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NEW YORK STATE DEPARTMENT OF HEALTH  
Office of Health Insurance Programs  
Division of Program Development and Management

**Request for Proposals**  
**New York State Medicaid Transportation Management Initiative –**  
**Hudson Valley Region**

RFP # 16267

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**Schedule of Key Events**

RFP Release Date ..... October 22, 2015

Written Questions Due ..... November 5, 2015

Response to Written Questions On or About..... November 19, 2015

Proposal Due Date ..... December 7, 2015 by 4:00 pm ET

Contract Start Date (Anticipated) ..... March 1, 2016 (new vendor)  
..... June 1, 2016 (incumbent vendor)

## Contacts Pursuant to State Finance Law § 139-j and 139-k

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*For further information regarding these statutory provisions, see the Lobbying Statute summary in Section F.13 of this solicitation.*

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## **A. INTRODUCTION**

The purpose of this Request for Proposals (RFP) entitled “New York State Medicaid Transportation Management Initiative – Hudson Valley Region” is to secure the services of one (1) qualified and responsible Contractor (Transportation Manager) within the United States to provide management and coordination of non-emergency medical transportation for Medicaid fee-for-service (FFS) enrollees in the Hudson Valley Region. This Medicaid transportation management initiative includes the following counties: Albany, Broome, Cayuga, Columbia, Delaware, Dutchess, Essex, Fulton, Greene, Montgomery, Oneida, Onondaga, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington and Westchester.

The New York State Department of Health (Department of Health) will award one (1) contract as a result of this RFP, anticipated to start on the date shown in the Schedule of Key Events, for a term of five (5) years and three (3) months if awarded to a new vendor, to allow for a three (3) month transition period from the previous vendor to the new vendor. Should the current contract holder be awarded, the contract term will be five (5) years.

## **B. BACKGROUND**

As a federally recognized state Medicaid agency, the Department of Health is responsible for ensuring the availability of non-emergency medical transportation for Medicaid enrollees in New York State. Prior to the authority granted to the Commissioner of Health in the enacted 2010-11 Budget, the Social Services Law gave the counties the responsibility for administering Medicaid transportation.

The 2010-11 State Budget amended the Social Services Law Section 365-h to give the Commissioner of Health authority to assume the management of Medicaid transportation in any county. The intent of the law is to improve the quality of transportation services, reduce the local burden of administering transportation services and local management contracts, and achieve projected budgeted Medicaid savings. The authority has been extended by the 2015-16 State Budget.

The State’s assumption of Medicaid Transportation management from the counties is a major administration reform highlighted in both the State’s Medicaid Administration Report and the Medicaid Redesign Team cost savings initiatives. Prior to the State’s assumption of Medicaid transportation, the administration of the program by counties was a costly local mandate that reduced the State’s ability to ensure uniform compliance with policy directives, did not take advantage of potential regional efficiencies, and was not effective in reducing costs. The initiative has improved program accountability, enhanced quality, and has achieved considerable ongoing cost savings.

The Social Services Law Section 365-h has the following major provisions:

- The Commissioner is authorized to contract with transportation managers that have proven experience in coordinating transportation services in a geographic and demographic area similar to which they will be operating in New York State.

- The transportation management contracts may include responsibility for review, approval, and processing of transportation requests, managing the appropriate level of transportation based on enrollee's individual need, and the development and application of new technologies for transportation services.
- The Commissioner must, if appropriate, adopt quality assurance measures, reporting requirements and service verification mechanisms. The Commissioner will further ensure that transportation services are provided in a safe, timely, and reliable manner by transportation vendors performing in compliance with state and local regulations and meet Commissioner approved consumer satisfaction criteria.
- Any reimbursement fees developed by transportation managers will be reviewed and approved by the Commissioner.
- The law's provisions sunset six (6) years after the execution date of the first transportation management contract, June 9, 2017.

Regionalized transportation management models have been employed successfully throughout the nation to control cost, improve quality and provide accurate data and reporting. These results are usually obtained through the use of call centers that reduce hold times and enhance the scheduling experience, best practice transportation techniques, fraud detection and prevention, data analysis, development and application of lower cost modes of transportation including the development of shuttle routes to major medical destinations.

Accordingly, the Department of Health procured transportation management contracts for the five (5) boroughs of New York City, 24 counties in the Hudson Valley region, 24 counties in the Finger Lakes/Northern New York region, seven (7) counties in the Western New York region, and two (2) counties in the Long Island region. These procurements are the centerpiece of the Medicaid Redesign Team's transportation reform initiatives, and are a component of the State's initiative to take over the administration of Medicaid from the counties. The current contract with the Hudson Valley Region Medicaid Transportation Manager expires May 31, 2016.

The Department of Health's transportation management contracts enhance the agency's ability to improve the delivery of Medicaid transportation and better align the State's fiscal and programmatic accountability for this integral service. The Commissioner will continue to exercise his discretionary authority in close collaboration with local social services officials in a manner that ensures compliance with both State and local regulations and consumer satisfaction standards.

Providing health care for Medicaid enrollees requires both ensuring access to an appropriate number and type of medical professionals, and the necessary mode of transportation to their services. Medicaid enrollees require transportation to access nearly all Medicaid-funded services, including local primary care practitioners. Transportation also serves enrollees who need routine care, such as regular appointments at renal dialysis and/or drug and alcohol treatment centers. New York's Medicaid program covers non-emergency medical transportation provided via non-emergency ambulance, ambulette, taxi, public transit, personal vehicle,

commercial travel (i.e., airplane, bus, train) and other modes as applicable to the individual enrollee.

New York, like other states, has struggled to continue to provide safe, reliable, and cost efficient non-emergency medical transportation for Medicaid enrollees in an era of growing enrollment and severe fiscal constraint. In Calendar Year 2014-15, New York's fee-for-service spending for Medicaid transportation was \$465 million; significant additional transportation spending was incurred through payments made to adult day health care and developmental disabilities programs, some mainstream managed care and managed long term care plans, and other entities. While the cost of Medicaid transportation has increased, the cost per enrollee has decreased since the State assumed Medicaid transportation management from the counties.

The Department of Health will pay the selected transportation management contractor (transportation manager) on a per-enrollee-per month fee for management of Medicaid transportation in the counties specified in this solicitation. These enrollees shall be defined as those eligible for Medicaid transportation reimbursed as fee-for-service in the Medicaid program, including non-medical transportation for those in the Traumatic Brain Injury program, the Health and Recovery Plan program, or other programs allowed in the New York State Medicaid State Plan and amendments. The applicant must propose a fee for each Medicaid enrollee as described in Section E.2. In addition to the transportation management fee, the transportation manager will pay for legitimate pass through enrollee transportation expenses, and will bill the Department of Health directly for reimbursement.

The Department of Health reimburses transportation vendors that provide transportation for fee-for-service Medicaid enrollees at fees established by the Department.

For entities that provide transportation in their rate, such as day programs, managed long term care plans, some managed care plans, and some facilities, those programs or facilities are responsible for arranging the necessary transportation and reimbursing vendors.

### **C. ELIGIBILITY OF BIDDERS**

The bidder must have a minimum of three (3) years of experience in coordinating Medicaid transportation services in a geographic and demographic area similar to the area in New York State within which the contractor would manage such services.

Also see Section E.3.1., Pass/Fail Assessment (Mandatory Requirements).

### **D. PROJECT SPECIFICATIONS**

This RFP is to identify and contract with a Medicaid Transportation Manager within the United States to provide management and coordination of non-emergency medical transportation for Medicaid fee-for-service enrollees in the 24 county Hudson Valley Region of New York. This management initiative includes the following counties: Albany, Broome, Cayuga, Columbia, Delaware, Dutchess, Essex, Fulton, Greene, Montgomery, Oneida, Onondaga, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren,

Washington and Westchester. The Hudson Valley Region counties are demographically and geographically diverse, and include both urban and rural areas.

Emergency ambulance service, as defined in 18 NYCRR Part 505.10 and in 92 ADM –21 (see Attachments B and F), is not covered under this contract.

The transportation manager will be responsible for performing transportation management activities according to the standards and directives of the Department of Health and in compliance with the provisions of Section 365-h of the Social Services Law (see Attachment A). The transportation manager will have an understanding of the unique aspects of each county and be flexible enough to meet the needs of the local medical providers, transportation vendors, and Medicaid enrollees.

The transportation manager is expected to consider existing transportation networks and arrangements between health care providers and transportation vendors, when these arrangements complement the Medicaid program goals of assuring and improving access to necessary medical care. A well-developed transportation management plan by the transportation manager will include strategies to collaborate with existing resources to enhance and improve transportation options for Medicaid enrollees.

Public transit is available in most counties in the Hudson Valley Region. The transportation manager shall use public transit options throughout the region as appropriate.

The Department of Health expects the transportation manager to utilize quality transportation vendors. The transportation manager is responsible for ensuring compliance with the Department's expectations of Taxi Cab providers within the Hudson Valley Region.

While medical care is available in each county, some specialty medical care may be needed from the major medical centers of the region, in New York City (NYC), or outside the State. The transportation manager will respond to local travel requests within each county, and also develop and maintain functional and efficient travel patterns to transport enrollees to these major medical destinations when the need for medical care is not available locally. The transportation manager will manage transportation from an extensive geographic area into a large metropolitan area.

The transportation manager will have the ability to respond to an emergency event which may disrupt telephone and transportation services in the Hudson Valley Region counties. Such acute events may include severe weather and other natural disasters, major industrial and transit accidents and acts of terror.

The transportation manager will utilize software technology by developing a system that determines accurate point-to-point mileage routing resulting in exact mileage using the shortest distance route necessary for travel.

The transportation manager will use aggregate data to analyze potential rides viable for efficient routing and reimbursement. For example, trips that are scheduled within similar time frames and with similar pick-up and drop-off locations can be grouped to maximize efficiency. In instances where such efficiencies are found and approved by the Department of Health, the transportation

manager is required to work directly with the medical providers (as appropriate) and transportation vendor/s in scheduling and providing transportation in order to maximize these efficiencies while adhering to the Department's quality standards.

Transportation management entities that specialize in managing non-emergency medical transportation have made significant improvements in the technology available for managing the transportation needs of Medicaid enrollees. These innovations include web-based scheduling for medical providers and enrollees, data reporting and analysis, and accurate mileage authorization. Any future use of new technologies by the transportation manager will be evaluated in regards to the probability of success and furthering the goals of the Medicaid program and be in the best interest of the state. Any plans for application of such technology will be submitted to the Department of Health for approval prior to their implementation.

The Department of Health expects that the transportation manager will incorporate user-friendly electronic technologies in their processes. Standard processes that use paper-based methodologies, such as requiring drivers to submit trip logs to the transportation manager in order to provide payment authorization, routine faxes of scheduled trip assignments and manifests, or requested trip corrections or complaints, are not acceptable.

When transportation is requested for an eligible Medicaid enrollee, the user-friendly technology employed by the transportation manager will identify the appropriate potential transportation options suitable to the enrollee's medical condition. Where public transit is the most appropriate option, this technology will compare transit schedules across numerous jurisdictions allowing the operator who manages the transportation request to automatically make transit decisions at the lowest cost and most medically appropriate level.

Currently, the transportation of Medicaid enrollees covered by some mainstream managed care and managed long term care plans is the responsibility of the managed care organization and paid by the plan under its capitated rate. Transportation requests for such enrollees must be referred to the appropriate plan.

Certain Medicaid programs, including adult day health care and developmental disabilities facilities and programs, include payment for transportation of registrants to and from the programs within their Medicaid reimbursement rates. Therefore, fee-for-service transportation to and/or from these programs will not be approvable unless the Department of Health adopts an initiative to carve non-emergency medical transportation out from these programs. Whenever applicable, the transportation manager shall refer these registrants to their program for transportation services.

It is the Department of Health's policy that a Medicaid enrollee use the least expensive mode of transportation that is appropriate and available based upon their medical condition, the medical provider's location, and the treating medical practitioner's instructions. Enrollees with no physical or cognitive limitations and who have medical appointments within walking distance of their medical provider will not be provided Medicaid-funded transportation services. For Medicaid-eligible enrollees requiring transportation via Medicaid-enrolled non-emergency transportation vendors, payment will be authorized by the transportation manager for services via the State's Medicaid Management Information System (MMIS) at the least costly and most appropriate level of service.

The expected outcome of the authorization process is the development of user-friendly, efficient methods of both arranging and assigning trips. The transportation manager will provide knowledgeable staff to meet onsite as needed with medical practitioners and transportation vendors at their place of business to guide them through all the available communication processes.

Under the New York State Medicaid program, payment is made for medical transportation when such transportation is essential for the Medicaid enrollee to obtain covered medically necessary care and services. Transportation services may be denied for a number of reasons, including when the individual has access to transportation such as a private vehicle or public transit, which the individual uses for ordinary activities of daily living.

Payment for non-emergency medical transportation will be made only when such transportation has been pre-approved by the transportation manager. Reimbursement to the Medicaid-enrolled transportation vendor for transportation approved by the transportation manager will be made by the Department of Health, not the transportation manager.

Reimbursement to the enrollee for pre-approved personal travel expenses will be made directly by the transportation manager, and payment for pre-approved commercial travel expenses shall be borne initially by the transportation manager. Appropriate personal and commercial travel expenses will be reimbursed by the Department of Health (see Attachment G).

Medicaid payments will be made only to those lawfully authorized to provide transportation services. In order to be eligible to receive payment, the vendor will be lawfully authorized under Section 365-h of Social Services Law on the date which services are rendered.

The volunteer drivers, friends and neighbors who provide transportation of an enrollee using a personally owned vehicle must have a valid driver's license on the service date in order to be considered for Medicaid reimbursement.

Allegations of fraud, waste and abuse referred to the Department of Health by the selected transportation manager will be investigated by the appropriate audit authorities, not the transportation manager.

**In addition to these requirements, the transportation manager will meet the following Medicaid Transportation Management Initiative project specifications:**

#### **D.1. Location of Core Management Team & Primary Call Center and Backup Call Center**

The transportation manager who is awarded this contract will maintain a core management team whose primary activity and direct responsibility is overseeing the day-to-day operations of the Hudson Valley Region Medicaid Transportation Management Initiative. The success of the transportation manager will rely in part on the competence and character of the team and their accessibility to the Hudson Valley Region counties. The transportation manager will have a core management team at a location accessible to the region being managed.

The primary call center will be located and operated within New York State (see Section E.1.6 and Section E.3.1). Any backup call center (see Section D.2.h) will be located and operated within the Continental USA (see Section E.1.6 and Section E.3.1). The bidder should identify the actual or anticipated location of the primary call center and backup call center, if known.

The core management team will include an individual who is available to consult with the Department of Health and who has the principal responsibility of overseeing the day-to-day operations of the contract awarded as a result of this RFP. Other core management team members will be knowledgeable, in the aggregate, of all functions required under this initiative.

## **D.2. Operate a Primary Call Center for Medicaid Eligible Individuals or Their Representatives**

- a. Maintain a toll-free telephone number and other voice and telecommunications devices, including devices appropriate for the hard-of-hearing. Oral interpreter services will also be made available, free of charge to Medicaid enrollees, for all regionally predominant languages, but especially Spanish and Yiddish. The telephone number shall be operational at least fifteen (15) calendar days prior to service begin date and will be transferable to the Department of Health, or other entity designated by the Department, upon expiration of the contract. Telephone access for transportation approval requests is required as follows:
  1. The transportation manager shall maintain sufficient personnel to perform the functions required herein for at least eleven (11) consecutive hours during the hours of 7:00 a.m. through 6:00 p.m. Eastern Standard Time, Monday through Friday.
  2. During regular business hours, the transportation manager shall maintain telephone routing and response procedures, with options for the enrollee to stay in the queue to reach a staff person, return to telephone routing, or key-punch a telephone number to be used to return the call to the enrollee within one (1) hour.
  3. The transportation manager may observe the designated Federal holidays of: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. However, the transportation manager must be prepared to manage requests for urgent care transportation on those holidays. If the transportation manager intends to observe additional holidays, the transportation manager must obtain the prior written approval of the Department of Health. The transportation manager shall give the Department of Health thirty (30) days' written notice of scheduled closure of days other than those listed above.
  4. The transportation manager shall maintain a call tracking system recording the following details for each call related to transportation, and upon request from the Department of Health, shall provide electronic recordings of specified calls. Minimally, the call tracking system will be able to retrieve calls based on incoming telephone number, date of call, and transportation manager staff answering the call. Callers shall be advised that calls are monitored and recorded for quality assurance purposes. The call tracking system shall be able to record and aggregate the following

information by queue and shall be able to produce the reports specified in this proposal as well as ad hoc reports that the Department of Health may request on a daily, weekly, or monthly basis:

1. The number of incoming calls;
  2. The number of calls that reach the automated voice response system;
  3. The number of calls that are abandoned during the queue wait time;
  4. The number of calls that reach call center operators;
  5. The average and maximum talk time;
  6. The number of calls in the queue that exceed three (3) minutes in hold time;
  7. The number of answered calls that exceed seven (7) minutes in duration, the number of these that exceed ten minutes in duration, and the number that exceed fifteen minutes in duration, including hold time;
  8. The number of calls placed on hold by call center operators;
  9. The number and percentage of calls abandoned while placed on hold by call center operators; and
  10. The number of available call center operators by the time of day and the day of the week, in half-hour increments.
- b. The transportation manager will effectively manage transportation requests from a multi-county region for a large volume of Medicaid enrollees who qualify for fee-for-service Medicaid transportation in a timely and professional manner.

Call center operations will meet the following standards on a monthly basis:

1. The automated voice response (AVR) system will answer all calls within three (3) rings, with 95% or greater compliance.
  2. The queue time for a live call center operator to answer a call after the initial AVR will be three (3) minutes or less per call, with 95% or greater compliance. A message will inform the caller every 30 seconds how long the caller has been on hold, and approximate time for next available call center operator.
- c. The transportation manager will maintain a request system that can receive a large volume of requests via different methods, including telephone calls and online, from eligible enrollees, their representatives, or an ordering medical practitioner for medical transportation in an established call center.

- d. The transportation manager will implement a system that will require all Medicaid eligible individuals in need of transportation for non-emergency or non-urgent medical care to request such services a minimum of 72 hours in advance of the service date. The system will include a process for communicating this requirement to enrollees and medical providers.
- e. The transportation manager will accommodate requests for same day transportation services when urgent care is required. "Urgent care" means that level of care ordered and verified by the individual's physician, by telephone and in written format, to be necessary on the same day the request is made or within 24 hours. The transportation manager will accommodate hospital and emergency department discharge requests, with pickup and transport occurring within a reasonable timeframe of receipt of the request, but not exceeding three (3) hours from the request, 24 hours a day.
- f. The transportation manager will establish a system for receiving requests from medical providers 24 hours a day, seven (7) days a week. The system will minimize the time and effort needed by the medical provider, and will accommodate both one (1) time (ad hoc) and multiple trip requests (i.e., standing orders).
- g. The transportation manager will establish a system to allow for post-trip approval of transportation services in accordance with Department of Health regulations and policies. Post-trip approval is allowed in instances when approval prior to the trip was not obtainable, such as in situations where the person was not eligible for Medicaid on the date of travel, but subsequently was determined to be retroactively Medicaid eligible to cover that service date. The post-trip approval policy shall ensure that all applicable requirements of prior approval are considered for the post-trip authorization, and shall establish a timeliness requirement for the submission of post-trip approval requests in accordance with Department of Health regulations and policies.
- h. The backup call center, if used, will only be utilized when the primary call center is not fully functional, such as during periods of excessive call volume, emergencies, equipment malfunction or after normal daytime operating hours. The backup call center will have the ability and capability to perform all duties and services provided by the Primary Call Center. The transportation manager will provide a plan describing how and when the backup call center will be utilized. The plan will include a description of how the use of a backup call center benefits the New York Medicaid program. The transportation manager (contractor) shall be responsible for all work performed by the backup call center and accepts all responsibility for the work of the backup call center and will ensure the backup call center is in full compliance with the RFP #16267 and the resulting contract.
- i. The transportation manager will establish a system for managing transportation during an acute event that may disrupt telephone and transportation services in the Hudson Valley Region.

### **D.3. Process Requests for Medical Transportation**

- a. At the time of the request, the transportation manager will confirm the individual's eligibility status as a Medicaid enrollee utilizing the applicable State-operated eligibility verification system. The transportation manager will become a registered user of the system operated through the Department of Health.
- b. The transportation manager will maintain enrollee confidentiality and comply with all Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations.
- c. The transportation manager will be able to explain the Department of Health's published rules and regulations of the Medicaid medical transportation program to transportation and medical providers and Medicaid enrollees and refer specific inquiries to the Department, as appropriate.
- d. When requests are made for transportation by a Medicaid enrollee, the transportation manager will interview the individual using a Department of Health-approved script to confirm all relevant information including their normal means of transportation, pickup address, location of required medical service, transportation needs, and whether the required medical service to which transportation is requested is a Medicaid covered service.
- e. The transportation manager will obtain the medical practitioner's documentation to support and justify the mode of transport for prior authorization for non-emergency ambulance, ambulette, or taxi (where public transit is an available option). The utilization of such modes of transport is a medical decision and requires the justification and recommendation of a medical practitioner. The process of obtaining the practitioner's justification will include the use of a standardized form approved by the Department of Health. The transportation manager can use the fields on this form in an electronic format used by medical practitioners, though the signature of a certified medical practitioner eligible to request transportation services must be affixed to the form. Upon receipt of the medical justification from the medical provider, the information shall be reviewed and the request for prior authorization for non-emergency transportation will be approved or denied based upon Medicaid program criteria. The form and associated documentation shall be uploaded, as applicable, to the transportation manager's repository system in its entirety, making it easily retrievable upon request. The transportation manager should not seek new medical justification for enrollees where the mode of transportation has already been documented and the determined mode of transport will be long term.
- f. The transportation manager will determine the appropriate mode of transportation according to the enrollee's needs. Based on that determination, the transportation manager will arrange the most appropriate transportation vendor capable of meeting those needs at the lowest cost and highest quality. An appropriate vendor may be a friend or neighbor, common carrier (public transit), taxi, ambulette, stretcher van, or non-emergency ambulance. Transportation will be assigned giving appropriate and reasonable consideration to the transportation needs of the enrollee. The transportation

manager shall first require enrollees to use their personal vehicle, when one is available to the enrollee and the enrollee can legally drive.

- g. The transportation manager will establish a system for assigning rides that is fair and equitable to transportation vendors and efficient for enrollees. Such a system will be based on the requirement that enrollees are free to choose a transportation vendor within the medically necessary mode of transport and who participates at the assigned fee for the required transport service. If no transportation vendor preference is expressed by the enrollee, the contractor will assign trips via a simple rotation system approved by the Department of Health.
- h. The transportation manager will implement a quality assurance management system that allows for a review of medical justification provided when a mode of transportation request indicates a need for service from a taxi vendor (in areas where public transit is an available option), ambulette, stretcher, and non-emergency ambulance.
- i. The transportation manager will implement a system by which access to ongoing use of advanced modes of transportation are regularly reviewed to ensure that the higher mode of transportation continues to be needed.
- j. The transportation manager will implement an automated system to manage the reservations, scheduling, and efficient routing of requests for non-emergency medical transportation; and train medical providers and transportation vendors on use of this system. Further, the transportation manager shall implement a trip verification system whereby transportation vendors will attest that an assigned trip has either been completed or has not been completed.
- k. The transportation manager will be responsible for ensuring that only attested trips are issued authorizations for payment. The transportation manager will describe how each of these trips will receive an authorization from the Department of Health, and how this authorization will be matched to each attested trip. Every trip will have its own distinct transportation manager-generated trip number and related MMIS-generated prior authorization.
- l. The transportation manager will ensure the enrollee uses the least expensive mode of transportation available that is appropriate based on their level of mobility and the location of the individual's medical service provider. If the lowest cost, most appropriate level of transportation is not available, the requested trip will be scheduled at the next higher level of transportation service.
- m. The transportation manager will have the ability to adequately respond to an acute event such as a major storm, industrial or transit accident, or act of terror that disrupts telephone and transportation services in the Hudson Valley Region counties.

