, to APD all public records in possession of the Qualified Organization or keep and maintain public records required by APD to perform the service under this Agreement. If the Qualified Organization transfers all public records to APD upon completion of the Agreement, the Qualified Organization shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Qualified Organization keeps and maintains public records upon completion of the Agreement, the Qualified Organization shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to APD, upon request from APD's Custodian of Public Records, in a format that is compatible with the information technology systems of APD.

A request to inspect or copy public records relating to the Agreement must be made directly to APD. If APD does not possess the requested records, APD shall immediately notify the Qualified Organization of the request, and the Qualified Organization must provide the records to APD or allow the records to be inspected or copied within a reasonable time. If the Qualified Organization does not comply with APD's request for records, APD shall enforce the contract provisions in accordance with the Agreement. If the Qualified Organization fails to provide the public records to APD within a reasonable time, the Qualified Organization may be subject to penalties under section 119.10, F.S.

If a civil action is filed against the Qualified Organization to compel the production of public records relating to the Agreement, the court shall assess and award against the Qualified Organization the reasonable costs of enforcement, including reasonable attorney fees, if (i) the court determines that the Qualified Organization unlawfully refused to comply with the public records request within a reasonable time; and (ii) at least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Qualified Organization has not complied with the request, to APD and to the Qualified Organization. A Qualified Organization who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

IF THE QUALIFIED ORGANIZATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S. TO THE QUALIFIED ORGANIZATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**Agency's Public Records Coordination Office
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 335
Tallahassee, FL 32399-0950
(850) 410-1309
publicrecords@apdcares.org**

III. TERMINATION OR MODIFICATION:

A. Termination or Modification of Agreement Without Cause

This Agreement may be terminated or modified to limit service provision to particular regions by either party without cause, upon no less than 30 calendar days' notice in writing to the other party unless a lesser time is mutually agreed upon in writing by both parties. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery.

B. Termination or Modification of Agreement With Cause

This Agreement may be terminated or modified to limit service provision to particular regions for the Qualified Organization's unacceptable performance, non-performance, or misconduct upon no less than 24 hours' notice in writing to the Qualified Organization. Waiver by either party of any breach of any term or condition of this Agreement shall not be construed as a waiver of any subsequent breach of any term or condition of this Agreement. If APD determines that the Qualified Organization is not performing in accordance with any term or condition in this Agreement, APD may, at its exclusive option, allow the Qualified Organization a period of time to achieve compliance. The provisions herein do not limit APD's right to any other remedies at law or in equity.

C. Client Central Records

Upon termination of this agreement, the Qualified Organization is responsible for ensuring that all client central records are immediately returned to APD or transitioned appropriately. This requirement survives the termination of this contract. The Qualified Organization will be responsible for any attorney's fees, expenses, or other costs incurred by APD in recovering the central records.

Upon any Support Coordinator leaving the Qualified Organization, the Qualified Organization must ensure that all client central records are immediately returned to APD or transitioned appropriately.

IV. GOVERNING LAW:

This Agreement shall be construed, performed, and enforced in all respects in accordance with all the laws and rules of the State of Florida, and any applicable federal laws and regulations. This includes Chapter 393, F.S.; Chapter 65G-14, F.A.C.; 59G-5.020, F.A.C.; and Rule 59G-13.070, F.A.C.

V. AGREEMENT DURATION:

This Agreement shall be effective _____ or the date on which it has been signed by both parties, whichever is later, and shall terminate on _____ which is no later than five years from the effective date.

VI. OFFICIAL REPRESENTATIVES (*Names, Address, Telephone Number, and E-mail Address*):

1. The Qualified Organization's contact person and street address where financial and administrative records are maintained is:

Name:
Telephone Number:
Address:
E-mail Address:

2. The representative of the Qualified Organization responsible for administration of the services under this Agreement is:

Name:
Telephone Number:
Address:
E-mail Address:

3. The Agency for Persons with Disabilities contact person for this Agreement is:

Name:
Telephone:
Address:
E-mail Address:

4. Upon any change of any representative's name, address, telephone number, or e-mail address, written notice shall be provided to the other party.

VII. INTEGRATED AGREEMENT

This Agreement, any attachments referenced, and the Medicaid Provider Agreement contain all the terms and conditions agreed upon by the parties.

There are no provisions, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written between the parties. If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement shall remain in full force and effect and such term or provision shall be stricken.

The Qualified Organization, by signing below, attests that the Qualified Organization has received, read, and understood the entire Agreement, inclusive of its attachments and documents as referenced in Section I, A., including the service-specific requirements and for enrolled Qualified Organizations contained in the *Developmental Disabilities Individual Budgeting Medicaid Waiver Coverage and Limitations Handbook*, and understands each section and paragraph. By signing below, I further attest that I have the authority to bind the Qualified Organization or APD.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized undersigned officials.

Qualified Organization:
Medicaid Provider ID (DD Waiver):
Printed Name and Title:
Signature:

Date:

State of Florida
Agency for Persons with Disabilities
Printed Name and Title:
Signature:

Date: