STATE OF DELAWARE

DELAWARE HEALTH
AND SOCIAL SERVICES
DIVISION OF MANAGEMENT
SERVICES
1901 N. DuPont Highway
New Castle, DE 19720

REQUEST FOR PROPOSAL NO. PSC HSS-11-008

FOR

PHYSICIAN/MEDICAL AND ON-CALL SERVICES AT THE STOCKLEY CENTER (ICF/MR)

FOR

THE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES
DELAWARE HEALTH AND SOCIAL SERVICES
STOCKLEY CENTER
26351 PATRIOTS WAY
GEORGETOWN, DE 19947

Deposit	Waived
Performance Bond	Waived

Date Due: **May 17, 2010**
11:00 a.m. local time

A **mandatory pre-bid meeting** will be held on **April 30, 2010, at 1:30 p.m.** at Stockley Center, 26351 Patriots Way, Georgetown DE 19947, Mary Ann Coverdale Center, RM A1178. **"All Bidders Who Wish To Bid On This Proposal Must Be Present, On Time, At The Mandatory Pre-Bid Meeting. No Proposals Will Be Accepted From Bidders Who Either Did Not Attend The Mandatory Pre-Bid Meeting Or Who Are More Than Fifteen (15) Minutes Late."**

REQUEST FOR PROPOSAL #PSC HSS-11-008

Bids for Physician/Medical And On-Call Services For The Stockley Center (ICF/MR) for the Division of Developmental Disabilities Services (DDDS), Delaware Health and Social Services, Stockley Center, 26351 Patriots Way, Georgetown, De 19947 will be **received** by the Delaware Health and Social Services, Herman M. Holloway Sr. Campus, Procurement Branch, Main Administration Building, Sullivan Street, Second Floor, Room #257, 1901 North DuPont Highway, New Castle, Delaware 19720, **until 11:00 a.m. local time May 17, 2010.** At which time the proposals will be opened and read.

A **mandatory pre-bid meeting** will be held on **April 30, 2010 at 1:30 p.m**. at Stockley Center, 26351 Patriots Way, Georgetown DE 19947, Mary Ann Coverdale Center, RM A1178. For further information, please contact Adele Wemlinger at (302) 933-3000.

In the event that state offices are closed on the day of the pre-bid meeting due to a State of Emergency declared by the Governor of Delaware, the pre-bid meeting will be cancelled or postponed. The status of the pre-bid meeting will be posted to the RFP website as soon as possible at www.dhss.delaware.gov/dhss/rfp/dhssrfp.htm. If the pre-bid meeting is cancelled, written questions will be accepted, in lieu of the pre-bid meeting, in accordance with the instructions presented in Section VI. D. of this document. If the pre-bid meeting is postponed, the new date and time will be posted to the RFP website.

All RFP-PSCOs can be obtained online at www.dhss.delaware.gov/dhss/rfp/dhssrfp.htm
A brief "Letter of Interest" must be submitted with your proposal. Specifications and administration procedures may be obtained at the above office or phone (302) 255-9290.

NOTE TO VENDORS: Your proposal must include the forms in Appendices A, B ,C and D signed and all information on the forms complete. **"All Bidders Who Wish To Bid On This Proposal Must Be Present, On Time, At The Mandatory Pre-Bid Meeting. No Proposals Will Be Accepted From Bidders Who Either Did Not Attend The Mandatory Pre-Bid Meeting Or Who Are More Than Fifteen (15) Minutes Late."**

NOTIFICATION TO BIDDERS

Bidder shall list all contracts awarded to it or its predecessor firm(s) by the State of Delaware; during the last three years, by State Department, Division, Contact Person (with address/phone number), period of performance and amount. The Evaluation/Selection Review Committee will consider these Additional references and may contact each of these sources. Information regarding bidder performance gathered from these sources may be included in the Committee's deliberations and factored in the final scoring of the bid. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the bid."

There will be a ninety (90) day period during which the agency may extend the contract period for renewal if needed.

If a bidder wishes to request a debriefing, they must submit a formal letter to the Procurement Administrator, Delaware Health and Social Services, Main Administration Building, Second Floor, Sullivan Street, 1901 North DuPont Highway, Herman M. Holloway Sr., Health and Social Services Campus, New Castle, Delaware 19720, within ten (10) days after receipt of "Notice of Award". The letter must specify reasons for the request.

If you do not intend to submit a bid you are asked to return the face sheet with "NO BID" stated on the front with your company's name, address and signature.

IMPORTANT: ALL PROPOSALS MUST HAVE OUR RFP NUMBER (**PSC HSS-11-008**) ON THE OUTSIDE ENVELOPE. IF THIS NUMBER IS OMITTED YOUR PROPOSAL WILL IMMEDIATELY BE REJECTED.

FOR FURTHER BIDDING INFORMATION PLEASE CONTACT:

BRUCE KRUG
DELAWARE HEALTH AND SOCIAL SERVICES
PROCUREMENT BRANCH
MAIN BLD-2ND FLOOR –ROOM #257
1901 NORTH DUPONT HIGHWAY
HERMAN M. HOLLOWAY SR. HEALTH AND
SOCIAL SERVICES CAMPUS
NEW CASTLE, DELAWARE 19720
PHONE: (302) 255-9290

IMPORTANT: DELIVERY INSTRUCTIONS

IT IS THE RESPONSIBILITY OF THE BIDDER TO ENSURE THAT THE PROPOSAL HAS BEEN RECEIVED BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES BY THE DEADLINE.

REQUEST FOR PROPOSAL FOR PHYSICIAN/MEDICAL AND ON-CALL SERVICES AT THE STOCKLEY CENTER (ICF/MR)

FOR

DELAWARE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

Availability of Funds

Funds are available for the selected vendor to provide Physician/Medical And On-Call Services for individuals with mental retardation and other developmental disabilities or Alzheimer/Dementia living at the Stockley Center and/or people receiving services from DDDS. Contract renewal is possible for up to two additional years contingent on funding availability and contract performance.

Pre-Bid Meeting

A pre-bid meeting will be required. The meeting will be **April 30, 2010 at 1:30 p.m.** at the following location.

Stockley Center
26351 Patriots Way
Georgetown DE 19947
Mary Ann Coverdale Center, RM A1178

All bidders who wish to bid on this proposal must be present on time at the **mandatory pre-bid meeting**. No proposals will be accepted from agencies that either did not attend the mandatory Pre-Bid Meeting or who are MORE than 15 minutes late. Bidders may ask clarifying questions regarding this request for proposal at the pre bid meeting. Responses to questions posed at the pre-bid meeting will be distributed to bidders attending the pre-bid meeting.

Further Information

Inquiries regarding this RFP should be addressed to:

Adele Wemlinger
Division of Developmental Disabilities Services
Stockley Center
26351 Patriots Way
Georgetown, Delaware 19947
Phone: 302-933-3000
FAX: 302-934-7875

E-mail: adele.wemlinger@state.de.us

Restrictions on Communications with State Staff

From the issue date of this RFP until a contractor is selected and the selection is announced, bidders are NOT allowed to contact any DDDS staff, except those specified in this RFP, regarding this procurement. Contact between contractors and Adele Wemlinger is restricted to emailed or faxed questions concerning this proposal. Questions must be submitted in writing and will be addressed in writing.

Questions are due by **April 30, 2010** and will be addressed at the pre-bid meeting. The complete list of questions and their answers will be released via e-mail or fax to the vendors that attended the pre-bid meeting. The complete list of questions and their answers will also be posted on the internet at http://www.dhss.delaware.gov/dhss/rfp/dhssrfp.htm

REQUEST FOR PROPOSAL FOR PHYSICIAN/MEDICAL AND ON-CALL SERVICES AT THE STOCKLEY CENTER (ICF/MR)

FOR

DELAWARE DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES

I. INTRODUCTION

A. DDDS SERVICE SYSTEM PHILOSOPHY

The mission of the DDDS is to help the people it serves achieve the quality of life they desire.

The vision of the DDDS is to provide a flexible system of individually directed supports and services that improves the quality of life of the individual and their family.

DDDS believes that the service delivery system has a primary responsibility to people - not for people. Our fundamental role is to support people as citizens in a community. We recognize that the support we provide must be responsive to the individual. Therefore, creativity and flexibility are essential and must be encouraged and rewarded. As a result of these beliefs, we are committed to four (4) guiding principles:

- **Guiding Principle One:**
  Services shall honor and respect the individuals right to self-direction and should support their lifestyle choices.
- **Guiding Principle Two:**
  Services shall be person-centered and treat each person with dignity and respect.
- **Guiding Principle Three:**
  Services shall support people to have valued roles in the community.
- **Guiding Principle Four:**
  Services shall work to build the capacity of the community to include all people in everyday life.

B. BACKGROUND

Stockley Center

The focus of DDDS facility-based services is the Stockley Center, which is the single, state-run ICF/MR facility in Delaware. The Stockley Center has been providing services for people with mental retardation and developmental disabilities since 1921. Currently, it is a 105-bed Federally

certified ICF/MR, state-licensed facility providing 24-hour residential and habilitation services to individuals with mental retardation and other developmental disabilities including challenging behaviors, seizure disorders, physical disabilities (including non-ambulatory), psychiatric conditions, significant medical needs, and skilled level-of-care. Individuals range in age from early through late adulthood and have various functioning levels. The Stockley Center currently serves approximately 90 people with mental retardation and other developmental disabilities in its facility-based, and waiver-based, residential program. Additionally, the Stockley Center operates a 15-bed, Assisted Living residence which is licensed under a CMS Waiver program through the Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD). This program provides services to people with Alzheimer's disease who also may present challenging behaviors and psychiatric conditions.

The DDDS currently has one MR/DD Home and Community Based Services Waiver, a 1915(C) for residential services that helps fund services to over 800 people in the community. These supports include Day and Residential programs, Respite, Clinical Support, Environmental Modifications, and Case Management services. Residential services to people participating in the waiver program are provided by about 15 contracted agency providers who oversee a network of group home and apartment sites, as well as approximately 200 contracted foster provider families. Day program services encompass habilitation at one of the five DDDS-operated community facilities, or a variety of prevocational and supported employment options provided by approximately 15 contracted agencies in the community. And lastly, the Stockley Center currently operates three community-based, staffed apartments and two neighborhood home that fall under the 1915(c) MR/DD Home and Community –Based Services (HCBS) Waiver. The Stockley Programs include 15 beds in five (5) sites. Four (4) sites are on the Stockley Center campus and one (1) is in the town of Laurel, DE.

Our new medical facility is a 54-bed residential living area, providing day programming and temporary respite services. It also houses administrative offices, laundry, food service, mobility, therapy, and medical/dental programs and is adjoined to the existing aquatic center.

The new facility provides medical and clinical services to those individuals with mental retardation and developmental disabilities whose level of care is considered 'medically complex', including, but not limited to, enterostomy tubes and tracheotomies. In addition to the services noted, this facility also serves as a treatment and evaluation center for not only residents of the facility but for individuals living in community settings with mental retardation and other developmental disabilities assisting with access to needed services; particularly those who require specialized medical or therapy intervention.

The Stockley Center will continue to operate two residential cottages, the Assisted Living program, and the aforementioned community-based apartments and neighborhood home.

Over the last several years, DDDS has been shifting its delivery of services from a fixed system of programming to one that is more flexible, consumer-centered, and self directed. It is the vision of DDDS to develop programs at the Stockley Center that are representative of this shift.

The Stockley Center is dedicated to providing ongoing, integrated, high-quality medical services to the individuals receiving services from its programs. These services include primary medical care services, specialty consultation services, and coordination of these services during periods of acute illness/ hospitalization. The focus of the contract APNs and physicians at the Stockley Center would be to provide those primary medical services directly, work closely with those medical specialists that might provide services, coordinate provision of continuous, integrated medical services between the Stockley Center and acute care hospitals, and other related medical care services. The physicians and APNs would need to be comfortable with care of chronic health conditions, adult neuro-developmental medicine, geriatric issues, including caring for individuals with enterostomy tubes and tracheotomies. It is extremely critical that the medical health practitioners of the Stockley Center work closely with the nursing and administration departments and view themselves as team partners of the larger interdisciplinary team.

The delivery of services to be provided to individuals living in community-based residences is expected to be developed over the next year and will include medical evaluations and care for those for whom medical services cannot be accessed; either because of their behavioral/ medical complexity or other reasons. Integration of medical services with those services that can be accessed in the community will be emphasized. It is expected that these services will be mostly consultative. This program will be administered within the office of the Executive Director of the Stockley Center and supervised by the Director of Nursing of the Stockley Center. Examples of medically-related services that will be rendered as part of this program might include:

1. Adult neuro-developmental assessments,
2. Primary care checks; including chronic disease management,
3. Oral health assessments,
4. Health prevention and promotion assessments, including fall assessments, dementia screening, vision and hearing checks,
5. Integrated primary care psychiatric services,
6. Enterostomal and skin evaluations,
7. Medication reviews.

The **PHYSICIAN/MEDICAL AND ON-CALL SERVICES** for the Stockley Center contract will be managed by the Stockley Center Director of Nursing and Health Services or designee.

C. Project Goal

The goal of this project is to provide **PHYSICIAN/MEDICAL AND ON-CALL SERVICES** for the Stockley Center and its affiliated Waiver Programs.

II. SCOPE OF WORK

The purpose of this RFP is to identify organizations to provide physician/medical and on-call services to various programs operated by the Stockley Center.

1. Express in an hourly-rate for medical services one (1) Medical Director for 1,800 hours per fiscal year, one (1) staff physician for 900 hours per fiscal year, and two (2) Advance Nurse Practitioners for a total of 3,600 hours per year, each having responsibility for resident care load. DDDS will only reimburse for actual hours worked.

2. The contract physicians shall be residency trained in the United States, shall be board certified or eligible for board certification in a primary care medical discipline, have experience with adult general medicine or geriatrics, shall posses a license to practice medicine in the State of Delaware for the term of the contract, and shall meet federal and state eligibility requirements to participate in Medicare and Medicaid.

3. The Advance Nurse Practitioners must possess Delaware Advance Practice Nurse license for Delaware in Medical, Surgical, Public Health or Gerontology; and, be in good standing with the State of Delaware for the term of the contract.

4. Validated credentials packages for all practitioners/physicians and Advance Practice Nurses identified by the organization's proposal shall be submitted within 30 days of the Department's initiation of contract.

5. Provide the facility with a National Provider Identifier.

6. Be a Medicaid participating provider.

7. Be eligible and capable of submitting direct claims to Medicaid, Medicare and other private insurance companies.

8. Be on-site during regular business hours. (8:00am to 4:00pm, Monday through Friday, excluding weekends and holidays.)

9. Seven days prior to the first day of the month, provide the facility with a schedule of medical coverage including regular business hours as well as on-call services.

10. Provide medical care and treatment to all the residents in the ICF/MR facility and the Assisted Living facility.

11. Provide medical care and treatment to residents with mental retardation and developmental disabilities in other programs operated by the Stockley Center.

12. Participate and serve as needed on various committees and work groups as assigned by the Executive Director.

13. Provide other medical physician services as needed in order to provide a comprehensive medical program at the facility.