#### **D.4. Maintain a Public Website**

The transportation manager will maintain a user-friendly public website with information for enrollees, transportation vendors, and medical providers about available transportation services,

Medicaid transportation eligibility requirements and how to access transportation. The website will have the ability to receive feedback from the Medicaid community, including medical practitioners and transportation vendors, and accept communication from enrollees and/or their agents, transportation vendors, and medical practitioners.

The transportation manager will make requested changes to the website within three (3) business days of request by the Department of Health.

At a minimum, the following information (or links to sites containing the information) will be included on the website:

- List of Medicaid terms and program standards;
- A list of essential transportation manager and State government Medicaid transportation contacts;
- Available Medicaid transportation services by county;
- Information on general Medicaid transportation service determination criteria;
- A list of transportation vendors, including the current address and telephone number of each transportation vendor, the geographic area covered by each transportation vendor, and the mode of transportation provided. Updates to this list within the previous thirty (30) days shall be indicated as a change to previous information;
- State-approved forms and a description of use;
- State-approved fee schedule by mode of service; and
- Links to transportation resources such as 511NY (online traffic, travel and transit information), subway/bus maps and the paratransit system.

#### **D.5. Collaborate with Local Transportation Stakeholders**

The transportation manager shall be knowledgeable about existing available transportation resources and vendor networks, current processes in place for arranging Medicaid transportation, and the challenges faced within each community to arrange for and provide non-emergency medical transportation. The transportation manager will collaborate closely with medical practitioners and transportation vendors to ensure an efficient, flexible and user-friendly system for approving and arranging transportation is implemented and that all stakeholders understand application of this system. The system will be compliant with all aspects of the New York State Medicaid fee-for-service transportation program. The transportation manager will work cooperatively and continuously with medical and transportation vendors to determine how to streamline ordering and documentation practices, and resolve barriers to the efficient routing, provision and authorization of transports through consultation with the Department of Health and community stakeholders.

The transportation manager will provide, at a minimum, semi-annual training to vendors, enrollees and medical practitioners; and will afford an option of a semi-annual stakeholder meeting to take place within each county. The transportation manager will visit vendors and medical practitioners at their facilities as necessary for training or to resolve issues.

## **D.6. Special Transportation Requests**

The transportation manager shall work directly with the Department of Health to develop and implement guidelines for authorizing multiple trips for enrollees who regularly attend scheduled medical care, day programs, transportation outside the common medical marketing area, non-emergency air ambulance transportation, nursing home transportation, and hospital admissions and discharges. Requests for transportation out-of-area will be reviewed, and payment made to the transportation vendor only when sufficient medical documentation is received, reviewed, and approved by the transportation manager.

When appropriate, the transportation manager will make arrangements for lodging and incidental travel expenses such as meals using Department of Health-approved guidelines, and will seek Department approval on unusual or high expenses (see Attachment G).

Approval and prior authorization is not generally required for emergency ambulance transportation. Callers requesting emergency ambulance transportation to a hospital emergency department will be directed to call emergency services (911). However, the transportation manager will be responsible for urgent care transports to the emergency department via the appropriate mode of transport.

## **D.7. Performance of Proactive Surveys and Resolution of Enrollee and Transportation/Medical Provider Complaints**

The transportation manager will develop and implement processes for performing proactive surveys of recent transportation users (both transportation vendors and enrollees) to assess the transportation manager's quality of service, and a reactive process to resolve enrollee and provider complaints. Complaints, including those identified through the proactive survey process, will be investigated thoroughly, resolved and responded to within ten (10) business days from the date the complaint was received. The transportation manager shall report the findings of the complaint to the complainant.

Transportation vendors that have demonstrated a pattern of poor performance will be asked by the transportation manager to submit a corrective action plan subject to the review and approval by the transportation manager and the Department of Health. If the vendor continues to provide substandard services, the information will be referred to the Department of Health with a recommendation for administrative action.

Monthly, the vendor will provide a concise summary of the quality assessment program, detailing, at a minimum, the outcome of the proactive surveys and complaint resolution processes.

The transportation manager will produce and provide to each transportation vendor a semi-annual report that summarizes feedback provided to the transportation manager concerning the vendor's performance.

Records of all complaints, investigations and resolutions will be maintained in the enrollee's electronic file and a copy provided to the Department of Health upon request.

The transportation manager may not arbitrarily take an action on a transportation service solely because of the diagnosis, type of illness, or medical condition of the enrollee. The Department of Health may mandate that certain language be used in the posted policies and written notifications. The transportation manager will provide written notification to the enrollee at the time an adverse action is taken to deny or reduce a transportation service. The notice will be issued within 24 hours of the action and indicate:

- The action taken and reasons for the action;
- The enrollee's right to file a grievance and request a State Fair Hearing; and
- Basic instructions regarding the grievance filing and State Fair Hearing request processes.

A copy of the notice, or notification of initial electronic filing in the transportation manager's enrollee file repository, shall be provided to the Department of Health within one (1) business day of determination.

Should an enrollee request a Fair Hearing to review a decision made concerning non-emergency medical transportation, the transportation manager staff will be readily available to provide to the Department of Health all pertinent information in written format. If required, a representative from the transportation manager's staff will be available to attend a Fair Hearing in the Department's stead.

#### **D.8. Correspondence**

As required by the Department of Health, the transportation manager shall generate and disseminate correspondence to individual practitioners, enrollees and transportation vendors regarding program requirements, corrective action plans, eligibility issues, etc. The Department of Health will be responsible for notifying practitioners, vendors, and enrollees of any changes impacting the entire cohort of vendors or enrollees.

#### **D.9. Quality Standards**

The transportation manager shall develop and implement a plan with procedures to measure transportation vendor quality performance. The purpose of such procedures is to develop and apply standards to assure that enrollees receive quality transportation services at the lowest cost, utilizing the most efficient routes. The plan should include the following transportation vendor quality standards that address such issues as: failure to meet appointments, timeliness of pickup and delivery, refusals to take longer, less-profitable trips, total travel time, vehicle cleanliness and perceived safety, driver behavior, Medicaid enrollee complaints and medical practitioner complaints. For example, the transportation manager shall develop a plan to review each vendor's compliance with the Department of Health's policies regarding pick up and wait times.

The transportation manager will monitor the overall system to assure timely provision of quality, uniform services, and to ensure system integrity.

The transportation manager will perform and document a pre-and post-trip verification review for those enrollees who have been identified by the transportation manager, in consultation with the Department of Health, as potentially abusing Medicaid transportation services. The pre-trip verification review will be done by verifying with the medical provider the medical appointment for a covered service for any ad hoc or urgent care trip requested by, for or on behalf of an identified enrollee.

The transportation manager will perform and document a post-trip verification review on 50% of all trips for which a fixed route bus pass or token was provided, and a minimum of ten percent (10%) of other trips and include problem areas such as after-hours transportation, and verify that the trips are for legitimate medical services. During the term of the contract, the Department of Health reserves the right to change the percentage of required trip verifications, up to 100%, with notification to the transportation manager.

Additionally, the transportation manager will implement an internal quality improvement process that will measure consumer satisfaction of its transportation management services. The internal quality improvement process will incorporate the performance requirements listed in Section D.15 as well as standards and measures aimed at improving all aspects of the organization's service delivery and reducing complaints. The quality improvement process shall include proactive strategies aimed at obtaining consumer feedback and recommendations and not rely solely on complaint resolution as a measure of improvement.

#### **D.10. Record Keeping and Reporting**

- a. The transportation manager will maintain and retain all financial and programmatic records, supporting documents, statistical records, and other records of participants for a minimum of six (6) years from the expiration of the contract. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the transportation manager will retain the records until completion of the action and resolution of all issues which arise from it or until the end of the regular six (6) year period, whichever is later. The transportation manager will retain the source records for data reports for a minimum of six (6) years and will have written policies and procedures for storing this information in compliance with all current to applicable HIPAA and security requirements.
- b. The transportation manager will be required to submit management and utilization reports to the Department of Health with content and schedule determined by the Department. The transportation manager will submit all report templates to the Department of Health for approval within 60 calendar days of receipt of the notice of award. Any changes to the report templates shall be submitted to the Department of Health for approval 30 days prior to implementation. At minimum, the transportation manager will submit the following quality assessment and activity reports to the Department of Health in a software format determined by the Department:
  - Telephone report;
  - Enrollee grievance report;
  - Medical provider grievance report;

- Transportation vendor quality assessment report;
- Transportation denial evaluation report;
- Trip report by mode and transportation vendor (trips are reported as one (1)-way);
- Transportation vendor accident report (only when the enrollee is on the vehicle) within three days after notification of the accident; and
- Prior authorization activity report.

#### **D.11. Processing of Payments to be made to Enrollees for Incurred Transportation Expenses**

The transportation manager will be expected to authorize legitimate personal travel-related expenses incurred by enrollees traveling to and from medical care, using the “Policy Regarding Reimbursement of Travel-Related Expenses”, (Attachment G) as guidance. These expenses typically are for personal vehicle and public transit use, and can also include episodic reimbursement of commercial travel costs, lodging and incidental travel-related expenses such as parking and tolls. The transportation manager will develop and implement an efficient and timely mechanism to authorize and make payment directly to enrollees, or their representatives, including volunteer drivers. The transportation manager will maintain detailed accounting of trip information, including enrollee information, service date, origination and destination addresses, mode of travel, mileage units (where applicable), and total trip cost. The transportation manager will create a report that details these expenses and summarizes the expenses by county of fiscal responsibility. The report will account for costs **incurred by the transportation manager** within the month being reported on. This report shall be submitted to the Department of Health monthly. The Department will process a lump sum “pass through” payment that will reimburse the transportation manager for all legitimate costs that were expended within that month. The Department of Health reserves the right to request from the transportation manager further documentation to substantiate reported costs, and to not reimburse the transportation manager for expenses deemed unsubstantiated or out of compliance with applicable Medicaid policies.

#### **D.12. Enrollee and Transportation Vendor Fraud**

While the investigation of Medicaid fraud and abuse cases is the principal responsibility of the Office of the Medicaid Inspector General, the transportation manager will develop policies and procedures to identify potential fraud and abuse by both transportation vendors and enrollees and will refer suspected fraud, waste or abuse. Suspected fraudulent or abusive activity will be reported to the Department of Health in writing within twenty four (24) hours of identification, or by the close of the next business day.

#### **D.13. Written Procedures**

Thirty days prior to the date that the transportation manager begins management of Medicaid transportation in the Region (June 1, 2016 implementation), the transportation manager will develop formal written procedures and guidelines for all aspects of the Medicaid transportation program and submit them for approval by the Department of Health prior to their distribution to and implementation by transportation manager staff. The procedures and guidelines will be distributed by the transportation manager to all staff and regularly updated to reflect changes in

program requirements. When necessary changes are identified, such changes shall be incorporated in the transportation manager's written procedures within ten (10) business days of notification that such change is necessary.

#### **D.14. Staff Training**

The transportation manager will ensure all personnel have sufficient knowledge of the requirements of the Medicaid transportation program and health-related privacy requirements (i.e., HIPAA) through the provision of upon-hire training and annual privacy training refreshers for existing staff.

#### **D.15. Reduction of Payment Regarding Transportation Manager Performance of Call Center and Prior Approval Requirements**

The Department of Health will monitor the Transportation manager/contractor's activities pertaining to the following (D.15.1 and D.15.2):

##### **D.15.1. Call Center:**

A number of call center activity measures are listed in Section D.2.a. as requirements for a monthly report. These measures will assist the Department of Health in evaluating that certain call center standards are being met. These standards are listed below.

The transportation manager shall maintain sufficient equipment and call center operators to ensure that, on a monthly basis:

1. The automated voice response system answers all calls within three (3) rings, with 95% or greater compliance.
2. The queue time for a live call center operator to answer a call after the initial automatic voice response will be three (3) minutes or less per call, with 95% or greater compliance.

The transportation manager's monthly service voucher will be reduced when any of these Call Center standards is not met during any given month as follows: When one (1) of the standards is not met, the service voucher payment for that month will be reduced by 5%. When two (2) standards are not met during a given month, the service voucher for that month will be reduced by 10%. The total reduction for the month will not exceed 10%.

##### **D.15.2. Prior Authorization:**

Each prior authorization submitted to the Medicaid Management Information System via the 278 process is automatically assigned a date (the beginning submission date will be the first of the month, and the last submission date will be the last day of the month). The Department of Health will use a complete file of monthly transactions, based upon the submission date on the eMedNY prior authorization transaction, to determine if the following performance standards have been met:

1. The transportation manager assigned the correct procedure code;

2. The transportation manager assigned the correct fee (established by the Department of Health) for the assigned procedure code;
3. The transportation manager assigned the correct number of procedure code units for the transport;
4. The transportation manager correctly calculated the miles assigned for a trip as determined by a generally accepted standard of mileage determination, as agreed upon by the Department of Health and the Transportation manager;
5. The transportation manager did not assign more than one (1) prior authorization containing the same information;
6. The transportation manager has not assigned duplicate prior authorizations for one (1) transport to two (2) different transportation vendors;
7. The transportation manager has not assigned any prior authorizations over 90 days after the date of the service without adequate substantiation; and
8. As of the identified sanction date, the transportation manager will not assign trips to transportation vendors that appear on the NYS Medicaid Exclusion List. This list is maintained by the Office of the Medicaid Inspector General and accessible online at <https://omig.ny.gov/fraud/medicaid-exclusions>.

If a review and analysis of a sample of prior authorization activity shows that the performance standards have not been met, the contractor's monthly service voucher payment will be reduced as follows: When the total number of prior authorization transaction errors exceeds 0.25% but is below 1% of the total number of prior authorization transactions submitted to the State during any given month, the contractor's service voucher payment will be reduced by 5%. When the total number of prior authorization transaction errors equals or is greater than 1.0% of the total number of transactions submitted to the State during any given month, the contractor's service voucher payment will be reduced by 10%. The total reduction for the month will not exceed 10%.

The State acknowledges that the actual damages likely to result from breach of this Section D.15 are difficult to estimate on the date of this agreement and may be difficult for the State to prove. The parties intend that [CONTRACTOR'S] payment of the Liquidated Damages Amount would serve to compensate the State for breach by [CONTRACTOR] of its obligations, and is not intended to serve as punishment for any such breach by [CONTRACTOR].

#### **D.16. Project Implementation**

Thirty days prior to the June 1, 2016 implementation, the contractor will submit a Transportation Management Implementation Plan for approval by the Department of Health. The Plan will provide a schedule for assuming transportation management activities from the prior vendor and for achieving compliance with the requirements of Social Services Law Section 365-h. This

Plan is subject to the review and approval of the Department of Health and may be amended as required by the Department. The transportation manager (contractor) must implement all 24 counties at once on June 1, 2016.

The transportation manager/contractor cannot begin managing a county's transportation services prescribed by this RFP nor receive any payment until the Department of Health determines that the following items have been satisfactorily completed (See Section F.6. Voucher Submission, Payment and Supporting Documentation):

- Call center operations are ready to commence;
- Medical practitioners in the county have been informed of and trained on new processes for ordering transportation;
- Transportation vendors have been informed of and trained on new processes to receive trip and authorization information;
- The necessary system changes have been made in order to transmit authorization data to the Department of Health's Medicaid payment system;
- The Department has determined that the new contractor is ready to transition Medicaid transportation management; and
- The contractor's Transportation Management Implementation Plan has been approved by the Department of Health.

#### **D.17. Conflicts of Interest Requirements Under Contract**

Actual or potential conflicts of interest are those relationships, financial or otherwise, which could be in conflict with the proper discharge of responsibilities under this RFP/contract. This includes but is not limited to any business relationship or financial interests with entities which provide transportation services and companies whose reimbursement for transportation of Medicaid enrollees is made via eMedNY or through another Medicaid reimbursement method, except where the successful bidder has a financial or other relationship to perform transportation services under a contract with a Managed Long Term Care Program. (See Section E.3.4, Conditional Award). If the successful bidder has a contract with a Managed Long Term Care Plan, all records and bookkeeping will be kept separate and will be producible to DOH upon request.

**D.17.1.** The Transportation Manager/contractor, for the entire life of the contract, must meet and maintain the conflict of interest disclosures and abrogate any ownership, affiliation, subsidiary relationship, management or operating interest, or participation of any kind in a transportation company that provides Medicaid transportation in any part of the region covered by this RFP, except where the contractor has a financial or other relationship to perform transportation services under a contract with a Managed Long Term Care Program.

**D.17.2.** The transportation manager/contractor must not be co-located with any Medicaid transportation vendor.

**D.17.3.** If, during the term of a resulting contract, the Transportation Manager/contractor becomes aware of a relationship, actual or potential, which may be considered a conflict of

interest with the proper discharge of responsibilities under this RFP/contract, the Transportation Manager shall notify the Department of Health in writing immediately.

Failure to comply with these provisions may result in termination of the contract and criminal proceedings as required by law.

#### **D.18. Subcontracting**

The Transportation Manager/contractor cannot use subcontractors to perform Medicaid transportation management services, and cannot subcontract with Medicaid transportation providers under this contract. The Transportation Manager may use subcontractors for other services.

### **E. PROPOSAL REQUIREMENTS**

Proposals include two separate components – a Technical Proposal and a Cost Proposal.

Proposals should be signed by an officer authorized to bind the vendor to its provisions.

No cost information can be included in the Technical Proposal.

Bidders should submit a Technical Proposal that responds to Section C, Eligibility of Bidders and Section D, Project Specifications.

Bidders should submit a Cost Proposal separate from the Technical Proposal. The Cost Proposal includes the region's pricing per Medicaid enrollee, per month (Attachment I).

#### **E.1. Technical Proposal** (80 percent)

Bidders should submit a Technical Proposal that responds to Section C, Eligibility of Bidders and Section D, Project Specifications in the order and format outlined below.

**Do not include any cost information in the technical proposal.**

Proposals should be submitted with a single cover page.

The technical proposal should address all Project Specifications. It should also demonstrate the bidder's understanding of the scope and purpose of the various review activities and tasks required under the contract.

Throughout this section, the bidder will be asked to provide responses to specific topics. Each response will include the section's topic as a heading. **Do not exceed page limitations.** Complete responses to each topic are to be provided within the page limitations and evaluators will cease reading after the page limit is reached.

Answers to questions must be made within the page limits, however, the bidder may submit

supportive reference material in appendices. For example, an appendix might be a flow chart that shows a visual representation of a process that has been described in the body of the technical proposal response. **Appendices will not count toward the page limitations, provided the appendix material is not being used to circumvent or substitute for the response's required page limitations.** To promote uniformity of preparation and to facilitate review, the Technical Proposal should include the following information and comply with the following general format requirements:

- Submit three (3) originals, five (5) bound exact copies and one (1) digital exact copy;
- Use letter size paper (8.5 x 11 inch);
- Font type for narrative information should be a minimum of 11 point;
- Submit each copy in a three (3) ring binder with no staples or clasps;
- Use tab dividers for each section of the proposal;
- Each topic will be included as a heading to each response; and
- Clearly number pages of the proposal, with each section of the proposal separately numbered and identified in a Table of Contents.

#### **E.1.1. Transmittal Form (Attachment H)**

The Transmittal Form (Attachment H) should be signed in ink by an official of the bidding organization. The signatory should be authorized to bind the organization to the provisions of the RFP and Proposal.

The Transmittal Form includes the following information:

1. The Bidder's complete contact information, including the Corporate name, mailing address, email address, telephone number and fax number;
2. Contact name and contact information, including email address and telephone number, for representatives authorized to answer questions regarding this proposal, and
3. The Vendor ID Number, the FEIN and Type of Legal Business Entity of the bidder.
4. A statement which describes the legal structure of the entity submitting the proposal.

The Transmittal Form includes the following attestations:

1. That the bidder accepts the contract terms and conditions contained in this RFP, including any exhibits and attachments, and that the bidder has received and acknowledged all Department of Health amendments to the RFP;

2. That the bidder is prepared, if requested by the Department of Health, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department;
3. Bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
4. Bidder agrees that the proposal and all provisions of the proposal will remain valid for a minimum of 365 calendar days from the closing date for submission of proposals;
5. The bidder cannot use subcontractors to perform Medicaid transportation management services, and cannot subcontract with transportation providers. For other services, if a proposal is submitted which proposes to utilize the services of a subcontractor(s), the bidder provides, in an Appendix to this Transmittal Letter, a subcontractor summary for each listed subcontractor and certifies that the information provided is complete and accurate.

The summary document for each listed subcontractor should contain the following information:

- a. Complete name of the subcontractor, including DBA and the names of controlling interests for each entity;
- b. Complete address of the subcontractor;
- c. A general description of the scope of work to be performed by the subcontractor;
- d. Percentage of work the subcontractor will be providing;
- e. Evidence that the subcontractor is authorized to do business in the State of New York, and is authorized to provide the applicable goods or services in the State of New York; and
- f. The subcontractor's assertion that they do not discriminate in its employment practices with regards to race, color, religion, age, sex, marital status, political affiliation, national origin, or handicap.

### **E.1.2. Table of Contents**

The Table of Contents should contain beginning page numbers for each section and subsection of the proposal. There is no page limit.

### **E.1.3. Executive Summary (3 page limit)**

**Do not include any cost information in the technical proposal.** For Cost Proposal information, see Section E.2.

The Executive Summary should include a clear, concise summary of the proposed approach to the project specifications as well as the bidder's past experience conducting relevant projects. Additionally, a general description of the capabilities and planned roles of any proposed subcontractor(s), a summary of the bidder's understanding of the various review components and required processes should be included. Identify the location of the Core Management Team, and explain how this location will allow the management team access to the Hudson Valley Region counties in order to fulfill the requirements of the RFP.

Provide a narrative overview of your proposed service as transportation manager for the New York State Medicaid Transportation Management Initiative – Hudson Valley Region. The narrative is to include a plan that describes how the transportation management functions will be implemented in the region.

### **E.1.4. Performance Criteria**

See page limits as indicated below. In all sections below, the bidder's responses should address the corresponding project specifications included in Section D. For example, the response to Section E.1.4.1 Call Center Activities should incorporate specifications of a call center as described in Section D.2. Operate a Call Center for Medicaid Eligible Individuals or Their Representatives.

Responses are to be enumerated in direct correlation to each request below. For example, a response to Section E.1.4.1 Call Center Activities below should begin with "E.1.4.1 Call Center Activities".

Detailed, specific information is expected in each response. The bidder is expected to include activities that show an ongoing continuous improvement structure that is flexible and responsive, adaptable and creative. For example, the Department of Health requires transportation managers to develop websites which will streamline processes and educate users. The bidder is expected to have a conceptual design of the website. However, processes that will be used to create, develop, and update a website are more critical than an actual website design.

While the Department of Health seeks "solutions" to the current challenges listed in this document, the Department is aware that some solutions will be generated only by involving key stakeholders. The processes proposed to solicit the input and feedback of those stakeholders will be an important component of the proposal.

In completing the Technical Proposal, complete responses to the items listed below will be provided within page limitations. For some responses, the bidder may wish to refer to an attachment or appendix that adds greater detail to the response, such as a flowchart of operations. The number of pages in these attachments will not be considered part of the actual

count of pages listed below. **However, attachments and appendices may not be used to circumvent response page limitations.**

Attachments or appendices should be placed in a separate section following the Technical Proposal section, and each attachment should be identified with a tab divider.

#### **E.1.4.1. Call Center Activities (7 page limit)**

- a. Describe the availability of a toll-free telephone number and other toll-free voice and telecommunications devices, including devices appropriate for hard-of-hearing clients and oral interpretation services. Describe the process for providing twenty-four hour toll-free access in order to provide information on accessing transportation for an urgent medical condition; and on holidays, weekends and outside business hours. Include the hours of operation and proposed level of staffing for the call center.
- b. Describe how the call center will encourage enrollees' use of public transportation and how their success rate will be determined and documented.
- c. Provide statistics for call performance standards, including average wait time, average call volume, peak call volume, and after hours call wait time for similar service provided by your organization for the **calendar year 2014**. Include the average number of staff available each day and the hours of operation relative to the statistics provided.
- d. Describe (1) the automated phone system capabilities that will be employed, (2) how your call center staff will establish eligibility and determine if the enrollee has managed care coverage that prohibits fee for service non-emergency medical transportation, and (3) where your call center will be located. If a backup call center is proposed, describe how such an arrangement benefits the New York Medicaid program.
- e. Describe how the transportation management system and call center technology will be structured to handle the volume of trip requests anticipated in a timely, user-friendly and efficient manner. Include any web based, fax based or other technology that may be used to maximize the efficiency of scheduling required trips.
- f. Describe the call center's process for ensuring requests are made at least 72 hours in advance of the service date and how the process will be effectively communicated to Medicaid enrollees and ordering providers.
- g. Describe the call center's process for ordering transportation that is to be followed by ordering practitioners. Include system efficiencies developed to expedite the process for practitioners and special accommodations made by the call center to handle urgent care requests.

