



**DEPARTMENT OF HEALTH AND MENTAL  
HYGIENE**

**REQUEST FOR PROPOSALS (RFP)**

**SOLICITATION NO. 17-15992**

**Issue Date: March 7, 2016**

**EXTERNAL QUALITY REVIEW OF MARYLAND  
MANAGED CARE ORGANIZATIONS**

**NOTICE**

**Minority Business Enterprises Are Encouraged to Respond to this  
Solicitation**

**STATE OF MARYLAND  
NOTICE TO VENDORS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this Contract, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

**Title: External Quality Review of Maryland Managed Care Organizations**  
**Solicitation No: DHMH/OPASS 17-15992**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Bid/Proposal is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE or VSBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: \_\_\_\_\_

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

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Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** External Quality Review of Maryland Managed Care Organizations

**Solicitation Number:** DHMH/OPASS 17-15992

**RFP Issue Date:** March 7, 2016

**RFP Issuing Office:** Department of Health and Mental Hygiene  
Office of Health Services

**Procurement Officer:** Aaron L. Street  
Director, Office of Procurement and Support Services  
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Phone: 410-767-5117 Fax: 410-333-5958  
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**Contract Monitor:** Glendora Finch  
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**Procurement Coordinator:** Sabrina A. Lewis  
Medical Care Programs – Office of Finance  
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Baltimore, MD 21201  
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e-mail: [Sabrina.Lewis@maryland.gov](mailto:Sabrina.Lewis@maryland.gov)

**Proposals are to be sent to:** Department of Health and Mental Hygiene  
201 West Preston Street, Room 416B  
Baltimore, MD 21201  
Attention: Theresa B. Ammons

**Pre-Proposal Conference:** **March 16, 2016, 2:00 p.m. Local Time**  
**300 W, Preston Street, Auditorium, Lobby**  
**Baltimore, MD. 21201**

**Proposal Due (Closing) Date and Time:** **April 6, 2016, 2:00 p.m. Local Time**

**MBE Subcontracting Goal:** **25%**

**VSBE Subcontracting Goal:** **1%**

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## **SECTION 1 - GENERAL INFORMATION**

### **1.1 Summary Statement**

- 1.1.1 The Department of Health and Mental Hygiene (DHMH or the Department) is issuing this Request for Proposals (RFP; see Section 1.2.43) to select an external quality review organization to perform quality assurance activities for HealthChoice, Maryland's mandatory Medicaid managed care program. HealthChoice provides health care to most Medicaid participants. Eligible Medicaid participants enroll in a Managed Care Organization (MCO) of their choice, and select a primary care provider (PCP) to oversee their medical care.
- 1.1.2 It is the State's intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is 5 years. See Section 1.4 for more information.
- 1.1.3 The Department intends to make single award as a result of this RFP. See RFP Section 1.15 for more information.
- 1.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### **1.2 Abbreviations and Definitions**

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

1. **Accreditation** – A process of review that healthcare organizations participate in to demonstrate the ability to meet predetermined criteria and standards of accreditation established by a professional accrediting agency.
2. **Agency for Healthcare Research and Quality** – A federal agency within the U.S. Department of Health and Human Services that is charged with improving the safety and quality of the U.S. health care system through evidence-based research, training, measures, and data.
3. **Annual Technical Report (ATR)** – A detailed technical report that describes the manner in which the data from all activities conducted in accordance with 42 CFR § 438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by the MCO.
4. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of "Normal State Business Hours" below).
5. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
6. **Consumer Assessment of Healthcare Providers and Systems (CAHPS®)** – A comprehensive and evolving family of surveys that ask consumers and patients to evaluate the interpersonal aspects of health care, overseen by the Agency for Healthcare Research and Quality (see 1.2.2).
7. **Consumer Report Card (CRC)** – A tool to assist Maryland Medicaid Participants in selecting one of the participating MCOs. Information in the Consumer Report Card includes performance measures from HEDIS®, the CAHPS survey, and the Value Based Purchasing Initiative.

8. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment A**.
9. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
10. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities.
11. **Contract Officer (CO)** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer.
12. **Contractor** – The selected Offeror that is awarded a Contract by the State.
13. **Corrective Action Plan**—A plan detailing improvements to an organization’s processes that will be taken to eliminate causes of non-conformities or other problematic issues.
14. **Deeming**—The process of determining that satisfaction of one requirement is sufficient to satisfy an equivalent requirement.
15. **Department or DHMH** – Maryland Department of Health and Mental Hygiene.
16. **Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)** - The federally mandated Medicaid program for screening, prevention, diagnosis, and treatment of physical and mental health conditions in children and adolescents through 20 years of age, as defined by Omnibus Budget Reconciliation Act (OBRA) in 1989.
17. **Early Periodic Screening, Diagnosis, and Treatment (EPSDT)/Healthy Kids Review** – An annual medical record review that collects and analyzes data to assess the timely delivery of EPSDT services to children and adolescents enrolled in an MCO.
18. **eMM** – eMaryland Marketplace (see RFP Section 1.8).
19. **Encounter Data Validation (EDV)** – Validation of the electronic records of services provided to MCO enrollees by both institutional and practitioner providers (regardless of how the providers were paid), when the services would traditionally be a billable service under the fee-for-service reimbursement systems.
20. **External Quality Review (EQR)** – The analysis and evaluation by an EQRO, of aggregated information on quality, timeliness, and access to the health care services that an MCO or their contractors furnish to Medicaid participants.
21. **External Quality Review Organization (EQRO)** – An organization that meets the competence and independence requirements set forth in 42 CFR § 438.354, and performs external quality review, other EQR-related activities as set forth in 42 CFR § 438.358, or both.

22. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
23. **Healthcare Effectiveness Data and Information Set (HEDIS®)**– A tool developed by the National Committee of Quality Assurance that is used to measure performance on dimensions of care and service.
24. **HealthChoice**– Maryland Medicaid’s statewide mandatory managed care program, implemented in 1997 under the authority of Section 1115 of the Social Security Act.
25. **Health Insurance Portability and Accountability Act (HIPAA)** – A federal law that establishes standards regarding privacy regulation and sets out specific and explicit rights that individuals have to access, make changes to and restrict the use of their protected health information.
26. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 1.23 and 4.4.2.7.
27. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
28. **Managed Care Organization (MCO)** – A certified health maintenance organization that is authorized to receive medical assistance prepaid capitation payments; or a corporation that is a managed care system that is authorized to receive medical assistance prepaid capitation payments, enrolls only program recipients or individuals or families served under the Maryland Children’s Health Program, and is subject to the requirements of Health-General Article, § 15-102.4, Annotated Code of Maryland.
29. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
30. **National Committee for Quality Assurance (NCQA)** – A private, 501(c)(3) not-for-profit organization that works to improve health care quality through the administration of evidence-based standards, measures, programs, and accreditation.
31. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
32. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
33. **Offeror** – An entity that submits a Proposal in response to this RFP.
34. **Participant** – A person who has been certified as eligible for, and is receiving, Medicaid benefits.
35. **Performance Improvement Project (PIP)** – A project designed to achieve, through ongoing measurements and interventions, significant improvement sustained over time in clinical care or non-clinical care areas that are expected to have a favorable effect on health outcomes. The PIP typically runs on a three-year cycle, at the discretion of the Department.

36. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
37. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
38. **Quality** – As it pertains to external quality review, the degree to which an MCO increases the likelihood of desired health outcomes of its enrollees through its structural and operational characteristics and through the provision of health services that are consistent with current professional knowledge.
39. **Quality Assurance Liaison Committee (QALC)** – This committee meets quarterly at the Department of Health and Mental Hygiene headquarters to review reports with MCOs, discuss quality assurance activity cycles and timelines, answer MCO questions, and discuss ways to improve care for the HealthChoice program.
40. **Quality Improvement Organization (QIO)** – A group of health quality experts, clinicians, and consumers organized to improve the care delivered to people with Medicare, and who work under contract with the Centers for Medicare and Medicaid Services (CMS) to assist Medicare Providers with quality improvement and to review quality concerns for the protection of participants and the Medicare Trust Fund.
41. **QIO-like Entity** – An organization that has been deemed by CMS to meet the requirements for a QIO, but does not work under contract with CMS as a QIO.
42. **Quality Strategy**– A written strategy for assessing and improving the quality of managed care services offered by all MCOs.
43. **Request for Proposals (RFP)** – This Request for Proposals issued by the Department of Health and Mental Hygiene, with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
44. **State** – The State of Maryland.
45. **Systems Performance Review** – An assessment of the structure, process, and outcome of each Maryland MCO’s internal quality assurance programs, in order to ensure that the services provided to the enrollees meet the standards set forth in the federal and Maryland laws and regulations governing the HealthChoice program.
46. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Price Form, and used in the financial evaluation of Proposals (see RFP Section 5.3).
47. **Validation** – The review of information, data, and procedures to determine the extent to which they are accurate, reliable, free from bias, and in accord with standards for data collection and analysis.
48. **Value Based Purchasing Initiative (VBPI)** – A quality improvement initiative that promotes high-quality service delivery by aligning MCO incentives with performance measures related to the provision of health services, increased access to care, and administrative efficiency.
49. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

### **1.3 Contract Type**

The Contract (see Section 1.2.8) resulting from this solicitation shall be an indefinite quantity contract with firm fixed unit prices as defined in COMAR 21.06.03.06A (2) (indefinite quantity) and 21.06.03.02 A 1 and 2 (firm fixed-price and fixed-price, respectively).

### **1.4 Contract Duration**

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department (see Section 1.2.15) following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (see Section 1.4.4, “Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2.22 and Section 1.4.3) will be the Contract “Start-up Period.” For this Contract, the State (see Section 1.2.44) will attempt to give at least 60 days for the Start-up Period. During the Start-up Period the Contractor (see Section 1.2.12) shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go-Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period.
- 1.4.3 As of the Go-Live Date contained in a Notice to Proceed (NTP; see Section 1.2.32), anticipated to be on or about September 1, 2016, the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, and the offerings in its Technical Proposal (see Section 1.2.37 for definition of “Proposal”), for the compensation described in its Financial Proposal.
- 1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date (the Start-Up Period as described in Section 1.4.2) plus 5 years from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation.
- 1.4.5 The Contractor’s obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

### **1.5 Procurement Officer**

1.5.1 The Procurement Officer is the sole point of contact in the State for purposes of this solicitation prior to the award of any Contract (see definition of “Procurement Officer” in Section 1.2.36).

The name and contact information of the Procurement Officer are indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

The Department may change the Procurement Officer at any time by written notice.

1.5.2 The name and contact information of the Contract Officer and Procurement Coordinator are indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, and after the Title Page and Notice to Vendors (see definition of Contract Officer and Procurement Coordinator in Section 1.2).

The Procurement Officer may change the Contract Officer and Procurement Coordinator at any time by written notice.

## 1.6 Contract Monitor

The Contract Monitor is the State representative for this Contract who is primarily responsible for Contract administration functions after Contract award (see definition of “Contract Monitor” in Section 1.2.10).

The name and contact information of the Contract Monitor are indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

The Department may change the Contract Monitor at any time by written notice.

## 1.7 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). All prospective Offerors (see section 1.2.33) are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See RFP Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment E**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. The Department will make a reasonable effort to provide such special accommodation.

## 1.8 eMarylandMarketplace

Each Offeror is requested to indicate its eMaryland Marketplace (eMM; see Section 1.2.18) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH website (<http://dhmh.maryland.gov>) and possibly other means for transmitting the RFP and associated materials, the solicitation and summary of the Pre-Proposal Conference, Offeror questions and the Procurement Officer’s responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on “Register” to begin the process, and then follow the prompts.

## 1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the

Procurement Officer's e-mail address indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

**1.10 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

**1.11 Proposals Due (Closing) Date and Time**

Proposals, in the number and form set forth in Section 4.2 "Proposals" must be received by the Procurement Officer at the Procurement Officer's address and no later than the Proposal Due date and time indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in this section will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in this section for receipt of Proposals.

**Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.**

Vendors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the RFP immediately following the Title Page (page ii).

**1.12 Multiple or Alternate Proposals**

Multiple and/or alternate Proposals will not be accepted.

**1.13 Economy of Preparation**

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror's Proposal to meet the requirements of this RFP.

#### **1.14 Public Information Act Notice**

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 4.4.3.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

#### **1.15 Award Basis**

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 5 for further award information.

#### **1.16 Oral Presentation**

Offerors may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror’s Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

#### **1.17 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer’s request only with the Offeror’s written agreement.

#### **1.18 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for Proposals, the Department shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Department’s procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror’s Technical Proposal (see RFP Section 4.4.2.3). Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

### **1.19 Cancellations**

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, to waive or permit the cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

### **1.20 Incurred Expenses**

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

### **1.21 Protest/Disputes**

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

### **1.22 Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals").

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

### **1.23 Substitution of Personnel**

#### **A. Continuous Performance of Key Personnel**

Unless substitution is approved per paragraphs B-D of this section, Key Personnel (see Section 1.2.26) shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed

by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to Key Personnel identified in each task order proposal and agreement.

## B. Definitions

For the purposes of this section, the following definitions apply:

**Extraordinary Personal Circumstance** – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

**Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

**Sudden** – means when the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

## C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

1. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
  - A detailed explanation of the reason(s) for the substitution request;
  - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
  - The official resume of the current personnel for comparison purposes; and
  - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

## D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

To voluntarily replace any Key Personnel, the Contractor shall submit a substitution request as described in paragraph C of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

2. Key Personnel Replacement Due to Vacancy

The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section.).

Under any of the circumstances set forth in this paragraph D.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. Key Personnel Replacement Due to an Indeterminate Absence

If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph C of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

4. Directed Personnel Replacement

- a. The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph C of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

- b. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

#### **1.24 Mandatory Contractual Terms**

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 4.4.2.4).**

#### **1.25 Bid/Proposal Affidavit**

A Proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment B** of this RFP.

#### **1.26 Contract Affidavit**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit is also required to be submitted by the Contractor with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), note that a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

#### **1.27 Compliance with Laws/Arrearages**

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all Federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

## **1.28 Verification of Registration and Tax Payment**

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdatcert3.resiusa.org/ucc-charter/>.

It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of Proposals. An Offeror's failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

## **1.29 False Statements**

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, §11-205.1 provides as follows:

1.29.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.29.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.29.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

## **1.30 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Bidder/Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

[http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf).

## **1.31 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see **Attachment A**). Additional information is available on GOMA's website at:

<http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>.

## 1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer’s decision on any Bid protest or Contract claim.
  2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
    - (a) ask questions regarding the solicitation;
    - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - (c) submit a "No Bid/Proposal Response" to the solicitation.
  3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial Bids or Proposals;
  2. filing of Bid Protests;
  3. filing of Contract Claims;

4. submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Offeror be provided in writing or hard copy.

F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

### **1.33 Minority Business Enterprise Goals**

#### **1.33.1 Establishment of Goal and Subgoals.**

An overall Minority Business Enterprise (MBE; see section 1.2.29) subcontractor participation goal of 25% of the total contract dollar amount as set forth in the Offeror's Price Proposal (Attachment F), including all option years, if any, has been established for this procurement.

In addition, the following subgoals have been established for this procurement:

- 7 % for African-American MBEs,
- 12 % for Woman-Owned MBEs.

Notwithstanding any subgoals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

1.33.2 **Attachments D-1 to D-5** – The following Minority Business Enterprise participation instructions, and forms are provided to assist Bidders/Offerors:

<b>Attachment D-1A</b>	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule <b>(must be submitted with Bid/Proposal)</b>
<b>Attachment D-1B</b>	Waiver Guidance
<b>Attachment D-1C</b>	Good Faith Efforts Documentation to Support Waiver Request
<b>Attachment D-2</b>	Outreach Efforts Compliance Statement
<b>Attachment D-3A</b>	MBE Subcontractor Project Participation Certification
<b>Attachment D-3B</b>	MBE Prime Project Participation Certification
<b>Attachment D-4A</b>	Prime Contractor Paid/Unpaid MBE Invoice Report
<b>Attachment D-4B</b>	MBE Prime Contractor Report
<b>Attachment D-5</b>	Subcontractor/Contractor Unpaid MBE Invoice Report

1.33.3 A Bidder/Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

- (a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE

Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

- (c) A Bidder/Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

***If a Bidder/Offeror fails to submit a completed Attachment D-1A with the Bid/Proposal as required, the Procurement Officer shall determine that the Bid is non-responsive or the Proposal is not reasonably susceptible of being selected for award.***

- 1.33.4 Bidders/Offerors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.
- 1.33.5 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.
  - (a) Outreach Efforts Compliance Statement (**Attachment D-2**).
  - (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**).
  - (c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
  - (d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

***If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.***

- 1.33.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 1.33.7 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:
  - (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report).
  - (b) **Attachment D- 4B** (MBE Prime Contractor Report, *if applicable*)
  - (c) **Attachment D-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).
- 1.33.8 A Bidder/Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in **COMAR 21.11.03.11**.

- 1.33.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Bidder/Officer in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see Contract – **Attachment A**, Section 2.1).
- 1.33.10 The Bidder/Officer is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment A**, “Liquidated Damages” clause).
- 1.33.11 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE Prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE Prime must also identify certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (**Attachment D-1A**)) used to meet those goals. If dually-certified, the MBE Prime can be designated as only one of the MBE sub-goal classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

- 1.33.12 With respect to Contract administration, the Contractor shall:
- (a) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
    - i. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
    - ii. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.
  - (b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department’s designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
  - (c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
  - (d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State’s representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them

available for State inspection for three years after final completion of the Contract.

- (e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### **1.34 Living Wage Requirements**

Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the “Living Wage” clause in the Contract (**Attachment A**).

Additional information regarding the State’s living wage requirement is contained in **Attachment G**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder/Offeror must identify in its Bid/Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

**NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.**

### **1.35 Federal Funding Acknowledgement**

- 1.35.1 There are programmatic conditions that apply to this Contract due to Federal funding. (see **Attachment H**).
- 1.35.2 The total amount of Federal funds allocated for the Medical Care Programs is \$5,053,761,375 in Maryland State fiscal year 2016. This represents 50% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 1.35.3 This Contract contains federal funds. The source of these federal funds is: Title XIX. The CFDA number is: 93.778. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment H**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment H** and Bidders/Offerors are to complete and submit these Attachments with their Bid/Proposal as instructed in the Attachments. Acceptance of this agreement indicates the Bidder/Offeror's intent to comply with all conditions, which are part of this Contract.

### **1.36 Conflict of Interest Affidavit and Disclosure**

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Bid/Proposal. All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

### **1.37 Non-Disclosure Agreement**

All Bidders/Offerors are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal.

### **1.38 HIPAA - Business Associate Agreement**

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA (see Section 1.2.25), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment K**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

### **1.39 Nonvisual Access**

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

## 1.40 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

## 1.41 Veteran-Owned Small Business Enterprise Goal

### 1.41.1 NOTICE TO BIDDERS/OFFERORS

Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE; see Section 1.2.48) participation goal of this solicitation must be raised before the due date for submission of Bids/Proposals.

### 1.41.2 PURPOSE

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment M**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment M**.

Veteran-Owned Small Business Enterprises, or VSBEs, must be verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.vebiz.gov>.

### 1.41.3 VSBE GOAL

A VSBE participation goal of 1% of the total Contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Bidder or Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

### 1.41.4 SOLICITATION AND CONTRACT FORMATION

A Bidder/Offeror must include with its Bid/Proposal a completed Veteran-Owned Small Business Enterprise Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment M-1**) whereby:

- (1) the Bidder/Offeror acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Bidder/Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal.
- (2) the Bidder/Offeror responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.

As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.

In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment M-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.

Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer.

- (1) VSBE Project Participation Statement (**Attachment M-2**);
- (2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
- (3) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE participation goal.

*If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for Contract award.*

#### 1.41.5 CONTRACT ADMINISTRATION REQUIREMENTS

The Contractor, once awarded the Contract shall:

- (1) Submit monthly to the Department a report listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice, and the reason payment has not been made. (**Attachment M-3**)
- (2) Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. (**Attachment M-4**)
- (3) Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) At the option of the procurement agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

#### **1.42 Location of the Performance of Services Disclosure**

The Bidder/Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment N**. The Disclosure must be provided with the Bid/Proposal.

#### **1.43 Department of Human Resources (DHR) Hiring Agreement**

This solicitation does not require a DHR Hiring Agreement.

#### **1.44 Small Business Reserve (SBR) Procurement**

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

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## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Offeror Minimum Qualifications**

The Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:

- 2.1.1 The Offeror shall demonstrate that it meets the qualifications of an External Quality Review Organization (EQRO; see Section 1.2.21) as set forth in 42 CFR § 438.354. As proof of meeting this requirement, the Offeror shall provide with its Proposal an attestation, signed by the organization's chief executive officer or its equivalent, that the organization meets each competence and independence requirement outlined in 42 CFR § 438.354(b) and (c). See Section 4.4.2.5.
- 2.1.2 The Offeror shall be a federally designated Quality Improvement Organization (QIO) or QIO-like Entity as defined by the Centers for Medicare and Medicaid Services (CMS) (see Sections 1.2.40 and 1.2.41, respectively). As proof of meeting this requirement, Offerors shall provide evidence of being selected through competitive procurement as a QIO by CMS or documentation of its designation as a QIO-like entity as an attachment to its Transmittal Letter (see Section 4.4.2.3).
- 2.1.3 The Offeror shall have at least three years of experience performing mandated EQRO activities for a State Medicaid managed care program. As proof of meeting this requirement, the Offeror shall provide at least three references from the past five years attesting to the Offeror's experience in serving as an EQRO. See Section 4.4.2.9.

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## **SECTION 3 – SCOPE OF WORK**

### **3.1 Background and Purpose**

The State is issuing this solicitation for the purposes of contracting with an External Quality Review Organization (EQRO) who can successfully perform External Quality Review activities (see Section 1.2.20) for HealthChoice Managed Care Organizations (MCOs) (see Sections 1.2.24 and 1.2.28), as described in 42 CFR § 438.358.

### **3.2 Scope of Work - Requirements**

The Contractor shall be responsible for performing the following activities for the duration of the Contract:

#### **3.2.1 External Quality Review Activities**

##### **3.2.1.1 Systems Performance Review– Assessment of Compliance with Medicaid Managed Care Regulations**

- A. The Contractor shall perform the Systems Performance Review (SPR; see Section 1.2.45) to assess each HealthChoice MCO’s compliance with federal and Maryland laws and regulations. This assessment includes determining the adequacy and effectiveness of the MCO’s operational infrastructure and evaluating the Quality of services provided to Medicaid Participants (see Section 1.2.38 for definition of “Quality”). Prior to 2016, the Department required this assessment annually. The SPR performed under this Contract shall be the first to occur on a three-year cycle.
- B. Unless otherwise specified by the CM, the SPR will be conducted in 2019 and review Calendar Years 2016, 2017, and 2018. This SPR will be a comprehensive review of all standards.
  - 1. The Contractor shall conduct annual intermediate desktop or onsite follow-up reviews for MCOs receiving partially met or unmet findings from the previous SPR to determine compliance with stated Corrective Action Plans (see Section 1.2.13).
  - 2. The Contractor shall conduct desktop reviews for baseline standards introduced during a year that does not coincide with the comprehensive review year (2019), as applicable.
  - 3. The Contractor shall issue an assessment report, recommendations, and/or additional Corrective Action Plans resulting from intermediate or baseline reviews, as applicable.
  - 4. The Contractor shall offer technical assistance to MCOs to resolve deficiencies as needed.
- C. The Contractor shall develop a protocol and timeline for the SPR consistent with CMS EQR Protocol 1: Assessment of Compliance with Medicaid Managed Care Regulations and its attachments (Attachment P).
  - 1. The Contractor shall be responsible for ensuring its protocol remains compliant with any changes to the CMS EQR Protocol and COMAR regulations.
  - 2. The protocol and timeline shall be subject to approval by the CM.
- D. The Contractor shall develop a timeline for initiation, performance, and completion of all SPR activities (i.e., full and intermediate reviews). The timeline shall conclude with the issuance of the final audit reports to the MCOs and to the CM by May 31 of the Contract year or a timeframe otherwise specified by the CM. The timeline should account for the following activities:
  - 1. Obtaining CM approval for preliminary and final audit reports;
  - 2. Submitting preliminary reports to the MCOs for review and comment; and,
  - 3. Receiving Corrective Action Plans from the MCOs for analysis and inclusion into the final reports.
- E. The Contractor shall submit to the CM for approval any recommended updates or revisions to the SPR review criteria annually from July 1 to August 31 of each Contract year, including the year of Contract transition.

1. The CM and the Contractor shall collaborate on any substantive updates to the SPR review criteria.
  2. The Contractor shall prepare a crosswalk of SPR review criteria to NCQA Accreditation standards (see Sections 1.2.30 and 1.2.1, respectively) to determine which SPR review criteria are eligible for Deeming (see Section 1.2.14), in accordance with when each MCO has received NCQA accreditation.
  3. The CM shall have final approval of all SPR review criteria and all deemed standards.
  4. The approved criteria shall be provided in an orientation manual that shall be distributed by the Contractor to the MCOs at the annual September Quality Assurance Liaison Committee (QALC) meeting (see Sections 1.2.39 and 3.2.4.A.3). The current standards for the 2016 SPR are included in Attachment Q.
- F. Prior to the SPR onsite review, the Contractor shall obtain information from each MCO consisting of at least a pre-site survey, and all applicable written plans, policies, and procedures for a desktop review. Deadlines for submitting information for the pre-site survey and conducting the desktop review shall be included in the timeline in 3.2.1.1.C.
- G. After the desktop review is complete, the Contractor shall schedule a two- to three-day onsite review with each MCO at the administrative office of the MCO's choosing. The onsite review shall conclude with an exit interview that provides the MCO with a significant review finding, probable areas of non-compliance, and possible areas that can be clarified or corrected with the provision of additional information by the MCO.
- H. The Contractor shall send a letter identifying all areas of non-compliance or requests for additional information within 10 Business Days (see Section 1.2.4) of the review, and permit the MCO 10 Business Days to respond to the letter. Each letter shall be reviewed and approved by the CM.
- I. The Contractor shall develop a preliminary report of findings for each MCO, with each report subject to approval by the CM.
1. After CM approval and preliminary report distribution, the Contractor shall extend the option to each MCO to discuss the preliminary report's findings, in a time frame established by the Contractor and the CM.
  2. The discussion may be held in person or by phone, at the MCO's option. In-person discussions shall be held at 201 West Preston Street, Baltimore, MD 21201.
  3. The Contractor shall inform each MCO when Corrective Action Plans are due, if applicable, at the conclusion of the discussion.
- J. The Contractor shall collect, review, and evaluate all complete Corrective Action Plans within 10 Business Days of submission by the MCO. The Contractor shall include approved Corrective Action Plan information in each MCO's final report.
- K. The Contractor shall include the following information in its final report for each MCO:
1. Objective, technical methods of data collection and analysis, and data obtained for each Contract activity;
  2. Conclusions drawn from the data, including assessment of MCO strengths and weaknesses with respect to the timeliness, access, and quality of health care services furnished to recipients;
  3. Recommendations for improving compliance;
  4. Assessment of MCO's Corrective Action Plans submitted after receiving the draft report; and,
  5. Assessments of the implementation of the MCO's Corrective Action Plan from the previous SPR and any intermediate reviews.
- L. The Contractor shall maintain documentation of all aspects of the SPR and make this information available to the CM.

1. The Contractor's documentation shall be sufficiently detailed to allow the CM and/or subsequent Contractors to understand the work performed, the evidence obtained, and how conclusions were reached.
  2. The Contractor's documentation shall be well-organized, adequately cross-referenced between report results and supporting documentation, and sufficiently detailed to create a comprehensive and complete record of activities performed.
- M. The Contractor shall incorporate the results, findings, and recommendations of the SPR into the Annual Technical Report (ATR; see Sections 1.2.3 and 3.2.2). The report shall include trends across all MCOs and trends specific to each MCO.

### **3.2.1.2 Validation of Performance Measures**

- A. Value Based Purchasing Initiative Performance Measures
1. To validate the Value Based Purchasing Initiative (VBPI; see Section 1.2.48) Performance Measures, the Contractor shall develop and submit the following for approval by the CM:
    - a. A work plan for all Validation activities (see Section 1.2.47) that is consistent with CMS EQR Protocol 2: Validation of Measures Reported by the MCO (Attachment P).
    - b. A timeline for the initiation, performance, and completion of the validation, including submission of draft reports for review and comment by the CM prior to report finalization.
    - c. Templates of the required draft and final reports of MCO performance, including an Executive Summary.
  2. The Contractor shall be responsible for ensuring its protocol remains compliant with any changes to the CMS EQR Protocol and COMAR (see Section 1.2.5).
  3. The Contractor shall work directly with the CM's other contractors who perform HEDIS® validation and encounter data analysis in order to obtain needed information on VBPI Performance Measures.
  4. The final report for VBPI Performance Measures utilizing the approved report template is due by November 15 of the year following the reporting period.
  5. The Contractor shall incorporate the results and findings of the VBPI final reports into the ATR.
- B. Other Performance Measures Designed by the Department
1. The Contractor shall be responsible for validating any additional performance measures designed by the Department for other health care initiatives.
  2. The Contractor shall provide the results and findings to the CM.
  3. The Contractor may incorporate the results and findings of other performance measures into the ATR.

### **3.2.1.3 Development and Validation of Performance Improvement Projects (PIPs)**

- A. A Performance Improvement Project (PIP; see Section 1.2.35) typically runs on a cycle of three years. For the PIPs, the Contractor shall:
1. Develop and submit for approval by the Department a protocol for validating each PIP. The protocol shall meet the requirements of CMS EQR Protocol 3: Validating Performance Improvement Projects (Attachment P).
  2. Provide technical assistance to the MCOs using CMS EQR Protocol 7: Implementation of Performance Improvement Projects (Attachment P).
  3. Ensure its protocol remains compliant with any changes to the CMS EQR Protocol.
  4. Work with the MCOs to develop a timeline for all PIP activities to be conducted by the MCO and for the Contractor to validate the results.
  5. Develop a timeline for the initiation, performance, and completion of PIP Validation, including submission of reports for review and approval by the CM, which ends no later than October 31 of each Contract year.
  6. Develop a template by September 1 for the following reports to be written and submitted to the CM:

- a. MCO PIP Project Update (due by September 30 of each contract year);
  - b. Annual PIP Updates (due by December 31 of each contract year); and,
  - c. Final PIP Report (due within 30 days of the completion of a PIP cycle).
7. Provide technical assistance to the CM throughout the selection, development, and implementation of each PIP cycle.

The Contractor shall submit each PIP report referenced in 3.2.1.3.A.6 to the CM with a submission deadline to be determined by the CM in consultation with the Contractor. The Contractor must receive the CM's approval before a report is accepted as complete.

- B. The Contractor shall incorporate the results, findings, and recommendations of the Annual and Final PIP Reports into the ATR.

#### **3.2.1.4 Network Adequacy Assessments**

- A. The Contractor shall design and perform two focused quality studies annually to determine the adequacy of each MCO's provider network and its compliance with federal and State standards and regulations.
- B. Study designs may include, with CM approval:
1. Measurement of how effectively MCOs meet specific access standards;
  2. Direct testing to determine the accuracy of network information maintained by health plans;
  3. Telephone calls to providers that assess compliance with specific standards, such as wait times for appointments; and/or
  4. Accuracy of provider information (for example, through phone calls to determine accuracy of information listed in accordance with COMAR 10.09.66.02(C)).
- C. Unless and until further guidance is issued by CMS in a future EQR protocol addressing network adequacy assessment, the Contractor shall use EQR Protocol 8: Conducting Focused Studies of Health Care Quality, dated September 2012 (Attachment P) to guide study implementation and design.
- D. In consultation with the CM, the Contractor shall develop the study design, timelines, materials, sampling methodologies, analysis methodologies, and reporting templates.
- E. The Contractor shall work in conjunction with the CM and/or the MCOs to obtain and validate the network information required to conduct the studies in accordance with their designs.
- F. After the studies are conducted, the Contractor shall analyze the results and identify all areas of compliance and non-compliance in a preliminary detailed report of findings for each MCO.
1. The Contractor shall review and evaluate all Corrective Action Plans submitted by MCOs for areas of non-compliance.
  2. The Contractor shall include Corrective Action Plan information in the final report.
  3. The CM shall review and approve all reports related to the studies.
- G. The Contractor shall maintain documentation of all aspects of the studies and make this information available to the CM.
1. The Contractor's documentation shall be sufficiently detailed to allow the CM and/or subsequent Contractors to understand the work performed, the evidence obtained, and how conclusions were reached.
  2. The Contractor's documentation shall be well-organized, adequately cross-referenced between report results and supporting documentation, and sufficiently detailed to create a comprehensive and complete record of activities performed.

- H. The Contractor shall submit to the CM final reports compiling the results of the studies annually, with a submission deadline to be determined by the CM in consultation with the Contractor.
- I. An executive summary highlighting the results of the studies shall be included in the ATR.

### **3.2.1.5 Consumer Report Card**

- A. The Contractor shall develop a methodology and design to produce a draft Consumer Report Card (CRC; see Section 1.2.7) document annually. The methodology and design shall be subject to approval by the CM. The current CRC methodology is included as Attachment R.
  - 1. The Contractor shall use a focus group with members who are representative of the Maryland HealthChoice Program population to solicit input and feedback on the methodology and design of the CRC.
  - 2. The Contractor shall submit the results and findings of the focus group in a report to the CM no later than the end of the second Contract year.
- B. The CM shall have final approval of all aspects of the CRC. The current CRC is provided in Attachment P.
- C. The Contractor shall ensure the annual CRC uses the most currently available HEDIS® and CAHPS® data (see Sections 1.2.23 and 1.2.6, respectively) by coordinating with the Department's NCQA-certified HEDIS® Compliance Auditor and NCQA-certified Survey Vendor.
- D. The CRC shall be printed in English and the most prevalent non-English language in Maryland, as determined by the Department (currently, Spanish). The CRC shall also be made available in .pdf format no later than January 31<sup>st</sup> of each calendar year.
- E. The Contractor shall work with the Department to provide a high resolution copy of the CRC for inclusion in enrollment packets, which will be printed and distributed to potential Participants by the enrollment broker.
- F. A summary of the methodology and the final CRC shall be included in the ATR.

### **3.2.1.6 Encounter Data Validation**

- A. For the Encounter Data Validation (EDV; see Section 1.2.19), the Contractor shall:
  - 1. Conduct an annual EDV audit to verify the accuracy of encounter data compared to the rendering provider's medical record.
  - 2. The Contractor shall develop and submit a protocol for EDV for Department approval. The protocol shall meet the requirements of CMS EQR Protocol 4: Validating of Encounter Data Reported by the MCO (Attachment P).
  - 3. The Contractor shall be responsible for ensuring its protocol remains compliant with any changes to the CMS EQR Protocol.
  - 4. The Contractor shall develop a timeline and report templates for conducting the EDV and submit it for Department approval.
  - 5. The Contractor shall receive a randomly selected sample of encounters from the Department's data warehouse vendor, The Hilltop Institute at University of Maryland, Baltimore County.
    - a. The sampling shall include practitioner and institutional encounters.
    - b. The percentages of each encounter type shall be determined by the Department.
  - 6. The Contractor shall contact the providers and arrange for completion of the medical record reviews. Contacts shall include two mailed requests and phone follow-up to non-responders.
  - 7. The Contractor shall make reasonable efforts to complete all reviews to yield a statistically significant sample of encounters.

- B. The Contractor shall submit a final report to the Department for approval that includes the scope of the EDV and the analysis results, due by November 30 of each Contract year.
- C. The Contractor shall incorporate the results, findings, and recommendations of the EDV into the ATR.

**3.2.1.7 Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)/Healthy Kids Review (see Section 1.2.16)**

- A. The Contractor shall collect and analyze data that provides an annual assessment of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT; see section 1.2.16) services provided to Participants (see Section 1.2.34) less than 21 years of age served by MCOs.
- B. With the approval of the CM, the Contractor shall review and update the standards to complete the annual assessment. The current standards are in Attachment S.
- C. To maintain consistency with the review standards of the Department, the Contractor shall participate in an orientation and training session in conjunction with the Department’s Division of Children’s Services no later than April 30 of each Contract year.
- D. Using the information from the training and orientation, the Contractor shall independently assess inter-rater reliability of the Contractor’s staff and achieve individual scores of at least 90%.
- E. The Contractor shall review a statistically valid sample of primary care medical records of HealthChoice Participants for each MCO. This review shall determine provider compliance with the Maryland Healthy Kids Preventive Health Schedule (Attachment P).
- F. The Contractor shall contact providers via mail, phone, and/or email to arrange appointments to conduct the record reviews in the providers’ offices or for providers to transmit the records securely to the Contractor. Correspondence to arrange these reviews is subject to CM approval.
- G. The Contractor shall produce reports of the aggregate results and individual review results by MCO. The CM shall approve all reports and reporting templates within timeframes outlined in 3.2.4.B.
- H. The Contractor shall summarize the aggregate and individual review results for inclusion in the ATR.

**3.2.1.8 Quarterly Analysis of Pre-Service Denial Reports and Appeals and Grievances Reports**

- A. The Contractor shall design and perform focused quality studies on a quarterly basis to determine MCO compliance with appropriate denials of service and appropriate handling of appeals and grievances. The reporting instructions and templates for MCO submission of this information are in Attachments T and U.
- B. The Contractor shall use EQR Protocol 8: Conducting Focused Studies of Health Care Quality (Attachment P) to guide implementation and design.
- C. The Contractor shall be responsible for ensuring its protocol remains compliant with any changes to the CMS EQR Protocol.
- D. With approval from the CM, the Contractor shall develop the study design, timelines, materials, sampling methodologies, analysis methodologies, and reporting templates.
- E. The Contractor shall work in conjunction with the CM and/or the MCOs to obtain and validate the information required to conduct the studies in accordance with their designs.

- F. On a quarterly basis for each report, the CM shall analyze the results and identify all areas of compliance and non-compliance in a preliminary report of findings for each MCO.
  - 1. The Contractor shall review and approve all Corrective Action Plans submitted by MCOs for areas of non-compliance.
  - 2. The Contractor shall include Corrective Action Plan information in the final annual reports.
  - 3. The CM shall review and approve all reports related to the studies.
- G. The Contractor shall maintain documentation of all aspects of the studies and make this information available to the CM.
  - 1. The Contractor's documentation shall be sufficiently detailed to allow the CM and/or subsequent Contractors to understand the work performed, the evidence obtained, and how conclusions were reached.
  - 2. The Contractor's documentation shall be well-organized, adequately cross-referenced between report results and supporting documentation, and sufficiently detailed to create a comprehensive and complete record of activities performed.
- H. The Contractor shall submit to the CM final reports compiling the results of the studies annually, with a deadline to be determined by the CM in consultation with the Contractor.

**3.2.2 Annual Technical Report (ATR) (42 CFR §438.364)**

- A. The Contractor shall produce a final ATR that describes the manner in which the data from all activities conducted were aggregated and analyzed, and the way in which conclusion were drawn as to the timeliness, quality, and access to the care provided by the MCO for the Maryland HealthChoice Program. The current ATR is included as Attachment P.
- B. For each EQR activity conducted, the ATR shall include objective, technical methods of data collection and analysis, description of data obtained, conclusions drawn from data, and recommendations for program improvement.
- C. The Contractor shall follow the formatting requirements for the ATR set forth in Section 508 of the Rehabilitation Act (29 USC §794d).
- D. The Contractor shall finalize the ATR for data collected within the prior 24 months by April 30<sup>th</sup> of each year.

**3.2.3 Technical Assistance**

- A. MCO Technical Assistance
  - 1. For the activities outlined in this Contract, the Contractor shall provide technical assistance to each participating HealthChoice MCO.
  - 2. In the event a MCO applies to participate in the HealthChoice Program, the Contractor shall provide technical assistance to the MCO applicant concerning the SPR standards and guidelines, upon request of the Department.
- B. Medical Record Review for Complaint Resolution Unit
  - 1. The Contractor shall provide medical case reviews to determine medical necessity of services to aid the Department's Complaint Resolution Unit on an ad hoc basis.
  - 2. This assistance may include, on rare occasions, attending a formal appeal hearing and giving expert testimony on behalf of the Department.
  - 3. The Department estimates that the Contractor will receive no more than 20 cases a year for review.

C. Ad Hoc Technical Assistance

1. Upon request, the Contractor shall provide advice to the Department, based on expertise and experience, to other relevant inquiries and initiatives.
2. The Contractor may provide recommendations to the Department about improvement of its quality initiatives on an ad hoc basis.

**3.2.4 Deliverables**

A. Accountability to the Department

1. The Contractor shall submit to the CM a written progress report by the 10<sup>th</sup> of each month of all tasks completed that are related to the functions outlined in Section 3.2.1 of this Contract.
2. The Contractor shall be available for weekly conference calls with the Department to discuss the progress of RFP activities.
3. The Contractor shall participate in quarterly Quality Assurance Liaison Committee (QALC) meetings. QALC meetings typically take place via webinar and conference call, except for the kick-off meeting in September of each calendar year. The CM provides dates for the QALC meetings at the beginning of each calendar year.
  1. The CM shall review and approve all presentations for QALC meetings.
  2. The Contractor’s Quality Improvement Director shall attend the September QALC meeting in person.

B. Deliverables by EQR Activity beginning on Go-Live Date (estimated to be September 1, 2016)

<b>EQR Activity</b>	<b>Completion Date</b>
Development and Finalization of SPR Orientation Manual (Section 3.2.1.1)	Starts no later than July 1 and concludes no later than August 31
SPR Onsite Reviews (Section 3.2.1.1)	Starts no later than January 1 and concludes no later than February 28/29
Development and Finalization of SPR Preliminary Report (Section 3.2.1.1)	Development no later than March 1 Finalization of preliminary report no later than March 31
Completion of SPR Final Report (Section 3.2.1.1)	May 31
Completion of SPR Executive Summary (Section 3.2.1.1)	June 30
Completion of VBP Executive Summary (Section 3.2.1.2)	December 31
Finalization of EPSDT/Healthy Kids Review Orientation Manual (Section 3.2.1.7)	February 28/29
Development of EPSDT/ Healthy Kids Review Preliminary Findings (Section 3.2.1.7)	Development no later than August 1 Preliminary findings report issued no later than September 30

Completion of EPSDT/Healthy Kids Review Executive Summary and Final Reports (Section 3.2.1.7)	October 31
Review and Completion of PIP Annual Submissions (Section 3.2.1.3)	Final annual submission completion no later than September 30
Review and Completion of Annual PIP Validations (Section 3.2.1.3)	Review begins no later than October 1 Final report completion no later than November 30
Completion of PIP Annual Reports (Section 3.2.1.3)	December 31
Development of EDV Draft Report (Section 3.2.1.6)	November 30
Completion of EDV Final Report (Section 3.2.1.6)	December 31
Issuance of CRC (Section 3.2.1.5)	January 31
Development and Completion of ATR Draft (Section 3.2.2)	Development no later than February 1 Completion no later than April 15
Annual Network Adequacy Assessments (Section 3.2.1.4)	Project deliverable dates to be determined by CM and Contractor, with final authority resting with the CM.
Quarterly and Annual Pre-Service Denial Report and Appeals and Grievances Reports (Section 3.2.1.8)	Project deliverable dates to be determined by CM and Contractor, with final authority resting with the CM.

### 3.2.5 Systems

- A. The Contractor shall develop a secure HIPAA-compliant web portal to facilitate exchanges of information between the Contractor and the Department, and exchanges between the Contractor and each MCO by Contract Commencement.
- B. The Contractor shall ensure the web portal houses all reports, templates, and documents used for conducting the activities outlined in this Contract and grant secure access to the CM and other DHMH designees, as appropriate.

### 3.2.6 Start-up and Transition Period

- A. During the Contract Start-up Period, the Contractor shall work cooperatively with the Department and the previous contractor to ensure an efficient and timely transition of Contract activities with minimal disruption to HealthChoice and the Department.

- B. The Contractor shall receive program information and details specified by the Department. Both the program information and the working relationship between the Contractor and the previous contractor will be defined by the Department.
- C. The Contractor and the CM shall hold a kick-off meeting no later than 15 days after Contract Commencement to discuss implementation of the Work Plan.
- D. The Contractor and CM shall hold weekly telephonic meetings during the Start-up and Transition Period between the CM and representatives from the Contractor's project staff to review progress of the Contract transition.

### **3.2.7 Subcontractors**

Any proposed subcontractors shall sign an attestation affirming it meets the independence requirements set forth in 42 CFR § 438.354(c).

### **3.2.8 Staffing**

The Contractor shall identify all Key Personnel (see Section 1.2.26) and support personnel necessary for completing the requirements of this RFP. All staff identified as Key Personnel shall be subject to the requirements in Section 1.23. At a minimum, the Contractor shall identify a Quality Improvement Director who will be Key Personnel and who will serve as the main point of contact for the CM. The Quality Improvement Director is responsible for all communications related to the activities identified in this Scope of Work.

## **3.3 Security Requirements**

### **3.3.1 Employee Identification**

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

### **3.3.2 Criminal Background Check**

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record to work under this Contract unless prior written approval is obtained from the Contract Monitor.

### **3.3.3 Information Technology**

For purposes of this solicitation and the resulting Contract:

- (a) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information

about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., Com. Law § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., State Govt. § 10-1301(c).

- (b) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (c) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and shall ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (d) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.
- (e) The Contractor, including any and all subcontractor(s), shall comply with HIPAA Standards, in particular those safeguards contained in HIPAA Part 164, Subpart C as follows:
  - 1. 164.308 – Administrative Safeguards: implement policies and procedures to prevent, detect, contain, and correct security violations.
  - 2. 164.310 – Physical Safeguards: implement controls and procedures to limit physical access to its electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed.
  - 3. 164.312 – Technical Safeguards: implement technical policies and procedures for electronic information systems that maintain electronic protected health information to allow access only to those persons or software programs that have been granted access rights as specified in § 164.308(a)(4), that is: isolating health care clearinghouse functions; access authorization; and access establishment and modification.

#### 3.3.3.1 Information Security Requirements

To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain the following information technology controls at all times throughout the life of the Contract. The Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls.

- (a) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subcontractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of

unnecessary services, the removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subcontractor's system configuration files.

- (b) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the Contractor's and/or subcontractor's security policy. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (c) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- (d) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (e) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (f) Ensure that State data is not comingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (g) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2.  
  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- (h) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:  
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- (i) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform

remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.

- (j) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- (k) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- (l) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
- (m) Ensure that the Contractor's and any subcontractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subcontractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subcontractor-owned equipment to a State LAN/WAN.

#### **3.3.3.2 Contingency /Disaster Recovery Plans**

- (a) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (b) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within 24 hours in order to avoid unacceptable consequences due to the unavailability of services.
- (c) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.

Such contingency and disaster recovery plans shall be available for the Department to inspect and to practically test at any reasonable time, and shall be subject to regular updating, revision, and testing throughout the term of the Contract.

#### **3.3.3.3 Incident Response Requirement**

- (a) The Contractor shall notify the Contract Monitor when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.

- (b) The Contractor shall notify the Contract Monitor within one (1) Business Day of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (c) The Contractor shall notify the Contract Monitor within two (2) hours if there is a threat to the Contractor and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (d) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within one (1) Business Day after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (e) The Contractor, within one (1) Business Day of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor's report shall identify:
  - 1. the nature of the unauthorized use or disclosure;
  - 2. the Sensitive Data used or disclosed;
  - 3. who made the unauthorized use or received the unauthorized disclosure;
  - 4. what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - 5. what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6. the Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- (f) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (g) This Section 3.3.3.3 shall survive expiration or termination of the Contract.

<b>3.4 Insurance Requirements</b>
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- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with a minimum limit of \$5,000,000 per claim and annual aggregate.
- 3.4.3 The Contractor shall maintain Crime Insurance to cover employee theft with minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000.
- 3.4.4 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and shall update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:

- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- b. Commercial General Liability as required in Section 3.4.1.
- c. Errors and Omissions/Professional Liability as required in Section 3.4.2.
- d. Crime Insurance as required in Section 3.4.3.

- 3.4.5 The "State of Maryland, its officers, employees and agents" shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Worker's Compensation Insurance, which is currently handled by the Chesapeake Employer's Insurance Company (formerly Injured Worker's Insurance Fund). All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.4.6 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.5 Problem Escalation Procedure**

- 3.5.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel, as directed should the Contract Monitor not be available.

- 3.5.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- The process for establishing the existence of a problem;
- Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- Expedited escalation procedures and any circumstances that would trigger expedited escalation procedures;

- The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- A process for updating and notifying the Contract Monitor of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

## **3.6 Invoicing**

### **3.6.1 General**

- (a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:
- Contractor name and address;
  - Remittance address;
  - Federal taxpayer identification number (or if sole proprietorship, the individual’s social security number);
  - Invoice period (i.e. time period during which services covered by invoice were performed);
  - Invoice date;
  - Invoice number;
  - State assigned Contract number;
  - State assigned (Blanket) Purchase Order number(s);
  - Goods or services provided; and
  - Amount due.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

- (b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the “Living Wage” provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

### **3.6.2 Invoice Submission Schedule**

The Contractor shall submit invoices in accordance with the following schedule:

- (a) Payments will be made as progress payments as set forth herein. In no case will any payment be viewed as a partial payment.
- (b) The Contractor shall submit an invoice for progress payment as described above in 3.2.4, by deliverable (See Attachment F and F-1 for more information):

- For Activities priced per MCO according to the Financial Proposal Form, Attachment F-1, the Contractor shall invoice the Department monthly for 1/12 of the product of its unit price for the contract year for which the Contractor is invoicing multiplied by the number of MCOs for that contract year, for each service specified under Activities priced per MCO. Invoices shall be due no later than the 15<sup>th</sup> of the month for services provided in the preceding month.
- For Activities Priced per Service according to the Financial Proposal Form, Attachment F-1, the Contractor shall bill the Department for its proposed price for any Activity Priced Per Service completed in the preceding month at the rate proposed in the Contract year for which the Contractor is invoicing. Completion of any activity shall be determined by the Contract Monitor's written acceptance in accordance with the requirements stated in this RFP for the invoiced activity. Invoices for services completed in the preceding month shall be submitted by no later than the 15<sup>th</sup> of the month.
- Invoices must be accompanied by the Contractor's monthly progress report for the time period being billed.
- Payments shall be made by DHMH in response to a properly submitted invoice in accordance with the following schedule of deliverables as discussed in Section 3.2, Scope of Work-Requirements.

### 3.7 MBE Reports

If this solicitation includes an MBE Goal (see Section 1.33), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (a) **Attachment D-4A**, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.
- (b) **Attachment D-4B** (*if applicable*), the MBE Prime Contractor Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.
- (b) **Attachment D-5**, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

### 3.8 VSBE Reports

If this solicitation includes a VSBE Goal (see Section 1.41), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

- (a) **Attachment M-3**, the VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
- (b) **Attachment M-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

### 3.9 SOC 2 Type 2 Audit Report

This section applies to the Contractor and any relevant subcontractor who provides services for the Department's identified critical functions, handles Sensitive Data [see RFP Section 3.3.3(c)], and/or hosts any related implemented system for the State under the Contract. For purposes of this section, "relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.

The Contractor shall have an annual audit performed, by an independent audit firm of the Contractor's choosing, of the Contractor's and any relevant subcontractor's handling of Sensitive Data and the Department's critical functions, which are identified in the Scope of Work in Section 3.2, and shall address all areas relating to Information Technology security and operational processes (see RFP Section 3.3.3). These services provided by the Contractor and any relevant subcontractor that shall be covered by the audit will collectively be referred to as the "Information Functions and/or Processes." Such audits shall be performed in accordance with audit guidance: *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2)* as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

- 3.9.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). The initial SOC 2 Audit shall be scheduled and completed within a timeframe to be specified by the Contract Monitor. All subsequent SOC 2 Audits that are arranged after this initial audit shall be performed on annual basis and submitted to the Contract Monitor by March 1 for the preceding calendar year.
- 3.9.2 The SOC 2 Audit shall report on the Contractor's and any relevant subcontractor's system(s) and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes to meet the requirements of the Contract, including the Security Requirements identified in Section 3.3, relevant to the following trust principles: **Security** and **Confidentiality**, as defined in the aforementioned Guidance.
- 3.9.3 The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Confidentiality, Processing Integrity, and/or Privacy) to accommodate any changes to the Contractor's and any relevant subcontractor's environment since the previous SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and/or Processes through modifications to the Contract, or due to changes in information technology or operational infrastructure implemented by the Contractor and/or subcontractor. The Contractor and any relevant subcontractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- 3.9.4 The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. The Contractor shall ensure the audit includes all subcontractors operating in performance of the Contract.
- 3.9.5 All SOC 2 Audits, including those of the Contractor and any relevant subcontractor, shall be performed at no additional expense to the Department.
- 3.9.6 The Contractor and all relevant subcontractors shall promptly provide a complete copy of the final SOC 2 Report(s) to the Contract Monitor upon completion of each SOC 2 Audit engagement.

- 3.9.7 The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a documented corrective action plan which addresses each audit finding or exception contained in a SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor and/or subcontractor(s) along with the date(s) when each remedial action is to be implemented.
- 3.9.8 If the Contractor, including any relevant subcontract, currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's and any relevant subcontractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- 3.9.9 If the Contractor and any relevant subcontractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in RFP Section 3.9.1, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and/or Processes utilized or provided by the Contractor and any relevant subcontractor under the Contract. The Contractor and any relevant subcontractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report . The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

### **3.10 End of Contract Transition**

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin ninety (90) days before the Contract end date, or the end date of any final exercised option or contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract.

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## **SECTION 4 – PROPOSAL FORMAT**

### **4.1 Two Part Submission**

Offerors shall submit Proposals in separate volumes:

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

### **4.2 Proposals**

4.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and seven (7) copies. Unless the resulting package will be too unwieldy, the Department’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

- The RFP title and number,
- Name and address of the Offeror, and
- Closing date and time for receipt of Proposals

To the Procurement Officer (see Section 1.5 “Procurement Officer”) prior to the date and time for receipt of Proposals (see Section 1.11 “Proposals Due (Closing) Date and Time”).

4.2.2 An electronic version (on Compact Disk/CD, Digital Versatile Disc/DVD, or Universal Serial Bus/USB Flash/Thumb Drive) of Volume 1-Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. An electronic version (on CD, DVD, or USB Flash Drive) of Volume II - Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Volume II - Financial Proposal submission. Each CD/DVD/USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each CD/DVD/USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

4.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD, DVD, or USB Flash Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”).

4.2.4 Beginning with Tab B (see RFP Section 4.4.2.3), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 4.4.2.1 and 4.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc).

4.2.5 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, or other persons deemed by the Department to have a legitimate interest in them.

### **4.3 Delivery**

Offerors may either mail or hand-deliver Proposals.

- 4.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom..
- 4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

**4.4 Volume I – Technical Proposal**

**Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).**

**4.4.1 Format of Technical Proposal**

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, five (5) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title and Table of Contents,” Section 4.4.2.2 “Claim of Confidentiality,” Section 4.4.2.3 “Transmittal Letter,” Section 4.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.2.1 Response . . . ; “Section 3.2.2 Response . . . ,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

4.4.2 **The Technical Proposal** shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

**4.4.2.1 Title Page and Table of Contents (Submit under TAB A)**

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

**4.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1)**

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 1.14 “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

**4.4.2.3 Transmittal Letter (Submit under TAB B)**

A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- Offeror's eMM number;
- Offeror's MBE certification number (if applicable);
- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- Acknowledgement of all addenda to this RFP.

#### **4.4.2.4 Executive Summary (Submit under TAB C)**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary shall identify the Service Category (ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see RFP Section 1.22 for more information).

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment A), or any other attachments, the Executive Summary shall so state.

#### **4.4.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D)**

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 "Offeror Minimum Qualifications."

#### **4.4.2.6 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)**

- a. The Offeror shall address each Scope of Work requirement (Section 3.2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work (Section 3.2) requirement shall include an explanation of how the work will be done. Any exception to a

requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

- b. The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- c. The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- d. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in RFP Section 3.5.

#### 4.4.2.7 **Experience and Qualifications of Proposed Staff (Submit under TAB F)**

The Offeror shall identify the number and types of staff proposed to be utilized under the Contract.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

#### 4.4.2.8 **Offeror Qualifications and Capabilities (Submit under TAB G)**

The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- a. The number of years the Offeror has provided the similar services;
- b. The number of clients/customers and geographic locations that the Offeror currently serves;
- c. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- d. The Offeror's process for resolving billing errors; and

- e. An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

#### 4.4.2.9 **References (Submit under TAB H)**

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror.

#### 4.4.2.10 **List of Current or Prior State Contracts (Submit under TAB I)**

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

#### 4.4.2.11 **Financial Capability (Submit under TAB J)**

An Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

- a. Dunn and Bradstreet Rating;
- b. Standard and Poor's Rating;
- c. Lines of credit;
- d. Evidence of a successful financial track record; and

- e. Evidence of adequate working capital.

#### 4.4.2.12 **Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.4. See Section 5.6 for the required insurance certificate submission for the recommended Offeror.

#### 4.4.2.13 **Subcontractors (Submit under TAB L)**

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. See Sections 4.4.2.6 and 4.4.2.7 for additional Offeror requirements related to Subcontractors.

#### 4.4.2.14 **Legal Action Summary (Submit under TAB M)**

This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- c. A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- d. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

#### 4.4.2.15 **Economic Benefit Factors (Submit under TAB N)**

The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price (see Section 1.2.45) from Attachment F, the Financial Proposal Form. See COMAR 21.05.03.03A(3).

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

Please note that in responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- a. generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- b. descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; or
- c. tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;
- The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- Subcontract dollars committed to Maryland small businesses and MBEs; and
- Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

#### 4.4.3 Additional Required Technical Submissions (Submit under TAB O)

4.4.3.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2.

- a. Completed Bid/Proposal Affidavit (**Attachment B**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).

4.4.3.2 **\*If Required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2. \*See appropriate RFP Section to determine whether the particular document is required for this procurement:

- a. A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **\*see Section 1.22**
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) **\*see Section 1.33.**
- c. Completed Federal Funds Attachment (**Attachment H**) **\*see Section 1.35.**
- d. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) **\*see Section 1.36.**
- e. Completed Mercury Affidavit (**Attachment L**) **\*see Section 1.40.**
- f. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (**Attachment M-1**) **\*see Section 1.41.**
- g. Completed Location of the Performance of Services Disclosure (**Attachment N**) **\*see Section 1.42.**

## **4.5 Volume II – Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 "Proposals," the Offeror shall submit an original unbound copy, seven (7) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

## **SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE**

### **5.1 Evaluation Committee**

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Department reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

### **5.2 Technical Proposal Evaluation Criteria**

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any subcriteria within each criterion have equal weight.

#### **5.2.1 Offeror’s Technical Response to RFP Requirements and Work Plan (See RFP § 4.4.2.6)**

The State prefers an Offeror’s response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as “concur” or “will comply” will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

- 5.2.1.1 To what extent do the Technical Response and Work Plan demonstrate the understanding and the ability of the Offeror to successfully meet the requirements, deliverables, and time frames of the RFP, including a timeline showing all critical steps and responsible staff for each component?
- 5.2.1.2 To what extent is the Work Plan provided reasonable to achieve Maryland Medicaid’s goals, objectives, and requirements?
- 5.2.1.3 To what extent does the Work Plan detail a reasonable amount of time for the transition from the current Contractor, how the transition is to be accomplished, and also provide an End of Transition Plan for movement to a successor Contractor at the end of this Contract?
- 5.2.1.4 To what extent has the Offeror documented and demonstrated sufficient physical and technological resources to fulfill the requirements of the RFP?
- 5.2.1.5 To what extent has the Offeror demonstrated its proposed staffing plan is sufficient to fulfill the requirements of the RFP?

#### **5.2.2 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP § 4.4.2.8 – 4.4.2.14)**

- 5.2.2.1 To what extent does the Technical Response demonstrate the Offeror’s experience in successfully managing similar projects for Medicaid programs (e.g., with states that have multiple Medicaid managed care organizations and large Medicaid populations)?

- 5.2.2.2 To what extent has the Offeror documented and demonstrated sufficient financial resources to fulfill the requirements of the RFP?
- 5.2.2.3 To what extent is the organizational structure of the Offeror appropriate for the provision of services under the RFP?
- 5.2.2.4 To what extent do the Offeror's references support the information provided in their proposal?
- 5.2.2.5 To what extent are subcontractors identified and their roles relative to the proposal clearly defined? To what extent are the subcontractors identified appropriate to accomplish the objectives of the Contract?
- 5.2.2.6 To what extent has the Offeror demonstrated a history of fiscal and legal integrity?

**5.2.3 Experience and Qualifications of Proposed Staff (See RFP § 4.4.2.7)**

- 5.2.3.1 To what extent has the Offeror demonstrated sufficient personnel resources to fulfill the requirements of the RFP?
- 5.2.3.2 To what extent has the Offeror documented that staff assigned to the project has experience with the various components of the RFP?
- 5.2.3.3 To what extent does the Offeror adequately describe the appropriate personnel with their qualifications and their respective areas of responsibility?

**5.2.4 Economic Benefit to State of Maryland (See RFP § 4.4.2.15)**

**5.3 Financial Proposal Evaluation Criteria**

All Qualified Offerors (see Section 5.5.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment F** - Financial Proposal Form.

**5.4 Reciprocal Preference**

Although Maryland law does not generally authorize procuring units to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- The Maryland resident business is a responsible Offeror;
- The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

## **5.5 Selection Procedures**

### **5.5.1 General**

The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Financial Proposal will subsequently be returned if the Financial Proposal is unopened at the time of the determination.

### **5.5.2 Selection Process Sequence**

5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed, if there is an MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (**Attachment M-1**) is included and is properly completed, if there is a VSBE goal. Finally, a determination is made that all Offeror Minimum Qualifications, if any (See RFP Section 2), have been satisfied.

5.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

5.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

5.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

### **5.5.3 Award Determination**

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In

making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

## **5.6 Documents Required upon Notice of Recommendation for Contract Award**

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- a. Contract (**Attachment A**),
- b. Contract Affidavit (**Attachment C**),
- c. MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; \*see **Section 1.33**,
- d. MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; \*see **Section 1.33**),
- e. Non-Disclosure Agreement (**Attachment J**), if applicable; \*see **Section 1.37**,
- f. HIPAA Business Associate Agreement (**Attachment K**), if applicable; \*see **Section 1.38**,
- g. VSBE **Attachment M-2**, if applicable \*see **Section 1.41**,
- h. DHR Hiring Agreement, **Attachment O**, if applicable \*see **Section 1.43**, and
- i. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” listing the State as an additional insured, if applicable; \*see **Section 3.4**.

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## **RFP ATTACHMENTS**

### **ATTACHMENT A – Contract**

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

### **ATTACHMENT B– Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT C– Contract Affidavit**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

### **ATTACHMENT D– Minority Business Enterprise Forms**

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within 10 Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

### **ATTACHMENT E– Pre-Proposal Conference Response Form**

It is requested that this form be completed and submitted as described in Section 1.7 by those potential Offerors that plan on attending the Pre-Proposal Conference.

### **ATTACHMENT F– Financial Proposal Instructions and Form**

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

### **ATTACHMENT G– Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement**

Attachment G-1 Living Wage Affidavit of Agreement must be completed and submitted with the Technical Proposal.

### **ATTACHMENT H – Federal Funds Attachment**

If required (see Section 1.35), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments.

### **ATTACHMENT I– Conflict of Interest Affidavit and Disclosure**

If required (see Section 1.36), this Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT J – Non-Disclosure Agreement**

If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

### **ATTACHMENT K– HIPAA Business Associate Agreement**

If required (see Section 1.38), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

### **ATTACHMENT L– Mercury Affidavit**

If required (see Section 1.40), this Attachment must be completed and submitted with the Technical Proposal.

**ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms**

If required (see Section 1.41), these Attachments include the VSBE Attachments M-1 through M-4. Attachment M-1 must be completed and submitted with the Technical Proposal. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

**ATTACHMENT N – Location of the Performance of Services Disclosure**

If required (see Section 1.42), this Attachment must be completed and submitted with the Technical Proposal.

**ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement**

If required (see Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

**ATTACHMENT P – EQRO Resources**

**ATTACHMENT Q – Systems Performance Review Standards for Calendar Year 2015**

**ATTACHMENT R – Consumer Report Card Methodology**

**ATTACHMENT S – EPSDT/Healthy Kids Review Standards for Calendar Year 2015**

**ATTACHMENT T – Pre-Service Denial Report Instructions and Template**

**ATTACHMENT U – Appeals and Grievances Report Instructions and Template**

## ATTACHMENT A – CONTRACT

### EXTERNAL QUALITY REVIEW OF MARYLAND MANAGED CARE ORGANIZATIONS

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

#### 1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the Department of Health and Mental Hygiene.
- 1.3 “Contract Monitor” means the following Department employee identified as the Contract Monitor: Glendora Finch; Chief, Division of HealthChoice Quality Assurance.
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the Department of Health and Mental Hygiene.
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer: (Procurement Officer’s name and contact information)
- 1.8 “RFP” means the Request for Proposals for **External Quality Review of Maryland Managed Care Organizations**, Solicitation # (solicitation number), and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

#### 2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for **External Quality Review of Maryland Managed Care Organizations** awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – State Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Proposal (Technical and Financial)

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

### **3. Period of Performance.**

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately 5 years beginning September 1, 2016 and ending on August 31, 2021.

3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is **(Contractor's FEIN or SSN)**. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

4.5 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).

## **5. Rights to Records**

5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

## **7. Patents, Copyrights, and Intellectual Property**

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidential or Proprietary Information and Documentation**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

## **10. Indemnification**

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

## **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

#### **15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

#### **16. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **17. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### **18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**19. Delays and Extensions of Time**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**21. Pre-Existing Regulations**

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. Financial Disclosure**

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

**24. Documents Retention and Inspection Clause**

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

**25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.
- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the Contract.

**26. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 26.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 26.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **27. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/Proposal.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid/Proposal, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Liability**

For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:

- 29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

## **30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **31. Prompt Pay Requirements**

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- a. Not process further payments to the contractor until payment to the subcontractor is verified;
- b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- e. Take other or further actions as appropriate to resolve the withheld payment.

31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:

- a. Retainage which had been withheld and is, by the terms of the Contract between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- b. An amount withheld because of issues arising out of a Contract or occurrence unrelated to the Contract under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

- a. Affect the rights of the contracting parties under any other provision of law;
- b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
- c. Result in liability against or prejudice the rights of the Department.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

- b. This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and
  - iii. Interviewing subcontractors and workers.
  - iv. Verification shall include a review of:
    - (a) The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- d. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
  - i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- e. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**32. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

**33. Variations in Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

**34. Contract Monitor and Procurement Officer**

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

**35. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:                   Aaron L. Street  
   Director, Office of Procurement and Support Services

201 W. Preston Street, Baltimore, MD. 21201  
Phone: 410-767-5117 Fax: 410-333-5958  
E-mail: [dhmh.solicitationquestions@maryland.gov](mailto:dhmh.solicitationquestions@maryland.gov)

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**36. Parent Company Guarantee**

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

**37. Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

**38. Compliance with Federal HIPAA and State Confidentiality Law**

38.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

- 38.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.
- 38.3 Protected Health Information as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

**39. Miscellaneous**

- 39.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 39.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

**IN WITNESS THEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE

\_\_\_\_\_  
By:  
\_\_\_\_\_  
Date

\_\_\_\_\_  
By: Van T. Mitchell  
Or designee:  
\_\_\_\_\_  
\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_ (Date) \_\_\_\_\_ (BPW Item #)

## ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

### A. AUTHORITY

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

#### B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7205, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body,

the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

**I FURTHER AFFIRM THAT:**

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUBCONTRACT AFFIRMATION**

**I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/Proposal that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
  - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
  - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- 2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: \_\_\_\_\_

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Bid or Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**ATTACHMENT C – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

**I FURTHER AFFIRM THAT:**

The business named above is a (check applicable box):

- (1) Corporation —  domestic or  foreign;
- (2) Limited Liability Company —  domestic or  foreign;
- (3) Partnership —  domestic or  foreign;
- (4) Statutory Trust —  domestic or  foreign;
- (5)  Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: \_\_\_\_\_ Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

#### I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

## F. CERTAIN AFFIRMATIONS VALID

### I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 201\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

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

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

## ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

### MBE ATTACHMENT D-1A MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE - INSTRUCTIONS

#### PLEASE READ BEFORE COMPLETING THIS DOCUMENT

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the Bid/Proposal. If the Bidder/Offeror fails to accurately complete and submit this Affidavit and Schedule with the Bid or Proposal as required, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract’s MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation (“MDOT”). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including an MBE Prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
4. Please refer to the MDOT MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System (“NAICS”) Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance:** Please note that when a certified MBE firm participates as a Prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.
  - ✓ In order to receive credit for self-performance, an MBE Prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE Prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.

- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime’s ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B Waiver Guidance**, the MBE Prime’s ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA’s website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
  7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
  8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.
  9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule MUST at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Bidder/Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Bidder/Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Bid will be deemed not responsive, or the Proposal determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

**SUBGOALS (IF APPLICABLE)**

**TOTAL AFRICAN AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL ASIAN AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL HISPANIC AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL WOMEN-OWNED MBE PARTICIPATION:** \_\_\_\_\_ %

**OVERALL GOAL**

**TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES):** \_\_\_\_\_ %

**MBE ATTACHMENT D-1A**  
**MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**  
**& MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the Bid/Proposal. If the Bidder/Offeror fails to accurately complete and submit this Affidavit and Schedule with the Bid or Proposal as required, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.**

In connection with the Bid/Proposal submitted in response to Solicitation No. DHMH/OPASS 17-15992, I affirm the following:

**1. MBE Participation (PLEASE CHECK ONLY ONE)**

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 25 percent and all of the following subgoals:

7 percent for African American-owned MBE firms

12 percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I must complete the MBE Participation Schedule (Item 4 below) in order to be considered for award.

**OR**

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I must complete the MBE Participation Schedule (Item 4 below) for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

**2. Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 Business Days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**)
- (b) Outreach Efforts Compliance Statement (**Attachment D-2**);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (**Attachments D-3A/B**);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain Bidder or Offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the Contract has already been awarded, the award is voidable.

**3. Information Provided to MBE firms**

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

**4. MBE Participation Schedule**

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract amount allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT certified.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

**SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)**

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____%</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p>Description of the Work to be performed with MBE prime’s own workforce: _____          _____</p>
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:          _____          _____          _____          _____</p>
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<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

(Continue on separate page if needed)

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Bidder/Offeror Name  
*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## **MBE ATTACHMENTD-1B** **WAIVER GUIDANCE**

### **GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Bidder/Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### **I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the Bidder/Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a Bidder/Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Bidder/Offeror has made. The efforts employed by the Bidder/Offeror should be those that one could reasonably expect a Bidder/Offeror to take if the Bidder/Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Bidder's/Offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Bidder/Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Bidder/Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the Bid/Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Bidder/Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Bidder/Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to a firm certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State’s MBE Program.

## **II. Types of Actions Agency will Consider**

The Bidder/Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Bidder's/Offeror's Good Faith Efforts when the Bidder/Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **A. Identify Bid/Proposal Items as Work for MBE Firms**

#### 1. Identified Items of Work in Procurements

(a) Certain procurements will include a list of Bid/Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Bidder/Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

#### 2. Identified Items of Work by Bidders/Offerors

(a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Bidders/Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, Bidders/Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Bidder/Offeror of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms to Solicit**

#### 1. MBE Firms Identified in Procurements

(a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Bidder/Offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

#### 2. MBE Firms Identified by Bidders/Offerors

(a) When the procurement does not include a list of Identified MBE Firms, Bidders/Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

(b) Any MBE Firms identified as available by the Bidder/Offeror should be certified to perform the Identified Items of Work.

## **C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Bidder/Offeror should:

(a) provide the written solicitation at least 10 days prior to Bid/Proposal opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Bidder/Offeror provides written solicitations.

3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Bidder/Offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

## **D. Negotiate With Interested MBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. A Bidder/Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Bidder's/Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Bidder/Offeror;

(b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Bidder/Offeror;

(c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;

(d) the number of MBE firms that the Bidder/Offeror solicited for that portion of the work;

(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and

(f) the number of quotes received by the Bidder/Offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The Bidder/Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received" by the Bidder/Offeror refers to the average of the quotes received from all subcontractors. Bidder/Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.

7. A Bidder/Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Bidder/Offeror concludes is not acceptable, the Bidder/Offeror must provide a written detailed statement listing the reasons for this conclusion. The Bidder/Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

**E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Bidder/Offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the Bidder/Offeror; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a Bidder/Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Bidders/Offerors in meeting the contract. For example, when the apparent successful Bidder/Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Bidder/Offeror could have met the goal. If the apparent successful Bidder/Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Bidders/Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Bidder/Offeror having made Good Faith Efforts.

**IV. Documenting Good Faith Efforts**

At a minimum, a Bidder/Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

**A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

**B. Outreach/Solicitation/Negotiation**

1. The record of the Bidder's/Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C (2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment D-2).**

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

**C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)**

1. For each MBE Firm that the Bidder/Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the Bidder/Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Bidder/Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the Bidder's/Offeror's Good Faith Efforts.

2. Submit any other documentation the Bidder/Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**MBE ATTACHMENTD-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
 \_\_\_\_\_ (Name of Minority firm)  
 located at \_\_\_\_\_  
 \_\_\_\_\_ (Number) \_\_\_\_\_ (Street)  
 \_\_\_\_\_  
 \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_  
 in \_\_\_\_\_ County by \_\_\_\_\_  
 \_\_\_\_\_ (Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the  
 work/service or unable to prepare a bid for this project for the following reason(s):

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

\_\_\_\_\_  
**Signature of Minority Firm's MBE Representative**                      **Title**                      **Date**

\_\_\_\_\_  
 MDOT Certification #                      Telephone #

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
 Signature of Prime Contractor                      Title                      Date

**MBE ATTACHMENTD-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>Solicitation Number</b>

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Signature of Representative

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Printed Name and Title

\_\_\_\_\_  
 City, State and Zip Code

\_\_\_\_\_  
 Date

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE  
TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>Solicitation Number</b>

Identify those items of work that the Bidder/Offeror made available to MBE Firms. This includes, where appropriate, those items the Bidder/Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Bidder's/Offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Bid/Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Bidder/Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Bidder/Offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

<b>Identified Items of Work</b>	<b>Was this work listed in the procurement?</b>	<b>Does Bidder/Offeror normally self-perform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why?</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Bidder/Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Bidder/Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Bidder/Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see **Attachment D-1B – Exhibit A**). If the Bidder/Offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting waiver of MBE subgoal.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> (Check only if requesting waiver of MBE subgoal.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date:  <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date:  <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With:  <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST**

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 2 indicates that an MBE quote was rejected because the Bidder/Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from Bid/Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

**MBE ATTACHMENTD-2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Bidder/Offeror identified subcontracting opportunities in these specific work categories:

---

---

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2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

---

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4. **Please Check One:**

- This project does not involve bonding requirements.
- Bidder/Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements.  
(DESCRIBE EFFORTS): \_\_\_\_\_

---

---

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5. **Please Check One:**

- Bidder/Offeror did attend the pre-bid/pre-proposal conference.
- No pre-Bid/pre-Proposal meeting/conference was held.
- Bidder/Offeror did not attend the pre-Bid/pre-Proposal conference.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

## MBE ATTACHMENTD-3A

### MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State Contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$\_\_\_\_\_ which equals to \_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

<p><b>PRIME CONTRACTOR</b> Signature of Representative: _____ Printed Name and Title: _____ Firm's Name: _____ Federal Identification Number: _____ Address: _____ Telephone: _____ Date: _____</p>	<p><b>SUBCONTRACTOR</b> Signature of Representative: _____ Printed Name and Title: _____ Firm's Name: _____ Federal Identification Number: _____ Address: _____ Telephone: _____ Date: _____</p>
---	--

**MBE ATTACHMENTD-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$\_\_\_\_\_ which equals to \_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

<p><b>MBE PRIME CONTRACTOR</b>  Signature of Representative: _____  Printed Name and Title: _____  Firm's Name: _____  Federal Identification Number: _____  Address: _____  Telephone: _____  Date: _____</p>
--

**MBE ATTACHMENTD-4A**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	--

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	Fax:		
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b> <u>Invoice# Amount</u> 1.  2.  3.  4.  <b>Total Dollars Paid: \$</b> _____		<b>List dates and amounts of any outstanding invoices:</b> <u>Invoice #Amount</u> 1.  2.  3.  4.  <b>Total Dollars Unpaid: \$</b> _____	

- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____
Contracting Unit and Address: _____
_____

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**MBE ATTACHMENTD-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ <b>MBE Prime Contractor: Report is due to the MBE Liaison by the ___ of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
--	--

Contact Person: _____		
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	E-mail: _____

Invoice Number	Value of the Work	NAICS Code	Description of the Work

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**MBE ATTACHMENT D-5**  
**Minority Business Enterprise Participation**  
**Subcontractor Paid/Unpaid MBE Invoice Report**

Report#: _____  Reporting Period (Month/Year): _____  <b>Report is due by the ___ of the month following the month the services were performed.</b>	Contract #: _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	---

MBE Subcontractor Name: _____		
MDOT Certification #: _____		
Contact Person: _____	E-mail: _____	
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	
<b>Subcontractor Services Provided:</b>		
<b>List all payments received from Prime Contractor during reporting period indicated above.</b> <u>Invoice Amt Date</u> 1. _____  2. _____  3. _____  <b>Total Dollars Paid: \$</b> _____	<b>List dates and amounts of any unpaid invoices over 30 days old.</b> <u>Invoice Amt Date</u> 1. _____  2. _____  3. _____  <b>Total Dollars Unpaid: \$</b> _____	
Prime Contractor: _____	Contact Person: _____	

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

**Solicitation Number 17-15992  
External Quality Review of Maryland Managed Care Organizations**

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer’s contact information is provided in the RFP Key Information Summary Sheet.

Please indicate:

Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 1.7 “Pre-Proposal Conference”):

---

Signature

Title

---

Name of Firm (please print)

## ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror's TOTAL PROPOSAL PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

## **FINANCIAL PROPOSAL FORM**

See the accompanying Excel spreadsheet, with the following comments and notes.

Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

Offerors are to enter their Financial Proposals in the Excel Financial Attachment F-1 accompanying this document. The Offeror agrees to provide the services for the RFP #DHMH-OPASS 17-15992 “External Quality Review for Maryland Managed Care Organizations” for the period beginning on or about September 1, 2016, through August 31, 2021. In the event the Contract does not commence on September 1, 2016, it shall be effective for five years from the actual Contract Commencement date. Contract Year 1 begins on the Contract Commencement date, and subsequent Contract years begin on the anniversary of the Contract Commencement date.

**Note #1:** The estimates in the financial attachment are for financial evaluation purposes only and not a guarantee of the total services to be performed. The Contractor shall be paid the price per review as proposed.

**Note #2:** The proposed prices entered on the accompanying Excel Spreadsheet are fully-loaded prices that include all costs/expenses associated with the provision of services as required by this RFP. The proposed prices shall include, but are not limited to: the costs associated with the specific review/service, transitioning into the contract, labor, profit/overhead, general operating and all other expenses except as expressly excluded in the RFP specifications. Offerors shall take account in their pricing of the requirements for payment of an eMaryland Marketplace fee, which may not be separately priced (See Key Information Summary). **No other amounts will be paid to the Contractor.**

To be signed by individual or representative of the Company that has the legal authority to commit and bind this Offer.

**Living Wage Requirements for Service Contracts**

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee’s time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
  - (3) Service contracts for the following:
    - (a) Services with a Public Service Company;
    - (b) Services with a nonprofit organization;
    - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement (“Unit”); or
    - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

**Maryland Living Wage Requirements Affidavit of Agreement**

(Submit with Bid/Proposal)

Contract No. \_\_\_\_\_

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

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons (check all that apply):

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract Is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee’s time during any work week on the contract

- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

### A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form "Certification Against Lobbying." It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a "Certification Regarding Environmental Tobacco Smoke," required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
  - A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and sub-recipients) which expend a total of \$300,000 or more (*\$500,000 for fiscal years ending after December 31, 2003*) in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and the Office of Management and Budget (OMB) Circular A-133. All sub-grantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the Department Contract Monitor.
  - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
  - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment,

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 *et seq.*) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation—programs, activities, and facilities and employment. It states, among other things, that:

*Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.*

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.

- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

**CERTIFICATION REGARDING LOBBYING**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Award No.	Organizational Entry
Name and Title of Official Signing for Organizational Entry	Telephone No. Of Signing Official
Signature of Above Official	Date Signed

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. Contract</p> <p><input type="checkbox"/> b. Grant</p> <p><input type="checkbox"/> c. Cooperative Agreement</p> <p><input type="checkbox"/> d. Loan</p> <p><input type="checkbox"/> e. Loan guarantee</p> <p><input type="checkbox"/> f. Loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. Bid/offer/application</p> <p><input type="checkbox"/> b. Initial award</p> <p><input type="checkbox"/> c. Post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. Initial filing</p> <p><input type="checkbox"/> b. Material change</p> <p>For Material Change Only:          Year _____ quarter          _____          Date of last report</p>
<p><b>4. Name and Address of Reporting Entity:</b></p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known:</p>		<p><b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known:</p>
<p><b>6. Federal Department/Agency:</b></p>		<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable: _____</p>
<p><b>8. Federal Action Number, if known:</b></p>		<p><b>9. Award Amount, if known:</b></p> <p>\$ _____</p>
<p><b>10. a. Name and Address of Lobbying Registrant</b> (if individual, last name, first name, MI):</p>		<p><b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):</p>
<p><b>11. Amount of Payment</b> (check all that apply)</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>		<p><b>13. Type of Payment</b> (check all that apply)</p> <p><input type="checkbox"/> a. retainer</p> <p><input type="checkbox"/> b. one-time</p> <p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> f. other; specify: _____</p>
<p><b>12. Form of Payment</b> (check all that apply)</p> <p><input type="checkbox"/> a. cash</p> <p><input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>		
<p><b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b></p> <p>(attach Continuation Sheet(s) SF-LLLA, if necessary)</p>		
<p><b>15. Continuation Sheet(s) SF-LLLA attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p><b>16.</b> Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>

<b>Federal Use Only:</b>	Authorized for Local Reproduction Standard Form LLL (Rev. 7- 97)

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro Children Act of 1994, Part C Environmental Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the Offeror/Contractor (for acquisitions) or Applicant/Grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

---

Signature of Authorized Certifying Individual

**ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

**Reference COMAR 21.05.08.08**

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## ATTACHMENT J – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through Department of Health and Mental Hygiene (the “Department”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for **External Quality Review of Maryland Managed Care Organizations**, Solicitation #17-15992; and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the State deems confidential information (the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, Confidential Information means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, State Govt. §10-1301) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former

Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
  - a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
  - f. The Recitals are not merely prefatory but are an integral part hereof; and
  - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

**IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: \_\_\_\_\_

DEPARTMENT OF HEALTH AND MENTAL  
HYGIENE

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

**NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1**

**LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION**

<b>Printed Name and Address of Individual/Agent</b>	<b>Employee (E) or Agent (A)</b>	<b>Signature</b>	<b>Date</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**NON-DISCLOSURE AGREEMENT –ATTACHMENT J-2**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.**

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made by and between the Department of Health and Mental Hygiene (Department) and \_\_\_\_\_ (Insert **Name of Contractor**) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

**DEFINITIONS.**

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Contractor**).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean the Department of Health and Mental Hygiene.
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

#### **PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.**

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State’s payment of Business Associate for its performance pursuant to the Underlying Agreement.

- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

#### **DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D. 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
- B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
- D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
- i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

#### IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for **External Quality Review of Maryland Managed Care Organizations**, Solicitation #17-15992, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
  2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.
- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

#### V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

## **VI. REMEDIES IN EVENT OF BREACH**

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

## **VII. MODIFICATION; AMENDMENT**

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

## **VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

## **IX. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

## **X. MISCELLANEOUS**

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Name: Ramiiek James, Esq.  
Address: 201 West Preston Street, 5<sup>th</sup> Floor  
Baltimore, MD 21201  
Email: [ramiek.james@maryland.gov](mailto:ramiek.james@maryland.gov)  
Phone: (410) 767-5411

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

**FORM OF NOTIFICATION TO COVERED ENTITY OF  
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.2.D (3) of the Business Associate Agreement between the Department of Health and Mental Hygiene and \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies the Department of Health and Mental Hygiene that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_  
\_\_\_\_\_

Date of the breach: \_\_\_\_\_ Date of discovery of the breach: \_\_\_\_\_

Does the breach involve 500 or more individuals? Yes/No      If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: \_\_\_\_\_

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):  
\_\_\_\_\_  
\_\_\_\_\_

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**ATTACHMENT L – MERCURY AFFIDAVIT**

This solicitation does not include the procurement of products known to likely include mercury as a component.

**ATTACHMENT M-1**  
**VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule**

**(submit with Bid/Proposal)**

This document **MUST BE** included with the Bid/Proposal. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the procurement officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. (17-15992), I affirm the following:

1.  I acknowledge and intend to meet the overall verified VSBE participation goal of 1%. Therefore, I will not be seeking a waiver.

**OR**

- I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.
  - (a) Subcontractor Project Participation Statement (**Attachment M-2**); and
  - (b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotations or offers, VSBE subcontractors were provided not less than the same information and amount of time to respond as were non-VSBE subcontractors.
4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

**ATTACHMENT M-1**  
**VSBE Prime/Subcontractor Participation Schedule**

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - _____	

List Information for Each Verified VSBE Prime Contractor or Subcontractor on This Project

Name of Veteran-Owned Firm:  Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm:  Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm:  Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm:  Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:

Continue on a separate page, if needed.

**SUMMARY**

**TOTAL VSBE Participation:** \_\_\_\_\_%

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Affiant

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTACHMENT M-2**  
**VSBE Subcontractor Participation Statement**

*Please complete and submit one form for each verified VSBE listed on Attachment M-1  
within 10 Business days of notification of apparent award*

\_\_\_\_\_ (prime contractor) has entered into a contract with  
\_\_\_\_\_ (subcontractor) to provide services in connection with the Solicitation described  
below.

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total Contract Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: \$

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

**PRIME CONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
Name, Title  
Date \_\_\_\_\_

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
Name, Title  
Date \_\_\_\_\_

This form is to be completed  
monthly by the prime contractor.

**ATTACHMENT M-3**  
**Veterans Small Business Enterprise (VSBE) Participation**  
**Prime Contractor Paid/Unpaid VSBE Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Report is due to the Contract Monitor by the 10<sup>th</sup> of the month following the month the services were provided.</b>  <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ VSBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	---

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
VSBE Prime Contractor Services Provided (if applicable):			
Subcontractor Name:		Contact Person:	
Phone:	Fax:		
VSBE Subcontractor Services Provided (if applicable):			
<b>List all payments made to VSBE subcontractor named above during this reporting period:</b> <u>Invoice# Amount</u> 1.  2.  3.  4.  <b>Total Dollars Paid: \$</b> _____		<b>List dates and amounts of any outstanding invoices:</b> <u>Invoice #Amount</u> 1.  2.  3.  4.  <b>Total Dollars Unpaid: \$</b> _____	

If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor.  
**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Required)

This form must be completed monthly  
by all VSBE subcontractors.

**ATTACHMENT M-4**  
**Veterans Small Business Enterprise Participation**  
**Subcontractor Paid/Unpaid VSBE Invoice Report**

Report#: _____  Reporting Period (Month/Year): _____  <b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	Contract # _____ Contracting Unit: _____ VSBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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VSBE Subcontractor Name: _____		
Department of Veterans Affairs Certification #: _____		
Contact Person: _____	E-mail: _____	
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	
<b>VSBE Subcontractor Services Provided:</b>		
<b>List all payments received from Prime Contractor during reporting period indicated above.</b> <u>Invoice Amt Date</u> 1. _____  2. _____  3. _____  <b>Total Dollars Paid: \$</b> _____	<b>List dates and amounts of any unpaid invoices over 30 days old.</b> <u>Invoice Amt Date</u> 1. _____  2. _____  3. _____  <b>Total Dollars Unpaid: \$</b> _____	
Prime Contractor: _____	Contact Person: _____	

**Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
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**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
(Required)

**ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE**

**(submit with Bid/Proposal)**

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. \_\_\_\_\_, the following disclosures are hereby made:

- 1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:
  - \_\_\_ have plans
  - \_\_\_ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

- a. Location(s) services will be performed:

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- b. Reasons why it is necessary or advantageous to perform services outside the United States:

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The undersigned, being an authorized representative of the Bidder/Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

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

Bidder/Offeror Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

## ATTACHMENT P – EQRO RESOURCES

### **CMS EQR Protocols**

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Quality-of-Care/Quality-of-Care-External-Quality-Review.html>

### **HealthChoice Consumer Report Card (English)**

[https://mmcp.dhmf.maryland.gov/healthchoice/Documents/MDEQRO\\_Report\\_Card\\_3\\_3\\_2015english%20\(1\).pdf](https://mmcp.dhmf.maryland.gov/healthchoice/Documents/MDEQRO_Report_Card_3_3_2015english%20(1).pdf)

### **HealthChoice Consumer Report Card (Spanish)**

[https://mmcp.dhmf.maryland.gov/healthchoice/Documents/MDEQRO\\_Report\\_Card\\_3\\_3\\_2015spanish%20\(1\)%20\(1\).pdf](https://mmcp.dhmf.maryland.gov/healthchoice/Documents/MDEQRO_Report_Card_3_3_2015spanish%20(1)%20(1).pdf)

### **Maryland Healthy Kids/EPSTD Program Information**

<https://mmcp.dhmf.maryland.gov/epsdt/SitePages/Home.aspx>

### **Maryland Healthy Kids Preventive Health Schedule**

[https://mmcp.dhmf.maryland.gov/epsdt/healthykids/Documents/Maryland%20EPSTD%20Healthy%20Kids%20Preventive%20Health%20Schedule%20Jan%2014\\_11%2003%2015.pdf](https://mmcp.dhmf.maryland.gov/epsdt/healthykids/Documents/Maryland%20EPSTD%20Healthy%20Kids%20Preventive%20Health%20Schedule%20Jan%2014_11%2003%2015.pdf)

### **Maryland 2014 EQRO Annual Technical Report**

<https://mmcp.dhmf.maryland.gov/healthchoice/Documents/CY%202014%20MD%20ATR%20FINAL.pdf>

**ATTACHMENT Q –STANDARDS FOR 2016 SYSTEMS PERFORMANCE REVIEW**

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
1.0	<p><b>Systematic Process of Quality Assessment and Improvement – The QAP objectively and systematically monitors and evaluates the QOC and services to enrollees, through QOC studies and related activities, and pursues opportunities for improvement on an ongoing basis.</b></p>			<p>42 CFR § 438.204a 42 CFR § 438.240 42 CFR § 438.240a2 COMAR 10.09.65.03</p>
1.1	<p>The QAP has written guidelines for QOC studies and related activities that include the specification of clinical or health services to be monitored.</p> <p>a. The monitoring and evaluation of care reflects the population served by the MCO in terms of age, disease categories, and special risk status.</p> <p>b. The QAP monitors and evaluates priority areas of concern selected by the State and any additional areas of concern identified by the MCO.</p>	<p>The MCO demonstrates the ability to capture and analyze data that describe the demographic, health status, and utilization patterns of the enrolled population.</p> <p>The MCO documents processes used to prioritize problems and develop a time frame for QAP studies and projects.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Policies &amp; Procedures</li> <li>• Data Analysis</li> <li>• Enrollee Profiles (demographic data; medical and pharmacy utilization data)</li> <li>• QAC Meeting Minutes</li> <li>• QA Timeline/Work Plan</li> <li>• <u>Outreach Plan</u></li> </ul>	<p>42 CFR § 438.204a 42 CFR § 438.240 42 CFR § 438.240a2 COMAR 10.09.65.03</p>
1.2	<p>The QAP's written guidelines for the MCO's QOC studies and related activities require the use of quality indicators.</p> <p>a. The organization identifies and uses quality indicators that are objective, measurable, and based on current knowledge and clinical experience.</p> <p>b. Methods and frequency of data collection are appropriate and sufficient to detect the need for program change.</p>	<p>QOC study designs or project plan contain indicators based on sound clinical evidence or guidelines. The methodology and frequency of data collection will be evaluated to determine if they are sufficient to detect change.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Policies &amp; Procedures</li> <li>• QOC Study Designs</li> <li>• QOC Project Plans</li> <li>• Quality Indicators</li> <li>• Data Analysis</li> </ul>	<p>42 CFR § 438.204a 42 CFR § 438.240 42 CFR § 438.240a2 COMAR 10.09.65.03</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
1.3	<p>The QAP has written guidelines for its QOC studies and related activities must include the use of clinical practice guidelines.</p> <p>a. <u>Clinical practice guidelines are used to determine variances from practice that may require additional study.</u></p> <p>b. <u>Clinical practice</u> guidelines are based on evidence based practices <u>or professional standards of practice</u> and are developed or reviewed by MCO providers.</p> <p>c. The guidelines focus on the process and outcomes of health care delivery and access to care.</p> <p>d. A mechanism is in place for continuously updating the guidelines as appropriate. There is evidence that this occurs.</p> <p>e. The guidelines are included in the provider manuals or disseminated to the providers <u>(electronically or faxed)</u> as they are adopted.</p> <p>f. There are guidelines to address preventive health services <u>for children and adults.</u></p> <p>g. The guidelines are developed for the <u>relevant</u> populations enrolled in the MCO <u>as noted in Standard 1.1a.</u></p> <p>h. The QAP has written guidelines to evaluate the QOC provided by the MCO's providers.</p>	<p>There must be a comprehensive set of guidelines that address preventive care and the range of the populations enrolled in the MCO. Clinical practice guidelines provide the basis for QOC studies and related QA activities.</p> <p>There is evidence that these guidelines are based on reasonable evidence based practice and have been developed or reviewed by plan providers. The guidelines in use allow for the assessment of the process and outcomes of care. The MCO must have a mechanism in place for reviewing the guidelines at least every two years and updating them as appropriate. There must be evidence that the providers receive the guidelines. The QAP has written guidelines to evaluate the QOC provided.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Policies &amp; Procedures</li> <li>• Practice Guidelines</li> <li>• Clinical Care Standards</li> <li>• QOC Study Designs</li> <li>• QOC Study Tools</li> <li>• QOC Project Plans</li> <li>• Quality Indicators</li> <li>• Data Analysis</li> </ul>	42 CFR § 438.236

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
1.4	<p>The QAP has written guidelines for its QOC studies and related activities that require the analysis of clinical and related services.</p> <p>a. <u>The QAP has written guidelines to evaluate the QOC provided by the MCO's providers.</u></p> <p>b. Appropriate clinicians monitor and evaluate quality through review of individual cases and through studies analyzing patterns of clinical care.</p> <p>c. Multidisciplinary teams are used to analyze, identify, and address systems issues.</p> <p>d. Clinical and related service areas requiring improvements are identified through activities described in a. and b. above.</p>	<p>The QA Plan and/or related documents describe the methodology for monitoring <u>the quality of care provided by the MCO's providers. This may be through study of clinical care</u> and services through individual case review, <u>provider utilization studies</u>, and <u>practice</u> pattern analysis.</p> <p>The composition of the team is described in the QA Plan and/or related documents. There is evidence that through these activities those areas requiring improvement are identified and acted upon.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Data Analysis</li> <li>• Policies &amp; Procedures</li> <li>• QA/QIC Meeting Minutes</li> <li>• QA/QIC Membership</li> <li>• QA/QIC Attendance Records</li> </ul>	42 CFR § 438.240

