

# Administrative Entity Operating Agreement

This Agreement is effective as of January 1, 2026 for the purposes of \_\_\_\_\_, hereinafter referred to as the Administrative Entity (AE), conducting the administrative functions of the Consolidated (CMS # PA.0147), Person/Family Directed Support (P/FDS) (CMS # PA.0354), and Community Living (CLW) (CMS # PA.1486) Waivers for Prospective Waiver Participants, Targets Supports Management (TSM) (Approved State Plan) and Waiver Participants and for the purpose of the AE conducting the initial Level of Care (LOC) evaluation of Prospective Waiver Participants for the Consolidated, P/FDS, Community Living, and Adult Autism Waivers (CMS # PA.0593).

WITNESSETH:

WHEREAS, the Department of Human Services (Department) retains the authority and responsibility to implement, administer and oversee the Consolidated Waiver, the P/FDS Waiver, the Community Living Waiver, hereinafter referred to collectively as the "Intellectual Disability/Autism (ID/A) Waivers"

WHEREAS, the AE is responsible for ID/A Waivers administrative functions specified in this Agreement.

WHEREAS, the AE is responsible for conducting the initial LOC evaluation for TSM, the ID/A Waivers, and the AAW.

WHEREAS, the AE, by and through collaboration with the Department, is the primary resource to support and direct Providers, as defined herein, in matters relating to enrollment and ongoing participation in the ID/A Waivers.

WHEREAS, authorization has been given for the ID/A Waivers and AAW as a result of federal approval under Section 1915(c) the Social Security Act.

WHEREAS, federal approval was conditioned on assurances that the expenditure of ID/A Waivers and AAW funds be governed by the ID/A Waivers and the AAW, including the provisions set forth in this Agreement.

WHEREAS, the Pennsylvania Mental Health and Intellectual Disability Act of 1966 creates a dynamic relationship in administrative oversight in the delivery of publicly funded community behavioral health and intellectual disability services.

WHEREAS, the Department has offered the county program the right of first opportunity to provide certain administrative services for the ID/A Waivers, in order to better coordinate care with other publicly funded community human services.

WHEREAS, the Department has promulgated regulations that apply to provision of ID/A Waivers and AAW.

NOW THEREFORE, the AE, intending to be legally bound to perform AE administrative functions

for the ID/A Waivers and the initial eligibility and LOC evaluations for TSM, the ID/A Waivers and the AAW, agrees as follows:

1. That the allocation of administrative funding is expressly conditioned upon the AE's compliance with the conditions of the ID/A Waivers, the AAW, and this Agreement.
2. That this Agreement shall remain in full force and effect until it is:
  - a. Altered by a change in law,
  - b. Superseded by another agreement or amendment to this Agreement, or
  - c. Terminated as outlined in Subsections 12.2 and 12.3 of this Agreement.

*[This space intentionally left blank]*

Signature of Person with legal authority to bind the Department to the terms of this Agreement:

_____ Typed or Printed Name	_____ Signature	_____ Date
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Signature(s) of persons with legal authority to bind the AE to the terms of this Agreement:

_____ Typed or Printed Name	_____ Signature	_____ Date
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## 1. Operating Agreement Terms and Conditions

### 1.1 Definition of Terms

The following capitalized terms as used in this Agreement are defined as set forth below:

**Administrative Entity (AE)** – A county/jointer or non-governmental entity that enters into and maintains a signed current agreement with the Department to perform administrative functions delegated by the Department, as the Department's designee, and LOC evaluations in compliance with the Department's approved ID/A Waivers and the AAW, Written Policies and Procedures, and Departmental Decisions.

**Administrative Entity (AE) Jurisdiction** – The AE is responsible for ID/A Waiver Participants or Prospective Waiver Participants when providing ID/A Waivers and AAW functions as identified in the body of this Agreement and the approved ID/A Waivers and AAW. For purposes of ID/A Waiver or Prospective Waiver Participants, it is the individuals who reside within the county or counties served by the AE. For the purposes of the AAW, the jurisdiction would include conducting initial LOC for Prospective Waiver Participants residing within the county or counties served by the AE.

**Adult Autism Waiver (AAW)** – A 1915(c) home and community-based services (HCBS) waiver designed to provide long-term community-based services and supports to meet the specific needs of adults with Autism Spectrum Disorders.

**Agency With Choice (AWC)** – A type of FMS where a Provider supports an ID/A Waiver Participant or an ID/A Waiver Participant's Surrogate acting as the Managing Employer in the management of the ID/A Waiver Participant's SSWs and supports and services authorized in the Participant's ISP.

**Approved Program Capacity (APC)** – The maximum number of individuals who may receive services at a service location at one time of any given day throughout the FY regardless of the service type or funding used to pay for the service.

**Assessed Needs** – Needs of ID/A Waiver Participants identified through valid assessments (Supports Intensity Scale, Physical Therapy, Occupational Therapy, Speech Therapy, etc.) that have been conducted based on the ID/A Waiver Participant's unique circumstances, documented in writing including frequency and duration, when applicable prescribed by a licensed medical professional, and identified as a required need by the ID/A Waiver Participant's team responsible for developing the ISP.

**Auto Approval and Authorization** – A web-based process that allows ISPs that meet criteria to be automatically approved and for services to be automatically authorized.

**Bureau of Hearings and Appeals (BHA)** – The Departmental entity charged with conducting administrative hearings and adjudication of appeals which are filed in accordance with state and federal regulations.

**Centers for Medicare & Medicaid Services (CMS)** – The agency in the federal Department of Health and Human Services that is responsible for federal administration for Medicaid, Medicare, and State Children’s Health Insurance programs.

**Claim** – A bill for a service(s) or a line item of service within a bill for a service(s) provided to an ID/A Waiver Participant that is submitted through PROMISe™.

**Common-Law Employer** – The ID/A Waiver Participant or the ID/A Waiver Participant’s designee that is the legal employer, also known as “employer of record” of the staff hired through the VF/EA model to support the ID/A Waiver Participant.

**Community Living Waiver Cap** – The per ID/A Waiver Participant limitation for Waiver services funded through the Community Living Waiver during a state FY, excluding costs for supports coordination.

**Corrective Action Plan (CAP)** – A plan to address issues of non-compliance, health and welfare risks for ID/A Waiver Participants, and other performance issues.

**County Assistance Office (CAO)** – The county offices of the Department that administer public assistance benefits, including determining participant eligibility for the ID/A Waivers and AAW.

**County/Joinder Mental Health/Intellectual Disabilities (MH/ID) Board** – The board established by a county, joinder or city of the first class as per Section 302 of the Mental Health and Intellectual Disability Act of 1966, 50 P.S. §§ 4101–4704.

**Department or DHS** – The Pennsylvania Department of Human Services and the state program offices under the heading of this Department, including ODP, except where some other subdivision is specifically named.

**Departmental Decisions** – Written determinations made by the Department including but not limited to: service review findings, Provider dispute resolution findings, BHA decisions, reconsiderations made by the Secretary of DHS, decisions made by the Deputy Secretary of ODP, Provider qualification and disqualification actions, licensing actions, interpretations of policy, findings resulting from an investigation completed by an ODP regional certified investigator, QA&I findings reports related to AE performance, and responses to a CAP or DCAP.

**Directed Corrective Action Plan (DCAP)** – A document developed or approved by the Department or the Department’s designee to resolve the AE’s or Provider’s non-compliance.



**Financial Management Services (FMS)** – An option (either AWC or VF/EA) that provides administrative support to an ID/A Waiver Participant who self-directs all or some of the ID/A Waiver Participant's HCBS and fulfills specific employer or employer agent responsibilities for that ID/A Waiver Participant.

**Fiscal Year (FY)** – The period of time extending from July 1 of one calendar year through June 30 of the next calendar year.

**Health Care Quality Units (HCQUs)** – The contracted entity with the mission to improve access to appropriate physical and behavioral health care. HCQUs are units comprised of professionals with expertise in the areas of intellectual and developmental disabilities and health care.

**Home and Community Services Information System (HCSIS)** – The secure web-based information system serving the DHS state program offices that oversee the ID/A Waivers and the AAW.

**ID/A Waiver Participant** – An individual determined to meet eligibility criteria and who is enrolled in either the Consolidated, Community Living, or P/FDS Waiver. The acronym ID/A does not include AAW or AAW participants.

**Independent Monitoring for Quality (IM4Q)** – A survey and interview instrument focusing on the quality of services and supports for individuals and ID/A Waiver Participants with intellectual disabilities and autism which provides a source of data to support ODP quality initiatives.

**Individual Support Plan (ISP)** – The comprehensive individual plan that contains decisions agreed upon by the ID/A Waiver Participant's ISP team and documented on the web-based form designated by the Department which identifies outcomes and needed services and supports provided to a Participant.

**Ineligible Provider** – A Provider identified on one of the following lists or databases:

Excluded Parties List System – This system includes information regarding entities debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule or otherwise declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits.

List of Excluded Individuals/Entities (maintained currently in the System for Award Management or SAM) – A database maintained by the Office of Inspector General for use by the public, health care providers, patients, and others which provides information relating to parties excluded from participation in Medicare, Medicaid, and all federal health care programs.

Medicheck – A list identifying providers, individuals, and other entities precluded from participation in the Commonwealth of Pennsylvania Medical Assistance Program.

In addition, a provider that expresses interest in delivering an ID/A Waiver service that has not successfully completed the Department's Provider qualification process is also considered an Ineligible Provider until the Provider is determined by the Department to be a Willing and Qualified Provider.

**Intellectual Disability/Autism (ID/A) Waivers** – The current approved Consolidated, Community Living, and P/FDS Waivers (acronym ID/A does not include AAW or AAW participants).

**Managing Employer** – The ID/A Waiver Participant or their Surrogate who agrees to enter into an employer arrangement with the AWC FMS.

**Medicaid or Medical Assistance (MA)** – The program authorized under Title XIX of the federal Social Security Act, 42 U.S.C. §§ 1396 et seq., and regulations promulgated thereunder.

**Multi-Year Program Growth Strategy (MYPGS)**- Strategy to expand access for adults waiting for services by the addition of waiver capacity as well as a shift to management of waiver capacity by budget rather than slots.

**Office of Developmental Programs (ODP)** – The Pennsylvania state program office within the Department that oversees the ID/A Waivers and AAW, sets policy, provides funds and administers services for individuals with intellectual disabilities, autism and children eight (8) years old and younger with developmental disabilities who are likely to be diagnosed with intellectual disability or autism and children under 22 years of age with medically complex conditions.

**Office of Vocational Rehabilitation (OVR)** – The office within the state Department of Labor & Industry which provides vocational rehabilitation services to help persons with disabilities prepare for, obtain, or maintain employment.

**Organized Health Care Delivery System (OHCDs)** – The arrangement in which a Provider that renders at least one direct ID/A Waiver service also chooses to offer Vendor services by subcontracting with a Vendor in order to facilitate the delivery of Vendor services.

**Performance Based Contracting (PBC)** - The 1915(b)(4) Selective Contracting waiver for residential services and supports coordination services. Residential services covered under this arrangement include Residential Habilitation, Supported Living, and Life

Sharing, which are currently offered in the Consolidated and Community Living 1915(c) Waiver programs. Supports coordination services covered under this arrangement include Supports Coordination services in the ID/A waivers and Medicaid State Plan Targeted Supports Management.

**Person/Family Directed Support (P/FDS) Cap** – The per participant limitation for Waiver services funded through the P/FDS Waiver during a state FY, excluding costs for supports coordination, support broker, and employment services up to the amount designated in the approved ID/A Waivers for employment services.

**Prioritization of Urgency of Need for Services (PUNS)** – The strategic planning tool and current process used to categorize a Prospective Waiver Participant's need for services prior to enrollment in one of the ID/A Waivers which is then reviewed at least annually thereafter.

**Prospective Waiver Participant** – A person who is likely to be eligible or has been determined eligible but has not been enrolled in an ID/A Waiver or the AAW.

**Provider** – An entity or individual that enters into and maintains a signed ID/A Waiver Provider Agreement with the Department to render an ID/A Waiver service(s).

**Provider Agreement for Participation in Pennsylvania's Consolidated, Community Living and P/FDS Waivers (ID/A Waiver Provider Agreement)** – The ODP agreement signed by a Provider of ID/A Waiver services, under which the Provider agrees to furnish services to ID/A Waiver Participants in compliance with state and federal requirements, including ID/A Waiver requirements approved by CMS.

**Provider Reimbursement and Operations Management Information System in electronic format (PROMIS<sup>™</sup>)** – A secure internet claims processing site that allows Providers, managed care organizations, and drug labelers or manufacturers to submit a Claim, check a Claim's status, access real time eligibility verification information, access web-based training courses, and review and download user manuals and Claim forms.

**Quality Assessment and Improvement (QA&I)** – A process for assessing a Provider's, SCO's, and AE's performance, which includes ODP's continuous review of specific indicators and a formal-on-site review every three (3) years of the Provider, SCO and AE and the development of a QA&I findings report summarizing the findings of the on-site review.

