

**THE SENIOR ALLIANCE AREA AGENCY ON AGING 1-C
OPERATIONAL GUIDELINES FOR PURCHASE OF SERVICE PROVIDERS
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**THE SENIOR ALLIANCE AREA AGENCY ON AGING 1-C
OPERATIONAL GUIDELINES FOR PURCHASE OF SERVICE PROVIDERS**

The Senior Alliance (TSA) Area Agency on Aging 1-C and its Community Care Department (CCD) serve high-risk individuals in their homes who are unable to provide self-care and would otherwise be subjected to an unnecessary or premature institutionalization. CCD includes the MI Choice Waiver, MI Health Link, Care Management (CM), and Case Coordination and Support (CCS) programs. Client needs are objectively identified through a comprehensive assessment process and community services are arranged, monitored, and adjusted as necessary by qualified TSA CCD staff.

TSA CCD directly purchases needed services for clients from a pool of competing vendors. The Purchase of Service (POS) pool is established through formal agreements with existing community service vendors.

The POS pool includes agencies participating in all three divisions of TSA CCD.

Services available for bid under a monthly purchase plan for the **MI Choice Waiver, CM/CCS, & MI Health Link Programs** are:

Adult Day Health	Assistive Technology
Chore Services	Personal Care
Community Transition Services	Personal Emergency Response System
Counseling Services	Private Duty Nursing
Environmental Accessibility Adaptations	Nursing Services
Community Living Supports	Respite Care Provided Inside of the Home
Expanded Community Living Support	Respite Care Provided Outside of the Home
Fiscal Intermediary	Non-Medical and Community Transportation
Home Delivered Meals	Specialized Medical Equipment/Supplies

TSA CCD POS program is available to clients residing in the 34 communities of southern/western Wayne County excluding: Detroit, Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Shores, Grosse Pointe Woods, Harper Woods, Hamtramck, and Highland Park.

I. SELECTION

TSA CCD will select vendors on a case by case basis from the criteria listed below. Vendors will deliver services at levels specified by TSA CCD care plans, approved by the client and/or client representative and the care manager(s).

- A. Client Preference** – TSA uses a Person Centered approach for the selection of vendors. Some clients prefer specific vendors through previous or current experience. The active vendor list is posted on TSA website and is also given to the participants and/or their caregivers.
- B. Accessibility** - Practical application in streamlining intake, avoiding duplication of assessments, and ability to work cooperatively with CCD meeting the approved care plan. Other considerations include the geographic area of service and ease of service delivery to participants.
- C. Ability to Provide Quality Services** - Includes performance, participant results, and accountability as monitored by TSA staff during performance criteria reviews (programmatic

audits/vendor complaints).

- D. **Comprehensive Care** - Minimize the number of agencies involved in each case for time effectiveness in brokering and/or purchasing services, and for minimizing participant and family stress.
- E. **Vendor Experience** – TSA will take into account the amount of time that the vendor has been providing services to TSA participants. New vendors may be placed on hold from receiving additional referrals (internal “purple status”) once they have reached a certain volume. The internal hold system for new vendors is used to ensure that in the best interest of participants, new vendors are properly acclimated and providing quality care.

II. EXPECTATIONS REGARDING MEDICATIONS – MEDICATION SET-UP BY NURSE

To ensure appropriate set-up of medications, all nurses must complete the following steps prior to setting up medications for a participant.

1. Contact the physician to obtain a current medication list prior to setting up the medications.
2. Contact the participant two days before the visit to verify that all prescriptions have been filled and are available for set-up. If the participant is not able to get the prescriptions filled, contact the participant’s Support Coordinator at The Senior Alliance to discuss the situation.
3. If the participant reports that the medications have changed, contact the physician to confirm. Do not assume that the participant fully understood the physician’s instructions if the participant gives information that conflicts the medication list provided by the physician.
4. If there is a problem, contact the participant’s Support Coordinator through vendor view and by phone to address any concerns or issues that may arise within two business days.

III. PERMISSIVE EXCLUSION PROCESS

Vendors are required to obtain participants consent to receiving services from a caregiver of their choice that has permissive exclusions. **Please note that this process only applies to family caregivers hired through the MI Health Link Program.** Please use the steps listed below:

1. TSA contacts vendor to let them know that a family caregiver would like to be credentialed through their agency.
2. Vendor runs background check and exclusion checks for the caregiver.
3. If the background check is clean, the vendor sends a vendor view message stating the date that the caregiver was hired.
4. If there are hits on the background check/exclusions, vendor faxes the results of the background check/exclusions to Attn: Melissa Gaynier at 734-727-2089.
5. MI Health Link Manager Melissa Gaynier will review the background check/exclusions and make a determination if further action needs to be taken.
6. If the background check does not have a mandatory or permissive exclusion, vendors will receive a vendor view message stating that the caregiver can be hired.
7. If the background check has a mandatory exclusion, vendor will receive a vendor view message stating that the participant cannot be hired.