- h. Describe the call center's process to allow for post-transportation approval of services as described in Section D.2.g.
- i. Describe how the call center will manage transportation during an emergency event that disrupts telephone or transportation services, such as a seasonal coastal storm or act of terror.

#### **E.1.4.2. Processing Requests for Transportation (18 page limit)**

- a. Describe: (1) how an individual's Medicaid eligibility will be identified and (2) what HIPAA regulation compliant safeguards will be in place to protect enrollee confidentiality as information is acquired and used during the prior authorization process.
- b. Describe what strategies will be used to ensure the availability of the most appropriate Medicaid transportation in all areas of the participating counties.
- c. Describe the process for ensuring use of the most cost effective mode of transportation to be used for each encounter, including:
  - Only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available is provided;
  - No expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available; and
  - Documentation for employing a mode of transportation different from the ordered mode (either higher or lower) will be maintained and made available upon request.
- d. Describe the process for arranging transportation once the mode has been determined. Include the process for determining the mileage for each trip scheduled and calculating the total costs for the prior authorization.
- e. Describe the process for ensuring that rides are assigned to available transportation vendors fairly and equitably.
- f. Describe the process by which advanced modes of transportation (ambulette, non-emergency ambulance, and taxi where applicable) will be reviewed and authorized. Include the role of any medical/health care staff in the prior authorization review process and a description of how and when a medical justification form will be used.
- g. Describe the process by which trips for advanced modes of transportation (ambulette, non-emergency ambulance, and taxi where applicable) will be reviewed on an on-going basis for continued need.

- h. Describe the automated system that will be used to manage the reservations, scheduling, and efficient routing of requests for non-emergency medical transportation.
- i. Describe the process for making appropriate and economical use of transportation resources available in each county in order to meet the anticipated demand for transportation services within the respective county. These resources include but are not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services.
- j. Describe how transportation requests will be managed during an emergency event that disrupts telephone and transportation services.

**E.1.4.3. Maintain a Public Web Site (3 page limit)**

Describe how you will create a public website to educate enrollees, transportation vendors and medical practitioners about available transportation services, eligibility requirements, the prior authorization process, and how to access transportation. The objectives of the website, the general contents, how it will be designed and updated should be included. Describe how you will receive complaints and acknowledgements from enrollees, transportation vendors, and medical practitioners as well as maintain functionality.

**E.1.4.4. Collaborate with Local Transportation Stakeholders (2 page limit)**

- a. Describe current experience coordinating with local transportation vendor networks and optimizing existing local resources to enhance Medicaid transportation.
- b. Describe current Medicaid transportation challenges that exist in the Hudson Valley Region and include strategies for collaborating locally that will improve efficiency and result in a user-friendly system for approving and arranging transportation.
- c. Provide details on how staff will be assigned to coordinate and handle transportation problems for medical providers throughout the region.
- d. Provide details on how staff will be assigned to provide ongoing education and support to providers and enrollees at the county level.

**E.1.4.5. Process Special Transportation Requests (1 page limit)**

- a. Describe the process for developing and implementing guidelines for authorizing multiple trips for enrollees attending regularly scheduled medical care, transportation outside the common medical marketing area, and nursing home transportation.

- b. Describe the process for approving transportation for hospital discharges and admissions; include any differences from routine transportation approvals that will ensure expediency with the arrangements.
- c. Describe the process for responding to requests from enrollees or medical practitioners for travel to and from major medical facilities in cities located across the United States and its territories, including arranging for fixed wing air ambulance or commercial air.

**For responses to Performance Criteria E.1.4.6 through E.1.4.12, the TOTAL page limit is 5 pages.**

**E.1.4.6. Resolution of Enrollee and Transportation/Medical Provider Complaints**

- a. Describe the complaint resolution process for enrollee and provider complaints and the general process and timeline from investigation to resolution.
- b. Describe the written notification process upon denying a request for transportation services for an individual that informs the enrollee of the denial and the enrollee's right to question the decision by requesting a State Fair Hearing.

**E.1.4.7. Quality Standards**

- a. Provide details regarding strategies for enhancing customer satisfaction and safety. Include copies of customer satisfaction standards used in any of your organization's current contracts (copies are excluded from page limits). Customer satisfaction measures should address both the transportation quality standards and the internal quality improvement standards as described in the Section D.9. This section should include proactive strategies aimed at obtaining consumer feedback and recommendations for improvement, and should not rely solely on complaint resolution as a measure of improvement.
- b. Describe the approach to implementing program integrity including quality assurance systems related to transportation that ensure services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements. Quality standards are to address such issues as proper New York State registration of vehicles and certification of drivers, reliability in meeting appointments, timeliness of vehicle pickup and delivery, transportation vendor acceptance of longer trips, cleanliness of vehicles, and driver politeness.
- c. Describe a corrective action protocol for providers and drivers who fail to provide satisfactory services in a timely manner or fail to comply with regulations.
- d. Describe your approach to program evaluation including trip and expenditure data collection and analysis as well as evaluating consumer satisfaction.

#### **E.1.4.8. Record Keeping and Reporting**

List the management and utilization reports you will make available to the Department of Health including a description of the intent of each report. Include reports described in Section D.10.

#### **E.1.4.9. Processing of Payments to Enrollees for Incurred Transportation Expenses**

Describe the process for educating enrollees on other travel related expenses which can be reimbursed under the Medicaid program due to long distance/overnight travel, public transportation, etc. and the system that will be developed to recover receipts and reimburse the enrollee for these travel expenses. Include a process for accountability and reporting these expenses to the Department of Health and a sample monthly report as an attachment. The sample report is not included in the page limit.

#### **E.1.4.10. Enrollee and Transportation Vendor Fraud**

Describe strategies to identify and address fraudulent or abusive activities, including monitoring and documentation of such behaviors by both transportation vendors and enrollees.

#### **E.1.4.11. Written Procedures**

Describe a process for developing formal written procedures and guidelines for all aspects of the Medicaid transportation program; describe how the procedures and guidelines will be distributed to all staff and how the procedures will be kept up to date with Department of Health requirements.

#### **E.1.4.12. Staff Training**

Describe aspects of the organization's personnel training program designed to ensure knowledge of Medicaid policy, Federal HIPAA regulations, and NYS Medicaid transportation policy and guidelines (<https://www.emedny.org/ProviderManuals/Transportation/index.aspx>). Give specific examples of the training program's curriculum.

#### **E.1.5. Project Implementation Work Plan (3 page limit)**

Provide a brief work plan for the full term of the contract that includes a date specific timeline for implementation of the project specifications that supports the start date listed on the cover page of the RFP. Include with each goal/objective the expected completion date, and person(s) responsible for implementation.

#### **E.1.6. Organizational Support and Experience (10 page limit)**

Bidder should submit the following in support of meeting their eligibility of bidder as stated in RFP Section C and in addition respond to the following:

- a. Describe how the bidder meets the required minimum of three (3) years of experience in coordinating Medicaid transportation services in a geographic and demographic area similar to the area in New York State within which the contractor would manage

such services (see Section C, Eligibility of Bidders, and Section E.3.1, Pass/Fail Assessment (Mandatory Requirements)).

In the description, the bidder should provide a list of at least three (3) projects, similar to this project in size and scope, for whom the organization has provided services for the past five (5) years, including any government contracts, if any. The response should include a clear description of the services provided and the timeframe the services were provided. Provide the name, title, organization, address, telephone number and email address of a contact person for each project listed. Prior to award, the Department of Health may confirm this experience.

- b. **The bidder must indicate that the Primary Call Center will be located and operated within New York State.** The bidder should identify the actual or anticipated location of the primary call center, if known (see Sections D.1, Location of Core Management Team & Primary Call Center and Backup Call Center and E.3.1, Pass/Fail Assessment (Mandatory Requirements)).
- c. **The bidder must indicate that the backup call center (if using a Backup Call Center) (see section D.2.h) will be located and operated within the Continental USA.** The bidder should identify the actual or anticipated location of the backup call center, if known (see Sections D.1, Location of Core Management Team & Primary Call Center and Backup Call Center and E.3.1, Pass/Fail Assessment (Mandatory Requirements)).
- d. Provide a brief history and description of your organization. Include an organizational chart that indicates the structure that will be used for this project, and shows the relationship with management staff.
- e. Identify your organization's structure, including an organizational chart, and the background and experience of the officers, executives and core management staff that would be assigned to manage the contract, and the location of the office from which each will work. Describe your anticipated staffing pattern relative to this transportation management RFP and related job descriptions for each position responsible for both administration/management and direct service delivery. **Specify the staffing level, job descriptions and qualifications for each member of the core Hudson Valley Region Transportation management team.** Discuss the strategy to replace key staff if they leave.

The bidder should describe how the key staff and their functions relate to the successful completion of the project.

Resumes of key staff are not required and will not be evaluated.

- f. Describe the essential features of a successful regional model, what support the organization will contribute to develop these features, and what experience the organization has with participating in a regional transportation management structure.

- g. Describe the organization's experience with the administration, provision, and coordination of non-emergency medical transportation services including:
  1. Experience in professional transportation coordination and delivery activities, scheduling, dispatching and provision of Medicaid-funded transportation;
  2. Capability to receive and respond to a high volume of telephonic and electronic requests for non-emergency medical transportation;
  3. Experience and knowledge of the rules and regulations for New York State Medicaid eligible individuals;
  4. Proven ability to utilize automated systems to support coordination and administration of transportation services; and
  5. Demonstrated ability to establish partnerships with various transportation vendors and local transportation networks to manage and coordinate transportation services.
- e. Describe the organization's proven experience coordinating transportation services in a geographic and demographic area similar to the area in New York State as outlined in this RFP.
- f. Describe the organization's experience in coordinating transportation services during an emergency event that disrupts telephone and transportation services.
- g. Describe the organization's experience providing functional assessments to determine level-of-need and the appropriate mode of transportation.
- h. Provide information on the organization's technology support relative to back-up and redundancy capabilities.

#### **E.1.7. Conflict of Interest**

The Bidder (and/or any subcontractor) should disclose any and all relationships that may be construed as actual or potential conflicts of interest when providing services under the contract (see D. 17 Conflicts of Interest). In cases where such relationship(s) and/or interests exist, the bidder should describe how an actual or potential conflict of interest and/or disclosure of confidential information relating to this RFP/contract will be avoided to the satisfaction of the Department. The bidder's disclosure should include any relationship or interest, financial, beneficial or otherwise, which is in conflict with the proper discharge of their responsibilities under this RFP, including but not limited to any business relationship or financial interest with entities which provide transportation services under this RFP. **The bidder should also indicate if they believe that no actual or potential conflict of interest exists.** (See Sections D.17 Project Specifications (contract deliverables), Conflict of Interest and Section E.3.4. Conditional Award).

If the information regarding conflicts of interest provided by the bidder requires further clarification or is unacceptable, the Department of Health will notify the bidder. Upon the Department's notification, the bidder must provide adequate clarification regarding actual or potential conflicts of interest within five (5) business days. Proposals that do not provide adequate discussion and resolution of possible conflicts of interest within that timeframe will not be reviewed.

### **E.1.8. Transition Plan**

Provide a plan to develop and implement a three (3) month transition for a seamless move for Medicaid transportation management in collaboration with the current contractor. Describe your transition plan, including a proposed timeline to complete the seamless transition from the current contractor to the winning bidder and the person(s) responsible for such transition. The plan should include discussion of continuity of services for Medicaid enrollees prior to the implementation date, transfer of enrollee information and access to needed information sources. Additionally, at the end of this proposed contract (see Section F.7, Term of Contract), the winning contractor will be required to transition all of these same services to potential future contractors. This section is for program planning purposes only, and will not be scored.

The Department will work with the awardee to ensure a smooth transition.

## **E.2. Cost Proposal Bid Form**

(20 percent)

The Cost Proposal Bid Form should be bound separately from the Technical Proposal. The Cost Proposal Bid Form should delineate the region's pricing per Medicaid enrollee, per month.

Cost Proposal Bid Forms should be accurate, clear and concise.

### **E.2.1. Bid**

Attachment I is the form that must be submitted as the Cost Proposal Bid Form in response to this RFP.

The bidder must submit a separate bid price for each of the volume level categories (A, B) for the number of Medicaid enrollees eligible to receive fee-for-service (FFS) non-emergency transportation, as indicated in the chart below. The bidder must bid on each volume level category, even if the region's total eligible number currently does not reach that level. Bidders are encouraged to reflect volume discounts in higher volume level categories. Bids should be in whole cents only. Any fraction of a cent will not be considered in the determination of the cost proposal score. Example: a submission of \$0.125 PMPM will be evaluated as \$.12 PMPM.

<b>Volume Level Category</b>	<b>Medicaid Enrollees Eligible to Receive FFS Transportation</b>	<b>Per Member, Per Month (PMPM) Cost Bid for Medicaid Transportation Management Services</b>
A	0 to 1,000,000	
B	1,000,001 and above	

Attachment E includes an historic volume of Medicaid enrollees eligible to receive fee-for-service transportation in the counties that will be covered under the contract, as of the dates provided. Bidders should note that the volume of Medicaid enrollees, and consequently transportation manager reimbursement, changes monthly during the contract period due to the eligibility of new and current Medicaid enrollees, therefore the actual monthly volume may be higher or lower. The successful contractor procured through the RFP will receive a monthly payment for each Medicaid enrollee that is eligible to receive fee-for-service transportation.

### **E.3. Method of Award**

The Department of Health will perform a fair and comprehensive evaluation of the proposals received in response to this RFP in accordance with the New York State procurement law, guidelines and procedures, as well as policies and procedures approved by the Department of Health. This section of this RFP describes the evaluation process that will be used to determine which proposal provides the best value to the Department of Health. At the discretion of the Department of Health, all bids may be rejected.

#### **E.3.1. Pass/Fail Assessment (Mandatory Requirements)**

All proposals will be reviewed to ensure the minimum criteria are met:

- The Technical Proposal and Cost Proposal Bid Form must be received at the address stated in Section F.3, Submission of Proposals, by the date and time specified in the Schedule of Key Events;
- The Cost Proposal Bid Form must be submitted with completed bid prices as discussed in Section E.2.1, Bid (Attachment I);
- Bidder Eligibility (See RFP Section C. Eligibility of Bidders);
- Bidder must indicate that the Primary Call Center will be located and operated within **New York State** (see Section D.1, Location of Core Management Team and Primary Call Center and Backup Call Center and Section E.1.6, Organizational Support and Experience).
- Bidder must indicate that the Backup Call Center (if any) (see section D.2.h) will be located and operated within the **Continental USA** (see section D.1, Location of Core Management

Team and Primary Call Center and Backup Call Center and Section E.1.6, Organizational Support and Experience).

### E.3.2. Evaluation Process

The evaluation process will include a comprehensive, fair and impartial evaluation of each proposal in response to this solicitation and will ensure the selection of the best overall solution for the Department of Health on a “best value” basis.

The evaluation process will include the following considerations:

- all proposals will be reviewed by the Department of Health to determine if all mandatory requirements are met;
- proposals that fail to meet the mandatory requirements will receive no further review;
- of the proposals that pass the mandatory requirements, the Cost Proposal Bid Form will be forwarded to the Cost Review Team and the Technical Proposal will be forwarded to the Technical Review Team for scoring.

### E.3.3. Vendor Selection

The scores from the Technical Proposal and Cost Proposal Bid Form will be used to produce a total score based on the assigned weights for each major section. The scores will be normalized by using the following formulas:

1. The highest scoring Technical Proposal will be awarded 80 points using the following formula:  $X/Y*80$ , where X=the average raw technical score of the proposal being scored and Y = the average raw technical score of the highest scoring Technical Proposal.
2. The Cost Proposal Bid Form will be normalized using the following formula:  $Y/X*20$ , where Y= total average cost of the lowest bidder and X = the total average cost for the proposal being scored.

Section	Maximum Points	Percentage of Total Score
Technical Proposal	80	80%
Cost Proposal Bid Form	20	20%
Total Combined Score	100	100%

In the event of a tie, the determining factor(s) for award, in descending order of importance, will be:

- Lowest Cost
- Minority/Women-owned Business Enterprise (MWBE) utilization
- Past experience
- References

#### **E.3.4. Conditional Award**

The award will be made conditionally to the highest aggregate (Technical/Cost) scoring and responsible vendor, via the process delineated in RFP Section E.3, Method of Award, pending the following:

1. Receipt of the Conflict of Interest documentation as determined by the Department (see Section E.1.7).
2. No later than 30 calendar days following notification of an award, and prior to execution of the contract, the successful bidder will abrogate any ownership as defined in RFP Section D.17, Conflicts of Interest Requirements Under Contract and to the satisfaction of the Department that such ownership (if any) has been satisfactorily abrogated.
3. Any conflicts of interest disclosed (see Section D.17 and Section E.1.7) must be mitigated no later than 30 calendar days following notification of an award.

### **F. ADMINISTRATIVE REQUIREMENTS**

#### **F.1 Issuing Agency**

This RFP is a solicitation issued by the Department of Health. The Department of Health is responsible for the requirements specified herein and for the evaluation of all proposals.

#### **F.2. Inquiries**

Questions must be submitted in writing using electronic mail (e-mail) to NYSDOH on or before the date specified in the Schedule of Key Events on the cover page of the RFP. Each question should cite the particular RFP part and section to which it refers.

Any questions concerning this solicitation must be sent electronically via e-mail to:

Lani Rafferty  
New York State Department of Health  
Office of Health Insurance Programs  
Email: [lani.rafferty@health.ny.gov](mailto:lani.rafferty@health.ny.gov)

Emails should cite the RFP number provided on the cover of the RFP in the subject line of the email. To the degree possible, each inquiry should cite the section and paragraph to which it

refers. Written questions will be accepted until the date and time posted on the Schedule of Key Events on the cover page of the RFP.

Questions and answers, as well as any RFP updates and/or modifications, will be posted on the Department of Health’s website at <http://www.health.ny.gov/funding> on or about the date listed in the Schedule of Key Events.

Prospective bidders should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised prior to the deadline for submitting questions.

There will be no bidder’s conference in conjunction with this RFP.

**F.3. Submission of Proposals**

The Bidder should submit its proposal with two (2) separate, clearly labeled and packaged parts: a Technical Proposal and a Cost Proposal Bid Form, prepared in accordance with the requirements stated in this RFP. The separate technical and cost proposal packages should be mailed as one (1) parcel. The hardcopy sets and exact copy on CD/flash drives of the Technical Proposal should be packaged, labeled, and sealed separately from the hardcopy sets and exact copy on CD/flashdrive of the Cost Proposal Bid Form.

Each package should be clearly labeled **“New York State Medicaid Transportation Management Initiative – Hudson Valley Region RFP #16267”** and labeled as to the type of contents **“Technical Proposal”** or **“Cost Proposal”**. The number of copies of the Technical and Cost Proposals are:

	<b>Original</b>	<b>Copies</b>	<b>Exact copy on CD or Flash Drive</b>
Technical Proposal	3 Original Hard Copy	5 Hard Copies	1 Copy Adobe PDF
Cost Proposal	3 Original Hard Copy	2 Hard Copies	1 Copy Adobe PDF

1. It is the bidders' responsibility to see that proposals are delivered to the address specified below in this section, prior to the bid due date/time as specified in the Schedule of Key Events. Late bids will not be considered;
2. The Bidder should be as specific as possible in its responses to provide the NYSDOH with an adequate understanding of the intent of the proposal;
3. In order for the State to evaluate proposals fairly and completely, proposals should follow the format set out below to provide all requested information. The use of tabs to identify sections and/or subsections is required. The NYSDOH discourages overly

lengthy proposals. Therefore, marketing brochures, user manuals or other materials, beyond what is sufficient to present a complete and effective proposal, are not needed. Elaborate artwork or expensive paper is not necessary or desired;

4. Audio and/or videotapes are not allowed. Any submitted audio or videotapes will be ignored by the evaluation team.
5. Each Technical Proposal (including all copies thereof) should meet the general format requirements noted in Section E.1.
6. The Cost Proposal Bid Form (Attachment I) must be submitted with completed bid prices as discussed in Section E.2.1, Bid (Attachment I).
7. Original proposals should be marked as such. Where signatures are required, they should be handwritten. E-mail submissions will not be accepted.
8. In case of any discrepancy between the electronic and hard copy documents, the hard copy shall supersede.

Responses to this RFP should be clearly marked “**New York State Medicaid Transportation Management Initiative – Hudson Valley Region RFP #16267**” and labeled as to the type of contents “**Technical Proposal**” or “**Cost Proposal Bid Form**” and be directed to:

Courier Service:

Mark Bertozzi  
New York State Department of Health  
Office of Health Insurance Programs  
Division of Program Development  
and Management  
One Commerce Plaza, Room 810  
99 Washington Avenue  
Albany, NY 12210

United States Postal Service:

Mark Bertozzi  
New York State Department of Health  
Office of Health Insurance Programs  
Division of Program Development  
and Management  
One Commerce Plaza, Room 810  
c/o Empire State Plaza  
Albany, NY 12237

All evidence and documentation requested under Section E, Proposal Requirements should be provided at the time the proposal is submitted.

The RFP and any subsequent amendments will be posted on the NYSDOH website at <http://www.health.ny.gov/funding>. Vendors are responsible for regularly checking the website for updates to information and any changes.

#### **F.4. Reserved Rights**

The Department of Health reserves the right to:

- i. Reject any or all proposals received in response to the RFP;
- ii. Withdraw the RFP at any time, at the agency’s sole discretion;

- iii. Make an award under the RFP in whole or in part;
- iv. Disqualify any bidder whose conduct and/or proposal fails to conform to the requirements of the RFP;
- v. Seek clarifications and revisions of proposals;
- vi. Use proposal information obtained through site visits, management interviews and the state's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the agency's request for clarifying information in the course of evaluation and/or selection under the RFP;
- vii. Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- viii. Prior to the bid opening, direct bidders to submit proposal modifications addressing subsequent RFP amendments;
- ix. Change any of the scheduled dates;
- x. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective bidders;
- xi. Waive any requirements that are not material;
- xii. Negotiate with the successful bidder within the scope of the RFP in the best interests of the state;
- xiii. Conduct contract negotiations with the next responsible bidder, should the agency be unsuccessful in negotiating with the selected bidder;
- xiv. Utilize any and all ideas submitted in the proposals received;
- xv. Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 365 calendar days from the bid opening; and,
- xvi. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a bidder's proposal and/or to determine a bidder's compliance with the requirements of the solicitation.

#### **F.5. Public Information and Press Releases**

Disclosure of information related to this procurement and the resulting contract shall be permitted consistent with the laws of the State of New York and specifically the Freedom of Information Law (FOIL) contained in Article 6 of the Public Officers Law. The State shall take

reasonable steps to protect from public disclosure any of the records relating to this procurement that are exempt from disclosure. Information constituting trade secrets or critical infrastructure information for purposes of FOIL shall be clearly marked and identified as such by the bidder upon submission. Determinations as to whether the materials or information may be withheld from disclosure will be made in accordance with FOIL at the time a request for such information is received by the State.