14. Maintain current, accurate and timely medical services documentation following ICF/MR regulations.

15. Conduct medical chart reviews and re-evaluations including medical orders which shall be updated with regards to medications, treatments, diets and requests for laboratory evaluations within state and regulatory requirements.

16. Interact and communicate with outside physicians, consultants and hospital personnel to ensure continuity of care, communication of medical treatment plans, and progression of condition when residents are hospitalized or seen on a consultative basis.

17. Communicate information to the facility staff, the persons with developmental disabilities, their families and/or guardians.

18. Complete the facility's established billing form to ensure that medical services provided to Medicaid and Medicare Part B residents are billed properly.

19. Any other duties as assigned by the Executive Director.

    On-call Services

20. Ensure one medical on-call services during non-regular business hours including weekends and holidays.

21. Be available to the facility nursing staff for telephone consultation and triaging.

22. To come to the facility to pronounce the death of any resident.

23. Ensure medical coverage if the physician or Advance Practice Nurse scheduled is unable to do so.

III. SPECIAL TERMS AND CONDITIONS

A. Length of Contract

Contract term is one (1) fiscal year. Contract renewal is possible for up to two (2) additional years contingent on funding availability and contract performance.

B. Subcontractors

The use of subcontractors will **NOT** be permitted for this project.

C. Funding Disclaimer Clause

Delaware Health and Social Services reserves the right to reject or accept any bid or portion thereof, as may be necessary to meet the Department's funding limitations and processing constraints. The Department reserves the right to terminate any contractual agreement upon fifteen (15) calendar days written notice in the event the state determines that state or federal funds are no longer available to continue said contractual agreement.

D. Reserved Rights

Notwithstanding anything to the contrary, the Department reserves the right to:

- Reject any and all proposals received in response to this RFP;
- Select a proposal other than the one with the lowest cost;
- Waive or modify any information, irregularities, or inconsistencies in proposals received;
- Negotiate as to any aspect of the proposal with the bidder and negotiate with more than one bidder at a time;
- If negotiations fail to result in an agreement within two (2) weeks, the Department may terminate negotiations and select the most responsive bidder, prepare and release a new RFP, or take such other action as the Department may deem appropriate.

E. Termination Conditions

The Department may terminate the contract resulting from this RFP at any time that the vendor fails to carry out its provisions or to make substantial progress under the terms specified in this RFP and the resulting proposal.

Prior to taking the appropriate action as described in the contract, the Department will provide the vendor with thirty (30) days notice of conditions endangering performance. If after such notice the vendor fails to remedy the conditions contained in the notice, the Department shall issue the vendor an order to stop work immediately and deliver all work and work in progress to the State. The Department shall be obligated only for those services rendered and accepted prior to the date of notice of termination.

The Contract may be terminated in whole or part:

a) by the Department upon five (5) calendar days written notice for cause or documented unsatisfactory performance,

b) by the Department upon fifteen (15) calendar days written notice of the loss of funding or reduction of funding for the stated Contractor services,

c) by either party without cause upon thirty (30) calendar days written notice to the other Party, unless a longer period is specified.

F. Contractor Monitoring

The contractor may be monitored on-site on a regular basis by representatives from the DDDS. Failure of the contractor to resolve any problem(s) identified in the monitoring may be cause for termination of the contract.

G. Payment:

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt. The contractor or vendor must accept full payment by procurement (credit) card and or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

Effective January 5, 2009, there is a new vendor process and use of the new Delaware Form W-9 will be implemented. The vendor will now have the capability of submitting the required form W-9 electronically and directly to the Division of Accounting for approval. The vendor will complete the secure form, read the affirmation, and submit the form by clicking the "Submit" button. Division of Accounting staff will review the affirmation and the submitted form for accuracy, completeness and standardization.

Once all the requirements are met, the form will be uploaded to the vendor file and approved. The vendor file is then available for processing transactions. For vendors who do not have internet access, a form can be faxed or mailed to the vendor. Vendors who do not have internet access can contact vendor staff with questions for at (302)734-6827. The web site is: http://accounting.delaware.gov

H. Ownership of Media Materials

The Division of Developmental Disabilities Services (DDDS) owns any/all products produced related to this contract. DDDDS will be provided with the original (native) files pertaining to any/all products produced.

IV. FORMAT AND CONTENT OF RESPONSE

Proposals shall contain the following information, adhering to the order as shown:

A. Bidder's Signature Form

This form, found in the Appendix A, must be completed and signed by the bidder's authorized representative.

B. Title Page

The Title page shall include: 1) the RFP subject; 2) the name of the applicant; 3) the applicant's full address; 4) the applicant's telephone number; 5) the name and title of the designated contact person; and 6) bid opening date (**due date: May 17, 2010 11:00 a.m.**).

C. Table of Contents

The Table of Contents shall include a clear and complete identification of information presented by section and page number.

D. Qualifications and Experience

This section shall contain sufficient information to demonstrate experience and staff expertise to carry out the project. A statement must be included that the vendor either has or certifies he/she will secure a Delaware Business License prior to initiation of the project. Attach articles of incorporation and IRS certification of tax exempt status if applicable.

The specific individuals who will work on this project must be identified, along with the nature and extent of their involvement. The qualifications of these individuals shall be presented (in resumes or other formats). If conducting this project will require hiring of one or more individuals who are not currently employed by the bidding organization, applications shall provide detailed job descriptions, including required qualifications and experience.

If subcontractors are to be used, the proposal shall also contain similar information regarding each subcontractor.

E. Bidder References

The names and phone numbers of at least three (3) organizations/agencies for whom the vendor carried out a similar project must be included. If no similar project has been conducted, others requiring comparable skills can be used.

Bidder shall list all contracts awarded to it or its predecessor firm(s) by the State of Delaware; during the last three years, by State Department, Division, Contact Person (with address/phone number), period of performance and amount. The Evaluation/Selection Review Committee will consider these additional references and may contact each of these sources. Information regarding bidder performance gathered from these sources may be included in the Committee's deliberations and factored in the final scoring of the bid. Failure to list any contract as required by this paragraph may be grounds for immediate rejection of the bid.

F. Proposed Methodology and Work Plan

This section shall describe in detail the approach that will be taken to carry out the activities described in the Scope of Services section of this RFP. Specific completion dates for the various tasks must be shown. The workplan shall outline specific objectives, activities and strategies, and resources.

G. Statements of Compliance

The bidder must include statements that the applicant agency complies with all Federal and Delaware laws and regulations pertaining to equal opportunity and affirmative action. In addition, compliance must be assured in regard to Federal and Delaware laws and regulations relating to confidentiality and individual and family privacy in health care delivery and in the collection and reporting of data. (See Appendix C)

H. Standard Contract

Appendix E is a copy of the standard boilerplate contract for the State of Delaware, Delaware of Health and Social Services, Division of Developmental Disabilities. This boilerplate will be the one used for any

contract resulting from this Request for Proposal. If a bidder has an objection to any contract provisions or the RFP and its procurement provisions, objections shall be stated in the Transmittal Letter of the bidder's proposal.

V. BUDGET

Vendor will submit a line item budget describing how funds will be utilized. Budget should include an amount per hour along with an estimation of time per activity. Modifications to the budget after the award must be approved by the DDDS.

Applicants shall also describe any factors that may have an impact on the cost and should suggest a payment schedule contingent upon completion of the various tasks.

VI. GENERAL INSTRUCTIONS FOR SUBMISSION OF PROPOSALS

A. Number of Copies Required

Number of Copies Required:

Two (2) original CDs (Each Labeled as "Original") and six (6) CD copies (Each labeled as "Copy"). In addition, any required confidential financial or audit information relating to the company and not specifically to the proposal may be copied separately to three (3) additional CDs (Each labeled "Corporate Confidential Information"). All CD files shall be in PDF and Microsoft Word formats. Additional file formats (i.e. .xls, .mpp) may be required as requested.

It is the responsibility of the bidder to ensure all submitted CDs are machine readable, virus free and are otherwise error-free. CDs (or their component files) not in this condition may be cause for the vendor to be disqualified from bidding.

Bidders will no longer be required to make hard copies.

Proposals shall be submitted to:

Mr. Bruce Krug, Procurement Administrator
Division of Management Services
Delaware Health and Social Services
Main Administration Building
Second Floor, Room 257
1901 North duPont Highway
New Castle, DE 19720

B. Closing Date

All responses must be received no later than **May 17, 2010 at 11:00 a.m.** Later submission will be cause for disqualification.

C. Notification of Acceptance

Notification of the Department's intent to enter into contract negotiations will be made in writing to all bidders.

D. Questions

All questions concerning this Request for Proposal must be in writing and can be either mailed, faxed, or emailed to: Adele Wemlinger, Division of Developmental Disabilities Services, Stockley Center, 26351 Patriots Way, Georgetown, Delaware 19947. Phone: 302-933-3000. FAX: 302-934-7875. E-mail: adele.wemlinger@state.de.us Deadline for submission of all questions is April 30, 2010. Written responses will be faxed or emailed to bidders no later than May 5, 2010. Please include your fax number and/or your email address with your request.

E. Amendments to Proposals

Amendments to proposals will not be accepted after the deadline for proposal submission has passed. The State reserves the right at any time to request clarification and/or further technical information from any or all applicants submitting proposals.

F. Proposals Become State Property

All proposals become the property of the State of Delaware and will not be returned to the bidders. The State will not divulge the specific contents of any proposal to the extent that the applicant(s) identity(ies) would be disclosed. This information is privileged and confidential.

G. Non-Interference Clause

The awarding of this contract and all aspects of the awarded bidders contractual obligations, projects, literature, books, manuals, and any other relevant materials and work will automatically become property of the State of Delaware. The awarded bidder will not in any manner interfere or retain any information in relationship to the contractual

obligations of said contract, at the time of the award or in the future tense.

H. Investigation of Bidder's Qualifications

The Delaware Health and Social Services may make such investigation as it deems necessary to determine the ability of the bidder to furnish the required services, and the bidder shall furnish such data as the Department may request for this purpose.

I. RFP and Final Contract

The contents of the RFP will be incorporated into the final contract and will become binding upon the successful bidder. If the bidder is unwilling to comply with any of the requirements, terms, and conditions of the RFP, objections must be clearly stated in the proposal. Objections will be considered and may be subject to negotiation at the discretion of the state.

J. Proposal and Final Contract

The contents of each proposal will be considered binding on the bidder and subject to subsequent contract confirmation if selected. The contents of the successful proposal will be included by reference in the resulting contract.

All prices, terms, and conditions contained in the proposal will remain fixed and valid for one (1) year after proposal due date.

K. Cost of Proposal Preparation

All costs for proposal preparation will be borne by the bidder.

L. Proposed Timetable

The Department's proposed schedule for reviewing proposals is outlined as follows:

Activity	***Date***
Bid Opening	May 17, 2010
Selection Process Begins	May 19, 2010
Vendor Selection (Tentative)	May 25, 2010

Project Begins	July 1, 2010

M. Confidentiality and Debriefing

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

If a bidder wishes to request a debriefing, he must submit a formal letter to the Procurement Administrator, Herman M. Holloway Campus, Delaware Health and Social Services Main Building, 2nd Floor, Room 257, 1901 N. duPont Highway, New Castle, Delaware 19720 within 10 days after receipt of Notice of Award. The letter must specify reasons for the request.

VII. SELECTION PROCESS

All proposals submitted in response to this RFP will be reviewed by an evaluation team composed of representatives of the Division of Public Health, Delaware Health and Social Services, and others as may be deemed appropriate by the Department. Each proposal will be independently reviewed and rated against review criteria. Selection will be based upon the recommendations of the review committee.

A. Proposal Evaluation Criteria

The vendor will be selected through open competition and based on the review of proposals submitted in response to this request for proposals. A technical review panel will review all proposals utilizing the following criteria. A maximum of 100 points is possible.

Category	Weight
Meets mandatory RFP provisions	Pass/Fail
Understanding of the requirements and ability to provide the service.	
1. Qualifications of vendor ……. (Bidder must demonstrate experience providing the services defined in the scope of this RFP)	30
2. Inclusion of all requested elements ……. (All elements in the scope of services must be included in the proposal)	20
3. Available resources …….. (Bidder must document actual existing qualified staff to carry-out these services)	20
4. Implementation plan …….. (Bidder must clearly document plan and timeline for implementation of services)	20
5. Cost proposal …….	10

Upon selection of a vendor, a Division of Developmental Disabilities Services representative will enter into negotiations with the bidder to establish a contract.

B. Project Costs and Proposed Scope of Service

The Department reserves the right to award this project to a bidder other than the one with the lowest cost or to decide not to fund this project at all. Cost will be balanced against the score received by each bidder in the rating process. The State of Delaware reserves the right to reject, as technically unqualified, proposals that are unrealistically low if, in the judgment of the evaluation team, a lack of sufficient budgeted resources would jeopardize project success.

APPENDIX A:

BIDDERS SIGNATURE FORM

DELAWARE HEALTH AND SOCIAL SERVICES

REQUEST FOR PROPOSAL

BIDDERS SIGNATURE FORM

NAME OF BIDDER:_____
SIGNATURE OF AUTHORIZED PERSON:_____
TYPE IN NAME OF AUTHORIZED PERSON:_____
TITLE OF AUTHORIZED PERSON:_____
STREET NAME AND NUMBER:_____
CITY, STATE, & ZIP CODE:_____
CONTACT PERSON:_____
TELEPHONE NUMBER:_____
FAX NUMBER:_____
DATE:_____
BIDDER'S FEDERAL EMPLOYERS IDENTIFICATION NUMBER:_____
DELIVERY DAYS/COMPLETION TIME:_____
F.O.B.:_____
TERMS:_____

THE FOLLOWING MUST BE COMPLETED BY THE VENDOR:

AS CONSIDERATION FOR THE AWARD AND EXECUTION BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES OF THIS CONTRACT, THE (COMPANY NAME)_____ HEREBY GRANTS, CONVEYS, SELLS, ASSIGNS, AND TRANSFERS TO THE STATE OF DELAWARE ALL OF ITS RIGHTS, TITLE AND INTEREST IN AND TO ALL KNOWN OR UNKNOWN CAUSES OF ACTION IT PRESENTLY HAS OR MAY NOW HEREAFTER ACQUIRE UNDER THE ANTITRUST LAWS OF THE UNITED STATES AND THE STATE OF DELAWARE, RELATING THE PARTICULAR GOODS OR SERVICES PURCHASED OR ACQUIRED BY THE DELAWARE HEALTH AND SOCIAL SERVICES DEPARTMENT, PURSUANT TO THIS CONTRACT.