8. If the background check has a permissive exclusion, a vendor view message will be sent to the vendor stating that the vendor must meet with the participant and have them sign the attached form if they would like this caregiver to provide services.
9. Once the vendor has the participant sign the attached form, the caregiver is able to be hired and provide services to the participant. Vendor keeps a copy of the form with the participant file.
10. Vendor sends a copy of the signed permissive exclusion form to TSA via fax to Attn: Leanne and Kristin at 734-727-2089.
11. Vendor sends a vendor view message stating the date that the caregiver was hired.

IV. FALSE CLAIMS ACT AND WHISTLEBLOWER PROTECTION ACT

PURPOSE

The purpose of this policy is to inform employees, contractors and agents of The Senior Alliance and its affiliates and programs (collectively referred to herein as “TSA”) of the federal False Claims Act (“FCA”), and the Michigan Medical False Claims Act; to provide general information regarding TSA’s efforts to combat fraud, waste and abuse; and to describe the remedies and fines for violations that can result from certain types of fraudulent activities.

POLICY

All employees, contractors, agents and volunteers of TSA have a responsibility to report to TSA’s Compliance Office any incidents of actual or suspected fraud, waste, abuse or misconduct that potentially violate federal or state law, or TSA’s policies. TSA engages in specific compliance efforts to detect and prevent fraud, waste and abuse.

Information about the Compliance Program and specific compliance policies can be obtained by contacting the “Compliance Office” at 734-727-2033. To report a concern, individuals should contact any member of senior management or the Compliance Office at 734-727-2033. You may remain anonymous.

TSA will not take or tolerate any intimidating or retaliatory action against an individual who, in good faith, makes a report of practices reasonably believed to be in violation of this Policy.

Federal and State Laws

The government has taken steps to prevent and detect fraud, waste and abuse in the U.S. health system. In accordance with the Deficit Reduction Act of 2005, information regarding the federal and state false claims laws and related qui tam/whistleblower provisions will be communicated to all employees, agents and contractors.

A. The Federal False Claims Act

The federal False Claims Act (FCA) is a law that deals with fraud in any federally funded program or contract. Examples of federal programs covered by the FCA are Medicare and Medicaid.

1. General Provisions

The FCA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the U.S. government for payment. A “claim” includes any request or demand for money that is submitted to the U.S. government or its contractors. In addition, no

person can knowingly and improperly avoid or decrease an obligation to repay the government. The term “knowingly” is defined as:

- 1) Having actual knowledge of false information in the claim
- 2) Acting in deliberate ignorance of truth or falsity of the information in a claim
- 3) Acting in reckless disregard of the truth or falsity of the information in a claim

The FCA does not require proof of a specific intent to defraud the U.S. government.

Health care providers who violate the FCA may be subject to civil monetary penalties ranging from \$5,500 to \$11,000 for each false claim that is submitted. Penalties of up to three times the amount of damages may also be ordered. The provider may also be excluded from participating in federal health care programs.

2. FCA Qui Tam “Whistleblower” Provisions

The FCA allows any person with actual knowledge of an allegedly false claim to file a lawsuit on behalf of the U.S. government. Such persons are called “whistleblowers.” In order to file a qui tam suit, a whistleblower must meet several requirements as outlined below.

The whistleblower must file his or her lawsuit on behalf of the government in federal district court. Once filed, the lawsuit is kept confidential or “under seal” while the government investigates the allegations and decides how to proceed. If the government decides that the lawsuit has merit, it may intervene. In this case, the U.S. Department of Justice will try the case. The government may decide not to intervene. In this case, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award ranging from 15 percent to 30 percent of the amount recovered. The whistleblower may also be entitled to reasonable expenses, such as attorney fees. If a court finds that the whistleblower planned or initiated the false claims, the award may be decreased. If the whistleblower is convicted of crimes related to the false claims, no award will be given.

The FCA contains important protections for whistleblowers who file claims in good faith. Depending on the circumstances, these protections may not apply to whistleblowers who file frivolous claims, file claims in bad faith or were directly involved in certain aspects of these claims. Retaliatory conduct against an employee who files an FCA lawsuit, or tries to stop or prevent an FCA violation, may entitle the employee to additional relief, including reinstatement of employment, back pay and compensation for costs or damages.