**Quality Management (QM)** – Active oversight of all quality assurance and improvement activities required to achieve and maintain a desired level of excellence.

**Quality Management (QM) Plan** – A written plan describing how the AE will measure, remediate, and improve its performance in a manner consistent with the Department's QM Strategy to ensure sustained compliance with ID/A Waiver assurances and to

contribute towards achieving the Department's identified priorities for improvement.

**Quality Management (QM) Strategy** – The structure, process, roles, responsibilities and methods the Department uses to manage its performance to achieve quality results including continuous cycles of performance measurement (discovery), correction of individual problems (remediation), and implementation of system-wide change as needed (improvement).

**Reserved Capacity** –The portion of the approved ID/A Waivers that are reserved for the enrollment of specified groups or targeted purposes.

**Risk Factor**– The presence of a factor that increases the likelihood of an adverse/undesirable outcome (e.g., loss of life, injury, financial loss, etc.) to an individual and/or an entity. Each Risk Factor carries the possibility of an undesirable consequence as well as the likelihood that it will occur.

**Risk Management (RM)** –Identifying, evaluating, and prioritizing identified Risk Factors, and then applying resources, in a coordinated effort to avoid, minimize, control, and monitor the probability or impact of harm or an adverse outcome. Risk Management activities can be proactive and reactive.

**Risk Mitigation** – An approach to minimize the severity of risk and to reduce the likelihood of occurrence or recurrence of an adverse event.

**State Medicaid Administration Allocation** – The administrative funds allocated to oversee and provide ID/A Waiver administrative functions as per this Agreement, Written Policies and Procedures, and Departmental Decisions.

**Statewide Needs Assessment** – The assessment designated by the Department to be used during the ISP process to determine an ID/A Waiver Participant's Assessed Needs.

**Substantial Failure** – A repeated pattern of non-compliance by the AE with responsibilities outlined in this Agreement; non-adherence with Written Policies and Procedures and Departmental Decisions; inability to develop or implement an approved CAP or DCAP to remedy non-compliance areas; or an egregious non-compliance issue that jeopardizes ID/A Waiver Participant health and welfare or overall compliance with federal ID/A Waiver requirements approved by CMS.

**Support Service Professional (SSP)** – A person hired by an ID/A Waiver Participant or their Surrogate who is managing services through one of the self-directing options.

**Supports Coordination Organization (SCO)** – A Provider with the primary responsibilities of locating, coordinating, and monitoring needed services and supports for ID/A Waiver Participants.

**Supports Coordinator (SC)** – An employee of an SCO with the primary responsibilities of locating, coordinating, and monitoring needed services and supports for ID/A Waiver Participants.

**Surrogate** – A Surrogate includes one of the following:

1. A parent of a child under 18 years of age under the common law and 35 P.S. § 10101.
2. Legal custodian of a minor as provided in 42 Pa.C.S. § 6357.
3. A health care agent and representative for an adult as provided in 20 Pa. C.S. Ch. 54.
4. A guardian of various kinds as provided in 20 Pa.C.S. Ch. 55 (as limited by 20 Pa.C.S. § 5521(f)).
5. A holder of powers of attorney of various kinds as provided in 20 Pa.C.S. Ch. 56.
6. A guardian of a person by operation of law as provided in 50 P.S. § 4417(c).

**Targeted Support Management (TSM)** – An approved State Plan service that assists eligible Prospective Waiver Participants with gaining access to needed medical, social, educational, and other services.

**Unanticipated Emergency** – An occurrence when a Prospective Waiver Participant or participant in the Community Living or P/FDS Waiver has an imminent risk of institutionalization within twenty-four (24) hours, substantial self-harm or substantial harm to others if the Prospective Waiver Participant or participant in the Community Living or P/FDS Waiver does not immediately receive services and this imminent risk is precipitated by at least one of the following situations:

1. The illness or death of a caretaker;
2. The sudden loss of the home of the Prospective Waiver Participant or participant in the Community Living or P/FDS Waiver (for example due to fire or natural disaster); or
3. The loss of the care of a relative or caregiver, without advance warning or planning.

To be considered by the Department to be an Unanticipated Emergency, the AE and the county program must have no other resources available to address the immediate health and welfare needs of the Prospective Waiver Participant's or participant in the Community Living or P/FDS Waiver.

**Vendor** – An entity that provides general goods or services and possesses the following distinguishing characteristics: goods/services are provided within normal business operations, similar goods/services are provided to many different purchasers, and the Vendor operates in a competitive environment providing goods/services to the general public.

**Vendor Fiscal/Employer Agent (VF/EA)** – A type of FMS entity acting as the fiscal agent which provides an administrative service that supports an ID/A Waiver Participant or their Surrogate acting as the Common-Law Employer to hire and manage SSWs. Under the VF/EA FMS model, the ID/A Waiver Participant or their Surrogate retains full and legal responsibility for all aspects of being the Common-Law Employer, with the exception of processing payroll for the SSWs, withholding and reporting taxes, obtaining and processing workers' compensation and insurance payments, and processing payment of all invoices.

**Waiver Capacity Commitment** – The number of Participants the AE may enroll in a specified ID/A Waiver at any given point in time during a FY, as approved by the Department.

**Waiver Capacity Commitment Notification** – A notification that designates the Department's current approved maximum number of ID/A Waiver Participants within the AE Jurisdiction that may be enrolled in each ID/A Waiver at any given point in time during a FY. There are three numbers designated in the Waiver Capacity Commitment Notification for each ID/A Waiver.

**Waiver Capacity Management** – The overall process of properly maintaining the AE's Waiver Capacity Commitment, which includes following Department-approved policies and procedures relating to Waiver Capacity Commitment, maintaining Reserved Capacity (including the tracking of ID/A Waiver Participants due to hospitalization or rehabilitation care), Waiver Residential Vacancy Management, management of Unanticipated Emergencies and submission of quarterly budget and capacity adjustments.

**Waiver Residential Vacancy Management** – The process of identifying and managing a vacancy in a service location licensed under 55 Pa. Code Chapter 6400 (relating to Community Homes for Individuals with an Intellectual Disability) within the service location's APC.

**Willing and Qualified Provider** – A Provider that is qualified to render a specific ID/A Waiver service because the Provider meets state and federal laws, Written Policies and Procedures, and Departmental Decisions relating to qualification and requalification of ID/A Waiver Providers and is willing to serve ID/A Waiver Participants, accept the Department's payment as payment in full for rendering an ID/A Waiver service, and abide by all of the ID/A Waiver Provider requirements, including entering into and maintaining a signed current ID/A Waiver Provider Agreement with the Department.

**Written Policies and Procedures** – The CMS-approved ID/A Waivers, the AAW and the ID/A Waivers and AAW amendments, and DHS rules, regulations, policies, policy clarifications, bulletins, directives, announcements, and procedures. This includes written correspondence signed by the Secretary of DHS or the Deputy Secretary of ODP.



## **2. General Scope of the Operating Agreement**

### **2.1 Sovereign Immunities**

Nothing herein is intended to limit, modify, alter or impair, directly or indirectly, the sovereign immunities of the Commonwealth, the Department or the AE respectively, including but not limited to such immunities as applicable to dealings with third parties.

#### **2.1.1 Authority of the Department**

The Department retains the authority to exercise discretion in the administration and supervision of all ID/A Waiver and AAW related matters, including the terms and conditions of this Agreement and to issue Departmental Decisions and Written Policies and Procedures related to the ID/A Waivers and AAW. An AE does not have the authority to change or disapprove any Departmental Decisions or otherwise substitute its judgment for that of the Department with respect to the application and implementation of Written Policies and Procedures and Departmental Decisions. The Department may, at its discretion, authorize the AE to act as the Department's designee in dealings with Providers for matters relating to the implementation of, the provision of technical assistance relating to, and the enforcement of provisions of the ID/A Waiver Provider Agreement as defined herein. The Department may at its discretion authorize the AE to act as the Department's designee for matters relating to the implementation of and the provision of technical assistance regarding state or federal regulations that establish program, operational, or payment requirements to Providers as defined herein.

#### **2.1.2 Authority of the Administrative Entity (AE)**

The authorities of the AE are as set forth herein and shall include the authority to enter into and maintain subcontracts with other entities for the administrative functions hereunder and the other authorities of the AE, including the delegation of authority as specified at Subsection 2.1.1 as set forth herein.

### **2.2 Indemnification**

Without waiving any immunity conferred by statute or common law, the AE shall hold the Commonwealth of Pennsylvania and by extension the Department harmless from and indemnify the Commonwealth of Pennsylvania, the Department against any and all claims, demands and actions based upon or arising out of any activities performed under this Agreement or nonperformance under this Agreement by the AE, any agent of the AE, any subcontractor or anyone directly or indirectly employed by the AE, and shall, at the request of the Commonwealth, Department or

ODP, defend any and all actions brought against the Commonwealth, Department or ODP based upon any such claims, demands and actions.

### **3. Administrative Functions**

All ID/A Waiver oversight, implementation, service delivery, and administrative functions must be provided in compliance with federal and state statutes and regulations, approved ID/A Waivers, the conditions of this Agreement, litigation affecting ID/A Waiver enrollment or ID/A Waiver Participants, Written Policies and Procedures, and Departmental Decisions.

#### **3.1 Delegated or Purchased Administrative Functions**

The AE may delegate or purchase ID/A Waiver and AAW administrative functions in accordance with applicable provisions of Pennsylvania statute and regulation. The AE shall continue to retain responsibility for compliance with this Agreement, Written Policies and Procedures, and Departmental Decisions when it delegates to or purchases administrative functions from an entity. Administrative functions are not permitted to be delegated to an SCO or Provider that renders ID/A Waiver or AAW services per written policies and procedures.

The AE shall ensure that any delegated or purchased administrative functions are established in writing pursuant to a subcontract or agreement. All subcontracts and agreements for delegated or purchased administrative functions must comply with 42 CFR §§ 434.6 and 434.10 and must allow for periodic inspections by the Department, the United States Comptroller General, the United States Department of Health and Human Services, and the authorized representatives of any of the agencies listed in this Section, to validate the quality, appropriateness, and timeliness of services performed as part of the subcontract or agreement.

The Department retains the authority to provide the AE with direction that must be followed related to the selection of an entity performing delegated or purchased administrative functions.

Upon request by the Department, the AE must provide to the appropriate regional ODP office the following with regard to the administrative functions delegated to or purchased from an entity:

1. A copy of the subcontract or agreement for each entity the AE has delegated or purchased functions.
2. A copy of any amendments to subcontracts or agreements for delegated or purchased functions.
3. Procedures the AE has or will put in place to monitor the completion of those delegated or purchased administrative functions, including frequency of reviews by the AE and the staff positions/titles responsible for the reviews.



### **3.1.1. Monitoring of Delegated or Purchased Administrative Functions**

Monitoring of delegated or purchased administrative functions as referenced in this Agreement is a separate and discrete function from the AE monitoring of Provider requirements as referenced in Section and Subsection 9 and 9.1 of this Agreement.

If the AE delegates or purchases an administrative function that has been designated as a responsibility of the AE to an entity, the AE shall monitor that delegated or purchased administrative function to ensure compliance with Written Policies and Procedures, Departmental Decisions, state and federal laws and regulations and the requirements of this Agreement. The AE shall be held responsible for the quality, compliance and completion of an administrative function which has been delegated to it by the Department, even when the AE delegates to or purchases the administrative function from an entity through a subcontract or agreement. The AE shall make available monitoring results to other AEs that use the same delegated or purchased entity.

The Department will utilize a variety of means to ensure compliance with Agreement requirements, Written Policies and Procedures, and Departmental Decisions, when the AE demonstrates a Substantial Failure to monitor and ensure delegated or purchased administrative functions are conducted in compliance with the terms and conditions of this Agreement. The Department will pursue remedial actions as needed to resolve any outstanding performance concerns and non-compliance with this Agreement. The application of remedies shall be a matter of public record once an acceptable CAP has been developed by the AE.

AE non-compliance will be addressed through remedial efforts as referenced in Subsection 12.1 of this Agreement. While remedies will generally follow a progressive path, the Department reserves the right to deviate from this path for significant issues of non-compliance as determined by the Department.

## **3.2 Financial Administration Requirements for the ID/A Waivers**

### **3.2.1 Administrative Payments to the AE**

The state and federal governments fund the administrative activities required of the AE through this Agreement. Contingent on state budget approval of sufficient funds, the Department shall make advance quarterly payments of the state share of ID/A Waiver administration funds necessary to comply with the requirements outlined in this Agreement to the AE. The first installment shall be for the quarter of the FY beginning July 1 and ending September 30.

The second installment shall be for the quarter beginning October 1 and ending December 31. The third installment shall be for the quarter beginning January 1 and ending March 31. The fourth installment shall be for the quarter beginning April 1 and ending June 30. The Department will provide the final allocation no later than September 30. The AE shall continue to perform all responsibilities outlined in this Agreement, including during periods when the Commonwealth is operating without an enacted budget. Upon enactment of the budget, the Department shall make retroactive payments for the period of delay.

