

## **PART SIX: PROVIDER FUNDING AND CONTRACTING GUIDELINES**

### **I. Classification of Service Providers**

The funding and contracting of services can be separated into three basic classifications as follows:

- A. Functional Unit is a program whereby the SCA provides D&A services directly to clients. Applicable sources of provider revenue must be applied prior to the expenditure of SCA funds.
- B. Cost-Reimbursement Projects are privately administered and staffed. They provide services as deemed necessary by the SCA to clients referred or participants designated by the SCA D&A program and are governed by the services to be performed as described in the contract work statement. Cost reimbursement projects may be partially or entirely funded by the SCA. Expenses include those for personnel, operating and fixed asset costs, according to an SCA approved budget. Applicable sources of provider revenue must be applied prior to the expenditure of SCA funds. Any contracts outside the geographic boundaries of the SCA cannot be cost reimbursement contracts but rather, must be on a fee-for-service basis.
- C. Fee-for-Service providers are privately administered and charge a unit cost for services rendered. In this classification, D&A services can be purchased via a contractual agreement on a unit cost basis by one of the following methods:
  - (1) Unlimited Basis – Under this method, the service provider has an established per unit cost that is charged for services rendered. The number of units to be rendered is not specific, and will reflect the actual need.
  - (2) Limited Basis – Under this method, the service provider has an established per unit cost that is charged for services rendered. The number of units to be rendered is specific, and based on the estimated need. If the actual unit need exceeds the estimate, there must be an adjustment clause provided for in the contract.

### **II. Subcontracts**

- A. An SCA may subcontract with a provider for separate services, utilizing both the cost reimbursement and fee-for-service classifications as described in Section I, Paragraphs B and C, above. If the SCA has this arrangement with a particular provider, then the SCA must include language in their subcontract to ensure that the SCA is not billed for the same expense performed under both the cost-reimbursement and the fee-for-service arrangements. If a duplicate billing has occurred, the provider will be required to refund to the SCA an amount equal to that of the duplicate billing expense contained in the cost reimbursement invoice.

B. Types of Contracts: It is anticipated that most of the services to be provided under the agreement will be provided by entities other than the SCA. When this occurs relating to D&A specific services [prevention, intervention (excluding hotline), treatment and case management services], a cost-reimbursement or fee-for-service contract shall be executed as described below. In addition, the SCA will need to contract for a variety of support services in order to administer their program. These support service contracts may be either cost-reimbursement or fee-for-service contracts and shall pertain to, but not be limited to, the following services:

- housing services (e.g., shelter, transitional living facility, recovery houses)
- hotline services
- medical (e.g., doctor, nurse, psychologist, psychiatrist)
- legal
- auditing
- accounting
- information technology
- maintenance (e.g., building and grounds, computer/copier)
- temporary (e.g., clerical)

SCAs are encouraged to engage in fee-for-service arrangements for the purchase of services. For those services purchased under a cost-reimbursement arrangement, the contract must be constructed for the purchase of a specific service with defined deliverables equating to the amount of funds being requested. Under this arrangement, the SCA will measure the delivery of projected services against the drawdown of funds.

(1) Cost-Reimbursement Contracts shall contain:

- (a) names of the parties involved
- (b) the term of the contract
- (c) the type of service purchased
- (d) the cost of services to be rendered
- (e) a Work Statement, to include:
  - (i) A precise statement of objectives (what the SCA expects to gain/accomplish through the contractor)
  - (ii) Measurable/Definitive deliverables in terms of:
    - a.) Number of clients or participants served
    - b.) Units of service provided
- (f) a budget that defines staffing, operating, and fixed asset costs for the delivery of services rendered

(2) FFS Contracts shall contain the following:

- (a) names of the parties involved
- (b) the term of the contract
- (c) the type of service purchased
- (d) a definition for a unit of service
- (e) the rate of reimbursement per unit to be applied for services rendered