B. The Michigan Medicaid False Claims Act

The Michigan Medicaid False Claims Act (MMFCA) is a state law that is designed to prevent fraud, kickbacks and conspiracies in the Michigan Medicaid program (Medical Assistance Program).

1. General Provisions

The MMFCA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim for payment to Michigan's Medicaid program. A "claim" means an attempt to cause the Michigan Department of Social Services to make a payment.

The term "knowingly" is defined as:

- 1) Being aware that his or her conduct is substantially certain to cause the payment of a Medicaid benefit; or
- 2) Acting in deliberate ignorance or reckless disregard of the truth or falsity of the facts.

Health care providers who violate the MMFCA may be subject to both criminal and civil penalties. Violation of the MMFCA is a felony punishable on most circumstances by up to four years in prison, or a fine up to \$50,000, or both. Civil monetary penalties are equal to the full amount received plus triple damages. The provider may also be excluded from participating in the Michigan Medicaid program.

2. MMFCA Qui Tam Whistleblower Provisions

The MMFCA allows any person to file a civil lawsuit to recover losses to the state of Michigan. Such persons are called "whistleblowers." In order to file a qui tam suit, a whistleblower must meet several requirements as outlined below.

The whistleblower must file his or her lawsuit. A suit filed under the MMFCA will be dismissed unless the attorney general is notified and has an opportunity to oppose the dismissal. If the government decides that the lawsuit has merit, it may intervene. In this case, the attorney general will prosecute the case. The whistleblower has the right to continue as a party to the action, subject to certain limitations. The government may decide not to intervene. In this case, the whistleblower can continue with the lawsuit on his or her own.

If the lawsuit is successful, the whistleblower may receive an award ranging from 15 percent to 30 percent of the amount recovered. If a court finds that the whistleblower actively participated in the false claims, the award may be decreased. If the whistleblower is convicted of crimes related to the false claims, no award will be given. If the court finds that the action brought by the whistleblower was frivolous, the court may fine the whistleblower up to \$10,000.00 and payment of actual attorney fees and expenses.

The MMFCA contains important protections for whistleblowers who file claims in good faith. Depending on the circumstances, these protections may not apply to whistleblowers who file frivolous claims, file claims in bad faith or were directly involved in certain aspects of the claim. Retaliatory conduct against an employee who either files under the MMFCA or cooperates in an MMFCA lawsuit may entitle the employee to additional relief, including reinstatement of employment, back pay and compensation for costs or damages.

C. Whistleblower Protections

Vendor will fully comply with the National Defense Authorization "Pilot Program for Enhancement of Grantee Employee Whistleblower Protections."

1. The current Purchase of Service Agreement and all employees of Vendor and of each of Vendor's subcontractors will be subject to the whistleblower rights and remedies in the pilot program on Grantee whistleblower protections established at 41 USC 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2012

- an Federal Acquisition Regulation (FAR) 3.908.
2. The Vendor and each of Vendor's subcontractors shall inform its respective employees, in writing, of the predominant language of the workforce of employee whistleblower rights and protections under 41 USC 4712, as described in FAR 3.908.
3. The Vendor and each of Vendor's subcontractors shall insert the substance of this clause, including this paragraph, in all subcontracts over the simplified acquisition threshold.

V. DISPUTE RESOLUTION

- A. Any dispute arising out of the POS Agreement between TSA and Vendor or its performance, breach, or termination, including but not limited to any dispute or appeal resulting from any TSA contract compliance or performance management action, shall be resolved exclusively through the following procedure:
 1. Non-Termination Dispute: Within ten (10) business days after the dispute arises or the decision appealed from is communicated to Vendor, Vendor shall give written notice of the dispute or appeal, including all facts and evidence supporting Vendor's position, to TSA's Contract Specialist at TSA's address. If TSA receives such a timely notice, the notice and supporting materials will be reviewed by TSA executive staff. Within thirty (30) calendar days after TSA's receipt of the notice of dispute or appeal, TSA's CEO shall issue a decision that is final and binding on all parties.
 2. Termination Dispute: Within five (5) business days after Vendor's receipt of notice of termination of the POS Agreement, Vendor shall give written notice of its appeal of such termination, including all facts and evidence supporting Vendor's position, to TSA's Contract Specialist at TSA's address. If TSA receives such a timely notice, Vendor shall be entitled to a meeting with TSA's CEO or the CEO's designee at which Vendor can present any arguments or evidence in opposition to the termination. Within thirty (30) calendar days after that meeting or, if no meeting is held, within thirty (30) calendar days after TSA's receipt of the notice of appeal, TSA's CEO shall issue a decision that is final and binding on all parties.
- B. The foregoing notwithstanding, Vendor shall comply with any and all TSA Policies, Procedures, and Protocols ("PPP") regarding dispute resolution adopted by TSA after the Effective Date of the POS Agreement.
- C. The decision of TSA's CEO with regard to any dispute between Vendor and TSA, including but not limited to any pertaining to termination of the POS Agreement, shall be final and binding on all parties.
- D. Anything in the POS Agreement or in any PPP to the contrary notwithstanding, TSA reserves the right, at all times, to take any and all actions necessary to protect the health and safety of Participants including, but not limited to, the imposition of administrative, financial and/or contractual sanctions, including but not limited to termination of the POS Agreement or reduction of the type, nature of volume of Services to be furnished by Vendor. Sanctions shall be those deemed reasonable by TSA in the exercise of good faith.

