

**Application for**

**Section 1915(b) (4) Waiver**

**Fee-for-Service**

**Selective Contracting Program**

June, 2012

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# Application for Section 1915(b) (4) Waiver Fee-for-Service (FFS) Selective Contracting Program

## Facesheet

The **State** of Pennsylvania requests a waiver/amendment under the authority of section 1915(b) of the Act. The Medicaid agency will directly operate the waiver.

The **name of the waiver program** is Performance-Based Contracting.  
(List each program name if the waiver authorizes more than one program.).

**Type of request.** This is:

- an initial request for new waiver. All sections are filled.
- a request to amend an existing waiver, which modifies Section/Part \_\_\_\_\_
- a renewal request

Section A is:

- replaced in full
- carried over with no changes
- changes noted in **BOLD**.

Section B is:

- replaced in full
- changes noted in **BOLD**.

**Effective Dates:** This waiver/renewal/amendment is requested for a period of 03 years beginning 1.1.25 and ending 12.31.27.

**State Contact:** The State contact person for this waiver is Julie Mochon and can be reached by telephone at (717) 783-5771, or fax at (717) 787-6583, or e-mail at jmocho@pa.gov. (List for each program)

## Section A – Waiver Program Description

### Part I: Program Overview

#### **Tribal Consultation:**

Describe the efforts the State has made to ensure that Federally-recognized tribes in the State are aware of and have had the opportunity to comment on this waiver proposal (if additional space is needed, please supplement your answer with a Word attachment).

There are no federally recognized Tribal Governments that maintain a primary office and/or majority population in Pennsylvania.

#### **Program Description:**

Provide a brief description of the proposed selective contracting program or, if this is a request to amend an existing selective contracting waiver, the history of and changes requested to the existing program. Please include the estimated number of enrollees served throughout the waiver (if additional space is needed, please supplement your answer with a Word attachment).

The State of Pennsylvania, Department of Human Services (Department), Office of Developmental Programs (ODP) is submitting this application request for a § 1915(b)(4) FFS Selective Contracting Waiver to operated concurrently with two ODP-administered 1915(c) Home and Community-Based Services waivers, Community Living Waiver (1486.R01.02) and Consolidated Waiver (0147.R07.02). Please note that from here on the term performance-based contracting is used in-lieu-of the term selective contracting.

Both Waivers serve children and adults with an ICF/IDD and ICF/ORC level of care. At present 5,422 individuals are served by the Community Living Waiver and 18,358 individuals are served by the Consolidated Waiver. Of those, 156 participants and 13,812 participants receive residential services respectively. Performance-based contracting allows ODP to move away from the current requirement under the approved 1915(c) Waivers to allow choice of every "willing and qualified" provider.

The 1915(b)(4) waiver will support high quality practices and ensure services are integrated and person-centered and that participants experience more independence and choices in their lives. Additionally, the 1915(b)(4) waiver will limit the provider pool to only those providers that are able to demonstrate quality service provision through existing and novel quality measures, which will help address compliance issues and reduce discrepancies in individual outcomes that result in unsafe and inequitable service experiences for Waiver participants.

To accomplish these goals, ODP has established new standards to assist with identifying the performance level of individual residential provider agencies. These include standards for clinical supports within all residential services and incentives for adoption of technology that supports greater independence and/or safety of participants. These new provider standards will allow ODP to meaningfully limit entry of new residential providers into the provider pool and to measure provider performance with new and existing standards, allowing providers to

be grouped into tiers that will be tied to reimbursement.

The Department, as the State Medicaid agency, retains authority over the administration and implementation of both the Community Living and Consolidated Waivers. ODP, as part of the State Medicaid Agency, is responsible for the development and distribution of policies, procedures, and rules related to all ODP waiver operations.

To administer performance-based contracting, ODP will continue to coordinate management and supervision functions related to home and community-based services through Administrative Entities (AEs). AEs are county/joinder or non-governmental entities that enter into and maintain a signed agreement with ODP. AEs will continue to conduct the activities specific to their role outlined in the 1915(c) Waivers and the AE Operating Agreement with ODP. To support some of these administrative activities, ODP will contract with a Performance Analysis Services (PAS) vendor, which will provide administrative assistance with data collection, analysis, and reporting functions.

### **Waiver Services:**

Please list all existing State Plan services the State will provide through this selective contracting waiver (if additional space is needed, please supplement your answer with a Word attachment).

The following services offered through both the Community Living and Consolidated Waivers are included in this 1915(b)(4) request: Residential Habilitation, Life Sharing, and Supported Living.

### **A. Statutory Authority**

1. **Waiver Authority.** The State is seeking authority under the following subsection of 1915(b):

**1915(b) (4) - FFS Selective Contracting program**

2. **Sections Waived.** The State requests a waiver of these sections of 1902 of the Social Security Act:

- a.  **Section 1902(a) (1) - Statewideness**
- b.  **Section 1902(a) (10) (B) - Comparability of Services**
- c.  **Section 1902(a) (23) - Freedom of Choice**
- d.  **Other Sections of 1902 – (please specify)**

### **B. Delivery Systems**

1. **Reimbursement.** Payment for the selective contracting program is:

- the same as stipulated in the State Plan  
 is different than stipulated in the State Plan (please describe)

X\_ Other (Please define): Rates are paid as described in Appendix I-2-a of the approved 1915(c) Waivers.