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
1.5	<p>The QAP includes written procedures for taking appropriate remedial action whenever inappropriate or substandard services are furnished or services that should have been furnished were not. The remedial/corrective action procedures specifically include:</p> <ol style="list-style-type: none"> <li><u>Performance thresholds to identify when actual or potential problems may exist that require remedial/corrective action.</u></li> <li>The <u>individual(s) or department(s)</u> responsible for making the final determinations regarding quality problems.</li> <li>The specific actions to be taken.</li> <li>The provision of feedback to the appropriate health professionals, providers, and staff.</li> <li>The schedule and accountability for implementing corrective actions.</li> <li>The approach to modifying the corrective action if improvements do not occur.</li> <li>The procedures for terminating health professionals, providers, or staff.</li> </ol>	<p>The QA Plan specifies the process for identifying problems and taking appropriate corrective actions. Documentation must be provided to ensure that policies and procedures are in place that support the process and address all components of this element. This would include the identification, development, implementation and monitoring of CAPs.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Policies &amp; Procedures</li> <li>• Data Analysis</li> <li>• Provider Feedback</li> <li>• CAPs</li> </ul>	HCQIS II.E.1-7
1.6	<p>The QAP has written guidelines for the assessment of the effectiveness of CAPs.</p> <ol style="list-style-type: none"> <li>The implementation of CAPs is monitored to assure that appropriate changes have been made.</li> <li>The MCO must ensure that actions for improvement have been effective.</li> </ol>	<p>The QA Plan and/or related policies and procedures must describe the CAP monitoring process. This plan must address the tracking of changes in practice patterns as well as follow-up by the MCO.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Policies &amp; Procedures</li> <li>• Data Analysis</li> <li>• Provider Feedback</li> <li>• CAPs</li> <li>• CAP Monitoring Documents</li> <li>• <u>Committee Meeting Minutes</u></li> </ul>	HCQIS II.F.1-2

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
1.7	<p>The QA Plan incorporates written guidelines for evaluation of the <u>status of QAP activities and the continuity and effectiveness of the QAP.</u></p> <p>a. <u>The MCO reviews the status of QAP activities against the QA Work Plan on a quarterly basis.</u></p> <p>b. <u>There is evidence that QA activities are assessed to determine if they have contributed to improvements in the care and services delivered to enrollees.</u></p>	<p>The QA Plan describes the method to be used to assure that the QAP is routinely reviewed to assess its scope and content.</p> <p>Documentation must be provided to substantiate that QA activities have resulted in improvements to care. <u>And if not, what is being done to address areas of opportunity for improvement.</u> QOC study data, analysis, reports and findings may support these improvements.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• <u>Policies and Procedures</u></li> <li>• QAC Meeting Minutes</li> <li>• QOC Studies</li> <li>• QAP Annual Report</li> </ul>	42 CFR § 438.240
1.8	<p>A comprehensive annual written report on the QAP is completed. The annual report on the QAP must include:</p> <p>a. <u>QA studies and other activities undertaken, results, and subsequent actions.</u></p> <p>b. <u>Trending of clinical and service indicators and other performance data, including HEDIS® CAHPS® results.</u></p> <p>c. <u>Analysis of aggregate data on utilization and quality of services rendered.</u></p> <p>d. <u>Demonstrated improvements in quality.</u></p> <p>e. <u>Areas of deficiency.</u></p> <p>f. <u>Recommendations for improvement to be included in the subsequent year's QA Work Plan.</u></p> <p>g. <u>An evaluation of the overall effectiveness of the QAP.</u></p>	<p>The annual report on the QAP must include all required components.</p> <p>Note: Element 2.1 requires this report to be reviewed and approved by the governing body to assess the QAP's continuity, effectiveness, and current acceptability.</p>	<ul style="list-style-type: none"> <li>• Annual QAP Evaluation Report</li> <li>• QAC Meeting Minutes</li> </ul>	42 CFR § 438.240
1.9	<p>The QA Plan must contain an organizational chart that includes all positions required to facilitate the QAP.</p>	<p>The organizational chart must be comprehensive, indicating all appropriate positions and their relationships to one another.</p>	<ul style="list-style-type: none"> <li>• QAP Organizational Chart</li> </ul>	42 CFR § 438.240
1.10	<p><u>The MCO must have a Disaster Recovery Plan which is updated on an annual basis.</u></p>	<p><u>The MCO and its subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided will be maintained in the event of disruption to the MCO/subcontractor's operations</u></p>	<ul style="list-style-type: none"> <li>• <u>Disaster Recovery Plan</u></li> </ul>	<u>COMAR 10.09.65.15</u>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<u>(including, but not limited to, disruption to information technology systems), however caused.</u>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
2.0	<p><b>Accountability to the Governing Body – The governing body of the MCO is the BOD or, where the Board’s participation with the QI issues is not direct; a committee of the MCO’s senior management is designated. The governing body is responsible for monitoring, evaluating, and making improvements to care.</b></p>			HCQIS III
2.1	<p>There is documentation that the governing body has oversight of the QAP. The governing body must approve the overall QAP and an annual QA Plan.</p>	<p>The governing body is the BOD or the designated entity of senior management that has accountability and oversight of the operations of the MCO, including but not limited to the QAP.</p> <p>The QA Plan must specify that the governing body has oversight of the QAP. The governing body meeting minutes must reflect the review and approval of the overall QAP and the annual QA Plan.</p>	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• MCO Organizational Chart</li> <li>• QA Organizational Chart</li> <li>• Governing Body Meeting Minutes</li> </ul>	HCQIS III.A
2.2	<p>The governing body formally designates an accountable entity or entities within the organization to provide oversight of QA, or has formally decided to provide oversight as a committee.</p>	<p>Documentation must be provided to indicate what committee or body the governing body has designated as the entity accountable for oversight of QA activities.</p> <p>Note: When the BOD or the designated entity of senior management does not choose to provide direct oversight of the day-to-day operations of the QAP, it must formally designate in writing a committee or other entity to provide such oversight. For example, this may be the MCO’s Quality Committee. However, the governing body must continue to perform all of the responsibilities noted in Standard <u>2.0</u>.</p>	<ul style="list-style-type: none"> <li>• Governing Body Meeting Minutes</li> <li>• QA Plan</li> <li>• QAC Meeting Minutes</li> <li>• QA Organizational Chart</li> </ul>	HCQIS III.B

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
2.3	The governing body routinely receives written reports on the QAP that describe actions taken, progress in meeting QA objectives, and improvements made.	<b>There must be evidence that the governing body receives written reports from the QAC. Reporting to the governing body should occur according to the time frames documented in the QA Plan (e.g., monthly, quarterly, etc.).</b>	<ul style="list-style-type: none"> <li>• Governing Body Meeting Minutes</li> <li>• QA Plan</li> </ul>	HCQIS III.C
2.4	The governing body formally reviews, at least annually, the written report on the QAP.	There must be evidence in the governing body meeting minutes that this document was reviewed and approved by the governing body.	<ul style="list-style-type: none"> <li>• QAP Annual Evaluation Report</li> <li>• Governing Body Meeting Minutes</li> </ul>	HCQIS III.D
2.5	The governing body takes action when appropriate and directs that the operational QAP be modified on to accommodate review of findings and issues of concern within the MCO.	The governing body receives regular written reports from the QAP delineating actions taken and improvements made (Element 2.3). As a result, the governing body takes action and provides follow-up when appropriate. These activities are documented in the minutes of the meetings in sufficient detail to demonstrate that it has directed and followed up on necessary actions pertaining to the QAP.	<ul style="list-style-type: none"> <li>• QA Plan</li> <li>• Governing Body Meeting Minutes</li> <li>• QAC Meeting Minutes</li> </ul>	HCQIS III.E

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
2.6	<p>The governing body <u>or its designated credentialing body</u> is active in credentialing and recredentialing functions. The following activities related to credentialing and recredentialing must be evident:</p> <ol style="list-style-type: none"> <li>The governing body or delegate approves the credentialing and recredentialing plan and reviews credentialing and recredentialing committee minutes/reports.</li> <li>If credentialing or recredentialing is delegated, evidence of governing body oversight of the delegated entity is present in the governing body's meeting minutes.</li> </ol>	<p>There must be evidence that the credentialing plan and recredentialing committee minutes/reports have been reviewed and approved by the appropriate <u>governing</u> body, group or individual.</p> <p>There is evidence that the MCO is monitoring the delegate's activities. There is evidence that the MCO monitors the effectiveness of the delegate's activities.</p>	<ul style="list-style-type: none"> <li>Governing Body Meeting Minutes</li> <li><u>Credentialing Committee Meeting Minutes</u></li> </ul>	<p>HCQIS IX B HCQIS IX G</p>
2.7	<p>The governing body is active in <u>UM</u> activities. The governing body meeting minutes reflect ongoing reporting of:</p> <ol style="list-style-type: none"> <li><u>UM activities and findings, and</u></li> <li><u>Evaluation of UM progress.</u></li> </ol>	<p>The <u>UM</u> Plan provides a clear definition of the overall authority and responsibility of the governing body.</p>	<ul style="list-style-type: none"> <li>Governing Body Meeting Minutes</li> <li>UR Plan</li> </ul>	<p>HCQIS XIII</p>
2.8	<p>An MCO may not knowingly have a relationship with individuals debarred by Federal Agencies.</p> <ol style="list-style-type: none"> <li>An MCO must have written policies and procedures ensuring that its directors, officers, and/or partners do not knowingly have any relationship with or an affiliation with individuals debarred by Federal Agencies.</li> <li>An MCO must have written policies and procedures ensuring that it does not have an individual debarred by Federal Agencies with beneficial ownership of five percent or more of the MCO's equity.</li> <li>An MCO must have written policies and procedures ensuring that it does not have an individual debarred by Federal Agencies with an employment, consulting or other arrangement with the MCO.</li> </ol>	<p>An MCO may not have a relationship with an individual who is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No.12549 or under guidelines implementing Executive Order No. 12549.</p> <p>An MCO may not have an affiliation with an individual who has been debarred by Federal Agencies, as defined in the Federal Acquisition Regulation.</p>	<ul style="list-style-type: none"> <li>Governance Policies and Procedures</li> <li>Subcontracting and Employment Policies and Procedures</li> </ul>	<p>42 CFR § 438.610(a) 42 CFR § 438.610(b) COMAR 10.09.64.03</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
3.0	<b>Oversight of Delegated Entities – The MCO remains accountable for all functions, even if certain functions are delegated to other entities.</b>			<b>HCQIS VIII COMAR 10.09.65.17 42 CFR § 438.230</b>
3.1	There is a written description of the delegated activities, the delegate's accountability for these activities, and the frequency of reporting to the MCO.	The contract for delegated activities contains the components listed in this element.	<ul style="list-style-type: none"> <li>• Delegation Contract</li> <li>• Delegation Policies &amp; Procedures</li> </ul>	HCQIS VIILA COMAR 10.09.65.17.A
3.2	The MCO has written procedures for monitoring and evaluating the implementation of the delegated functions and for verifying the QOC being provided.	The MCO has policies and procedures in place to monitor and evaluate the delegated functions and for verifying the care provided.	<ul style="list-style-type: none"> <li>• Delegation Contract</li> <li>• Delegation Policies &amp; Procedures</li> <li>• Documentation of Monitoring Activities</li> </ul>	HCQIS VIILB COMAR 10.09.65.17.D
3.3	There is evidence of continuous and ongoing evaluation of delegated activities, including: <ul style="list-style-type: none"> <li>a. Oversight of delegated entities' performance to ensure the quality of the care and/or service provided, through the review of regular reports, annual reviews, site visits, etc.</li> <li>b. Quarterly review and approval of reports from the delegates that are produced at least quarterly regarding complaints, grievances, and appeals, where applicable.</li> <li>c. Review and approval of claims payment activities <u>at least semi-annually</u>, where applicable.</li> <li>d. Review and approval of the delegated entities' UM plan, which must include evidence of review and approval of UM criteria by the delegated entity, where applicable.</li> <li>e. Review and approval of over and under utilization reports, <u>at least semi-annually</u>, where applicable.</li> </ul>	There is evidence that an appropriate committee or body within the MCO makes process improvement decisions and acts upon the conclusions drawn from delegated entity monitoring according to the MCO's internal policies and procedures and/or the terms set forth in the delegate's contract.  The MCO must provide evidence of items a. through e.	<ul style="list-style-type: none"> <li>• Delegation Contract</li> <li>• Delegation Policies &amp; Procedures</li> <li>• Documentation of Monitoring Activities</li> <li>• Delegation Committee Meeting Minutes</li> <li>• Delegated Entities' Complaints, Grievances, and Appeals Reports, where applicable</li> <li>• Delegated Entities' Claims Payment Monitoring Reports, where applicable</li> <li>• Delegated Entities' Utilization Activity Reports, where applicable</li> </ul>	HCQIS VI .C 42 CFR § 438.230(a&b) COMAR 10.09.65.17.D COMAR 31.10.11 COMAR 31.10.23.01 Maryland Insurance Article § 15-1004 Maryland Insurance Article§ 15-1005

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
4.0	<b>Credentialing and Recredentialing – The QAP contains all required provisions to determine whether physicians and other health care professionals licensed by the State and under contract with the MCO are qualified to perform their services.</b>			<b>HCQIS IX</b> 42 CFR § 438.102 (a & b)
4.1	<p>The MCO has written policies and procedures for the credentialing process that govern the organization’s credentialing and recredentialing.</p> <p>a. The MCO must have a written Credentialing Plan that contains the policies and procedures describing the initial credentialing and subsequent recredentialing process.</p> <p>b. The Credentialing Plan designates a CC or other peer review body that makes recommendations regarding credentialing decisions.</p> <p>c. The Credentialing Plan must identify the practitioners who fall under its scope of authority and action.</p> <p>d. The Credentialing Plan must include policies and procedures for communication with providers regarding provider applications within the timeframes specified in Insurance Article Section 15-112(d).</p>	<p>The MCO must have a comprehensive written Credentialing Plan and/or policies and procedures outlined in the QA Plan that describe the process for credentialing and recredentialing.</p> <p>The Credentialing Plan must designate the peer review body that has the authority to make recommendations regarding credentialing decisions and must identify the practitioners who fall under its authority.</p> <p>Within 30 days of receipt of a completed application, the MCO shall send to the provider at the address listed in the application written notice of the MCO’s:</p> <ul style="list-style-type: none"> <li>• intent to continue to process the provider’s application to obtain necessary credentialing information.</li> <li>• rejection of the provider for participation in the MCO’s provider panel.</li> </ul> <p>If the MCO provides notice to the provider of its intent to continue to process the providers application, the MCO, within 120 days after the date the notice is provided, shall:</p>	<ul style="list-style-type: none"> <li>• Credentialing Plan</li> <li>• Credentialing Process in QA Plan</li> <li>• Governing Body Meeting Minutes</li> <li>• Delegation Committee/Oversight Committee Meeting Minutes</li> <li>• Credentialing Policies &amp; Procedures</li> </ul>	<p>HCQIS IX A-D</p> <p>Maryland Insurance Article § 15-112 (a)(4)(ii)(9)</p> <p>Article § 15-112(d)</p> <p>COMAR 10.09.65.02N</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<ul style="list-style-type: none"> <li>• accept or reject the provider for participation on the MCO’s provider panel.</li> <li>• send written notice of the acceptance or rejection to the provider at the address on the application.</li> </ul> <p>After the MCO receives the completed application, the MCO is subject to the aforementioned time frames for completed application processing.</p> <p>When an “online credentialing system” is utilized by the MCO the following applies:</p> <ul style="list-style-type: none"> <li>• The MCO is required to track the date of the application i.e. query the online credentialing system so that dates of credentialing can be calculated.</li> <li>• The “10 Day Letter” is not applicable since the entire application must be completed prior to exiting the application.</li> <li>• The “30 Day Letter” still applies with the above mentioned timeframes.</li> <li>• If an MCO does not accept applications through an “online credentialing system”, notice shall be given to the provider at the address listed in the application within 10 days after the date the application is received that the application is complete.</li> </ul>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
4.2	<p>There is documentation that the MCO has the right to approve new providers and sites and to terminate or suspend individual providers. Documentation includes:</p> <ol style="list-style-type: none"> <li>Written policies and procedures for the suspension, reduction, or termination of practitioner privileges.</li> <li>A documented process for, and evidence of implementation of, reporting to the appropriate authorities, any serious quality deficiencies resulting in suspension or termination of a practitioner.</li> <li>A documented process for provider appeals in the event of the MCO's suspension, termination, or reduction of a practitioner's privileges with the organization.</li> </ol>	<p>There are policies and procedures in place for the suspension, reduction, or termination of practitioner privileges. There is evidence that these policies and procedures have been implemented.</p> <p>The policies and procedures must identify the mechanism for reporting serious quality deficiencies, resulting in suspension or termination of a practitioner, to the appropriate authorities. There is evidence that this process is in place. There is a comprehensive provider appeals process. A review of provider appeals indicates that the process is followed according to policy and procedures.</p>	<ul style="list-style-type: none"> <li>Credentialing Plan</li> <li>Recredentialing Plan</li> <li>Credentialing Policies &amp; Procedures</li> <li>Provider Appeal Policy &amp; Procedure</li> <li>Provider Appeals Files</li> <li>Facility Site Reviews (completed forms/files)</li> </ul>	HCQIS IX H-J
4.3	<p>If the MCO delegates credentialing/recredentialing activities, the following must be present:</p> <ol style="list-style-type: none"> <li>A written description of the delegated activities.</li> <li>A description of the delegate's accountability for designated activities.</li> <li>Evidence that the delegate accomplished the credentialing activities.</li> </ol>	<p>The contract for delegated services includes a description of the delegated activities and the delegate's accountability for designated activities.</p> <p>The delegate provides reports to the MCO according to the contract requirements.</p>	<ul style="list-style-type: none"> <li>Delegation Contract</li> <li>Delegate Progress Reports to the MCO</li> <li>MCO Monitoring Documents</li> </ul>	HCQIS IX G

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
4.4	<p>The credentialing process must be ongoing and current. At a minimum, the credentialing process must include:</p> <ol style="list-style-type: none"> <li>A review of a current valid license to practice.</li> <li>A review of a valid DEA or CDS certificate, if applicable.</li> <li>A review of graduation from medical school and completed residency or post-graduate training, as applicable.</li> <li>A review of work history.</li> <li>A review of a professional and liability claims history.</li> <li>A review of current adequate malpractice insurance according to the MCO's policy.</li> <li><b>A review of good standing of clinical privileges at the hospital designated by the practitioner as the primary admitting facility.</b></li> <li>A review of EPSDT certification.</li> <li>Adherence to the time frames set forth in the MCO's policies regarding credentialing date requirements.</li> <li>Adherence to the timeframes set forth in the MCO's policies for communication with providers regarding provider applications within the timeframes specified in Insurance Article Section 15-112(d).</li> </ol>	<p>The credentialing plan and policies and procedures require, at a minimum, that the MCO obtain the information required in components a-h for the credentialing process.</p> <p><b>Note:</b> (h) is applicable to those PCPs who deliver preventive health care services to enrollees less than 21 years of age. The reviewer will assess the MCO's methodology for verifying whether PCPs in the MCO's network that see patients under age 21 are EPSDT certified.</p> <p>As a result of House Bill 444, changes were made to Maryland Insurance Article Section 15-112 in CY 2011. Updates must be made to credentialing policies and procedures to reflect the following: If the MCO does not accept applications through an online credentialing system, the MCO must provide notice to the provider that the application is complete at the address listed in the application within 10 days after the date the application is received.</p>	<ul style="list-style-type: none"> <li>Credentialing Plan</li> <li>Credentialing Policies &amp; Procedures</li> <li>Sample Credentialing Records</li> <li>Written correspondence to providers.</li> </ul>	<p>HCQIS IX E.1-7  42 CFR § 438.214(c-e)  COMAR 10.09.65.02.N  Maryland Insurance Article § 15-112 (a)(4)(ii)(9)  Article § 15-112 (d)</p>
4.5	<p><b>There should be evidence that the MCO requests from recognized monitoring organizations information about the practitioner. The evidence must include:</b></p> <ol style="list-style-type: none"> <li>Any revocation or suspension of a State license or a DEA/BNDD number.</li> <li>Any curtailment or suspension of medical staff privileges (other than for incomplete medical records).</li> <li>Any sanctions imposed by Medicare and/or</li> </ol>	<p>The credentialing plan and policies and procedures require that the MCO request information required in components a-d from recognized monitoring organizations.</p>	<ul style="list-style-type: none"> <li>Credentialing Plan</li> <li>Credentialing Policies &amp; Procedures</li> <li>Sample Credentialing Records</li> <li>Credentialing Committee Meeting Minutes</li> </ul>	<p>HCQIS IX E.8-12</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>Medicaid.</p> <p>d. Information about the practitioner from the NPDB and the MBP.</p>			
4.6	<p>The credentialing application includes the following:</p> <p>a. The use of illegal drugs.</p> <p>b. Any history of loss of license.</p> <p>c. Any history of loss or limitation of privileges or disciplinary activity.</p> <p>d. Attestation to the correctness and completeness of the application.</p>	<p>The credentialing plan and policies and procedures describe the application process. This process includes the requirement that the applicant must provide a statement that includes components a-d.</p> <p>There must be evidence in the credentialing files that this statement is completed. Type of credentialing application must be reviewed and in compliance with MIA regulatory requirements noted.</p>	<ul style="list-style-type: none"> <li>• Credentialing Plan</li> <li>• Credentialing Policies &amp; Procedures</li> <li>• Sample Credentialing Records</li> <li>• Completed Application</li> <li>• Completed Uniform Credentialing Form</li> </ul>	<p>HCQIS IX E.13.a-e COMAR 31.10.26.03</p>
4.7	<p>There is evidence of an initial visit to each potential PCP's office with documentation of a review of the site and medical record keeping practices to ensure compliance with the ADA and the MCO's standards.</p>	<p>The credentialing plan and policies and procedures must require an initial visit to each potential primary care practitioner's office. There must be documentation that a review of the site includes both an evaluation of ADA compliance and medical record keeping, and that these practices are in conformance with the MCO's standards. Such standards should consider:</p> <ul style="list-style-type: none"> <li>• Handicapped designated parking clearly marked and close to the entrance.</li> <li>• Ramps for wheelchair access.</li> <li>• Door openings to the practice and restroom and hallways should facilitate access for disabled individuals.</li> <li>• Elevator availability for practices above ground level.</li> </ul>	<ul style="list-style-type: none"> <li>• Credentialing Plan</li> <li>• Credentialing Policies &amp; Procedures</li> <li>• Site Visit Tool</li> <li>• Sample Completed Site Visit Tools</li> <li>• Sample Credentialing Records</li> <li>• Applicable Reports of On-site Visits</li> <li>• Credentialing Committee Meeting Minutes</li> </ul>	<p>HCQIS IX E.14 COMAR 10.09.65.02 H (1) <b>28 CFR Chapter 1, Part 36</b></p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
4.8	<p>There is evidence that recredentialing is performed at least every three years and:</p> <ol style="list-style-type: none"> <li>Includes a review of information from the NPDB.</li> <li>Includes a review of available performance data.</li> <li>Includes all items contained in element 4.4 a–h.</li> <li>Includes all items contained in 4.6 a–d.</li> <li>Meets the time frames set forth in the MCO’s policies regarding recredentialing decision date requirements.</li> </ol>	<p>The credentialing plan and policies and procedures indicate that recredentialing is performed at least every three years.</p> <p>The recredentialing process requires a review of components contained in a-d. There is evidence in individual provider credentialing files that this has occurred. This information is used to decide whether or not to renew the participating physician agreement.</p>	<ul style="list-style-type: none"> <li>Credentialing Plan</li> <li>Recredentialing Policies &amp; Procedures</li> <li>Sample Credentialing Records</li> <li>Credentialing Committee Meeting Minutes</li> </ul>	<p>HCQIS IX F.1-2 COMAR 10.09.65.02.N Maryland Insurance Article § 15-112 (d)</p>
4.9	<p>There is evidence that the recredentialing process includes a review of the following:</p> <ol style="list-style-type: none"> <li>Enrollee complaints.</li> <li>Results of quality reviews.</li> <li>Hospital privileges and current licensure.</li> <li>Office site compliance with ADA standards, if applicable.</li> </ol>	<p>The credentialing process described in the credentialing plan and policies and procedures requires review of components a–d. There is evidence in provider recredentialing files that this has occurred.</p> <p>There is a process in place to re-assess provider site ADA compliance when:</p> <ul style="list-style-type: none"> <li>the provider has relocated to a site that has not previously been evaluated and approved as being ADA compliant, or</li> <li>there is evidence of ADA non-compliance issues with a particular site of care delivery.</li> </ul>	<ul style="list-style-type: none"> <li>Credentialing Plan</li> <li>Recredentialing Policies &amp; Procedures</li> <li>Sample Recredentialing Records</li> </ul>	<p>HCQIS IX F.3 a – e</p>
4.10	<p>The MCO must have policies and procedures regarding the selection and retention of Providers.</p> <ol style="list-style-type: none"> <li>The MCO must have written policies and procedures for selection and recruitment of providers in the HealthChoice Program.</li> <li>The MCO must have written policies and procedures for the retention of providers in the HealthChoice Program.</li> </ol>	<p>Policies and procedures should be directed at ensuring that recipient choice is enhanced by providers participating in multiple MCOs. Also, ensuring that providers are retained within the Medicaid network.</p>	<ul style="list-style-type: none"> <li>Credentialing Plan</li> <li>Credentialing Policies and Procedures</li> </ul>	<p>42 CFR §438.214 42 CFR § 438.207</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
4.11	<p>The MCO must ensure that enrollees' parents/guardians are notified if they have chosen for their child to be treated by a non-EPSDT certified PCP.</p> <p>a. The MCO must have a written policy and procedure regarding notifying parents/guardians within 30 days of enrollment that the PCP they chose to treat their child is a non-EPSDT certified physician and they have the option to switch to a certified EPSDT PCP if desired.</p> <p>b. The MCO must provide evidence of notification to parents/guardians that the PCP they chose to treat their child is a non-EPSDT certified physician and they have the option to switch to a certified EPSDT PCP if desired.</p>	<p>The MCO must include in the notification:</p> <ul style="list-style-type: none"> <li>• <u>An explanation of theist preventive screening services to which an enrollee is entitled according to the EPSDT periodicity schedule(only a summary is necessary if the periodicity schedule was included in the MCO's welcome packet);</u></li> <li>• Importance of accessing the EPSDT preventive screening services; and</li> <li>• Process for requesting a change to an EPSDT-certified PCP to obtain preventive screening services.</li> </ul>	<ul style="list-style-type: none"> <li>• Policies and Procedures</li> <li>• Letters to Parents/Guardians</li> </ul>	COMAR 10.09.66.05

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
5.0	<b>Enrollee Rights – The organization demonstrates a commitment to treating enrollees in a manner that acknowledges their rights and responsibilities.</b>			HCQIS X 42 CFR § 438.100: P.75
5.1	<p>The MCO has a system linked to the QAP for resolving enrollees’ grievances. This system meets all requirements in COMAR 10.09.71.02 and 10.09.71.04.</p> <ol style="list-style-type: none"> <li>There are written procedures in place for registering and responding to grievances in accordance with COMAR 10.09.71.</li> <li>The system requires documentation of the substance of the grievances and steps taken.</li> <li>The system ensures that the resolution of a grievance is documented according to policy and procedure.</li> <li>The policy and procedure describes the process for aggregation and analysis of grievance data and the use of the data for QI. There is documented evidence that this process is in place and is functioning.</li> <li>The MCO has a documented appeal process. This process must provide for the enrollee to present his/her case to the MCO’s CEO or his/her designee as the final level of grievance process.</li> </ol>	<p>Time frames for resolving grievances in the policy and procedure must be in accordance with the following:</p> <ul style="list-style-type: none"> <li>Emergency medically related grievances not &gt; 24 hours.</li> <li>Non-emergency medically related grievances not &gt; 5 days.</li> <li>Administrative grievances not &gt; 30 days.</li> </ul> <p>The policy and procedures must describe what types of information will be collected when grievances are recorded and processed. The MCO must have a grievance form. The policies and procedures must include the process stating how the form is used and how an enrollee can get assistance from the MCO in completing the form.</p>	<ul style="list-style-type: none"> <li>Grievance Policies &amp; Procedures</li> <li>Grievance Form</li> <li>Grievance Logs</li> <li>Grievance Reports</li> <li>Grievances Files</li> <li>QAC/QIC Meeting Minutes</li> <li>CAB Meeting Minutes</li> <li>Quarterly Complaint/Grievance/ Appeal Reports Sent to DHMH</li> </ul>	<p>HCQIS X.E.1-5</p> <p>COMAR 10.09.71.02 COMAR 10.09.71.04 COMAR 10.09.71.05 42 CFR § 438.402 (a &amp; b) 42 CFR § 438.406 (a &amp; b) 42 CFR § 438.408 (a-f)</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>f. There is complete documentation of the substance of the grievances and steps taken.</p> <p>g. The MCO adheres to the time frames set forth in its policies and procedures for resolving grievances.</p>	<p>The policies and procedures must describe the complete process from the registration through resolution of grievances. The policies and procedures must allow participation by the provider or an ombudsman, if appropriate, and must ensure the participation of individuals within the MCO who have authority to require corrective action.</p> <p>A sample of selected grievances is reviewed to assure that the process is complete and is being followed.</p> <p>The policies and procedures describe the process to be used for data collection and analysis. This must include time frames for collection and reporting. (e.g., collected and analyzed quarterly, reported to the QAC quarterly).</p> <p>The policies and procedures must include the notification of results to the provider and the QACs as required by COMAR.</p> <p>If problems are identified, the reviewer will track the progress of problem resolution. The appeal process must include a final level of appeal to the MCO's CEO or his/her designee.</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
5.2	Enrollee information is written to be readable and easily understood. This information is available in the prevalent non-English languages identified by the Department.	Enrollee information including, but not limited to, enrollee handbook, newsletters, and health education materials are written at the appropriate reading comprehension level for the Medicaid population. The SMOG formula or the Flesch-Kincaid Grade Level Index will be applied to determine readability. Currently, the State has determined that Spanish is the prevalent language in which the MCOs must make vital materials available to enrollees.	<ul style="list-style-type: none"> <li data-bbox="1430 212 1795 277">Enrollee Informational Materials</li> </ul>	COMAR 10.09.65.02.H COMAR 10.09.66.01.A(2) 42 CFR § 438.10 (b)(2)(i) 42 CFR § 438.206 (c)(2)

