



CONTRACT

(no cost contract, involving no monetary obligation between state agencies – not including the University of Tennessee and Board of Regents colleges and universities)



Begin Date July 1, 2013	End Date June 30, 2018	Agency Tracking # 31865-00054	Edison Record ID 37042
Contractor Agency Name Department of Human Services Division of Rehabilitation Services			
Service Caption Title XIX Rehabilitation Services			
OCR USE - NC			



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
AND
DEPARTMENT OF HUMAN SERVICES
DIVISION OF REHABILITATION SERVICES**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "Procuring State Agency" and Department of Human Services, Division of Rehabilitation Services, hereinafter referred to as the "Contractor," is for the provision of Title XIX, Public Law 8997 of the Social Security Act, as further defined in the "SCOPE OF SERVICES."

A. SCOPE OF SERVICES:

Both Parties Agree:

- A.1. To the cooperative joint and individual use of their respective resources as required for rehabilitating certified TennCare recipients and providing medical services essential to maximum physical and mental improvement and rehabilitation of eligible recipients;
- A.2. That information on mutual clients will be available and exchanged between agencies as program requirements indicate. The confidential nature of information available by or to either agency will be respected at all times;
- A.3. That designated individuals eligible for Rehabilitation Services who are also eligible for TennCare – Title XIX assistance, will, by mutual agreement, be provided medical care consistent with individually approved treatment needs and, first, within the limitation of the TennCare program. The Division of Rehabilitation Services will assume responsibility for treatment requirements necessary for rehabilitation of the individual after TennCare entitlement is exhausted;
- A.4. That each agency agrees to the fullest coordination of program efforts, making available records and reports of their respective services, developing methods of providing adequate and prompt exchange of necessary administrative and other information, and coordination otherwise by mutual agreement as necessary to meet the established needs of their respective services in meeting data, date and deadline requirements of the State and Federal agencies and administering Title XIX, and
- A.5. An annual review of the Contract will be made by the respective agencies and, if necessary, its terms will be redeveloped.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2018.

C. PAYMENT TERMS AND CONDITIONS:

There shall be no cost to the Procuring State Agency for the performance of services under this contract.



D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Procuring State Agency is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Procuring State Agency shall have the right to immediately terminate the Contract.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Procuring State Agency. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.7. State Liability. The Procuring State Agency shall have no liability except as specifically provided in this Contract.
- D.8. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.9. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified



by written notice.

The Procuring State Agency:

Darin J. Gordon, Director
Department of Finance and Administration
Division of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, TN 37243
Darin.J.Gordon@tn.gov
Telephone: (615) 507-6443
FAX: (615) 253-5607

The Contractor:

Commissioner
Tennessee Department of Human Services
400 Deaderick Street
Nashville, TN 37243-1403
Telephone: (615) 313-4700
FAX: (615) 741-4165

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the Procuring State Agency or acquired by the Contractor on behalf of the Procuring State Agency shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the Procuring State Agency to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the Procuring State Agency's information; or, disclosed by the Procuring State Agency to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the Procuring State Agency or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.4. HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information



Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended.

Contractor warrants to the State that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract including but not limited to the following:

1. Compliance with the Privacy Rule, Security Rule, Notification Rule;
2. The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
3. Timely Reporting of Violations in the Access, Use and Disclosure of PHI; and
4. Timely Reporting of Privacy and/or Security Incidents.

Contractor warrants that it shall cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.

The State and the Contractor shall sign documents, including but not limited to business associate agreements, as required by HIPAA and HITECH and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA and HITECH.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.5. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.6. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:



- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the Procuring State Agency if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.7. State and Federal Compliance. The Contractor agrees to comply with all applicable federal and state laws, policies, rules and regulations, consent decrees and court orders, including, but not limited to, Constitutional provisions regarding due process and equal protection of the laws.
- E.8. Social Security Administration (SSA) Required Provisions for Data Security. Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988; related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, et seq.), and related National Institute of Standards and Technology guidelines. In addition, Contractor shall have in place administrative, physical, and technical safeguards for data.
- (a) Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Agreement for any purpose other than that set forth in this Agreement. Should Contractor propose a redisclosure of said data, Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
 - (b) Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Agreement.
 - (c) Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request.
 - (d) Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Agreement. Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
 - (e) Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by TennCare under this Agreement from loss, theft or inadvertent disclosure;



- (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
- (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
- (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
- (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

Contractor employees who access, use, or disclose TennCare SSA-supplied data in a manner or purpose not authorized by this Agreement may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

- (f) **Loss or Suspected Loss of Data** – If an employee of Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare immediately upon becoming aware to report the actual or suspected loss. Contractor will use the Loss Worksheet, which can be found at http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf to quickly gather and organize information about the incident. Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

If Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and Contractor shall bear any costs associated with the notice or any mitigation.

- (g) TennCare may immediately and unilaterally suspend the data flow under this Agreement, or cause Contractor to terminate this Agreement, if TennCare, in its sole discretion, determines that Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Agreement.

- (h) In order to meet certain requirements set forth in TennCare's Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of TennCare. TennCare and Contractor further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as Contractor and Contractor shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, TennCare, its contractors, agents and providers are not required to abide by the NIST guidelines.

- (i) This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

- (i) **Definitions**

- (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and TennCare).



- (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII) (45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- (3) "Individually Identifiable Health Information" – information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.9. Medicaid and CHIP – The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

i. Purposes directly related to the administration of Medicaid and CHIP include:

- (a) establishing eligibility;
- (b) determining the amount of medical assistance;
- (c) providing services for beneficiaries; and,
- (d) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

ii. The Contractor must have adequate safeguards to assure that—

- (a) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC section 6103(I) is exchanged only with parties authorized to receive that information under that section of the Code; and,
- (b) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

iii. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least—

- (a) Names and addresses;
- (b) Medical services provided;
- (c) Social and economic conditions or circumstances;
- (d) Contractor evaluation of personal information;
- (e) Medical data, including diagnosis and past history of disease or disability; and
- (f) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service,



- (g) Any information received for verifying income eligibility and amount of medical assistance payments
- (h) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements
- (i) Any information received in connection with the identification of legally liable third party resources.
- (j) Social Security Numbers.

- iv. The Contractor must have criteria approved by TennCare specifying
 - (a) the conditions for release and use of information about applicants and beneficiaries;
 - (b) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of TennCare.
 - (c) The Contractor shall not publish names of applicants or beneficiaries.
 - (d) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
 - (e) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family or individual immediately after supplying the information.
 - (f) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
 - (i.) The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
 - (g) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information, effective until Jan. 1, 2014.
 - (h) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TennCare.

E.10. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

IN WITNESS WHEREOF,

DEPARTMENT OF HUMAN SERVICES
DIVISION OF REHABILITATION SERVICES:

Raquel Hunter

Dr. Raquel Hunter, Commissioner

5/21/13

DATE



DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

Mark A. Emkes / CO

Mark A. Emkes, Commissioner

May 22, 2013
DATE