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AGING PROGRAM DIRECTIVE

SUBJECT: PDA CONTRACT PROCUREMENT REQUIREMENTS FOR AREA AGENCIES ON AGING

TO: EXECUTIVE STAFF, PA DEPARTMENT OF AGING & PUBLIC WELFARE
OFFICE OF LONG TERM LIVING
AREA AGENCIES ON AGING

PA COUNCIL ON AGING
PA ASSOCIATION OF AREA AGENCIES ON AGING

FROM: 
JOHN MICHAEL HALL
SECRETARY
DEPARTMENT OF AGING

REGULATORY

REFERENCES: 45 CFR 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

PURPOSE: The purpose of this directive is to establish a contract procurement system for all contracted consumer services including the Department's) Options, and Waiver Programs. The system must incorporate the following four (4) guiding principles:

- Ensuring an adequate supply of quality service
- Increasing consumer choice
- Providing a mechanism for cost containment, and
- Complying with local, state and federal contracting requirements

SECTION 1 - CONTENTS

Background:

Prior to the statewide implementation of the Pennsylvania Home and Community Based Waiver for Individuals Aged 60 and Over (the Aging Waiver), the Aging network was required to utilize a competitive procurement system to secure all consumer services. In an effort to ensure quality services at a reasonable cost, the Area Agencies on Aging (AAA) awarded each service contract to one (1) provider/vendor or to a very limited number of providers/vendors who were assigned specific geographic regions or served as primary and backup providers. Consumers determined to be eligible for an AAA funded service were provided the service by the AAA designated provider.

The 1998-99 state fiscal year introduced the statewide expansion of the Pennsylvania Home and Community Based Waiver for individuals Aged 60 and Over (Aging Waiver). Requirements for the operation of the Aging Waiver afforded consumers the opportunity to personally choose the provider of the service(s) they required from a list of qualified approved providers/vendors. The Aging Waiver allows consumers to change providers when they are not satisfied with services received from the selected provider.

Aging Program Directive (APD) 02-01-03 was the initial step taken by the Department to transition from the system previously in place to one that afforded consumer choice through the use of additional service providers. Ceiling rates were established for multi-vendor services. Providers were added upon qualification and having rates at or below the established ceiling rate.

Late in the 2004-05 State Fiscal Year, the Department of Aging in conjunction with the Department of Public Welfare initiated the Nursing Home Transition Program. This program provides for services to assist individuals placed in nursing facilities to re-enter the community.

In the 2007-08 fiscal year the Aging Waiver was reviewed by the Center for Medicaid Services (CMS) as a part of the 1916(c) renewal process. The CMS review identified the wide variance in provider rates for Aging Waiver services both within the AAA network and across the Commonwealth as one area that needed to be addressed and corrected by the Commonwealth in order to continue the Aging Waiver. The Department through its Office of Long Term Living must establish a process to standardize rates to providers for all Aging Waiver services across the Commonwealth. The process to establish statewide or regional rates will be completed by July 2012. The Department is revising the Contract Management Policy as an interim step to ensure that the variance in provider/vendor rates does not get any greater.

Scope and Intent:

The Department's philosophy with regard to competitive procurement and the direct delivery of service changed with the implementation of APD 02-01-03 in order to promote consumer choice of provider of service. For all multi-vendor services, the opportunity to select a provider of their choice is the driving force in establishing contract procurement requirements. The Department and the OLTL believe that a competitive procurement system continues to be an important tool in establishing the fair market price for each consumer service. The procurement process should focus on identifying all qualified vendors.

The guiding principles of the contract procurement process are:

1. to identify qualified vendors who are able to provide the requested type(s) of service, and

2. to rank those vendors by price
3. to provide for an adequate supply of service
4. to maximize available resources

Ranking qualified providers of multi-vendor services by provider rate will be utilized as an incentive mechanism for cost containment.

Wherever feasible, consumers must be given the opportunity to choose among qualified providers/vendors. Additionally, the Department strongly encourages AAAs to offer consumers more options and/or control over the type of service intervention that will best meet their individualized needs.

The Department anticipates and supports the concept that in the aging network's effort to recruit qualified providers/vendors of all consumer services, regional alliances will be formed. The AAAs may elect to establish geographic areas for contract procurement activities that will encompass multiple planning and service areas. This directive applies to all programs and services provided through the AAA utilizing funds received from the Department or provided by Medical assistance enrolled providers through the Aging Waiver. Nothing in this directive is intended to limit the AAA in the provision of service; rather, the intention is to provide a minimum set of standards, which will enable the AAA in many instances to offer consumers control over the provider that will deliver the services they need. AAAs must reference other PDA/OLTL policy documents (e.g., Aging Program Directives) concerning specific service provision requirements when developing Request for Proposals (RFP) and subcontracts.

SECTION II - DEFINITIONS

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

Adequate Supply - When the minimum number of potential subcontractors or subgrantees is willing and able to provide a quantity of consumer service, meeting all qualitative specifications set by the AAA (in compliance with state and federal regulations).

Brokerage - The act of an AAA enrolling as a Medical Assistance provider in order to serve as a fiscal intermediary for service(s) in the Aging Waiver Program and/or Nursing Home Transition Program. AAAs must complete all brokerage tasks as an administrative activity. AAAs are not permitted to add administrative overhead costs to unit cost for the service(s) brokered.

Competitive Bid (Low Bid Award) - The procurement process in which the AAA would accept and rank according to price, all qualified bidders for multi-vendor services, with rates at or below the AAA maximum rate. For all other services, the AAA identifies the minimum contract requirements and awards the contract to either the lowest responsible bidder or to multiple responsible bidders with rates at or below the AAA maximum rate.

Consumer Choice - The ability of an individual to select a provider from a list of qualified vendors who are willing to provide the specified service.

Consumer Directed Services - Services provided in situations where the consumer serves as the employer or plays a significant role in the securing of services from a non-AAA vendor.

Consumer Services - The programs and activities listed in the Aging Block Grant Applications, which are in and of themselves beneficial to the older adult. At a minimum, these services include: Adult Day Care, Congregate Meals, Counseling, Environmental Modifications, Home Delivered Meals, Home Health, Home Support, Legal Assistance, Medical Equipment/Supplies/Adaptive Devices, Overnight Shelter/Supervision, Passenger Transportation, Personal Assistance Services, and Personal Care.

Coordinative Activities - Functions performed by an AAA, which may involve consumer contact, but more importantly involve supervision, coordination and/or advocacy regarding services to older persons. The AAA may perform these functions directly at its discretion. The Department identifies the following functions (service categories) as coordinative activities: AAA Administration (including fiscal intermediary tasks), Assessments, Attendant Care, Care Management, Nursing Home Transition Activities, Consumer Reimbursement, Domiciliary Care, Employment, Guardianship, Information and Referral, Ombudsman, Outreach, Protective Services, Intake and Investigation, Provider Certification, Senior Center Services. Services provided in the Attendant Care Program are listed as a coordinative activity since the services are provided by Under Sixty (60) Attendant Care Providers to ensure continuity of care.

(The Department will provide opinions, upon request, regarding the appropriate classification of services and activities not contained in the Accounting Manual.)

Demonstration Program - A project funded by the Department and/or the AAA, which is new and/or in the developing stages, without clearly defined specifications or costs needed for competitive procurement. Projects, which have not been established statewide, may also be considered as demonstrations.

Direct Service - Consumer services and coordinative activities provided by paid AAA staff and/or in the case of county agencies, through another county administered agency. This also includes situations where the AAA serves as a broker for the provision of Aging Waiver and Nursing Home Transition Program services.

Medical Assistance Ceiling Rate—The fee schedule rate established by Department of Public Welfare for the provision of goods and services.

Market Study - The process of identifying the current rates being charged by providers/vendors for a specific service in the local area as well as the rates being charged by providers/vendors doing business with AAAs in contiguous Planning and Service Areas.