The Department reserves the right to review advance installments against actual expenditures at any time, and to make appropriate adjustments in subsequent advances. If an overpayment cannot be recovered through an adjustment, the AE shall provide a refund of all overpayments to the Department upon request.

To document AE costs and qualify for federal funding, the AE shall participate in the statewide county MH/ID/EI Random Moment Time Study (RMTS) and submit its ID/A administrative costs to the Department through the RMTS-related quarterly claiming system in a timely manner. Through the RMTS and Medicaid administrative claiming (MAC) methodology, the costs eligible for federal reimbursement are identified and reimbursed following the end of each quarter.

The Department will evaluate increases and decreases in the AE's workload and reserves the right to adjust the state allocation to the AE via an updated notice indicating its State Medicaid Administration Allocation.

The Department will evaluate the State Medicaid Administration Allocation against the terms of the Agreement to confirm that there are sufficient allocations to perform all terms. If the state allocation, together with the federal reimbursement, is not sufficient to allow all terms of the Agreement to be completed, the Department will prioritize the terms of the Agreement and notify the AE regarding this prioritization.

If the AE requests additional state funds for inclusion in its State Medicaid Administration Allocation, the Department shall notify the AE of its decision in writing within thirty (30) calendar days of receipt of a request.

### **3.2.2 Ineligible ID/A Waiver Expenditures**

The AE shall ensure that the following are **not** authorized as ID/A Waiver services:

1. The purchase of a service(s) that is not eligible for funding

- through an ID/A Waiver.
2. Service(s) to an individual who is ineligible for services funded through an ID/A Waiver.
  3. The purchase of an ID/A Waiver service(s) rendered by a Provider that is restricted or sanctioned by the Department.
  4. The purchase of an ID/A Waiver service(s) rendered by a Provider that is not qualified to render an ID/A Waiver service(s).
  5. The purchase of an ID/A Waiver service(s) rendered by an Ineligible Provider.

### **3.2.3 Financial Liability of ID/A Waiver Participants**

The AE may not require a Participant in an ID/A Waiver to pay a cost share or co-pay for an ID/A Waiver-eligible service, unless otherwise specified in the approved ID/A Waiver.

### **3.2.4 Financial Audits**

The AE shall comply with all applicable federal audit requirements, including the Single Audit Act, as amended; the Office of Management and Budget *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (commonly called "Uniform Guidance"); 45 CFR Section 75.501(i); and any other applicable federal law or regulation t.

The AE shall assist the Department as requested with the review and follow up of Provider audits.

### **3.2.5 Desk and Financial Review**

The AE shall analyze a Provider's financial solvency if necessary and shall notify the Department if any financial issues are identified.

The AE shall collect data to support rate setting activities for ID/A Waiver service(s) when requested and in accordance with instructions issued by the Department.

### **3.2.6 Claim Resolution Support**

The AE shall assist Providers in the timely resolution of a denied Claim resulting from issues with ISPs or discrepancies between HCSIS or its replacement and information maintained by the Department's CAO.

The AE shall designate staff to serve as the point of contact for Claim resolution support issues and shall advise the appropriate regional ODP

office and Providers of this staff designation.

### **3.2.7 Fee Schedule Rates**

If the AE negotiates rates with providers for basefunded services which have corresponding rates published in the final fee schedule for the ID/A Waivers and AAW, the AE must notify the Department. When funding is appropriated to increase base allocations to cover fee schedule increases, AEs with negotiated rates that are below the fee schedule rate will not receive the corresponding base allocation increase.

Base funded Supports Coordination services are exempt from 3.2.7.

## **3.3 ID/A Waiver Records**

The AE shall preserve the documents and records listed in Section 3.3.1 for five (5) years after the ID/A Waiver Participant's case is closed. Records that relate to litigation, audit exceptions, or the settlement of a Claim related to performance or expenditures under this Agreement must be retained by the AE until such litigation, audit exception, or Claim has reached final disposition.

### **3.3.1 ID/A Waiver Participants' Records**

The AE shall maintain the following:

1. Documentation of the choice between institutional services and HCBS using the Department's service preference form.
2. Documentation of the initial financial eligibility determination made by the CAO, such as the initial PA-162 form.
3. Office of Vocational Rehabilitation (OVR) referral and response letters, if applicable.
4. Service review findings letter(s) issued by the Department.
5. Requests for fair hearings and fair hearing decisions, including supporting documentation and letters providing notification of fair hearing rights when there is an AE decision to deny, suspend, terminate or reduce a service.
6. Documentation of meetings related to service disputes.
7. Service requests and responses.
8. Requests for variances or extensions to service limitations and responses.
9. Documentation for services requiring supplemental information per the approved waivers.
10. Correspondence and documentation related to the transfer of an ID/A Waiver Participant to the AE.
11. Required documentation related to incidents and incident

- investigation.
12. Documentation related to Pre-Admission Screening and Resident Review (PASRR), if applicable.
  13. Documentation related to transferring to other service programs, such as Community HealthChoices.

### **3.3.2 Other ID/A Waiver Records**

The AE shall maintain the following for a period of five (5) years from the date the record was created:

1. Subcontracts or agreements with entities paid with administrative funds (e.g., entities providing delegated or purchased administrative functions, HCQUs, IM4Q contracts, incident management, etc.).
2. Records of AE monitoring of delegated or purchased administrative functions, including any associated CAPs and verification of remediation.
3. Records to substantiate ID/A Waiver administrative costs and the methodology used to calculate the administrative costs.
4. Invoices and billing records for administrative functions.
5. Any documentation related to Cost Report Desk Reviews completed by the AE.
6. Provider audits specified by the Department.
7. Documentation relating to monitoring of Providers.
8. Correspondence and documentation relating to an AE-developed CAP or DCAP.
9. Correspondence and documentation relating to the development, modification or remediation of an approved CAP or DCAP for a Provider.
10. Documentation of the verification of Provider qualification standards, including any supporting information.
11. Documentation related to Provider appeals as specified by the Department.
12. Correspondence and documentation of issues identified and resolved through monitoring of ID/A Waiver services.
13. AE QM Plans and associated reports.

### **3.3.3 Safeguarding ID/A Waiver Records**

The AE shall develop and implement a written protocol relating to safeguarding ID/A Waiver records, which shall include restrictions on disclosure of information concerning Prospective Waiver Participants and ID/A Waiver Participants that is consistent with 42 CFR Part 431, Subpart F and 55 Pa. Code Chapter 105. The protocol must include a policy on controlling

access to e-records, training and maintaining passwords.

### **3.3.4 Access to ID/A Waiver Records**

The AE shall develop and implement a written protocol relating to full and free access to all records pertaining to Prospective Waiver Participants, ID/A Waiver Participants, services and payments for services that allows for the evaluation through inspection or other means of the quality, appropriateness and timeliness of services performed under this Agreement. The AE shall grant access to the following:

1. The Department.
2. The Commonwealth of Pennsylvania Attorney General.
3. The Commonwealth of Pennsylvania Auditor General.
4. The United States Comptroller General.
5. The United States Department of Health and Human Services.
6. The authorized representatives of any of the agencies listed in this Section.
7. The Prospective Waiver Participant, ID/A Waiver Participant, individual(s) designated by the ID/A Waiver Participant, or legally responsible person(s).

### **3.4 ID/A Waiver Capacity Management**

The AE shall comply with the ID/A Waiver Capacity Management process as approved by the Department, including the policies and procedures relating to Multi-Year Program Growth Strategy (MYPGS) Waiver Capacity Commitment (including management of Reserved Capacity), Waiver Residential Vacancy Management, and management of Unanticipated Emergencies.

On any day during a FY, the total number of ID/A Waiver Participants enrolled in the ID/A Waivers registered with the AE may not exceed the approved number of ID/A Waiver Participants in the AE's current Waiver Capacity Commitment. The Department will notify the AE in writing of changes to the AE's Waiver Capacity Commitment.

AEs shall implement protocols for maintaining Waiver Capacity and MYPGS communication between program and fiscal staff, monthly review of data, monthly oversight of Waiver Capacity Management and MYPGS internal controls of the ISP review, and service authorization and utilization review procedure. The AE shall ensure the following:

1. AE has sufficient staffing to implement MYPGS successfully.

2. AE is compliant with this Agreement, the ID/A Waivers, and other ODP communications/guidance.
3. AE has established protocol for reviewing data monthly.
4. AE meets average utilization expectations.
5. AE efficiently manages waiver capacity.
6. AE has established process for reviewing ISPs and services to ensure services are authorized in accordance with identified needs, ID/A Waiver expectations, and budget impact.
7. AE ensures PUNS is updated timely when an individual is enrolled in an ID/A Waiver.
8. AE uses all budget management tools available to it, including the AE dashboard.
9. AE ensures oversight of base spending in accordance with its county plan.
10. AE conducts budget analysis to identify trends and budget impacts.

### **3.4.1 Waiver Capacity Commitment**

The AE shall perform administrative functions to ensure that ID/A Waiver services are provided to ID/A Waiver Participants within the AE's available Waiver Capacity Commitment and ODP capacity increases to the AE's waiver capacity commitment within the AE's allocated budget per Written Policies and Procedures.

The Department will designate the number of new ID/A Waiver Participants the Department expects the AE to enroll in one of the ID/A Waivers as part of the waiting list initiative, MYPGS or other Reserved Capacity category, if applicable. The AE shall identify those individuals using the instructions given by the Department. The waiting list and/or other Reserved Capacity categories will be identified separately from the Waiver Capacity Commitment.

The Department reserves the right to adjust the number of ID/A Waiver Participants in the AE's Waiver Capacity Commitment based on budgetary, utilization or other considerations.

The AE shall only enroll an individual with an emergency need as identified in PUNS or its successor into one of the ID/A Waivers, except for individuals designated in a Reserved Capacity category. If the AE is unable to provide services to the number of ID/A Waiver Participants identified in its Waiver Capacity Commitment Notification by filling the capacity with an individual with an emergency need identified in PUNS or its successor, it shall notify the appropriate regional ODP office per the Written Policies and Procedures.

If the AE has enrolled a participant who did not meet emergency PUNS or



Reserved Capacity criteria or fails to enroll ID/A Waiver Participants within the AE Jurisdiction with an emergency PUNS into one of the ID/A Waivers, the Department retains the authority to release the capacity for use by a Prospective Waiver Participant within the Commonwealth who does have an emergency PUNS.

If the AE needs to request an increase in the number of ID/A Waiver Participants it serves over its current Waiver Capacity Commitment for the ID/A Waivers due to an Unanticipated Emergency, it must submit a written request to increase the ID/A Waiver Capacity Commitment to the appropriate regional ODP office.

The AE may submit capacity and budget adjustments on a quarterly basis per the MYPGS Written Policies and Procedures.

### **3.4.2 ID/A Waiver Residential Vacancy Management**

The AE shall develop and maintain an implementation protocol in accordance with the Department's Waiver Residential Vacancy Management Written Policies and Procedures. The AE shall assign a staff point-person to implement the Waiver Residential Vacancy Management activities identified in the AE's protocol and in accordance with the Written Policies and Procedures. The AE shall fill a vacancy per Written Policies and Procedures, including authorizing services for ID/A Waiver Participants within the Provider's APC.

### **3.4.3 Approved Program Capacity (APC)**

The Department will establish an APC for each residential service location licensed under 55 Pa. Code Chapters 6400 and 6500. The AE shall not approve and authorize an ID/A Waiver service for an ID/A Waiver Participant in a setting with an APC if the APC will be exceeded unless the AE obtains prior approval from ODP.

### **3.4.4 Reserved Capacity**

The Department and its designee reserve a portion of ID/A Waiver capacity for specified purposes (e.g., to provide for the community transition of institutionalized persons or to furnish ID/A Waiver services to individuals experiencing a crisis).

## **1. Hospital or Rehabilitation Care Reserved Capacity**

The AE shall develop and implement a written protocol that identifies how it will monitor the status of former ID/A Waiver Participants whose



enrollment in an ID/A Waiver is being reserved because of a short-term stay in a hospital, nursing facility or rehabilitation care facility. This does not apply to participant when receiving waiver services during an acute hospital stay.

When an ID/A Waiver Participant requires medical or psychiatric hospital care for more than 30 consecutive days, or immediately upon admission in a nursing home or rehabilitation care facility (day 1 of admission), the following procedures must occur:

- 1.1** The AE must send the ID/A Waiver Participant a letter notifying them that they are being terminated from the ID/A Waiver, but their waiver capacity will be maintained for up to 180 days. The 180-day Reserved Capacity time-period begins on day 31 for individuals who are hospitalized or upon admission (day 1) for individuals in a nursing home or rehabilitation care facility.
- 1.2** The AE must notify the County Assistance Office (CAO) using the PA 1768 form that the ID/A Waiver Participant is in a hospital, nursing home or rehabilitation care facility.
- 1.3** The AE must change the ID/A Waiver Participant's status on the Waiver/Program Enrollment screen in HCSIS or its replacement from "Enrolled" to "Intent to Enroll."
- 1.4** The AE must notify the waiver capacity manager (WCM) upon the change of the ID/A Waiver Participant's status and provide the WCM with the following information: Master Client Index (MCI) number of the participant, the date the participant was entered into Reserved Capacity and the name of the hospital, nursing home or rehabilitation facility to which the participant has been admitted.
- 1.5** The AE shall review information provided by the ISP team on at least a monthly basis to determine if the ID/A Waiver Participant will be returning to the community. This may include recommendations and updates from medical providers about the participant's progress, the possibility of the participant returning to the community, any changes in the level of support needed by the participant, any adaptations required at the participant's residence and whether natural, family and community supports can assist the participant in returning to the community.
- 1.6** If the ID/A Waiver Participant is discharged from the hospital, nursing home or rehabilitation care facility within the 180-day Reserved Capacity timeframe, the AE is required to start the waiver enrollment process.