C. The SCA shall include the following in D&A Specific Service contracts:

- (1) All reporting requirements specified by the Department or required for federal reporting purposes.
- (2) All applicable requirements from the SCA Agreement, as well as BDAP's State Plan, and the Fiscal, Treatment and Prevention Manuals, and any subsequent revisions, when applicable.
- (3) All audit requirements pertaining to Cost-Reimbursement service providers as per BDAP Fiscal Manual guidelines.
- (4) Fixed asset requirements pertaining to Cost-Reimbursement service providers as per BDAP Fiscal Manual guidelines.
- (5) All client confidentiality requirements identified in BDAP's Treatment Manual, where applicable.
- (6) The terms and conditions regarding travel, lodging and subsistence rates as set forth in the Office of Administration's Management Directive 230.10, Rev. 11/01/00 and any subsequent revisions thereto. If the lodging rates set by the Management Directive are not available to the Contractor, the lowest price available through 3 telephone bids will be acceptable. However, if prevailing county travel policies provide for reimbursement of travel, lodging and subsistence costs at a lower rate than the state rate, then the lower rate shall govern. If prevailing collective bargaining unit policies provide for reimbursement of these items at a different rate than the state or county rate, then the terms of the bargaining unit shall prevail. If the Contractor attends a D&A conference or training event where the hotel is the site of the event, then the reimbursement rate for lodging costs incurred for attendance at the event shall take precedence over both the Management Directive rate and the county rate. In those instances when lodging cannot be secured within the established lodging rate allowance, employees may exceed the allowance if written justification is provided on the travel form (e.g., closest lodging facility to work site – next hotel 25 miles away; no rooms available at hotel with lowest rate; inclement weather; lateness of hour).

No subsistence payments shall be made to the Contractor for non-overnight travel, except as specifically provided for in labor agreements.

All employee travel reimbursement must be approved and signed by a duly designated executive, official or supervisor of the Contractor. Copies of all authorized expense reports (travel vouchers) must be on file for auditing purposes. These reports must be signed by the employee and must show the purpose of travel, departure and destination points, actual miles traveled each day, and expenses incurred, such as parking, meals, lodging and tolls. Itemized receipts for travel and subsistence must be on file to support reimbursement.

Allowances for the reimbursement of subsistence costs incurred by the Contractor are not flat allowances; only amounts actually expended may be claimed.

Management Directive 230.10 may be accessed via the internet at <http://www.oa.state.pa.us> under Policies and Procedures, Management Directives.

- (7) The requirement that the Contractor ensure key staff are available for BDAP Quality Assurance Assessment Reviews and follow-up visits as required by the Department.
  - (8) The requirement that all information obtained during the period of this contract by the Contractor through work governed by the contract shall be made available to the Department and SCA immediately upon demand.
  - (9) The requirement that all treatment service providers with whom it subcontracts shall stipulate that all appropriate staff receives six hours of confidentiality training. Appropriate staff includes project directors, facility directors, clinical supervisors, counselors and counselor assistants. The provider shall document all required training and shall ensure that all individuals receive confidentiality training within 365 days of hire.
- D. The SCA shall insert the following specific clauses in all D&A Specific Service Contracts:
- (1) Fee-Splitting – The Contractor agrees that no employee, board member, or representative of the Contractor, either personally or through an agent, shall solicit the referral of clients to any facility in a manner that offers or implies an offer of rebate to persons referring clients or other fee-splitting inducements. No person or entity involved in the referral of clients may receive payment or other inducement by a facility or its representatives.
  - (2) Federal Lobbying Certification and Disclosure Requirements whereby the Contractor certifies, to the best of Contractor's knowledge and belief, that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, 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.
- (b) 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, Contractor shall complete and submit Standard Form-LLL (Appendix C), "Disclosure of Lobbying Activities," in accordance with its instructions.
- (c) Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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 under 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 such failure.

Copies of the certification and lobbying disclosure forms shall be attached to the provider's contract as a separate appendix. Persons or entities, at whatever tier, receiving more than \$100,000 in federal funds hereunder, shall promptly file the certification and any necessary lobbying disclosure forms with the tier providing the funding. That tier shall retain the certification but promptly file any lobbying disclosure forms with the next higher tier until such lobbying disclosure forms reach the federal funding source agency. There is an obligation to file an amended lobbying disclosure form and pass it from tier to tier whenever there is a material change to the original lobbying disclosure form. See 55 Federal Register 6736 - 6756 (February 26, 1990). Further general information may be obtained by telephoning the federal Office of Management and Budget at 202-395-3254.