Multi-Vendor Services - A subset of professional consumer services that must include, but is not limited to, Home Health, Personal Care, and Personal Assistance Services. The AAA must ensure that, at a minimum, consumers are afforded the opportunity to select among qualified providers/vendors for these services. The AAA may designate additional consumer services as multi-vendor services if sufficient qualified providers/vendors are available in the planning and service area.

Nursing Home Transition Program- The AAA administered mechanism through which consumers placed in skilled nursing facilities receive goods and services funded by the Department of Public Welfare and the Department of Aging to enable them to return to the community.

Options Program - The mechanism through which consumers, who are ineligible for the Aging Waiver Program, receive in-home goods and services funded by the AAA.

Aging Waiver Program - The AAA administered mechanism through which Medical Assistance nursing home eligible consumers receive in-home goods and services funded by the Department of Public Welfare.

Professional Consumer Services - A subset of consumer services and coordinative activities that includes: Adult Day Care, Assessment, Care Management, Counseling, Domiciliary Care, Guardianship, Home Health, Legal, Ombudsman, Personal Care and Personal Assistance Services.

Qualified Bidder - An organization or individual that has met the selection criteria established by the AAA.

Qualified Provider/Vendor - An organization or individual that has met the selection criteria established by the AAA and has entered into a contract with the AAA to provide services.

Small Purchase Procedure - A simple procurement method to secure unique and/or limited goods and services.

Sole Source - A non-competitive contract procurement process in which the AAA directly negotiates with one or more providers/vendors to provide an identified service.

Usual and Customary Rate - The private pay rate or the amount the service provider charges to the general public.

SECTION III - MINIMUM REQUIREMENTS

Each AAA must ensure that for all Options Services:

- 1) All consumer services and any coordinative activities, which the AAA does not provide directly, are obtained from providers/vendors selected through an established procurement process. The following exemptions are permitted:
 - Services provided to individuals who turn 60 while enrolled in the Under Age Sixty Attendant Care Program and transition to the Aging Attendant Care program will continue to be provided through the under 60 provider.
 - Coordinated transportation programs are excluded from this requirement.
 - Services, with the exclusion of Legal Services, that are procured utilizing the "small purchase procedure" as defined in Section V.
 - The rate for personal assistance services provided to Options Program participants cannot exceed the current regional rate for attendant care services.

- 2) With the exception of the above identified services, all Options Program consumer services, as well as coordinative activities that the AAA chooses to subcontract, are advertised for competitive bid at least once every five (5) years. Exception: the length of the procurement cycle may be extended if the AAA is able to negotiate a rate of increase that is equal to or less than the amount of the increase in the AAAs Regular Block Grant categorical allocation provided by the Department in the annual Aging Block Grant APD. As a matter of policy, the Department supports AAA efforts to standardize rates and if an AAA wishes to increase/decrease individual rates as a part of its standardization efforts, the AAA may request a waiver from the Department by submitting its plan to the Bureau of Finance. The plan must identify any changes to individual provider rates and calculate the financial impact of the rate changes. The Department will consider the request based primarily

on the cost neutrality of the suggested rate changes and how the change will impact the amount of service that can be provided given the funds available. **NOTE: If an AAA chooses to simply reduce its maximum rate for a particular service, the AAA does not need to submit a waiver request since this action will not negatively impact the amount of service that can be provided.**