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
5.3	<p>The organization acts to ensure that the confidentiality of specified patient information and records is protected. The MCO:</p> <ol style="list-style-type: none"> <li>Has established in writing, and enforced, policies and procedures on confidentiality, including confidentiality of medical records and electronic data.</li> <li>Ensures that patient care offices/sites have implemented mechanisms that guard against the unauthorized or inadvertent disclosure of confidential information to persons outside of the MCO.</li> <li>Must hold confidential all information obtained by its personnel about enrollees related to their care and shall not divulge it without the enrollee's authorization unless: (1) it is required by law, (2) it is necessary to coordinate the patient's care, or (3) it is necessary in compelling circumstances to protect the health or safety of an individual.</li> <li>Must ensure that the release of any information in response to a court order is reported to the patient in a timely manner.</li> <li>May disclose enrollee records, with or without the enrollee's authorization, to qualified personnel for the purpose of conducting scientific research, but such personnel may not identify any individual enrollee in any report of research or otherwise disclose participant identity in any manner.</li> </ol>	<p>The policies and procedures address all required components described in a-e. The MCO must provide evidence that these policies and procedures have been implemented.</p> <p>The MCO must provide documentation to demonstrate that it ensures patient care offices/sites have implemented mechanisms that guard against the unauthorized or inadvertent disclosure of confidential information.</p>	<ul style="list-style-type: none"> <li>Medical Records Policies &amp; Procedures</li> <li>Confidentiality Policies &amp; Procedures</li> <li>Sample Provider Contracts</li> <li>Sample Provider Site Visit Evaluation Tool</li> <li>Credentialing Policies &amp; Procedures</li> <li>Tools Related to Assessing Confidentiality of Patient Medical Records</li> <li>Sample of MCO Employee Confidentiality Statement</li> <li>Signed MCO Employee Confidentiality Statements</li> <li>Sample Vendor Contracts</li> </ul>	<p>HCQIS X.1 42 CFR § 438.100 (d) 42 CFR § 438.224</p>
5.4	<p>The MCO has written policies regarding the appropriate treatment of minors.</p>	<p>The MCO has a written policy addressing the appropriate treatment of minors. This policy must address the minor's right to receive treatment without parental consent in cases of sexual abuse, rape, family planning, and sexually transmitted diseases.</p>	<ul style="list-style-type: none"> <li>Treatment of Minors Policy</li> </ul>	<p>HCQIS X.J Health General 20-102</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
5.5	<p>As a result of the enrollee satisfaction surveys, the MCO:</p> <ol style="list-style-type: none"> <li>a. Identifies and investigates sources of dissatisfaction.</li> <li>b. Implements steps to follow up on the findings.</li> <li>c. Informs practitioners and providers of assessment results.</li> <li>d. Reevaluates the effects of b. above at least quarterly.</li> </ol>	<p>There is a process in place for identifying sources of dissatisfaction. The MCO must have mechanisms in place to identify problems, develop plans to address problems, and provide follow-up. There must be documentation (e.g. meeting minutes, CAPs) to demonstrate that policies and procedures are in place and are being followed.</p> <p>There is a mechanism in place to provide survey information to providers as a group, and to an individual provider(s) if warranted.</p>	<ul style="list-style-type: none"> <li>• Patient Satisfaction Evaluation Policies and Procedures</li> <li>• Patient Satisfaction Evaluation Tool</li> <li>• Patient Satisfaction Survey Data Analysis</li> <li>• Corrective Action Plans</li> <li>• Appropriate Committee Meeting Minutes</li> </ul>	<p>HCQIS X.K.3 a-c</p> <p>HCQIS X.K.4</p> <p>42 CFR § 438.206 (c)</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
5.6	<p>The MCO has systems in place to assure that new enrollees receive required information within established time frames.</p> <p>a. Policies and procedures are in place that address the content of new enrollee packets of information and specify the time frames for sending such information to the enrollee.</p> <p>b. Policies and procedures are in place for newborn enrollments, including issuance of the MCO's ID card.</p> <p>c. The MCO has a documented tracking process for timeliness of newborn enrollment that has the ability to identify issues for resolution.</p> <p>d. <u>The MCO includes the Continuity of Health Care Notice in the new enrollee packet.</u></p>	<p>Policies and procedures address the content of new enrollee information packets and time frames for receipt of the packets. At a minimum, new enrollee information packets contain:</p> <ul style="list-style-type: none"> <li>• Enrollee ID card</li> <li>• Enrollee handbook</li> <li>• Provider Directory</li> </ul> <p>New enrollee information packets are provided to new enrollees within 10 calendar days of DHMH's notification to the MCO of enrollment. <u>The packet includes the Continuity of Health Care Notice that is required by § 15-140(f) of the Insurance Article.</u></p> <p>The MCO has a written procedure that tracks and monitors timeliness of receipt of ID cards (including newborns). Such monitoring is analyzed and if timelines are not met, there is evidence of corrective action and evaluation of progress. Performance is reported through committee or the MCO's administrative structure.</p> <p>There is a documented process for newborn enrollment that includes time frames. The MCO has a documented internal mechanism for processing and follow-up on the Daily MCO Newborn Enrollment Report from the Department.</p>	<ul style="list-style-type: none"> <li>• Sample New Enrollee Information Packet</li> <li>• New Enrollee Policies &amp; Procedures</li> <li>• Committee Meeting Minutes</li> <li>• ID Card Fulfillment Reports</li> <li>• ID Card Fulfillment Tracking and Trending Analysis</li> </ul>	<p>COMAR 10.09.66.02 COMAR 10.09.65.02.G (3)</p> <p>COMAR 10.09.63.02 <u>Maryland Insurance Article § 15-140</u></p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
5.7	<p>The MCO must have an active Consumer Advisory Board (CAB).</p> <ol style="list-style-type: none"> <li>a. The MCO's CAB membership must reflect the special needs population requirements.</li> <li>b. The CAB must meet at least six times a year.</li> <li>c. The MCO must have a mechanism for tracking enrollee feedback from the meetings.</li> </ol>	<p>An MCO shall establish a CAB to facilitate the receipt of input from enrollees. The CAB membership shall consist of enrollees and enrollees' family members, guardians, or caregivers. It is to be comprised of no less than 1/3 representation from the MCO's special needs populations, or their representatives. Pursuant to regulation, the CAB shall annually report its activities and recommendations to the Secretary.</p>	<ul style="list-style-type: none"> <li>• Policies and Procedures</li> <li>• Committee Charter</li> <li>• CAB Meeting Minutes</li> <li>• CAB Annual Summary</li> </ul>	COMAR 10.09.65.12

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
6.0	<b>Availability and Accessibility – The MCO has established measurable standards for access and availability.</b>			HCQIS XI
6.1	<p>The MCO must have a process in place to assure MCO service, referrals to other health service providers, and accessibility and availability of health care services.</p> <p>a. The MCO has developed and disseminated written access and availability standards.</p> <p>b. The MCO has processes in place to monitor performance against these standards.</p> <p>c. The MCO has established policies and procedures for the operations of its customer/enrollee services and has developed standards/indicators to monitor, measure, and report on its performance.</p> <p>d. The MCO has documented review of the Enrollee Services Call Center performance.</p>	<p>The MCO has established access and availability standards that comply with HCQIS and COMAR requirements and demonstrates that these standards have been disseminated to providers. These standards must include:</p> <ul style="list-style-type: none"> <li>• routine appointments</li> <li>• urgent appointments</li> <li>• emergency care/services</li> <li>• telephone appointments</li> <li>• advice</li> <li>• enrollee service lines</li> <li>• outreach</li> <li>• clinical and pharmacy access</li> </ul> <p>The MCO has also established policies and procedures for the operations of its internal customer/enrollee services. Performance standards have been developed, such as telephone answering time, wait time, abandon call rates, and time frames for response to enrollees' inquiries. Such standards are measured for performance and identification of issues that affect enrollee services and are reported through established channels, such as committees.</p>	<ul style="list-style-type: none"> <li>• Access and Availability Standards</li> <li>• Access and Availability Policies &amp; Procedures</li> <li>• Provider Manual</li> <li>• Newsletters</li> <li>• Monitoring and Evaluation Processes</li> <li>• Committee Meeting Minutes</li> <li>• Monitoring Reports</li> <li>• Performance Trends</li> </ul>	<p>HCQIS XI</p> <p>COMAR 10.09.66.03-08</p> <p>42 CFR § 438.206 (c) (1)</p> <p>42 CFR § 438.210</p> <p>COMAR 10.09.66.07.B(2)</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
6.2	<p>The MCO has a list of providers that are currently accepting new enrollees.</p> <p>a. The MCO must verify that its providers are listed geographically and are adequate to meet the needs of the population as specified in COMAR.</p> <p>b. At the time of enrollment, enrollees are provided with information about the MCO's providers that includes requirements set forth in COMAR 10.09.66.</p> <p>c. The MCO has a methodology in place to assess and monitor the network needs of its population, including individuals with disabilities.</p>	<p>The MCO must comply with the network capacity and geographic access requirements required in COMAR 10.09.66.05.B and COMAR 10.09.66.06.B-D. Some of these are listed below:</p> <ul style="list-style-type: none"> <li>• Enrollee to physician ratio for local access area = 200:1</li> <li>• Enrollee to advance practice nursing specialties = 100:1.</li> <li>• Travel time (urban) - 10 mile radius</li> <li>• Travel time (suburban) – within 20 mile radius</li> <li>• Travel time (rural) - within 30 mile radius.</li> </ul> <p>Refer to COMAR for more specific requirements.</p> <p>The listing of individual practitioners who are the MCO's primary and specialty care providers are grouped by county and by medical specialty and include the following information:</p> <ul style="list-style-type: none"> <li>• Name</li> <li>• Address</li> <li>• Practice location(s)</li> <li>• An indication of whether or not the provider is accepting new Medicaid patients</li> <li>• An indication of whether or not access to the provider is otherwise limited (e.g. by age of patient or number of enrollees the provider will serve.)</li> </ul> <p>The directory must also include:</p> <ul style="list-style-type: none"> <li>• A listing of the MCO's hospital</li> </ul>	<ul style="list-style-type: none"> <li>• Provider Directory</li> <li>• Provider Manual</li> <li>• New Enrollee Packet</li> <li>• New Enrollee Orientation Materials</li> <li>• Availability &amp; Access Standards</li> <li>• Access and Availability Policies &amp; Procedures</li> <li>• Monitoring Methodology</li> <li>• Monitoring Reports</li> <li>• Committee Meeting Minutes</li> <li>• Top Ten Diagnoses for all Care Settings</li> <li>• Enrollee Complaint Reports</li> <li>• Documentation of any CAPs</li> </ul>	<p>HCQIS XI</p> <p>COMAR 10.09.66.05.B</p> <p>COMAR 10.09.66.06.B-D</p> <p>COMAR 10.09.66.01.A</p> <p>(3)</p> <p>42 CFR § 438.10 (f) (2-6)</p> <p>42 CFR § 438.206 (b)</p> <p>42 CFR § 438.207</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>providers, of both inpatient and outpatient services, in the enrollee's county <u>with</u> their addresses and services provided.</p> <p>The MCO has a methodology in place to assess and monitor the network needs of its Medicaid population. The methodology substantiates how the MCO determines that it has sufficient numbers and the types of specialists, as well as PCPs, within its network to meet the care and service needs of its population in all care settings. The methodology includes:</p> <ul style="list-style-type: none"> <li>• A process of monitoring that has the ability to identify problem areas that are reported through the MCO's established structure.</li> <li>• Follow-up activities and progress towards resolution <u>that</u> are evident.</li> <li>• Direct access to specialists. Each MCO must have a mechanism in place to allow enrollees with special health care needs who have been determined to need a course of treatment or regular care monitoring to directly access a specialist as appropriate for the enrollee's condition and identified needs. This is determined through an assessment by appropriate health care professionals and can be provided for example, through a standing referral or an approved number of visits.</li> </ul> <p>An MCO shall provide access to health care services and information in a manner that addresses the individualized needs of its</p>		

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		<p>enrollees, including, but not limited to, the delivery of services and information to enrollees: In a manner that accommodates individuals with disabilities consistent with the requirements of the Americans with Disabilities Act of 1990, P.L. 101-330, 42 U.S.C. §12101 et seq., and regulations promulgated under it.”</p>		
6.3	<p>The MCO has implemented policies and procedures to assure that there is a system in place for notifying enrollees of due dates for wellness services.</p> <p>a. The MCO must have policies and procedures in place for notifying enrollees of due dates for wellness services, IHAs, and preventive services.</p> <p>b. The policies and procedures include the procedures for notification and outreach for noncompliant enrollees.</p> <p>c. Trending and analysis of data are included in the QAP and incorporate mechanisms for review of policies and procedures, with CAPs developed as appropriate.</p>	<p>Policies and procedures must be in place and address all components a-c.</p> <p>MCO must provide evidence that these policies and procedures have been implemented and are functioning appropriately.</p> <p>Documentation must be provided to substantiate that time frames are adhered to and that tracking procedures are in place.</p> <p>The MCO has a written procedure/methodology that tracks and monitors timeliness of IHAs. Such monitoring is analyzed and if un-timeliness is identified, there is evidence of corrective action and evaluation of progress. Performance is reported through committee or the MCO’s administrative structure.</p>	<ul style="list-style-type: none"> <li>• New Enrollee Policies &amp; Procedures</li> <li>• New Enrollee Packet</li> <li>• New Enrollee Orientation Materials</li> <li>• Scheduling of IHA Policies &amp; Procedures</li> <li>• IHA completion analysis</li> <li>• Outreach Policies &amp; Procedures</li> <li>• Policies &amp; Procedures for Tracking Non-Compliant Enrollees</li> <li>• Sample Letters to Enrollees</li> <li>• Sample Letters to Physicians</li> <li>• Sample Notices</li> <li>• QA Plan</li> </ul>	<p>HCQIS XI COMAR 10.09.64.06 COMAR 10.09.66.03 COMAR 10.09.66.07</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
7.0	<b>Utilization Review – The MCO has a comprehensive UM program, monitored by the governing body, and designed to systematically evaluate the use of services through the collection and analysis of data in order to achieve overall improvement.</b>			HCQIS XIII 42 CFR § 438.206 (b)(2) - (5) 42 CFR § 438.210 42 CFR § 438.236 42 CFR § 438.240
7.1	There is a comprehensive written UR Plan. a. This plan includes procedures to evaluate medical necessity, criteria used, information sources, and the process used to review and approve the provision of medical services. b. The scope of the UR Plan includes a review of all covered services in all settings, admissions in all settings, and collateral and ancillary services. c. There is documentation that ensures that utilization determinations made by an individual or entity are not directly influenced by financial incentive or compensation.	The UR Plan is comprehensive and addresses components a-c.  Component 7.1(c) requires that the MCO documentation reflect that compensation to individuals or entities that conduct UM activities is not structured so as to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary services to any enrollee.	<ul style="list-style-type: none"> <li>• UR Plan</li> <li>• UR Meeting Minutes</li> <li>• Governing Body Meeting Minutes</li> </ul>	HCQIS XIII A  42 CFR § 438.236
7.2	The UR Plan specifies criteria for UR/UM decisions. a. The criteria used to make UR/UM decisions must be based on acceptable medical practice. b. The UR Plan must describe the mechanism or process for the periodic updating of the criteria. c. The UR Plan must describe the involvement of participating providers in the review and updating of criteria. d. There must be evidence that the criteria are reviewed and updated according to MCO policies and procedures. e. There is evidence that UR/UM staff receive annual training on the	There is evidence that UR criteria are based on acceptable medical practice. The UR Plan must describe the process for reviewing and updating the criteria and for involving providers. There must be evidence that criteria are reviewed and updated per the policies and procedures. The MCO must use an appropriate mechanism to assess the consistency with which physician and non-physician reviewers apply medical necessity criteria.	<ul style="list-style-type: none"> <li>• UR Plan</li> <li>• UR Criteria Reflecting Review/Revision Dates</li> <li>• Policies &amp; Procedures for Criteria Review/Revision</li> <li>• UR Committee Meeting Minutes</li> <li>• Documentation of UR/UM Criteria Application Consistency</li> </ul>	HCQIS XIII A  COMAR 10.09.65.11S(2)

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>interpretation and application of UR/UM standards.</p> <p>f. There is evidence that the MCO evaluates the consistency with which all staff involved apply UR/UM criteria on at least an annual basis.</p>			

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
7.3	<p>The written UR Plan has mechanisms in place to detect over utilization and under utilization of services.</p> <ol style="list-style-type: none"> <li>Services provided must be reviewed for over and under utilization.</li> <li>UR reports must provide the ability to identify problems and take the appropriate corrective action.</li> <li>Corrective measures implemented must be monitored.</li> </ol>	<p>The UR Plan describes the process to be used for detecting over and under utilization of services.</p> <p>UR reports and data analysis must be available and should demonstrate the ability to identify problems.</p> <p>There must be documentation to support that the MCO has developed, implemented, and provided follow-up of corrective actions for the identified issues.</p>	<ul style="list-style-type: none"> <li>UR Plan</li> <li>UR Policies &amp; Procedures</li> <li>Data Reports and Analysis</li> <li>CAPs</li> <li>UR Committee Meeting Minutes</li> <li>Provider Profiles</li> </ul>	<p>HCQIS XIII</p> <p>42 CFR § 438.240 (b)</p>
7.4	<p>For MCOs with preauthorization or concurrent review programs, the MCO must substantiate that:</p> <ol style="list-style-type: none"> <li>Preauthorization, concurrent review, and appeal decisions are made and supervised by appropriate qualified medical professionals.</li> <li>Efforts are made to obtain all necessary information, including pertinent clinical information, and to consult with the treating physician as appropriate.</li> <li>The reasons for decisions are clearly documented and available to the enrollee <u>in easy to understand language</u>.</li> <li>There are well publicized and readily available appeal mechanisms for both providers and enrollees.</li> <li>Preauthorization and concurrent review decisions are made in a timely manner as specified by the State.</li> <li>Appeal decisions are made in a timely manner as required by the exigencies of the situation.</li> <li>The MCO maintains policies and procedures pertaining to provider appeals as outlined in COMAR 10.09.71.03.</li> </ol>	<p>The MCO must demonstrate that appropriate medical staff supervises the review decisions. The method to collect information for review decisions is documented.</p> <p>For services to enrollees that require preauthorization by the MCO, the MCO shall provide the preauthorization in a timely manner so as not to adversely affect the health of the enrollee and within 2 business days of receipt of necessary clinical information but not later than 7 calendar days from the date of the initial request. The MCOs shall notify the enrollee and the provider in writing whenever the provider's request for preauthorization for a service is denied.</p> <p>The state specified threshold for all preauthorization review decisions has been lowered to 95%. A sample of preauthorization reviews must be reviewed for compliance with state specified timeliness by the MCO according to their</p>	<ul style="list-style-type: none"> <li>UR Plan</li> <li>UR Policies &amp; Procedures</li> <li>UR Organizational Charts</li> <li>UM Position Descriptions</li> <li>UM Staffing Plan</li> <li>UR Committee Meeting Minutes</li> <li>Enrollee Appeals Policies &amp; Procedures</li> <li>Selected UR Cases</li> <li>Sample UM Delegation Contract</li> <li>Delegate Reports to MCO</li> <li>MCO Monitoring of Delegate Reports</li> <li>Appeals Policies &amp; Procedures</li> <li>Appeals Forms &amp; Logs</li> <li>Appeals Reports</li> <li>Appeal Records</li> </ul>	<p>HCQIS XIII.C 1-7</p> <p>COMAR 10.09.71.02</p> <p>COMAR 10.09.71.03</p> <p>COMAR 10.09.71.04</p> <p>COMAR 10.09.71.05</p> <p>42 CFR § 438.10 (f &amp; g)</p> <p>42 CFR § 438.210 (c &amp; d)</p> <p>42 CFR § 438.236</p> <p>42 CFR § 438.404 (b)</p> <p>42 CFR § 438.406 (a &amp; b)</p> <p>42 CFR § 438.408 (a-f)</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>policies (i.e., weekly, monthly, or quarterly). This review is required to be completed using a statistically valid sample size with a confidence level of 95% and a sampling error of 5%.</p> <p>Notice of decision to deny initial services must be provided to the enrollee within: 24 hours for Emergency, medically related requests, not more than 72 hours for non-emergency, medically related requests. For any previously authorized service written notice to the enrollee must be provided at least 10 days prior to reducing, suspending, or terminating a covered service.</p> <p>There is evidence that review decisions are documented and available to enrollees <u>in easy to understand language</u>.</p> <p>There is evidence that initial review decisions and appeal determinations are made within the time frames established by the State.</p> <p>Time frames for resolving appeal in the policy and procedure must be in accordance with the following:</p> <ul style="list-style-type: none"> <li>• Expedited Appeals within 3 business days.</li> <li>• Non-emergency Appeals within 30 days, unless extended pursuant to 438.408 b and c.</li> </ul> <p>The MCO must ensure that decision makers on appeal were not involved in previous levels of review or decision making and are</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>health care professionals with clinical expertise in treating the enrollee's condition.</p> <p>A selected sample of enrollee appeals, or provider appeals submitted on behalf of the enrollee, will be reviewed to assure that the policies and procedures are being followed. The MCO must include in its provider complaint process at least the following elements:</p> <p>An appeal process which:</p> <ul style="list-style-type: none"> <li>• Is available when the provider's appeal or grievance is not resolved to the provider's satisfaction;</li> <li>• Acknowledges receipt of provider appeals within 5 business days of receipt by the MCO;</li> <li>• Allows providers 90 business days from the date of a denial to file an initial appeal;</li> <li>• Allows providers at least 15 business days from the date of denial to file each subsequent level of appeal;</li> <li>• Resolves appeals, regardless of the number of appeal levels allowed by the MCO, within 90 business days of receipt of the initial appeal by the MCO;</li> <li>• Pays claim within 30 days of the appeal decision when a claim denial is overturned;</li> <li>• Provides at its final level an opportunity for the provider to be heard by the MCO's chief executive officer, or the chief executive officer's designee;</li> <li>• Provides timely written notice to the provider of the results of the internal</li> </ul>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
7.5	Adverse determination letters include a description of how to file an appeal and all other required components.	<p>appeal.</p> <p>There must be documented policies and procedures for appeals. Such policies and procedures must address all 13 required letter components for denial of care and/or services. The required adverse determination letter components include:</p> <ol style="list-style-type: none"> <li>1. Explanation of the requested care, treatment, or service.</li> <li>2. Clear, full and complete factual explanation of the reasons for the denial, reduction or termination in understandable language. <ul style="list-style-type: none"> <li>• Conclusive statements such as “services included under another procedure” and “not medically necessary” are not legally sufficient.</li> </ul> </li> <li>3. <u>Use of the phrase “nationally recognized medical standards” is acceptable; however, the exact clinical guideline reference must be included.</u></li> <li>4. <u>Availability of a free copy of any guideline, code, or similar information MCO used to decide and the MCO contact number including TTY.</u></li> <li>5. Description of any additional information MCO needs for reconsideration, <u>if appropriate from enrollee and/or doctor.</u></li> <li>6. <u>Statement of the availability and contact information of the doctor who made the decision if the enrollee’s provider would like to contact him/her.</u></li> <li>7. Statement that the enrollee has access to his/her medical records.</li> <li>8. Direction to the enrollee to call the Enrollee Help Line (EHL) to <u>review the MCO’s decision. If they cannot resolve the enrollee’s case within 10 days of the</u></li> </ol>	<ul style="list-style-type: none"> <li>• Enrollee Adverse Determination Letter Policies and Procedure</li> <li>• Sample Enrollee Adverse Determination Letters</li> <li>• Selected UR Cases</li> </ul>	<p>HCQIS XIII.C 1-7 COMAR 10.09.71.02 42 CFR § 438.404</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p><u>enrollee's call, the enrollee will receive information from the State of Maryland about how to file an appeal and obtain a fair hearing on the enrollee's case. (No substantive change just revised wording from letter template.).</u></p> <p>9. <u>The enrollee may also appeal to the MCO directly by contacting the MCO (phone # or address) within 90 days from the date of this letter.</u></p> <p>10. <u>Explanation to the enrollee that if he/she is currently receiving ongoing services that are being denied or reduced, he/she may be able to continue receiving these services during the appeal process by calling the MCO or the EHL within 10 days from receipt of this letter. If the enrollee's appeal is denied he/she may be required to pay for the cost of the services received during the appeal process (No substantive change just revised wording from letter template).</u></p> <p>11. <u>Statement that the enrollee may represent self or use legal counsel, a relative, a friend, or other spokesperson.</u></p> <p>12. <u>An explanation that it is assumed an enrollee receives the letter 5 days after it is dated unless he/she shows evidence otherwise. (Included above)</u></p> <p>13. <u>There is evidence that the letter is copied to the PCP and the requesting provider.</u></p> <p>14. <u>A statement explaining the availability of the expedited review process, MCO phone number and time frame for making a determination.</u></p> <p>15. <u>A statement of availability of the letter in other languages and alternate formats.</u></p>		
7.6	There are policies, procedures, and reporting mechanisms in place to evaluate the effects of the	The intent of this element is to provide a		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>UR program by using data on enrollee satisfaction, provider satisfaction, or other appropriate measures.</p> <p>a. The MCO has a process in place to evaluate the effects of the UR program by using enrollee satisfaction, provider satisfaction, and/or other appropriate measures.</p> <p>b. The MCO demonstrates review of the data on enrollee satisfaction, provider satisfaction, and/or other appropriate data by the appropriate oversight committee.</p> <p>c. The MCO acts upon identified issues as a result of the review of the data.</p>	<p>mechanism for enrollees and providers to offer opinions on the UR process in place at the MCO and assure that the MCO is reviewing and acting upon identified issues.</p> <p>There must be evidence these processes are in place and functioning.</p> <p>There must be evidence that these policies and procedures have been followed. The policies and procedures must describe the process to evaluate the effects of the program using data on provider satisfaction and/or other appropriate measures.</p> <p><u>It is expected that the MCO will review results of member and provider satisfaction surveys and develop and implement action plans to address identified opportunities for improvement timely in order to have some impact on subsequent survey results.</u></p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
7.7	<p>The MCO must have a written policy and procedure outlining the complaint resolution process for disputes between the MCO and providers regarding adverse medical necessity decisions made by the MCO. The policy and procedure must include the process for explaining how providers that receive an adverse medical necessity decision on claims for reimbursement may submit the adverse decision for review by an Independent Review Organization (IRO) designated by the Department.</p>	<p>The Department shall procure the services of an IRO to make determinations of medical necessity on provider complaints regarding adverse decisions.</p> <p>The MCO's specific responsibilities under the Maryland Medicaid Managed Care Independent Review Services process are as follows and should be included in the policy and procedure:</p> <ol style="list-style-type: none"> <li>1. Establish an online account with the IRO and provide all required information through this account.</li> <li>2. Upload the complete case record for each medical case review request within five (5) business days of receipt of the request from the IRO.</li> <li>3. Upload any additional, case-related documentation requested by the IRO within two (2) business days of receipt of notification of a request for additional information from the IRO.</li> <li>4. Agree to pay the fixed case fee should the IRO rule against the</li> </ol>	<ul style="list-style-type: none"> <li>• <u>Complaint Resolution/IRO Policy and Procedure</u></li> <li>• <u>Online Account</u></li> <li>• <u>Sample Case Record</u></li> </ul>	<p>10.09.86.00  <u>MCO Independent Review Organization Agreement</u></p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p><u>MCO.</u></p> <p>a) <u>In the event that the MCO does not pay the Contractor within sixty (60) calendar days of the release of the invoice, the MCO acknowledges that DHMH will deduct the amount from the its future Medicaid payments plus the liquidated damage(s) identified below, and remit payment to the IRO. The schedule of liquidated damages is as follows:</u></p> <ul style="list-style-type: none"> <li>i. <u>First offense: Seventeen (17) percent of the invoice amount.</u></li> <li>ii. <u>Second offense: Thirty-five (35) percent of the invoice amount.</u></li> <li>iii. <u>Third offense: Fifty (50) percent of the invoice amount.</u></li> </ul> <p>5. <u>Acknowledge that if the MCO receives an adverse decision from the Contractor, the MCO may file an appeal in accordance with COMAR 10.09.72.06.</u></p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
8.0	<b>Continuity of Care – The MCO has put a basic system in place that promotes continuity of care and CM.</b>			HCQIS XIV
8.1	Enrollees with special needs and/or those with complex health care needs must have access to CM according to established criteria and must receive the appropriate services.	<p>The MCO must have policies and procedures in place to identify enrollees with special needs and/or complex health care needs, such as diabetes, severe asthma and high-risk pregnancy, and to enroll them into CM according to the MCOs established criteria. This system must allow for the enrollee to access the appropriate services provided by the MCO.</p> <p>Per COMAR 10.09.65.04B, special needs populations are identified as:</p> <ol style="list-style-type: none"> <li>1. Children with special health care needs.</li> <li>2. Individuals with a physical disability.</li> <li>3. Individuals with a developmental disability.</li> <li>4. Pregnant and postpartum women.</li> <li>5. Individuals who are homeless.</li> <li>6. Individuals with HIV/AIDS.</li> <li>7. Individuals with a need for substance abuse treatment.</li> <li>8. Children in State supervised care.</li> </ol> <p>Specifically, the MCO has documented evidence of the following:</p>	<ul style="list-style-type: none"> <li>• CM Plan</li> <li>• CM Criteria/Standards</li> <li>• CM Policies &amp; Procedures</li> <li>• CM Cases</li> <li>• Committee Meeting Minutes (e.g., QA/UR)</li> <li>• Job Descriptions</li> <li>• Reports and Analysis</li> <li>• Orientation/Training Materials</li> </ul>	<p>HCQIS XIV</p> <p>COMAR 10.09.64.06 COMAR 10.09.65.04-11 42 CFR § 438.208 (c)(1,2)</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<ul style="list-style-type: none"> <li>• CM Plan that describes the MCO's CM program and/or CM policies and procedures.</li> <li>• Mechanisms for coordination of care/ services with the PCP.</li> <li>• CM criteria and/or standards for the following: <ul style="list-style-type: none"> <li>◊ Identification of children and adult enrollees with special needs</li> <li>◊ Assessments</li> <li>◊ Plans of care</li> <li>◊ Caseload</li> </ul> </li> <li>• Committee reporting structure.</li> <li>• Minimum qualifications for case managers and case manager supervisors.</li> <li>• Orientation/Training for case managers.</li> <li>• Number of FTEs allocated for CM.</li> </ul>		
8.2	The MCO must ensure appropriate initiation of care based on the results of HRA data supplied to the MCO. This must include a process for gathering HRA data, an ongoing analysis, and a process that calls for appropriate follow-up on results of the analysis.	There is documented evidence of HRA: <ul style="list-style-type: none"> <li>• data collection methodology</li> <li>• data analysis activities, and</li> <li>• evidence that follow-up based on the results of the analysis is occurring in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>• HRA Policies and Procedures</li> <li>• Reports and Analysis</li> </ul>	COMAR 10.09.63.03
8.3	The MCO must have policies and procedures in place to coordinate care with <u>primary care, behavioral health, and substance abuse providers; Local Health Departments (LHDs), school health programs, and other frequently involved community based organizations (CBOs).</u>	The MCO must have policies and procedures in place to assure the coordination of services for its enrollees, including coordination of care/services with the enrollee's PCP, <u>behavioral health and substance abuse providers, LHDs, school based health programs, and other CBOs where coordination with the MCO is necessary to ensure enrollee services are coordinated.</u> <u>Other CBOs might include Chase Brexton for HIV/AIDS, homes and domestic violence shelters, etc.</u> Collaboration with	<ul style="list-style-type: none"> <li>• Continuity of Care Policies &amp; Procedures</li> </ul>	HCQIS XIV

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<u>other department activities such as quality and outreach.</u>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
8.4	The MCO must monitor continuity of care across all services and treatment modalities <u>including discharges or admissions to inpatient setting to home</u> . This must include an ongoing analysis of referral patterns and the demonstration of continuity of individual cases (timeliness and follow-up of referrals).	There is documented evidence of monitoring activities. This includes the collection and analysis of data.	<ul style="list-style-type: none"> <li>• Continuity of Care Policies &amp; Procedures (e.g. hospitalizations, prenatal care)</li> <li>• Data Analysis</li> <li>• QA &amp; UR Committee Meeting Minutes</li> </ul>	HCQIS XI
8.5	The MCO must monitor the effectiveness of the <u>CM Program</u> .	<ul style="list-style-type: none"> <li>• <u>Methodology to evaluate the effectiveness of the CM program.</u></li> <li>• <u>Methodology for monitoring the plans of care.</u></li> <li>• <u>Methodology for evaluating plans of care.</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>CM Evaluation Studies</u></li> <li>• <u>Analysis and Reports</u></li> <li>• <u>Computer Screen Shots of CM Software or Actual Demonstration of CM System</u></li> <li>• <u>Case Records</u></li> </ul>	<u>HCQIS XIV</u> <u>COMAR 10.09.64.06</u> <u>COMAR 10.09.65.04-11</u>
8.6	The MCO has <u>processes in place for coordinating care with the State's behavioral health vendor and demonstrates implementation of these procedures.</u>	The MCO has <u>policies and procedures for coordinating care with the State's behavioral health vendor and demonstrates implementation through documentation of coordination in enrollee records.</u>	<ul style="list-style-type: none"> <li>• <u>Coordination with Behavioral Health Vendor Policy and Procedures</u></li> <li>• <u>Enrollee Records</u></li> </ul>	<u>COMAR 10.09.65.14E</u>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
9.0	<b>Health Education Plan – The MCO must have a comprehensive educational plan and have mechanisms in place to oversee that appropriate health education activities are provided or are available at each provider site. The educational activities must include health education on subjects that affect the health status of the enrollee population.</b>			COMAR 10.09.64.09N
9.1	The MCO has a comprehensive written HEP, which must include: a. The education plan’s purpose and objectives. b. Outlines of the educational activities such as seminars and distribution of brochures and calendars of events. c. A methodology for notifying enrollees and providers of available educational activities. d. A description of group and individual educational activities targeted at both providers and enrollees.	The MCO’s HEP must contain all of the components listed in a-d.  There must be an indication of how the objectives were established.	<ul style="list-style-type: none"> <li>• HEP &amp; Work Plan</li> <li>• Health Education Schedule of Events</li> <li>• Health Education Materials</li> <li>• Enrollee/Provider Notification Methodology</li> </ul>	COMAR 10.09.65.03
9.2	The HEP incorporates activities that address needs identified through the analysis of enrollee data.	The MCO must provide evidence that enrollee data were analyzed to determine the need for certain health education programs.	<ul style="list-style-type: none"> <li>• HEP</li> <li>• Enrollee Data Analysis</li> <li>• Health Education Calendar of Events</li> </ul>	COMAR 10.09.65.03
9.3	The MCO’s HEP must: a. Have a written methodology for an annual evaluation of the impact of the HEP on process and/or outcome measures, such as ER utilization, avoidable hospital admissions, utilization of preventive services, and clinical measures. b. Provide for qualified staff or contract with external organizations to develop and conduct educational sessions to support identified needs of the members. c. Contain a provision addressing how the	The HEP must describe the qualifications of the staff that will conduct the educational sessions (e.g., certified diabetes instructor, registered dietician, or certified mental health provider).  The education plan must describe how a provider can access a health educator/ educational program through the MCO (e.g., the MCO may designate a contact person to assist the provider in connecting the enrollee to a health educator or program).	<ul style="list-style-type: none"> <li>• Data Analysis and Studies</li> <li>• HEP and Work Plan</li> <li>• Provider Manual</li> <li>• Impact Evaluation Methodology</li> </ul>	COMAR 10.09.65.03

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	MCO will notify providers of the availability and contact information for accessing a health educator/educational program for member referrals.			

