

**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 participant 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 caregiver cannot be hired.
8. If the background check has a permissive exclusion, a vendor view message will be sent to the vendor stating that there is a permissive exclusion. The ICO or TSA will obtain the permissive exclusion form.

9. Once the permissive exclusion form is signed, TSA will notify the vendor that the caregiver can be hired and will send the vendor a copy of the signed permissive exclusion form for their file.
10. 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 and a 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. NON-EMERGENCY TRANSPORTATION REQUIREMENTS

Effective December 27, 2021, transportation providers must comply with requirements in the Consolidated Appropriations Act, 2021, Division CC, Title II, Section 209 concerning Medicaid coverage of non-emergency medical transportation verification of provider and driving requirements.

Transportation providers must ensure that any drivers that furnish Medicaid-reimbursed non-emergency medical transportation must meet the minimum requirements that follow:

1. Each provider or individual driver is not excluded from participation in any federal health care program, is not listed on the MDHHS sanctioned provider list, and is not listed on the exclusion list of the Inspector General of the Department of Health and Human Services; and
2. Each individual driver has a valid driver's license; and
3. Each provider and individual driver must not have been convicted under a federal or state law after August 21, 1996, for a felony criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; and
4. Each provider must disclose and report any felony conviction related to a controlled substance to TSA; and
5. Each provider and individual driver must disclose to TSA the driving history of each individual driver employed by a provider, including any traffic violations.
6. Individual drivers who have ANY of the following convictions in the past two years will be excluded as an NEMT provider:
  - a. More than two moving violations
  - b. Operating While Intoxicated (OWI)
  - c. Driving Under the Influence (DUI)
7. Exceptions to the traffic violation exclusion:
  - a. A family member with any of the traffic convictions listed may receive reimbursement for NEMT provided to a participant who is unable to consent because of an intellectual or development disability or a legal guardianship, with the written consent of their legally responsible party.
  - b. A family member with any of the traffic convictions listed may receive reimbursement for NEMT provided to a participant who is able to consent to the family member providing NEMT after the convictions are disclosed to the participant and the participant signs an acknowledgement form.
8. Applicability:
  - a. These requirements **are not** applicable to a public transit authority.
  - b. These requirements **are not** applicable to the MI Choice participant.

- c. These requirements **are** applicable to transportation network companies such as Uber or Lyft.
- d. These requirements **are** applicable to a beneficiary's family members.
- e. These requirements **are** applicable to taxicab drivers.

**VI. UPDATED MI CHOICE BILLING CONTRACT LANGUAGE**

When a vendor identifies a billing error or overpayment from TSA, the vendor is required to use Vendor Billing to correct the error. If the overpayment is due to an error that cannot be corrected through Vendor Billing, the vendor is required to notify their assigned Accounting Specialist by Vendor View message or by encrypted email. This information must be communicated to TSA as soon as possible and no later than the 10<sup>th</sup> business days after identification.

**VII. UPDATED MI CHOICE DOCUMENTATION AND AUDITS CONTRACT LANGUAGE**

If any TSA Audit or other activity related to review of payments made by TSA to Vendor discloses Vendor's receipt of any overpayment or any other sum to which Vendor is not entitled (each an "Overpayment"), Vendor must repay the entire Overpayment within sixty (60) days. To effect such repayment, TSA shall deduct the entire Overpayment from the first payment after Vendor's receipt of TSA's written notice of the overpayment, provided that any Overpayment remaining after such deduction shall be paid in full within sixty (60) days.