- 3) At any time in the procurement cycle, a new provider/vendor of multi-vendor services that meets the AAA's established qualifications may be included at the bottom of the provider list that was established as a result of the AAA's competitive procurement process. The new provider/vendor will be placed at the bottom of the list for a maximum time period of six (6) months or until a new competitive procurement process is completed (whichever happens first). At the end of the period, the provider will be ranked on the list according to price. New provider/vendor rates cannot exceed the current lowest rate of providing that specific service under contract with the AAA or as an MA provider of Aging Waiver services.
- 4) In situations when the AAA publishes a notice for multi-vendor service(s) and receives responses from fewer than two (2) qualified bidders, the AAA is required to solicit all service providers that contract with the AAAs in the adjoining Planning and Service Areas. If this process results in fewer than two (2) qualified bidders, through the waiver process, the Department may determine that the public notice will satisfy this requirement for one (1) year only regardless of the contract period publicized in the notice for interested bidders (Section VI). The AAA must continue to annually advertise and recruit for interested bidders until two (2) or more qualified providers/vendors are secured.
- 5) In situations where the AAA desires to subcontract coordinative activities and consumer services that do not require multi-vendors and only one (1) qualified bidder is identified, the AAA may contract with the provider for the length of the period advertised in the bid notice (maximum 5 years). The AAA must publish an annual notice if no response is received.
- 6) A negotiated increase to a service rate for an existing Aging Waiver and/or Options is limited to the percent increase provided in the AAA's Regular Block Grant categorical allocation as identified in the annual Aging Block Grant APD or if the AAA has chosen to submit a waiver request as identified in item 2 above.
- 7) In cases where more than one (1) potential provider/vendor in any way demonstrates interest in contracting with the AAA and the AAA elects to utilize a competitive procurement system to establish a maximum rate, a formal Request for Proposal (RFP) is developed and a bidders' conference is offered. All organizations, which have demonstrated interest in bidding on the contract, are invited. A bidders' conference must, at a minimum, set out an explanation of the competitive procurement process being employed, including timetable requirements and selection procedures.
- 8) All providers selected to provide services to Options consumers are strongly encouraged to become enrolled to provide services to Aging Waiver Program consumers.
- 9) For multi-vendor service contracts, the qualified provider with the lowest unit cost will be listed first followed by all other qualified providers in ascending price order. In situations where two (2) or more providers have the same rate, the AAA must rotate the order of the providers on the listing provided to the consumers on at least a quarterly basis. In situations where the consumer does not have a provider preference, AAAs may also establish a process which rotates referrals to providers having the same rate. Consumers or their primary caregiver may choose any listed provider; however, if the consumer does not express a preference, the AAA shall make the referral to the

provider with the lowest unit cost. If for any reason, the provider with the lowest cost cannot provide the consumer the needed service, the AAA must then contact the provider ranked next on the list until the consumer is served.

- 10) The AAA must establish in writing the minimum criteria for a provider to be identified as a qualified vendor
- 11) All contracts must specifically delineate:
 - Type of Service
 - Length of Contract
 - Reimbursement System (unit cost or program funded)
- 12) All contracts must incorporate the standard provisions as necessary to ensure compliance with federal and state regulations and the terms and provisions of the Pennsylvania Department of Aging Cooperative Agreement.
- 13) Legal Services contracts must be awarded as a result of a competitive procurement process regardless of the amount of the contract.
- 14) The AAA conducts on-site monitoring of each AAA subcontractor on at least an annual basis.
- 15) The AAA maintains reports of the monitoring visits, showing findings, recommendations and corrective actions taken. These reports must be shared with the monitored agency.

Each AAA must ensure that for all Aging Waiver Program Services:

- 1) All services provided to Aging Waiver Program consumers must be secured from vendors, enrolled as Department of Public Welfare Medicaid providers who are approved to participate in the Aging Waiver Program, who have agreed to provide the specified service(s) at or below the Aging Waiver Program maximum rate or the Medical Assistance fee schedule.
- 2) For Aging Waiver Program contracts, the qualified provider with the lowest unit cost will be listed first followed by all other qualified providers in ascending price order. In situations where two (2) or more providers have the same rate, the AAA must rotate the order of the providers on the listing provided to the consumers on at least a quarterly basis. In situations where the consumer does not have a provider preference, AAAs may also establish a process which rotates referrals to providers having the same rate. Consumers or their primary caregiver may choose any listed provider; however, if the consumer does not express a preference, the AAA shall make the referral to the provider with the lowest unit cost. If for any reason, the vendor with the lowest cost cannot provide the consumer the needed service, the AAA must then contact the provider ranked next on the list until the consumer is served.
- 3) The AAA conducts on-site monitoring of each Aging Waiver Program service provider on at least an annual basis.
- 4) The AAA maintains reports of the monitoring visits, showing findings, recommendations and corrective actions taken. These reports must be shared with the monitored agency.