APPENDIX B:

CERTIFICATION SHEET

DELAWARE HEALTH AND SOCIAL SERVICES
REQUEST FOR PROPOSAL

CERTIFICATION SHEET

As the official representative for the proposer, I certify on behalf of the agency that:

a. They are a regular dealer in the services being procured.

b. They have the ability to fulfill all requirements specified for development within this RFP.

c. They have independently determined their prices.

d. They are accurately representing their type of business and affiliations.

e. They will secure a Delaware Business License.

f. They have acknowledged that no contingency fees have been paid to obtain award of this contract.

g. The Prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor;

h. Unless otherwise required by Law, the prices which have been quoted in this offer have not been knowingly disclosed by the contractor and prior to the award in the case of a negotiated procurement, directly or indirectly to any other contractor or to any competitor; and

i. No attempt has been made or will be made by the contractor in part to other persons or firm to submit or not to submit an offer for the purpose of restricting competition.

j. They have not employed or retained any company or person (other than a full-time bona fide employee working solely for the contractor) to solicit or secure this contract, and they have not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the contractor) any fee, commission percentage or brokerage fee contingent upon or resulting from the award of this contract.

k. They (check one) operate ___an individual; _____a Partnership ____a non-profit (501 C-3) organization; _____a not-for-profit organization; or _____for profit corporation, incorporated under the laws of the State of _____.

l. The referenced offerer has neither directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free

competitive bidding in connection with this bid submitted this date to Delaware Health and Social Services.

m. The referenced bidder agrees that the signed delivery of this bid represents the bidder's acceptance of the terms and conditions of this invitation to bid including all Specifications and special provisions.

n. They (check one): _____are; _____are not owned or controlled by a parent company. If owned or controlled by a parent company, enter name and address of parent company:

_____
_____
_____
_____

Violations and Penalties:

Each contract entered into by an agency for professional services shall contain a prohibition against contingency fees as follows:

1. The firm offering professional services swears that it has not employed or retained any company or person working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of its employees in the professional service procurement process.

2. The firm offering the professional services has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this agreement; and

3. For the violation of this provision, the agency shall have the right to terminate the agreement without liability and at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

The following conditions are understood and agreed to:

a. No charges, other than those specified in the cost proposal, are to be levied upon the State as a result of a contract.

b. The State will have exclusive ownership of all products of this contract unless mutually agreed to in writing at the time a binding contract is executed.

_____ _____

Date Signature & Title of Official Representative

Type Name of Official Representative

APPENDIX C

STATEMENTS OF COMPLIANCE FORM

DELAWARE HEALTH AND SOCIAL SERVICES

REQUEST FOR PROPOSAL

STATEMENTS OF COMPLIANCE FORM

As the official representative for the contractor, I certify on behalf of the agency that__ _____ (Company Name) will comply with all Federal and Delaware laws and regulations pertaining to equal employment opportunity and affirmative action. In addition, compliance will be assured in regard to Federal and Delaware laws and regulations relating to confidentiality and individual and family privacy in the collection and reporting of data.

Authorized Signature:_____

Title:_____

Date:_____

APPENDIX D

OFFICE OF MINORITY AND WOMEN BUSINESS ENTERPRISE SELF-CERTIFICATION TRACKING FORM

OFFICE OF MINORITY AND WOMEN BUSINESS ENTERPRISE SELF-CERTIFICATION TRACKING FORM

IF YOUR FIRM WISHES TO BE CONSIDERED FOR ONE OF THE CLASSIFICATIONS LISTED BELOW, THIS PAGE MUST BE SIGNED, NOTARIZED AND RETURNED WITH YOUR PROPOSAL.

COMPANY NAME_____
NAME OF AUTHORIZED REPRESENTATIVE (Please print)
_____
SIGNATURE_____
COMPANY ADDRESS_____
TELEPHONE #_____
FAX #_____
EMAIL ADDRESS_____
FEDERAL EI# _____
STATE OF DE BUSINESS LIC#_____
Note: Signature of the authorized representative must be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Delaware Health and Social Services.

Organization Classifications (Please circle)
Women Business Enterprise (WBE) Yes/No
Minority Business Enterprise (MBE) Yes/No
Please check one---Corporation _____
Partnership_____Individual _____
_____
For appropriate certification (WBE), (MBE), (DBE) please apply to Office of Minority and Women Business Enterprise Phone # (302) 739-4206 L. Jay Burks, Executive Director Fax# (302) 739-1965
Certification #_____ Certifying Agency_____
http://www.state.de.us/omwbe

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____DAY OF _____20_____

NOTARY PUBLIC_____MY COMMISION EXPIRES _____

CITY OF _____COUNTY OF _____STATE OF_____

Definitions

The following definitions are from the State Office of Minority and Women Business Enterprise.

Women Owned Business Enterprise (WBE):
At least 51% is owned by women, or in the case of a publicly owned enterprise, a business enterprise in which at least 51% of the voting stock is owned by women; or any business enterprise that is approved or certified as such for purposes of participation in contracts subject to women-owned business enterprise requirements involving federal programs and federal funds.

Minority Business Enterprise (MBE):
At least 51% is owned by minority group members; or in the case of a publicly owned enterprise, a business enterprise in which at least 51% of the voting stock is owned by minority group members; or any business enterprise that is approved or certified as such for purposes of participation in contracts subjects to minority business enterprises requirements involving federal programs and federal funds.

Corporation:
An artificial legal entity treated as an individual, having rights and liabilities distinct from those of the persons of its members, and vested with the capacity to transact business, within the limits of the powers granted by law to the entity.

Partnership:
An agreement under which two or more persons agree to carry on a business, sharing in the profit or losses, but each liable for losses to the extent of his or her personal assets.

Individual:
Self-explanatory

For certification in one of above, the bidder must contract:
L. Jay Burks
Office of Minority and Women Business Enterprise
(302) 739-4206
Fax (302) 739-5561

APPENDIX E

Contract Boilerplate

CONTRACT

A) Introduction

1. This contract is entered into between the Delaware Department of Health and Social Services (the Department), Division of Developmental Disabilities Services (Division) and _____(the Contractor).

2. The Contract shall commence on _____ and terminate on _____ unless specifically extended by an amendment, signed by all parties to the Contract. Time is of the essence. (Effective contract start date is subject to the provisions of Paragraph C 1 of this Agreement.)

B) Administrative Requirements

1. Contractor recognizes that it is operating as an independent Contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the Contractor's negligent performance under this Contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the Contractor in their negligent performance under this Contract.

2. The Contractor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Contract. The Contractor is an independent contractor and is not an employee of the State.

3. During the term of this Contract, the Contractor shall, at its own expense, carry insurance with minimum coverage limits as follows:

	a) Comprehensive General Liability	$1,000,000
and		
	b) Medical/Professional Liability	$1,000,000/ $3,000,000
or	c) Misc. Errors and Omissions	$1,000,000/$3,000,000
or	d) Product Liability	$1,000,000/$3,000,000

All contractors must carry (a) and at least one of (b), (c), or (d), depending on the type of service or product being delivered.

If the contractual service requires the transportation of Departmental clients or staff, the contractor shall, in addition to the above coverage, secure at its own expense the following coverage:

e) Automotive Liability (Bodily Injury) $100,000/$300,000
f) Automotive Property Damage (to others) $ 25,000

4. Not withstanding the information contained above, the Contractor shall indemnify and hold harmless the State of Delaware, the Department and the Division from contingent liability to others for damages because of bodily injury, including death, that may result from the Contractor's negligent performance under this Contract, and any other liability for damages for which the Contractor is required to indemnify the State, the Department and the Division under any provision of this Contract.

5. The policies required under Paragraph B3 must be written to include Comprehensive General Liability coverage, including Bodily Injury and Property damage insurance to protect against claims arising from the performance of the Contractor and the contractor's subcontractors under this Contract and Medical/Professional Liability coverage when applicable.

6. The Contractor shall provide a Certificate of Insurance as proof that the Contractor has the required insurance. The certificate shall identify the Department and the Division as the "Certificate Holder" and shall be valid for the contract's period of performance as detailed in Paragraph A 2.

7. The Contractor acknowledges and accepts full responsibility for securing and maintaining all licenses and permits, including the Delaware business license, as applicable and required by law, to engage in business and provide the goods and/or services to be acquired under the terms of this Contract. The Contractor acknowledges and is aware that Delaware law provides for significant penalties associated with the conduct of business without the appropriate license.

8. The Contractor agrees to comply with all State and Federal licensing standards and all other applicable standards as required to provide services under this Contract, to assure the quality of services provided under this Contract. The Contractor shall immediately notify the Department in writing of any change in the status of any accreditations, licenses or certifications in any jurisdiction in which they provide services or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, the Contractor understands that such action may be grounds for termination of the Contract.

a) If a contractor is under the regulation of any Department entity and has been assessed Civil Money Penalties (CMPs), or a court has entered a civil judgment against a Contractor or vendor in a case in which DHSS or its agencies was a party, the Contractor or vendor is excluded from other DHSS contractual opportunities or is at risk of contract termination in whole, or in part, until penalties are paid in full or the entity is participating in a corrective action plan approved by the Department.

A corrective action plan must be submitted in writing and must respond to findings of non-compliance with Federal, State, and Department requirements. Corrective action plans must include timeframes for correcting deficiencies and must be approved, in writing, by the Department.

The Contractor will be afforded a thirty (30) day period to cure non-compliance with Section 8(a). If, in the sole judgment of the Department, the Contractor has not made

satisfactory progress in curing the infraction(s) within the aforementioned thirty (30) days, then the Department may immediately terminate any and/or all active contracts.

9. Contractor agrees to comply with all the terms, requirements and provisions of the Civil Rights Act of 1964, the Rehabilitation Act of 1973 and any other federal, state, local or any other anti discriminatory act, law, statute, regulation or policy along with all amendments and revision of these laws, in the performance of this Contract and will not discriminate against any applicant or employee or service recipient because of race, creed, religion, age, sex, color, national or ethnic origin, disability or any other unlawful discriminatory basis or criteria.

10. The Contractor agrees to provide to the Divisional Contract Manager, on an annual basis, if requested, information regarding its client population served under this Contract by race, color, national origin or disability.

11. This Contract may be terminated in whole or part:

a) by the Department upon five (5) calendar days written notice for cause or documented unsatisfactory performance,

b) by the Department upon fifteen (15) calendar days written notice of the loss of funding or reduction of funding for the stated Contractor services as described in Appendix B,

c) by either party without cause upon thirty (30) calendar days written notice to the other Party, unless a longer period is specified in Appendix A.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, models, maps, photographs, and reports or other material prepared by Contractor under this contract shall, at the option of the Department, become the property of the Department.

In the event of termination, the Contractor, upon receiving the termination notice, shall immediately cease work and refrain from purchasing contract related items unless otherwise instructed by the Department.

The Contractor shall be entitled to receive reasonable compensation as determined by the Department in its sole discretion for any satisfactory work completed on such documents and other materials that are usable to the Department. Whether such work is satisfactory and usable is determined by the Department in its sole discretion.

Should the Contractor cease conducting business, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of, or become subject to any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors, then at the option of the Department, this Contract shall terminate and be of no further force and effect. Contractor shall notify the Department immediately of such events.

12. Any notice required or permitted under this Contract shall be effective upon receipt and may be hand delivered with receipt requested or by registered or certified mail with return receipt requested to the addresses listed below. Either Party may change its address for notices and official formal correspondence upon five (5) days written notice to the other.

To the Division at:

_____

_____

_____

To the Contractor at:

_____

_____

_____

13. In the event of amendments to current Federal or State laws which nullify any term(s) or provision(s) of this Contract, the remainder of the Contract will remain unaffected.

14. This Contract shall not be altered, changed, modified or amended except by written consent of all Parties to the Contract.

15. The Contractor shall not enter into any subcontract for any portion of the services covered by this Contract without obtaining prior written approval of the Department. Any such subcontract shall be subject to all the conditions and provisions of this Contract. The approval requirements of this paragraph do not extend to the purchase of articles, supplies, equipment, rentals, leases and other day-to-day operational expenses in support of staff or facilities providing the services covered by this Contract.

16. This entire Contract between the Contractor and the Department is composed of these several pages and the attached:

Appendix A - Divisional Requirements

Appendix B - Services Description

Appendix C - Contract Budget

Appendix D - Reporting Requirements in Cases of Abuse or Neglect, DDDS Policy Abuse, Neglect,Mis-Treatment, Financial Exploitation andSignificant Injury, Title 16, Section 1131 – 1140

Appendix E - Proclamation of Beliefs and Guiding Principles

17. This Contract shall be interpreted and any disputes resolved according to the Laws of the State of Delaware. Except as may be otherwise provided in this contract, all claims, counterclaims, disputes and other matters in question between the Department and Contractor arising out of or relating to this Contract or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State of Delaware.

18. In the event Contractor is successful in an action under the antitrust laws of the United States and/or the State of Delaware against a vendor, supplier, subcontractor, or other party who provides particular goods or services to the Contractor that impact the budget for this Contract, Contractor agrees to reimburse the State of Delaware, Department of Health and Social Services for the pro-rata portion of the damages awarded that are attributable to the goods or services used by the Contractor to fulfill the requirements of this Contract. In the event Contractor refuses or neglects after reasonable written notice by the Department to bring such antitrust action, Contractor shall be deemed to have assigned such action to the Department.

18. Contractor covenants that it presently has no interest and shall not acquire any interests, direct or indirect, that would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that in the performance of this contract, it shall not employ any person having such interest.

19. Contractor covenants that it has not employed or retained any company or person who is working primarily for the Contractor, to solicit or secure this agreement, by improperly influencing the Department or any of its employees in any professional procurement process; and, the Contractor has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement. For the violation of this provision, the Department shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

20. The Department shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. Contractor shall have no right to copyright any material produced in whole or in part under this Contract. Upon the request of the Department, the Contractor shall execute additional documents as are required to assure the transfer of such copyrights to the Department.

    If the use of any services or deliverables is prohibited by court action based on a U.S. patent or copyright infringement claim, Contractor shall, at its own expense, buy for the Department the right to continue using the services or deliverables or modify or replace the product with no material loss in use, at the option of the Department.

21. Contractor agrees that no information obtained pursuant to this Contract may be released in any form except in compliance with applicable laws and policies on the confidentiality of information and except as necessary for the proper discharge of the Contractor's obligations under this Contract.

22. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by authorized representatives of all parties and attached to the original Contract.

24. If the amount of this contract listed in Paragraph C2 is over $25,000, the Contractor, by their signature in Section E, is representing that the Firm and/or its Principals, along with its subcontractors and assignees under this agreement, are not currently subject to either suspension or debarment from Procurement and Non-Procurement activities by the Federal Government.

C) Financial Requirements

1. The rights and obligations of each Party to this Contract are not effective and no Party is bound by the terms of this contract unless, and until, a validly executed Purchase Order is approved by the Secretary of Finance and received by Contractor, *if required by the State of Delaware Budget and Accounting Manual,* and all policies and procedures of the Department of Finance have been met. The obligations of the Department under this Contract are expressly limited to the amount of any approved Purchase Order. The State will not be liable for expenditures made or services delivered prior to Contractor's receipt of the Purchase Order.

2. Total payments under this Contract shall not exceed $ _____ in accordance with the budget presented in Appendix C. Payment will be made upon receipt of an itemized invoice from the Contractor in accordance with the payment schedule, if any. The contractor or vendor must accept full payment by procurement (credit) card and or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions. Contractor is responsible for costs incurred in excess of the total cost of this Contract and the Department is not responsible for such costs.

3. The Contractor is solely responsible for the payment of all amounts due to all subcontractors and suppliers of goods, materials or services which may have been acquired by or provided to the Contractor in the performance of this contract. The Department is not responsible for the payment of such subcontractors or suppliers.