## **2. Transition Reserved Capacity**

The AE shall reserve existing ID/A Waiver capacity for Prospective Waiver Participants who require future services in accordance with the criteria in the approved ID/A Waivers. Capacity may be reserved for up to 180 calendar days prior to the expected need for services. The AE shall develop and implement a written protocol that identifies how it will identify, monitor and reserve capacity for Prospective Waiver Participants transitioning in accordance with an approved ID/A Waiver.

If capacity is reserved for the Prospective Waiver Participant for more than 180 days, the AE will be notified by the WCM to remove the Prospective Waiver Participant from the queue and provide the participant with a letter notifying the Prospective Waiver Participant that waiver capacity will no longer be maintained for the Prospective Waiver Participant.

## **3. Reserved Capacity for High School Graduates**

The AE shall reserve existing P/FDS Waiver capacity for students graduating from high school. The students identified may not meet emergency PUNs requirements, which makes it necessary to reserve capacity for them to ensure they have access to the P/FDS Waiver.

## **4. Reserved Capacity for ID/A Waivers**

The AE shall reserve existing ID/A Waiver capacity to serve identified Prospective Waiver participants who meet the criteria for Reserved Capacity in the ID/A Waivers.

### **3.4.5 Management of Unanticipated Emergencies**

The AE shall develop and implement a protocol to manage Unanticipated Emergencies efficiently and in the best interest of the ID/A Waiver Participant or Prospective Waiver Participant in need of services. The AE shall develop and implement the protocol as directed in the Written Policies and Procedures.

The AE shall identify a contact person at the AE and a contact person at the Prospective Waiver Participant's or ID/A Waiver Participant's SCO responsible for ensuring that the Prospective Waiver Participant's or ID/A

Waiver Participant's health, welfare, and safety needs are met. The identified contact person must be available to respond to the Prospective Waiver Participant at any time. These contact persons could include, but are not limited to: an AE program staff, a County crisis worker, a TSM SC, or an ID/A Waiver SC.

An Unanticipated Emergency may occur because a Prospective Waiver Participant in need of services was unknown to the AE; a Prospective Waiver Participant was not identified correctly through the PUNS; or the Prospective Waiver Participant's PUNS did not accurately reflect an unanticipated change in circumstances.

#### **4. Health and Welfare Assurances**

The AE shall conduct a trend analysis by Provider to identify potential systemic issues related to health and welfare per written policies and procedures.

The AE shall provide Providers with ODP's standardized and approved training curriculum on how to identify and report critical incidents and reasonable suspicions of abuse, neglect, and exploitation. The AE shall utilize the CAP or DCAP process to facilitate quality improvement by Providers if the AE identifies an issue that relates to the health and welfare of ID/A Waiver Participants.

The AE shall provide training to its staff that have a direct role in incident management and to ID/A Waiver Participants and their families, guardians, and advocates about their rights, roles, and responsibilities for health and welfare.

The AE shall provide ongoing training and technical assistance as needed to Providers that relate to the needs of ID/A Waiver Participants served by the Provider. This shall include coordination of training resources to be provided by entities other than the AE when necessary.

The AE shall develop and maintain a process to ensure that incidents are reviewed and approved in accordance with the time frames and requirements outlined in the most current ODP incident management bulletin and the approved ID/A Waivers. The AE shall develop and maintain a process that ensures that any incident that is required to be investigated by ODP's current incident management bulletin is investigated by an ODP certified investigator who is available to conduct the investigation 24 hours a day, 7 days a week.

##### **4.1 Provider Risk Screening Process**

The AE shall establish a Provider Risk screening process to identify potential systemic issues that place the health and welfare of ID/A Waiver Participants at risk or affect the Provider's ability to continue to operate. The purpose of the Risk Factor

screening process is to identify problems that require intervention to prevent a crisis. The Risk screening process cannot be a substitute for or duplicate of the QA&I process. Risk screening must be an ongoing process that allows early identification of potential systemic issues outside of the QA&I three-year monitoring cycle. The AE must screen Providers that are assigned to the AE. The AE is responsible for gathering data from other AEs that have ID/A Waiver Participants being served by the Provider.

The Risk screening process must include a discussion between AE staff with knowledge about the specific Provider's performance as it relates to ID/A Waiver Participants receiving supports and services from the Provider and representatives from any SCO that supports ID/A Waiver Participants being served by the Provider. The discussions should occur when the Risk screening process has identified potential systemic issues that place the health and welfare of ID/A Waiver Participants at risk or has identified potential risks that affect the Provider's ability to continue to operate. The topics of the discussions must include the Risk Factors identified through the Risk screening process.

The Provider Risk screening process must include an annual desk review of each Provider. More frequent desk reviews or onsite reviews shall occur when there are reports of problems with service delivery or financial problems. The desk review process must include but not be limited to review of the information from the AE's QM Plan, ODP licensing, incident management, abuse reporting, IM4Q considerations, complaints, QA&I results, SC individual monitoring findings, claims, billing, authorization and financial information. The AE may also conduct announced and unannounced onsite visits of Providers. Any visits must be documented using the QA&I Written Policies and Procedures.

After it completes the Risk screening, the AE shall meet with the Provider to share what the AE observed and discuss with the Provider how to remedy any Risk factors identified. If the AE concludes that a Provider's continued operation is at risk or the health and welfare of ID/A Waiver Participants are at risk, the AE must notify the regional ODP office and provide a written summary of the identified risk areas. Depending on the findings of the risk Screening, the AE shall request technical assistance from the ODP regional office to remedy any identified problems. In accordance with Written Policies and Procedures, the AE shall use the CAP/DCAP process to address any identified risk areas.

## **4.2 Participant Management**

The AE, in coordination with the ID/A Waiver Participant and his or her team, shall develop mitigation plans to address medical, behavioral, and socio-economic crisis situations in a timely manner. The AE is responsible for ensuring the Provider develops and implements corrective actions when a critical incident or crisis occurs.

The AE shall directly assume management of individual cases including but not limited to the following circumstances:

1. Individual's planning team is seeking assistance
2. No willing or identified provider is available
3. Involvement of law enforcement
4. Participant is hospitalized, ready for discharge without an identified or willing provider
5. At the direction of the Department

In such cases, AE shall ensure the following:

1. Incident reporting and ensure compliance with reporting requirements
2. Actively engage in and document participant referrals to Providers for service delivery; activities include:
  - a. identifying qualified providers
  - b. Outreach to Providers directly,to determine willingness to serve the participant
3. Coordinate with protective service entities, as applicable
4. Manage crisis situations including the following:
  - a. Meeting with potential willing providers, authorized Providers and SCOs for planning, locating resources and finding opportunities to mitigate the crisis
  - b. Explore and document all efforts to divert institutional placement
  - c. Facilitating competency hearings and guardianship appointments when necessary to resolve a crisis situation.
  - d. Other actions as directed by the Department
5. The AE shall ensure active planning for individuals return to the community is occurring for individuals who are placed in an institutional settings, including state centers, state hospitals, skilled nursing facilities, hospitals, psychiatric settings and prison.

### **4.3 Human Rights Committee**

The AE shall develop and maintain a Human Rights Committee (HRC) in order to safeguard the human rights of ID/A Waiver Participants receiving services and supports. The mission of the HRC is to implement a consistent system of AE oversight of protection and promotion of the human, civil, and legal rights of ID/A Waiver Participants. The AE shall develop a protocol that includes the following:

1. The HRC must conduct a systemic review to ensure and verify the Provider's use of restraints and restrictive interventions is appropriate and necessary.

2. The HRC must provide technical assistance to Providers to assist in the development of positive interventions or strategy alternatives to eliminate or reduce the need for restraints and restrictive interventions.
3. The HRC must analyze systemic concerns including Provider's policies and procedures, trends and patterns, individual situations and restrictive procedure plans that authorize the use of interventions that have the potential to impact an ID/A Waiver Participant's rights. The analysis will be used to determine whether the AE must provide technical assistance or issue a CAP/DCAP.

## **4.4 Customer Service and Coordination with System Partners**

### **4.4.1 Customer Service**

The AE shall develop and maintain a customer service protocol to assist all individuals, family members, local stakeholders, local businesses, and the Department. Customer service protocols should include building trust by responding to all inquiries in an effective and timely manner. Responsive and timely support includes maintaining consistent communication and providing resources to address all ID/A Waiver Participants needs in a meaningful way. The AE should contact the ODP Regional Office regarding unusual situations that the AE is unable to resolve.

### **4.4.2 Coordination with System Partners**

The AE shall discuss and manage challenging individual cases such as an imminent or unavoidable event that will affect the individual's need for new or modified services with system partners, including, but not limited to the County Mental Health Office; County Children, Youth and Families Office; Dual Diagnosis Treatment Team (DDTT), Managed Care Organizations, Hospital Social Workers, and the ODP Regional Office. The AE shall regularly engage with SCOs to identify areas of improvement and discuss oversight of ISP meetings, individual monitoring, service notes and other SCO functions.

### **4.4.3 Relationship with SCO**

AEs will collaborate with SCOs for all ID/A Waiver Participants. The AE will document any considerations or issues regarding ID/A participants and forward them to the SCO. AEs and SCOs will collaborate to ensure actions to ensure communication for needs of participant waiver enrollment and participant health and welfare. AEs and SCOs are responsible for all or part of the development and/or

approval and authorization of ISPs for ID/A Waiver participants. The AE will review, approve and make authorization decisions regarding ID/A Waiver participants. The SCO must distribute this information to required team members within 14 calendar days prior to the ID/A participants Annual Review Update Date.

The AE is responsible for ensuring the SCO enters the ISP into HCSIS in accordance with ODP policy and regulation and submit to the AE for approval and authorization at least 30 calendar days prior to the end date of the ISP. If the AE sends documentation back to the SC/SCO for revision, the SC must make the necessary corrections and resubmit to the AE within seven days of the date it was returned. The AE is responsible for providing information to the SCO and provider (if appropriate).

If the team cannot reach a resolution to the barrier, the SCO should elevate to the County Program/AE. If the change in need impacts the currently authorized services and/or funding, the SC must create a critical revision. The critical revision must be created and submitted for authorization to the AE within seven calendar days of notification of the change. The AE shall review to approve or disapprove the plan and authorize the services that meet assessed needs.

If the AE identifies an SCO has performance issues, the AE shall inform the SCO of the issues. The AE shall notify the appropriate regional ODP office if the SCO's performance issues are systemic.

#### **4.5 Incident Management (IM)**

1. The AE shall perform IM functions consistent with Written Policies and Procedures.
2. The AE shall analyze incidents to determine needed intervention and actions, including interventions and actions that ensure ID/A Waiver Participants' immediate health and safety.
3. The AE shall complete the IM management review process for each incident reported that requires Approval or Disapproval.
4. The AE shall review the implementation of CAPs and DCAPs.
5. The AE shall have a protocol detailing the IM review process including any available assessment/reports. The protocol shall include an analysis of incidents to identify at risk ID/A Waiver Participants. The protocol shall also include involvement of SCs in the identification of at-risk ID/A Waiver Participants.

### **5. Health Care Quality Units (HCQU)**



## **5.1 Collaboration with the HCQU**

The AE must request support from the HCQUs for activities related to unresolved health and welfare concerns. The HCQU activities include providing education, technical assistance, and capacity building. In collaboration with the AE, the HCQU will provide assistance, guidance and support to providers and SCOs for health-related issues. The AE shall invite the HCQU to participate in its quality management meetings.

The following AEs are the lead AEs for HCQU activities. Lead AEs must provide funding for a local HCQU and must maintain funding relationships and evaluate the performance of the HCQU.

1. Philadelphia
2. Lackawanna/Susquehanna
3. Carbon/Monroe/Pike
4. Cumberland/Perry
5. Northumberland
6. Butler
7. Clearfield/Jefferson
8. Westmoreland

The Lead AEs must contract with the HCQUs. Contracts with the HCQU must incorporate the requirements outlined in the HCQU Bulletin and the Template for Health Care Quality Unit Scope of Work and Payment Structure provided by ODP, and as updated by ODP. The AE must comply with the reporting requirements outlined in the current HCQU Bulletin.

The Lead AEs shall have a process involving the AEs who are part of the geographic area of the HCQU in evaluating the performance of the HCQU. All AEs within the geographic area of the HCQU, in coordination with ODP, are expected to collaborate with HCQUs as appropriate to develop and implement ODP priorities, such as Quality Management activities, behavioral health, and other areas.