SECTION IV - RATE SETTING

Multi-Vendor Services:

As a result of the CMS review of the renewal of the Aging Waiver application, the Department will be establishing standardized rates for all Aging Waiver and Options services. This process will be completed by July 2012. During this interim period, the Department is limiting increases to any existing Aging Waiver and Options provider rates to the percent increase provided in the AAA's Regular Block Grant categorical allocation as identified in the annual Aging Block Grant APD. Providers who choose not to accept the limits of the service rate increase may choose not to participate as a service provider, however, they will not be allowed to re-enroll as a provider for the Aging Waiver or Options program for a period of one year.

An AAA average rate must be identified for each multi-vendor service. For multi-vendor serviced the AAA must receive bids with rates that the AAA determines to be fair and reasonable. . If the AAA is unable to secure the two (2) required providers/vendors, the AAA may conduct a market study and establish a rate that the agency will pay for services. The AAA must contract with a minimum of two (2) providers that meet the cost requirements. In addition, the AAA must contract with all new responsible providers/vendors that are willing to provide the service at a rate that is equal to the AAA lowest rate for that particular multi-vendor service.

Aging Waiver Program Services:

The following six (7) principles must be observed:

- The current Medical Assistance (MA) fee schedule prevails for the following services: nursing facility respite, non-emergency transportation, specialized medical equipment and supplies, and home health. The usual and customary rate will prevail for Durable Medical Equipment (DME) items not on the Medical Assistance fee schedule. Providers that are unwilling to contract at the MA fee schedule rate **must** receive approval for a higher rate by requesting a program exception through DPW. Instructions for requesting a program exception are located in the DPW provider handbooks.
- For personal assistance services, the provider rate will be the regional rate established by the Office of Long Term Living (OLTL) for attendant care providers.
- Other than those services listed in the 2 bullets above, the maximum waiver rate is the AAA's highest current Options rate. For new providers/vendors, the maximum rate is the lowest of the existing provider rates for the service in question.
- AAAs may request a waiver of this requirement if they wish to standardize rates for a particular service. The AAA must submit the waiver request including the methodology to the Department by April 30th for the next state fiscal year. **The Department will consider the request based primarily on the cost neutrality of the suggested rate changes. The over riding concern is that the amount of service available to consumers will not be reduced. . NOTE: If an AAA chooses to simply reduce its maximum rate for a particular service, the AAA does not need to submit a waiver request since this action will not negatively impact the amount of service that can be provided.**

- For services not currently provided or under contract by the AAA and for which there is no existing MA rate, the small purchase procedure would be utilized.
- Providers must utilize the procedures established in MA provider handbooks access fee-for-service items that are available through Medical Assistance. In the event that the Medical Assistance Office denies a prior authorization request for a service, the rate must be obtained at the Medical Assistance fee schedule rate.
- AAAs are not permitted to contract for Nursing Home Transition or Aging Waiver Program services that do not fall within the service definitions as documented in the Home and Community Based Services Manual or the Aging Waiver Program procedure code document (AAAExcel>Waiver>PROCEDURE.doc).

Small Purchase Procedure:

A procurement system to address:

- Unique individualized consumer services that are not available through an existing formal service provider (subcontractor) of the AAA and do not exceed an annual total cost of \$10,000 per item per consumer;
- Consumer services, excluding legal services, that are utilized on a limited basis and that in aggregate do not exceed an annual total cost of \$10,000 for the cost center and;
- Consultants for consumer services (i.e. dietician, physician, and registered nurse) that do not exceed a total cost of \$10,000 per type of consultant contract.

The AAA must obtain and document price quotes from at least three (3) qualified vendors and then purchase the item/service from the vendor with the lowest cost.

Aging Waiver Program services that are procured on an individual need basis must be obtained at the Medical Assistance fee schedule. If no Medical Assistance fee schedule rate has been established, the small purchase procedure would be utilized.

In all situations, a provider cannot charge more than the lesser of its “usual and customary rate” or the established Medical Assistance rate.