4. The Contractor shall not assign the Contract or any portion thereof without prior written approval of the Department and subject to such conditions and revisions as the Department may deem necessary. No such approval by the Department of any assignment shall be deemed to provide for the incurrence of any obligations of the Department in addition to the total agreed upon price of the Contract.

5. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under this Contract in accordance with generally accepted accounting principles and practices. Contractor shall also maintain the financial information and data used by Contractor in the preparation of support of its bid or proposal. Contractor shall retain this information for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Department shall have access to such books, records, documents, and other evidence for the purpose of inspection, auditing, and copying during normal business hours of the Contractor after giving reasonable notice. Contractor will provide facilities for such access and inspection.

6. The Contractor agrees that any submission by or on behalf of the Contractor of any claim for payment by the Department shall constitute certification by the Contractor that the services or items for which payment is claimed were actually rendered by the Contractor or its agents, and that all information submitted in support of the claims is true, accurate, and complete.

7 The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the Department for disallowances shall be drawn from the Contractor's own resources and not charged to Contract costs or cost pools indirectly charging Contract costs.

8. When the Department desires any addition or deletion to the deliverables or a change in the services to be provided under this Contract, it shall so notify the Contractor. The Department will develop a Contract Amendment authorizing said change. The Amendment shall state whether the change shall cause an alteration in the price or time required by the Contractor for any aspect of its performance under the Contract. Pricing of changes shall be consistent with those prices or costs established within this Contract. Such amendment shall not be effective until executed by all Parties pursuant to Paragraph B 14.

D) Miscellaneous Requirements

1. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 46, (PM #46, effective 3/11/05), and divisional procedures regarding the reporting and investigation of suspected abuse, neglect, mistreatment, misappropriation of property and significant injury of residents/clients receiving services, including providing testimony at any administrative proceedings arising from such investigations. The policy and procedures are included as Appendix D to this Contract. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Contractor's procedures must include the position(s) responsible for the PM46 process in the provider agency. Documentation of staff training on PM46 must be maintained by the Contractor.

2. The Contractor, including its parent company and its subsidiaries, and any subcontractor, including its parent company and subsidiaries, agree to comply with the provisions of 29 Del. Code, Chapter 58: "Laws Regulating the Conduct of Officers and Employees of the State," and in particular with Section 5805 (d): "Post Employment Restrictions."

3. *When required by Law*, Contractor shall conduct child abuse and adult abuse registry checks and obtain service letters in accordance with 19 Del. Code Section 708; and 11 Del. Code, Sections 8563 and 8564. Contractor shall not employ individuals with adverse registry findings in the performance of this contract.

4. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 40 (PM #40, effective 3/10/2008), and divisional procedures regarding conducting criminal background checks and handling adverse findings of the criminal background checks. This policy and procedure are included as Appendix _____ to this Contract. It is understood that adherence to this policy includes the development of appropriate procedures to implement the policy and ensuring staff receive appropriate training on the policy requirements. The Contractor's procedures must include the title of the position(s) responsible for the PM40 process in the contractor's agency.

5. *If applicable*, the Contractor agrees to adhere to the requirements of DHSS Policy Memorandum # 36 (PM #36, effective 9/24/2008), and divisional procedures regarding minimal requirements of contractors who are engaging in a contractual agreement to develop community based residential arrangements for those individuals served by Divisions within DHSS. This policy and procedure are

included as Appendix _____ to this Contract. It is understood that adherence to this policy includes individuals/entities that enter into a contractual arrangement (*contractors*) with the DHSS/Division to develop a community based residential home(s) and apartment(s). Contractors shall be responsible for their subcontractors' adherence with this policy and related protocol(s) established by the applicable Division.

6. All Department campuses are tobacco-free. Contractors, their employees and sub-contractors are prohibited from using any tobacco products while on Department property. This prohibition extends to personal vehicles parked in Department parking lots.

E) Authorized Signatures:

For the Contractor:

_____
Name

_____
Title

_____
Date

For the Department:

_____
Rita M. Landgraf
Secretary

_____
Date

For the Division:

_____

Director

_____
Date

Appendix A

DIVISIONAL REQUIREMENTS

1. Business License or Proof of non-profit status

2. Proof of Insurance
   General Liability and
   Medical/Professional
   or Miscellaneous Errors and Omissions
   or Product Liability

3. Professional License (if applicable)

Appendix B

SERVICE DESCRIPTION

1. Description of Service

Appendix C

CONTRACT BUDGET

CONTRACT BUDGET DESCRIPTION

1. Contractor: _____

2. Address: _____

_____

_____

Phone Number: _____

E.I. Number: _____

3. Division: Developmental Disabilities Services

4. Total Payments for services shall not exceed $ _____

5. Payment will be made upon presentation of a completed monthly invoice and/or supporting documentation which will consist of the date of service, the hours worked and the amount. Invoices for the agreed upon services are to be sent to:

Name:_____

Address:_____

_____

Appendix D-1

Reporting Requirements For Allegations of

Abuse, Neglect, Mistreatment, Financial Exploitation, Significant Injury

Requirements have been established in State law that safeguard and protect the people whom we serve. The DHSS Policy Memorandum #46 (PM #46) and the DDDS policy entitled *Abuse, Neglect, Mistreatment, Financial Exploitation, and Significant Injury* outline the requirements for reporting, investigating, monitoring, and follow-up on the aforementioned allegations. A brief explanation, including some possible examples of abuse, neglect, mistreatment, financial exploitation, and significant injury are listed below.

This list is not all-inclusive, rather it is intended to supplement the applicable DDDS policy, the DHSS PM # 46 and Title 16, Del. C., sections 1131-1140.

ABUSE

Physical Abuse

- This is when a person unnecessarily inflicts pain or injury to an individual receiving DDDS services. The infliction of pain is assumed when any act of physical abuse is proven.
- Examples include, but are not limited to hitting, kicking, slapping, pulling hair, or sexual molestation/exploitation.

Emotional Abuse

- This includes, but is not limited to ridiculing or demeaning an individual receiving DDDS services, making derogatory remarks to the individual, cursing directed at the individual, or threatening an individual with physical or emotional harm;
- Examples include but are not limited to telling an individual that he/she will be moved back to Stockley Center if he/she don't behave/comply, telling an individual that they will have to move if they don't "straighten up", threatening to violate an individual's rights, cursing at the individual, threatening to hit the individual, or referring to the individual as "stupid".

MISTREATMENT

- This is when a person inappropriately uses medication, isolation, or physical/chemical restraints on an individual who receives services from DDDS.
- Examples include, but are not limited to giving an individual medicine to control him/her when such has not been prescribed by a licensed medical practitioner, locking a consumer in his/her bedroom or the car, doing anything that would prevent a person from physically moving (unless it is specified in an approved behavior support plan).

NEGLECT

- This is when a person fails to meet an individual's needs or fails to report to a nurse or his/her supervisor a change in a individual's health condition.
- Examples include but are not limited to not following directions for services as written into the consumer's Essential Lifestyle Plan, not following a medical practitioner's orders (including some medication errors), not providing adequate, adult, competent supervision, not ensuring proper medical care.

FINANCIAL EXPLOITATION

- This is when a person illegally or improperly uses/abuses an individual's resources or financial rights, whether for profit or other advantage.
- Examples include, but are not limited to, using an individual's money to repair the house (without specific written approval from DDDS), taking an individual's belongings or finances, using an individual's money to pay for someone else's financial obligations.

SIGNIFICANT INJURY

- This is an injury that is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or function(s) which cannot be justified on the basis of medical diagnosis or through internal investigation.
- Examples include, but are not limited to, second or third degree burns, broken bones resulting from improper transferring of an individual.

The following is required if abuse, neglect, mistreatment, financial exploitation or significant injury are witnessed or suspected:

- Immediately treat, comfort, and protect the individual involved. This means make sure the individual is removed from possible harm and receives medical treatment, as needed.
- Immediately notify the DDDS PM # 46 Coordinator (Suzette Bliey in New Castle County at 369-2186, ext. 219 or Lew Miller in Kent/Sussex County @ 302-933-3404) of the allegation. If the PM# 46 Coordinator is not available, tell the secretary that you need to speak with someone about an abuse allegation. The secretary will put you in touch with a person to whom you can report the abuse.
- If the office is closed (holidays, weekends, after hours), call the DDDS on-call worker, as per policy.
- Immediately report the allegation (except for significant injury) to the Division of Long Term Care Resident Protection (DLTCRP) by telephoning 1-877-453-0012.

Delaware Health and Social Services
Division of Developmental Disabilities Services
Dover, Delaware

Title: **Abuse, Neglect, Mistreatment, Financial Exploitation and Significant Injury**

Approved By: 5/19/09
Acting Division Director

Written/Revised By: **DDDS Policy Committee** **Date of Origin:** **January, 2006**

I. Purpose

To protect the right of the individuals served by the Division of Developmental Disabilities Services (DDDS) to be free from abuse, neglect, mistreatment, financial exploitation and significant injury.

To establish standardized procedures for the reporting, investigating and follow-up of all incidents involving suspected abuse, neglect, mistreatment, financial exploitation and significant injury.

II. Policy

To safeguard individuals served by the Division of Developmental Disabilities Services (DDDS) from any form of abuse, neglect, mistreatment, financial exploitation and significant injury. DDDS policies shall be in compliance with the Delaware Health and Social Services Policy Memorandum #46 (DHSS PM#46, revised 03/11/05).

III. Application

All Division of Developmental Disabilities Services (DDDS) Staff and Volunteers
All DDDS Contractors and Providers

IV. Definitions

A. Abuse:
1. Physical Abuse - the unnecessary infliction of pain or injury to an individual receiving services. This includes but is not limited to hitting, kicking, pinching, slapping, pulling hair, or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.
2. Emotional Abuse - ridiculing or demeaning an individual receiving services, making derogatory remarks or cursing directed towards a consumer, or threatening to inflict physical or emotional harm to a consumer.

B. Neglect shall include the following:
1. Lack of attention to the physical needs of an individual receiving services including but not limited to toileting, bathing, meals and safety (to include supervision).
2. Failure to report health problems or changes in health problems or changes in health condition, of an individual receiving services, that may have the potential to cause adverse effects, to an immediate supervisor or medical professional.
3. Failure to carry out a prescribed treatment plan for an individual receiving services.
4. A knowing failure to provide adequate staffing which results in a medical emergency to an individual receiving services.

C. Mistreatment - the inappropriate use of medications, isolation or physical or chemical restraints on or of an individual receiving services.

D. Financial exploitation - the illegal or improper use of an individual's resources or financial rights by another person, whether for profit or other advantage.

E. Significant Injury - an injury which is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or function(s) which cannot be justified on the basis of medical diagnosis or through internal investigation.

F. Individual Served to Individual Served Incidents - an incident that involves interactions/altercations between at least two (2) individuals receiving services.

G. Internal Investigation - a systematic collection of information for the purpose of describing and explaining an event(s) not described in the PM #46 or in this DDDS policy but warranting investigation (i.e., non-significant injuries, etc.).

H. Preliminary Investigation - a systematic collection of information for the purpose of determining whether there is reason to suspect abuse, neglect, mistreatment, financial exploitation or significant injury, as defined in the PM #46 or in this DDDS policy.

I. Comprehensive Investigation - a systematic collection of information for the purpose of describing and explaining an event(s) alleged to be abuse, neglect, mistreatment, financial exploitation or significant injury, as per the DHSS Policy Memorandum #46 or this DDDS policy.

J. Outcome Memo- a memorandum that includes a brief description of the alleged incident, conclusions based on the investigation and recommendations for improvement.

K. IRCuser- Incident Referral Center which is a department of the DLTCRP.

L. Report of Findings- a standardized DHSS template used to document facts relative to an investigation.

M. Director of Community Services/Adult Special Populations - the persons authorized with administrative duties and powers for Community Services and Adult Special Populations (i.e., Director of Community Services/Designee or Director of Adult Special Populations/Designee).

N. Executive Director of Stockley Center - the person authorized with administrative duties and powers and the assigned recipient of PM #46 allegations for Stockley Center and his/her designee.

O. Division Director's Designee- the person authorized on behalf of the Division Director to review reports of abuse, neglect, mistreatment, financial exploitation and significant injury investigations.

P. Regional PM #46 Coordinator - the person assigned in the Northern and Southern regions of Community Services/Adult Special Populations to receive allegations of abuse, neglect, mistreatment, financial exploitation and significant injuries, determine the required scope of the investigation, coordinate and/or initiate an investigation, notify all appropriate persons and track all activity related to the investigation until its completion.

Q. Immediately - With respect to reporting allegations of abuse, neglect, mistreatment, financial exploitation or significant injury, immediately shall mean as soon as the situation is stabilized (e.g., actions have been taken to provide treatment, comfort and safety to individuals involved).

V. Standards

A. As defined above, all actions of abuse, neglect, mistreatment, financial exploitation and significant injury shall be prohibited toward any individual receiving services (respite, community residential, Stockley Center, or day program/vocational) managed or funded by the DDDS.

B. All DDDS employees or contract providers who have reason to suspect abuse, neglect, mistreatment, financial exploitation or significant injury shall complete the following in this order of priority:

1. Take immediate action, as necessary to treat (medically if needed), comfort and protect the individual(s) involved;

2. Immediately notify the applicable PM #46 Coordinator or Executive Director at either Stockley Center or in the DDDS Northern and Southern regions of Community Services/Adult Special Populations and report the allegation;

3. Immediately notify the assigned DDDS on-call worker to report the allegation, during non-traditional working hours or if the PM #46 Coordinator cannot be contacted;

4. Immediately makes a verbal report to the Division of Long Term Care Residents Protection by telephoning the 24 hour toll free number @ 1-877-453-0012 (if the alleged victim resides at Stockley Center or in a DDDS supported residential setting).

C. The standards for reporting allegations of abuse, neglect, mistreatment, financial exploitation or significant injury of an individual who receives DDDS funded services, to the respective PM #46 Coordinator, shall apply whether the alleged offender is a staff person of a residential arrangement or not. Furthermore, the standards shall apply whether or not the alleged offense occurred on or off the grounds of the residential arrangement or day program. Individuals served to individuals served incidents shall also be reported if there is reason to suspect that they occurred as a result of staff negligence.

D. The telephone number to the DLTCRP, the name and telephone number for the applicable PM #46 Coordinator and the on-call number for use during non traditional working hours shall be conspicuously posted in each DDDS office building, residential area and day/work program area.

V. Standards (continued)

E. **Stockley Center employees and their contractors** shall refer to the ICF/MR's internal procedures for further details relative to reporting and investigating allegations of (physical or emotional) abuse, neglect, mistreatment, financial exploitation, significant injuries or injuries of an unknown source.

F. Only people who have successfully completed investigative training approved by DDDS shall be permitted to conduct investigations. Community Services/ASP contracted agencies shall notify the applicable PM #46 Coordinator of the names of their trained investigators and their credentials.

G. The assigned agency investigator shall not have routine work assignments associated with the home/person under investigation so as to minimize a potential conflict of interest.

H. All persons covered under the scope of this policy shall be subject to disciplinary action, up to and including termination, for failure to cooperate with an abuse investigation.

I. The decision to notify the police shall be made on an individual basis. The police shall generally be contacted when there is an allegation of sexual assault, physical abuse resulting in the need for medical care and neglect resulting in the need for medical care, theft/financial exploitation of resources or significant injury. The Division of Long Term Care Resident Protection (Investigative Section Chief) shall be contacted for consultation if there is any uncertainty relative to the need for police involvement.