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
9.4	The MCO must have mechanisms in place to identify enrollees in special need of educational efforts. Documentation must support that these mechanisms are in place and functioning.	Mechanisms to identify enrollees in special need of educational efforts may include CM, outreach, or PCP referral for one-on-one education of the enrollee with complex medical needs, the home bound enrollee, the noncompliant enrollee with health issues.	<ul style="list-style-type: none"> <li>• Special Educational Need Identification Mechanisms</li> </ul>	COMAR 10.09.65.03
9.5	The MCO must make the education program available to the enrollee population and demonstrate that enrollees have attended. The MCO must provide: <ul style="list-style-type: none"> <li>a. Samples of notifications, brochures, and mailings.</li> <li>b. Attendance records and session evaluations completed by enrollees.</li> <li>c. Provider evaluations of health education programs.</li> </ul>	The MCO must demonstrate that enrollees are notified of educational programs and that they have been afforded the opportunity to evaluate these programs. The MCO must provide documentation in the form of notifications, attendance records and session evaluations. There must be evidence that providers are given the opportunity to evaluate enrollee educational sessions and the overall health education program.	<ul style="list-style-type: none"> <li>• Enrollee Mailings</li> <li>• Attendance Records</li> <li>• Completed Session Evaluations</li> <li>• Program Evaluations</li> <li>• Completed Provider Evaluations</li> </ul>	COMAR 10.09.65.03

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
10.0	<p><b>Outreach Plan – The MCO has developed a comprehensive written outreach services plan to assist enrollees in overcoming barriers in accessing health care services. The OP adequately describes the populations to be served, activities to be conducted, and the monitoring of those activities. There must be evidence that the MCO has implemented the OP, appropriately identified the populations, monitored outreach activities, and made modifications as appropriate.</b></p>			<p><b>Health General 15-103(b)(9)(iv)</b>  <b>Health General 15-103 (b)(9)(vii)</b>  <b>COMAR 10.09.65.04</b>  <b>COMAR 10.09.65.08</b>  <b>COMAR 10.09.65.09</b>  <b>COMAR 10.09.65.25</b>  <b>COMAR 10.09.66.03</b>  <b>COMAR 10.09.66.07</b></p>
10.1	<p>The MCO has developed a written OP that describes the following:</p> <ol style="list-style-type: none"> <li>Populations to be served through the outreach activities and an assessment of common health problems within the MCO’s membership.</li> <li>MCO’s organizational capacity to provide both broad-based and enrollee-specific outreach.</li> <li>Unique features of the MCO’s enrollee outreach initiatives.</li> <li>Community partnerships.</li> <li>Role of the MCO’s provider network in performing outreach.</li> <li>MCO’s relationship with each of the LHDs and ACCUs.</li> </ol>	<p>Each of the MCOs participating in HealthChoice is unique in the manner in which it facilitates the outreach requirements. The OP must describe the individual MCO’s approach to providing outreach. This written plan must provide an overview of outreach activities that includes components 10.1a through 10.1f. Supporting policies and procedures must be in place to provide details regarding how these activities are carried out.</p> <p>The OP must include an overview of the populations to be served. At a minimum the populations must include:</p> <ul style="list-style-type: none"> <li>Those in need of wellness/ preventive services.</li> <li>Those children eligible for EPSDT services.</li> <li>Those enrollees (both adults and children) who are difficult to reach or miss appointments.</li> <li>Those enrollees comprising the following special populations defined in COMAR</li> </ul>	<ul style="list-style-type: none"> <li>• Educational Materials</li> <li>• DM and CM Program Descriptions</li> <li>• MOUs</li> <li>• Community Event Calendars or Education Program Schedules</li> <li>• Provider Manual</li> <li>• Provider Contracts</li> <li>• MOUs</li> </ul>	<p>COMAR 10.09.65.02</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>10.09.65.04 B:</p> <ol style="list-style-type: none"> <li>1) Children with special health care needs.</li> <li>2) Individuals with a physical disability.</li> <li>3) Individuals with a developmental disability.</li> <li>4) Pregnant and postpartum women.</li> <li>5) Individuals who are homeless.</li> <li>6) Individuals with HIV/AIDS.</li> <li>7) Individuals in need of substance abuse treatment.</li> <li>8) Children in State supervised care.</li> </ol> <ul style="list-style-type: none"> <li>• The OP must briefly describe common health problems within the MCO's membership (i.e., diabetes, HIV/AIDS, pediatric asthma) and any identified barriers or specific areas where outreach has been or is anticipated to be particularly challenging (i.e., rural population, non-English speaking populations).</li> </ul> <p>The OP must provide an overview of how the MCO's internal and external resources are organized to provide an effective outreach program. For example, the OP briefly describes the roles of various departments such as provider relations, enrollee services, CM, DM, health education and delegated entities in the performance of outreach activities.</p> <p>The OP must briefly describe data management systems to be utilized in performing outreach activities. This may include data systems or software used to identify, track, and report outreach activities.</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>The OP briefly describes any unique educational activities related to the populations served, such as:</p> <ul style="list-style-type: none"> <li>• Languages in which materials are printed and availability of interpreter services.</li> <li>• TTD/TTY services for those who are hearing impaired.</li> <li>• Any unique educational activities such as, CM or DM programs related to special populations (i.e., mother/baby programs, substance abuse programs for pregnant women, asthma management programs, etc.).</li> <li>• Any other unique services related to education.</li> </ul> <p>The OP briefly describes any community partners and their role in providing outreach activities to assist the MCO in bringing enrollees into care (i.e., church groups, YMCA, homeless shelters, community based school programs, parks and recreation programs, medical societies and/or associations such as the American Diabetes Assoc., etc.). The community partner may provide educational health fairs or screenings, educational materials, speakers, personnel who assist the enrollee in completing necessary medical paperwork or who assist the enrollee in locating special services to facilitate bringing the enrollee in to care, etc.</p> <p>(Do not include the role of the local health departments, since they are addressed in</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		10.1f)  The OP must include a brief description of the role and responsibilities of providers for participating in outreach activities.		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		The OP must demonstrate the MCO's relationship with the LHD/ACCU regarding collaborative efforts being undertaken (i.e. methods of referral). The description must include: <ul style="list-style-type: none"> <li>• The LHD's responsibilities in outreach.</li> <li>• How results of the LHD's efforts are conveyed to the MCO.</li> </ul>		
10.2	The MCO has implemented policies and procedures for: <ol style="list-style-type: none"> <li>The provision of outreach services for new enrollees as well as those enrolled over time.</li> <li>Responding to a request for outreach from a provider, enrollee, or other source.</li> <li>The provision of outreach via telephone, written materials, and face-to-face contact.</li> <li>Monitoring of all outreach activities, including those delegated or subcontracted to other entities.</li> </ol>	There must be evidence that the MCO has policies and procedures in place and implemented for each of the activities in 10.2 a-d.  The MCO has methods/activities in place to identify enrollees in need of outreach for both new enrollees and those enrolled over time (i.e., review of HRAs and data reports). There must be evidence that these activities are occurring.	<ul style="list-style-type: none"> <li>• Data Reports</li> <li>• Outreach Logs</li> <li>• Enrollee Mailings</li> <li>• Educational Materials</li> <li>• LHD Reports</li> </ul>	

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>The MCO must have policies and procedures in place to guide outreach staff in the outreach process. This guidance may be in the form of policies and procedures or process flow charts. There must be evidence that these processes are being followed.</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>There must be evidence that the MCO utilizes a systematic process to provide outreach services that employs:</p> <ul style="list-style-type: none"> <li>• Telephone contact.</li> <li>• Written materials.</li> <li>• Face-to-face contact.</li> </ul> <p>There must be evidence that outreach activities are monitored. There must be evidence that the MCO monitors any delegated activities to assure that contracted or delegated activities are carried out. For example, if the MCO has an agreement with the LHD to perform specific outreach activities such as face-to-face contact with enrollees, the MCO must have a mechanism for monitoring outcomes of these activities</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		(i.e., number of enrollees referred for LHD outreach and number successfully reached).		
10.3	<p>The MCO has implemented strategies:</p> <p>a. To encourage utilization of wellness/ preventive health services through education and notification to enrollees of due dates for wellness services.</p> <p>b. To assist the special needs populations described in COMAR with scheduling and coordination of services.</p> <p>c. To promote the provision of EPSDT services and respond to no shows and non-compliant behavior related to children in need of EPSDT services.</p> <p>d. To bring enrollees into care who are difficult to reach or who miss appointments.</p>	<p>There must be evidence that the MCO has implemented strategies to provide outreach to the populations in 10.3 a-d.</p> <p>The MCO has identified those enrollees in need of wellness/ preventive services and has initiated activities to encourage utilization of these services. There is evidence that the MCO has implemented a system to track and monitor access to these services. For example, the MCO identifies and notifies enrollees of due dates for preventive services such as mammograms and cervical cancer screenings through reminder notices such as letters or postcards.</p>	<ul style="list-style-type: none"> <li>• Outreach Work Plan</li> <li>• Data Reports</li> <li>• Tracking/Referral logs</li> <li>• Enrollee Mailings</li> <li>• Provider Mailings</li> </ul>	

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>The MCO has identified those enrollees in each of the special needs populations described in COMAR and has initiated strategies to track these enrollees and link them to necessary services. For example, the MCO identifies pregnant women with substance abuse and assists in coordinating counseling and/or treatment services.</p> <p>The MCO identifies and tracks children (up to 21 years of age) who are eligible for EPSDT services or treatment. The MCO identifies those enrollees due for services, enrollees who miss appointments, and non-compliant enrollees. There is evidence that</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
		<p>the MCO provides outreach to schedule those children in need of EPSDT services and/or to bring those children who miss appointments into care.</p> <p>The MCO identifies enrollees and provides outreach to those who are difficult to reach or who miss appointments.</p>		

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
11.0	<p><b>Fraud and Abuse - The MCO maintains a Medicaid Managed Care Compliance Program that outlines its internal processes for adherence to all applicable Federal and State laws and regulations, with an emphasis on preventing fraud and abuse. The program also includes guidelines for defining failure to comply with these standards.</b></p>			42 CFR § 438.608
Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
11.1	<p>The MCO maintains administrative and management procedures, including a mandatory compliance plan, that are designed to support organizational standards of integrity in identifying and addressing inappropriate and unlawful conduct, fraudulent activities, and abusive patterns. The mandatory compliance plan must be written and include:</p> <ol style="list-style-type: none"> <li>Documentation that articulates the organization’s commitment to comply with all applicable Federal and State laws, regulations, and standards.</li> <li>Designation of a Compliance Officer and a Compliance Committee that is accountable to senior management and is responsible for ongoing monitoring of the MCO’s mandatory compliance plan.</li> <li>Designation of a Compliance Officer to serve as the liaison between the MCO and the Department.</li> <li>A documented process for internal monitoring and auditing, both routine and random, for potential fraud and abuse in areas such as encounter data, claims submission, claims processing, billing procedures, utilization, customer</li> </ol>	<p>The MCO demonstrates the ability to detect and identify inappropriate and unlawful conduct, fraudulent activities, and abusive patterns through detailed policies, procedures, education and training.</p> <p>The MCO demonstrates the ability to internally monitor and audit for potential fraud and abuse in such areas as encounter data, claims submission, claims processing, billing procedures, underutilization, customer service, enrollment and disenrollment, marketing, and provider/enrollee education materials.</p> <p>The MCO documents its processes used to detect and identify incidences of fraud and abuse.</p>	<ul style="list-style-type: none"> <li>• Compliance Plan</li> <li>• Fraud Manual</li> <li>• Fraud and Abuse Policies &amp; Procedures</li> <li>• Compliance Officer Job Description and Qualifications</li> <li>• Compliance Committee Membership</li> <li>• Compliance Committee Meeting Minutes</li> <li>• Communication Between Compliance Officer &amp; Compliance Committee</li> <li>• Routine and Random Audit Reports for Fraud and Abuse</li> <li>• Reports tracking the receipt and dispensation of all incidences of reported suspected fraud and abuse</li> </ul>	<p>42 CFR § 438.608</p> <p>COMAR 10.09.65.02</p> <p>COMAR 10.09.65.03</p> <p><a href="#">COMAR 31.04.15</a></p> <p>CMS Publication – “Guidelines for Constructing a Compliance Program for Medicaid Managed Care Organizations and PrePaid Health Plans”</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>service, enrollment and disenrollment, marketing, as well as mechanisms responsible for the appropriate fraud and abuse education of MCO staff, enrollees, and providers.</p> <p>e. A documented process for timely investigation of all reports of suspected fraud as well as prompt response to detected offenses of fraud and abuse through the development of CAPs to rectify a deficiency or non-compliance situation.</p>			

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
11.2	<p>The MCO maintains administrative and management procedures that train employees to detect fraud and abuse and communicates to employees, subcontractors, and enrollees the organization’s standards of integrity in identifying and addressing inappropriate and unlawful conduct, fraudulent activities, and abusive patterns. They must include:</p> <p>a. Education and training for the Compliance Officer and the MCO’s employees on detection of fraud and abuse.</p> <p>b. A documented process for distributing and communicating all new regulations, regulatory changes, and modifications within the organization between the Compliance Officer and the MCO’s employees.</p> <p>c. A documented process for enforcing standards by means of clear communication to employees, in well publicized guidelines, to sanction incidents of fraud and abuse.</p> <p>d. A documented process for enforcement of standards through clear communication of well publicized guidelines to subcontractors of the</p>	<p>The MCO demonstrates clear and well-publicized communication of disciplinary guidelines to employees, subcontractors of the MCO, and enrollees to sanction fraud and abuse offenses.</p> <p>The MCO demonstrates its process exists, e.g. a hotline, which allows employees, subcontractors of the MCO, and enrollees to report suspected fraud and abuse without fear of reprisal. The MCO will also demonstrate its procedures for timely investigation, dispensation, and tracking of reported suspected incidences of fraud and abuse.</p>	<ul style="list-style-type: none"> <li>• Compliance Plan</li> <li>• Fraud Manual</li> <li>• Fraud and Abuse Policies &amp; Procedures</li> <li>• Staff orientation, education, and training protocols pertaining to fraud and abuse</li> <li>• Sign-in rosters for employee training sessions regarding fraud and abuse</li> </ul>	<p>42 CFR § 438.608</p> <p>COMAR 10.09.65.02</p> <p>COMAR 10.09.65.03</p> <p><a href="#">COMAR 31.04.15</a></p> <p>CMS Publication – “Guidelines for Constructing a Compliance Program for Medicaid Managed Care Organizations and PrePaid Health Plans”</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>MCO regarding sanctioning incidents of fraud and abuse.</p> <p>e. A documented process for enforcement of standards through clear communication of well publicized guidelines to enrollees regarding sanctioning incidents of fraud and abuse.</p> <p>f. A documented process for the reporting by employees of suspected fraud and abuse within the organization, without fear of reprisal.</p> <p>g. A documented process for reporting by subcontractors of the MCO suspected fraud and abuse within the organization, without fear of reprisal.</p> <p>h. A documented process for reporting by enrollees of the MCO suspected fraud and abuse within the organization without fear of reprisal.</p>			

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
11.3	<p>The MCO maintains administrative and management procedures by which personnel may report to and cooperate with the appropriate authorities regarding inappropriate and unlawful conduct, fraudulent activities, and abusive patterns. It must include:</p> <p>a. A documented process for reporting all suspected cases of provider fraud and abuse to the DHMH Office of the Inspector General and the Medicaid Fraud Control Unit within 30 calendar days of the initial report.</p> <p>b. A documented process for cooperating with the DHMH Office of the Inspector General and the State Medicaid Fraud Control Unit when suspected fraud and abuse is investigated.</p>	<p>The MCO documents its processes for reporting and tracking suspected incidences of fraud and abuse to the appropriate State and Federal agencies within the appropriate timeframes and its cooperation with those agencies investigating those alleged incidences.</p>	<ul style="list-style-type: none"> <li>• Compliance Plan</li> <li>• Fraud Manual</li> <li>• Fraud and Abuse Policies &amp; Procedures</li> <li>• Documentation of reported incidences of fraud and abuse to State Medicaid Agency</li> <li>• Documentation of collaboration and cooperation with State Medicaid Fraud Control Unit</li> </ul>	<p>42 CFR § 438.608</p> <p>COMAR 10.09.65.02</p> <p>COMAR 10.09.65.03</p> <p><a href="#">COMAR 31.04.15</a></p> <p>CMS Publication – “Guidelines for Constructing a Compliance Program for Medicaid Managed Care Organizations and PrePaid Health Plans”</p>
11.4	<p>The MCO utilizes various mechanisms to evaluate the effectiveness of its fraud and abuse compliance plan. The mechanisms must address:</p>	<p>The MCO documents the mechanisms which evaluate the effectiveness of its fraud and abuse compliance plan through routine</p>	<ul style="list-style-type: none"> <li>• Compliance Committee Minutes</li> </ul>	<p>42 CFR § 438.608</p> <p>COMAR 10.09.65.02</p>

Standard	Description	Review Guidelines	Documents to be Reviewed	Cite(s) and Similar References
	<p>a. Evidence of review of routine and random reports by the Compliance Officer and Compliance Committee.</p> <p>b. Evidence that any CAP is reviewed and approved by the Compliance Committee and that the Compliance Committee receives information regarding the implementation of the approved CAP.</p> <p>c. Evidence of the Compliance Committee’s review and approval of administrative and management procedures, including mandatory compliance plans to prevent fraud and abuse for each delegate that the MCO contracts with.</p> <p>d. Evidence of review and approval of continuous and ongoing delegate reports regarding the monitoring of fraud and abuse activities, as specified in 11.1d.</p>	<p>and random reports, CAPs and their implementation, administrative and management procedures.</p> <p>The MCO documents oversight of fraud and abuse activities for each delegate, including delegate compliance plans and fraud and abuse activity reports.</p>	<ul style="list-style-type: none"> <li>• Routine and Random Fraud and Abuse Reports</li> <li>• CAPs</li> <li>• CAP Implementation Reports</li> <li>• Delegate Fraud and Abuse Reports</li> </ul>	<p>COMAR 10.09.65.03  <a href="#">COMAR 31.04.15</a>          CMS Publication –          “Guidelines for Constructing a Compliance Program for Medicaid Managed Care Organizations and PrePaid Health Plans”</p>

## Information Reporting Strategy & Analytic Methodology for the 2015 Maryland HealthChoice Consumer Report Card

Prepared by National Committee for Quality Assurance, September 2014

### I. Introduction

As a part of its External Quality Review contract with the State of Maryland Department of Health and Mental Hygiene (DHMH), Delmarva Foundation (Delmarva) is responsible for developing a Medicaid Consumer Report Card. Delmarva contracted with the National Committee for Quality Assurance (NCQA) to assist in the Report Card development and production.

The Report Card is meant to assist Medicaid beneficiaries in the selection among the participating HealthChoice managed care organizations. Information in the Report Card includes performance measures from the Healthcare Effectiveness Data and Information Set (HEDIS<sup>®</sup>), the Consumer Assessment of Healthcare Providers and Systems (CAHPS<sup>®</sup>) survey, and the DHMH's Value Based Purchasing (VBP) initiative.

This report explains the reporting strategy and analytic methods Delmarva and NCQA plan to use in developing the Report Card that the DHMH will release in 2015 based on data reported in 2014 (HEDIS 2014). This report is organized as follows:

*Section II: Information Reporting Strategy* explains the principles used to determine the most appropriate and effective methods of reporting quality information to the intended target audience, Medicaid beneficiaries.

*Section III: Analytic Methods* provides statistical basis and the analysis method to be used for reporting comparative health plan performance.

*Appendices:*

- A. Reporting Categories and Measures
- B. Questions Comprising CAHPS Composites for the Medicaid Product Line
- C. Statistical Methodology to Compare Plan Performance

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HEDIS<sup>®</sup> is a registered trademark of the National Committee for Quality Assurance (NCQA).

CAHPS<sup>®</sup> is a registered trademark of the Agency for Healthcare Quality and Research (AHRQ).

## II. Information Reporting Strategy

The most formidable challenge facing all consumer information projects is how to communicate a large amount of complex information in an understandable and meaningful manner while fairly and accurately representing the data. In determining the appropriate content for Maryland's HealthChoice Report Card, principles were identified that addressed these fundamental questions:

- Is the information meaningful for the target audience?
- Will the target audience understand what to do with the information?
- Are the words or concepts presented at a level that the target audience is likely to understand?
- Does the information contain an appropriate level of detail?

The reporting strategy presented incorporates methods and recommendations based on experience and research about presenting quality information to consumers.

### ORGANIZING INFORMATION

#### **Group relevant information into the minimal number of reporting categories and into single level summary scores.**

**Recommendation** -- To enhance comprehension and interpretation of quality measurement information provided for a Medicaid audience, the NCQA and Delmarva team plans to design the Report Card to include six categories with one level of summary scores (measure roll-ups), per plan, for each reporting category.

**Rationale**-- Research has shown that people have difficulty comparing plan performance when information is presented in too many topic areas. To include a comprehensive set of performance measures in an effective consumer-information product (one that does not present more information than is appropriate for the audience), measures must be combined into a limited number of reporting categories that are meaningful to the target audience, Medicaid beneficiaries.

#### **Group measures into reporting categories that are meaningful to consumers.**

**Recommendation**-- Based on a review of the potential measures available for the Report Card (HEDIS, CAHPS and the DHMH's VBP initiative), the team recommends the following reporting categories:

- Access to Care
- Doctor Communication and Service
- Keeping Kids Healthy
- Care for Kids with Chronic Illness
- Taking Care of Women
- Care for Adults with Chronic Illness

**Rationale**-- The recommended categories are based on measures to be reported by HealthChoice plans in 2014 and are designed to focus on clearly identifiable areas of interest. Consumers will be directed to focus on plan performance in the areas that are the most important to them and their families.

The first two categories are relevant to all beneficiaries. The remaining categories are focused on more specific populations that are relevant to Maryland HealthChoice beneficiaries— children, children with chronic illness, women and adults living with illnesses.

Reporting specific measures individually (in addition to the above reporting categories) is not recommended. Consumers comparing the performance of a category composed of many measures to individual measures may give undue weight to the performance on the individual measures.

## **MEASURE SELECTION**

### **Select measures that are applicable to the goals of the project.**

The measures that the project team considered for inclusion in the Report Card are derived from those that the DHMH requires health plans to report, which include HEDIS measures, the CAHPS results from both the Adult Questionnaire and the Child Questionnaire, and the DHMH's VBP measures.

NCQA created measure selection criteria that included a consistent and logical framework for determining which quality of care measures are to be included in each composite each year.

- **Meaningful.** Do results show variability in performance in order to inform health care choices?
- **Useful.** Does the measure relate to the concerns of the target audience?
- **Understandable.** Are the words or concepts presented in a manner that the target audience is likely to understand?

**Appendix A** includes the complete list of HEDIS, CAHPS and VBP measures the team recommends including in each reporting category.

### ***Recommendations for Analysis***

#### **HEDIS Measures**

##### Summary of HEDIS 2014 Measures Changes

NCQA has made revisions to the HEDIS clinical measure specifications for HEDIS 2014.

For the following measure, the modifications do impact the report card methodology (See Reporting Category Changes: Taking Care of Women on page 8).

- Cervical Cancer Screening
  - Added steps to allow for two appropriate screening methods of cervical cancer screening: cervical cytology performed every three years in women 21–64 years of age and cervical cytology/HPV co-testing performed every five years in women 30–64 years of age.

The following modifications do not impact the report card methodology. For detailed changes please refer to the HEDIS 2014, Volume 2.

- Breast Cancer Screening
  - Revised the continuous enrollment time frame.
  - Revised the age criterion to women 50–74 years of age.

- Revised the numerator time frame.
- Comprehensive Diabetes Care
  - Added canagliflozin to the description of “Sodium glucose cotransporter 2 (SGLT2) inhibitor” in Table CDC-A.
  - Clarified hybrid requirements for the HbA1c Control indicators and LDL-C Control (<100 mg/dL) indicator.
  - Clarified that a finding (e.g., normal, within normal limits) is acceptable for the LDL-C Screening indicator.
  - Clarified medical record documentation requirements for a negative retinal or dilated eye exam.
  - Clarified step 2 of the numerator for BP Control indicators in the Hybrid Specifications to state when a BP reading is not compliant.
- Well-Child Visits in the First 15 Months of Life
  - Clarified that visits must be on different dates of services for the numerators in the Administrative Specification.
- Use of Appropriate Medications for People With Asthma (ASM)
  - Revised the definition of *Inhaler dispensing event*

### **CAHPS Patient Experience Survey Measures**

Consistent with the 2014 Consumer Report Card, our recommendation is to include the results of both the CAHPS Health Plan Survey 5.0H, Adult Version and the CAHPS Health Plan Survey 5.0H, Child Version with the Children with Chronic Conditions (CCC) measure.

The sampling protocol for the CAHPS 5.0H Child Questionnaire allows for the reporting of two separate sets of results: one for the general population of children and one for the population of children with chronic conditions. For each population, results include the same ratings, composites and individual question summary rates. In addition, five CCC composites are reported for the population of children with chronic conditions.

**Appendix B** shows the questions comprising the CAHPS 5.0H composites recommended for the Report Card and their score values.

### **Recommendations for 2015 Report Card**

DHMH required five new measures in 2013, which were under consideration for inclusion in the 2015 Report Card.

- Adult BMI Assessment
- Controlling High Blood Pressure
- Annual Monitoring for Patients on Persistent Medications
- Disease-Modifying Anti-Rheumatic Drug Therapy for Rheumatoid Arthritis
- Medication Management for People With Asthma

After further assessment of these new measures, we recommend adding 2 measures to the 2015 Report Card: *Medication Management for People With Asthma* and *Controlling High Blood Pressure*. To incorporate any new measures into the Report Card, psychometric (correlation) testing will be conducted to ensure like measures ‘hang well’ in the proposed category.

## **Reporting Category Changes**

### Access to Care

- No changes

### Doctor Communication and Service

- No changes

### Keeping Kids Healthy

- No changes

### Care for Kids with Chronic Illness

- Propose adding *Medication Management for People With Asthma* (5-11 years; 75% indicator)

### Taking Care of Women

- We propose to remove the *Cervical Cancer Screening* measure due to the significant changes made to the measure (see HEDIS Measures on page 6)

### Care for Adults with Chronic Illness

- We propose adding the following measures:
  - *Use of Appropriate Medications for People With Asthma* (19-64 (combine 19-50 and 61-64))
  - *Medication Management for People With Asthma* (19-64 (combine 19-50 and 61-64); propose using 75% indicator)
  - *Controlling High Blood Pressure*

## **Future Year Considerations**

For HEDIS 2015 (2016 Report Card), the *Diabetes LDL-C Screening and Control* indicators and *Cholesterol Management for Patients with Cardiovascular Conditions* measures will be retired based on new blood cholesterol guidelines by the American College of Cardiology/American Heart Association (ACC/AHA) Task Force on Practice Guidelines and hypertension guidelines by the eighth Joint National Committee (JNC 8).

## **FORMAT: Display information in a format that is easy to read and understand.**

The following principles are important when designing report cards:

- *Space*: Maximize the amount to display data and explanatory text
- *Message*: Communicate health plan quality in positive terms to build trust in the information presented
- *Instructions*: Be concrete about how consumers should use the information

- *Text*: Relate the utility of the Report Card to the audience’s situation (e.g., new beneficiaries choosing a plan for the first time, beneficiaries receiving the Annual Right to Change Notice and prioritizing their current health care needs, current beneficiaries learning more about their plan) and reading level
- *Narrative*: Emphasize *why* what is being measured in each reporting category is important, rather than giving a detailed explanation of *what* is being measured. For example, “making sure that kids get all of their shots protects them against serious childhood diseases” instead of “the percentage of children who received the following antigens ...”
- *Design*: Use color and layouts to facilitate navigation and align the star ratings to be left justified consistent with the key.

**Recommendation--** The following format is recommended: 24 x 9.75 inch pamphlet folded in thirds, with English on one side and Spanish on the opposite side.

Pamphlets allow one page presentation of all performance information. Additionally, measure explanations can be integrated on the same page as the performance results, facilitating a reader’s ability to match the explanation to actual data.

Pamphlet contents will be drafted to present the information at a sixth-grade reading level, with short, direct sentences intended to relate to the audience’s particular concerns. Terms and concepts unfamiliar to the general public will be avoided. Explanations of performance ratings, measure descriptions, and how to use the Report Card will be straightforward and action-oriented. Contents will be translated into Spanish by an experienced translation vendor.

**Rationale--** Cognitive testing conducted for similar projects showed that Medicaid beneficiaries had difficulty associating the data in charts with explanations if they were presented elsewhere in the Report Card. Consumers prefer a format that groups related data on a single page. Given the number of health plans whose information is being presented in Maryland’s HealthChoice Report Card, a pamphlet format will allow easy access to information.

## **RATING SCALE**

### **Rate plans on a tri-level rating scale.**

**Recommendation--** Performance should be rated by comparing each plan’s performance to the average of all plans potentially available to the target audience; in this case the average of all HealthChoice plans (a.k.a., the Maryland HealthChoice plan average). Stars or circles should be used to represent performance that is “above,” “the same as,” or “below” the Maryland HealthChoice plan average.

**Rationale--** A tri-level rating scale in a matrix that displays performance across a select number of salient performance categories provides beneficiaries with an easy-to-read “picture” of quality performance across plans and presents data in a manner that emphasizes meaningful differences between plans that are available to them. (The tri-level rating method is explained in Section III, Analytic Methods.) This methodology differs from similar methodologies that compare plan performance to ideal targets or national percentiles. The team’s recommended approach is more useful in an environment where consumers must choose from a group of available plans.

At this time, the team does not recommend developing an overall rating for each health plan. The proposed strategy allows the Report Card users to decide which performance areas are most important to them when selecting a plan.

### **III. Analytic Method**

NCQA and the Delmarva team recommends that the Report Card compare each plan's actual score to the unweighted, statewide plan average for a particular reporting category. An icon or symbol would denote whether a plan performed "above," "the same as," or "below" the statewide Medicaid plan average.<sup>1</sup>

The goal of the analysis is to generate reliable and useful information that can be used by Medicaid consumers to make relative comparisons of the quality of health care provided by Maryland's HealthChoice plans. This information should allow consumers to easily detect substantial differences in plan performance. This means that the index of difference should compare plan-to-plan quality performance directly and that differences between plans should be statistically reliable.