**Note: Press releases by any bidder pertaining to this project shall not be made without prior written approval of, and in conjunction with, the Department of Health.**

#### **F.6. Voucher Submission, Payment and Supporting Documentation**

If awarded a contract, the Transportation Manager/contractor shall submit invoices and/or vouchers to the State's designated payment office:

- Preferred method: Email a .pdf copy of your signed voucher to the New York State Business Services Center (BSC) at: [AccountsPayable@ogs.ny.gov](mailto:AccountsPayable@ogs.ny.gov) with a subject field as follows:

Subject: <<Unit ID: 345XXXX>> <<Contract #>>

- Alternate Method: Mail vouchers to BSC at the U.S. postal address [to be specified in the contract] **NYS Department of Health**

**Unit ID 345<<xxxx>>  
PO Box 2093  
Albany, NY 12220-0093**

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm), by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by telephone at 518-474-6019. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9 must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.state.ny.us/epay>. Completed W-9 forms should be submitted to the following address:

NYS Office of the State Comptroller  
Bureau of Accounting Operations  
Warrant & Payment Control Unit  
110 State Street, 9<sup>th</sup> Floor  
Albany, NY 12236

Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be:

The successful contractor will receive a monthly payment per Medicaid enrollee eligible to receive fee-for-service transportation (see table in Section E.2, Cost Proposal) which is based on a fee determined in accordance with the fee schedule submitted in the Cost Proposal Bid Form and as negotiated by DOH in accordance with Section 365-h of Social Services Law and the RFP, in the best interests of the State. Payment will be made per eligible Medicaid enrollee for only those counties where the contractor is implementing the Medicaid transportation management services prescribed by this RFP. **This monthly payment is an all inclusive reimbursement under the contract and will be the only compensation received by the contractor for performing the transportation management activities procured by the State through this RFP.**

The contractor cannot begin managing a county's transportation services prescribed by this RFP nor receive any payment until the Department of Health determines that the items identified in Section D.16 have been satisfactorily completed.

**For the purpose of contractor payment for Medicaid Transportation Management Services, the volume of Medicaid enrollees will be calculated within five (5) business days of the 15th day of each month.** The Department of Health may change the day the calculation is made for each month upon agreement with the awarded vendor.

The volume of Medicaid enrollees eligible to receive fee-for-service transportation, therefore contractor reimbursement, may change during the contract period due to the eligibility of new and current Medicaid enrollees, or the addition of enrollees in certain programs that become eligible for Medicaid transportation.

Additionally, the transportation manager will be responsible for paying for legitimate pass through Medicaid transportation costs. These pass through expenses include payments to Medicaid enrollees for personal travel expenses and transportation vendors not enrolled in NYS Medicaid as a vendor, such as commercial transportation vendors. Pass through expenses can also include reimbursement for costs associated with medically necessary long distance travel. The transportation manager will be reimbursed for legitimate pass through Medicaid transportation costs and payments will be made based on detailed reports submitted by the contractor.

The Department of Health will monitor two areas of contractor activities for compliance. Non-compliance could result in a reduction in the month's voucher payment (see Section D.2.b and Section D.15).

The State acknowledges that the actual damages likely to result from a breach of this Section F.6, Voucher Submission, Payment and Supporting Documentation, are difficult to estimate on the date of this agreement and may be difficult for the State to prove. The parties intend that [CONTRACTOR'S] payment of the Liquidated Damages Amount would serve to compensate the State for breach by [CONTRACTOR] of its obligations, and is not intended to serve as punishment for any such breach by [CONTRACTOR].

#### **F.7. Term of Contract**

This agreement shall be effective upon approval of the NYS Office of the State Comptroller (OSC).

It is anticipated that a contract resulting from this RFP will be effective on or about the anticipated start date shown in the Schedule of Key Events and the contract term will be for a period of five (5) years and three (3) months if awarded to a new vendor, to allow for a three (3) month transition period from the previous vendor to the new vendor. Should the current contract holder be awarded, the contract term will be for five (5) years.

The contract may be canceled at any time by the Department of Health, giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified, this contract shall be deemed terminated and canceled.

Price Adjustment: Prices for the transportation management services shall remain firm for the first 3 (three) years of the contract period. At the end of contract year three (3), contract prices will be subject to a price increase or decrease of the lesser of three percent (3%) or the percent increase or decrease in the National Consumer Price Index for All Urban Consumers (CPI-U) as published by the United States Bureau of Labor Statistics, Washington, D.C., 20212 for the 12 month period, ending three (3) calendar months prior to the end date of the third year of the contract. The one time price increase or decrease to the contract prices will be in effect for contract year four (4) and year five (5). The index is also available through the Internet at the Bureau of Labor Statistics web site at <http://stats.bls.gov>, go to "Inflation and Consumer Spending", then click "Consumer Price Index", then click on "Tables created by BLS", then click on "Table Containing History of CPI-U U.S. All Items Indexes and Annual % Changes 1913 to Present, unless otherwise indicated as published by the United States Bureau of Labor Statistics, Washington, D.C., 20212.

#### **F.8. Early Termination Transition Plan**

If the contract is terminated before the end of the contract period, the contractor will work with the State to transition any documents, reports, files, activities, and responsibilities to the Department of Health, or its designee, to maintain and continue these state and federally mandated requirements.

#### **F.9. Debriefing**

Once an award has been made, bidders may request a debriefing of their proposal. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's proposal, and will not include any discussion of other proposals. Requests must be received no later than ten (10) business days from date of award or non-award announcement.

## **F.10. Protest Procedures**

In the event unsuccessful bidders wish to protest the award resulting from this RFP, bidders should follow the protest procedures established by the Office of the State Comptroller (OSC). These procedures can be found in Chapter XI Section 17 of the Guide to Financial Operations (GFO). Available on-line at:

<http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## **F.11. Vendor Responsibility Questionnaire**

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us). Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or may contact the Department of Health or the Office of the State Comptroller for a copy of the paper form. Bidder's should complete and submit the Vendor Responsibility Attestation (Attachment # J).

## **F.12. State Consultant Services Reporting**

Chapter 10 of the Laws of 2006 amended certain sections of State Finance Law and Civil Service Law to require disclosure of information regarding contracts for consulting services in New York State.

The winning bidders for procurements involving consultant services must complete a "State Consultant Services Form A, Contractor's Planned Employment From Contract Start Date through End of Contract Term" in order to be eligible for a contract.

State Consultant Services Form A

<http://www.osc.state.ny.us/agencies/forms/ac3271s.doc>

Winning bidders must also agree to complete a "State Consultant Services Form B, Contractor's Annual Employment Report" for each state fiscal year included in the resulting contract. This report must be submitted annually to the Department of Health, the Office of the State Comptroller, and Department of Civil Service.

State Consultant Services Form B

<http://www.osc.state.ny.us/agencies/forms/ac3272s.doc>

## **F.13. Lobbying Statute**

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, provides, among other things, the following as pertains to development of procurement contracts with governmental entities:

- a. Makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. Requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. Requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. Authorizes the New York State Commission on Public Integrity to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. Directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. Requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. Expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. Modifies the governance of the New York State Commission on Public Integrity;
- i. Provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. Increases the monetary threshold which triggers a lobbyists obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. Establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended: (i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York State Commission on Public Integrity regarding procurement lobbying, the Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the New York State Commission on Public Integrity.

#### **F.14. Accessibility of State Agency Web-based Intranet and Internet Information and Applications**

Any web-based intranet and internet information and applications development, or programming delivered pursuant to the contract or procurement will comply with New York State Enterprise IT Policy NYS-P08-005, “Accessibility Web-based Information and Applications”, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that state agency web-based intranet and internet information and applications are accessible to persons with disabilities. Web content must conform to New York State Enterprise IT Standard NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing will be conducted by Department of Health, contractor or other, and the results of such testing must be satisfactory to the Department of Health before web content will be considered a qualified deliverable under the contract or procurement.

#### **F.15. Information Security Breach and Notification Act**

Section 208 of the State Technology Law (STL) and Section 899-aa of the General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual’s unencrypted personal information plus one or more of the following: social security number, driver’s license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual’s financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after measures are taken to determine the scope of the breach and to restore integrity; provided, however, that notification may be delayed if law enforcement determines that expedient notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB).

Information relative to the law and the notification process is available at:  
<http://its.ny.gov/eiso/breach-notification>.

#### **F.16. New York State Tax Law Section 5-a**

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to the Department of Tax and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agencies, from approving a contract awarded to an offerer meeting the registration requirements but who is not so registered in accordance with the law.

Contractor must complete and submit directly to the New York State Taxation and Finance, Contractor Certification Form ST-220-TD attached hereto. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s), a new form (ST-220-TD) must be filed with DTF.

Contractor must complete and submit to the Department of Health the form ST-220-CA attached hereto, certifying that the contractor filed the ST-220-TD with DTF. Failure to make either of these filings may render an offerer non-responsive and non-responsible. Offerers shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Forms ST-220-TD and ST-220-CA may be accessed electronically at:

ST-220-TD:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) and

ST-220-CA:

[http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)

#### **F.17. Piggybacking**

New York State Finance Law section 163(10)(e) (see also <http://www.ogs.ny.gov/procurecounc/pgbguidelines.asp>) allows the Commissioner of the NYS Office of General Services to consent to the use of this contract by other New York State Agencies, and other authorized purchasers, subject to conditions and the Contractor's consent.

## **F.18. Contractor Requirements and Procedures for Business Participation Opportunities for New York State Certified Minority and Women Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

### **NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A, the New York State Department of Health recognizes its obligation to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of New York State Department of Health contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that New York State Department of Health establish goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

### **Business Participation Opportunities for MWBEs**

For purposes of this solicitation, New York State Department of Health hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that New York State Department of Health may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <http://ny.newnycontracts.com>.

For guidance on how New York State Department of Health will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and New York State Department of Health may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- i. Bidders should submit a MWBE Utilization Plan on Form #1 with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to New York State Department of Health.
- ii. New York State Department of Health will review the submitted MWBE Utilization Plan and advise the Bidder of New York State Department of Health acceptance or issue a notice of deficiency within 30 days of receipt.
- iii. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the [AGENCY NAME, address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by New York State Department of Health to be inadequate, New York State Department of Health shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on Form #2. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- iv. New York State Department of Health may disqualify a Bidder as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If New York State Department of Health determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to New York State Department of Health, but must be made prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report on Form #3 to the New York State Department of Health address, phone and fax information, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

## Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (Form #4) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the New York State Department of Health, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

### F.19. Iran Divestment Act

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Department of Health receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced

certifications, the Department of Health will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Department of Health shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Department of Health reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

## **F.20. Encouraging Use of New York Businesses in Contract Performance**

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles. All bidders should complete Attachment M to indicate their intent to use/not use New York Businesses in the performance of this contract.

## **G. DEFINITIONS**

For the purposes of the Medicaid Program and as used in this request, the following terms are defined as follows:

### **G.1. Ambulance**

An ambulance is a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

An ambulance service is any entity, as defined in Section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat, or other form of transportation to or

from facilities providing hospital services and which is certified or registered by the Department of Health as an ambulance service.

### **G.2. Ambulette**

Ambulette or invalid coach is a special-purpose vehicle designed and equipped to provide non-emergency care that has either wheelchair-carrying capacity or the ability to carry disabled individuals.

An ambulette service is an individual, partnership, association, corporation, or any other legal entity which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care.

An ambulette service provides the invalid, infirm or disabled with personal assistance.

### **G.3. Common Medical Marketing Area**

The common medical marketing area is the geographic area from which a community customarily obtains its medical care and services.

### **G.4. Conditional Liability**

Conditional liability is the responsibility of the prior authorization official for making payment only for transportation services which are provided to Medicaid eligible individuals in accordance with the requirements of Title 18 (the regulations of the New York State Department of Social Services).

### **G.5. Day Treatment Program**

A day treatment program or continuing treatment program is a planned combination of diagnostic, treatment and rehabilitative services certified by the Office for Persons with Developmental Disabilities or the Office of Mental Health.

### **G.6. Department Staff**

Employees of the New York State Department of Health, or designees of the Department of Health, for the purposes of this contract.

### **G.7. Emergency**

A medical or mental health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention could reasonably be expected to result in placing the enrollee's physical or mental health (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, serious dysfunction of any bodily organ or part, serious harm to self or others due to an alcohol or drug abuse emergency, injury to self or bodily harm to others, or with respect to a pregnant woman having contractions: (1) that there is inadequate time to effect a safe transfer to a hospital before delivery, or (2) that transfer may pose a threat to the health or safety of the woman or the unborn child.

### **G.8. Enrollee/Enrollee**

An enrollee/enrollee is an individual who is enrolled in the Medicaid Program and is eligible to receive Medicaid services, including transportation.

### **G.9. Fee-for-Service**

The payment of a fee by the Department of Health directly to a service provider for a specified direct service.

### **G.10. Medical Escort**

A paid or unpaid individual or caregiver accompanying a program eligible enrollee who is physically, mentally, or developmentally disabled and unable to travel or wait without assistance

or supervision to receive a Medicaid coverable service. The escort may drive or utilize transportation services with the program eligible enrollee.

### **G.11. Medical Necessity**

Health care services are considered medically necessary when those services are:

- medically appropriate;
- Necessary to meet the basic health needs of the enrollee;
- Rendered in the most cost-efficient manner and type of setting appropriate for the delivery of the covered service;
- Consistent in type, frequency, duration of treatment with scientifically based guidelines of national medical, research, or health care coverage organizations or governmental agencies;
- Consistent with the diagnosis of the condition;
- Required for means other than convenience of the enrollee or his or her physician;
- No more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;
- Of demonstrated value; and,
- No more intense level of service than can be safely provided.

### **G.12. Medical Service Provider**

An individual, firm, corporation, hospital, nursing facility, or association that is enrolled as a Medicaid provider, or provides a Medicaid coverable service free of charge (for example, a Veterans Administration Hospital, or local county Department of Health.)

### **G.13. Mode**

The method used to provide transportation services to enrollees.

### **G.14. Non-Emergency Ambulance Transportation**

Non-emergency ambulance transportation is the provision of ambulance transportation for the purpose of obtaining necessary medical care or services by a Medicaid enrollee whose medical condition requires transportation in a recumbent position.

Non-emergency ambulance transportation is transportation of a pre-planned nature where the patient must be transported on a stretcher or requires the administration of life support equipment, such as oxygen, by trained medical personnel.

**G.15. No-Show**

The result of a Department of Health enrollee or transportation service provider not keeping an appointment and failing to cancel the appointment.

**G.16. Prior Authorization**

A determination that payment for transportation is essential in order for a Medicaid enrollee to obtain necessary medical care and services and that the Medicaid Program accepts conditional liability for payment of the Medicaid enrollee's transportation costs.

**G.17. Medical Practitioner**

An ordering practitioner is the Medicaid enrollee's attending physician or other medical practitioner who has not been excluded from or denied enrollment in the Medicaid Program and who is requesting transportation on behalf of the Medicaid enrollee in order for the Medicaid enrollee to receive medical care or services covered under Medicaid.

**G.18. Stretcher Van**

A vehicle that transports a prone or supine person who does not require medical attention while traveling to services.

**G.19. Transportation vendor**

A transportation vendor is a lawfully authorized provider of transportation services who is actively enrolled in the Medicaid Program.

**G.20. Transportation Services**

Transportation services are services by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the Medicaid enrollee's medical condition; and transportation attendant to accompany the Medicaid enrollee, if necessary.

Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the Medicaid enrollee's family.

**G.21. Urgent Care Transportation**

"Urgent care" means that level of care ordered and verified by the individual's physician (online, by phone or fax) to be necessary on the day the request is made. Examples include, but are not limited to, high temperature, persistent rash, vomiting or diarrhea, symptoms which are of sudden or severe onset but which do not require emergency room services. Urgent care is generally determined by the enrollee's medical care provider, but not necessary.

An appointment shall be considered urgent if the medical service provider grants an appointment within forty-eight (48) hours of the enrollee's request.

A hospital discharge shall be considered an Urgent Trip.

## H. CONTRACT APPENDICES

The following will be incorporated as appendices into any contract resulting from this RFP. This RFP, excluding Attachment N “Sample Standard NYS Contract Language and Appendices” will, itself, be included as an appendix of the contract.

- APPENDIX A - Standard Clauses for All New York State Contracts
- APPENDIX B - Request for Proposal
- APPENDIX C - Proposal  
The bidder's proposal (if selected for award), including any Bid Forms and all proposal requirements.
- APPENDIX D - General Specifications
- APPENDIX E  
Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:
  - Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
    - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/OR Disability Benefits Insurance Coverage Is Not Required; OR
    - **C-105.2** – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
    - **SI-12** – Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** – Certificate of Participation in Workers' Compensation Group Self-Insurance.
  - Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
    - **CE-200**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/OR Disability Benefits Insurance Coverage Is Not Required; OR
    - **DB-120.1** – Certificate of Disability Benefits Insurance
    - **DB-155** – Certificate of Disability Benefits Self-Insurance

- Appendix G - Notices
- Appendix H - Health Insurance Portability and Accountability Act (HIPAA) (if applicable)
- Appendix M - Participation by Minority Group Members and Women with Respect to State Contracts: Requirements and Procedures
- Appendix X – Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)

## **I. LIST OF ATTACHMENTS**

Attachment A	Transportation Management Law
Attachment B	Department of Health regulation on Medicaid Transportation, Title 18 of the New York Code of Rules and Regulation (NYCRR) 505.10
Attachment C	Medicaid Transportation Ordering Guidelines Manual
Attachment D	Medicaid Enrollee Fair Hearing Rights
Attachment E	Medicaid Transportation Data
Attachment F	92 ADM-21, Transportation for Medical Care and Services: 18 NYCRR 505.10
Attachment G	Medicaid Transportation Policy Regarding Reimbursement of Travel-Related Expenses
Attachment H	Transmittal Form
Attachment I	Cost Proposal Bid Form
Attachment J	Lobbying Form
Attachment K	Vendor Responsibility Attestation
Attachment L	New York State DOH M/WBE RFP Required Forms
Attachment M	Encouraging Use of New York Businesses in Contract Performance
Attachment N	Sample Standard NYS Contract Language and Appendices

## Attachment A Transportation Management Law

Section 365-h of the Social Services Law, as added by Chapter 8 of the Laws of 1995 and Subdivision 3 as amended by Section 26 of Part B of Chapter 1 of the Laws of 2002, amended by 2015-16 Budget, to read as follows:

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\* § 365-h. Provision and reimbursement of transportation costs.

1. The local social services official and, subject to the provisions of subdivision four of this section, the commissioner of health shall have responsibility for prior authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official and, as appropriate, the commissioner of health shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that

(i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided;

(ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons; and

(iii) transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the commissioner of health.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

4. The commissioner of health is authorized to assume responsibility from a local social services official for the provision and reimbursement of transportation costs under this section. If the commissioner elects to assume such responsibility, the commissioner shall notify the local social services official in writing as to the election, the date upon which the election shall be effective and such information as to transition of responsibilities as the commissioner deems prudent. The commissioner is authorized to contract with a transportation manager or managers to manage transportation services in any local social services district, other than transportation services provided or arranged for enrollees of managed long term care plans issued certificates of authority under section forty-four hundred three-f of the public health law. Any transportation manager or managers selected by the commissioner to manage transportation services shall have proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York state within which the contractor would manage the provision of services under this section. Such a contract or contracts may include responsibility for: review, approval

and processing of transportation orders; management of the appropriate level of transportation based on documented patient medical need; and development of new technologies leading to efficient transportation services. If the commissioner elects to assume such responsibility from a local social services district, the commissioner shall examine and, if appropriate, adopt quality assurance measures that may include, but are not limited to, global positioning tracking system reporting requirements and service verification mechanisms. Any and all reimbursement rates developed by transportation managers under this subdivision shall be subject to the review and approval of the commissioner.

\* NB Repealed 6 years after the contract entered into pursuant to this section 365-h is executed

\* § 365-h. Provision and reimbursement of transportation costs.

1. The local social services official shall have responsibility for prior authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that

(i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided and

(ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

\* NB Effective 6 years after the contract entered into pursuant to this section 365-h has been executed

**Attachment B      Title 18 of the New York Code of Rules and Regulation (NYCRR)**  
**§505.10**

*Transportation for Medical Care and Services*  
**Effective Date:** 04/29/98

**(a) Scope and purpose.**

This section describes the department's policy concerning payment for transportation services provided to Medical Assistance (MA) recipients, the standards to be used in determining when the MA program will pay for transportation, and the prior authorization process required for obtaining such payment.

Generally, payment will be made only upon prior authorization for transportation services provided to an eligible MA recipient. Prior authorization will be granted by the prior authorization official only when payment for transportation expenses is essential in order for an eligible MA recipient to obtain necessary medical care and services which may be paid for under the MA program.

**(b) Definitions.**

(1) Ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.

(2) Ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.

(3) Ambulette or invalid coach means a special-purpose vehicle, designed and equipped to provide non-emergency transport that has wheelchair-carrying capacity, stretcher-carrying capacity, or the ability to carry disabled individuals.

(4) Ambulette service means an individual, partnership, association, corporation, or any other legal entity, which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance as defined in this subdivision.

(5) Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.

(6) Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.

(7) Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.

(8) Day treatment program or continuing treatment program means a planned combination of diagnostic, treatment, and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.

(9) Department established rate means the rate for any given mode of transportation which the department has determined will ensure the efficient provision of appropriate transportation to MA recipients in order for the recipients to obtain necessary medical care or services.

(10) Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.

(11) Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.

(12) Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.

(13) Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.

(14) Non-emergency ambulance transportation means the provision of ambulance transportation for obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation by an ambulance service.

(15) Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

(16) Personal assistance means the provision of physical assistance by a provider of ambulette services or the provider's employee to an MA recipient for the purpose of assuring safe access to and from the recipient's place of residence, ambulette vehicle and MA covered health service provider's place of business.

Personal assistance is the rendering of physical assistance to the recipient in:

- walking, climbing or descending stairs, ramps, curbs or other obstacles;
- opening or closing doors;
- accessing an ambulette vehicle; and
- the moving of wheelchairs or other items of medical equipment and the removal of obstacles as necessary to assure the safe movement of the recipient.

In providing personal assistance, the provider or the provider's employee will physically assist the recipient which shall include touching, or, if the recipient prefers not to be touched, guiding the recipient in such close proximity that the provider of services will be able to prevent any potential injury due to a sudden loss of steadiness or balance.

A recipient who can walk to and from a vehicle, his or her home, and a place of medical services without such assistance is deemed not to require personal assistance.

(17) Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.

(18) Prior authorization official means the department, a social services district, or their designated agents.

(19) Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.

(20) Transportation expenses means:

- (i) the costs of transportation services; and
- (ii) the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.

(21) Transportation services means:

- (i) transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and
- (ii) a transportation attendant to accompany the MA recipient, if necessary.

Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.

(22) Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

(23) Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.

**(c) Ambulette and nonemergency ambulance transportation.**

(1) Who may order:

Only those practitioners, facilities, or programs listed in paragraph (4) of subdivision (d) of this section may order or submit an order on behalf of a practitioner for ambulette or nonemergency ambulance transportation services.

(2) Criteria for ordering ambulette transportation.

Ambulette transportation may be ordered if any one of the following conditions exist:

(i) The recipient needs to be transported in a recumbent position and the ambulette service ordered has stretcher-carrying capacity; or

(ii) The recipient is wheelchair bound and is unable to use a taxi, livery service, bus or private vehicle; or

(iii) The recipient has a disabling physical condition which requires the use of a walker or crutches and is unable to use a taxi, livery service, bus or private vehicle; or

(iv) The recipient has a disabling physical condition other than one described in subparagraph (iii) of this paragraph or a disabling mental condition, either of which requires the personal assistance provided by an ambulette service, and the ordering practitioner certifies, in a manner designated by the department, that the recipient cannot be transported by a taxi, livery service, bus or private vehicle and requires transportation by ambulette service; or

(v) An otherwise ambulatory recipient requires radiation therapy, chemotherapy, or dialysis treatment which results in a disabling physical condition after treatment and renders the recipient unable to access transportation without the person assistance provided by an ambulette service.

(3) Criteria for ordering nonemergency ambulance transportation.

Nonemergency ambulance transportation may be ordered when the recipient is in need of services while being transported to a provider of medical services which can only be administered by an ambulance service.

(4) Recordkeeping.

The ordering practitioner must note in the recipient's patient record the condition which justifies the practitioner's ordering of ambulette or nonemergency ambulance services.

(5) Audit and claim review.