J. The decision to relocate/remove staff or individuals served from their working/living environment shall be made by the Executive Director of Stockley Center, the Director of Community Services, the Director of Adult Special Populations or the Director of the applicable contracted agency. Elements to be considered when deciding to remove or relocate staff or consumer shall be made on an individual basis and include the following:
   1. propensity for intimidation of the alleged victim by the alleged offender;
   2. alleged victim's fear of the alleged offender;
   3. alleged victim's susceptibility to being victimized;
   4. request of the family or alleged victim;
   5. severity of the alleged offense;
   6. alleged offender's history of similar offenses;
   7. health and safety risk to alleged victim or other consumers;
   8. existing evidence strongly suggests that physical abuse did occur;
   9. the protection of the accused (e.g., retaliation has been implied).

K. Efforts shall be made not to disrupt the individual's home and or day/work setting, rather relocation shall be made by the involved staff person whenever possible and as needed.

VI. **Standards** (continued)

L. Initial notification to family of allegation -

1. (alleged victim) expressly communicates that he/she do not want this information released.

2. Notification re: allegations of abuse, neglect, mistreatment, financial exploitation or significant injury shall always be made to the legal guardian of person and guardian of property in exploitation cases, when the alleged victim cannot make an informed decision.

3. Initial notification to the contact person shall only include that an allegation of abuse, neglect, mistreatment, financial exploitation or significant injury has been received, reassurance that the person is safe and protected and that an investigation has been initiated.

4. Interim communications with the contact person shall be made if the investigation exceeds ten (10) working days. Contact persons shall only be advised that the investigation is still pending and that the person continues to be protected.

M. Timeliness of investigations (Report of Findings) shall be as follows:
Stockley Center- 5 working days for completion per tag # W156 of the ICF/MR regulations. Refer to Stockley Center procedures for more detail.

N. Community Services and Adult Special Populations- 10 calendar days total for the completion of the Report of Findings, review by the Regional PM #46 Coordinator and Director of Community Services/Adult Special Populations and submission to the Division Director's Designee. Agency investigators shall submit their investigative report, via the Report of Findings, and all documentary evidence within 5 calendar days of being contacted by the DDDS PM #46 Coordinator relative to initiating an investigation.

O. Notification re: the completion of the investigation shall always be made to the individual receiving services, guardian of person and primary family contact person except when the individual (victim) expressly communicates that he/she does not want this information released.

P. Notification of completion shall only include the fact that the internal investigation has been completed, actions have been taken to protect the individual and/or provide medical assistance, and that a further level review will occur by the Division of Long Term Care Resident Protection (DLTCRP) and/or the Office of the Attorney General/Medicaid Fraud Unit.

Q. The individual or his/her guardian, the Division Director Designee and the DDDS employee identified as the alleged offender (or the contracted agency director) shall be notified by the DLTCRP, at the conclusion of their investigation, of the status of the case, unless prohibited by law.

R. The Executive Director of Stockley Center and the Directors of Community Services/Adult Special Populations shall contact the appropriate person(s) or agency to request completion of specific recommendations and/or plan of correction. Written verification shall also be requested from the appropriate person(s) or agency relative to completion of the recommendations and/or plan of correction.

V. Standards (continued)

S. The Executive Director of Stockley Center or designee, the Directors of Community Services/Adult Special Populations or designee shall monitor that the requested recommendations and/or plan of correction have been completed. They shall also document individual and system changes that were made as a result of a PM #46 investigation. The aforementioned information shall be tracked on an electronic database.

T. The Regional PM #46 Coordinators and the Executive Director of Stockley Center or designee shall electronically track PM #46 allegations and related information to minimally include the investigative case number, victim's name, offender's name, date of required notifications, type of allegation(s), date allegation was reported to PM #46 Coordinator, place of reported incident, type of abuse investigation completed, outcome of the investigation, time entered onto the Adult Abuse Registry and results of criminal prosecution, if known.

U. The DLTCRP shall be responsible for routinely reviewing investigative reports.

V. Annual reports shall be prepared and submitted by the regional PM #46 Coordinators to the Division Director's designee, on the approved format, relative to the frequency and trends of abuse, neglect, mistreatment, financial exploitation and significant injury allegations, as defined in this policy.

W. The Division Director's designee shall submit a statistical and trending report to the Risk Management Committee as requested by the RMC Chairperson or Coordinator.

X. The HIPAA Privacy Rule relative to disclosure of protected health information shall always be followed (45 CFR Part 164).

Y. The investigative process shall be confidential and not subject to disclosure both pursuant to 24 Del. C., section 1768 and because it is privileged under the governmental privilege for investigative files.

VI. Procedures

Responsibility	Action
Eye witness/person with reason to suspect abuse, neglect, mistreatment, financial exploitation, significant injury	1. Completes the following upon having reason to suspect abuse, neglect, mistreatment, financial exploitation or significant injury (in this order of priority): a. Immediately arranges for medical treatment (if necessary), comforts and protects the individual; b. Immediately notifies the applicable DDDS PM #46 Coordinator or Executive Director of Stockley Center to report the allegation;

VI. Procedures (continued)

	c. Immediately notifies the assigned on-call-worker to report the allegation if during non-traditional working hours or if the PM #46 Coordinator cannot be contacted. d. Immediately notifies the DLTCRP via a verbal report by telephoning 1-877-453-0012 (if the alleged victim resides at Stockley Center or in a DDDS supported residential site).
	2. Documents in the COR (ID Notes) that the applicable PM #46 Coordinator/S.C. Executive Director was contacted. Details of the allegations shall not be documented in the COR. An example of such documentation is as follows: PM #46 Coordinator (name) was contacted on (date). PM #46 Coordinator (name) can be contacted for more information. 3. Stockley Center's employees and contractors shall refer to the ICF/MR's internal procedures for further details relative to reporting and investigating allegations of (physical or emotional) abuse, neglect, mistreatment, financial exploitation, significant injuries or other injuries of an unknown source.
Regional PM #46 Coordinator S.C. Executive Director or Designee	4. Completes the following upon receiving a report of alleged abuse, neglect, mistreatment, financial exploitation or significant injury: a. Determines the required scope of the investigation (i.e., internal, preliminary, comprehensive); b. Coordinates or personally initiates the completion of the required investigation; For allegations within the scope of the PM #46, minimally notifies via e-mail the Division Director and Director's Designee, DHSS Secretary's Office, Division of Long Term Care Resident Protection (DLTCRP) and the Office of the Attorney General, Medicaid Fraud Unit. Notification shall be made within

VI. Procedures (continued)

	eight (8) hours. **Stockley Center** - refer to internal procedures for more details relative to required contacts. **Community Services and Adult Special Populations**- refer to exhibit for more details relative to notifications.
	5. Notifications shall include the alleged victim's name(s), brief description of the alleged incident, date of alleged incident and alleged victim's place of residence . 6. Submits DLTCRP Incident Report to DLTCRP IRCuser if allegation is within the scope of the PM #46. 7. Notifies the police when applicable.
Exec. Dir. of Stockley Center, Director of Community Services or Special Populations, Director of contracted agency or his/her designee	8. Makes decision relative to alleged offender's job duties while the investigation is ongoing and outcome is pending. Informs employee's supervisor of recommendation for suspension, re-assignment, changes in job assignment including work area, schedule, etc.
DDDS Social Worker/Case Manager or assigned DDDS designee during non-traditional working hours	9. Notifies the individual served, guardian of person (and property if allegation involves financial exploitation) and primary family contact person of abuse allegation except when the individual (victim) expressly communicates that he/she does not want such information released or the release of information has the potential to do harm.
DDDS Social Worker/Case Manager	10. Communicates with the individual served, guardian and primary family contact if the investigation exceeds ten (10) working days. Family shall be advised that the investigation is on-going and that their relative continues to be safe.
PM #46 Coordinator S.C. Executive Director or Designee	11. Coordinates the completion of an investigation relative to the allegation within the timeframe identified in Standard N of this policy. 12. Completes and/or reviews and signs Report of Findings.

VI. Procedures (continued)

Community Services PM #46 Coordinator	13. **Community Services only:** Submits signed Report of Findings, copies of all applicable attachments and outcomes memo to Director of Community Services/Adult Special Populations, as applicable, within two (2) days of receipt.
Executive Director of Stockley Center, Director of Community Services/Adult Special Populations	14. Reviews Report of Findings, applicable attachments and outcomes memo. 15. Documents comments, if applicable, and signature on the Report of Findings. 16. Delivers outcomes memo, original signed Report of Findings and copies of all attachments to the Director's Designee within two (2) days of receipt.
Division Director's Designee	17. Reviews Report of Findings with attachments and outcomes memo. 18. Documents comments and signs original Report of Findings and outcome memo. 19. Returns signed Report of Findings and outcome memo to Stockley Center Executive Director or Director of Community Services/Adult Special Populations. 20. Sends copy of the outcome memo prepared by the Director of Community Services or Director of Adult Special Populations to the Community Services PM #46 Coordinator for filing. 21. Forwards a copy of the signed Report of Findings to DLTCRP within one (1) day of receipt.
DDDS Social Worker/ Case Manager	22. Notifies the individual served and others who received the initial notification (refer to Standard M) that the internal investigation has been completed, actions have been taken to protect the individual and/or provide medical assistance, if applicable, and that a further level review will be completed by the Division of Long Term Care Resident Protection and/or the Office of the Attorney General/Medicaid Fraud Unit. 23. Documents in the ID Notes of the COR that the individual served/family/guardian contact was made.

VI. Procedures (continued)

Verification of Follow-up to Recommendations

Stockley Center: Executive Director	24. Sends recommendations from PM# 46 investigation to the appropriate executive staff member(s) for implementation.
S.C. Executive Staff Member	25. Assigns area supervisor to implement recommendations.
S.C. Area Supervisor	26. Implements recommendations. 27. Sends documentation to the applicable Executive Staff Member re: verification that the recommendations were implemented.
S.C. Executive Staff Member	28. Reviews verification from Area Supervisor and forwards such to the Executive Director. .
S.C. Executive Director/Designee	29. Tracks verification of implementation of recommendations and individual/system changes that were made as the result of the PM #46 investigation.
Community Services/Adult Special Populations: Director of Community Services/Adult Special Populations	30. Sends request for follow-up to the appropriate agency Director and/or Regional Program Director. 31. Requests written documentation describing in detail how and when the recommendations were implemented.
Assigned Administrative Assistant	32. Tracks the request and receipt of responses to/from the agency Director(s) and Regional Program Director(s).
Applicable Agency Director and/or Regional Program Director	33. Coordinates implementation of recommendations. 34. Sends documentation to the Director of Community Services/Adult Special Populations re: verification of how and when the recommendations were implemented.
Director of Community Services/Adult Special Populations	35. Reviews response (#34) for completeness. Forwards recommendations and the subsequent written verification of their implementation to the applicable Regional Program Director (for non-foster homes) or Regional QA Director (for foster homes only).

VI. Procedures (continued)

Regional Program Director	36. Assigns ID Team member(s) to verify that corrective actions (see #34) have been implemented in non-foster home sites. 37. Sends report to Director of CS/ASP and Director of Quality Assurance re: the status of the verification observation.
Regional Quality Assurance Director	38. Assigns Program Evaluator to verify that corrective actions (see #34) have been implemented in foster homes. 39. Sends report to Director of CS/ASP and Director of Quality Assurance re: the status of the verification observation.
Director of Community Services/Adult Special Populations	40. Forwards verification to the Administrative Assistant for entry into the abuse recommendation tracking data base. 41. Ensures that individual/system changes that were made as the result of the abuse investigation are documented in a data base.
Regional PM #46 Coordinator	42. Prepares and submits annual fiscal year reports to the Division Director's Designee, by July 15th (refer to Standard V).
Division Director's Designee	43. Submits statistical and trending report to the Risk Management Committee as requested by the RMC Chairperson or Coordinator. 44. Sends e-mail notification to agency director, Stockley Center Executive Director, Community Services Director and/or Director of Adult Special Populations, as applicable, to advise of the DLTCRP outcome.

VII. References

A. Delaware Health and Social Services Policy Memorandum #46
B. Delaware Code, Title 16, sections 1131-1132
C. Stockley Center's Reporting and Investigation Procedure For: PM #46 and Sutures or Fractures not Considered as a PM #46

VIII. Exhibits

A. PM #46 Coordinator's Notification Protocol
B. DLTCRP Incident Report
C. Report of Findings
D. DHSS Policy Memorandum #46
E. Protocol for Responding to Allegations of Sexual Assault

Exhibit A

Community Services/Adult Special Populations
PM #46 Coordinator's Notification & Dissemination Protocol

Notification Protocol To Report Receipt of Allegation

PM #46: Sends e-mail to the Division Director, Division Director's designee, Director of Community Services/Adult Special Populations, DHSS Secretary's Office, the assigned Regional Program Director, the DLTCRP via IRCuser and Office of the Attorney General/Medicaid Fraud Unit briefly notifying them of the allegation.

Sends DLTCRP Incident Report Form to DLTCRP via IRCuser

Non-PM #46: Sends e-mail to the Division Director, Division Director's designee, Director of Community Services/Adult Special Populations and the assigned Regional Program Director.

Notification Protocol After Report of Findings is Received and Reviewed

PM #46: Sends e-mail to the Division Director, Division Director's designee, Director of Community Services/Adult Special Populations, DHSS Secretary's Office, assigned Regional Program Director and DLTCRP via IRCuser that alerts them to the date that the Report of Findings was reviewed and delivered to the Director of Community Services/Adult Special Populations.

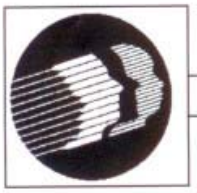
Non-PM #46: For allegations that appear to be ***substantiated,*** sends e-mail to the Division Director, Division Director's designee, Director of Community Services/Adult Special Populations, the assigned Regional Program Director and the DLTCRP via IRCuser. The e-mail shall alert the recipient to the date that the Report of Findings was reviewed and delivered to the Director of Community Services/Adult Special Populations. Indicate that the allegation ***appears to be substantiated*** based on information in the Report of Findings and its attachments and requires further review by the DLTCRP.

For allegations that appear to be ***unsubstantiated***, sends e-mail to the Division Director, Division Director's designee, Director of Community Services/Adult Special Populations and the assigned Regional Program Director that alerts them to the date that the Report of Findings was reviewed and delivered to the Director of Community Services/Adult Special Populations.

Dissemination of Report of Findings & Attachments

PM #46 and Non-PM #46: Delivers a hard copy of the Report of Findings signed by the PM #46 Coordinator, copies of all attachments and an outcome memo prepared by the PM #46 Coordinator to the Director of Community Services/Adult Special Populations. Also sends an electronic copy of the DDDS outcome memo to the Director of Community Services/Adult Special Populations. The outcome memo received by the PM #46 Coordinator by the agency provider is for the PM #46 Coordinator's reference when preparing the outcome memo for the Director of Community Services/Adult Special Populations and is to be filed in the PM #46 file.