#### **Handling Missing Values**

Three issues involve the replacement of missing values in this analysis. The first issue is deciding which pool of observed (non-missing) plans should be used to derive replacement values for missing data.

The second concerns how imputed values will be chosen. Alternatives are fixed values (such as zero or the 25th percentile for all plans in the nation), calculated values (such as means or regression estimates) or probable selected values (such as multiplying imputed values).

The third issue is that the method used to replace missing values should not provide an incentive for plans that perform poorly to purposefully fail to report data. For example, if missing values are replaced with the mean of non-missing cases, scores for plans that perform below the mean would be increased if they fail to report.

Replacing missing Medicaid plan data with commercial plan data is inappropriate because the characteristics of Medicaid populations differ from those of commercial populations. This restricts the potential group to national Medicaid plans, regional Medicaid plans or Maryland HealthChoice plans. Analyses conducted by NCQA for the annual *State of Health Care Quality* report have consistently shown substantial regional differences in the performance of commercial managed care plans. Assuming that such regional differences generalize to Medicaid plans, it would be inappropriate to use the entire group of national Medicaid plans to replace missing values for Maryland HealthChoice plans.

Using a regional group of plans to derive missing values was also determined to be inappropriate because of substantial differences in Medicaid program administration across states. In other words, reporting of Medicaid data is skewed to a few large states with large Medicaid managed care enrollment.

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<sup>1</sup> For state performance reports directed at consumers, NCQA believes it is most appropriate to compare a plan's performance to the average of all plans serving the state. NCQA does not recommend comparing plans to a statewide average that has been weighted proportionally to the enrollment size of each plan. A weighted average emphasizes plans with higher enrollments and is used to measure the overall, statewide average. Report cards compare a plan's performance relative to other plans, rather than presenting how well the state's Medicaid managed care plans serve beneficiaries *overall*. In a Report Card, each plan represents an equally valid option to the reader, regardless of its enrollment size.

For these reasons, Maryland HealthChoice plans should serve as the pool from which replacement values for missing data are generated. A disadvantage to using only Maryland HealthChoice plans for missing data replacement is that there are fewer than 20 plans available to derive replacement values. This makes it unlikely that data-intensive imputation procedures such as regression or multiple imputations can be employed.

Plans are sometimes unable to provide suitable data (for example, if too few of their members meet the eligibility criteria for a measure), despite their willingness to do so. These missing data are classified as “Not Applicable” (N/A). If the NCQA HEDIS Compliance Audit™ finds the measure to be materially biased, the measure is assigned a “Not Report” designation (NR).

For Report Card purposes, missing values for plans will be handled in this specific order:

- If fewer than 50 percent of the plans report a measure, the measure will be dropped from the report card category.
- Next, if a plan has reported at least 50 percent of the measures in a reporting category, the missing values will be replaced with the mean or minimum values based on the reasons for the missing value.
- For plans that have more than 50 percent of the measures that compose a reporting category missing, they are given a designation of “insufficient data” for that measurement category.

The calculations in that category are based upon the remaining reportable measures versus reportable plans.

“N/A” and “N/R” designations will be treated differently where values are missing. “N/A” values will be replaced with the mean of ‘non-missing observations’ and “N/R” values will be replaced with the minimum value of the ‘non-missing observations’. This procedure minimizes any disadvantage to plans that are willing but unable to report data.

### **Case-Mix Adjustment of CAHPS Data**

Several field tests indicate that there is a tendency for CAHPS respondents who are in poor health to have lower satisfaction scores. It is not clear whether this is because members in poor health experience lower quality health care or because they are generally predisposed to give more negative responses (halo effect).

It is believed that respondents in poor health receive more intensive health care services, and their CAHPS’ responses do contain meaningful information about the quality of care delivered in this more intensive environment. Therefore, case-mix adjusting is not planned for the CAHPS data used in this analysis.

### **Statistical Methodology**

**Appendix C** presents details of the statistical methodology, which includes the following steps:

1. Create standardized versions of all measures for each plan so that all component measures that contribute to the summary scores for each reporting category are on the same scale. Measures are standardized by subtracting the mean of all plans from the value for individual plans and dividing by the standard deviation of all plans.
2. Combine the standard measures into summary scores in each reporting category for each plan.
3. Calculate standard errors for individual plan summary scores and for the mean summary scores for all plans.

4. Calculate difference scores for each reporting category by subtracting the mean summary score for all plans from individual plan summary score values.
5. Use the standard errors to calculate 95 percent confidence intervals for the difference scores.
6. Categorize plans into three categories on the basis of these confidence intervals (CI). If the entire 95 percent CI is in the positive range, the plan is categorized as “above average”. If a plan’s 95 percent CI includes zero, the plan is categorized as “average”. If the entire 95 percent CI is in the negative range, the individual plan is categorized as “below average”.

This procedure generates classification categories so differences from the group mean for individual plans in the “above average” and “below average” categories are statistically significant at  $\alpha = .05$ . Scores of plans in the “average” category are not significantly different from the group mean.

### **Quality Control**

The Delmarva and NCQA team has quality control processes for ensuring that all data in the Report Card are accurately presented. This includes closely reviewing the project’s agreed upon requirements and specification of each measure so that impacts of any changes are assessed and clearly delineated and cross-checking all data analysis results against Delmarva and NCQA independent analyses. NCQA will have two separate programmers independently review the specifications and code the Report Card. The analysts will resolve any discrepancies in results prior to passing the data to Delmarva for its own independent analysis and quality checks. Any discrepancies at this step will be discussed with the project team and resolved before the analysis is made final. Following the quality control processes, Delmarva will deliver the data analysis necessary to support public reporting in the Report Card.

**APPENDIX A:  
Reporting Categories and Measures**

<b>CATEGORY: ACCESS TO CARE</b>	<b>DATA SOURCE</b>
Getting Needed Care (composite)	CAHPS5.0H MA CAHPS5.0H MC
Getting Care Quickly (composite)	CAHPS5.0H MA CAHPS5.0H MC
Customer Service (composite)	CAHPS5.0H MA CAHPS5.0H MC
Children and Adolescents' Access to Primary Care Practitioners (12 to 24 months, 25 months to 6 years, 7 to 11 years, and 12-19 years)	HEDIS
Adults' Access to Preventive/Ambulatory Health Services (20 to 44 years and 45 to 64 years)	HEDIS
Access to Care - SSI Adult (21 years or older)*	DHMH Encounter Data
Call Answer Timeliness†	HEDIS

<b>CATEGORY: DOCTOR COMMUNICATION AND SERVICE</b>	<b>DATA SOURCE</b>
Rating of All Health Care	CAHPS5.0H MA CAHPS 5.0H MC
Rating of Personal Doctor	CAHPS5.0H MA CAHPS5.0H MC
Rating of Specialist Seen Most Often	CAHPS5.0H MA CAHPS5.0H MC
How Well Doctors Communicate (composite)	CAHPS5.0H MA CAHPS5.0H MC
Shared Decision Making (composite)	CAHPS5.0H MA CAHPS5.0H MC
Health Promotion and Education	CAHPS5.0H MA CAHPS5.0H MC
Coordination of Care	CAHPS5.0H MA CAHPS5.0H MC

<b>CATEGORY: KEEPING KIDS HEALTHY</b>	<b>DATA SOURCE</b>
Childhood Immunization Status (Combo 3)*	HEDIS
Appropriate Treatment for Children With Upper Respiratory Infections (3 months-18 years)	HEDIS
Appropriate Testing for Children With Pharyngitis (2-18 years)	HEDIS
Well-Child Visits in the First 15 Months of Life (5+ visit rate)	HEDIS
Well-Child Visits in the 3rd, 4th, 5th and 6 <sup>th</sup> Years of Life*	HEDIS
Adolescent Well-Care Visits (12-21 years)*	HEDIS
Lead Screening (12 through 23 months)*	DHMH Encounter Data, MD Dept of Environment, Lead Registry, Fee for Service Data
Immunization for Adolescents (Combo 1)*	HEDIS

\*VBP measure

†New measure

<b>CATEGORY: CARE FOR KIDS WITH CHRONIC ILLNESS</b>	<b>DATA SOURCE</b>
Access to Prescription Medicines	CAHPS5.0H MC
Access to Specialized Services: Special Medical Equipment or Devices	CAHPS5.0H MC
Family Centered Care: Personal Doctor or Nurse Who Knows Child(composite)	CAHPS5.0H MC
Family Centered Care: Getting Needed Information	CAHPS5.0H MC
Coordination of Care for Children With Chronic Conditions (composite)	CAHPS5.0H MC
Access to Care – SSI Children (ages 0-20)*	DHMH Encounter Data
Use of Appropriate Medications for People With Asthma (5-11 years)	HEDIS
Medication Management for People With Asthma (5-11 years; 75% indicator)*†	HEDIS

<b>CATEGORY: TAKING CARE OF WOMEN</b>	<b>DATA SOURCE</b>
Breast Cancer Screening*	HEDIS
Chlamydia Screening (Total Rate: 16-24 years )	HEDIS
Timeliness of Prenatal Care	HEDIS
Postpartum Care*	HEDIS
Frequency of Ongoing Prenatal Care(≥ 81% of visits)	HEDIS

<b>CATEGORY: CARE FOR ADULTS WITH CHRONIC ILLNESS</b>	<b>DATA SOURCE</b>
CDC: Hemoglobin A1c (HbA1c) Testing*	HEDIS
CDC: HbA1c Poor Control (>9.0%) Note: plan rate used in the analysis is the inverse score, in order to provide consistency with other measures (i.e. higher % is better)	HEDIS
CDC: LDL-C Screening	HEDIS
CDC: LDL-C Control (<100 mg/dL)	HEDIS
CDC: Eye Exam (Retinal) Performed	HEDIS
CDC: Medical Attention for Nephropathy	HEDIS
CDC: Blood Pressure Control (<140/80 mm Hg)	HEDIS
Avoidance of Antibiotic Treatment in Adults With Acute Bronchitis	HEDIS
Use of Imaging Studies for Low Back Pain	HEDIS
Use of Appropriate Medications for People With Asthma (19-64 (combine 19-50 and 61-64))*†	HEDIS
Medication Management for People With Asthma (19-64 (combine 19-50 and 61-64); propose using 75% indicator)*†	HEDIS
Controlling High Blood Pressure**†	HEDIS

\*VBP measure

†New measure

## Appendix B:

### Questions Comprising CAHPS® 5.0H Composites for the Medicaid Product Line

Composites are used to aggregate information from multiple specific questions. The table displays the composite questions, response choices and corresponding score values used to calculate results for the CAHPS 5.0H Adult Questionnaire and Child Questionnaire (With Children with Chronic Conditions measure) (CCC). The sampling protocol for the Child Questionnaire allows for the reporting of two separate sets of results: one for the general population of children and one for the population of children with chronic conditions.

#### Question numbers:

**MA = CAHPS 5.0H Medicaid Adult Questionnaire**

**MC = CAHPS 5.0H Medicaid Child Questionnaire (With CCC measure)**

Question	Getting Needed Care	Response Choices	Score Values
Q14=MA Q15=MC	In the last 6 months, how often was it easy to get appointments with specialists?	Never Sometimes Usually Always	1 1 2 3
Q25=MA Q46=MC	In the last 6 months, how often was it easy to get the care, tests, or treatment you thought you needed through your health plan?	Never Sometimes Usually Always	1 1 2 3
Question	Getting Care Quickly	Response Choices	Score Values
Q4=MA Q4=MC	In the last 6 months, when you needed care right away, how often did you get care as soon as you needed?	Never Sometimes Usually Always	1 1 2 3
Q6=MA Q6=MC	In the last 6 months, how often did you get an appointment for a check-up or routine care at a doctor's office or clinic as soon as you needed?	Never Sometimes Usually Always	1 1 2 3
Question	How Well Doctors Communicate	Response Choices	Score Values
Q17=MA Q32=MC	In the last 6 months, how often did your personal doctor explain things in a way that was easy to understand?	Never Sometimes Usually Always	1 1 2 3
Q18=MA Q33=MC	In the last 6 months, how often did your personal doctor listen carefully to you?	Never Sometimes Usually Always	1 1 2 3
Q19=MA Q34=MC	In the last 6 months, how often did your personal doctor show respect for what you had to say?	Never Sometimes Usually Always	1 1 2 3
Q20=MA Q37=MC	In the last 6 months, how often did your personal doctor spend enough time with you?	Never Sometimes Usually Always	1 1 2 3

Question		Customer Service	Response Choices	Score Values
Q31=MA Q50=MC	In the last 6 months, how often did your health plan's customer service give you the information or help you needed?		Never Sometimes Usually Always	1 1 2 3
Q32=MA Q51=MC	In the last 6 months, how often did your health plan's customer service staff treat you with courtesy and respect?		Never Sometimes Usually Always	1 1 2 3
Question		Shared Decision Making	Response Choices	Score Values
Q10=MA Q11=MC	When you talked about starting or stopping a prescription medicine, how much did a doctor or other health provider talk about the reasons you might want to take a medicine?		Not at all A little Some A lot	1 1 2 3
Q11=MA Q12=MC	When you talked about starting or stopping a prescription medicine, how much did a doctor or other health provider talk about the reasons you might not want to take a medicine?		Not at all A little Some A lot	1 1 2 3
Q12=MA Q13=MC	When you talked about starting or stopping a prescription medicine, did a doctor or other health provider ask you what you thought was best for you?		Yes No	3 1
Question		Health Promotion and Education	Response Choices	Score Values
Q8=MA Q8=MC	In the last 6 months, did you and a doctor or other health provider talk specific things you could do to prevent illness?		Yes No	1 2
Question		Coordination of Care	Response Choices	Score Values
Q22=MA Q40=MC	In the last 6 months, how often did your personal doctor seem informed and up-to-date about the care you got from these doctors or other health providers?		Never Sometimes Usually Always	1 1 2 3

## CAHPS 5.0H Child Questionnaire Composites

The following questions from the CAHPS 5.0H Child Questionnaire provide information on parents' experience with their child's health plan for the population of children with chronic conditions. The five CCC composites summarize satisfaction with basic components of care essential for successful treatment, management and support of children with chronic conditions. The child is included in the CCC population calculations if one or more of the following survey-based screening criteria are true:

- ◆ Child currently needs/uses **medicine prescribed by a doctor** for a medical, behavioral or other health condition lasting/expected to last 12 months or more.
- ◆ Child needs/uses more **medical, mental health or educational services** than is usual for most children the same age due to a medical, behavioral or other health condition lasting/expected to last 12 months or more.
- ◆ Child is **limited or prevented** in any way in his or her ability to do the things most children of the same age can do because of a medical, behavioral or other health condition lasting/expected to last 12 months or more.
- ◆ Child needs to get **special therapy**, such as physical, occupational or speech therapy for a medical, behavioral or other health condition lasting/expected to last 12 months or more.
- ◆ Child has any kind of emotional, developmental or behavioral problem lasting/expected to last 12 months or more for which he or she needs or gets **treatment or counseling**.

Question	Access to Prescription Medicines	Response Choices	Score Values
<b>Q56</b>	In the last 6 months, how often was it easy to get prescription medicines for your child through his or her health plan?	Never Sometimes Usually Always	1 1 2 3
Question	Access to Specialized Services	Response Choices	Score Values
<b>Q20</b>	In the last 6 months, how often was it easy to get special medical equipment or devices for your child?	Never Sometimes Usually Always	1 1 2 3
<b>Q23</b>	In the last 6 months, how often was it easy to get this therapy for your child?	Never Sometimes Usually Always	1 1 2 3
<b>Q26</b>	In the last 6 months, how often was it easy to get this treatment or counseling for your child?	Never Sometimes Usually Always	1 1 2 3
Question	Family-Centered Care: Personal Doctor Who Knows Child	Response Choices	Score Values
<b>Q38</b>	In the last 6 months, did your child's personal doctor talk with you about how your child is feeling, growing, or behaving?	Yes No	1 0
<b>Q43</b>	Does your child's personal doctor understand how these medical, behavioral, or other health conditions affect your child's day-to-day life?	Yes No	1 0
<b>Q44</b>	Does your child's personal doctor understand how your child's medical, behavioral, or other health conditions affect your family's day-to-day life?	Yes No	1 0
Question	Family-Centered Care: Getting Needed Information	Response Choices	Score Values
<b>Q9</b>	In the last 6 months, how often did you have your questions answered by your child's doctors or other health providers?	Never Sometimes	1 1

		Usually Always	2 3
<b>Question</b>	<b>Coordination of Care for Children With Chronic Conditions</b>	<b>Response Choices</b>	<b>Score Values</b>
<b>Q18</b>	In the last 6 months, did you get the help you needed from your child's doctors or other health providers in contacting your child's school or daycare?	Yes No	1 0
<b>Q29</b>	In the last 6 months, did anyone from your child's health plan, doctor's office, or clinic help coordinate your child's care among these different providers or services?	Yes No	1 0

## **APPENDIX C:**

### **Statistical Methodology to Compare Plan Performance Developed by NCQA**

NCQA will compute a series of summary measure scores for each plan as well as the summary mean values for the plans as a group. Higher values represent more favorable performance<sup>2</sup>. The summary scores are calculated from plan scores on selected HEDIS<sup>®</sup> measures, CAHPS<sup>®</sup> questions, CAHPS composites, and additional data from the Maryland HealthChoice Program.

Prior to the statistical analysis, NCQA will review the data for missing values. Plans with more than half of the measures missing within a summary category will not receive a summary score for that category. Otherwise, NCQA will handle missing values as follows:

- Rates with an “NR” (Not Reportable) designation will be assigned the minimum plan rate.
- Rates with an “NA” (Not Applicable) designation will be assigned the average plan rate.

For Report Card purposes, missing values for plans will be handled in this specific order:

- If fewer than 50 percent of the plans report a measure, the measure will be dropped from the report card category.
- Next, if a plan has reported at least 50 percent of the measures in a reporting category, the missing values will be replaced with the mean or minimum values based on the reasons for the missing value.
- For plans that have more than 50 percent of the measures that compose a reporting category missing, they are given a designation of “insufficient data” for that measurement category.

The calculations in that category are based upon the remaining reportable measures versus reportable plans.

Plan ratings are based on the difference between the plan score and the unweighted group mean. The statistical significance of each difference is determined by computing a confidence interval (CI) around it. The formulas below assume a 95% CI. Those plans with differences significantly above or below zero receive the top and bottom designations respectively. A plan is significantly above zero if the lower limit of the CI is greater than zero; it is significantly below zero if the upper limit of the CI is below zero. All remaining plans receive the middle designation.

The specific formula for calculating the CI around a summary score is based on the CI formulas for the individual measures that compose the summary measure. These are presented first. The formulas can be modified to incorporate variable weights for the measures. The formulas presented here assume that each measure receives equal weight.

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<sup>2</sup>For HbA1c Poor Control (>9.0%) the rate used in the analysis is the inverse of the plan rate in order to be consistent with other measures (i.e., higher % is better).

## Specific Methods

- For an individual HEDIS measure score, the CI formula is as follows:

For a given measure and plan k, let the difference  $d_k = \text{plan k score} - \text{group mean}$ .  
Then the formula for the 95% CI is:

$$95\% \text{ CI} \quad d_k \pm 1.96\sqrt{\text{Var}(d_k)}$$

where  $\text{Var}(d_k)$  = Variance of  $d_k$  is estimated as  $\frac{N(N-2)}{N^2} * \frac{p_k(1-p_k)}{n_k-1} + \frac{1}{N^2} \sum_{k=1}^N \frac{p_k(1-p_k)}{n_k-1}$

and:  $p_k$  = plan k score

$N$  = total number of plans

$n_k$  = number of members in the measure sample for plan k.

The CIs for CAHPS question means, CAHPS composites, and the summary measures are computed similarly by modifying the formula for  $\text{Var}(d_k)$  to take into account the variances of the HEDIS scores, CAHPS questions, and CAHPS composites in each summary measure.

- For summary measures that include HEDIS measures only (i.e. all measures are proportions), first standardize each measure score in the summary by subtracting the group mean and dividing by the group standard deviation. Sum the plan standardized scores to get the plan summary measure score. Use these scores to compute the group summary mean and the difference scores. For each plan k, substitute

$$\sum_{j=1}^m \frac{w_j^2}{s_j^2} \frac{p_j(1-p_j)}{n_j-1} \quad \text{for } p_k(1-p_k)/(n_k-1) \text{ in the variance formula where:}$$

$j = 1, \dots, m$  HEDIS measures in the summary measure

$n_j$  = number of members in the denominator for measure j

$s_j$  = standard deviation for measure j

$w_j$  = weight for measure j scaled so that  $\sum_{j=1}^m w_j = 1$

$p_j$  = non-standardized plan score for measure j

- For individual CAHPS® ratings' questions, convert each question response to a score (1, 2, or 3) and compute the plan mean. Use the plan means to compute the group mean and the difference scores. Next

$$\text{substitute } \frac{1}{n_k} \frac{\sum_{i=1}^{n_k} (x_i - \bar{x})^2}{n_k - 1} \quad \text{for } p_k(1-p_k)/(n_k-1) \text{ in the variance formula}$$

where:

$x_i$  = response of member i

$\bar{x}$  = the mean score for plan k

$n_k$  = number of responses in plan k.

- For CAHPS® composites, convert each individual response to a score (1, 2, or 3) and calculate each plan composite mean as described in HEDIS Volume 3. Use the plan composite means to compute the group

mean and the difference scores. Substitute  $CV_k$ , the plan k Composite Variance, for  $p_k(1-p_k)/(n_k-1)$  in the variance formula where  $CV_k = \frac{T}{T-1} \sum_{i=1}^N \left( \sum_{j=1}^m \frac{1}{m} \frac{(x_{ij} - \bar{x}_j)^2}{n_j} \right)$

and:

- $j = 1, \dots, m$  questions in the composite measure
- $i = 1, \dots, n_j$  members responding to question j
- $x_{ij}$  = response of member i to question j (1, 2, or 3)
- $\bar{x}_j$  = plan mean for question j
- T = number of members responding to at least one question in the CAHPS composite.

5. For the summary measures that include CAHPS scores only (individual questions or composites), first convert each individual response to a score (1-3 or 0-1) as described in HEDIS Volume 3. Compute the plan mean for each individual rating's question in the summary measure and the plan composite mean for each composite. Next, standardize each plan mean (individual question or composite) by subtracting the mean of the plan means and dividing by the standard deviation of the plan means. Compute the sum of the standardized plan means to get the plan summary measure score. Use these summary scores to compute the group mean and the difference scores. For each plan k, substitute:

$$\sum_{j=1}^{m_c} \frac{w_j^2}{s_j^2} CV_j + \sum_{j=1}^{m_q} \frac{w_j^2}{s_j^2} \frac{1}{n_j} \frac{\sum_{i=1}^{n_j} (x_{ij} - \bar{x}_j)^2}{n_j - 1}$$

for  $p_k(1-p_k)/(n_k-1)$  in the variance formula where:

$j = 1, \dots, m_c$  or  $m_q$  composites or questions in the summary measure  
 $s_j$  = standard deviation for composite or question j

$w_j$  = weight for measure j scaled so that  $\sum_{j=1}^m w_j = 1$

$CV_j$  = composite variance for composite j

$x_{ij}$  = response of member i to question j (1, 2, or 3)

$\bar{x}_j$  = non-standardized plan mean score for question j

$n_j$  = number of responses to question j

6. For the summary measures that include HEDIS and CAHPS scores, the variance of the summary measure is the sum of the variances of the components of the measure. Score each CAHPS question or composite by converting each individual response to a score (1, 2, or 3) as described in HEDIS Volume 3. Compute the plan composite mean for each CAHPS composite and the plan mean for each HEDIS measure or CAHPS question. Next, standardize each plan mean (composite or HEDIS) by subtracting the mean of the plan means and dividing by the standard deviation of the plan means. Compute the sum of the standardized plan means to get the plan summary measure score. Use these summary scores to compute the group mean and the difference scores.

For each plan k, substitute:

$$\sum_{j=1}^{m_c} \frac{w_j^2}{s_j^2} CV_j + \sum_{j=1}^{m_q} \frac{w_j^2}{s_j^2} \frac{1}{n_j} \frac{\sum_{i=1}^{n_j} (x_{ij} - \bar{x}_j)^2}{n_j - 1} + \sum_{j=1}^m \frac{1}{s_j^2 w_j^2} \frac{p_j(1-p_j)}{n_j - 1}$$

for  $p_k(1-p_k)/(n_k-1)$  in the variance formula

where:

- $j = 1, \dots, m$  or  $m_c$  or  $m_q$  HEDIS measures or CAHPS composites or CAHPS questions in the summary
- $n_j$  = number of members in the sample or denominator for measure j

$x_{ij}$  = response of member  $i$  to question  $j$  (1, 2, or 3)

$\bar{x}_j$  = non-standardized plan mean for question  $j$

$CV_j$  = composite variance for composite  $j$

$s_j$  = standard deviation for measure  $j$

$w_j$  = *weight for measure  $j$  scaled so that  $\sum_{j=1}^m w_j = 1$*

$p_j$  = non-standardized plan score for measure  $j$

**ATTACHMENT S – EPSDT/HEALTHY KIDS REVIEW STANDARDS**

<b>EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program Health and Developmental History</b>			
<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
1. Medical history 2. Family history 3. Immunization history 4. Psychosocial history 5. Perinatal history 6. Adolescent history	Visit Notes  Encounter Forms  History Form  Problem List  Electronic Medical Record/ Electronic Health Record (EMR/EHR)	Score achieved based on criteria established by the Program for a documented comprehensive initial history and yearly re-assessment of: <ul style="list-style-type: none"> <li>• Medical history/review of systems (ROS)</li> <li>• Family history</li> <li>• Immunization history</li> <li>• Psychosocial history</li> <li>• Adolescent history (ages 12 years and older)</li> <li>• Perinatal history (&lt;2 years of age)</li> </ul>	Baseline health and family health history is a required component of a complete EPSDT medical record. A complete health history is required on the initial visit and includes: <ul style="list-style-type: none"> <li>• Birthdate</li> <li>• Perinatal history, if relevant</li> <li>• Family history of health conditions for both immediate (parents, siblings) and extended family (grandparents, aunts/uncles, cousins)</li> <li>• Psychosocial history that may include information on housing, parentage (single vs. married, teen), parental employment, recent move, recent death in family, exposure to violence.</li> <li>• Chronic problems</li> <li>• Allergies and allergic reactions</li> <li>• Surgeries</li> <li>• Family health habits (use of seatbelts, tobacco, etc.)</li> <li>• Potential allergens, if applicable</li> <li>• Nutritional history</li> <li>• Immunization history</li> <li>• Sexual/reproductive history</li> <li>• Caregiver concerns</li> <li>• Last dental visit</li> </ul> <p>➤ Consistent use of the most currently updated problem list is acceptable in lieu of yearly medical history/updates/summaries</p> <p>➤ Yearly update/summary of medical, family, psychosocial history is required that indicates PCP review.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Health and Developmental History**

<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
<b>EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program Health and Developmental History</b>			
<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
7. Mental Health Assessment	Visit Notes Screening Questionnaires History Notes Problem List EMR/EHR	Score achieved based on documentation of subjective or objective mental health assessments.	A mental health risk assessment is required on every Healthy Kids visit beginning at age three years with results (normal/abnormal) noted either on the date of service or within a year of the current date of service under review. Refer for specialty services for abnormal findings or document counseling provided by the PCP to address the mental health issue.  Refusal of referral by patient/parent should be noted if this occurs.
8. Developmental Surveillance Note: this element screen is displayed separately from Mental Health Assessment	Visit Notes Developmental Screening Tool History Notes EMR/EHR	Score achieved based on documentation of subjective or objective developmental assessment or tool.	Developmental surveillance and Mental Health assessments for school age children and adolescents overlap in many areas. Scoring for these two elements includes documented information related to the school performance and/or emotional/ behavioral adjustments during this stage of development.
9. Developmental Screening	Developmental Screening Tool	Score achieved based on documentation of an objective developmental tool.	The implementation of a developmental screening tool at the 9, 18, and 24-30 month visit. [i.e., Ages and Stages Questionnaire (ASQ) or Parent Evaluation of Developmental Status (PEDS)]. Implementation of a developmental tool is required in 2012.  EPSDT providers must complete an autism screening tool, such as the M-CHAT, at 18 months and 24-30 months of age.
10. Substance Abuse Assessment	Visit Notes Screening questionnaires History Note Problem List	Score achieved based on documentation of subjective or objective substance abuse assessments.	A substance abuse assessment should begin at age 12, or at a younger age, if indicated, with re-assessment yearly thereafter. Document results of the yearly assessment during the Healthy Kids visit. Refer for specialty services as indicated. Refusal of referral by patient/parent should be noted if this occurs.

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Comprehensive Physical Examination**

<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
1. Physical Examination	Visit Notes  EMR/EHR	Score achieved based on documentation of systems examination.	<p>Documentation of the physical examination noting a minimum of five systems and physical measurement parameters is required for Healthy Kids/EPSDT Program.</p> <p>Documentation should include:</p> <ul style="list-style-type: none"> <li>• General appearance of the child</li> <li>• Structure and function systems review of skeletal, muscular, nervous, sensory , circulatory, respiratory, digestive, urinary, reproductive, and endocrine systems.</li> </ul> <p>Documentation of systems should be charted with findings noted as normal or abnormal. A check mark in the appropriate box is sufficient when using a pre-printed pediatric visit sheet. Documentation that includes “none”, “negative”, or ∅ symbol is acceptable negative documentation for each system that is reviewed. All abnormal findings must include an explanation.</p> <p>Note: A summary notation of “P.E. WNL” (within normal limits) is not acceptable documentation for a systems exam.</p>
2. Measurements and Graphing	Visit Notes  Growth Charts  EMR/EHR	Score achieved based on the following documentation of: <ul style="list-style-type: none"> <li>• height</li> <li>• weight</li> <li>• plotted measurements</li> <li>• head circumference</li> <li>• blood pressure</li> <li>• BMI</li> </ul>	<p>Measurement of height and weight is required through 20 years of age and graphed on growth charts:</p> <ul style="list-style-type: none"> <li>• Adult height &amp; weight parameters can be used to assess specific problems for ages 18 – 20.</li> <li>• Calculation and graphing of Body Mass Index (BMI) is required for all children 2-20 years of age and was added to the Maryland Schedule for Preventive Health Care in CY 2008.</li> </ul> <p>As recommended by the AAP, routine measurement and graphing of head circumference to age 2 is now required. Refer to the updated 2008 Maryland Schedule for Preventive Health Care.</p> <p>Blood pressure must be documented on all children age 3 and older.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Comprehensive Physical Examination**

<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
3. Nutrition Assessment	Visit Notes  Growth Charts  Lab Results  EMR/EHR	Score achieved based on documentation of specified criteria (see “explanatory notes”).	Assessment of the nutritional status of a child is required at each visit. Criteria includes documented: <ul style="list-style-type: none"> <li>• Assessment of “typical” diet.</li> <li>• Assessment of growth measurements that includes calculation and graphing of BMI.</li> <li>• Assessment of lab results for iron deficiency and/or elevated serum cholesterol.</li> <li>• Referral for specialty nutrition counseling when BMI is at or greater than the 95<sup>th</sup> percentile.</li> <li>• Diet counseling and appropriate lab tests when BMI is above 85<sup>th</sup> percentile.</li> </ul> Refer to the 2007 Expert Committee Recommendations at: <a href="http://www.ama-assn.org/ama/pub/category/11759.html">www.ama-assn.org/ama/pub/category/11759.html</a>
4. Vision & Hearing Assessments	Visit Notes  Audiometer/Audioscope Results  Objective Vision Results  EMR/EHR	Score achieved based on documentation of assessment results.	Vision and hearing assessment indicators should be documented at all Healthy Kids screening intervals. Determine the appropriateness of the method used for each age group.  Abnormal vision/hearing assessments/screens require referral to specialist.  Objective screening methods are suggested (not required) at intervals designated on the Schedule of Preventive Health Care. The components for the objective screening methods are outlined in the Healthy Kids Program Manual.