An ordering practitioner or a facility or program submitting an order on the practitioner's behalf, which does not comply with this subdivision may be subjected to monetary claims and/or program sanctions as provided in section 504.8(a) of this Title.

**(d) Prior authorization.**

(1) Generally, prior authorization must be obtained before transportation expenses are incurred. Prior authorization is not required for emergency ambulance transportation or Medicare approved transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments. If transportation services are provided in accordance with section 505.10(e)(7) of this Part, the individualized education program or interim or final individualized family services plan of an MA eligible person will qualify as the prior authorization required by this subdivision.

(2) Requests for prior authorization may be made by the MA recipient, his or her representative, or an ordering practitioner.

(3) The recipient, his or her representative, or ordering practitioner must make the request in the manner required by the prior authorization official.

(4) A request for prior authorization for non-emergency ambulance transportation must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, or nurse practitioner. A request for prior authorization for transportation by ambulette or invalid coach must be supported by the order of an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the district and approved by the department. A diagnostic and treatment center, hospital, nursing home, intermediate care facility, long term home health care program, home and community-based services waiver program, or managed care program may submit an order for ambulette or nonemergency ambulance transportation services on behalf of the ordering practitioner.

(5) Each social services district must inform applicants for and recipients of MA of the need for prior authorization in order for transportation expenses to be paid under the MA program and of the procedures for obtaining such prior authorization.

(6) The prior authorization official may approve or deny a request for prior authorization, or require the ordering practitioner to submit additional information before the request is approved or denied.

(7) The prior authorization official must use the following criteria in determining whether to authorize payment of transportation expenses in accordance with subdivision (d) of this section:

(i) When the MA recipient can be transported to necessary medical care or services by use of private vehicle or by means of mass transportation which are used by the MA recipient for the usual activities of daily living, prior authorization for payment for such transportation expenses may be denied;

(ii) when the MA recipient needs multiple visits or treatments within a short period of time and the MA recipient would suffer undue financial hardship if required to make payment for the transportation to such visits or treatments, prior authorization for payment for such transportation expenses may be granted for a means of transportation ordinarily used by the MA recipient for the usual activities of daily living;

(iii) when the nature and severity of the MA recipient's illness necessitates a of transportation other than that ordinarily used by the MA recipient, prior authorization for such a mode of transportation may be granted;

(iv) when the geographic locations of the MA recipient and the provider of medical care and services are such that the usual mode of transportation is inappropriate, prior authorization for another mode of transportation may be granted;

(v) when the distance to be traveled necessitates a large transportation expense and undue financial hardship to the MA recipient, prior authorization for payment for the MA recipient's usual mode of transportation may be granted;

(vi) when the medical care and services needed are available within the common medical marketing area of the MA recipient's community, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be denied;

(vii) when the need to continue a regimen of medical care or service with a specific provider necessitates travel which is outside the MA recipient's common medical marketing area, notwithstanding the fact that the medical care or service is available within the common medical marketing area, prior authorization for payment of transportation expenses to such medical care and services outside the common medical marketing area may be granted; and

(viii) when there are any other circumstances which are unique to the MA recipient and which the prior authorization official determines have an effect on the need for payment of transportation expenses, prior authorization for payment for such transportation expenses may be granted.

**(e) Payment.**

(1) Payment for transportation expenses will be made only when transportation expenses have been prior authorized except for emergency ambulance transportation or Medicare approved

transportation by an ambulance service provided to an MA-eligible person who is also eligible for Medicare Part B payments.

(2) Payment for transportation expenses will be made only to the vendor of transportation services, to the MA recipient or to an individual providing transportation services on behalf of the MA recipient.

(3) Payment will be made only for the least expensive available mode of transportation suitable to the MA recipient's needs, as determined by the prior authorization official.

(4) Payment to vendors for transportation services must not exceed the lower of the department established rate, the local established rate, the locally prevailing rate, or the rate charged to the public, by the most direct route for the mode of transportation used. However, payment may be made in excess of the locally prevailing rate or the rate charged to the public when federal financial participation in the MA payment for transportation services is available and such payment is necessary to assure the transportation service.

(5) Payment to vendors will be made only where an MA recipient is actually being transported in the vehicle.

(6) In order to receive payment for services provided to an MA recipient, a vendor must be lawfully authorized to provide transportation services on the date the services are rendered. A vendor of transportation services is lawfully authorized to provide such services if it meets the following standards:

(i) ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

(ii) ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.

(iii) taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality and with all requirements of the Department of Motor Vehicles; and

(iv) Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements.

(7) Payment is available for transportation services provided in order for the recipient to receive an MA covered service if the recipient receives such service (other than transportation services) at school or off of the school premises and both the covered service and transportation service are included in the recipient's individualized education plan. Payment is available for transportation services provided in order for the recipient, or the recipient's family member or significant other to receive an MA covered service if both the covered service and transportation service are included in the recipient's interim or final individualized family services plan. For purposes of this section, a significant other is a person who substitutes for the recipient's family, interacts regularly with the recipient, and affects directly the recipient's developmental status. Reimbursement for such services must be made in accordance with the provider agreement.

(8) Payment to a provider of ambulette services will only be made for services documented in contemporaneous records in accordance with section 504.3 of this Title. Documentation must include:

- (i) the recipient's name and MA identification number;
- (ii) the origination of the trip;
- (iii) the destination of the trip;
- (iv) the date and time of service; and,
- (v) the name of the driver transporting the recipient.

(9) Payment will not be made for transportation services when:

- (i) the transportation services are ordinarily made available to other persons in the community without charge; however, payment may be made under such circumstances when federal financial participation in the MA payment for transportation services is available;
- (ii) the transportation services are provided by a medical facility and the costs are included in the facility's MA rate;
- (iii) a vendor is not actually transporting an MA recipient;
- (iv) the MA recipient has access to and can make use of transportation, such as a private vehicle or mass transportation, which the recipient ordinarily uses for the usual activities of daily living unless prior authorization has been granted by the prior authorization official.

**(f) Medical transportation plans and rate schedules.**

(1) The department may either establish rate schedules at which transportation services can be assured or delegate such authority to the social services districts.

(2) As directed by the department, each social services district must prepare and submit for department approval a medical transportation plan which provides for essential transportation of MA recipients to and from medical care and services which may be paid for under the MA program and the rate schedules to be used by the district. The department will approve a transportation plan if it finds that the plan satisfactorily demonstrates that appropriate modes of transportation are available to MA recipients in the social services district and that the rates of payment for transportation are adequate to ensure the availability of transportation to and from medically necessary care and services which can be paid for under the MA program.

(i) Amendments to transportation plans or changes to rate schedules must be submitted at least 60 days prior to the effective date of the amendment. The department may permit a shorter notification period in circumstances where the department has adequate time to review the proposed amendment prior to its effective date. Factors which will be considered in determining whether to shorten the notification period include, but are not limited to, the complexity of the proposed amendment and the number and complexity of any other proposed amendments which the department is reviewing when the request is made. The department may also waive the notification period at the request of the social services district where a waiver would permit more efficient and effective administration of the MA program.

(ii) Plans, rate schedules or amendments may not be implemented without departmental approval.

(iii) The transportation rate schedules submitted for approval must be complete and contain the current department established rates, the locally established rates, or the locally prevailing rates for each transportation service for which the district is required to pay.

(3) Failure to obtain the approval required by this subdivision may result in the social services district being denied federal and state reimbursement for the expenses related to transporting MA recipients to providers of medical care or services.

(4) On request, a vendor of transportation services must submit pertinent cost data, which is available to the vendor, to the department or the social services district. The department or the social services district may not require a certified cost document if providing such certification will result in additional expense to the vendor. Failure to comply with the requirements of this paragraph may result in the vendor's termination from participation in the MA program.

(5) The department or each social services district for which payment of transportation services is made through the Medicaid Management Information System (MMIS) must adhere to the following requirements in establishing payment rates with vendors of transportation services:

(i) The department or the social services district must select at least one of the following:

(a) a flat rate for all transportation services provided;

(b) a base rate for all transportation services provided, plus a mileage charge;

(c) a flat rate for transportation services within specified areas; or

(d) a mileage rate based on distance.

(ii) The department or the social services district may establish with vendors a reduced rate for any of the following:

(a) transportation of additional persons;

(b) transportation of persons traveling to and from day treatment or continuing treatment programs; and

(c) transportation of persons for purposes of obtaining regularly recurring medical care and services.

(iii) The department or the social services district may establish an additional rate for any of the following:

(a) other transportation costs, limited to the costs of meals, lodging and transportation attendants. Such costs must be approved by the department before the social services district may establish the additional rate; and

(b) bridge and road tolls.

(6) Rates established by the department will be deemed part of all applicable social services district medical transportation plans.

**Volume:** C

**NEW YORK STATE  
MEDICAID TRANSPORTATION  
ORDERING GUIDELINES MANUAL  
EFFECTIVE JULY 15, 2010**

## **Introduction**

When the Medicaid Program was established in the 1960s, the federal government recognized that unless needy individuals could actually get to and from providers of services, the entire goal of the Medicaid Program is inhibited at the start. As a result, States are required under federal regulations to ensure necessary transportation for Medicaid enrollees to and from medical services. The federal government also provided authority for States to ensure the provision of this transportation to Medicaid enrollees with federal financial participation in the cost of these services under the Medicaid Program. For the Medicaid population, getting to and from services can be a struggle. If the enrollee cannot get to services, then the Program fails from the start; so New York State made the decision to cover a series of optional services under the Medicaid Program, including medical transportation.

In order to maintain enough flexibility to sufficiently meet the transportation needs of Medicaid enrollees in a significantly culturally and geographically diverse State, the responsibility of managing the New York State Medicaid Transportation Program was delegated to each county's local departments of social services. The New York City Medicaid Transportation Program is administered by the City of New York Human Resources Administration, which encompasses the five boroughs of the City of New York, with oversight by the New York State Department of Health.

Medicaid covers the transportation of eligible, enrolled persons who need transportation to and from Medicaid-covered services. All transportation must be prior authorized for payment.

For questions, comments and more information, please contact the Medicaid Program's Transportation Unit:

Telephone: (518) 473-2160  
Fax: (518) 486-2495  
Email: [MedTrans@health.state.ny.us](mailto:MedTrans@health.state.ny.us).

## Section I – Covered Transportation Services

Medicaid covers the transportation of eligible, enrolled persons who need transportation to and from Medicaid-covered services. When traveling to medical appointments, a Medicaid enrollee is to use the same mode of transportation as used to carry out the activities of daily life. Medicaid will pay for the **least costly, most medically appropriate** level of transportation to and from services covered by the Medicaid Program.

Covered non-emergency transportation services include:

- Personal vehicle;
- Public transportation (bus/subway);
- Livery;
- Ambulette; and
- Ambulance.

## Section II - Rules for Ordering

As an ordering practitioner, you are responsible for ordering medically necessary transportation within the common medical marketing area (CMMA).

***The CMMA is the geographic area from which a community customarily obtains its medical care and services***

Enrollees who have reasonable access to a mode of transportation used for the normal activities of daily living; such as shopping and recreational events; are expected to use this same mode to travel to and from medical appointments when that mode is available to them.

Medicaid may restrict payment for transportation if it is determined that:

- the enrollee chose to go to a medical provider outside the CMMA when services were available within the CMMA;
- the enrollee could have taken a less expensive form of transportation but opted to take the more costly transportation.

In either case above, if the enrollee or his/her medical practitioner can demonstrate circumstances justifying payment, then reimbursement can be **considered**.

### **Responsibility of the Ordering Practitioner**

As the medical practitioner requesting taxi, ambulette, or non-emergency ambulance services, you are responsible for ordering the **medically appropriate** mode of transportation for the Medicaid enrollee. A basic consideration for this should be the enrollee's current level of mobility and functional independence.

The transportation ordered should be the least specialized mode required based upon the enrollee's **current** medical condition. For example, if you feel the enrollee does not require personal assistance, but cannot walk to public transportation, you should authorize taxi service, not ambulette service.

***Any ordering practitioner or entity ordering transportation on the practitioner's behalf that orders transportation which is deemed not to meet the above rules may be sanctioned according to 18 NYCRR Section 515.3, available online at:***

<http://www.health.state.ny.us/nysdoh/phforum/nycrr18.htm>.

## Acceptable Orderers of Transportation

If you are enrolled as a Medicaid provider and the category of service in which you have enrolled reflected in the table below, then you may request prior authorization of transportation services on behalf of Medicaid enrollees.

Provider Type	Provider Type
Shared Health Facility	Long Term Care Health Related Facility
Dental Group	Long Term Care Day Care
Physician Group	ICF for Developmentally Disabled
Midwife Group	Mental Retardation: Outpatient Services
Clinical Psychologist Group	Nursing Home Sponsored HHA Professional Svcs
Free-Standing Diagnostic & Treatment Ctr	Long Term Home Health Care
Ordered Ambulatory (Other than Labs)	Salaried Optometrist
Hospice	LTC: Ordered Ambulatory (Other than Labs)
Dental School	Self-Employed Optometrist
Dental Service	Salaried Optician
Prepaid Capitation Plan	Physician
Free-Standing Home Health Ag Professional Svc	Self-Employed Optician
Assisted Living Program	Physician: CHAP Practitioner
OMH-Certified Rehabilitation Facility	Registered Physician's Assistant
HHAS: OMR/DD Waiver Services	Physician
Hos Svc: Ordered Ambulatory (Other than Labs)	Nurse Practitioner
Hos Svc: Home Care Program	Podiatrist
Inpatient Facility	Midwife
Skilled Nursing Facility	Clinical Psychologist
Hos Svc: Hospital Base Outpatient Services	Occupational Therapist
Hos Svc: Health Related Facility	Physical Therapist
Audiologist	Speech Therapist
Long Term Care Skilled Nursing Facility	Respiratory Therapist
	Respiratory Therapist Technician

If you have any questions regarding the category of service in which you are enrolled, please contact Computer Sciences Corporation at (800) 343-9000.

## Non-Emergency Ambulance

Generally, ambulance service is requested when a Medicaid enrollee needs to be transported in a recumbent position (lying down) or is in need of medical attention while en route to their medical appointments.

A request for prior authorization **must** be supported by the order of a practitioner who is the Medicaid enrollee's:

- Attending physician;
- Physician's assistant; or
- Nurse practitioner.

## **Ambulette**

Ambulette service is door-to-door; from the enrollee's home through the door of the medical appointment. Personal assistance by the staff of the ambulette company is required by the Medicaid Program in order to bill the Program for the provision of ambulette service. Personal assistance by the staff of the transportation company is required by the Medicaid Program and consists of the rendering of physical assistance to the ambulatory and non-ambulatory (wheelchair-bound) Medicaid enrollees in:

- Walking, climbing or descending stairs, ramps, curbs, or other obstacles;
- Opening and closing doors;
- Accessing an ambulette vehicle; and
- The moving of obstacles as necessary to assure the safe movement of the Medicaid enrollee.

If personal assistance is not necessary and/or not provided, then [taxi](#) service should be ordered.

There is no separate reimbursement for the escort of a Medicaid enrollee. Necessary escorts are to be provided by the ambulette service at no additional or enhanced charge.

***The Medicaid Program does not limit the number of stairs or floors in a building that a provider must climb in order to deliver personal assistance to a Medicaid enrollee.*** The ambulette provider is required to provide personal assistance and door-to-door service at no additional or enhanced charge. This means the staff must transport the enrollee from his/her front door (including apartment door, nursing home room, etc.) no matter where it is located; to the door of the medical practitioner from whom the enrollee is to receive Medicaid-covered medical services.

Ambulettes may also provide taxi (curb-to-curb) service and will transport taxi-eligible enrollees in the same vehicle as ambulette-eligible enrollees. The Medicaid Program does not require the ambulette service to be licensed as a taxi service; the only requirement that ambulettes need to meet for this service is the proper authority and license to operate as an ambulette.

A request for prior authorization of ambulette transportation must be supported by the order of a practitioner who is the Medicaid enrollee's:

- Attending physician;
- Physician's assistant;
- Nurse practitioner;
- Dentist;
- Optometrist;
- Podiatrist; or
- Other type of medical practitioner designated by the district and approved by the Department.

A diagnostic and treatment clinic, hospital, nursing home, intermediate care

facility, long term home health care program, home and community based services waiver program, or managed care program may order non-emergency ambulance transportation services on behalf of the ordering practitioner.

Ambulette transportation may be ordered if any of the following conditions is present:

**Note: The ordering practitioner must note in the patient's medical record the Medicaid enrollee's condition which qualifies use of an ambulette transport.**

- The Medicaid enrollee needs to be transported in a recumbent position and the ambulette service is able to accommodate a stretcher;
- The Medicaid enrollee is wheelchair-bound and is unable to use a taxi, taxi service, bus or private vehicle;
- The Medicaid enrollee has a disabling physical condition which requires the use of a walker or crutches and is unable to use a taxi, bus or private vehicle;
- An otherwise ambulatory Medicaid enrollee requires radiation therapy, chemotherapy, or dialysis treatments which result in a disabling physical condition after treatment, making the enrollee unable to access transportation without personal assistance provided by an ambulette service;
- The Medicaid enrollee has a disabling physical condition other than one described above or a disabling mental condition requiring personal assistance provided by an ambulette services; and,
- The ordering practitioner certifies in a manner designated by and submitted to the Department that the Medicaid enrollee cannot be transported by taxi, bus or private vehicle and there is a need for ambulette service.

### **Taxi Transportation**

A request for prior authorization for transportation by New York City livery services must be supported by the order of a practitioner who is the Medicaid enrollee's:

- Attending physician;
- Physician's assistant;
- Nurse practitioner;
- Dentist;
- Optometrist;

- Podiatrist; or
- Other type of medical practitioner designated by the district and approved by the Department.

A diagnostic and treatment clinic, hospital, nursing home, intermediate care facility, long term home health care program, home and community based services

waiver program, or managed care program may order non-emergency ambulance transportation services on behalf of the ordering practitioner.

**Note: The ordering practitioner must note in the patient's medical record the Medicaid enrollee's condition which qualifies use of an ambulette transport.**

## **Day Program Transportation**

Day program transportation is unique in that this transportation can be provided by an ambulance, ambulette or taxi provider. The difference is that a typical transport involves a group of individuals traveling to and from the same site, at the same time, on a daily or regular basis.

The economies of this group ride transport are reflected in a different reimbursement amount than that reimbursed for an episodic medical appointment.

Providers of transportation to day treatment/day program must adhere to the same requirements for their specific provider category.

## Attachment D Medicaid Enrollee Fair Hearing Rights

### Fair Hearings

A Fair Hearing is a chance for you to tell an Administrative Law Judge from the New York State Office of Temporary and Disability Assistance, Office of Administrative Hearings, why you think a decision about your case made by a local social services agency is wrong. The Office of Temporary and Disability Assistance will then issue a written decision which will state whether the local agency's decision was right or wrong. The written decision may order the local agency to correct your case.

- **Request a Fair Hearing** - Requests for Hearings can be completed online, by US Mail, by telephone or by fax.
- **Request an Adjournment or Reopening** - If you cannot appear at a hearing that has been scheduled but hasn't been held yet, you may request that it be adjourned (postponed) to another date. You may submit your request for an adjournment online, by US Mail, by telephone or by fax. If the hearing date has already passed and you didn't attend the hearing, under some limited circumstances, you may be able to have the hearing rescheduled.
- **Cancel a Fair Hearing** - If you no longer need a hearing that you have requested, you may let us know online, by US Mail, by telephone or by fax.
- **Request Compliance with a Fair Hearing Decision** - If you have received a fair hearing decision that says that your local agency should do something and you believe that they haven't done it, you may submit a Compliance Complaint to us. You may do this online, by US Mail, by telephone or by fax.
- **Search the Fair Hearing Decision Archive** - The Office of Administrative Hearings publishes all of its Fair Hearing Decisions on the Internet. These decisions have all personal and confidential information removed. If you want to look at old decisions or find other decisions whose facts are similar to yours, you may search this archive.

### Contact Fair Hearings

For all other issues, including inquiries or complaints regarding a specific fair hearing decision, obtaining an additional copy of a decision, or requests to amend a decision and/or reopen a hearing, you may contact the Office of Administrative Hearings at:

Office of Temporary and Disability Assistance  
Office of Administrative Hearings  
PO BOX 1930  
Albany, N.Y. 12201-1930

Fax: 518-473-6735  
Phone: 1 (518) 474-8781 or 1 (800) 342-3334 (toll free)

### Speech or Hearing Impaired Individuals

Please contact the New York Relay Service at 711 and request that the operator call us at 1 (877) 502-6155. Service at this number will *only* be provided to callers using TDD equipment.

Source: <http://otda.ny.gov/oah/default.asp>

## Attachment E Medicaid Transportation Data

Table 1 indicates the number of Medicaid enrollees, unduplicated enrollees using fee for service transportation, and non-emergency one way trips as of the dates shown. Table 2 shows the number of non-emergency Medicaid trips for calendar years 2013 and 2014. Table 3 shows the number of Medicaid users of transportation services for calendar years 2013 and 2014.

Note: The figures in these tables do not guarantee current or future service levels and are provided for informational purposes. Further, non-emergency one way trips data do not include trips via public transit, personal vehicle, or commercial travel and do not include trips for Medicaid Managed Care enrollees whose current benefits include transportation.

**Table 1: Medicaid Enrollee, User and Trip Data \***

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>County</b>	<b>Medicaid Enrollees (8/2015)</b>	<b>Unduplicated Medicaid Enrollees Using Fee-for-Service Transportation (2014)</b>	<b>Non-Emergency One Way Trips (2014)</b>
ALBANY	61,759	11,349	229,505
BROOME	51,863	8,478	113,938
CAYUGA	17,711	2,790	43,158
COLUMBIA	13,984	2,616	66,808
DELAWARE	11,087	1,811	29,711
DUTCHESS	51,548	8,379	261,095
ESSEX	8,078	1,067	21,190
FULTON	15,829	2,763	54,798
GREENE	11,441	2,347	61,606
MONTGOMERY	15,059	2,560	58,848
ONEIDA	68,469	10,889	123,278
ONONDAGA	115,306	23,484	493,037
ORANGE	94,175	23,779	470,824
PUTNAM	10,852	1,247	52,058
RENSSELAER	34,374	6,466	154,997
ROCKLAND	43,572	5,984	134,835
SARATOGA	31,313	4,255	95,051
SCHENECTADY	42,525	7,673	145,685
SCHOHARIE	7,045	765	14,785
SULLIVAN	23,935	5,764	118,497
ULSTER	41,313	7,006	147,745
WARREN	13,933	1,856	34,232
WASHINGTON	15,848	2,016	32,930
WESTCHESTER	198,987	23,100	594,011
<b>TOTAL</b>	<b>1,000,006</b>	<b>168,444</b>	<b>3,552,622</b>

**Table 2: Medicaid Trips Calendar Years 2013 and 2014 \***

<b>County</b>	<b>Non-Emergency One Way Trips (2013)</b>	<b>Non-Emergency One Way Trips (2014)</b>
ALBANY	209,921	229,505
BROOME	98,754	113,938
CAYUGA	36,942	43,158
COLUMBIA	63,077	66,808
DELAWARE	24,089	29,711
DUTCHESS	251,218	261,095
ESSEX	11,944	21,190
FULTON	50,233	54,798
GREENE	59,792	61,606
MONTGOMERY	50,046	58,848
ONEIDA	95,712	123,278
ONONDAGA	443,476	493,037
ORANGE	439,581	470,824
PUTNAM	53,967	52,058
RENSSELAER	129,499	154,997
ROCKLAND	134,527	134,835
SARATOGA	83,039	95,051
SCHENECTADY	125,634	145,685
SCHOHARIE	11,832	14,785
SULLIVAN	113,414	118,497
ULSTER	140,046	147,745
WARREN	28,921	34,232
WASHINGTON	25,815	32,930
WESTCHESTER	565,542	594,011
<b>TOTAL</b>	<b>3,247,021</b>	<b>3,552,622</b>

**Table 3: Medicaid Users of Transportation Services Calendar Years 2013 and 2014 \***

<b>County</b>	<b>Unduplicated Medicaid Enrollees Using Fee-for-Service Transportation (2013)</b>	<b>Unduplicated Medicaid Enrollees Using Fee-for-Service Transportation (2014)</b>
ALBANY	10,249	11,349
BROOME	7,496	8,478
CAYUGA	2,302	2,790
COLUMBIA	2,484	2,616
DELAWARE	1,638	1,811
DUTCHESS	7,432	8,379
ESSEX	845	1,067
FULTON	2,602	2,763
GREENE	2,218	2,347
MONTGOMERY	2,295	2,560
ONEIDA	9,561	10,889
ONONDAGA	21,196	23,484
ORANGE	21,458	23,779
PUTNAM	1,081	1,247
RENSSELAER	5,491	6,466
ROCKLAND	5,444	5,984
SARATOGA	3,813	4,255
SCHENECTADY	6,523	7,673
SCHOHARIE	706	765
SULLIVAN	5,366	5,764
ULSTER	6,292	7,006
WARREN	1,693	1,856
WASHINGTON	1,710	2,016
WESTCHESTER	20,957	23,100
<b>TOTAL</b>	<b>150,852</b>	<b>168,444</b>

\* Source: eMedNY, DataMart and Medicaid Data Warehouse data. Trip figures do not include pass through reimbursed trips, such as when Medicaid enrollees are reimbursed for the use of personal vehicles or public transit to get to their eligible appointments.