EXHIBIT B



Division of Long Term Care 1-877-453-0012
Residents Protection Fax: 1-877-264-8516
Department of Health and Social Services

Initial Submission ☒
5 Day Follow-up ☐

Incident Report

DLTCRP use only:
Date _____ Time ____ : ____ am Assign Refer/ Comp.# _____

Please print or write legibly

Reporting Person: Date _____ Time _____ : _____ pm

Name _____ **Position/Relationship**

Street _____ **Phone** ( )

City _____ **State** _____ **Zip**

Incident: Death ☐ Alleged Abuse ☐ Alleged Neglect ☐
Date _____ Time _____ : _____ pm pm Alleged Mistreatment ☐ Fall ☐
Theft/Missing Items ☐ Unknown Source ☐

Facility _____ **Phone** (

Street _____ **City** _____ **Zip**

Resident _____ **DOB** _____ **Sex:** f

Injury: Severe ☐ Moderate ☐ Negligible ☐ None ☐ **Alert & Oriented:** n

Brief Description:
(Include witness information)

Physician Notified ☐ Family Notified ☐

Accused (If applicable):

1. Name Position DOB
Sex: m SS# Phone( ) Lic/Cert #
Street City State Zip

2. Name Position DOB
Sex: m SS# Phone( ) Lic/Cert #
Street City State Zip

Use separate sheet for additional information.

EXHIBIT C

CONFIDENTIAL

DHSS POLICY MEMORANDUM #46 PRESCRIBES THE STANDARDIZED REPORTING AND INVESTIGATION OF SUSPECTED ABUSE, NEGLECT, MISTREATMENT, FINANCIAL EXPLOITATION AND SIGNIFICANT INJURY OF RESIDENTS/CLIENTS RECEIVING SERVICES IN RESIDENTIAL FACILITIES OPERATED BY OR FOR DHSS.

Information contained in the standardized PM-46 Report of Findings is CONFIDENTIAL AND PRIVILEGED under 24 Del.C. Section 1768 and the governmental executive privilege for investigative files.

Distribution of this Report of Findings, and the information it contains, must be restricted to only those persons who are authorized to see it.

INVESTIGATOR, please list all persons to whom you have distributed this Report of Findings:

Name	Agency

CONFIDENTIAL FACILITY CASE #_____

DELAWARE HEALTH AND SOCIAL SERVICES

PM 46

REPORT OF FINDINGS

DPH	DDSS	DSAMH
___DHCI	___ Stockley Ctr.	___ DPC
___ EPB	___ CS/ASP.	___ SUB.AB.
___ GBHC		___ CMH

ALLEGATION TYPE:

_____ ABUSE
___ Physical
___ Emotional

_____ NEGLECT

_____ MISTREATMENT

_____ FINANCIAL EXPLOITATION

_____ SIGNIFICANT INJURY INVOLVED

Victim Name:

Sex: **DO.B.:** **Age:**

Diagnosis:

Communication Style:

Facility Admission Date:

Contractor & Program Name:

IF victim information requested above is NOT known please provide:

Height: **Weight:** **Race:**

Other Identifying Marks:

ALLEGED INCIDENT

Date:

Time:

Location:

INITIATOR OF REPORT

Name:

Title:

Report Date:

Accused Name:
Sex: M F

Address:

Date of Birth:
Phone #:

Occupation:

License/Certificate #

IF accused information requested above is NOT known please provide:

Height: **Weight:** **Race:**

Other Identifying Marks:

INVESTIGATORY PROCESSES

Investigation Start Date: **Time:**

Completion Date:

Investigator:

TO BE COMPLETED BY DIVISION:
Notifications:

	NAME	DATE	TIME	REPORTED BY
FACILITY DIRECTOR				
PM 46 MANAGER				
DOCTOR				
DIVISION DIRECTOR				
DHSS SECRETARY				
DLTCRP				
MEDICAID FRAUD UNIT				
OTHER				

ALLEGATION SUMMARY: (DESCRIPTION OF ORIGINAL REPORT RECEIVED BY INVESTIGATOR):

Nature of allegation (Who, What, When, Where, How):

Source of allegation (Name & Title):

Date and time of allegation: Reason for delay between time of incident and time reported, if any:

SUMMARY OF INVESTIGATION FINDINGS

Name of Investigator:

1. MANNER IN WHICH THE INVESTIGATOR BECAME INVOLVED IN THE INCIDENT:
Notified by:
When:
How:

Date and time the investigation began:
Date and time the investigation ended:
If investigation did not start immediately, explain:

2. SECURING THE SCENE OF THE ALLEGED INCIDENT:

Individual who secured scene (Name & Title):
Date and time scene was secured:
Manner in which scene was secured:
If scene was not secured, explain:

3. INTERVIEWS CONDUCTED DURING THE INVESTIGATION:
(Note Reasons for Delays)

Name & Title of Interviewee	Date of Interview	Time of Interview	Location of Interview	Interviewee's Role (i.e. Accuser, Subject, Witness, etc.)

4. INTERVIEWS WHICH COULD NOT BE CONDUCTED:

Name & Title of Individual	Individual's Role (i.e., Accuser, Subject, Witness, etc.)	Reason interview not conducted

5. MENTAL & PHYSICAL STATUS PRIOR TO INCIDENT:

6. ANY CHANGE IN MENTAL & PHYSICAL STATUS SINCE THIS INCIDENT TOOK PLACE:

( ) Yes ( ) No

If yes, explain:

7. REPORT TO FAMILY/GUARDIAN: ( ) Yes ( ) No

Name & Relationship of Person Notified:

Date & Time of Notification:

Notified by Whom:

8. IF FAMILY/GUARDIAN NOT NOTIFIED, GIVE REASON:

9. WAS MEDICAL ATTENTION REQUIRED FOR THE INDIVIDUAL: ( ) Yes ( ) No

Name of Physician Evaluating Individual:
Date & time of treatment:
Describe treatment:

10. SUMMARY OF TESTIMONIAL EVIDENCE:
(Summarize the KEY points of all the interviews you conducted)

11. SUMMARY OF DOCUMENTARY EVIDENCE:
(Summarize the SIGNIFICANCE of all applicable patient records, medical reports, employee records)

12. SUMMARY OF PHYSICAL EVIDENCE & DEMONSTRATIVE EVIDENCE:
(Summarize the SIGNIFICANCE of any objects, arrangement of objects, substances, or conditions of a person's body. Also, review the significance of all applicable photographs, diagrams, etc.)

13. INVESTIGATION SUMMARY:

Signature: _____ _____
Investigator *Date*

Signature: _____ _____
PM #46 Coordinator *Date*

DDDS Director of Stockley Center or Community Services/Adult Special Populations

Reviewed/Approved: YES NO

Comments:

_____ _____
DDDS Director of S.C, CS, or ASP *Date*

DDDS Division Director/Designee

Reviewed/Approved: YES NO

Comments:

_____ _____
Division Director/Designee *Date*

EXHIBIT D

Department of Health and Social Services

DHSS Policy Memorandum 46 April 18, 2008
Subject: Injury to Clients

I. PURPOSE

a. To protect the right of residents/clients of Delaware Health and Social Services (DHSS) facilities to be free from abuse, neglect, mistreatment, financial exploitation or significant injury.
b. To require that each Division that has, or contracts for the operation of, residential facilities establish standardized written procedures for the reporting, investigation and follow up of all incidents involving suspected resident/client abuse, neglect, mistreatment, financial exploitation, or significant injury.
c. To require that all DHSS residential facilities comply with The Patient Abuse Law (Title 16, Chapter 11, section 1131, et seq.) and Title 29, Chapter 79, sections 7970 and 7971 (Attachments I and II); and that all Medicaid and/or Medicare certified long term care facilities and Intermediate Care Facilities for Mental Retardation (ICF/MR) comply with the federal regulations (42 CFR) and State Operations Manual for such facilities.
d. To require that all DHSS residential facilities comply with all applicable state and federal statutes, rules and regulations pertaining to suspected abuse, neglect, mistreatment, financial exploitation, or significant injury.

II. SCOPE

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

III. DEFINITIONS

a. Abuse shall mean:
    1. Physical abuse the unnecessary infliction of pain or injury to a resident or client. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.

2. Emotional abuse - This includes, but is not limited to, ridiculing or demeaning a resident or client, cursing or making derogatory remarks towards a resident or client, or threatening to inflict physical or emotional harm to a resident or client.

b. Neglect shall mean:

1. Lack of attention to the physical needs of the resident or client including, but not limited to, toileting, bathing, meals, and safety.
2. Failure to report client or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.
3. Failure to carry out a prescribed treatment plan for a resident or client.
4. A knowing failure to provide adequate staffing (where required) which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the department, all so as to evidence a willful pattern of such neglect. (Reference 16 DE Code, §1161-1169)

c. Mistreatment shall mean the inappropriate use of medications, isolation, or physical or chemical restraints on or of a resident or client.

d. Financial exploitation shall mean the illegal or improper use or abuse of a client's or resident's resources or financial rights by another person, whether for profit or other advantage.

e. Significant Injury is one which is life threatening or causes severe disfigurement or significant impairment of bodily organ(s) or functions which cannot be justified on the basis of medical diagnosis or through internal investigation.

f. Residential Facility shall include any facility operated by or for DHSS which provides supervised residential services, including Long Term Care licensed facilities, group homes, foster homes, and community living arrangements.

g. Long Term Care Facility is any facility operated by or for DHSS which provides long term care residential services and the Delaware Psychiatric Center.

h. High managerial agent is an officer of a facility or any other agent in a position of comparable authority with respect to the formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

IV. RESPONSIBILITIES

a. The Director, or his/her designee of each Division within the scope of this policy, is hereby designated as an official DHSS designee under the State Mandatory Patient Abuse Reporting Law.

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

V. STANDARDS/PROCEDURES

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

a. Employee(s) of the residential facility, or anyone who provides services to residents/clients of the facility, who have reasonable cause to believe that a resident/client has been abused, mistreated, neglected, subjected to financial exploitation, or has received a significant injury shall:
    1. Take actions to assure that the residents/client(s) will receive all necessary medical attention immediately.

2. Take actions to protect the residents/client(s) from further harm.
3. Report immediately to the Division of Long Term Care Residents Protection (if the incident occurred in a long term care facility or if the client was a resident of a long term care facility); and to the Department of Services for Children, Youth and Their Families/Division of Family Services (if the client is a minor, as required under 16 Del. C., section 903). It is essential that the reporting person ensure that the report be made to the appropriate division designee immediately.
4. Report immediately to the facility/program director and the Division's designated recipient(s) of PM 46 reports.
5. Follow up the verbal report with a written initial incident report to the persons/ agencies named in (a) 3 and (a) 4 (above) within 48 hours.

b. In addition to the above named persons, any other person may make a report to a staff person of the facility or to the Division director or his/her designee. Such a report shall trigger activities under V(a), items 1 through 5. Each written initial report of suspected abuse, neglect, mistreatment, financial exploitation, or significant injury (completed by the reporting employee) must include:
    1. The name and gender of the resident or client.
    2. The age of the resident or client, if known.
    3. Name and address of the reporter and where the reporter can be contacted.
    4. Any information relative to the nature and extent of the abuse, neglect, mistreatment, financial exploitation or significant injury.
    5. The circumstances under which the reporter became aware of the abuse, neglect, mistreatment, financial exploitation or significant injury.
    6. The action taken, if any, to treat or otherwise assist the resident or client.
    7. Any other information that the reporter believes to be relevant in establishing the cause of such abuse, neglect, mistreatment, financial exploitation or significant injury.
    8. A statement relative to the reporter's opinion of the perceived cause of the abuse, neglect, mistreatment, financial exploitation or significant injury (whether a staff member or facility program negligence).

d. The Division's designated recipient of PM 46 reports shall report all allegations of abuse, neglect, mistreatment, financial exploitation and significant injury, to the Office of the Secretary; the Office of the Attorney General/Medicaid Fraud Control Unit (for Medicaid and/or Medicare certified long term care facilities); the appropriate state licensing agency for the program, if applicable; and the Division Director or designee, within 24 hours of receiving notification of such.

e. In instances where there is immediate danger to the health or safety of a

resident/client from further abuse, mistreatment or neglect; if criminal action is suspected; or if a resident/client has died because of suspected abuse, mistreatment, neglect or significant injury, the Division Director or his/her designee shall immediately notify the appropriate police agency.

The Division of Long Term Care Residents Protection, and the Office of the Secretary, shall be notified if the police were contacted. Further, Division Director or his/her designee shall notify the Office of the Attorney General/Medicaid Fraud Control Unit, the Office of the Secretary, and the Chief Medical Examiner, if a resident/client has died because of suspected abuse, mistreatment, neglect, significant injury, or as a result of any cause identified by 29 Del. C., section 4706.

f. The Division Director or his/her designee shall review the initial incident report and initiate an investigation into the allegations contained in the report. The investigation, with a written report, shall be made within 24 hours, if the Division has reasonable cause to believe that the resident's/client's health or safety is in immediate danger from further abuse, neglect or mistreatment. Otherwise, the investigation and written Investigative Report, up to and including the Division Director's or designee's signed review of the report, shall be made to the Division of Long Term Care Residents Protection (DLTCRP) within 10 days. This timeframe may be extended by DLTCRP if extenuating facts warrant a longer time to complete the investigation. If the facility is a Medicaid-Medicare certified long-term care facility, or an ICF/MR facility, the report of suspected abuse, neglect, mistreatment, financial exploitation or significant injury shall be sent to the appropriate authorities, as required in the respective regulations under 42 CFR, within 5 working days of the incident.

g. The investigative process shall be confidential and not subject to disclosure both pursuant to 24 Del. C., section 1768 and because it is privileged under the governmental privilege for investigative files. Each Investigative Report shall be labeled as confidential and privileged, pursuant to 24 Del. C., section 1768. Each investigation shall include the following:
    1. A visit to the facility or other site of incident.
    2. A private interview with the resident or client allegedly abused, neglected, mistreated, whose finances were exploited or whose injury was significant.
    3. Interviews with witnesses and other appropriate individuals.
    4. A determination of the nature, extent and cause of injuries, or in the case of exploited finances, the nature and value of the property. The identity of the person or persons responsible.
    6. All other pertinent facts.
    7. An evaluation of the potential risk of any physical or emotional injury to any other resident or client of that facility, if appropriate.

h. A written report (Investigative Report) containing the information identified in V (g) shall be completed within the time frames identified in

V (f) and shall include a summary of the facts resulting from the investigation. (Attachment 3)

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

j. All Investigative Reports shall be forwarded by the reporting division, forthwith, to the Division of Long Term Care Residents Protection. The Division of Long Term Care Residents Protection shall complete the investigation by making a determination of findings and documenting their conclusions.

k. If a determination is made at the Division level (upon consultation with the Division of Management Services, Human Resources office) that discipline is appropriate, the Investigative Report shall be forwarded to the Human Resources office. Human Resources shall determine the appropriate level of discipline, forward their recommendations to the Office of the Secretary and to the originating division for implementation, and proceed as appropriate.

l. The Office of the Secretary shall be informed by the Division of Long Term Care Residents Protection, in writing, of the results of the investigation, including the findings and recommendations, within 5 days following the completion of the investigation.

m. The Division Director or designee shall notify the appropriate licensing or registration board, if the incident involved a licensed or registered professional, and the appropriate state or federal agency, including the appropriate state licensing agency of the program, if applicable, upon a finding of: 1) abuse, mistreatment, neglect, financial exploitation, or significant injury; 2) failure to report such instances by a licensed or registered professional; or 3) failure by a member of a board of directors or high managerial agent to promptly take corrective action.

n. The Division Director or designee shall notify the employee, resident/client, the guardian of the resident/client, if applicable, and the incident reporter of the results of the facility-based case resolution, unless otherwise prohibited by law. They shall also advise the parties of the fact that there is a further level of review that will occur through the Division of Long Term Care Residents Protection and/or the Office of the Attorney General/Medicaid Fraud Control Unit.

o. The Division of Long Term Care Residents Protection shall, at the conclusion of their review of the case, notify the DHSS employee (or the

agency director for contract providers), the resident/client, or the guardian of the resident/client, if applicable, and the originating Division Director or designee, of the substantiated or unsubstantiated status of the case, unless otherwise prohibited by law. The Division of Long Term Care Residents Protection shall also notify the Office of the Attorney General/Medicaid Fraud Control Unit of all substantiated cases.

