

Addendum to Provider Agreement

WHEREAS, the Department of Human Services (“the Department”) administers the Pennsylvania Medical Assistance (MA) Program; and

WHEREAS, the entity identified below (hereinafter “Provider”) renders home and community based services to individuals with intellectual disabilities (specifically residential habilitation services) that are funded through the MA Program; and

WHEREAS, Provider signed a Provider Agreement to enroll in the MA Program; and

WHEREAS, the payment and qualification provisions for MA-funded home and community based services rendered to individuals with intellectual disabilities are set forth at 55 Pa. Code Chapter 51; and

WHEREAS, the Chapter 51 regulations were issued pursuant to Act 2011-22 (Act of June 30, 2011, P.L. 89, No. 22)(“Act 22”); and

WHEREAS, the Department offers certain additional or exceptional payment provisions consistent with the payment provisions of Chapter 51 under the conditions set forth in this Addendum.

NOW THEREFORE, Provider agrees to the following in addition to the provisions of its Provider Agreement:

1. To establish residential habilitation rates for Provider for the period of July 1, 2015 through June 30, 2017, the Department will:
 - a. use a residential habilitation vacancy factor, as described at 55 Pa. Code §§ 51.74 (12), 51.74 (14) and 51.98, of ninety-six percent (96%); and
 - b. adjust line 19 of the provider's cost reports for FY 2013/2014 and FY 2014/2015 from “total waiver units of service available” to “total waiver units of service authorized.”
2. The Department, for the period July 1, 2013 - June 30, 2015, will amend its policies governing exceptions to the ninety-seven percent (97%) residential habilitation statewide vacancy factor as follows:
 - a. The Department shall group a provider's billing codes (“W Codes”) for residential habilitation services into two (2) groups (“Groups”) to determine both a provider's eligibility for an exception and the value of the revised vacancy factor. The First Group shall consist of five (5) existing W codes -W6090, W6092, W6094, W6096 and W6098. The Second Group shall be all remaining

cost-based residential billing codes that exist on the effective date of this Amendment. If the billing codes are amended during the period July 1, 2013 - June 30, 2015, the equivalent billing code for each respective group shall be used. To be eligible for an exception in one or both of the aforementioned Groups, the provider must have an average annual occupancy rate across the given group's W Codes that is below ninety-seven percent (97%).

- b. 55 Pa. Code §§ 51.34(b), 51.98(g) and (h) shall not be applied or considered in any way in the review of exception requests for an exception to the statewide vacancy factor.
- c. To calculate the value of the revised vacancy factor for each Group identified in subparagraph 2.a, above, the Department will include vacancies that are applicable to the given Group; that are attributable to a consumer's absence from his/her residence due to medical reasons (e.g., hospitalization) or therapeutic reasons (e.g., visits with family and/or friends); that are documented in the consumer's records; and that do not exceed the federal time limits (as specified as thirty (30) consecutive days) that require the Department to disenroll the individual from the Waiver Programs. The Department will not calculate the revised vacancy factor by W Code individually or by the provider's business in total.
- d. To implement the provisions of c., above, the instructions set forth in Exhibit A will govern the review and approval of residential habilitation vacancy exception requests. The provider who makes the request shall document, in each exception request, utilization for each Group for any utilization that falls below a 97% occupancy. The Department will validate the information contained in the exception requests using information available in the Home and Community-Based Services Information System (HCSIS) and in the claims processing system referred to as "PROMISE."
- e. Provider may submit residential habilitation exception requests relating to FY 2013-2014 until April 30, 2015 and for FY 2014-2015 until September 30, 2015.
- f. The Office of Developmental Programs, or its designee, shall review residential habilitation exception requests and issue a final written determination within sixty (60) calendar days of receipt of the exception request. A denial of an exception request shall be subject to administrative review pursuant to 55 Pa. Code Chapter 41.
- g. The Department will use its best efforts to ensure that payments owed to a provider relating to a residential habilitation vacancy exception request will be paid within forty-five (45) calendar days of approval of an exception request,

subject to subparagraph 2.h.

- h. In the event a payment is made under this paragraph, the Department may recoup a portion of the payment if the payments are not eligible for federal financial participation. In the event that the Department does not receive federal financial participation for the payments, then the Department, upon sending written notice to the provider, may recoup an amount equal to, but no more than, one-half of the amount of the anticipated federal financial participation. For example, if the total payment to the provider equals \$100.00, and the federal financial participation, if available, would have equaled \$52.00, then the Department may recoup, by offset or otherwise, the amount of \$26.00 and the provider retains \$74.00.

3. The Department, for the period July 1, 2014 through June 30, 2015, will amend its policies to temporarily reclassify residential capacity related to transitional bed openings as of the date the opening occurs, subject to the following:

- a. The Department will process any reclassification change expeditiously but in no case later than forty-five (45) days after a request is received.
- b. Provider may bill retroactively to the date the transitional opening occurred.
- c. No later than June 30, 2015, all residential capacity for an individual home shall be restored to the capacity level that existed prior to the initial temporary reclassification for transitional beds openings.
- d. During the effective period of this policy, Provider may not act arbitrarily and capriciously in its refusal of a waiver participant referral.