VI. CRIMINAL BACKGROUND AND OTHER CHECKS

- A. All vendors must conduct the following checks for each employee, volunteer and subcontractor, paid and unpaid, who works directly with participants or has access to participant information:
 1. a criminal background review through the Michigan State Police I-CHAT (Internet Criminal History Access Tool): <http://apps.migchigan.gov/ichat>
 2. National sex offender registry check: <http://www.nsopw.gov>

3. Michigan sex offender registry check: <http://www.mipsor.state.mi.us>
- B. All reviews and checks required by subsection VI.A above must be conducted by Vendor prior to the employee, volunteer, or subcontractor furnishing services in a participant's home, working directly with a participant, or having access to participant information. Vendor must conduct all three types of reviews and checks, at minimum, every three years, preferably annually, after initial completion. A private provider or national criminal background check is not sufficient unless the Michigan Workforce Background Check/ICHAT system is used.
 - C. Vendor must conduct a Central Registry ("CR") check for each new employee, subcontractor, or volunteer who will work directly with children or vulnerable adults. The CR check must be conducted by Vendor prior to the employee, subcontractor, or volunteer working directly with children or vulnerable adults. Central Registry: http://www.michigan.gov/mdhhs/0,5885,7-399-73971_7119_50648_48330---,00.html
 - D. Vendor will require each new employee, volunteer, or subcontractor who works directly with participants or has access to participant information to notify both Vendor and TSA in writing of all criminal convictions (felony or misdemeanor), pending felony charges, or placement on the Central Registry as a perpetrator, both (i) at the time of hire or engagement as a volunteer or subcontractor and (ii) within ten (10) days of any such event occurring after the date of hire or engagement as a volunteer or subcontractor.
 - E. Vendor must and will determine whether to prohibit employee, volunteer, or subcontractor from performing work directly with participants or accessing participant information related to participants, based on the results of a positive ICHAT response or reported felony or conviction or perpetrator identification. TSA reserves the right to prohibit any Vendor employee, volunteer, or subcontractor from performing work directly with participants or accessing participant information related to participants, based on the results of a positive ICHAT response or reported felony or conviction or perpetrator identification.
 - F. Vendor certifies, represents, and warrants to TSA that neither Vendor, nor any of Vendor's subcontractors has committed an act of so serious or compelling nature that it affects Vendor's or the subcontractor's present responsibilities.

VII. ANTI-LOBBYING ACT

Vendor will fully comply with the Anti-Lobbying Act (31 USC 1352) as revised by the Lobbying Disclosure Act of 1995 (2 USC 1601 et seq.) and Section 503 of the Department of Labor, Health and Human Services, and Education, and Related Agencies section of the FY 1997 Omnibus Consolidated Appropriations Act (Public Law 104-208). Further, Vendor shall ensure that the language of this requirement is included in any and all subcontracts and that all subcontractors certify and disclose accordingly.

VIII. ADDITIONAL INSURANCE REQUIREMENTS

The following insurance must be obtained by all Vendors and is in addition to the existing insurance requirements listed in the current Purchase of Service Agreement:

- A. General Commercial Liability Insurance, on an "Occurrence Basis" with per-occurrence limits of liability not less than \$1,000,000, including, at least, the following coverages: (a) industry standard broad form property damage and general liability coverages, (b) Premises/Operations, (c) Libel and Slander, (d) Independent Vendors, (e) Products and Completed Operations, (f) Broad form Contractual, (g) Employers Liability, and (h) Personal Injury with contractual exclusion deleted.
 1. The Commercial General Liability Insurance Policy must be endorsed to add the following: "the State of Michigan, its departments, divisions, agencies, offices,

commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, GC 2010 07 04 and CG 2037 07 04.