The Department will advance the state funding to the Lead AEs for the HCQU and the Lead AEs will need to claim federal funds quarterly using the Medicaid administrative claiming system for county programs.

Payments to Lead AEs will be reconciled to the lesser of the actual costs or the amount of state and federal funds allocated to the AE at the end of the FY, in accordance with 55 Pa. Code Chapter 4300. The Lead AEs for the HCQUs shall follow the written policies and procedures for payment to the HCQU.



## **5.2 Health Risk Screening Tool (HRST)**

Assigned AEs shall ensure Providers have a plan to track and use of data from the Health Risk Screening Tool (HRST) to improve health outcomes. The AE and Provider will use the Health Risk Screening Tool (HRST) to identify individuals who have a high risk of health destabilization. AEs will ensure current health risk screenings (HRS) are in place for all individuals including applicable assessments as indicated by HRST protocol by:

1. Delivering technical assistance for Providers to understand and utilize the HRST data.
2. Integrating IM findings in HRST or determination that HRST needs to be updated.
3. Providing an analysis of the data using the available reports, including IM, and should work along with the HCQU to develop reports.
4. Ensuring Provider is utilizing the individuals' collective HRST data to create and conduct wellness programs/activities.

## **6. Eligibility, Level of Care and Enrollment**

The AE shall complete a LOC evaluation for any individual likely to be eligible for TSM, an ID/A Waiver, or the AAW. The AE shall complete its eligibility determination within fourteen (14) calendar days of receipt of the complete eligibility documentation required by Written Policies and Procedures. If the eligibility determination takes longer than fourteen (14) calendar days, the AE shall document in the individual's LOC record the reasons for the delay. The AE must notify the individual of the eligibility determination within 30 days of determination.

### **6.1 Level of Care**

The AE shall complete the required documentation for the LOC evaluation and re-evaluation of LOC specified in the TSM bulletin and the ID/A Waivers, and LOC initial evaluation in the AAW. The AE shall make a determination regarding whether the Prospective Waiver Participant meets LOC criteria.

The AE shall have the ability to score the required standardized assessment of adaptive functioning. The AE shall apply the process and instruments described in the Written Policies and Procedures and Departmental Decisions relating to determining individual eligibility for ID/A Waiver services, TSM and AAW.

The AE shall develop a protocol for individuals who are not eligible for TSM, ID/A Waivers and the AAW. The protocol must include identifying alternate available

resources.

## **6.2 Level of Care Records**

The AE shall maintain a complete record of all LOC evaluations and re-evaluations, including all supporting documentation necessary to evaluate LOC, for five (5) years after the LOC evaluation or re-evaluation, including records for individuals who are not ID/A Waiver Participants or AAW participants. The AE shall develop and implement a written protocol relating to safeguarding records of LOC evaluations that includes restrictions on disclosure of information that is consistent with 42 CFR Part 431, Subpart F and 55 Pa. Code Chapter 105. The protocol should include a policy on controlling access to e-records, training, and maintaining passwords and should address full and free access to records of LOC evaluations and re-evaluation by the following:

1. The Department.
2. The Commonwealth of Pennsylvania Attorney General.
3. The Commonwealth of Pennsylvania Auditor General.
4. The United States Comptroller General.
5. The United States Department of Health and Human Services.
6. The authorized representatives of any of the agencies listed in this Section.

## **6.3 Participant Enrollment in the ID/A Waivers**

The AE must receive and review all applications for enrollment in an ID/A Waiver, ensure initial and annual completion of a PUNS, and refer Prospective Waiver Participants for an eligibility decision. The AE must provide assistance to the Prospective Waiver Participant in completing the application and gathering all necessary information for ID/A Waiver enrollment.

## **6.4 Support Needs List Management – PUNS**

The AE must ensure appropriate AE staff are trained in ODP's PUNS policy and process as described in ODP's Written Policies and Procedures. The AE must identify the person(s) responsible for PUNS-related activities and ongoing local training of AE staff, SCOs, and intake/registration workers.

The AE shall develop and implement a written protocol consistent with Written Policies and Procedures and the ID/A Waivers that includes how the AE will conduct oversight to ensure that Prospective Waiver Participants and ID/A Waiver Participants are placed in the appropriate category of need. The protocol shall include how the AE will engage with SCOs to gather information needed to complete an individual's PUNS.

Except as provided through the designation in Reserved Capacity status, the AE shall ensure that all Prospective Waiver Participants most in need with an emergency category within the AE Jurisdiction are enrolled in one of the ID/A Waivers prior to investigating the enrollment of a Prospective Waiver Participant with a waiting list category. AEs shall expedite intake and enrollment of prospective waiver participants who are receiving funded services through Adult Protective Services.

If the AE cannot identify an individual who is in the emergency category within the AE Jurisdiction, the AE shall notify the Regional Waiver Capacity Manager.

The AE may not admit a Prospective Waiver Participant into an ID/A Waiver based on financial contributions or other types of enrollment fees paid by the Prospective Waiver Participant, a representative of the Prospective Waiver Participant, or on behalf of the Prospective Waiver Participant to the AE, Provider or any other entity.

#### **6.4.1 Planning for Age-Outs and Children with Medically Complex Conditions**

The AE shall actively participate in planning for children who:

1. Have Medically Complex Conditions and are ready to be discharged from a pediatric facility or hospital
2. Are aging out of EPSDT
3. Are aging out of MH/BH/MCO

AE participation includes participating in related meetings, drafting related correspondence, resource management, locating Providers, case management, and directing the individual's ISP team.

#### **6.5 Service Delivery Preference**

The AE shall monitor compliance with the service delivery preference process established by ODP in Written Policies and Procedures and Departmental Decisions relating to service delivery preference.

#### **6.6 Statewide Needs Assessment**

The AE shall complete its required functions related to the request and completion of the Statewide Needs Assessment (Supports Intensity Scale) in accordance with Written Policies and Procedures and Departmental Decisions relating to the Statewide Needs Assessment.

When a Prospective Waiver Participant is identified to be enrolled in an ID/A Waiver, the AE shall confirm that the Prospective Waiver Participant has a valid Statewide Needs Assessment or initiate a request to have the Statewide Needs

Assessment conducted in accordance with Written Policies and Procedures and Departmental instructions. A Statewide Needs Assessment shall be completed prior to the receipt of ID/A Waiver services. If a Statewide Needs Assessment cannot be completed prior to enrollment in an ID/A Waiver because an ID/A Waiver Participant requires the immediate initiation of ID/A Waiver services to ensure his or her health and safety, the AE shall notify the regional ODP office to request approval for the Statewide Needs Assessment to be completed within thirty (30) calendar days after the start date of the enrollment in an ID/A Waiver.

The AE shall review all exceptions and urgent requests for Statewide Needs Assessment to be completed in accordance with Written Policies and Procedures.

### **6.7 Statewide Needs Assessment Contractor**

The AE shall notify the appropriate ODP regional office of any concerns regarding the performance of the Statewide Needs Assessment contractor. Such concerns may include, but are not limited to, timeliness of assessments, conduct of assessors, and scheduling. The AE shall submit concerns in writing to the appropriate ODP regional program manager.

### **6.8 Support for Prospective Waiver Participants**

The AE shall provide information on Everyday Lives and Supporting Families Throughout the Lifespan principles, guidance on other community resources, and services available to all Prospective Waiver Participants. The AE shall follow all Written Policies and Procedures related to intake of a Prospective Waiver Participant. The AE must gather the below during intake for ODP TSM or waiver services:

1. Psychological Evaluation
2. Standardized Assessment of Adaptive Functioning
3. Birth Certificate or Proof of Citizenship
4. Social Security Card
5. Copy of Medicaid card or verification of coverage through the Departments eligibility system such as EVS or eCIS

The AE shall ensure outreach to the Prospective Waiver Participant to begin intake occurs within 10 business days of referral. The AE shall expedite the intake of any person being considered for waiver enrollment due to an Active APS report of need. The AE must validate the Prospective Waiver Participant is not enrolled in another HCBS program.

## **6.9 Money Follows the Person (MFP)**

The AE shall ensure that MFP eligible ID/A Waiver Participants are enrolled in the MFP program upon enrollment in an ID/A Waiver. This includes completing the eligibility and coding sections of form DP 1768 or its successor, notifying the appropriate County Assistance Office (CAO) using the appropriate coding, and performing any additional actions as directed by ODP per Written Policies and Procedures.

## **6.10 Financial Eligibility for ID/A Waivers and TSM**

The Department's CAO retains primary responsibility for the determination of initial and continuing financial eligibility for ID/A Waiver services and TSM, the AE shall provide all necessary assistance and cooperation to the CAO in accordance with Written Policies and Procedures and Departmental Decisions. The AE shall use data provided by ODP related to MA redeterminations to conduct outreach to individuals/families, support teams and/or providers to ensure all individuals receiving TSM and ID/A Waiver Participants maintain their financial eligibility and continued MA enrollment.

## **6.11 Pre-Admission Screening and Resident Review**

The AE is responsible for recommending specialized services and completing the concurrence for individuals who are Nursing Facility Clinically Eligible (NFCE) and have an intellectual disability per ODP Written Policies and Procedures. The AE is responsible for providing or arranging for specialized services for individuals with Intellectual Disability residing in skilled nursing facilities (SNF) and to coordinate with Community HealthChoices/Managed Care Organizations (CHC/MCO) for individuals residing in SNFs. The responsibility of the provision of the specialized services transitions from the AE to the CHC MCO once the individual is enrolled with the CHC MCO. When an ID/A Waiver Participant with an Intellectual Disability is admitted into a SNF, their Long-Term Services and Supports (LTSS) will be provided by their CHC MCO per ODP's Written Policies and Procedures.

## **6.12 Consolidated Waiver Enrollment**

The AE shall ensure, as identified through the approval, authorization, and implementation of ID/A Waiver services outlined in Section 7 of this Agreement, that the Assessed Needs and the health and welfare of existing Consolidated Waiver Participants are fully addressed. Needs may be addressed through Consolidated Waiver services, community resources, community opportunities, and family and natural supports.

### **6.13 P/FDS Waiver and Community Living Waiver Enrollment**

The AE shall ensure that the Prospective Waiver Participant's immediate health and welfare needs can be addressed within the P/FDS Cap or Community Living Waiver Cap prior to enrolling the Prospective Waiver Participant into the P/FDS Waiver or Community Living Waiver. Needs may be addressed through P/FDS or Community Living Waiver services, or through family and community resources and opportunities.

The AE shall only enroll a Prospective Waiver Participant into the P/FDS Waiver or Community Living Waiver if the following apply:

1. The Prospective Waiver Participant's immediate health and welfare needs identified through the planning process can be addressed within the P/FDS Cap or Community Living Waiver Cap.
2. An unaddressed need(s) is a need that is not an immediate health and welfare need.
3. A need(s) not addressed within the P/FDS Cap or Community Living Waiver Cap will be addressed using non-Waiver funded resources or supports.

When a P/FDS Waiver or Community Living Waiver participant experiences a change that results in an emergency need for services which will cause the participant to go over the P/FDS Cap or Community Living Waiver Cap, the AE shall:

1. Explore alternative, more cost-effective ways to provide services, including the use of community-based resources available to the general public.
2. Determine if failure to provide the additional service(s) presents an immediate health and welfare issue. If the participant's health and welfare will be at jeopardy without the additional service(s), the AE shall, in the following order:
  - a. Authorize non-Waiver funds, as available, to address the outstanding needs.
  - b. Evaluate whether the participant should be enrolled in the Consolidated Waiver.
  - c. If the AE does not have available Waiver capacity to enroll a participant into the Consolidated Waiver, it shall request an increase to its current Waiver Capacity Commitment as per Subsection 3.4.5 of this Agreement.

### **6.14 Transfer of ID/A Waiver Participants**

Per the Department written policies and procedures, the waiver participant

assignment of an AE is based on the residential location of the waiver participant. The AE shall initiate a transfer due to a waiver participant's planned relocation to reside within another AE. The sending AE shall provide the intended receiving AE with a written notice of the intent of transfer 14 business days prior to the ID/A Waiver Participant's transfer to a new AE. If the established transfer date agreed upon by the individual's ISP team has passed and an agreement regarding transfer has not been reached, the following steps should occur:

1. The sending AE shall inform the ODP Regional WCM. The WCM will seek to resolve the delay at the local level and reach out to other WCMs if appropriate.
2. Should all efforts fail to resolve the situation, ODP will provide a final determination on the transfer and the AEs are expected to comply.

The sending AE will provide the receiving AE with all the ID/A Waiver Participant's records in their possession. At a minimum, the sending AE shall provide the following documents:

1. Current ISP
2. Psychological evaluation(s)
3. Standardized Assessment of Adaptive Functioning
4. Most recent medical evaluation (MA 51, utilization review)
5. Documentation of current eligibility and LOC
6. DP 250 and DP 251
7. Service preference, current DP457 or previous choice forms (e.g. Beneficiary of Choice, Informed Consent, etc.)
8. Copy of birth certificate
9. Copy of social security card or other documentation of citizenship status
10. Copy of MA card or EVS Report, eCIS
11. Most current PA 600/PA 600A

If there are extenuating circumstances as to why a document is not available, the sending AE shall document the reason and notify the appropriate ODP regional office.