4. The Department, for the period July 1, 2015 - June 30, 2017, will amend its policies to allow for a two (2) percent retention factor affecting Provider's cost based residential rates to be calculated as follows:

- a. The Department will use cost reports submitted in FY 2014-15 based on FY 2013-14 costs (Year 7 cost report) for purposes of computing the retention factor for FY 2015-16 rates.
- b. The retention factor will be a percentage addition to a Provider's otherwise calculated rate if the total per unit provider costs by W code decrease from the cost report submitted in FY 2013-14 (Year 6 cost report) as compared to the per unit costs submitted in FY 2014-15. If year over year (Year 7 less Year 6) unit costs by W code are less, the provider's rates for the specific W code would be increased up to a maximum of two (2) percent. The percentage refers to the Year 6 costs less Year 7 costs divided by Year 6 costs. The application of the

retention factor will not cause the provider's rate to exceed the prior year's PROMISE paid rate.

- c. For FY 2016-17 rates, the Department will compare Provider's per unit costs by W code in the cost report submitted in FY 2015-16 based on FY 14-15 costs (Year 8 cost report) as compared to the per unit payment rate before the vacancy factor is applied by W code in FY 2015-16 for purposes of computing a retention factor of up to a maximum of two (2) percent in each fiscal period.
- d. Provider will identify the estimated amount of revenue that will be retained by application of the retention factor in its annual cost report.
- e. Retention factor applies only to cost based residential rates.

5. Provider understands and agrees that the terms of this Addendum regarding the retention factor that are set forth at paragraph 4 are contingent upon approval from the federal Centers for Medicare and Medicaid Services (CMS). The Department will compute the state only share of the retention factor to be included in the rates effective for each fiscal year beginning July 1st. If CMS approves the waiver amendment and thus ODP receives federal financial participation, the Department will calculate the revised rates and promptly notify providers via a revised cost-based residential rate letter. The effective date of the revised rates will be determined based on the CMS effective date of the approved waiver. The Department will use good faith efforts to resolve CMS's denial (if any) of federal financial participation.

6. The Department will not adopt or impose or apply a negative rate adjustment factor (RAF) under 55 Pa. Code §51.74 to any provider's payment rates in any form for any reason for the period July 1, 2014 through and including June 30, 2017.

7. In consideration of the payment provisions set forth paragraphs 1 through 6 above, Provider agrees that it will neither raise nor pursue, in any administrative appeals or any other judicial or quasi-judicial actions applicable to FY 2014-2015, FY 2015-2016 or FY 2016-2017, the following issues:

- a. whether Act 22 reflects an unconstitutional delegation of legislative authority; and
- b. whether the Department must comply with the provisions of the Commonwealth Document Law, 45 P.S. §§ 1201 et seq., the Commonwealth Attorneys Act, 71 P.S. §§ 732-101-732-506, and the Regulatory Review Act, 71 P.S. §§ 745.1-745.15, in order to apply the Chapter 51 regulations subsequent to June 30, 2012 (i.e., whether Act 22 imposed a sunset date or time restriction on the regulations).

8. Provider agrees that this Addendum does not amend its Provider Agreement, which remains in full force and effect, and does not amend any policies, procedures, rules or laws governing Provider's participation in the MA Program except as provided in this Addendum.

9. This Addendum is governed by, and shall be interpreted and construed in accordance with, the laws of the Commonwealth of Pennsylvania subject to the following:

- a. This Addendum shall not be construed for or against Provider or the Department, but rather shall be given a fair and reasonable interpretation based upon the plain language of the Agreement and the expressed intent of the parties.
- b. This Addendum does not constitute an admission of any kind whatsoever by Provider or the Department.
- c. This Addendum shall not be construed as an admission or evidence of the Department's or Provider's interpretation or policy on any issue, dispute, or claim resolved hereunder, nor does it establish a precedent or otherwise bind the Department or Provider in any other matter.
- d. This Addendum is not binding on any other state agency or any federal agency.

10. Provider will litigate any disputes regarding the provisions of this Addendum exclusively in the Department's Bureau of Hearings and Appeals.

11. The undersigned asserts and warrants that he/she:

- a. possesses all necessary powers and authority to make the representations set forth on this Addendum and to execute the same on behalf of the Provider and, in so doing, to bind the Provider, including the owner(s) of the Provider and any persons who derive any rights from the Provider and its enrollment in the MA Program; and
- b. understands that the representations contained in this Addendum may be relied upon to make payment of Federal and State funds, and that any false information, statements, or documents or the concealment of material facts may be prosecuted under applicable Federal and State laws, including 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

I have read and understood this Addendum, and I have had the opportunity to seek and obtain legal counsel concerning the document and its requirements.

Signature: _____

Date: _____

Print Name: _____

Print Title: _____

Provider Address: _____

Provider MA ID Number: _____