VI. IMPLEMENTATION

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

VII. EXHIBITS

a. Attachment 1 - Delaware Code, Title 16, Chapter 11, Sections 1131-1140.
b. Attachment 2 - Delaware Code, Title 29, Chapter 79, Sections 7970-7971.
c. Attachment 3 - Investigative Report form

Vincent P. Meconi April 18, 2008
Vincent P. Meconi, Secretary

Exhibit E

Protocol for Responding to Allegations of Sexual Assault
Community Services/Adult Special Populations Program

I. When does an allegation of sexual assault require a medical or forensic evaluation?

When an individual receiving services alleges, either via verbal or non-verbal communication, that he/she was the victim of any of the following:

a. Contact or penetration of the vagina with the penis

b. Anal contact or penetration

c. Oral contact of the male genitalia

d. Oral contact of the female genitalia

II. What must be done immediately after receiving or understanding an allegation of sexual assault?

The following actions steps must be taken without delay or exception, in the following order of priority:

Law Enforcement

The allegation of sexual assault must be reported to the law enforcement agency in the jurisdiction where the assault allegedly occurred **immediately** following receipt of the allegation. The police contact is to be made by an administrator/designee of the reporting provider agency or the DDDS Regional PM #46 Coordinator for Shared Living homes. If there is uncertainty relative to the need to contact police, call them and let them make the decision about involvement. The notification of the allegation may be in the form of either verbal or non-verbal communication depending on the reporter's mode of communication. If you do not know where the alleged crime occurred, report it to the local police. Make sure you document the date and time that you made the contact, who you spoke to, his/her badge number and the complaint number.

Important Action Steps:

- Make immediate report with law enforcement agency;
- Follow police instructions;

- Reporting person must remain available to speak with the responding police officer and/or meet him/her at the scene;

- Contact DDDS Regional PM #46 Coordinator.

Medical Evaluation

The alleged victim must be evaluated at a hospital emergency department (emergency room), preferably by a Sexual Assault Nurse Examiner (SANE) or a medical professional who has received specialized education to perform medical forensic examinations, **as soon as the allegation is made or understood.** Staff should not delay a medical/forensic examination until he/she has collected evidence or proof that the allegation was true. The people we serve have a much higher ratio of being sexually assaulted, as they are perceived to be vulnerable and easily victimized. We must ensure that the people we serve are respected and treated just like people who do not have disabilities.

- Prior to arriving at the hospital, strongly encourage the person **NOT** to change clothing, brush teeth, clean under fingernails, wash off or brush/comb hair. **DO NOT** eat or void. All of the aforementioned may result in the loss or damage of very important evidence that can be used to identify and prosecute the perpetrator of the crime and perhaps future crimes, as well.

- The staff person accompanying the alleged victim to the hospital for a SANE examination may be requested to serve as a liaison with the SANE examiner relative to interpreting communication. Be available to the SANE examiner, as requested.

DDDS PM #46 Coordinator

Report the allegation to the DDDS PM #46 Coordinator, via telephone, during normal working hours, or the DDDS on-call worker if it is after normal working hours/weekend/holiday, **immediately after the stabilization of the situation (i.e. treatment, safety and comfort have been coordinated)**.

- PM #46 Coordinator will identify in his/her Outcome Memo if the investigation included an allegation of sexual assault, sexual conduct or offensive touching. It makes no difference if the allegation(s) was made at the onset of the investigation or it later developed during the course of the investigation.

- PM #46 Coordinator will describe in the Outcome Memo the nature of the allegation, action that has been taken and any action that requires follow-up, if applicable.

Appendix D

TITLE 16
Health and Safety
PART II
Regulatory Provisions Concerning Public Health

CHAPTER 11. NURSING FACILITIES AND SIMILAR FACILITIES

Subchapter III. Abuse, Neglect, Mistreatment or Financial Exploitation of Residents or Patients

§ 1131. Definitions.

When used in this subchapter the following words shall have the meaning herein defined. To the extent the terms are not defined herein, the words are to have their commonly-accepted meaning.

(1) "Abuse" shall mean:

a. Physical abuse by unnecessarily inflicting pain or injury to a patient or resident. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.

b. Emotional abuse which includes, but is not limited to, ridiculing or demeaning a patient or resident, making derogatory remarks to a patient or resident or cursing directed towards a patient or resident, or threatening to inflict physical or emotional harm on a patient.

(2) "Department" shall mean the Department of Health and Social Services or its designee.

(3) "Division" shall mean the Division of Long-Term Care Consumer Protection;

(4) "Facility" shall include:

a. Any facility required to be licensed under this chapter;

b. Any facility operated by or for the State which provides long-term care residential services; and

c. The Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to § 5001 or § 5136 of this title.

(5) "Financial Exploitation" shall mean the illegal or improper use or abuse of a patient's or resident's resources or financial rights by another person, whether for profit or other advantage.

(6) "High managerial agent" means an officer of a facility or any other agent in a position of comparable authority with respect to the

formulation of the policy of the facility or the supervision in a managerial capacity of subordinate employees.

(7) "Investigation" shall mean the collection of evidence in response to a report of abuse, neglect, mistreatment or financial exploitation of a resident or patient to determine if that resident or patient has been abused, neglected, mistreated or financially exploited. The Division shall develop protocols for its investigations which focus on ensuring the safety and well-being of the patient or resident and which satisfy the requirements of this Chapter.

(8) "Mistreatment" shall include the inappropriate use of medications, isolation, or physical or chemical restraints on or of a patient or resident.

(9) "Neglect" shall mean:

a. Lack of attention to physical needs of the patient or resident including, but not limited to toileting, bathing, meals and safety.

b. Failure to report patient or resident health problems or changes in health problems or changes in health condition to an immediate supervisor or nurse.

c. Failure to carry out a prescribed treatment plan for a patient or resident.

d. A knowing failure to provide adequate staffing which results in a medical emergency to any patient or resident where there has been documented history of at least 2 prior cited instances of such inadequate staffing within the past 2 years in violation of minimum maintenance of staffing levels as required by statute or regulations promulgated by the Department, all so as to evidence a willful pattern of such neglect.

(10) "Person" means a human being and where appropriate a public or private corporation, an unincorporated association, a partnership, a government or governmental instrumentality.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 222, § 3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 550, § 1; 71 Del. Laws, c. 487, § 1; 72 Del. Laws, c. 120, §§ 1-4.)

§ 1132. Reporting requirements.

(a) Any employee of a facility or anyone who provides services to a patient or resident of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, neglected or financially exploited shall immediately report such abuse, mistreatment, neglect or financial exploitation to the Department by oral communication. A written report shall be filed by the employee or service provider within 48 hours after the employee or service provider first gains knowledge of the abuse, mistreatment, neglect or financial exploitaiton.

(b) Any person required by subsection (a) of this section to make an oral and a written report who fails to do so shall be fined not more than $1,000 or shall be imprisoned not more than 15 days, or both.

(c) In addition to those persons subject to subsection (a) of this section any other person may make such a report, if such persons have reasonable cause to believe that a patient or resident of a facility has been abused, mistreated, neglected or financially exploited.

(d) Any individual who intentionally makes a false report under this subchapter shall be guilty of a class A misdemeanor.
(e) Any correspondence or other written communication from a resident or patient to the Department, the Attorney General's Office and/or a law enforcement agency shall, if delivered to or received by a facility, be promptly forwarded, unopened, by the facility or service provider to the agency to which it is written. Any correspondence or other written communication from the Department, the Attorney General's office and/or a law enforcement agency to a resident or patient shall, if delivered to or received by the facility or other service provider, be promptly forwarded, unopened, by the facility or other service provider to such resident or patient. Failure to comply with this section shall result in a civil penalty not to exceed $1,000 per violation.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 292, § 1; 71 Del. Laws, c. 487, §§ 3, 5, 6; 74 Del. Laws, c. 196, § 1.)

§ 1133. Contents of reports.

The reports required under this subchapter shall contain the following information: The name and sex of the patient or resident; the name and address of the facility in which the patient or resident resides; the age of the patient or resident, if known; the name and address of the reporter and where the reporter can be contacted; any information relative to the nature and extent of the abuse, mistreatment or neglect, and if known to the reporter any information relative to prior abuse, mistreatment or neglect of such patient or resident; the circumstances under which the reporter became aware of the abuse, mistreatment or neglect; what action, if any, was taken to treat or otherwise assist the patient or resident; and any other information which the reporter believes to be relevant in establishing the cause of such abuse, mistreatment or neglect.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1134. State response to reports of adult abuse, neglect, mistreatment or financial exploitation.

(a) The Department shall ensure that patients or residents are afforded the same rights and protections as other individuals in the State.
(b) In addition to the persons required to report abuse, neglect, mistreatment or financial exploitation pursuant to § 1132(a) of this title, any other person, including a nursing facility resident or patient, may contact the Department to report any complaint concerning the health, safety and welfare of facility residents and patients.
(c) Establish and maintain a 24-hour statewide toll-free telephone report line operating at all times and capable of receiving reports of alleged abuse, neglect, mistreatment and financial exploitation.
(d) In responding to abuse, neglect, mistreatment and financial exploitation complaints, the Division shall:
(1) Receive and maintain reports in a computerized central data base.
(2) Acknowledge all complaints, when authorized by the person making the report. If the Division does not have jurisdiction over the complaint, its staff shall so advise the person making the complaint and shall promptly refer the complainant to the appropriate agency.
(3) Forward complaints to the appropriate Division staff who shall determine, through the use of standard operating procedures developed by

the Division, whether an investigation should be initiated to respond to the complaint. The protocols for making this determination shall be developed by the Division and shall give priority to ensuring the well-being and safety of residents and patients.

(4) Begin the investigation within 24 hours of receipt of any report or complaint that alleges the following:

a. A resident's or patient's health or safety is in imminent danger; or

b. A resident or patient has died due to alleged abuse, neglect or mistreatment; or

c. A resident or patient has been hospitalized or received medical treatment due to alleged abuse, neglect or mistreatment; or

d. If the report or complaint alleges the existence of circumstances that could result in abuse, neglect or mistreatment and that could place a resident's or patient's health or safety in imminent danger; or

e. A resident or patient has been the victim of financial exploitation or risk thereof and exigent circumstances warrant an immediate response.

(5) Contact the appropriate law enforcement agency upon receipt of any complaint requiring an investigation immediately under this section and shall provide the police with a detailed description of the complaint received. The appropriate law enforcement agency shall conduct its investigation or provide the Division, within a reasonable time period, an explanation detailing the reasons why it is unable to conduct the investigation. The Department may defer its own investigation in these circumstances until it receives appropriate guidance from the Attorney General's Office and the relevant police agency with respect to how to proceed with its investigation thereby assuring a coordinated investigation. Notwithstanding any provision of the Delaware Code to the contrary, to the extent the law enforcement agency with jurisdiction over the case is unable to assist, the Division may request that the Delaware State Police exercise jurisdiction over the case and, upon such request, the Delaware State Police may exercise such jurisdiction.

(6) Upon receipt of any report pursuant to subsection (d)(4) of this section, the law enforcement agency having jurisdiction shall conduct a full and complete criminal investigation based on their departmental policies and shall assess probable cause and effectuate arrests when appropriate. The Attorney General's Office or other law enforcement agency conducting the investigation shall keep the Division informed of the case status and all major decisions pursuant to Memoranda of Understanding between the Division and the Attorney General's Office and other relevant law enforcement agencies. The Memoranda of Understanding shall be executed within 180 days of the signing of this legislation and may be amended as needed. To the extent the criminal arrest and criminal prosecution, the Department of Justice shall keep the Division well informed of the case status and all major decisions, including but not limited to the disposition of criminal charges and the specifics of any sentencing order rendered.

(7) The Department shall have the authority to secure a medical examination of a nursing facility resident or patient upon the consent of the resident or patient without the consent of the service provider if the resident has been reported to be a victim of abuse, neglect or mistreatment;

provided, that such case is classified as an investigation pursuant to this subchapter.

(8) When a written report of abuse, neglect, mistreatment or financial exploitation is made by a person required to report under § 1132(a) of this title, the Division shall contact the person who made such report within 48 hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information, including medical records, which may be pertinent.

(9) The Division shall conduct an investigation involving all reports which, if true, would constitute criminal offenses pursuant to any of the following provisions of Title 11 of the Delaware Code: §§ 601, 602, 603, 604, 611, 612, 613, 621, 625, 626, 627, 631, 632, 633, 634, 635, 636, 645, 763, 764, 765, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 791, 841, 842, 843, 844, 845, 846, 848, 851, 861, 862 and 908 or an attempt to commit any such crime. Except for situations outlined in subsection (d)(4) of this section requiring the initiation of an investigation within 24 hours, all other investigations under this subchapter shall be initiated within 10 days and conducted during that timeframe unless extenuating facts warrant a longer time period to complete the investigation.

(10) The Division shall develop protocols to ensure that it shall conduct its investigation in coordination with the relevant law enforcement agency. The primary purpose of the Division's investigation shall be the protection of the resident(s) or patient(s).

(11) In investigating abuse, neglect, mistreatment or financial exploitation reports, the Division may:

a. Make unannounced visit(s) to the facility to determine the nature and cause of the alleged abuse, neglect, mistreatment or financial exploitation;

b. Interview available witnesses identified by any source as having personal knowledge relevant to the reported abuse, neglect, mistreatment or financial exploitation;

c. Conduct interviews in private unless the witness expressly requests that the interview not be private;

d. Write an investigation report that includes the investigator's personal observations, a review of the medical and all other relevant documents and records, a summary of each witness statement and a statement of the factual basis for the findings for each incident or problem alleged in the complaint.