The sending AE shall also provide the following documents, if applicable:

1. All financial documents, including trusts and bank statements
2. Burial account information
3. OVR referral and response letters
4. Guardianship documents
5. Picture identification
6. Custody documents



The sending AE should ensure the ID/A Waiver Participant's placement is stable before requesting a transfer. The receiving AE shall accept the transfer of the ID/A Waiver Participant within sixty (60) calendar days of the date of the notification of the request for transfer from the sending AE. If there are concerns about the records received or the stability of the placement, the receiving AE shall discuss the concerns with the sending AE and attempt to resolve the concerns. The determination and timeframe established for transfer by ODP must be implemented. The sending AE maintains the responsibility for all requirements in this Agreement until the transfer is complete. This includes that the AE must offer the ID/A Waiver Participant a choice of an SCO using the SCO directory provided by ODP. Upon the transfer of the ID/A Waiver Participant, the receiving AE's Waiver Capacity Commitment will be increased by one and the sending AE's Waiver Capacity Commitment will be reduced by one. The actual cost for serving the waiver participant will be adjusted appropriately to deduct from the sending AE and increased for the receiving AE.

#### **6.15 Offering Free Choice of Willing and Qualified Providers**

For services not included in Performance-Based Contracting, the AE shall validate that ID/A Waiver Participants are offered free choice of a Willing and Qualified Provider for each service or support the AE approves and authorizes in an ISP. For residential services and supports coordination services, AEs shall follow referral parameters outlined in the 1915(b)(4)..

#### **6.16 Financial Management Services (FMS) and Participant Directed Services**

The AE shall make information on FMS and Participant Directed Services available to ID/A Waiver Participants at enrollment in an ID/A Waiver. The AE shall ensure adherence to the requirements outlined in Written Policies and Procedures and Departmental Decisions relating to FMS and self-direction. When aware or notified of concerns regarding the performance of a Common-Law Employer or Managing Employer, the AE shall follow the procedures specified in the ID/A Waivers or as otherwise directed by ODP.

The Administrative Entity (AE) shall ensure the availability of one qualified Agency with Choice (AWC) Financial Management Services (FMS) provider within its designated jurisdiction. The AE is not required to conduct a formal procurement or competitive bidding process to fulfill this requirement. The AE must identify, qualify, and maintain one AWC provider that meets all applicable ODP requirements for participation in the Participant-Directed Services model. The AE shall collaborate with ODP to ensure that the selected AWC provider maintains adequate capacity, complies with all applicable regulations, and supports participant access and choice. The AE must notify ODP immediately if an AWC provider discontinues



services, fails to meet qualifications, or is otherwise unavailable, and must take timely action to identify an alternative provider to avoid disruption of participant services.

#### **6.17 Service Initiation Upon Enrollment in an ID/A Waiver**

The AE shall develop and implement a written protocol to monitor that ID/A Waiver services are initiated within forty-five (45) calendar days after the effective date of the ID/A Waiver Participant's enrollment in an ID/A Waiver. Upon identification of delays in service initiation, the AE shall submit a written request for an extension to the appropriate regional ODP office. The written request must include the reason for the delay and the AE's efforts to resolve the issues, including evidence of offering the choice of other Willing and Qualified Providers. The extension request must include documentation of the AE's efforts to resolve service delays, including the barriers to service initiation.

### **7. Review, Approval and Authorization of ISPs**

The AE shall initially review, approve and authorize the ISP prior to each ID/A Waiver Participant's receipt of service(s) through an ID/A Waiver and other ISPs that require the AE to manually approve and authorize services. Subsequent ISPs may be subject to Auto Approval and Authorization and do not require the AE to manually approve and authorize.

The AE shall establish a protocol for completing a quality review of a random sample of ISPs that meet Auto Approval and Authorization criteria as specified in Written Policies and Procedures.

The AE's review, approval and authorization of ISPs shall be completed within the Department's approved timelines as specified in Written Policies and Procedures.

When an AE is unable to resolve an objection regarding the content of the ISP by the team, the Department will resolve any disagreement relating to content of the ISP.

AE shall have a written protocol to ensure that the review, approval, and authorization of services in ISPs are conducted in accordance with the approved ID/A Waivers, Written Policies and Procedures, Departmental Decisions, and this Agreement. Prior to authorizing a service in an ISP, the AE shall ensure that:

1. The ISP is reviewed for quality.
2. The ISP is reviewed to ensure services are meeting the individual's assessed needs and meeting the individual's goals and outcomes.
3. Services paid for through the ID/A Waivers are identified to support outcomes based on Assessed Needs, which are required by the ID/A Waiver Participant.

4. The ISP reflects the full range of an ID/A Waiver Participant's needs and includes all Medicaid and non-Medicaid services, including informal, family and natural supports and supports paid by other service systems to address those needs.
5. The ISP includes the type of services to be provided; the amount, duration, and frequency of each ID/A Waiver-eligible service; and the Provider to furnish each service.
6. Services are consistent with the approved ID/A Waivers, including the ID/A Waiver service definitions and applicable service limits on an annualized basis.
7. The ISP details risk mitigation strategies, including any Risk Factors identified in the HRST.
8. Any required variance or ODP approval of an exception to service limits was obtained through the established variance or exceptions process.
9. Services cannot be authorized on an ISP until there is documentation that a variance has been approved
10. The ISP describes the need for any requested enhanced services or enhanced service levels.
11. All Assessed Needs, as identified through the Statewide Needs Assessment instrument, other assessments as appropriate and the planning process, are included in the ISP.
12. The outcomes listed in the ISP relate to an identified need.
13. The outcomes listed in the ISP relate to an identified preference.
14. Services are identified to support outcomes.
15. The ISP is documented on the Department-approved format in HCSIS or its replacement.
16. The identified Providers are Willing and Qualified Providers.
17. Monthly utilization review and biannual unit adjustments are completed based on utilization.

The AE shall develop a protocol consistent with the Written Policies and Procedures to conduct quality assurance oversight of ISPs that have been Auto Approved and Authorized.

The AE shall authorize supported employment and education support services in accordance with federal and state requirements, Written Policies and Procedures, and Departmental Decisions.

The AE may only authorize therapy services and nursing services through an ID/A Waiver if there is documentation that the service is medically necessary. The AE must confirm there is documentation of a nursing plan of care when authorizing nursing services. Therapy services and nursing services must be provided under the State Plan (which includes EPSDT), Medicare, or private insurance plans until the private insurance plan's limitation has been reached before being authorized under an ID/A Waiver.

## **7.1 Additional Prerequisites for Service Authorization**

The AE shall ensure that the authorization of services provided through an ID/A Waiver is not effective until the ID/A Waiver Participant's effective start date and after all of the following are met:

1. The Department's CAO has provided notice of the ID/A Waiver Participant's eligibility for services. The AE also may access the eligibility information using PROMIS<sup>™</sup>, as long as the eligibility confirmation is printed and maintained in the ID/A Waiver Participant's record maintained by the AE.
2. The ID/A Waiver Participant has exercised freedom of choice of Willing and Qualified Providers in accordance with federal and state law and Written Policies and Procedures.
3. The ISP is written in accordance with requirements in the ID/A Waiver in which the ID/A Waiver Participant is enrolled.
4. The AE has authorized services funded through an ID/A Waiver as necessary to address documented and current Assessed Needs.
5. Providers, including Providers of vendor services and Vendors contracted through an OHCDs, are appropriately qualified to render ID/A Waiver services as required by Subsection 8.2 of this Agreement and in accordance with Written Policies and Procedures and Departmental Decisions relating to qualification and disqualification of Providers.
6. The standardized Statewide Needs Assessment has been completed or, when the ID/A Waiver Participant's health and welfare requires, approval has been obtained from the Department to proceed with enrollment.

A Provider of Vendor services includes a Provider who is acting in accordance with OHCDs requirements. For services provided through a Vendor, the AE shall verify and document that the Vendor rate entered by the SC on the ISP does not exceed the rate charged to the general public plus any allowable administration fee, prior to authorizing the Vendor service in the ISP. The AE shall verify that the administrative charge is an allowable administrative charge and does not exceed the ODP established rate as per Written Policies and Procedures related to the provision of Vendor services. The AE shall verify that services, including Vendor services, are added and authorized in an ISP in accordance with directions issued by the Department.

## **7.2 Supporting Communication**

The AE shall have a policy that ensures that every eligible ID/A Waiver Participant has access to effective communication. This policy shall include, at minimum, the

following:

1. Training protocols to equip staff with the skills necessary to be effective communication partners.
2. Strategies to ensure all communication will be culturally and linguistically appropriate.
3. A plan for budgeting and providing necessary accommodations, such as interpreters.
4. Guidelines to ensure that ISPs include how the individual communicates (both expressively and receptively) and what is needed for effective and meaningful communication.

This policy should be reviewed and updated regularly to ensure effectiveness, continuity, and sustainability. It must be made available to ODP upon request.

### **7.3 Employment**

The AE shall develop and maintain an employment protocol that complies with the Employment First Act, 62 P.S. §§ 3401-3409. The AE shall ensure that competitive integrated employment is the first consideration and preferred outcome offered for all ID/A Waiver Participants receiving ID/A Waiver services. Competitive integrated employment is work performed on a full or part-time basis (including self-employment) for which the following conditions apply:

1. The employee is compensated at not less than required by federal, state, or local minimum wage requirements or law (whichever is highest) and not less than the customary rate paid by the employer for the same or similar work performed by people without a disability;
2. The work is performed at a location where the employee interacts with people besides his or her supervisor or support staff who do not have a disability; and
3. The employee has, as appropriate, opportunities to advance that are similar to the opportunities presented to other employees in similar positions without a disability.

The AE shall assign a staff point person as the local employment subject matter expert to work collaboratively with all individuals, family members, local stakeholders, local businesses and the ODP regional office to promote competitive integrated employment and to increase competitive integrated employment outcomes.

If none exists within the AE's jurisdiction, the AE shall engage community stakeholders to create an employment coalition. The AE shall work with community stakeholders to enhance the employment coalitions in order to educate professionals in the ODP service system about what other service systems offer to

support employment, share information and resources, develop interagency relationships, explain policy, engage the business community, and collect and share data.

#### **7.4 Residential Services**

The AE shall only approve and authorize a service to be provided in a licensed or unlicensed residential habilitation service setting that is agency-owned, leased, rented or operated, if the residential service setting is located in a noncontiguous and non-campus setting and complies with other standards as detailed in the applicable ID/A Waiver, applicable regulations, and Written Policies and Procedures.

The AE must ensure that all residential service options have been offered and considered before authorizing Residential Habilitation.

The AE will only authorize Residential Services as indicated in applicable Written Policies and Procedures.

The AE shall review and when requested conduct a site visit to verify a non-contiguous site clearance of new residential service settings to ensure the proposed location meets the applicable ID/A Waiver's standards and Written Policies and Procedures for program capacity and provide ODP with the findings and a recommendation. The AE shall provide a recommendation to the ODP regional office regarding requests to change the APC of residential locations.

The AE shall conduct onsite reviews of unlicensed residential settings per written policies and procedures.

#### **7.5 Implementation of ISPs**

The AE shall ensure that the ID/A Waiver Participant's ISP is reviewed and approved, that ID/A Waiver-funded services are authorized prior to implementation, and that those ID/A Waiver-funded services are furnished in accordance with the approved and authorized ISP, Written Policies and Procedures, Departmental Decisions, and the terms and conditions of this Agreement. The AE shall implement immediate corrective action if an ID/A Waiver Participant's health and welfare is at risk. The AE shall ensure the ISP is implemented as written and corrective action is taken when a Provider is unavailable or unable to deliver authorized services. If the AE is unable to resolve delays in implementing an ISP by the service start date, the AE shall immediately notify the appropriate regional ODP office.

##### **7.5.1 Service Requests**

In accordance with Written Policies and Procedures, when the ISP team does not agree on the services to include in an ISP and a service request is

submitted by the SCO, the AE shall use information from the ID/A Waiver Participant's record, including the ID/A Waiver Participant's assessment or reassessment evaluations, to determine whether the identified service(s) is necessary to address a current Assessed Need(s). If the AE determines the service(s) is not needed or if the ID/A Waiver Participant is not eligible for the service, the AE shall provide written denial of the service(s) to the ID/A Waiver Participant, along with notice of the ID/A Waiver Participant's fair hearing rights within thirty (30) calendar days of the receipt of the service request. If the AE determines the service(s) is necessary, the AE shall, consistent with the ID/A Waivers and this Agreement:

1. Notify the SCO of the approval of the service request and instruct the SCO to update the ISP as necessary and submit the ISP to the AE for approval and authorization.
2. Approve and authorize the updated ISP within thirty (30) calendar days of receipt of the service request. This function must be conducted by the AE.
3. Notify the involved Provider(s) and ensure that the service(s) is implemented as written and by the service start date in the ISP.