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Comprehensive Physical Examination**

<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
5. Oral Assessment	Visit Notes  EMR/EHR	Score achieved based on documented oral assessments, education and referrals.	<p>Oral assessments are to be documented at each well child visit to include notation of condition of oral cavity and teeth. The number of teeth should also be noted during infancy as they erupt. The Dental Caries Risk Assessment for Non-Dental Healthcare Providers is recommended for use and can be obtained from the DHMH Office of Oral Health @ <a href="http://www.fha.state.md.us/oralhealth">www.fha.state.md.us/oralhealth</a>.</p> <p>Appropriate education and/or referrals should be noted that addresses problems identified during the visit.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Laboratory Tests/At Risk Screenings**

<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
1. Hereditary/Metabolic Screening at no later than 8 weeks of age.	Visit notes  Lab Slip  EMR/EHR	Score achieved based on documented lab results.	Document results of the newborn screen completed at birth by the hospital. NOTE: PCP is responsible for obtaining metabolic screening results for all infants less than 6 months of age. Lab results are available from the Department upon request at 410 767-6730. A second “satisfactory” <u>test result</u> is required by 8 weeks of age and must be documented in the medical record.
2. Lead Assessment	Visit Notes Screening Questionnaires EMR/EHR	Score achieved based on documented results of screening by questionnaire.	Document results of lead risk assessment at each Healthy Kids visit from 6 mos. to 6 years of age.
3. Referral to laboratory for lead test	Visit Notes Screening Questionnaires EMR/EHR	Score achieved based on: Documented referral to lab at appropriate ages and follow-up of referral.	Referral to the laboratory for age-appropriate lead tests is to be documented with follow-up of referral noted within 30 days if test results not received.
4. Lead Blood Test at 12 months and at 24 months  <ul style="list-style-type: none"> <li>Documented lead test results at 12 months and at 24 months.*</li> <li>Documented baseline test results for ages 3 to 6 years of age.</li> <li>Catch up</li> </ul>	Visit Notes  Lab Slip  EMR/EHR	Score achieved based on: <ul style="list-style-type: none"> <li>Documented lead test results at 12 months and at 24 months.*</li> <li>Documented baseline test results for ages 3 to 6 years of age.</li> <li>Catch up</li> </ul>	Document blood lead test results at age 12 months and 24 months, or as indicated on the Preventive Health Care Schedule.  *12 month lead results are to be documented between 9 – 23 months of age and 24 month lead results between 24 – 35 months.  Any child who enters the practice between 3 years and 6 years of age needs a baseline lead test result in the record.  Note - A child with a blood lead level greater than 5 ug/dL must have a blood lead level drawn within 3 months. This will be scored as baseline in 2014 and scored in 2015.

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Laboratory Tests/At Risk Screenings**

<i>Screens</i>	Data Sources	Outcomes	Explanatory Notes
<p>5. Anemia test at 12 months and 24 months.</p> <ul style="list-style-type: none"> <li>Documented anemia test results at 12 months and at 24 months.*</li> <li>Documented baseline test results for ages 3 to 6 years of age.</li> <li>Catch up</li> </ul>	<p>Visit Notes</p> <p>Lab Slip</p> <p>EMR/EHR</p>	<p>Score achieved based on documented anemia test results at 12 months and at 24 months.*</p> <ul style="list-style-type: none"> <li>Documented anemia test results at 12 months and at 24 months.*</li> <li>Documented baseline test results for ages 3 to 6 years of age.</li> <li>Catch up</li> </ul>	<p>Document test results for anemia at 12 months and 24 months of age or as indicated on the Maryland Schedule of Preventive Health Care.</p> <p>*12 month anemia results are to be documented between 9 – 23 months of age and 24 month anemia results between 24 – 35 months.</p> <p>Any child who enters the practice between 3 years and 6 years of age needs a baseline anemia test result in the record.</p>
<p>6. Additional Risk Assessments and Lab Tests (Based on Risk Factors)</p>	<p>History and Visit Notes</p> <p>Assessment Questionnaires</p> <p>Lab slip</p> <p>EMR/EHR</p>	<p>Score achieved based on documented risk assessment results, appropriate lab tests, and follow-up for abnormal lab results.</p>	<p>Conduct yearly age-appropriate risk assessments for the following:</p> <ul style="list-style-type: none"> <li>Tuberculosis beginning at 1 month and annually assess.</li> <li>Cholesterol/Heart Disease beginning at 2 years of age.</li> <li>STI/HIV beginning at age 12.</li> </ul> <p>Provide appropriate counseling and education based on assessment results.</p> <p>Refer for laboratory tests and/or other screening tests based on positive risk factors identified from the health history, physical examination, or risk assessment questionnaire.</p> <p>Document a referral and/or follow-up for abnormal lab results.</p> <p>Document evidence of outreach efforts for any child that did not receive follow-up for abnormal lab results.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Appropriate Immunizations**

<i>Screens</i>	A. Data Sources	B. Outcomes	C. Explanatory Notes
<b>1. Immunization Status</b>	Visit Notes	Score achieved based on documentation of age-appropriate administration of vaccines according to the most current recommended DHMH Immunization Schedule.	<p>Document the following in the record:</p> <ul style="list-style-type: none"> <li>• Immunization status was evaluated the day of the Healthy Kids visit.</li> <li>• Immunization history for each child, adolescent and young adult. If a child does not have their immunization record, document the efforts to obtain the immunization record.</li> <li>• If parents indicate their religious beliefs conflict with the immunization requirement, a religious exemption must be recorded.</li> <li>• Immunization status must be reviewed at all visits, well child and acute care. In addition, note the reason a child is delayed receiving immunizations.</li> <li>• Any vaccine contraindication, such as a physical condition that would constitute a serious threat to the child's health.</li> <li>• Parental refusal for vaccinations must be documented.</li> </ul>
<b>Age Vaccine</b>	Immunization History/Records		
Birth Hep B	Medical History		
2 mos. DTaP, IPV, Hib, Hep B, <u>PCV13*</u> , RV	EMR/EHR		
4 mos. DTAP, IPV, Hib, PCV13 RV			
6 mos. DTAP, Hib, Hep B, IPV, <u>PCV13*</u> , RV			
12 mos. MMR, Varicella #1, <u>PCV13*</u> , Hep A #1			
15 mos. DTaP, or Dt , Hib			
18 mos. Hep A #2			

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Appropriate Immunizations**

<i>Screens</i>	A. Data Sources	B. Outcomes	C. Explanatory Notes
<p>4-6 yrs. DTaP, or DPT, IPV, MMR Varicella #2</p>			<p>Providers must follow the most current immunization schedule approved by the MD State Medical Society and the Department of Health and Mental Hygiene.</p> <p>Providers are required to re-start age-appropriate vaccines based on current recommendations when a parent, guardian or recipient is unable to produce a vaccine record of when the child was immunized.</p> <p>Vaccine shortage within a practice must be documented in the chart when it is not administered per Schedule.</p> <p>Hib vaccine is no longer in short supply, therefore the four-dose requirement is in effect. Note: Only three doses required when PedvaxHib or ComVax are administered.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Appropriate Immunizations**

<i>Screens</i>	A. Data Sources	B. Outcomes	C. Explanatory Notes
<p>11 - 18yrs. and older</p> <p>Td/Tdap(Repeat every 5-10 years throughout life)</p> <p>MCV4</p> <p>HepB</p> <p>Varicella</p>			<p>Hep B &amp; Varicella should be given to school age children and teens at any age when there is no history or record of previous immunization.</p> <p>MCV4 is required at the 11-12 year visit and ages 13-18 if previously unvaccinated.</p> <p>Two doses of Varicella vaccine are required for all ages through 20 years of age. Give 2<sup>nd</sup> dose to any child or adolescent with history of only 1 dose. Give 2 doses if no history or record of any Varicella vaccination.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Appropriate Immunizations**

<b>Screens</b>		<b>D. Data Sources</b>	<b>E. Outcomes</b>	<b>F. Explanatory Notes</b>
Ages 6 to 32 weeks	Rotavirus (RV)			<p>Closely follow DHMH Immunization Schedule when administering RV:</p> <ul style="list-style-type: none"> <li>• 1<sup>st</sup> dose given between 6-14 wks (but not after 14 wks 6 days)</li> <li>• The final dose given no later than 32 weeks</li> <li>• Don't initiate vaccine if infant 15 weeks or older</li> </ul> <p>Rotarix (RV1) – 2 doses required if used exclusively                      RotaTeq (RV5) – 3 doses required                      Note: If child received RV1 and RV5 for either of first two doses, a 3<sup>rd</sup> dose of RV is required.</p>
Ages 6 months through 18	Influenza (Flu)			<p>During the annual influenza season (September through April), all children/adolescents 6 months to 18 years of age are required to receive influenza vaccine.                      Follow the current DHMH Immunization Schedule for administering influenza vaccine to young adults 19-20 years of age.</p>
All vaccines per age	Assessed if Immunizations are up to date on date of service			<p>Any vaccine not given per Schedule on the date of service under review is considered a “missed opportunity” to immunize unless there is adequate documentation of a reason for deferring administration.</p>
New Vaccines per VFC Program				<p>As new vaccines become available from the VFC Program, criteria for scoring will be based on the most current Maryland Recommended Childhood and Adolescent Immunization Schedule. New vaccines must be available to MCO network providers for one full calendar year before the new vaccine(s) is included in a review.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Health Education/Anticipatory Guidance**

<i>Screens</i>	<i>Data Sources</i>	<i>Outcomes</i>	<i>Explanatory Notes</i>
1. Health Education/Anticipatory Guidance	<p>Visit Notes</p> <p>Laboratory Results</p> <p>Documented Office Protocol</p> <p>Evidence of Accessible Educational Materials</p> <p>EMR/EHR</p>	Score achieved based on documented evidence of health education and/or anticipatory guidance.	<p>Documentation of age-specific health education and anticipatory guidance is required for each well child encounter. A minimum of 3 topic areas are to be addressed and documented at each visit and include:</p> <ul style="list-style-type: none"> <li>• Normal infant and child development</li> <li>• Child care and parenting skills</li> <li>• Injury prevention and safety</li> <li>• Nutrition</li> <li>• Dental care</li> <li>• Sex education</li> <li>• Disease prevention</li> <li>• Healthy habits</li> </ul>
2. Oral Health Education and Dental Referral	<p>Visit Notes</p> <p>Referral form</p> <p>EMR/EHR</p>	Score achieved based on documented education regarding dental care and referral to the dentist.	<p>Oral health assessment begins in infancy with eruption of teeth. Documentation of the importance of routine dental care and yearly dental referrals are required beginning at 1 year of age. Note: A dental referral is now required at 12 months. This will be scored as baseline in 2014 and scored in 2015.</p>
3. Education about Scheduling Routine Visits per the Schedule of Preventive Health Care	<p>Visit Note</p> <p>Appointment System (computerized or paper)</p> <p>EMR/EHR</p>	Score achieved based on Documented appointments for preventive care according to the Preventive Schedule of Health Care and documented follow-up of missed appointments.	<p>Regular visits for preventive care are required and should be noted in the patient's medical record, unless, a system is in place to document return visits (i.e. computerized appt system).</p> <p>Follow-up of missed appointments should be noted by the PCP in the patient's medical record. Referral to MCOs should be documented when efforts by the PCP have failed to bring the child back into care.</p>

**EPSDT Review Criteria ♦ Maryland Medicaid HealthChoice Program  
Health Education/Anticipatory Guidance**

<i>Screens</i>	<i>Data Sources</i>	<i>Outcomes</i>	<i>Explanatory Notes</i>
<p>4. Counseling/Education and Referral for Identified Problems</p>	<p>Visit Notes  Referral Form  EMR/EHR</p>	<p>Score achieved based on appropriate documentation that identified problems and issues were adequately addressed.</p>	<p>Issues and concerns identified by the parent/guardian or child are to be addressed by the PCP with appropriate documentation in the record of counseling and/or referrals.</p> <p>Referrals for specialty care services are to be placed in the medical record and follow-up from referrals documented. Examples:</p> <ul style="list-style-type: none"> <li>• Document follow-up regarding abnormal lab results.</li> <li>• Document counseling and referral for overweight child.</li> </ul>

## ATTACHMENT T – PRE SERVICE DENIAL REPORTING INSTRUCTIONS AND TEMPLATE

### MCO PRE-SERVICE DENIALS QUARTERLY REPORT TEMPLATE INSTRUCTIONS

The following list is a step-by-step guide for completing the monthly pre-service denial report template provided.

- 1. Member Name (Last, First):** Enter the member's name. Use a comma to separate.
- 2. Medicaid #:** Enter the member's 8-digit Medicaid number. No spaces or dashes.
- 3. Authorization #:** If your organization has an authorization number, enter it here. If not applicable, write N/A.
- 4. Under 21 (Y/N):** If the member is under 21, enter Y; if not, enter N.
- 5. Emergent Medically Necessary Service (Y/N):** If the services requested are emergent, enter Y; if not, enter N. Emergent medically necessary services require a decision within 24 hours of receipt; see COMAR 10.09.71.04(C)(1).
- 6. Denial Date:** Use mm/dd/yyyy format to indicate the date the service was denied.
- 7. Service Category Code:** Use the chart on page 2 of these instructions to enter the appropriate code for the type of service denied. Descriptions are provided for guidance.
- 8. Service/Benefit Denied, Reduced, or Terminated:** Enter D for denial, R for reduction, or T for termination of services.
- 9. Reason for Denial, Reduction, or Termination:** Use the chart on page 3 of these instructions to enter the appropriate code for the reason the service was denied, reduced, or terminated.
- 10. MCO Explanation:** In 50 words or less, provide justification for denial, reduction, or termination of services.
- 11. Date Letter Sent:** Use mm/dd/yyyy format to indicate the date the denial letter was sent to the member.

**MCO PRE-SERVICE DENIAL - CATEGORIES**  
**SERVICES CATERORIES**  
**Effective FY 2015 Reports**

<b>Code</b>	<b>Services Description</b>
<b>1A</b>	Diagnostic/Lab: those medically necessary services provided to diagnose or rule out certain health conditions, illnesses or injuries. (excluding Radiology)
<b>1B</b>	Diagnostic/Lab: Radiology
<b>2</b>	<p>Durable Medical Equipment (DME)/Disposable Medical Supplies (DMS): DME is equipment which satisfies the following</p> <ul style="list-style-type: none"> <li>➤ It can withstand repeated use</li> <li>➤ It is used to serve a medically necessary purpose</li> <li>➤ It has no practical use in the absence of illness, injury, disability or health condition. Examples are wheelchairs, canes</li> </ul> <p>DMS is a consumable or disposable item with minimal or no potential for reuse which is used to serve a medically necessary purpose and, with the exception of disposable gloves and incontinence supplies, have no practical use in the absence of illness, injury, disability or health condition.(COMAR 10.09.12.01) ( MCO Transmittal #14 – June 9, 1999)</p>
<b>3</b>	Inpatient/Admission Hospital Services: Hospital as defined in 10.09.62.01.B(79), and in accordance with 10.09.67.07
<b>4A</b>	Medical/Surgical: those services which are medical or surgical in nature, including, but not limited to: specialty provider visits, home health services and visits, outpatient services, surgical interventions, etc. (excludes services related to Pain Management, Private Duty Nursing, Therapies – see 4B, 4C, and 4D)
<b>4B</b>	Medical/Surgical: related to Private Duty Nursing [Private Duty Nursing: as defined in COMAR 10.09.62.01.B(149) and in accordance with COMAR 10.09.67.20.B(4)]
<b>4C</b>	Medical/Surgical: related to Therapies including OT, PT, Speech/Language
<b>4D</b>	Medical/Surgical: Non-pharmacy pain management
<b>5A</b>	Pharmacy services*: drugs, insulin, contraceptives, hypodermic needles and syringes, enteral nutritional and supplemental vitamins and mineral products and other medications as specified in: HealthChoice: COMAR 10.09.67.04 or Pharmacy Transmittal # 189 – 6/3/09.
<b>5B</b>	Pharmacy services: Chronic Pain Management
<b>6</b>	Substance Abuse*: those services provided for identifying, treating and referring recipients in need of substance abuse treatment in accordance with: For HealthChoice: COMAR 10.09.65.11, .11-1 and .11-2; COMAR 10.09.67.10.
<b>7</b>	Transportation per COMAR 10.09.67.27(B)(10)(b).
<b>8</b>	Vision: services specified in COMAR 10.09.67.14
<b>9</b>	Other : not otherwise specified

**DENIAL CATEGORIES**  
Please select the primary reason for denial

<b>Code</b>	<b>Category</b>	<b>Examples</b>
<b>NMN-1*</b>	Not Medically Necessary – Full Denial	Investigational; experimental; not standard of care; taking opioids/tramadol but request suboxone; no evidence of conservative treatment; does not meet ASAM criteria for this level of service; does not meet Milliman’s; Poor pt. compliance (i.e. CPAP use); termination of services
<b>NMN-2*</b>	Not Medically Necessary – Partial Authorization	Partial authorization: Non-formulary; authorize less quantity than requested; # of services does not meet plan guidelines; purchase denied/rental approved; step therapy; quantity limits (i.e., PT visits, # of pills); no failure of formulary alternative; x-ray ok but not CT scan; service authorized but at a alternate location
<b>NMN-3*</b>	Not Medically Necessary – Lack of or inadequate/incomplete documentation from the requesting provider to support request	Use when this is the only reason given Lack of documentation of failure/intolerance/ineffectiveness of alternate treatment (i.e. oral vs. injectable); lack of documentation of adherence to plan (i.e. home exercise plan); lack of documentation of effectiveness/ compliance (i.e. CPAP); lack of documentation of medical necessity (i.e. disposable blue pads)
<b>ADM-1</b>	Administrative – Denied pending request of primary payor	Denied pending request of primary payor; other carrier/payor responsibility; Alternative insurance
<b>ADM-2</b>	Administrative – Recipient ineligible on date of service	
<b>ADM-3</b>	Administrative – Did not meet time guidelines for authorization	
<b>ADM-4</b>	Administrative - Out of network provider	Service available in-network
<b>ADM-5**</b>	Administrative - Not a covered service/benefit	
<b>ADM-6*</b>	Administrative – Location	Service available at alternate site (i.e. outpatient not inpatient; freestanding clinic not hospital) but no authorization issued; Local vs. Mail Order vs. Specialty Pharmacy
<b>OTH</b>	Other	Not otherwise listed

\*Med. – Medical necessity as defined in COMAR 10.09.62.01 B (107)

\*\*Typically “not a covered service” should not be used as the basis for denial of services to children/EPSTD services



**ATTACHMENT U – APPEALS AND GRIEVANCES REPORTING INSTRUCTIONS AND TEMPLATE**

**QUARTERLY MCO APPEALS AND GRIEVANCES REPORT  
DUE WITHIN 30 DAYS OF THE CLOSE OF EACH QUARTER**

[COMAR 10.09.65.15D(1)]

**Background**

**Appeals and grievances both begin with complaints.**

A complaint is an expression of dissatisfaction that results in either an appeal or a grievance (COMAR 10.09.62.01[31-2]).

**Complaints that are actions lead to appeals.**

An appeal is a request for a review of an action (COMAR 10.09.62.01[12-1]).

COMAR 10.09.62.01(2-1) gives these definitions of an action:

- **Action 1:** Denial or limited authorization of a requested service, including the type or level of service
- **Action 2:** Reduction, suspension, or termination of a previously authorized service
- **Action 3:** Denial, in whole or part, of payment for a service
- **Action 4:** Failure to provide services in a timely manner  
*(i.e., if the MCO fails to provide services within the timeframes defined by the State in COMAR 10.09.66.07)*
- **Action 5:** Failure of an MCO to act within the required appeal time frames set in COMAR

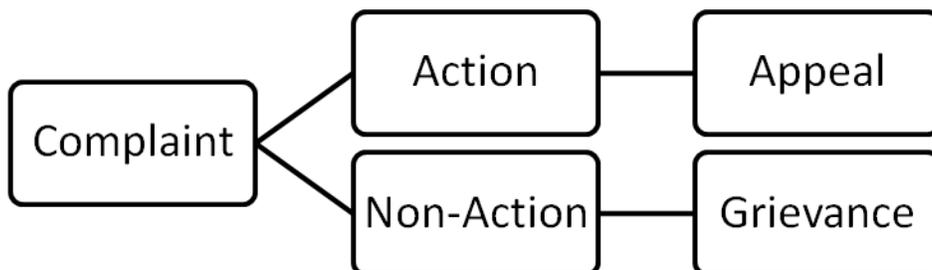
Providers can file appeals on a participant's behalf. Maryland's 1115 waiver has special terms and conditions that do not require the provider to seek written authorization before filing an appeal on the participant's behalf.

**Complaints that are not actions lead to grievances.**

A grievance is an expression of dissatisfaction about any matter other than an action (COMAR 10.09.62.01[58-1]).

COMAR 10.09.71.02C(1) describes three categories of grievances:

- **Category 1:** Emergency medically related grievances (24 hours)  
*Example: Emergency prescription or incorrect prescription provided*
- **Category 2:** Non-emergency medically related grievances (5 calendar days)  
*Example: ME/DMS related complaints about repairs, upgrades, vendor issues, etc.*
- **Category 3:** Administrative grievances (30 calendar days)  
*Example: Difficulty finding a network PCP or specialist*



## TEMPLATE INSTRUCTIONS

### **Part I: Appeals**

Appeals include those where the provider or a representative is filing an appeal on behalf of the participant. The template is classified by the five actions resulting in an appeal listed above.

An appeal is resolved when the participant or provider has not filed for a second level appeal after an initial decision or when all levels of appeals are exhausted. Resolved appeals should be identified as those appeals with a final decision date within the quarter. Any open appeals as of the last day of the reporting quarter should be listed as “in process.”

1. **MCO Name:** Write the name of your MCO.
2. **Quarter:** Indicate the quarter for which the MCO is reporting.
3. **Year:** Write the year the MCO is reporting in.
4. **First Level Appeals.** Complete the following fields as directed.
  - a. Identify the number of appeals overturned.
  - b. Identify the number of appeals upheld.
  - c. Identify the number of appeals partially overturned.
  - d. Identify the number of appeals in process.
5. **Second Level Appeals.** Follow the same instructions identified under **First Level Appeals**.
6. **Total Appeals:** Give the total numbers of appeals received for the quarter for each action, and the number of appeals per 1000 participants or providers.
7. **Total:** Provide totals for each column.

**NOTE:** If your MCO has more than two internal levels of appeal, repeat the columns illustrated in the template and report the information.

### **Appeal Analysis**

Using the service category definitions provided at the end of this document, list the top five services that resulted in appeals to the MCO. Give the total number of appeals and the number of appeals resolved for each party.

### **Timeliness Analysis**

Give the number and percentage of expedited and extended appeals for the quarter.

### **Appeal Sources**

1. **Total # of Complaints:** Give the total number of complaints received for the quarter.
2. **#/% of Appeals from Complaints:** Of those complaints, give the number and percentage of complaints that resulted in appeals filed during the reporting quarter.
3. **Total # of Denials:** Give the total number of denials issued for the quarter (whether pre-service or post-service).
4. **#/% of Appeals from Denials:** Of those denials, give the number and percentage of denials that resulted in appeals filed during the reporting quarter.
5. **Total # of Appeals from Participants:** Identify the number of appeals during the quarter that were filed by participants or on the participant’s behalf.
6. **Total # of Appeals from Providers:** Identify the number of appeals during the quarter that were filed by providers.

## Part II: Grievances

### Participant Grievance Tracking

1. **Total Number of Grievances:** Write the number of grievances during the quarter.
2. **Grievances per 1000 Participants:** Provide the number of grievances per 1000 participants. No percentages.
3. **In Process:** Give the number of unresolved grievances as of the end of the reporting quarter (i.e., any open grievances whose resolution date.
4. **Resolved:** Give the number of resolved grievances as of end of the quarter.

### Timeliness of Resolution

Indicate the number of grievances received during the reporting quarter that were resolved within the turnaround times (TAT) for each category, as well as the ones resolved outside of the turnaround time.

**Give totals for each section.**

### Provider Grievance Tracking

1. **Total Number of Grievances:** Write the number of grievances during the quarter.
2. **Grievances per 1000 Providers:** Provide the number of grievances per 1000 participants. No percentages.
3. **In Process:** Give the number of unresolved grievances as of the end of the reporting quarter (i.e., any open grievances whose resolution date.
4. **Resolved:** Give the number of resolved grievances as of end of the quarter.

### Timeliness of Resolution

Indicate the number of grievances received during the reporting quarter that were resolved within the turnaround times (TAT) for each category, as well as the ones resolved outside of the turnaround time.

**Give totals for each section.**

### Participant Grievance Analysis

List the top five types of complaints that resulted in a grievance to the MCO during the reporting quarter.

1. **Service Category:** Using the service categories provided, rank the types of grievances received during the reporting quarter.
2. **# Of Cases Received:** Give the number of grievances linked to the service category.
3. **# Of Cases Resolved:** Give the number of grievances resolved as of the last day of the reporting quarter.
4. **# Of Cases in Process:** Give the number of unresolved grievances as of the last day of the reporting quarter.

### Provider Grievance Analysis

List the top five types of complaints that resulted in a grievance to the MCO during the reporting quarter.

1. **Service Category:** Using the service categories provided, rank the types of grievances received during the reporting quarter.
2. **# Of Cases Received:** Give the number of grievances linked to the service category.

3. **# Of Cases Resolved:** Give the number of grievances resolved as of the last day of the reporting quarter.
4. **# Of Cases in Process:** Give the number of unresolved grievances as of the last day of the reporting quarter.

### Trending Analysis

As a supplement to the reporting template, submit any reports on complaints, appeals, and grievances presented to internal quality assurance committees and to consumer advisory boards that were developed during the reporting quarter.

### **Part III: Report Submission**

The Appeals and Grievances Report is due within 30 days of the close of each quarter. For example, first quarter reports covering January - March will be due no later than April 30, etc. Submit reports to [DHMH.MCOReports@maryland.gov](mailto:DHMH.MCOReports@maryland.gov).

Please use the following file and email subject format for submitting this report and all supplemental information:

Report: [Name of MCO]\_AppealsGrievanceReport\_Q[#]\_[Calendar Year]

Supplement: [Name of MCO]\_AppealsGrievanceReport\_Supp[#]\_Q[#]\_[Calendar Year]

**Example:** MCO is submitting an appeals and grievances report and two supplements for the second quarter of 2016.

To: [DHMH.MCOReports@maryland.gov](mailto:DHMH.MCOReports@maryland.gov)

Subject:[Name of MCO]\_AppealsGrievancesReport\_Q2\_2016

Attachments:

[Name of MCO]\_AppealsGrievancesReport\_Q2\_2016.xlsx,

[Name of MCO]\_AppealsGrievancesReport\_Supp1\_Q2\_2016.pdf,

[Name of MCO]\_AppealsGrievancesReport\_Supp2\_Q2\_2016.docx

**MCO PARTICIPANT AND PROVIDER APPEALS  
SERVICE CATEGORIES**

<b>Code</b>	<b>Services Description</b>
<b>1A</b>	Diagnostic/Lab: those medically necessary services provided to diagnose or rule out certain health conditions, illnesses or injuries. (excluding Radiology)
<b>1B</b>	Diagnostic/Lab: Radiology
<b>2</b>	<p>Durable Medical Equipment (DME)/Disposable Medical Supplies (DMS): DME is equipment which satisfies the following</p> <ul style="list-style-type: none"> <li>➤ It can withstand repeated use</li> <li>➤ It is used to serve a medically necessary purpose</li> <li>➤ It has no practical use in the absence of illness, injury, disability or health condition. Examples are wheelchairs, canes</li> </ul> <p>DMS is a consumable or disposable item with minimal or no potential for reuse which is used to serve a medically necessary purpose and, with the exception of disposable gloves and incontinence supplies, have no practical use in the absence of illness, injury, disability or health condition.(COMAR 10.09.12.01) ( MCO Transmittal #14 – June 9, 1999)</p>
<b>3</b>	Inpatient/Admission Hospital Services: Hospital as defined in 10.09.62.01.B(79), and in accordance with 10.09.67.07
<b>4A</b>	Medical/Surgical: those services which are medical or surgical in nature, including, but not limited to: specialty provider visits, home health services and visits, outpatient services, surgical interventions, etc. (excludes services related to Pain Management, Private Duty Nursing, Therapies – see 4B, 4C, and 4D)
<b>4B</b>	Medical/Surgical: related to Private Duty Nursing [Private Duty Nursing: as defined in COMAR 10.09.62.01.B(149) and in accordance with COMAR 10.09.67.20.B(4)]
<b>4C</b>	Medical/Surgical: related to Therapies including OT, PT, Speech/Language
<b>4D</b>	Medical/Surgical: Non-pharmacy pain management
<b>5A</b>	Pharmacy services: drugs, insulin, contraceptives, hypodermic needles and syringes, enteral nutritional and supplemental vitamins and mineral products and other medications as specified in: HealthChoice: COMAR 10.09.67.04 or Pharmacy Transmittal # 189 – 6/3/09.
<b>5B</b>	Pharmacy services: Chronic Pain Management
<b>6</b>	Substance Abuse: those services provided by PCPs for identifying, treating and referring recipients in need of substance abuse treatment.
<b>7</b>	Transportation per COMAR 10.09.70.03(N).
<b>8</b>	Vision: services specified in COMAR 10.09.67.14
<b>9</b>	Other : not otherwise specified
<b>10</b>	Adult Dental Services
<b>11</b>	Long Term Care – Rehabilitation Hospital and/or Skilled Nursing Facility: stays longer than 30 days

**MCO PARTICIPANT AND PROVIDER GRIEVANCES  
SERVICE CATEGORIES**

<b>Code</b>	<b>Services Description</b>
<b>1</b>	Quality of Care
<b>2</b>	Access
<b>2A</b>	Access – Unable to Schedule Appointment
<b>2B</b>	Access – Pharmacy/Prescription Issues
<b>3</b>	Attitude/Service
<b>3A</b>	Attitude/Service – Practitioner
<b>3B</b>	Attitude/Service – Administrative Staff
<b>3C</b>	Attitude/Service – MCO Customer Service
<b>4</b>	Billing/Financial
<b>5</b>	Quality of Practitioner Office Site
<b>6</b>	Participant Education Issue
<b>7</b>	Other Grievance

Note: Codes 1, 2, 3, 4, and 5 are from NCQA.

Codes 2A, 2B, 3A, 3B, 6, and 7 are additional categories identified by the Department.

Maryland Department of Health and Mental Hygiene

[MCO Name] Appeals by Quarter

Quarter:

Year:

Legend	
Action 1	Denial or limited authorization of a requested service, including the type or level of service
Action 2	Reduction, suspension, or termination of a previously authorized service
Action 3	Denial, in whole or part, of payment for a service
Action 4	Failure to provide services in a timely manner as defined by the State
Action 5	Failure of an MCO to act within the required appeal time frames

Participant and Provider Appeal Statistics (Should reflect decision date as of the end of the reporting quarter.)

Type of Action	First Level Appeals				Second Level Appeals				Total Appeals	
	Appeals Overturned	Appeals Upheld	Appeals Partially Overturned	Appeals in Process	Appeals Overturned	Appeals Upheld	Appeals Partially Overturned	Appeals in Process	# Appeals Received in Quarter	# Appeals Per 1000 Participants or Providers
Action 1										
Action 2										
Action 3										
Action 4										
Action 5										
Total										

Appeal Analysis

List the top five service categories for which participants or providers filed appeals.

Service Category	Total Appeals	Resolved Appeals		
		Overturned	Upheld	Partially Overturned

Timeliness Analysis

How many appeals (number and percentage) were expedited?	
How many appeals (number and percentage) were extended?	

Appeal Sources

Total # of Complaints	
#/% of Appeals from Complaints	
Total # of Denials	
#/% of Appeals from Denials	
Total # of Appeals from Participants	
Total # of Appeals from Providers	



**Participant Grievance Analysis**

<b>Ranking</b>	<b>Service Category</b>	<b># of Cases Received</b>	<b># of Cases Resolved</b>	<b># of Cases in Process</b>
1				
2				
3				
4				
5				

**Provider Grievance Analysis**

<b>Ranking</b>	<b>Service Category</b>	<b># of Cases Received</b>	<b># of Cases Resolved</b>	<b># of Cases in Process</b>
1				
2				
3				
4				
5				