- B. Privacy and Security Liability (Cyber Liability), with limits of liability not less than \$500,000 per occurrence and aggregate and including coverage for violations of HIPAA, information security and privacy liability, privacy notification costs, regulator defense and penalties, and website media content liability.
- C. Insurance Coverage for Sexual Abuse and Molestation Liability, with limits of liability not less than \$500,000, is required if Vendor or any of its employees, volunteers or subcontractors will interact with children, schools, the cognitively impaired, and/or vulnerable adults.

IX. PUBLICITY AND PUBLICATIONS

- A. Publicity. Vendor will publicize services to eligible seniors, including those in greatest economic and social need with particular emphasis on low-income minority individuals, by the most effective means available. Vendor shall not make any media releases related to the current Purchase of Service Agreement, without prior written authorization from TSA and the Michigan Department of Health and Human Services (“the Department”) Communication office.
- B. Acknowledgment. Any promotional materials, including films, slides, books, reports, pamphlets, papers, or articles, resulting from or related to performance of the current Purchase of Service Agreement will contain acknowledgments of AASA and TSA, and of funding through state appropriations or the Federal Act and a statement of compliance with Title VI of the Civil Rights Act of 1964.
- C. Photographs. Photographs of seniors receiving services may not be published without the prior informed written consent of the senior(s).
- D. Copies. Vendor will provide TSA, free of charge, at least three copies of any publication published pursuant to the current Purchase of Service Agreement and will provide three additional copies to AASA and HHS upon request.
- E. Publication Rights. Vendor shall
 1. Copyright materials only when Vendor exclusively develops books, films, or other such copyrightable materials through activities supported by the current Purchase of Service Agreement. The copyrighted materials cannot include recipient information or personal identification data. Vendor grants TSA and the Department a royalty-free, non-exclusive and irrevocable license to reproduce, publish and use such materials copyrighted by Vendor and authorizes others to reproduce and use such materials.
 2. Obtain prior written authorization from TSA and the Department's Communication Office for any materials copyrighted by Vendor or modifications bearing acknowledgement of TSA's or the Department's name prior to reproduction and use of such materials. The State of Michigan may modify the material copyrighted by Vendor and may combine it with other copyrightable intellectual property to form a derivative work. The State of Michigan will own and hold all copyright and other intellectual property rights in any such derivative work, excluding any rights or interest granted in the current Purchase of Service Agreement to TSA or Vendor. If Vendor ceases to conduct business for any reason, or ceases to support the copyrightable materials developed under the current Purchase of Service Agreement, the State of Michigan has the right to convert its licenses into transferable licenses to the extent consistent with any applicable obligations Vendor has.
 3. Obtain prior written authorization from TSA and the Department's Communication office and give recognition to TSA and the Department in any and all publications, papers, and presentations arising from the current Purchase of Service Agreement activities.
 4. Notify TSA and the Department's Bureau of Grants and Purchasing thirty (30) days before applying to register a copyright with the U.S. Copyright Office. Vendor must submit an

annual report for all copyrighted materials developed by Vendor through activities supported by the current Purchase of Service Agreement and must submit a final invention statement and certification to TSA and the Department within sixty (60) days of the end of the current Purchase of Service Agreement period.

X. AMENDMENT

If, for any reason, there is a change in the statutes, regulations, funder or payer policies or procedures, and/or accreditation requirements (individually and collectively, "Regulatory Requirements") with which TSA must comply, then TSA may, by written notice to Vendor, amend the current Purchase of Service Agreement, without requirement of signature by either party, to the extent necessary to achieve compliance with the Regulatory Requirements. Such amendment shall be effective on the earlier of the date of such notice by TSA or the date required to achieve compliance with the Regulatory Requirements. TSA reserves the right to modify or amend TSA Operational Guidelines at any time to ensure compliance with program requirements. Except as provided in the preceding portion of this Section X, the current Purchase of Service Agreement cannot be modified or amended except by a formal writing executed by a duly authorized representative of each party specifying their intent to amend this Contract.

XI. HOME MODIFICATIONS

Vendors who are contracted to provide home modification services and/or install assistive equipment are required to adhere to the following deadlines:

- All bids must be submitted as quickly as possible to ensure that the job is completed in a timely manner.
- Grab bars and other assistive equipment must be installed within 30 days of the job being awarded to the vendor.
- All other home modifications must be completed within 45 days of the job being awarded to the vendor.