**SECTION V - WAIVERS OF THE CONTRACT PROCUREMENT
REQUIREMENTS FOR AAAs**

As in the case of discretionary PDA policies, AAAs have the option of applying for a waiver if they feel that following the policy or policies in question would not be in the interest of older persons residing within the planning and service area.

All waiver requests, with full justification included, must be submitted in writing no later than April 30, for the next fiscal year. All waivers will be granted for a one (1) year period and must be requested on an annual basis.

The following five (5) types of waivers have been identified:

Brokerage:

In the Nursing Home Transition and Aging Waiver Programs, occasionally situations arise where the AAA is unable to secure vendors for the required services or the service required is unique to each consumer (i.e. Home Modifications). To deal with these issues, the AAA must request annual permission to serve as fiscal intermediary for vendors providing the identified service(s).

AAAs that have received approval from the Department to serve as a broker or direct service provider are not permitted to include AAA administrative costs when establishing a unit rate. AAAs that are approved to be a broker must ensure that all service orders are entered in SAMS.

Lack of Adequate Supply:

In situations where the only provider(s) for a specific service refuse to continue to provide service at the existing rate, the AAA may request a waiver to negotiate with the existing provider(s) as opposed to issuing an RFP. The waiver request must identify the service, the current rate for the service, the requested percentage increase and the rates for the service in the contiguous AAAs.

Consumer Choice:

In the event that the AAA is unable to secure two (2) qualified multi-vendor service providers for the Options or the Aging Waiver Program to establish consumer choice, the AAA must request a waiver to provide services with only one (1) provider/vendor.

The AAA must submit to the Department, a detailed written description of the actions taken by the agency to incorporate providers/vendors into its system and any additional information to justify the request.

Direct Service:

The AAA must clearly demonstrate that a responsible provider does not exist to justify serving as a direct provider of a consumer service.

Only in situations where the direct provision of consumer service is documented by an AAA as necessary to insure the adequate availability of service at a reasonable cost, will the direct provision of service by an AAA be permitted.

Documentation must include a published notice to secure contractors for a consumer service that resulted in no response and assurance that all providers that contract with AAAs for the service in contiguous planning and service areas have been contacted and were unable or unwilling to provide service for the AAA. The AAA may then request a waiver from the Department to serve as a direct service provider.

To prevent conflict of interest issues, the AAAs will not be permitted to provide Personal Care, Personal Assistance or Home Health services.

Demonstration Programs:

Demonstration programs funded by the Department may be exempt at the discretion of the Department from the competitive procurement requirements of this directive. However, the AAA must receive written clarification from the Department that such an exemption exists for the specific program in question.

Sole Source Contracts:

The AAA may request a waiver to enter into a sole source contract for coordinative activities and consumer services in situations where the uniqueness of the service does not permit other providers from being capable of providing the service at a reasonable cost.

SECTION VI - PROVIDER APPEALS

Competitive Bid Process Appeals:

After the competitive bid process has been completed and the AAA has identified the successful bidder(s), the AAA is required to notify all unsuccessful bidders in writing, that they were not selected to contract with the AAA. Providers will be identified as unsuccessful due to failure to meet the minimum quality standards established by the AAA or due to the bid price of the service.

This notification must:

- Be issued within 30 days of the AAA's decision.
- Include the reasons for the AAA's action and the evidence upon which the decision was based.
- Provide information on 30-day time frame and process to appeal the AAA's decision.

Appeals of the Established Rate/Provider Minimum Requirements:

Appeal notification must be given to vendors who are not selected to provide services to AAA consumers in the Options and Aging Waiver Programs due to failure to meet the minimum qualifications and/or accept a rate at or below the rate established by the AAA.

SECTION VII - TECHNICAL ASSISTANCE

Each AAA must take action, as necessary, in order to adjust its contract management process according to the standards presented in this directive.

To receive technical assistance and/or training to meet these responsibilities, the AAA should contact Rob Heinlen by email at rheinlen@state.pa.us or by phone at (717) 772-0192 to make appropriate arrangements.