**Attachment F 92 ADM-21, Transportation for Medical Care and Services: 18  
NYCRR 505.10**

+-----+  
| ADMINISTRATIVE DIRECTIVE |  
+-----+

TRANSMITTAL: 92 ADM-21

TO: Commissioners of  
Social Services

DIVISION: Medical  
Assistance

SUBJECT: Transportation for Medical Care  
and Services: 18 NYCRR 505.10

DATE: June 2, 1992

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SUGGESTED |

DISTRIBUTION: | Medical Assistance Staff  
| Child/Teen Health Plan Staff  
| Transportation Unit Staff  
| Staff Development Coordinators

CONTACT

PERSON: | For additional information contact Loretta Grose  
| at 1-800-342-3715, extension 35873 (OA USERID  
| AW0680).

ATTACHMENTS: | There are no attachments to this Administrative  
| Directive.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
81 INF-27		505.10	20.3(d)		89 LCM-193
82 ADM-40		360-7.7	34.3(f)		89 LCM-42
82 INF-28			365-a.2(j)		89 LCM-43
86 INF-16			365-b, 368-a		90 LCM-51
87 ADM-39			14 NYCRR		90 LCM-88
87 INF-50, 67			579.5(a)(1);		
90 ADM-1			585.10, .13a		

Date June 2, 1992

Trans. No. 92 ADM-21 Page No. 2

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I. Purpose

This Directive informs social services district staff of revisions to Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR) 505.10, "Transportation for Medical Care and Services".

This ADM outlines the programmatic implications of the revisions as follows:

- A. Definition of Terminology;
- B. Clarification of Existing Medical Assistance Transportation Policy;
- C. Conformity of State Regulation with Federal Policy;
- D. Licensure Requirements of Transportation Providers;
- E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B;
- F. Qualified Orderers of Ambulance and Ambulette Transportation;
- G. Changes Requested by Social Services Districts and Other Sources; and,
- H. Medical Transportation Expenditure Claiming Procedures

II. Background

The previous version of 18 NYCRR 505.10 was last amended in 1981. Since that time, changes in the Medical Assistance (MA) program, as well as new licensure requirements for transportation vendors, resulted in various departmental policy statements which clarified the scope and intent of this regulation. Additionally, several court cases have broadened the effect of this regulation beyond its original intent. The revised regulation clearly defines the purpose and range of transportation under the MA program.

III. Program Implications

A. Definition of Terminology

Certain terms which are commonly used in the MA transportation program are now defined in 18 NYCRR 505.10, as follows:

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1. Ambulance. An ambulance means a motor vehicle, aircraft, boat or other form of transportation designed and equipped to provide emergency medical services during transit.
  2. Ambulance Service. A certified ambulance service means any entity, as defined in section 3001 of the Public Health Law, which is engaged in the provision of emergency medical services and the transportation of sick, disabled or injured persons by motor vehicle, aircraft, boat or other form of transportation to or from facilities providing hospital services and which is currently certified or registered by the Department of Health as an ambulance service.
  3. Emergency Ambulance Transportation. Emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining hospital services for an MA recipient who suffers from severe, life-threatening, or potentially disabling conditions which require the provision of emergency medical services while the recipient is being transported.
  4. Non-Emergency Ambulance Transportation. Non-emergency ambulance transportation means the provision of ambulance transportation for the purpose of obtaining necessary medical care or services to an MA recipient whose medical condition requires transportation in a recumbent position.
  5. Emergency Medical Services. Emergency medical services means the provision of initial urgent medical care including, but not limited to, the treatment of trauma, burns, and respiratory, circulatory and obstetrical emergencies.
  6. Ambulette. An ambulette, or invalid coach, means a special-purpose vehicle, designed and equipped to provide non-emergency care, that has either wheelchaircarrying capacity or the ability to carry disabled individuals.
  7. Ambulette Service. An ambulette service means an individual, partnership, association, corporation, or any other legal entity which transports the invalid, infirm or disabled by ambulette to or from facilities which provide medical care. An ambulette service provides the invalid, infirm or disabled with personal assistance entering and exiting their residences, the ambulette, and a facility which provides medical care.

8. Prior Authorization. Prior authorization means a prior authorization official's determination that payment for a specific mode of transportation is essential in order for an MA recipient to obtain necessary medical care and services and that the prior authorization official accepts conditional liability for payment of the recipient's transportation costs.
9. Prior Authorization Official. Prior authorization official means the department, a social services district, or their designated agents.
10. Conditional Liability. Conditional liability means that the prior authorization official is responsible for making payment only for transportation services which are provided to MA-eligible individuals in accordance with the requirements of this Title.
11. Common Medical Marketing Area. Common medical marketing area means the geographic area from which a community customarily obtains its medical care and services.
12. Community. Community means either the State, a portion of the State, a city or a particular classification of the population, such as all persons 65 years of age and older.
13. Locally Established Rate. Locally established rate means the rate for any given mode of transportation which the social services official has determined will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services.
14. Locally Prevailing Rate. Locally prevailing rate means a rate for a given mode of transportation which is established by a transit or transportation authority or commission empowered to establish rates for public transportation, a municipality, or a third-party payor, and which is charged to all persons using that mode of transportation in a given community.
15. Ordering Practitioner. Ordering practitioner means the MA recipient's attending physician or other medical practitioner who has not been excluded from enrollment in the MA program and who is requesting transportation on behalf of the MA recipient in order that the MA recipient may obtain medical care or services which are covered under the MA program. The ordering practitioner is responsible for initially determining when a specific mode of transportation to a particular medical care or service is medically necessary.

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16. Day Treatment Program or Continuing Treatment Program. Day treatment program or continuing treatment program means a planned combination of diagnostic, treatment and rehabilitative services certified by the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health.
17. Transportation Attendant. Transportation attendant means any individual authorized by the prior authorization official to assist the MA recipient in receiving safe transportation.
18. Transportation Expenses. Transportation expenses means:
- i. the costs of transportation services; and
  - ii. the costs of outside meals and lodging incurred when going to and returning from a provider of medical care and services when distance and travel time require these costs.
19. Transportation Services. Transportation services means:
- i. transportation by ambulance, ambulette or invalid coach, taxicab, common carrier or other means appropriate to the recipient's medical condition; and
  - ii. a transportation attendant to accompany the MA recipient, if necessary. Such services may include the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family.
20. Vendor. Vendor means a lawfully authorized provider of transportation services who is either enrolled in the MA program pursuant to Part 504 of this Title or authorized to receive payment for transportation services directly from a social services district or other agent designated by the department. The term vendor does not mean an MA recipient or other individual who transports an MA recipient by means of a private vehicle.
21. Undue Financial Hardship. Undue financial hardship means transportation expenses which the MA recipient cannot be expected to meet from monthly income or from available resources. Such transportation expenses may include those of a recurring nature or major one-time costs.

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B. Clarification of Existing Medical Assistance Transportation Policy

Section 505.10 provides clarification of current policy for the authorization and payment of MA transportation as follows:

1. The transportation must be provided to an MA recipient.

Example 1: The parent of a hospitalized child, who is receiving MA, is required to go to the hospital for periodic consultations regarding the scope of the child's on-going medical care. The parent's transportation expenses for these medical consultations may be reimbursable under the MA program (based on medical necessity) only if the parent is an MA recipient. If the parent is not a recipient of MA, the transportation expenses are not covered. (However, when a child travels to medical care and services, an attendant is required. It is expected that the parent or guardian of the child will act as attendant. In these situations, the costs of transportation, lodging and meals of the parent or guardian may be reimbursable regardless of the parent or guardian's MA eligibility.)

2. The transportation must be made to or from a necessary care or service which may be paid for under the MA program.

Example 1: An MA recipient requests reimbursement for transportation expenses to an Alcoholics Anonymous meeting or some other self-help group. Reimbursement for transportation expenses should not be authorized as these programs are not paid for under the MA program.

Example 2: A physician has ordered that it is medically necessary for a 55 year old developmentally disabled MA recipient to attend a sheltered workshop program in order for the recipient to maintain physical and mental health. The physician has further ordered that it is medically necessary for the MA recipient to travel by ambulette. Even though a physician has ordered this program and specified the mode of transportation, transportation should not be authorized since a sheltered workshop program is not a service covered under the MA program.

Example 3: A young, chronically-ill mother of two children is residing in a long-term-care facility. This MA recipient's attending physician has approved a home visit for the recipient and included this order in the recipient's therapeutic plan of care. This transportation home should not be authorized since the recipient is not being transported to an MA covered service.

Example 4: A 25 year old developmentally disabled Intermediate Care Facility (ICF) resident is ordered by the ICF's attending physician to participate in a summer camp program. This transportation should not be authorized since a summer camp program is not a service covered under Medicaid.

Example 5: An MA recipient has an appointment with a physician who has not been excluded from enrollment in the MA program, but who has voluntarily chosen not to enroll as an MA provider. Transportation to this appointment can be authorized since physician services are covered under the MA program.

3. Payment will be made only for the least expensive available mode of transportation. The least expensive available mode of transportation must be suitable to the MA recipient's needs as determined by the prior authorization official.

Example 1: An MA recipient has access to a bus line and is physically able to use a bus to travel to necessary medical care and services. The prior authorization official has determined that a bus token(s) is less expensive than private vehicle mileage reimbursement. However, the MA recipient wishes to use a private vehicle. Even though the recipient prefers to use a private car the local social services district can limit reimbursement to a bus token(s). No reimbursement should be made if the bus is not used.

4. Payment will be made to a vendor only for services provided where an MA recipient is actually being transported in the vehicle. Payment will not be available for non-passenger occupied time.

Example 1: An ambulette arrives at a recipient's home for a scheduled appointment. The recipient is not at home; therefore, no trip is made. The vendor should not be reimbursed for this service since the MA recipient was not transported in the vehicle.

Example 2: An ambulette arrives at a physician's office to pick up a recipient and return the recipient to the recipient's home. The pick-up is scheduled for 1:00 P.M. The recipient does not leave the physician's office until 1:20 P.M. The ambulette company should not be reimbursed an extra amount for this additional 20 minutes waiting time since the MA recipient was not in the vehicle.

During some long-distance trips, it may be appropriate for the vendor to wait for the recipient rather than return to the vendor's base of operation. Social services districts may choose to establish an enhanced base rate for this type of trip, but no specific fee should be designated for waiting time.

5. Transportation should take place within the common medical marketing area, which means the geographic area from which a community customarily obtains its medical care and services. While recipients may exercise freedom of choice in the selection of medical care and service providers, this does not mean that the local social services district must pay for transportation to medical care and service outside the common medical marketing area when the same care and service is available locally.

When authorizing long-distance transportation social services districts must ensure that the medical care and services required by the recipient are not readily available within the recipient's common medical marketing area. The appropriateness of reimbursement for long-distance transportation should be decided by the prior authorization official after a careful consideration of relevant factors such as location of service and recipient, medical need, recipient's personal circumstances and continuity of medical care.

Example 1: An MA recipient residing in Albany wishes to consult a medical provider located in Syracuse, which is outside the recipient's common medical marketing area. If this same type of provider is available within the Albany area, the prior authorization official may, after consideration of all criteria set forth in section 505.10(d)(7), deny reimbursement for transportation to the medical provider located in Syracuse. In this instance, medical care and services are available within the recipient's common medical marketing area; therefore, payment for transportation outside the area is not essential in order for the recipient to obtain needed medical care. If the recipient chooses to go to the out of area medical provider, no transportation reimbursement should be provided as appropriate medical care within the common medical marketing area has been assured.

Example 2: A pregnant woman, who changes residence from one social services district to another, may need to consult with her original physician in her former district of residence for a period of time before an

adequate transfer of care to a new local provider can be accomplished. Reimbursement for transportation to the out of area physician could be provided for as long a period as consultation with this physician is medically necessary.

C. Conformity of State Regulation with Federal Policy

The Code of Federal Regulations (42 CFR 431.53) requires states participating in the Medicaid program to assure necessary transportation to and from providers of medical care and services which are covered under the states' Medicaid programs. Assuring transportation does not necessarily mean payment for transportation. This federal requirement to assure necessary transportation can be met in a variety of ways, including:

1. The use of transportation services which are ordinarily made available to other persons in the community without charge;
2. The use of volunteer services;
3. Payment to a vendor of transportation services; or,
4. Reimbursement to MA recipients for the use of a private vehicle or mass transportation.

Social services districts can reasonably assume that recipients have some form of transportation available to them for their usual activities of daily living. If a recipient has access to and can make use of the mode of transportation generally used for the usual activities of daily living (such as shopping, recreation, worship services), the recipient should use this mode of transportation to travel to medical appointments. Reimbursement for this mode of transportation does not have to be made. The prior authorization official may authorize payment, however, where the failure to do so would cause the recipient undue financial hardship. If the recipient's normal mode of transportation is available, reimbursement is not necessary for transportation to occasional medical treatment.

Example 1: A rural county resident regularly travels 25 miles one way in her personal vehicle to the county seat in order to shop for food, clothes, and other household items. Reimbursement for occasional transportation to the same city for medical appointments can be denied.

Example 2: An ambulatory individual living in a city resides five blocks from a bus route which interconnects with other bus routes throughout the city. When the individual must travel to the site of a medical practitioner which is in the catchment area of the bus routes, the district can reasonably expect the individual to use the bus and can deny reimbursement for the cost of the token.

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Example 3: A department in a rural county provides van transportation of recipients to a major medical center in a neighboring county on Tuesdays and Fridays of each week. For non-urgent medical appointments to the center, the department can expect recipients to schedule appointments for and use the van on Tuesdays or Fridays. Reimbursement for personal vehicle mileage to the van pickup site can be denied.

An MA recipient may use a private vehicle or mass transit for the usual activities of daily living. Reimbursement may be made for these modes of transportation when the use of these modes without reimbursement would constitute an undue financial hardship for the MA recipient. The prior authorization official must decide whether or not to reimburse for these situations on a case by case basis. Reimbursement for mileage in a private vehicle, when authorized, is assumed to be round-trip even if the MA recipient does not return with the driver to the origin point but remains in a medical facility.

Example 4: An MA recipient, diagnosed with a short-term illness requires multiple medical visits within a short period of time. The frequency of these visits may provide a reason for the social services district to reimburse the MA recipient for transportation expenses.

Example 5: A child with an unusual heart problem, residing in the city of Buffalo, may need to access medical services at a New York City hospital specializing in children's diseases. Although located outside the recipient's common medical marketing area, the social services district should reimburse for this long-distance transportation if it is necessary to assure appropriate medical care. In this type of circumstance it may be necessary for the MA recipient to access medical care and services located outside the common medical marketing area. When long distance travel is required, the social services district should provide reimbursement as the cost of transportation is excessive. While a recipient may, in general circumstances, access medical care and services through use of a private vehicle or mass transit, a severe illness may necessitate the use of a higher mode of transport. If a higher mode of transport is required, the recipient would not be expected to assume this cost.

Example 6: An MA recipient is generally able to use the mass transit system for medical appointments and other daily activities. Reimbursement for this MA recipient's transportation is not being paid by the social services district. This recipient suffers a sprained ankle and cannot use the mass transit system. A higher mode of

transport, in this case a taxi, is required. The social services district may wish to reimburse for transportation expenses in this situation as the cost of this higher mode of transport, without reimbursement, may be an undue financial hardship to the recipient.

An elderly recipient, generally driven to medical appointments by a family member, breaks a leg and is now unable to utilize a private vehicle for transportation to necessary medical appointments. An ambulette is necessary and is ordered by the attending physician. The recipient would not be expected to assume the cost of this higher mode of transport. In these cases, social services districts should provide payment for transportation expenses.

Example 7: A mother and her small children who normally take a bus to medical appointments cannot use mass transit due to icy or snowy weather. Reimbursement to this recipient for a safer and more accessible method of transportation (private vehicle or taxi) may be appropriate.

Procedures for denial of transportation reimbursement should be included as part of the social services district's transportation plan.

Recipients who request reimbursement and are denied reimbursement for transportation expenses must be informed of their right to a fair hearing.

The prior authorization official should consider a number of factors when deciding whether or not to authorize reimbursement for a recipient's private transportation expenses. These factors include but are not limited to :

1. Frequency of medical appointments;
2. Distance to be traveled;
3. Continuity of medical care;
4. Medical condition of the recipient;
5. Weather conditions;
6. Availability of the recipient's usual mode of transportation;
7. Undue financial hardship to the recipient if reimbursement is not authorized; and,
8. Any other circumstance which may affect the recipient's ability to access needed medical care and services.

#### D. Licensure Requirements of Transportation Providers

Section 505.10(d) (6) establishes licensure requirements for transportation providers, as follows:

1. Ambulance services must be certified or registered by the Department of Health and comply with all requirements of that department.

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2. Ambulette services must be authorized by the Department of Transportation. Ambulette drivers must be qualified under Article 19-A of the Vehicle and Traffic Law. Ambulette services and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the ambulette services or their drivers are exempt from such requirements. In addition, ambulette services operating in New York City must be licensed by the New York City Taxi and Limousine Commission.
  3. Taxicab or livery services must comply with all requirements of the local municipality concerning the operation of taxicab or livery service in that municipality.
  4. Vendors which provide transportation to day treatment or continuing treatment programs must be authorized by the Department of Transportation. Drivers for such vendors must be qualified under Article 19-A of the Vehicle and Traffic Law. Such vendors and their drivers must comply with all requirements of the Department of Transportation and the Department of Motor Vehicles or have a statement in writing from the appropriate department or departments verifying that the vendors or their drivers are exempt from such requirements. Payment to vendors will be made only when they meet the above requirements on the date the services are rendered.

E. Prior Authorization of Ambulance Transportation Involving Persons Covered Under Medicare Part B

Chapter 763 of the Laws of 1989 mandated that ambulance providers be paid the full deductible and coinsurance amounts of an approved Medicare Part B claim for the transportation of MA eligible persons who are covered under Medicare Part B. Section 505.10(c)(1) now reflects this legislation. Prior authorization of non-emergency ambulance transportation is not required for ambulance claims in which there is a Medicare Part B approved amount. Approval by Medicare of an ambulance transport will be deemed appropriate approval for MA purposes.

Prior authorization will still be required for non-emergency ambulance transportation for which there is no Medicare Part B coverage.

F. Qualified Orderers of Ambulance and Ambulette Transportation

Section 505.10(c)(4) allows an ordering practitioner who is the MA recipient's attending physician, physician's assistant or nurse practitioner to order non-emergency ambulance transportation. Ambulette transportation may be ordered by an ordering practitioner who is the MA recipient's attending physician, physician's assistant, nurse practitioner, dentist, optometrist, podiatrist or other type of medical practitioner designated by the social services district and approved by the Department. If a social services district wishes to include additional ordering provider groups the district must submit such request to the Division of Medical Assistance for approval as part of their social services district's Title XIX Medical Transportation Plan.

G. Changes Requested by Social Services Districts and Other Sources

1. Vendors of transportation services must provide pertinent cost data to a social services district upon request. The request should be for any pertinent cost data which would aid the social services district in containing expenditures or establishing rates. Social services districts may request this data as long as the request does not place an additional financial cost on the vendor. An example of an additional financial cost would be a request for a certified cost document when such a certified cost document does not exist. Additional financial cost does not mean the cost of photocopying financial documents or computer generated printouts of financial documents. These procedures should be readily and inexpensively available to the vendor. Failure to comply with the social services district request may result in the vendor's termination from the MA program.

This provision is not intended to encourage the development of cost-based rates. A variety of factors should be included in the rate setting process.

2. Social services districts must notify applicants for and recipients of MA of the procedures for obtaining prior authorization of transportation services. Several recent court decisions granted recipients retroactive reimbursement for private vehicle transportation costs because these recipients were never notified by the social services district that the potential for MA transportation reimbursement existed. Information regarding the availability of reimbursement for prior authorized private medical transportation expenses is included in the revised client information booklets DSS-4148A and DSS-4148B.

3. A court found that the previous version of Section 505.10 required social services districts to negotiate with vendors in the rate setting process. The use of the term "negotiate" has been eliminated from the language of the regulation. Section 505.10 now permits rates to be established by the local social services official at a level which assures transportation for MA recipients to necessary medical care and services. Negotiation may be included as part of the rate-setting process if the social services district so desires, but negotiation is not required.

#### H. Medical Transportation Expenditures Claiming Procedures

1. All medical transportation services furnished by an entity to which a direct vendor payment can be made are claimable for reimbursement as program assistance costs.
2. All non-vendor medical transportation payments should be claimed for reimbursement as administrative costs. These non-vendor payments include, but are not limited to, the following:
  - a. reimbursement to recipients for approved medical transportation;
  - b. costs of meals or lodging enroute to and from medical care;
  - c. cost of a transportation attendant to accompany the the recipient, if necessary, and the costs of the transportation attendant's transportation, meals, lodging and salary; however, no salary will be paid to a transportation attendant who is a member of the MA recipient's family;
  - d. cost of bus and subway tokens purchased by the social services district for distribution to recipients;
  - e. payments to a party which is not the provider of the transportation services.

#### IV. Required Action

Social services district staff must follow the provisions of this release in authorizing and making payment for transportation services for MA eligible persons.

If any changes in social services district's procedures occur, the social services district must submit these changes in writing to the department for approval and amendment of the social services district's transportation plan.

V. System Implications

None.

VI. Effective Date

The Directive is effective July 1, 1992 retroactive to April 1, 1992.

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Jo-Ann A. Costantino  
Deputy Commissioner  
Division of Medical Assistance

**Attachment G Medicaid Transportation Policy Regarding Reimbursement of Travel Related Expenses**



**Department  
of Health**

**Office of  
Health Insurance  
Programs**

# **MEDICAID TRANSPORTATION PROGRAM**

## **POLICY REGARDING REIMBURSEMENT OF TRAVEL-RELATED EXPENSES**

The policy included in this Manual is designed to guide the Department's Transportation Manager (TM)/contracted prior authorization official/s in the reimbursement of prior authorized non-emergency travel expenses and personal vehicle mileage according to the provisions and policies of this Department, developed in accordance with approved guidelines regarding such reimbursement developed by the federal government.

Generally, all medical appointments must be prior authorized by the applicable prior authorization official to be eligible for expense reimbursement. The prior authorization official will only reimburse for approved travel related expenses and/or personal vehicle mileage reimbursement for an eligible Medicaid enrollee. When medically necessary and prior approved, the prior authorization official will pay for appropriate expenses for a second person (i.e., an attendant) to accompany a Medicaid enrollee to their medical appointments and will reimburse or pay appropriate expenses per person per day.

Personal Vehicle Mileage reimbursement is available, **with prior approval from the TM** to transport an eligible Medicaid enrollee to/from a qualified service covered by the Medicaid program both for short trips and longer distance trips.

Please note, reimbursement of emergency transportation, including air lift to a regional trauma center and ground ambulance emanating from a 9-1-1 call, is excluded from this policy document.

Please review this document for more information.

## **Section I – Personal Vehicle Mileage Reimbursement**

The following information relates to reimbursement for the use of a personal vehicle to travel to and from pre-approved medical appointments.