If there are delays in implementing service(s), the AE shall immediately notify the appropriate regional ODP office. The AE shall implement immediate corrective action if the ID/A Waiver Participant's health and welfare is at risk.

## **7.6 Fair Hearing and Appeal**

The AE shall ensure that fair hearing and appeal activities are conducted in compliance with this Agreement, Written Policies and Procedures, and Departmental Decisions. The AE shall cooperate with the Department, as requested, regarding the Department's option to complete a service review of formal fair hearing requests to ensure compliance.

The AE shall notify the appropriate regional ODP office if it is unable to resolve issues that cause the implementation of Departmental Decisions to be delayed. The Department will review AE requests for extensions in implementing Departmental Decisions.

### **7.6.1 Notice of Fair Hearing Rights to Prospective Waiver Participants and ID/A Waiver Participants**

The AE shall have a written protocol to validate that Prospective Waiver Participants and ID/A waiver participants are provided with fair hearing rights and appeal information in accordance with Written Policies and Procedures and Departmental Decisions relating to due process, fair hearing rights and appeals. The protocol should reflect the record

retention policy as described in Sections 3.3 and 6.2 of this Agreement.

The AE shall develop and implement a written protocol to validate that Prospective Waiver Participants receive the assistance needed to complete and file an appeal in accordance with Written Policies and Procedures and Departmental Decisions relating to appeals.

When the AE makes a determination to deny, suspend, terminate or reduce an ID/A Waiver service or request for an ID/A Waiver service, the AE shall provide the required written notice to the ID/A Waiver Participant and/or the ID/A Waiver Participant's Surrogate.

The AE shall participate in fair hearings and appeals that involve Prospective Waiver Participants, ID/A Waiver Participants, or the denial, suspension, termination, or reduction of services.

#### **7.6.2 Continuation of Waiver Services**

In the event a fair hearing request is filed within ten (10) calendar days of the mailing date of the written notification from the AE, the AE shall ensure that current approved- and authorized services remain in the ISP and the authorization of services provides for continuation of the ID/A Waiver services pending a final administrative action on such a request in accordance with Written Policies and Procedures and Departmental Decisions relating to due process, fair hearing, and appeals.

### **8. Providers**

#### **8.1 Provider Recruitment and Enrollment**

The AE shall support the development of a network of ID/A Waiver Providers, excluding SCOs, through recruitment and other capacity building efforts to enhance the ability of Providers to serve ID/A Waiver Participants. The AE shall initiate recruitment of Providers when there is less than two (2) Providers of a service to choose from *or* when there is a lack of available Providers to meet the acuity needs of an ID/A Waiver Participant. AEs are encouraged to collaborate with other AEs in network development efforts.

The AE shall provide ongoing technical assistance to Providers utilizing Written Policies and Procedures on enrollment, qualification, and HCSIS or its replacement and PROMIS<sup>™</sup> processes, Everyday Lives and LifeCourse tools. This technical assistance includes, but is not limited to:



1. The ongoing engagement of the Willing and Qualified Provider network through outreach, meetings, and technical assistance.
2. The provision of information regarding the Provider application, enrollment, and qualification processes. The information must be approved by ODP.
3. The provision of intensive technical assistance or referral to the appropriate entity for enrollment support.
4. Communication with the appropriate ODP regional office regarding issues related to Provider recruitment and enrollment processes.
5. The AE shall ensure the Provider network has sufficient capacity to offer respite
6. Oversight of transition planning in the event of Provider closure or notification that a Provider is no longer willing to provide supports to an ID/A Waiver Participant. This shall include actions to ensure that any affected ID/A Waiver Participant(s) is afforded choice of Provider.
7. The provision of information regarding ODP required Provider orientation and training.
8. Orientation or training of Providers using the Department's developed curriculum, when approved or requested by the Department.

#### **8.1.1 Provider Recruitment and Enrollment-Residential Providers**

AEs are required to ensure access to two (2) or more residential Providers operating at least one service location in the AE's Jurisdiction. AEs are required to monitor access to residential Providers on a monthly basis. AEs are required to maintain documentation of monthly monitoring.

AEs will qualify a current residential habilitation Provider if they seek to add Lifesharing or Supported Living services, this is allowable under PBC process and does not require an RFA.

AEs are required to ensure access to two (2) or more residential Providers operating at least one service location in the AE's Jurisdiction. AEs are required to monitor access to residential Providers monthly and maintain documentation of monthly monitoring.

When an AE determines there is not adequate residential capacity to address access needs, the AE should notify the respective ODP Regional Office and outreach to currently enrolled Residential Providers, seeking expansion of existing service locations.

AEs will qualify a current enrolled residential habilitation Provider seeking to add Lifesharing or Supported Living services.

As of January 1, 2025, the qualification of a new residential Provider requires



a Request for Applications (RFA) initiated by the Department. If initiated, ODP may engage an AE to participate in RFA process as designated by the Department in accordance with Written Policies and Procedures.

## **8.2 Qualification of Providers**

This Section applies to all ID/A Waiver Providers, except SCOs. The AE shall complete the Provider qualification process as instructed by ODP and as outlined in Written Policies and Procedures, including assuring certification, licensure and other standards as required in the approved ID/A Waivers, Written Policies and Procedures and Departmental Decisions relating to qualification, requalification and disqualification of Providers.

If a Vendor is contracted through an OHCDs, the AE shall monitor that the Provider acting as the OHCDs and subcontracted Vendor are qualified in accordance with the ID/A Waivers, Written Policies and Procedures and Departmental Decisions.

The AE may not impose any additional requirements beyond those established by the Department relating to qualification and disqualification of Providers.

If an AE identifies that a Willing and Qualified Provider may meet the criteria for disqualification or restriction included in Written Policies and Procedures and Departmental Decisions relating to qualification, requalification and disqualification of Providers, the AE shall immediately notify the appropriate ODP regional office of its recommendation to disqualify or restrict the Provider.

When the AE determines that a provider that applied to be an ID/A Waiver Provider is not qualified or a current Provider does not meet requalification requirements, the AE shall notify the appropriate ODP regional office to advise and confer regarding the determination prior to issuing notice. The AE shall provide written notice to the applying provider applicant/ID/A Waiver Provider explaining the determination and including appeal rights. If the provider appeals the determination, the AE shall represent the Department in any related proceedings before the Bureau of Hearings and Appeals (BHA), including the submission of documentation and the appearance of knowledgeable staff as necessary, unless otherwise directed by ODP.

## **8.3 Ineligible Providers**

The AE shall not authorize services to be provided by an Ineligible Provider. If the AE authorized services and a Provider becomes ineligible, or has committed fraud, the AE must end date the authorization and ensure continuity of service with a Willing and Qualified Provider.

In the event that Provider terminations or exclusions effect the provision of service(s) in an ISP, the AE shall immediately notify the appropriate SCO and in collaboration with the SCO, shall make revisions to the ISP accordingly.

## **9 Oversight of Waiver Requirements**

The AE shall comply with QA&I oversight conducted by the Department. The AE shall conduct oversight of ID/A Waiver Providers and Vendors using ODP's QA&I process. This shall exclude SCOs.

### **9.1 QA&I Process Conducted by AEs**

The AE shall conduct the QA&I process using the Department's standardized oversight tool and process to ensure ongoing adherence to the approved ID/A Waiver qualification and monitoring standards, provisions of applicable regulations, the terms and conditions of this Agreement, any amendments to this Agreement, Written Policies and Procedures, and Departmental Decisions.

When a Provider renders services in areas served by multiple AEs, the onsite monitoring is conducted by the assigned AE, and in accordance with the QA&I process, with partnering AEs conducting onsite monitoring for those ID/A Waiver Participants in the sample registered with them. The assigned AE is designated by ODP based on the AE who has the most ID/A Waiver Participants authorized for services from the Provider.

Assigned AEs shall conduct onsite monitoring of Providers designated by ODP as described in the approved ID/A Waivers. Partnering AEs will provide necessary information at the request of the assigned AE.

If issues are identified during the Provider monitoring, the AE shall request a CAP from the Provider within fifteen (15) calendar days of notification. If the CAP submitted by the Provider does not appropriately address the identified issues, the AE shall initiate remediation efforts and notify the appropriate regional ODP office. The AE shall notify the appropriate regional ODP office if initial remediation efforts are unsuccessful relating to the following:

1. Failure to meet ID/A Waiver qualification standards.
2. Failure to comply with the provisions in the Provider Agreement for Participation in Pennsylvania's Consolidated Waiver, Person/Family Directed Support Waiver, Adult Autism Waiver and Community Living Waiver.
3. If there is evidence that:
  - a. The Provider has furnished ID/A Waiver services at a frequency or amount not consistent with authorized ISPs.
  - b. The Provider has furnished ID/A Waiver services of a quality

- that does not meet professionally recognized standards of health care, as defined in 42 CFR § 1001.2.
- c. The Provider has failed to comply with Written Policies and Procedures.
- d. The Provider has committed an action listed in 55 Pa. Code §§ 1101.75 and 1101.77 (relating to provider prohibited acts; and enforcement actions by the Department).
- e. The Provider has failed to complete Provider qualification requirements within the required time frames.
- f. The Provider has submitted false information for qualification.
- g. The Provider has been convicted of illegal business activities.

The AE shall collaborate with the Department when there are outstanding issues on the CAP prior to the issuance of a DCAP. The DCAP must be implemented as directed by the established completion dates. If the Provider fails to do so, the AE shall notify ODP of any outstanding issues. The AE is responsible for drafting the DCAP, ensuring that its content accurately reflects the nature of the deficiencies and required actions, and for maintaining appropriate documentation to support and authenticate the basis for the DCAP.

The assigned AE shall ensure that the partnering AEs have access to Provider QA&I results and the CAP.

## **9.2 Provider Oversight and Remediation Unrelated to the QA&I Process**

If a Provider does not comply with the terms of its Provider Agreement for Participation in Pennsylvania's Consolidated Waiver, Person/Family Directed Support Waiver, Adult Autism Waiver and Community Living Waiver, or if a Provider does not comply with the requirements at 55 Pa. Code Chapter 6100 (relating to Services for Individuals with an Intellectual Disability or Autism), the AE shall prepare and issue a Statement of Findings to the Provider. The AE shall require that the Provider produce and submit a CAP within no more than fifteen (15) calendar days of transmission of the Statement of Findings. The AE may at its discretion require CAPs to be submitted sooner than 15 days when warranted by the severity of the noncompliance(s).

The AE shall validate that CAPs are fully implemented by the date required by the CAP.

If a Provider submits an unacceptable CAP, or if a Provider fails to implement a CAP, the AE shall collaborate with the Department as described in 9.1 above.

## **9.3 Providing and Tracking Technical Assistance**

The AE shall provide technical assistance to Waiver Providers and SCOs upon request and as indicated based on the performance of the entity. The AE shall track provided technical assistance per written policies and procedures.

## **10. Implementation of Departmental Decisions**

The AE shall implement Departmental Decisions. If the AE determines it is unable to resolve its questions or concerns related to Department Decisions through routine and standard communications, the AE shall direct its questions, concerns and issues related to Departmental Decisions in writing to the appropriate Department staff (DHS-ODP Regional Program Manager) with copies to the DHS-ODP Director of the Bureau of Community Services, the DHS-ODP Deputy Secretary and the DHS Secretary. A written response from the Department will be issued within fifteen (15) calendar days. At the direction of the Department, the AE shall continue to implement Departmental Decisions until the Department's response is provided to the AE.

If the findings or Departmental Decisions involve issues related to the performance of a Provider, including AWC FMS Providers, Providers of Vendor services, Providers acting as OHCDs Providers for the delivery of Vendor services, and SCOs, the AE shall notify the Provider of the findings or Departmental Decisions. The AE shall monitor the Provider to ensure the implementation of an ODP-approved CAP to address the findings or Departmental Decisions. If monitoring of the Provider reveals unsatisfactory performance, the AE shall notify the appropriate regional ODP office. ODP will assist the AE in addressing Provider performance issues as further provided in Sections 9.1 and 9.2 of this Agreement.

For all findings and/or Departmental Decisions requiring the provision of a service, such service shall be provided within thirty (30) calendar days of notification of the finding or Departmental Decision or as directed by the Department when related to a risk to an ID/A Waiver Participant's health and welfare. When implementing services related to fair hearing decisions, the AE shall provide services as per Written Policies and Procedures and Departmental Decisions relating to due process, fair hearing and appeals. The AE shall approve and authorize the service and monitor service implementation.

The AE shall notify the appropriate regional ODP office when:

1. There is a delay in the implementation of authorized services; or
2. There is a need for an extension of time to implement the Departmental Decisions and findings.

The AE shall work with the responsible Provider or Provider of Vendor services to

ensure the provision of the authorized service, document the interaction with the Provider, and notify the appropriate regional ODP office.

The AE may make a written request for an extension and ODP will review requests for extensions should an AE experience difficulty in implementing Departmental Decisions and findings. ODP will respond to the AE with its decision within five (5) calendar days of receipt of said request.