- (3) Block grant prohibition provisions pursuant to the Federal SAPTBG and in accordance with 42 U.S.C. Section 300x-31 and 45 CFR Section 96.135, whereby none of this contract's funds shall be used to:
- (a) Provide inpatient hospital services unless it is determined, in accordance with guidelines issued by the Secretary of Health and Human Services, that such treatment is a medical necessity for the individual involved. In exercising this exception, a physician must determine that the primary diagnosis of the individual is substance abuse; the services can be reasonably expected to improve the individual's condition or level of functioning; the individual cannot be effectively treated in a community-based, non-hospital, residential program of treatment; and the hospital's substance abuse program follows national standard of substance abuse professional practice. SAPTBG funding may only be used under these circumstances only to the extent that the daily rate of payment provided to the hospitals for providing the services to the individual shall not exceed the comparable daily rate provided for community-based, non-hospital, residential programs of treatment for substance abuse; and that payment is only for services that are medically necessary, that is, only for those days that the patient cannot be safely treated in a residential, community-based program.
  - (b) Make cash payments to intended recipients of health services;
  - (c) Purchase or improve land, purchase, construct or permanently improve (other than minor remodeling if provided for in the line item budget of this agreement) any building or other facility, or purchase major medical equipment. (No minor equipment may be purchased unless the line item budget specifically provides for such purchase);
  - (d) Satisfy any requirement for the expenditure of non-Federal funds as a condition for receipt of Federal funds;
  - (e) Provide financial assistance to any entity other than a public or non-profit private entity; or
  - (f) Provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines in writing that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for AIDS. (In addition, state law, Controlled Substance, Drug Device and Cosmetic Act, 35 P.S. Section 780-101 et seq., prohibits providing individuals with hypodermic needles or syringes.)

- (4) Pro-Children Act of 1994 - Contractor shall agree to comply with the following certification required by P.L. 103-227 Sections 1041-1044, 20 U.S.C. Sections 6081-6084, known as the Pro-Children Act of 1994, which 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 the 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 Contractor certifies that it will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act of 1994. The Contractor agrees that it will require that the language of this certification be included in any subcontracts which contain provisions for children's services and that all subcontractors shall certify accordingly.
- (5) Other Federal Funds - If the Cost-Reimbursement Contractor is contributing toward the general contract cost, the Contractor certifies that the Federal funds to be used under this Agreement do not replace or supplant in any way, State or local funds for already existing services. The Contractor further certifies that the services to be provided under this Agreement are not already available without cost. The Contractor further certifies that the addition of Federal funds will result in a commensurate program expansion.
- (6) Equal Employment Opportunity
- (a) Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, or sex. Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, ancestry, national origin, age, or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- (b) Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, or sex.

- (c) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.
- (d) It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment, which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanction.
- (e) Where the practices of a union or training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.
- (f) Contractor shall comply with all State and Federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this Agreement or with any such laws, this Agreement may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.
- (g) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the Department and the Office of Administration, Bureau of Affirmative Action, for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Department or the Bureau of Affirmative Action.
- (h) Contractor shall actively recruit minority sub-contractors or sub-contractors with substantial minority representation among their employees.
- (i) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

(7) Equal Opportunity for the Handicapped

The Contractor agrees to abide by Section 504 of the Rehabilitation Act of 1973, as amended (Public Law 93-112, 29 U.S.C. §794, as amended) and implementing Federal regulations. The Contractor assures that any benefits, services, or employment, available through the Contractor to the public by way of this Agreement's funds, shall not be denied persons with handicaps who are otherwise qualified or eligible for the benefits, services, or employment available as a result of this Agreement.

(8) Provisions Concerning the Americans with Disabilities Act

During the term of this Agreement, the Contractor agrees as follows:

Pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

E. Invoice Only – no agreement is needed; only payment of invoice. Two types exist, as follows:

- (1) goods purchased (e.g. office supplies, water, meals, etc.)
- (2) limited services (e.g. plumbing, electrical, roofing, etc.)

F. The SCA agrees to accept full responsibility for the performance of the terms of the Agreement between BDAP and the SCA, including the work performed by subcontractors. All subcontractors shall acknowledge the rights of the Department or the public set forth in its contract with the SCA. The Department reserves the right to reject or to require modification to any subcontract at any time.

G. At a minimum, the SCA shall monitor the financial and service performance of its subcontractors annually to identify contractual deficiencies, as per BDAP's Report Schedule, Prevention Manual, Treatment Manual and Fiscal Manual requirements. If contractual deficiencies are identified during the monitoring process, the SCA will require and approve submitted corrective action plans by the subcontractor and will conduct follow-up monitoring to verify implementation of approved corrective action plans.

- H. All service provider contracts, using funds received under an agreement with the SCA, shall be signed and dated by all necessary and appropriate parties prior to payment for services rendered or goods purchased.
- I. This Paragraph II, Subcontracts shall take precedence over any language in Paragraph 6 of the Department's Standard General Terms and Conditions, Rev. 6/01, that is in conflict with language within this Paragraph.