### **Requesting Approval for a Trip**

In order to be reimbursed for non-emergency transportation and travel-related expenses, the following three steps are required:

#### **Step 1**

Call the TM to obtain prior approval for all trips. Trip requests can be made by telephone or through the TM's website. Trip requests should be made no less than 72 hours prior to the medical appointment. You must provide:

- The enrollee's Medicaid number;
- The enrollee's date of birth;
- The enrollee's current address;
- The enrollee's current telephone number;
- The name and telephone number of the person scheduling the trip;
- The date of appointment;
- The reason for the medical appointment;
- The enrollee's primary care physician or physician ordering the trip;
- The exact address of the destination, including zip code;
- If someone other than the enrollee is driving; and
- Any additional information required by the prior authorization official.

## **Step 2**

Request an invoice number for every trip for your records and proof of approval.

## **Step 3**

Download reimbursement forms from [the TM's website](#) or request the operator mail you reimbursement forms prior to the medical appointment.

## **Requesting Reimbursement**

To request reimbursement, complete the following steps.

### **Step 1**

Complete the reimbursement form.

If someone other than the enrollee is driving the enrollee or there is a volunteer driver involved, the form must be signed once the trip is completed. (The driver's social security number is **required** for the first reimbursement. Future claims do not require social security numbers).

### **Step 2**

On the day of the medical appointment, request the medical practitioner or other medical facility staff member to sign designated area of the reimbursement form to support attendance.

### **Step 3**

Save and attach all **ORIGINAL** receipts pertaining to parking/toll expenses **and** write amounts in the appropriate spaces provided.

Save copies of all information to be sent to the TM for your personal records.

### **Step 4**

Within 90 days of the trip, mail completed form with any original receipts to the TM at:

**[TM name]**  
**[TM Address]**

## **Customer Service**

For any questions you have concerning your claim, please call

**[TM phone #]**

Be sure to refer to the trip number(s) you are calling in reference to.

## **Claim Certification Statement**

Please review the following statement.

By submitting a claim, the claimant certifies that:

*I am qualified to provide such services for which I am submitting for reimbursement.*

*I have reviewed the form.*

*I have furnished or caused to be furnished the care, services and supplies itemized in accordance with applicable federal and state laws and regulations.*

*The amounts listed are due and, except as noted, no part thereof has been paid by, or to the best of my knowledge is payable from any source other than the Medicaid Program.*

*Payment of fees made in accordance with established schedules is accepted as payment in full; other than a claim rejected or denied or one for adjustment, no previous claim for the care, services and itemized supplies has been submitted or paid.*

*All statements made hereon are true, accurate and complete to the best of my knowledge.*

*No material fact has been omitted from this form.*

*I understand that payment and satisfaction of this claim will be from federal, state and local public funds and that I may be prosecuted under applicable federal and state laws for any false claims, statements or documents or concealment of a material fact.*

*Taxes from which the State is exempt are excluded.*

*All records pertaining to the care, services and supplies provided including all records which are necessary to disclose fully the extent of care, services and supplies provided to individuals under the New York State Medicaid Program will be kept for a period of six years from the date of payment, and such records and information regarding this claim and payment therefore shall be promptly furnished upon request to the Health Department, the State Medicaid Fraud Control Unit of the New York State Office of Attorney General or the Secretary of the Department of Health and Human Services.*

*There has been compliance with the Federal Civil Rights Act of 1964 and with section 504 of the Federal Rehabilitation Act of 1973, as amended, which forbid discrimination on the basis of race, color, national origin, handicap, age, sex and religion.*

*I agree to comply with the requirements of 42 CFR Part 455 relating to disclosures by providers; the State of New York through its fiscal agent or otherwise is hereby authorized to*

*(1) make administrative corrections to this claim to enable its automated processing subject to reversal by provider, and*

*(2) accept the claim data on this form as original evidence of care, services and supplies furnished.*

*By making this claim I understand and agree that I shall be subject to and bound by all rules, regulations, policies, standards, rates and procedures of the Health Department as set forth in Title 18 of the New York Official Compilation of Codes, Rules and Regulations of New York State and other Department publications.*

*I understand and agree that I shall be subject to and shall accept, subject to due process of law, any determinations pursuant to said rules, regulations, policies, standards, fee codes and procedures, including, but not limited to, any duly made determination affecting my (or the entity's) past, present or future status in the Medicaid Program and/or imposing any duly considered sanction or penalty.*

*I understand that my signature on the claim form incorporates the above certifications and attests to their truth.*

## **Frequently Asked Questions**

### **What are the current reimbursement rates?**

- Self-drive/In-home relative, caregiver or friend: 23 cents per loaded mile.
- Out-of-home family member/neighbor/friend/volunteer: 58 cents per loaded mile.

These rates are established by the Internal Revenue Service (IRS). The IRS generally updates its rates annually.

### **If I drive myself to my medical appointment, can I be reimbursed?**

Yes, if you are eligible for Medicaid on the date of your medical appointment, and you have received prior approval from the TM for the trip, you can be reimbursed for your mileage reimbursement.

Medicaid enrollees who receive prior approval and drive themselves to and from medical appointments receive the self-drive rate listed above.

### **If someone else drives me who will be paid?**

If someone else drives you, they will be reimbursed by TM. If the driver is a family member that lives in your home, they will be paid the self-drive rate. If they are a family member, friend, neighbor, or a volunteer driver, who does not live with you, they will be paid the volunteer driver rate.

### **Do I need to track my miles?**

You can track your mileage, but do not need to track or report your miles. The TM uses an automated mileage calculation system to calculate the distance traveled. The mileage calculated is based on the shortest distance route determined by the system. If you travel a route other than the shortest calculated distance, additional justification may be required.

Mileage/Travel Reimbursement is paid for loaded mileage (actively transporting a Medicaid enrollee) only.

### **What expenses will the Medicaid program reimburse?**

The TM, on behalf of the Medicaid program, will reimburse for the pre-approved round-trip loaded miles to and from your qualified medical appointment. Loaded miles are the miles traveled in which the Medicaid enrollee having an appointment is transported to and from their home address to the appointment location.

The TM will also consider reimbursement for tolls, parking and bridges, if accompanied by an original receipt. Lodging and meals will be reimbursed if prior approved.

The TM will not reimburse for fuel.

## **Section II - Travel Expenses and Reimbursement**

The following section details Medicaid policy for the reimbursement of meals, lodging and incidental expenses.

## Definition of Travel-Related Expenses

- **Breakfast** is defined as meals consumed by traveler between the hours of 5:00 am-10:00 am.
- **Lunch** is defined as meals consumed by traveler between the hours of 10:01 am and 3:00 pm.
- **Dinner** is defined as meals consumed by traveler between the hours of 3:01 pm and 10:00 pm.
- **Incidentals** are defined as snacks and/or beverages consumed in addition to breakfast, lunch and dinner; or consumed outside of the defined timeframes defined for meals as noted above.

## Non-Compensable Expenses

The following are not reimbursable:

- Tobacco and tobacco-like products;
- tips;
- alcoholic beverages;
- internet services;
- laundry services;
- hotel amenities such as movies and entertainment;
- excessive meal expenses;
- fuel;
- vehicle repairs and supplies;
- rental vehicles;
- medical supplies;
- over the counter medications; and
- other personal items.

## Daily Meal & Incidental Expense Allowance

Daily Travel is defined as pre-approved travel of less than one full day or travel time that is approximately eighty (80) miles or more each way; or an appointment time greater than four (4) hours but does not require an overnight stay; or the combined appointment and travel time exceeds ten (10) hours total. The Medicaid Program understands that the time of day of an appointment may determine the meal or meals a traveler may consume and approved expenses that may be reimbursed. Less than full day travel does not guarantee the full Federal Government per diem is available for each person to fully use.

Overnight Travel is defined as pre-approved travel requiring an overnight stay. This may apply when the enrollee must travel on the day prior to an appointment to arrive on time or prepare for

the appointment or upon completion of the appointment returning home does not make sense or is not feasible for the enrollee to immediately return home.

The TM/prior authorization official will reimburse for up to three (3) meals per day, up to seventy-five (75) percent of the federal per diem rate based upon location, according to the following guidelines.

The daily maximum reimbursable meal expenses is \$46.00 to \$71.00 for full day or overnight travel, depending on the city where the medical service takes place. The TM/prior authorization official will reimburse for reasonable meal expenses according to receipts submitted. This does not guarantee the entire daily per diem amount will be reimbursed for each person when travel to approved medical appointments is not overnight travel.

A reasonable reimbursement guideline for meal expenses for less than full day travel is:

- Breakfast - 15% of the daily allowance;
- Lunch - 25% of the daily allowance;
- Dinner - 50 % of the daily allowance; and
- Incidental expenses - 10% of the daily allowance (to include snacks) in accordance with the federal rates and guidelines for per diem meals.

The TM/prior authorization official may reimburse approved expenses for one to two reasonable meals per day or one meal and/or reasonable incidentals according to the following guidelines for daily travel where the travel or appointment time that is less than one full day. At no time will the TM/prior authorization official reimburse an entire day's meal expense for a single meal. The enrollee must provide receipts in order to be reimbursed for meal expenses.

## Daily Travel

### **Breakfast**

On a day an eligible Medicaid enrollee or attendant is beginning to travel to a medical appointment that has been prior authorized, it is expected that breakfast is consumed prior to engaging in travel and is therefore not an eligible travel expense.

### **Lunch**

On a day an eligible Medicaid enrollee or other person is traveling to a prior authorized medical appointment, lunch may be consumed and is therefore an eligible travel expense that may be submitted in accordance with these guidelines. Lunch reimbursement shall not exceed the lower of the receipted amount or 25% of the medical location's federal per diem rate.

*Please note that travel commencing later in the day does not automatically guarantee lunch expenses to be reimbursed as it is not unreasonable to eat a meal at home prior to traveling.*

### **Dinner**

On a day an eligible Medicaid enrollee or other person is beginning to travel to a prior authorized medical appointment where the appointment or travel time will not allow them to consume dinner prior to leaving home, dinner may be consumed prior to returning home, and is therefore an eligible travel expense that may be submitted in accordance with these guidelines. Dinner reimbursement shall not exceed the lower of the receipted amount or 50% of the location's federal per diem rate.

*Please note that travel commencing later in the day does not automatically guarantee dinner expenses to be reimbursed as it is not unreasonable to eat a meal at home prior to traveling or returning home.*

### **Incidentals**

Incidental expenditures, including snacks and beverages, may come up throughout the trip and reimbursement may be submitted in accordance with these guidelines. Reimbursement for incidentals shall not exceed the lower of the receipted amount or 10% of the medical location's federal per diem rate.

## **Overnight Travel**

### **Breakfast**

On a day an eligible Medicaid enrollee or attendant has travelled to a prior authorized medical appointment, or must return home the morning after the appointment, accrued breakfast travel expenses may be submitted in accordance with these guidelines and additional breakfast expenses may be submitted on each subsequent travel day prior to returning home.

Breakfast reimbursement shall not exceed the lower of the receipted amount or 15% of the medical location's federal per diem rate.

When the lodging establishment provides a continental breakfast, no breakfast reimbursement shall be provided.

*Reimbursement for breakfast is not available after the travelers have returned home.*

### **Lunch**

On a day an eligible Medicaid enrollee or attendant is traveling to and from a prior authorized medical appointment or is at the medical appointment, lunch may be consumed and is an eligible travel expense that may be submitted in accordance with these guidelines.

Lunch reimbursement shall not exceed the lower of the receipted amount or 25% of the location's federal per diem rate.

*Reimbursement for lunch is not available after the travelers have returned home.*

### **Dinner**

On a day an eligible Medicaid enrollee or attendant has travelled to a prior authorized medical appointment or is at a medical appointment and the Medicaid enrollee's appointment or travel time will not allow them to consume dinner prior to leaving home, dinner may be consumed after the appointment, prior to returning home and is therefore an eligible travel expense that may be submitted in accordance with these guidelines.

Dinner reimbursement shall not exceed the lower of the receipted amount or 50% of the location's federal per diem rate.

*Reimbursement for dinner is not available after the travelers have returned home.*

## Hotel Selection

The prior authorization official selects reasonable value rated hotels, other reasonably priced hotels or hotels with arranged preferred medical rates with each medical facility using the federally established lodging expense per diem list as a guideline. The prior authorization official will attempt to make hotel arrangements with the closest most appropriate hotel to the enrollee's medical appointment to minimize additional expenses.

When enrollees make their own travel arrangements, the prior authorization official anticipates the same guidelines to be used or reasonable travel expenses to be submitted for reimbursement.

## Unreceipted Stay

This method provides for flat rate allowances for meals, lodging and incidental expenses regardless of where lodging is obtained, as well as circumstances where an official receipt cannot be generated including lodging with relatives or friends. Rates are established based on the county where lodging is obtained or the location to which the enrollee was traveling (whichever rate is less), and such location must be indicated. No receipts are required when using this method. Current rates are as follows:

• New York City, Nassau, Suffolk, Rockland and Westchester Counties	\$50.00
• Albany, Broome, Erie, Monroe and Onondaga Counties	\$40.00
• All other Counties within New York State	\$35.00
• Out of State	\$50.00

## Exclusions & Additional Information

Many lodging establishments include a continental breakfast. When a continental breakfast is included, the prior authorization official will not reimburse for incurred breakfast expenses. When the enrollee is making their own travel arrangements for a prior approved medical appointment, breakfast will be part of the approved reimbursement when a hotel does not offer continental breakfast as part of a hotel stay.

The TM/prior authorization official will consider for reimbursement receipted parking, tolls, and additional local travel expenses directly related to receiving medical care.

The prior authorization official may reimburse for prior approved rental vehicle utilization when considered on an ad hoc basis and when such utilization is directly related to the provision of necessary medical care. Note that, when prior approved, the rental car may not exceed the size or accommodation needs of the enrollee and/or his/her attendant. For example, the prior authorization official shall not reimburse for a luxury car when a mid-size vehicle is more appropriate.

## Questions

Questions concerning this Manual may be directed to Department's Medicaid Transportation Unit via email to [MedTrans@health.ny.gov](mailto:MedTrans@health.ny.gov) or telephone to (518) 473-2160.

## Attachment H Transmittal Form

**NYS Medicaid Transportation Management Initiative – Hudson Valley Region  
RFP # 16267**

**[To Be Completed on Bidder's Letterhead]**

Date:	Bidder Phone No.:
Bidder Name:	Bidder Fax No.:
Bidder Address:	Bidder Contact E-mail Address:
Federal Employee Identification Number:	NYS Vendor ID #:
Bidder Designated Contact Name:	Bidder Designated Contact Information: Address:  Telephone: Fax: E-mail address:

**[Insert Bidder's complete name]** submits this firm and binding offer to the Department of Health in response to the above-referenced RFP and agrees as follows:

1. Bidder provides the following statement which describes the legal structure of the entity submitting the proposal: **[Bidder inserts response]**;
2. Bidder accepts the contract terms and conditions contained in this RFP, including any exhibits and attachments;
3. Bidder acknowledges receipt of the RFP and all Department of Health amendments to this RFP;
4. Bidder (i) does not qualify its proposal, or include any exceptions from the RFP and (ii) acknowledges that should any alternative proposals or extraneous terms be submitted with the proposal, such alternate proposals or extraneous terms will not be evaluated by the Department;
5. Bidder agrees that the proposal and all provisions of the proposal will remain valid for minimum of 365 calendar days from the closing date for submission of proposals;

6. The bidder is prepared, if requested by the Department of Health, to present evidence of legal authority to do business in New York State, subject to the sole satisfaction of the Department;
7. The bidder cannot use subcontractors to perform Medicaid transportation management services, and cannot subcontract with transportation providers. For other services, bidder **is/is not** [circle one] proposing to utilize the services of a subcontractor (s). If a proposal is submitted which proposes to utilize the services of a subcontractor (s), the bidder provides, in an Appendix to this Transmittal Letter, a subcontractor summary for each listed subcontractor and certifies that the information provided is complete and accurate.

The summary document for each listed subcontractor should contain the following information:

- a. Complete name of the subcontractor, including DBA and the names of controlling interests for each entity;
- b. Complete address of the subcontractor;
- c. A general description of the scope of work to be performed by the subcontractor;
- d. Percentage of work the subcontractor will be providing;
- e. Evidence that the subcontractor is authorized to do business in the State of New York, and is authorized to provide the applicable goods or services in the State of New York; and
- f. The subcontractor's assertion that they do not discriminate in its employment practices with regards to race, color, religion, age, sex, marital status, political affiliation, national origin, or handicap.

The undersigned individual affirms and represents that he/she has the legal authority and capacity to sign and submit this bid on behalf of **[Insert Bidder's Name]** as well as to execute a contract with the Department of Health.

Signature of Authorized Official:

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Printed Name of Authorized Official:

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**Attachment I Cost Proposal Bid Form**

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**COST PROPOSAL BID FORM: Hudson Valley Region**

PROCUREMENT TITLE: NYS Medicaid Transportation Management Initiative  
Hudson Valley Region

**RFP # 16267**

Bidder Name:

Bidder Address:

Bidder NYS Vendor ID No: \_\_\_\_\_

**Bidder must submit a bid price for each of the Volume Level Categories (A, B) for the number of Medicaid enrollees eligible to receive fee-for-service (FFS) non-emergency transportation, as indicated in the chart below.** Bids must be provided for each volume level category, even if the region's total eligible enrollees currently does not reach that level. Bidders are encouraged to reflect volume discounts in higher volume level categories. Any fraction of a cent will not be considered in the determination of the cost proposal score. Example: a submission of \$0.125 PMPM will be evaluated as \$.12 PMPM.

<b>Volume Level Category</b>	<b>Medicaid Enrollees Eligible to Receive FFS Transportation</b>	<b>Per Enrollee, Per Month Cost Bid for Transportation Management Services*</b>
<b>A</b>	0 to 1,000,000	
<b>B</b>	1,000,001 and above	

**\*Prices remain firm for the first three (3) years of the contract. See price adjustment clause in Section F.7, Term of Contract for years four and five.**

Authorized Vendor Signature \_\_\_\_\_ Date: \_\_\_\_\_



1c. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

2a. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

2b. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add additional pages as necessary)

**B.** Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

\_\_\_\_\_  
\_\_\_\_\_  
(Officer Signature)

(Date)

\_\_\_\_\_  
\_\_\_\_\_  
(Officer Title)

(Telephone)

\_\_\_\_\_  
(e-mail Address)

**Attachment K Vendor Responsibility Attestation**

**Vendor Responsibility Attestation**

To comply with the Vendor Responsibility Requirements outlined in Section F.11. Vendor Responsibility Questionnaire, I hereby certify:

**Choose one:**

- An on-line Vendor Responsibility Questionnaire has been updated or created at OSC's website: <https://portal.osc.ny.gov> within the last six months.
  
- A hard copy Vendor Responsibility Questionnaire is included with this proposal/bid and is dated within the last six months.
  
- A Vendor Responsibility Questionnaire is not required due to an exempt status. Exemptions include governmental entities, public authorities, public colleges and universities, public benefit corporations, and Indian Nations.

Signature of Organization Official: \_\_\_\_\_

Print/type Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## **Attachment L NEW YORK STATE DOH MWBE RFP REQUIRED FORMS**

All DOH procurements have a section entitled “**MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE REQUIREMENTS.**” This section of procurement sets forth the established DOH goal for that particular procurement and also describes the forms that should be completed with their bid. Below is a summary of the forms used in the DOH MWBE Participation Program by a bidder.

**Form #1: Bidder MWBE Utilization Plan** - This document should be completed by all bidders responding to RFPs with an MWBE goal greater than zero. The bidder must demonstrate how it plans to meet the stated MWBE goal. In completing this form, the bidder should describe the steps taken to establish communication with MWBE firms and identify current or future relationships with certified MWBE firms. The second page of the form should list the MWBE certified firms that the vendor plans to engage with on the project and the amount that each certified firm is projected to be paid. Plans to work with uncertified firms or women and minority staffed firms do not meet the criteria for participation. The firm must be owned and operated by a Woman and/or Minority and must be certified by NYS Empire State Development to be eligible for participation. If the plan is not submitted or is deemed deficient, the bidder may be sent a notice of deficiency. It is mandatory that all awards with goals have a utilization plan on file.

**Form #2: MWBE Utilization Waiver Request** - This document should be filled out by the bidder if the utilization plan (Form #1) indicates less than the stated participation goal for the procurement. In this instance, Form #2 must accompany Form #1 with the bid. If Form #2 is provided and goal was initially set higher, revised goal approval will be necessary from DOB. When completing Form #2, it is important that the bidder thoroughly document the steps that were taken to meet the goal and provide evidence in the form of attachments to the document. The required attachments are listed on Form #2 and will document the good-faith efforts taken to meet the desired goal. A bidder can also attach additional evidence outside of those referenced attachments. Without evidence of good-faith efforts, in the form of attachments or other documentation, the Department of Health may not approve the waiver and the bidder may be deemed non-responsive.

New MWBE firms are being certified daily and new MWBE firms may now be available to provide products or services that were historically unavailable. If Form #2 is found by DOH to be deficient, the bidder may be sent a deficiency letter which will require a revised form to be returned within 7 business days of receipt to avoid a finding of non-compliance. DOH may work directly with firm to resolve minor deficiencies via e-mail.

**Form #3: Replaced by Online Compliance System - <https://ny.newnycontracts.com>**  
**Contractors will need to login and submit payments to MWBE Firms in this online system once payments to these vendors commence.**

### **Form#4 – MWBE Staffing Plan**

This form should be completed based on the composition of staff working on the project. Enter the numbers or counts in the corresponding boxes and add up the totals in each column. This form is for diversity research purposes only and has no bearing on MWBE goal achievement.

### **Form#5 – EEO and MWBE Policy Statement**

This is a standard EEO policy that needs to be signed and dated and submitted. If Bidder has their own EEO policy it may be submitted instead of endorsing this document.

**- M/WBE Form #1 -**

**New York State Department of Health  
M/WBE UTILIZATION PLAN**

<b>Bidder/Contractor Name:</b>	
<b>Vendor ID:</b>	<b>Telephone No.</b>
<b>RFP/Contract Title:</b>	<b>Email:</b>
	<b>RFP/Contract No.</b>

**Description of Plan to Meet M/WBE Goals**

**PROJECTED M/WBE USAGE**

	<b>%</b>	<b>Amount</b>
<b>1. Total Dollar Value of Proposal Bid</b>	<b>100</b>	<b>\$</b>
<b>2. MBE Goal Applied to the Contract</b>		<b>\$</b>
<b>3. WBE Goal Applied to the Contract</b>		<b>\$</b>
<b>4. M/WBE Combined Totals</b>		<b>\$</b>

“Making false representation or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Firms that do not perform commercially useful functions may not be counted toward MWBE utilization.”