## **11 Quality Management (QM)**

The AE shall have a written QM Plan that implements the Department's QM Strategy related to the methodology, accountability, responsibility, and ongoing review of QM activities.

### **11.1 QM Plan**

The AE shall routinely review and analyze data and performance over time, as well as any direction or feedback provided by the Department regarding priorities and/or opportunities to improve the AE's internal QM processes and/or plans. The AE shall use routine data monitoring and data analysis to identify quality improvement (QI) initiatives consistent with Everyday Lives' recommendations, person-centered outcomes data, and ODP priorities in making decisions around QI initiatives. The AE shall also use routine data monitoring and analysis for measuring progress on chosen QI initiatives. The AE shall maintain documentation of the process used to select opportunities for improvement and shall provide evidence to the Department upon request for the implementation of its QM Plan.

The QM Plan shall contain:

1. Specific area(s) the AE has chosen to improve that align with person-centered outcomes and Everyday Lives principles and strategies.
2. Measurable target objectives the AE is aiming to reach, within an identified timeframe, that relate to the identified goal(s) and outcome(s).
3. An action plan that includes action steps to be taken to achieve target objectives, including provisions for collaboration and regularly scheduled meetings with system partners, participants and their families to improve local services and supports.
4. Performance measures for each target objective that will be used to establish baselines, set benchmarks, and evaluate whether improvement is occurring.
5. The data source for each performance measure.
6. The title of the person responsible for the QM Plan.
7. The title of the person(s) responsible for each action step on the action

plan.

## **11.2 Utilizing Data to Monitor and Enhance Quality**

The Department will provide information to the AE to enhance the quality of the AE's administrative functions. Information will include, but not be limited to: alerts, Written Policies and Procedures, summaries of QM reports, data reports, policy and procedure clarifications and general information. As part of supporting its administrative functions outlined in this Agreement, the AE shall review the information provided and use/comply with it.

The AE shall have a policy for use of data and ongoing data monitoring and analysis practices that includes at a minimum:

1. Frequency of review and analysis
2. Use of demographic data
3. Use of data in DocuShare provided by the Department
4. Use of data in HCSIS and EIM, or their replacements
5. Monitoring data integrity
6. Data review to monitor for racial equity and equitable access to services
7. Performance measures using the Department's priorities
8. Use of dashboards made available by the Department
9. Use of data reports distributed by the Department

### **11.2.3 Risk Management**

The AE shall actively engage in RM and QM activities using data and dashboards available to it. Using EIM data and dashboards, the AE shall conduct routine data monitoring (e.g., monthly) and periodic data analysis (e.g., quarterly and annually), by ID/A Waiver Participant, service location, and Provider to identify Risk Factors that require intervention to avoid a crisis or adverse outcome. The data analysis must include, but is not limited to:

1. Compliance with timeframes for reporting, investigation and finalization of incidents and evaluations of circumstances.
2. Frequency of the use of restraints.
3. Frequency of medication errors.

To complete the data analysis, the AE must document findings from the analysis in writing, including any actions that need to be taken. Incident Management Bulletin 00-21-02 or its successor should be consulted for additional information.

The AE shall provide assistance to mitigate all situations identified as potential risks to the health and welfare of ID/A Waiver Participants upon request from Providers or SCOs.

### **11.3 Functions of the AE's QM Point Person(s)**

The person(s) filling the AE's QM personnel position shall ensure that the requirements in Section 11.1 and the Written Policies and Procedures are met. The AE's designated QM personnel shall be ODP QM certified, so that they are fully equipped for the role of managing quality and advancing quality improvement activities.

### **11.4 Independent Monitoring for Quality (IM4Q)**

The AE shall enter into a contractual relationship with a local IM4Q program. The AE shall evaluate the performance of the IM4Q program. The AE's evaluation should include reviewing, monitoring satisfaction and implementation of IM4Q.

#### **11.4.1. Protocol and Guidelines**

The AE shall comply with the responsibilities outlined in the current IM4Q Protocol and Guidelines as set forth in the ODP IM4Q Manual, with the QA&I process as it relates to the IM4Q local programs' conducting of individual interviews, any other applicable ODP Written Policies and Procedures, and any ad-hoc direction from ODP as applicable. The AE shall establish and implement a protocol that details the AE's oversight of implementation of the IM4Q program and the AE's evaluation of the IM4Q local program's performance.

#### **11.4.2. IM4Q Coordinator**

The AE shall assign at least one (1) AE representative to serve as the coordinator or point person for activities related to IM4Q.

#### **11.4.3. Closing the Loop**

The AE shall have a written procedure for implementing the IM4Q "closing the loop" process per Written Policies and Procedures, including specific procedure for how to follow up on concerns.

#### **11.4.4. Oversight**

ODP will provide the AE with the lists of ID/A Waiver Participants eligible for in-person or virtual interview per Written Policies and Procedures:

The AE shall monitor the IM4Q program at least monthly per written policies and procedures to ensure that:

- IM4Q surveys are completed by the deadline established by ODP.



- QA&I surveys are completed by the deadline established by ODP.
- Survey data is entered into the information management systems specified by ODP.
- Survey data is entered into the specified information management system by the deadline established by ODP.

The AE shall implement corrective actions as needed to ensure timely survey completion and data entry. Corrective actions may be implemented at the AE's discretion or as requested by ODP.

#### **11.4.5. Payment**

The AE shall compensate the IM4Q program for the completion of IM4Q activities per Written Policies and Procedures.

The amount paid to each IM4Q program shall be equal to the total number of IM4Q and QA&I surveys to be completed in any FY times the current per-survey rates established by ODP. At the conclusion of the FY, the total payment will be reconciled to the claim limit, which is the lesser of the AE's IM4Q allocation from ODP or the total determined by multiplying the number of completed surveys by the appropriate per-survey rate.

At the end of the FY, the AE shall withhold or recover any funds paid for surveys that were not fully completed. "Fully completed" means that the survey was conducted and entered into the specified information management system by the deadline established by ODP.

The Department will advance the state funding to the AE for administration to ensure Local Programs remain staffed and functional throughout the contract period. Federal funds will need to be claimed quarterly using the Medicaid administrative claiming system for county programs.

## **12. Training and Technical Assistance**

### **12.1 Participation in Training**

In order to ensure consistent application of the ID/A Waivers' requirements, the AAW's requirements, Written Policies and Procedures, and Departmental Decisions, the AE shall attend and participate in training sessions that are required by the Department.

The AE shall keep a record of attendance of staff or delegated entities' participation in required AE trainings.

The Department retains the authority to designate a specific training session as



mandatory and designate specific AE functional lead(s) and staff that must attend.

## **12.2 Technical Assistance**

The AE shall request support, training, and technical assistance as needed. Upon such request, the Department will provide support, training, and document provided technical assistance as determined necessary by the Department to ensure compliance with this Agreement, Written Policies and Procedures, and Departmental Decisions.

## **13. Operating Agreement Remedies and Termination**

### **13.1 Agreement Remedies**

The Department will utilize a variety of means to ensure compliance with Agreement requirements, Written Policies and Procedures, and Departmental Decisions. The Department will pursue remedial actions as needed to resolve any outstanding performance concerns and non-compliance with this Agreement, Written Policies and Procedures, and Departmental Decisions. The application of remedies shall be a matter of public record once an acceptable CAP has been developed by the AE.

AE non-compliance with the Agreement, Written Policies and Procedures, and Departmental Decisions will be addressed through the following remedies. While remedies will generally follow a progressive path, the Department reserves the right to deviate from this path for Substantial Failure as determined by the Department. The Department may utilize the following actions:

1. Notify the AE in writing of non-compliance with the Agreement, Written Policies and Procedures, or Departmental Decisions with copies to the County Mental Health/Intellectual Disabilities administrator and executives, administrator of the County/Joinder, County Commissioners/County Council/Executive Directors, and/or Boards of Directors of the AE and the County/Joinder MH/ID Board.
2. Require a CAP, including a detailed work plan outlining specific corrective activity, and specified status reports for continuance of the Agreement.
3. Require the AE to conduct at least one administrative review of the services provided using the monitoring procedures prescribed by ODP with the exception of the sample size and interviews with ID/A Waiver Participants. The review shall include an analysis of the data collected and the implementation of procedures that ensure compliance with the ID/A Waivers.
4. Revise the AE's Waiver Capacity Commitment or halt the AE's ID/A Waiver enrollment.

5. Provide a DCAP to the AE, including specific required training, participation, and/or technical assistance activities.
6. Validate corrective actions and intensify monitoring of the performance of the AE, which may include onsite performance monitoring and a requirement for regular written and/or oral status updates.
7. Adjust the State Medicaid Administration Allocation commensurate with non-delivered functions and failure to perform the terms and conditions of this Agreement, Written Policies and Procedures, and Departmental Decisions.
8. Termination of the Agreement.

In the event that the Department finds there has been Substantial Failure of the AE to adhere to the responsibilities and functions outlined in this Agreement, including applicable Written Policies and Procedures and Departmental Decisions, or Substantial Failure to perform or provide services to ID/A Waiver Participants in the ODP service system, the Department may provide notice of termination as referenced in Subsections 12.2 through 12.3.2 of this Agreement.

### **13.2 Agreement Termination**

Either party may terminate this Agreement without cause with at least one hundred twenty (120) calendar days prior written notice given to the other party and the relevant County/Joinder and County Commissioners/County Council/Executive Directors. The parties may terminate this Agreement without cause with less than one hundred twenty (120) calendar days notice only if there is an agreement to do so in writing and signed by both parties.

The Department may terminate this Agreement for Substantial Failure with less than one hundred twenty (120) calendar days prior written notice.

#### **13.2.1 Enforcement**

Failure of either party to provide the prior written notice required by Subsection 12.2 shall permit the other party to seek specific performance in a court of competent jurisdiction for up to one hundred twenty (120) calendar days following any notice of failure to perform.

#### **13.2.2 Transition Plan and Closeout Procedures for Agreement Termination**

#### **13.2.3 Transition Plan for Agreement Termination**

In the event that this Agreement is terminated as per Subsections 12.2 through 12.3.2 of this Agreement, the Department and the current AE shall

cooperate to develop a plan for transitioning administrative activities related to ID/A Waiver Participants and TSM participants to the successor AE. The transition plan must be developed within thirty (30) calendar days of the written notice of termination and will span the remainder of the one hundred twenty (120) calendar days. The current AE shall cooperate with the Department to implement the transition plan. The Department shall have the sole authority to approve the adequacy of the transition plan, including providing for the financing of the transition plan. The current AE shall ensure continuity of care for all ID/A Waiver Participants being served under this Agreement until all ID/A Waiver Participants are being served within the AE Jurisdiction of the successor AE. The current AE will cooperate with the Department in developing a transition plan for the maintenance of ID/A Waiver Participant eligibility and the provision of services during the transition period, including the systematic transfer of each ID/A Waiver Participant and ID/A Waiver Participant's record from the responsibility of the current AE to the successor AE. The transition period may be extended at the Department's discretion. The current AE shall cooperate with the successor AE regarding the transfer of records and services.

#### **13.2.4 Close Out Procedures for Agreement Termination**

If this Agreement is terminated, the following shall take effect:

4. Within thirty (30) calendar days following the notification of termination of this Agreement, or as otherwise approved in writing by the Department, the AE shall provide to the Department all financial, performance and other reports required by this Agreement.
5. Within thirty (30) calendar days following the notification of termination of this Agreement, or as otherwise approved in writing by the Department, the current AE shall supply to the Department and/or the successor AE all material necessary for continued operation of payment and related systems, including:
  - a. Computer programs.
  - b. Data files.
  - c. User and operation manuals.
  - d. System and program documentation.
  - e. Training programs for ID/A Waiver functions for responsible staff, staff agents or designees, related to the operation and maintenance of the payment system.

If the AE possesses the proprietary rights to such materials, the AE shall permit the Department to purchase the materials or purchase the use of the materials through leasing or other means.

The portion of all funds accumulated by the AE that are comprised of ID/A Waiver administrative funds and related interest must be refunded to the Department within thirty (30) calendar days after the notification of termination of this Agreement, less amounts needed to cover an outstanding Claim or liability, unless otherwise directed in writing by the Department.

All financial, administrative and clinical records under the AE's responsibility must be retained by the current AE for a period of five (5) years from the termination of this Agreement. The current AE shall provide copies of all necessary records to the successor AE as part of a transition plan.

The records required to be retained and provided, as per Subsections 3.3 through 3.3.4 and Subsection 6.2 of this Agreement, shall be transferred to the entity assuming responsibility for the AE Jurisdiction, which must retain the records for a period of five (5) years from the termination of this Agreement. The current AE shall provide copies of all necessary records to the successor AE as part of the transition plan.

The transition plan must include financing arrangements with the successor AE, which may utilize remaining ID/A Waivers-related funds held by the current AE and owed to the Department.

Should additional statistical or management information be required by the Department after this Agreement has been terminated, the AE will be given at least forty-five (45) calendar days notice to provide the required information.

#### **13.2.5 Enforcement**

The obligations in Subsections 12.3.1 and 12.3.2 shall be enforceable through an action for specific performance in a court of competent jurisdiction.