(12) Appointment of special investigators; powers and duties.

a. The Secretary of the Department of Health and Social Services may appoint qualified persons to be special investigators for the Division of Long-Term Care Residents Protection. Such investigators shall hold office at the pleasure of the Secretary. Any person appointed pursuant to this section shall have a minimum of 10 years experience as a "police officer," as that term is defined in § 1911(a) of Title 11, significant investigatory experience while working as a police officer, shall be in good standing with the previous or present law enforcement agency where such person is or was employed, and shall have such other qualifications deemed appropriate by the Secretary.

b. Special investigators appointed under this section may conduct investigations of abuse, neglect, mistreatment or financial exploitation of residents of long-term care facilities and infirm adults anywhere in this State as directed by the Director of the Division of Long-Term Care Residents Protection and shall have the power to make arrests and serve writs anywhere in this State. In conducting such investigations, the special investigators shall have the statewide powers enumerated under § 1911 of Title 11 and such other powers as conferred by law on police officers, but such powers shall be limited to offenses involving abuse, neglect, mistreatment or financial exploitation of residents of long-term care facilities and infirm adults anywhere in this State as directed by the Director of the Division of Long-Term Care Residents Protection. To the extent possible, special investigators pursuant to this section shall consult with the police agency having jurisdiction and the Director or the Director's designee prior to making an arrest and shall do so in all cases after making such arrest.

c. The salary of special investigators shall be fixed by the Secretary within the appropriations made to the Department.

d. Special investigators will assist in the training of other Division staff.

(13) The Department the Office of the Attorney General and other law enforcement agencies shall develop Memoranda of Understanding pursuant to this subchapter which provide for timely notification, co-investigation, referral of cases, including automatic referral in certain cases, and ongoing coordination in order to keep each other apprised of the status of their respective investigations. This paragraph shall become effective March 31, 1999.

(14) If the Division suspects or discovers information indicating the commission of violations of standards of professional conduct by facilities licensed under this chapter or by staff employed by such facilities, the Division shall immediately contact the Office of the Attorney General and the relevant professional licensing board.

(15) The Division and the Attorney General's Office shall cooperate with law enforcement agencies to develop training programs to increase the effectiveness of Division personnel, Attorney General's Office personnel and law enforcement officers in investigating suspected cases of abuse, neglect, mistreatment or financial exploitation.

(16) A person required to report to the Division under § 1132(a) of this title shall be informed by the Division of the person's right to obtain information concerning the disposition of the report. Such person shall receive, if requested, information on the general disposition of the report at the conclusion of the investigation.

(17) Before the completion of an investigation, the Division shall file a petition for the temporary care and protection of the resident or patient if the Division determines that immediate removal is necessary to protect the resident or patient from further abuse, neglect, mistreatment or financial exploitation.

(18) Upon completing an investigation of a complaint, the Division shall take 1 or more of the following courses of action, as appropriate:

a. If representatives of the Department, the Attorney General's Office and/or the appropriate law enforcement agency are unable to

substantiate a complaint that applicable laws or regulations have been violated the Department or appropriate law enforcement agency shall so advise the complainant and the facility, agency or individual against which the complaint was made.

b. If Division representatives are able to substantiate a complaint that applicable laws or regulations have been violated, the Division shall take appropriate enforcement action.

c. Enforcement action may include instituting actions by the Division for injunctive relief or other relief deemed appropriate. The Office of the Attorney General shall provide legal advice and assist the Division to institute such proceedings.

d. If the Division discovers a deficiency in violation of federal laws or regulations or rules administered by any other government agency, the Division shall refer the matter directly to the appropriate government agency for enforcement action.

e. In the event that a criminal prosecution for abuse, neglect, mistreatment or financial exploitation is initiated by the Attorney General's Office pursuant to a report under this subchapter, and incarceration of the person who is the subject of the report is ordered by the Court, the Attorney General's Office shall keep the Division informed of actions taken by the Court which result in the release of any such individual, provided that the Attorney General's Office is represented at such a hearing.

f. In the event that a criminal prosecution for abuse, neglect, mistreatment or financial exploitation is initiated by the Attorney General's Office against a person employed by or associated with a facility or organization required to be licensed or whose staff are required to be licensed under Delaware law, the Attorney General shall notify the Department within 48 hours and the Department shall then notify the person's employer:

1. Upon return of an indictment charging such person with having committed at least one felony offense involving an allegation of abuse, neglect, mistreatment or financial exploitation; or

2. Upon an adjudication of guilt of such person for any misdemeanor or violation, when such offense involved abuse, neglect, mistreatment or financial exploitation.

(19) Protect the privacy of the nursing facility resident or patient and his or her family, and the Division shall establish guidelines concerning the disclosure of information relating to complaints and investigations regarding abuse, neglect, mistreatment or financial exploitation involving that resident or patient. The Division may require persons to make written requests for access to records maintained by the Division. Notwithstanding Chapter 100 of Title 29, the Division may only release information to persons who have a legitimate public safety need for such information and such information shall be used only for the purpose for which it is released pursuant to a user agreement with the Division.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 222, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 487, § 4; 72 Del. Laws, c. 3, § 4; 74 Del. Laws, c. 212, § 1.)

§ 1135. Immunities and other protections.

(a) No person making any oral or written report pursuant to this subchapter shall be liable in any civil or criminal action by reason of such report where such report was made in good faith or under the reasonable belief that such abuse, mistreatment or neglect has taken place.

(b) No facility shall discharge, or in any manner discriminate or retaliate against any person, by any means whatsoever, who in good faith makes or causes to be made, a report under this subchapter, or who testifies or who is about to testify in any proceeding concerning abuse, mistreatment or neglect of patients or residents in said facility.

(c) Any facility which discharges, discriminates or retaliates against a person because the person has reported, testified or is about to testify concerning abuse, mistreatment or neglect of patients or residents shall be liable to such person for treble damages, costs and attorney fees. Where a facility discharges, demotes or retaliates by any other means, against a person after the person made a report, testified, or was subpoenaed to testify as a result of a report required under this subchapter, there shall be a rebuttable presumption that such facility discharged, demoted or retaliated against such person as a result of such report or testimony.

(d) This section shall not apply to any person who has engaged in the abuse, mistreatment or neglect of a patient or resident.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1136. Violations.

(a) Any person who knowingly abuses, mistreats or knowingly or recklessly neglects a patient or resident of a facility shall be guilty of a class A misdemeanor. Where the abuse, mistreatment or neglect results in serious physical injury then such person shall be guilty of a class D felony. Where the abuse, mistreatment or neglect results in death then such person shall be guilty of a class A felony.

(b) Any person who knowingly exploits a patient's or resident's resources shall be guilty of a class A misdemeanor where the value of the resources is less than $1,000 and shall be guilty of a class G felony where the value of the resources is $1,000 or more.

(c) Any member of the board of directors or a high managerial agent who knows that patients or residents of the facility are being abused, mistreated or neglected and fails to promptly take corrective action shall be guilty of a class A misdemeanor.

(65 Del. Laws, c. 442, § 1; 72 Del. Laws, c. 120, §§ 5, 6.)

§ 1137. Suspension or revocation of license for violation by licensed or registered professional.

Upon a finding of abuse, mistreatment or neglect, or failure to report such instances by a licensed or registered professional, the Department or the Attorney General shall notify the appropriate licensing or registration board. If, after a hearing, a licensed or registered professional is found to have abused, mistreated or neglected a patient or resident or has failed to report such instance, the appropriate board shall suspend or revoke such person's license.

(65 Del. Laws, c. 442, § 1.)

§ 1138. Suspension or revocation of license for violation by facility.

Upon a finding that abuse, mistreatment or neglect has occurred in a facility, the Department or the Attorney General shall notify the appropriate licensing board and, if such facility receives public funding, the appropriate state or federal agency. If, after a hearing, it is determined that a member of the board of directors or a high managerial agent knew that patients or residents were abused, mistreated or neglected and failed to promptly take corrective action, the appropriate board shall suspend or revoke such facility's license.

(65 Del. Laws, c. 442, § 1.)

§ 1139. Treatment by spiritual means.

Nothing in this subchapter shall be construed to mean that a patient or resident is abused, mistreated or neglected for the sole reason the patient or resident relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, nor shall anything in this subchapter be construed to authorize or require any medical care or treatment over the implied or express objection of said patient or resident.

(65 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1140. Jurisdiction.

The Superior Court shall have original and exclusive jurisdiction over violations of this subchapter. (65 Del. Laws, c. 442, § 1.)

APPENDIX- E

Delaware Health & Social Services
Division of Developmental Disabilities Services

PROCLAMATION OF BELIEFS AND GUIDING PRINCIPLES

The following Belief Statements and Guiding Principles guide the delivery of services provided by DDDS.

We Believe in a person's right to a lifestyle of choice and self-determination.

Guiding Principle One: Services shall empower and support personal decision making.

We Believe in a person's individuality. Each person has unique qualities which we recognize and value.

Guiding Principle Two: Services shall be person-centered; supporting each person to explore and assert his/her own individuality.

We Believe people with disabilities have the same rights as other citizens.

Guiding Principle Three: Services shall protect people's rights, and support people to exercise their rights.

We Believe people with disabilities are an integral part of their community. We believe a person with disabilities, and the community, both benefit when they engage each other.

Guiding Principle Four: Services shall support people to have meaningful roles in the community.

We Believe in a community where persons with disabilities feel included and can participate as they desire.

Guiding Principle Five: Services shall work to build the capacity of the community to accept and socially nourish people with disabilities.

We Believe in the right of all people to be treated with dignity and respect.

Guiding Principle Six: Service recipients shall feel that they are a valued member of the team. Service supports shall be delivered in a manner that recognizes each person's humanity.

BUSINESS ASSOCIATE AGREEMENT[1] - APPENDIX F

This Business Associate Agreement ("Agreement"), effective as of the _____ day of _____ _____, 20____, is entered into by and between Division of Developmental Disabilities Services, ("Covered Entity") and _____ ("Business Associate")

WHEREAS, in conjunction with the provision of certain healthcare services, Covered Entity receives and creates certain individually indentifiable health information ("Protected Health Information") the creation, transmission, disclosure and dissemination of which must be protected as confidential information;

WHEREAS, in conjunction with the provision of certain healthcare services to Covered Entity under an agreement dated the _____ day of _____, 20____, ("Original Contract") Business Associate has access to and is involved in the creation, transmission, disclosure and dissemination of such Protected Health Information;

WHEREAS, the Covered Entity and Business Associate wish to comply with the provisions of 45 C. F. R. § 160.101 et seq.("Privacy Regulations") and 45 C.F.R. §164.308 et seq. ("Security Regulations") regarding the appropriate use and disclosure of such Protected Health Information;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Covered Entity and Business Associate hereby agree as follows:

1. Definitions. The terms used in this Business Associate Agreement ("Agreement") shall have the same meaning as those terms are used in HIPAA, 45 CFR §160 et seq. and 45 CFR §164.308 et seq.

2. Permitted uses and Disclosures of Protected Health Information. Business Associate will not use or further disclose any Protected Health Information except in the provision of services to Covered Entity as specifically authorized under the Original Contract, including without limitation any use or disclosure which would violate the provisions of the Privacy Regulations. Notwithstanding the foregoing, Business Associate may use and disclose Protected Health Information to provide data aggregation services related to the healthcare operations of Covered Entity. Business Associate may also use and disclose Protected Health Information in the proper management and administration of Business Associate and to carry out its legal responsibilities, provided that the use and disclosure is either required by law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of information has been breached.

3. Responsibilities of Business Associate. Business Associate will:

(a) Not use or further disclose Protected Health Information other than as permitted or required by the Original Contract or as required by law, including without limitation, the Privacy Regulations and any applicable State law;
(b) Use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for in the Original Contract;
(c) Implement administrative, physical, and technical safeguards that reasonably protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity;
(d) Report to Covered Entity any use or disclosure of Protected Health Information not provided for in the Original Contract of which it becomes aware;

[1] The entities must enter into a memorandum of understanding with the business associate that contains terms that accomplish the objectives of paragraph (a)(2)(i) of section §164.314 or if other law contains requirements applicable to the business associate that accomplish the objectives of paragraph (a)(2)(i) of section §164.314

(e) Ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of, the Covered Entity agrees to the same restrictions and conditions that apply to Business Associate with respect to Protected Health Information. Further any agent or subcontractor must agree to implement reasonable and appropriate safeguards to protect electronic protected health information;

(f) Make available for inspection and copying Protected Health Information to an individual about such individual in accordance with 45 C.F.R. §164.524;

(g) Make available Protected Health Information to an individual about such individual for amendment and incorporate any amendments to Protected Health Information in accordance with 45 C.F.R. §164.526;

(h) Make available Protected Health Information required to provide an accounting of disclosures in accordance with 45 C.F.R. §164.528;

(i) Make its internal practices, books, and records relating to the use and disclosure of Protected Health information received from, or created or received by Business Associate of behalf of, Covered Entity available to the Secretary of HHS to whom the authority involved has been delegated for purposes of determining the Covered Entity's compliance with privacy Regulations; and

(j) At termination of the Original Contract, if feasible, return all Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associates still maintains in any form and retain no copies of such Protected Health information or, if return is not feasible, extend the protections of the Original Contract and this Agreement to the information and limit further uses and disclosures to those purposes that make the return of the protected Health Information infeasible.

4. Other Arangements

(a) If a business associate is required by law to perform a function or activity on behalf of a covered entity or to provide a service described in the definition of business associate as specified in §160.103 of this subchapter to a covered entity, the covered entity may permit the business associate to create, receive maintain or transmit electronic protected health information on its behalf to the extent necessary to comply with the legal mandate without meeting the requirements of (a) (2) (1) of §164.314, provided that the covered entity attempts in good faith to obtain satisfactory assurances as required by paragraph (a) (2)(ii)(A) of §164.314, and documents the attempt and the reasons that these assurances cannot be obtained.

(b) The covered entity may omit from its other arrangements authorization of the termination of the contract by the covered entity, as required by paragraph (a)(2)(i)(D) of §164.314 if authorization is inconsistent with the statutory obligations of the covered entity or its business associate.

5. Termination of Agreement. This Agreement and the Original Contract may be terminated by Covered Entity if Covered Entity determines that Business Associate has violated a material term of this Agreement. The provisions of Paragraphs 1 and 2 hereof shall survive any termination of this Agreement and/or the Original Contract.

6. Miscellaneous. This Agreement contains the final and entire agreement of the parties and supersedes all prior and/or contemporaneous understandings and may not be modified or amended unless such modification is in writing and signed by both parties and their successors, administrators and binding upon and inure to the benefit of both parties and their successors, administrators and permitted assigns. All personal pronouns used in this Agreement whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa. Titles of Paragraphs are utilized for convenience only and neither limit nor amplify the provisions of this Agreement itself. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this affected thereby and shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

COVERED ENTITY: **BUSINESS ASSOCIATE:**

Group Health Plans Addendum

Except when the only electronic protected health information disclosed to a plan sponsor is disclosed pursuant to §164.504(f)(1)(ii) or (iii), or as authorized under §164.508, a group health plan must ensure that its plan documents provide that the plan sponsor will reasonably and appropriately safeguard electronic protected health information created, received, maintained, or transmitted to or by the plan sponsor on behalf of the group health plan.

The plan documents of the group health plan must be amended to incorporate provisions to require the plan sponsor to (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains or transmits on behalf of the group health plan; (ii) ensure that the adequate separation required by §164.504(f)(2)(iii) is supported by reasonable and appropriate security measures; (iii) ensure that nay agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect information; and (iv) report to the group health plan any security incident of which it becomes aware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first above written.

COVERED ENTITY: **BUSINESS ASSOCIATE:**