**New York State Department of Health  
M/WBE UTILIZATION PLAN**

**MINORITY OWNED BUSINESS ENTERPRISE (MBE) INFORMATION**

In order to achieve the MBE Goals, bidder expects to subcontract with New York State certified MINORITY-OWNED entities as follows:

MBE Firm (Exactly as Registered)	Description of Work (Products/Services) [MBE]	Projected MBE Dollar Amount
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number</b> ( ) -		\$ _____

**New York State Department of Health  
M/WBE UTILIZATION PLAN**

**WOMEN OWNED BUSINESS ENTERPRISE (WBE) INFORMATION**

In order to achieve the WBE Goals, bidder expects to subcontract with New York State certified WOMEN-OWNED entities as follows:

<b>WBE Firm (Exactly as Registered)</b>	<b>Description of Work (Products/Services) [WBE]</b>	<b>Projected WBE Dollar Amount</b>
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number ( ) -</b>		<b>\$ _____</b>
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number ( ) -</b>		<b>\$ _____</b>
<b>Name</b>  <b>Address</b>  <b>City, State, ZIP</b>  <b>Employer I.D.</b>  <b>Telephone Number ( ) -</b>		<b>\$ _____</b>

**New York State Department of Health  
Waiver Request**

<b>Offeror/Contractor Name:</b> Click here to enter text.		<b>Federal Identification No.:</b> Click here to enter number.	
<b>Address:</b> Click here to enter text.		<b>Solicitation/Contract No.:</b> Click here to enter number.	
<b>City, State, Zip Code:</b> Click here to enter text.		<b>M/WBE Goal: MBE %%% WBE %%%</b> (From Lines 2 and 3 from Form #1)	
<b>By submitting this form and the required information, the officer or/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.</b>			
<b>Contractor is requesting a:</b> <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. Total Partial <input type="checkbox"/> Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development.) <b>Date of such filing with Empire State Development:</b> Click here to enter a date.			
<b>PREPARED BY (Signature)</b>		<b>Date:</b>	
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.			
<b>Name and Title of Preparer (Printed or Typed):</b>		<b>Telephone Number:</b>	<b>Email Address:</b>
Submit with the bid or proposal or if submitting after award submit to: <a href="mailto:doh.sm.mwbe@health.ny.gov">doh.sm.mwbe@health.ny.gov</a>		<b>***** FOR DMWBD USE ONLY *****</b>	
		<b>REVIEWED BY:</b>	<b>DATE:</b>
		<b>Waiver Granted: <input type="checkbox"/> YES <input type="checkbox"/> NO</b> <b>MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></b> <input type="checkbox"/> Total Waiver <span style="float:right"><input type="checkbox"/> Partial Waiver</span> <input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued <hr/> <b>*Comments:</b>	

- M/WBE Form #4 -

**New York State Department of Health  
M/WBE STAFFING PLAN**

For project staff, consultants and/or subcontractors working on this grant complete the following plan. This has no impact on MWBE utilization goals, or the submitted Utilization Plan - Form#1. This is for diversity research purposes.

Contractor Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

STAFF	Total	Male	Female	Black	Hispanic	Asian/ Pacific Islander	Other
Executive/Senior level Officials							
Managers/Supervisors							
Professionals							
Technicians							
Administrative Support							
Craft/Maintenance Workers							
Laborers and Helpers							
Service Workers							
Totals							

\_\_\_\_\_  
(Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Date

**- M/WBE Form #5 –  
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor)\_\_\_\_\_ agree to adopt the following policies with respect to the project being developed or services rendered at

---

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature & Date

## DETAILED MWBE FORMS INSTRUCTIONS

### Miscellaneous Specific

#### Form#1 – MWBE Utilization Plan

##### Page#1 of Form#1:

**Description of Plan** - Describe any steps/details that support Bidder/Contractor plan to meet the MWBE goals stated in the procurement/contract.

**Line#1 - Total Dollar Value of Proposal Bid** – This line should represent the total dollar amount of bid. The total value is eligible for MWBE goal setting.

**Line#2 - MBE Goal Applied to the Contract**– Bidder/Contractor lists the amount to be paid/subcontracted to Certified Minority-owned Business Enterprise(s) and the percentage this amount represents of the Total Dollar Value of Proposal Bid listed on Line #1.

*Example:* If paying two MBE firms \$100,000 & \$50,000 each and Total Dollar Value of Proposal Bid listed on line#1 is \$1,000,000 list 15% and \$150,000 on Line#2.

**Line#3 - WBE Goal Applied to the Contract**– Bidder/Contractor lists the amount to be paid to a Certified Woman-owned Business Enterprise and states the percentage this amount is of the Total Value listed on Line #1.

*Example:* If Bidder/Contractor is paying two WBE firms \$50,000 & \$100,000 each and the Total Dollar Value of Proposal Bid listed on line#1 is \$1,000,000 Bidder/Contractor would list 15% and \$150,000 on Line#2 of the Utilization Plan.

**Line#4 - MWBE Combined totals** - Bidder/Contractor totals Line #2 and Line #3 for both Percentage and Amount to state the Combined M&W percentages and Combined M&W amount.

*Example:* Using the above Line #2 and Line #3 examples for payment data, Bidder/Contractor achieves a combined MWBE % of 30% and a combined MWBE amount of \$300,000. (15%M and 15%W; \$150,000M + \$150,000W). MWBE combined Total/Total Dollar Value Eligible = the MWBE % (300,000/1,000,000 = 30%).

**Page#2 of Form#1:**

**The first column** (left column): Bidder/Contractor lists any Minority-owned Business Enterprises (MBE) that Bidder/Contractor is subcontracting with or purchasing from and the MBE contact/company information.

**The second column** (center column): Bidder/Contractor describes what type of work certified MBE will be providing or what product certified MBE will be supplying to Bidder/Contractor.

**The third column** (right column): Bidder/Contractor states the amount to be paid to the certified MBE during the term of the contract. The amount totaled from Page #2 should equal the amount listed on Line#2 of Page#1.

**Page#3 of Form#1:**

**The first column** (left column): Bidder/Contractor lists any Woman-owned Business Enterprises (WBE) that Bidder/Contractor will be subcontracting with or purchasing from and WBE contact/company information.

**The second column** (center column): Bidder/Contractor describes what type of work certified WBE will be providing or what product certified WBE will be supplying to Bidder/Contractor.

**Third column** (right column): Bidder/Contractor states the amount to be paid to the certified WBE during the term of the contract. The amount totaled from Page#3 should equal the amount listed on Line#3 of Page#1.

**Form#2 – MWBE Utilization Waiver Request**

“Form#1 MWBE Utilization Plans” that commit to a goal % less than the stated MWBE goal percentage in procurement must be accompanied by a “Form#2 MWBE Utilization Waiver Request”. A Bidder/Contractor may qualify for a partial or total waiver of the MWBE goal requirements established on a State contract only upon the submission of a waiver form by a Bidder/Contractor, documenting good-faith efforts by the Contractor to meet the goal requirements of the state contract and a consideration of applicable factors. The ability to subcontract with M/WBEs and separately the ability to purchase from M/WBEs must be addressed in attachments on all waiver requests.

Fill out the header with the name of the Bidder/Contractor requesting the waiver under Offeror/Contractor Name, include your Federal Identification ID, Address, Solicitation/Contract Number, and M/WBE Goals. Check off the appropriate box for the type of waiver that is being requested and whether it is a total or partial waiver. If the Waiver is Pending ESD Certification, meaning the subcontractor has applied for certification with Empire State Development, check off that box and state the date that they applied for certification. Directly below the Pending ESD Certification area, sign and date the waiver. Provide the name of the preparer as well as a telephone number and email address (Bidder/Contractor direct contact number of person authorized to discuss submission).

The following attachments should be provided:

1. A statement setting forth your basis for requesting a partial or total waiver. The statement should at a minimum include the services being subcontracted out and why a portion of those services cannot be subcontracted to certified MWBE(s). In addition, statement must also include what purchases of equipment and supplies are being made and why those purchases cannot be provided by certified MWBE(s).
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals related to this contract.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses to your solicitations received by you from certified M/WBEs.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Bidder/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

**\* All attachments are created by the entity requesting the waiver. These are self-generated attachments and are not provided by the agency.**

## Attachment M Encouraging Use of New York Businesses in Contract Performance

### I. Background

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing service and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

### II. Required Identifying Information

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?

                    
YES        NO

If yes, identify New York State businesses that will be used and attach identifying information. Information should include at a minimum: verifiable business name, New York address and business contact information.



**Attachment N Sample Standard NYS Contract Language and Appendices**

# MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):  
Department of Health  
Corning Tower  
Albany, NY 12237

NYS COMPTROLLER'S NUMBER: C#  
  
ORIGINATING AGENCY GLBU: DOH01  
DEPARTMENT ID: 3450437

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

CONTRACTOR HAS ( ) HAS NOT ( ) TIMELY  
FILED WITH THE ATTORNEY GENERAL'S  
CHARITIES BUREAU ALL REQUIRED  
PERIODIC OR ANNUAL WRITTEN REPORTS

FROM:  
TO:

FUNDING AMOUNT FOR CONTRACT  
TERM:

FEDERAL TAX IDENTIFICATION NUMBER:

STATUS:  
CONTRACTOR IS ( ) IS NOT ( ) A  
SECTARIAN ENTITY

NYS VENDOR IDENTIFICATION NUMBER:

CONTRACTOR IS ( ) IS NOT ( ) A  
NOT-FOR-PROFIT ORGANIZATION

MUNICIPALITY NO. (if applicable)

CONTRACTOR IS ( ) IS NOT ( ) A  
N Y STATE BUSINESS ENTERPRISE

( ) IF MARKED HERE, THIS CONTRACT IS RENEWABLE FOR \_\_\_ ADDITIONAL ONE-YEAR PERIOD(S)  
AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE OF THE STATE  
COMPTROLLER.

## **BID OPENING DATE:**

### APPENDICES ATTACHED AND PART OF THIS AGREEMENT

Precedence shall be given to these documents in the order listed below.

- APPENDIX A Standard Clauses as required by the Attorney General for all State Contracts.
- APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
- APPENDIX Q Modification of Standard Department of Health Contract Language
- STATE OF NEW YORK AGREEMENT
- APPENDIX D General Specifications
- APPENDIX B Request For Proposal (RFP)
- APPENDIX C Proposal
- APPENDIX E-1 Proof of Workers' Compensation Coverage
- APPENDIX E-2 Proof of Disability Insurance Coverage
- APPENDIX H Federal Health Insurance Portability and Accountability Act Business Associate Agreement
- APPENDIX G Notices
- APPENDIX M Participation by Minority Group Members and Women with respect to State Contracts: Requirements and Procedures



**APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS  
REVISED Appendix A dated January 2014**

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the

any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the

Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law

concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.**

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business  
Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: mwbcertification@esd.ny.gov  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.**

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended.

Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default. The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX X  
GLBU: DOH01

Contract Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Amendment Number X-\_\_\_\_\_

BSC Unit ID: 345<XXXX>

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through NYS Department of Health, having its principal office at Albany, New York, (hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), having its mailing address at \_\_\_\_\_, for amendment of this contract.

This amendment makes the following changes to the contract (check all that apply):

- \_\_\_\_\_ Modifies the contract period at no additional cost
- \_\_\_\_\_ Modifies the contract period at additional cost
- \_\_\_\_\_ Modifies the budget or payment terms
- \_\_\_\_\_ Modifies the work plan or deliverables
- \_\_\_\_\_ Replaces appendix(es) \_\_\_\_\_ with the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Adds the attached appendix(es) \_\_\_\_\_
- \_\_\_\_\_ Other: (describe) \_\_\_\_\_

This amendment *is* / *is not* a contract renewal as allowed for in the existing contract.

All other provisions of said AGREEMENT shall remain in full force and effect.

Additionally, Contractor certifies that it is not included on the prohibited entities list published at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> as a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Contractor (or any assignee) also certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Prior to this amendment, the contract value and period were:

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Value before amendment) (Initial start date)

This amendment provides the following modification (complete only items being modified):

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.

This will result in new contract terms of:

\$ \_\_\_\_\_ From \_\_\_\_/\_\_\_\_/\_\_\_\_ to \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(All years thus far combined) (Initial start date) (Amendment end date)

Signature Page for:

Contract Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Amendment Number: X-\_\_\_\_\_

BSC Unit ID: 345<XXXX>\_\_\_\_\_

-----  
IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

**CONTRACTOR SIGNATURE:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK )  
 ) SS:  
County of \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their/ capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
(Signature and office of the individual taking acknowledgement)

-----  
**STATE AGENCY SIGNATURE**

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

-----  
**ATTORNEY GENERAL'S SIGNATURE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

**STATE COMPTROLLER'S SIGNATURE**

By: \_\_\_\_\_ Date: \_\_\_\_\_

STATE OF NEW YORK  
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York Department of Health (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT. The modification agreement is subject to the approval of the Office of the State Comptroller.
- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request for Proposals" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit complete and accurate invoices and/or vouchers, together with supporting documentation required by the contract, the State Agency and the State Comptroller, to the STATE's designated payment office in order to receive payment to one of the following addresses:

1. Preferred Method: Email a .pdf copy of your signed voucher to the BSC at: [accountspayable@ogs.ny.gov](mailto:accountspayable@ogs.ny.gov) with a subject field as follows:  
Subject: <<Unit ID: 3450437>> <<Contract #>>

(Note: **do not** send a paper copy in addition to your emailed voucher.)

2. Alternate Method: Mail vouchers to BSC at the following U.S. postal address:

**NYS Department of Health  
Unit ID 3450437  
PO Box 2117  
Albany, NY 12220-0117**

- B. Payment of such invoices and/or vouchers by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

Payment for invoices and/or vouchers submitted by the CONTRACTOR shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The CONTRACTOR shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller's website at [www.osc.ny.gov/epay/index.htm](http://www.osc.ny.gov/epay/index.htm), by email at [helpdesk@sfs.ny.gov](mailto:helpdesk@sfs.ny.gov) or by telephone at 1-855-233-8363. CONTRACTOR acknowledges that it will not receive payment on any invoices and/or vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

In addition to the Electronic Payment Authorization Form, a Substitute Form W-9, must be on file with the Office of the State Comptroller, Bureau of Accounting Operations. Additional information and procedures for enrollment can be found at <http://www.osc.ny.gov/vendors/vendorguide/guide.htm>.

### III. Term of Contract

- A. Upon approval of the Commissioner of Health, this AGREEMENT shall be effective for the term as specified on the cover page.
- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further

obligations by the Department to the Contractor.

- E. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

#### IV. Proof of Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. C-105.2 – Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the U-26.3; OR
  - 3. SI-12 – Certificate of Workers' Compensation Self-Insurance, OR GSI-105.2 – Certificate of Participation in Workers' Compensation Group Self-Insurance.
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
  - 1. CE-200, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - 2. DB-120.1 – Certificate of Disability Benefits Insurance OR
  - 3. DB-155 – Certificate of Disability Benefits Self-Insurance

#### V. Indemnification

- A. The CONTRACTOR shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the CONTRACTOR or its subcontractors pursuant to this AGREEMENT. The CONTRACTOR shall indemnify and hold harmless the STATE and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this AGREEMENT.
- B. The CONTRACTOR is an independent contractor and may neither hold itself out nor claim to be an officer, employee or subdivision of the STATE nor make any claims, demand or application to or for any right based upon any different status.

## APPENDIX D GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that all specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specifications, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.
- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, e-mail, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department, and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable, and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety shall be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowance or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. CONTRACTOR will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. Non-Collusive Bidding By submission of this proposal, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
- a The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - b Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
  - c No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed for use in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification --The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
  - 1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
  - 2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
  - 3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting contract also incorporates this provision in the contract.

N. Date/Time Warranty

- 1. Definitions: For the purposes of this warranty, the following definitions apply:

a. "Product" shall include, without limitation: when solicited from a vendor in a State government entity's contracts, RFPs, IFBs, or mini-bids, any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g., consulting, systems integration, code or data conversion or data entry, the term "Product" shall include resulting deliverables.

b. "Third Party Product" shall include product manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. "Third Party Product" does not include product where vendor is : (a) a corporate subsidiary or affiliate of the third party manufacturer/developer; and/or (b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

## 2. Date/Time Warranty Statement

CONTRACTOR warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a CONTRACTOR proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where CONTRACTOR is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), CONTRACTOR warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of CONTRACTOR's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. CONTRACTOR shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the CONTRACTOR's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

O. No Subcontracting Subcontracting by the CONTRACTOR shall not be permitted except by prior written approval of the Department of Health. All subcontracts shall contain provisions specifying that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

P. Superintendence by Contractor The CONTRACTOR shall have a representative to provide supervision of the work which CONTRACTOR employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the CONTRACTOR.

Q. Sufficiency of Personnel and Equipment If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department

shall have the authority to require the CONTRACTOR to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

R. Experience Requirements The CONTRACTOR shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The CONTRACTOR shall submit at least two references to substantiate these qualifications.

S. Contract Amendments This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The CONTRACTOR shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. In the event that the CONTRACTOR, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR.
2. If, in the judgment of the Department of Health, the CONTRACTOR acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the CONTRACTOR. In such case the CONTRACTOR shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the CONTRACTOR up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the CONTRACTOR was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Upon termination of this agreement, the following shall occur:

1. CONTRACTOR shall make available to the State for examination all data, records and reports relating to this Contract; and
2. Except as otherwise provided in the Contract, the liability of the State for payments to the CONTRACTOR and the liability of the CONTRACTOR for services hereunder shall cease.

V. Conflicts If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the CONTRACTOR shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the CONTRACTOR supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. Contract Insurance Requirements

1. The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish

to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

- a. A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
- b. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
  - i. CONTRACTOR's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this proposal and the contract.
  - ii. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
  - iii. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

X. Certification Regarding Debarment and Suspension Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1. APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

May 2013

- a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
  - b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
  - c. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
  - d. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
  - e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
  - f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
  - g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
  - h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  - i. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions
    - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
    - b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## Y. Confidentiality Clauses

May 2013

1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

#### Z. Provision Related to Consultant Disclosure Legislation

1. If this contract is for the provision of consulting services as defined in Subdivision 17 of Section 8 of the State Finance Law, the CONTRACTOR shall submit a "State Consultant Services Form B, Contractor's Annual Employment Report" no later than May 15th following the end of each state fiscal year included in this contract term. This report must be submitted to:
  - a. The NYS Department of Health, at the following address New York State Department of Health, Bureau of Contracts Room -2756, Corning Tower, Albany, NY 12237 ; and
  - b. The NYS Office of the State Comptroller, Bureau of Contracts, 110 State Street, 11th Floor, Albany NY 12236 ATTN: Consultant Reporting -or via fax at (518) 474-8030 or (518) 473-8808; and
  - c. The NYS Department of Civil Service, Albany NY 12239, ATTN: Consultant Reporting.

AA. Provisions Related to New York State Procurement Lobbying Law The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such

finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

- BB. Provisions Related to New York State Information Security Breach and Notification Act CONTRACTOR shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). CONTRACTOR shall be liable for the costs associated with such breach if caused by CONTRACTOR'S negligent or willful acts or omissions, or the negligent or willful acts or omissions of CONTRACTOR'S agents, officers, employees or subcontractors.
- CC. Lead Guidelines All products supplied pursuant to this agreement shall meet local, state and federal regulations, guidelines and action levels for lead as they exist at the time of the State's acceptance of this contract.

DD. On-Going Responsibility

1. General Responsibility Language: The CONTRACTOR shall at all times during the Contract term remain responsible. The CONTRACTOR agrees, if requested by the Commissioner of Health or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
2. Suspension of Work (for Non-Responsibility) :The Commissioner of Health or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Health or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
3. Termination (for Non-Responsibility) : Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard with appropriate Department of Health officials or staff, the Contract may be terminated by Commissioner of Health or his or her designee at the CONTRACTOR's expense where the CONTRACTOR is determined by the Commissioner of Health or his or her designee to be non-responsible. In such event, the Commissioner of Health or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

- EE. Provisions Related to Iran Divestment Act As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) has developed a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list has been posted on the OGS website at <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By entering into this Contract, CONTRACTOR (or any assignee) certifies that it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list. Additionally, CONTRACTOR agrees that should it seek to renew or extend the Contract, it will be required to certify at the time the Contract is renewed or extended that it is not included on the prohibited entities list. CONTRACTOR also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the prohibited entities list before the New York State Department of Health may approve a request for Assignment of Contract. During the term of the Contract, should New York State Department of Health receive information that a person is in violation of the above referenced certification, New York State Department of Health will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then New

York State Department of Health shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the CONTRACTOR in default.

New York State Department of Health reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

**APPENDIX B: REQUEST FOR PROPOSAL**

To be added upon award

**APPENDIX C: PROPOSAL OF BIDDER**

To be added upon award.

## **APPENDIX H: HIPAA CONFIDENTIALITY**

for CONTRACTOR that creates, receives, maintains or transmits individually identifiable health information on behalf of a New York State Department of Health HIPAA-Covered Program

- I. Definitions. For purposes of this Appendix H of this AGREEMENT:
  - A. “Business Associate” shall mean CONTRACTOR.
  - B. “Covered Program” shall mean the STATE.
  - C. Other terms used, but not otherwise defined, in this AGREEMENT shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and implementing regulations, including those at 45 CFR Parts 160 and 164.
- II. Obligations and Activities of Business Associate:
  - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this AGREEMENT or as Required By Law.
  - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this AGREEMENT and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this AGREEMENT.
  - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the Protected Health Information not provided for by this AGREEMENT of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of Unsecured Protected Health Information of which it becomes aware. Such report shall include, to the extent possible:
    1. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    2. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
    4. A description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and
    5. Contact procedures for Covered Program to ask questions or learn additional information.
  - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same

restrictions and conditions that apply to Business Associate with respect to such information.

- E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to Protected Health Information in a Designated Record Set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.
  - F. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
  - G. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this AGREEMENT, to permit Covered Program to comply with 45 CFR § 164.528.
  - H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
  - I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the federal Department of Health and Human Services, in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- III. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this AGREEMENT, Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this AGREEMENT.
  - B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate.
  - C. Business Associate may disclose Protected Health Information as Required By Law.
- IV. Term and Termination
- A. This AGREEMENT shall be effective for the term as specified on the cover page of this AGREEMENT, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Appendix H of this AGREEMENT.

- B. Termination for Cause. Upon Covered Program’s knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this AGREEMENT if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this AGREEMENT if Business Associate has breached a material term of this AGREEMENT and cure is not possible.
- C. Effect of Termination.
  - 1. Except as provided in paragraph (c)(2) below, upon termination of this AGREEMENT, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. In the event that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Program that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this AGREEMENT to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

V. Violations

- A. Any violation of this AGREEMENT may cause irreparable harm to the STATE. Therefore, the STATE may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the STATE harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate’s obligations under this AGREEMENT. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the STATE from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation; provided, however, that Business Associate shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the STATE.

VI. Miscellaneous

- A. Regulatory References. A reference in this AGREEMENT to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.

- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this AGREEMENT from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV)(C) of this Appendix H of this AGREEMENT shall survive the termination of this AGREEMENT.
- D. Interpretation. Any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this AGREEMENT, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.

**APPENDIX G: NOTICES**

All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

**State of New York Department of Health**

Name:  
Title:  
Address:  
Telephone Number:  
Facsimile Number:  
E-Mail Address:

**[Insert Contractor Name]**

Name:  
Title:  
Address:  
Telephone Number:  
Facsimile Number:  
E-Mail Address:

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this AGREEMENT by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representative for the purposes of receiving notices under this AGREEMENT. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems, and/or for dispute resolution.

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## **APPENDIX M PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

### **I. General Provisions**

- A. The New York State Department of Health is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State New York State Department of Health (the “New York State Department of Health”), to fully comply and cooperate with the New York State Department of Health in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

### **II. Contract Goals**

- A. For purposes of this Amendment X-?, the New York State Department of Health hereby establishes an overall goal of **30%** for Minority and Women-Owned Business Enterprises (“MWBE”) participation, **15%** for Minority-Owned Business Enterprises (“MBE”) participation and **15%** for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:  
<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the New York State Department of Health for liquidated or other appropriate damages, as set forth herein.
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### **III. Equal Employment Opportunity (EEO)**

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
  - 1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. The Contractor shall submit an EEO policy statement to the New York State Department of Health within seventy two (72) hours after the date of the notice by New York State Department of Health to award the Contract to the Contractor.
  - 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the New York State Department of Health may provide the Contractor or Subcontractor a model statement (see Form #5 - Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
  - 4. The Contractor's EEO policy statement shall include the following language:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
    - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
    - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
    - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.
- C. Form #4 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as

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part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form #6 - Workforce Employment Utilization Report (“Workforce Report”)

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the New York State Department of Health of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**IV. MWBE Utilization Plan**

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan (Form #1) either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, New York State Department of Health shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

**V. Waivers**

- A. For Waiver Requests Contractor should use Form #2 – Waiver Request.
  - B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the New York State Department of Health shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
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- C. If the New York State Department of Health, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the New York State Department of Health may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form #3) to the New York State Department of Health by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where New York State Department of Health determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the New York State Department of Health liquidated damages.
  - B. Such liquidated damages shall be calculated as an amount equaling the difference between:
    - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
    - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
  - C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the New York State Department of Health, Contractor shall pay such liquidated damages to the New York State Department of Health within sixty (60) days after they are assessed by the New York State Department of Health unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the New York State Department of Health.
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