2. **Procurement.** The State will select the contractor in the following manner:

- Competitive** procurement
- Open** cooperative procurement
- Sole source** procurement
- Other** (please describe) To support continuity of care for Waiver participants, current residential providers may participate in the selective contracting program. Over time provider participation may be limited based on provider performance.

### C. **Restriction of Freedom of Choice**

1. **Provider Limitations.**

- Beneficiaries will be limited to a single provider in their service area.
- Beneficiaries will be given a choice of providers in their service area.

(NOTE: Please indicate the area(s) of the State where the waiver program will be implemented)

2. **State Standards.**

Detail any difference between the state standards that will be applied under this waiver and those detailed in the State Plan coverage or reimbursement documents (if additional space is needed, please supplement your answer with a Word attachment).

There will be no changes to the standards currently applied to the Residential Habilitation, Life Sharing, and Supported Living services under the 1915(c) Waivers as a result of this waiver. State standards will be applied in the same manner as those outlined in the existing 1915(c) coverage and reimbursement documents, including but not limited to State regulations, contracts, the 1915(c) Waivers and ODP policies and procedures. Providers will continue to be expected to comply with all applicable State standards, such as qualifications for staff, requirements for services, ODP quality requirements, and maintenance of participant records. New performance standards related to the performance-based contracting program will be incorporated into the Residential Provider Agreement and ODP policy.

### D. **Populations Affected by Waiver**

(May be modified as needed to fit the State's specific circumstances)

1. **Included Populations.** The following populations are included in the waiver:

- Section 1931 Children and Related Populations
- Section 1931 Adults and Related Populations
- Blind/Disabled Adults and Related Populations
- Blind/Disabled Children and Related Populations

- Aged and Related Populations
- Foster Care Children
- Title XXI CHIP Children

X\_ Other populations:

Optional State supplement recipients

- Working individuals with disabilities who buy into Medicaid (TWWIIA Basic Coverage Group as provided in §1902(a)(10)(A)(ii)(XV) of the Act)
- Working individuals with disabilities who buy into Medicaid (TWWIIA Medical Improvement Coverage Group as provided in §1902(a)(10)(A)(ii)(XVI) of the Act)
- SSI recipients
- Medically needy in 1634 States and SSI Criteria States (42 CFR §435.320, §435.322 and §435.324)
- Other specified groups (include only statutory/regulatory reference to reflect the additional groups in the State Plan that may receive services under this Waiver)
- Individuals Eligible for but not Receiving Cash - 42 CFR §435.210; 1902(a)(10)(A)(ii)(I); 1905(a); 1902(v)(1)
- Certain Individuals Needing Treatment for Breast or Cervical Cancer - 1902(a)(10)(A)(ii)(XVIII); 1902(aa)
- Only the following groups of individuals in the special home and community-based waiver group under 42 CFR §435.217
- A special income level equal to: 300% of the SSI Federal Benefit Rate (FBR)

2. **Excluded Populations.** Indicate if any of the following populations are excluded from participating in the waiver:

- Dual Eligibles
- Poverty Level Pregnant Women
- Individuals with other insurance
- Individuals residing in a nursing facility or ICF/MR
- Individuals enrolled in a managed care program
- Individuals participating in a HCBS Waiver program
- American Indians/Alaskan Natives
- Special Needs Children (State Defined). Please provide this definition.
- Individuals receiving retroactive eligibility
- Other (Please define):

This performance-based contracting program is open only to individuals enrolled in the Community Living and Consolidated Waiver programs.

## Part II: Access, Provider Capacity and Utilization Standards

### A. Timely Access Standards

Describe the standard that the State will adopt (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State has adopted) defining timely Medicaid beneficiary access to the contracted services, *i.e.*, what constitutes timely access to the service?

1. How does the State measure (or propose to measure) the timeliness of Medicaid beneficiary access to the services covered under the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment)?

The Community Living and Consolidated Waivers both contain timely access requirements regarding the initiation of residential services. Residential Habilitation providers must initiate services within an average of 90 days or less post referral acceptance. Supported Living and Life Sharing providers must initiate services within 6 months post referral acceptance. Additionally, as part of the proposed tier standards, providers will be required to measure and report on time to service initiation post-referral acceptance.

2. Describe the remedies the State has or will put in place in the event that Medicaid beneficiaries are unable to access the contracted service in a timely fashion (if additional space is needed, please supplement your answer with a Word attachment).

ODP delegates 1915(c) Waiver administration functions to external Administrative Entities (AEs) to supervise service delivery and contracts with a Performance Analysis Service vendor to gather and analyze service data at the provider, county, and county joinder level. The State utilizes a variety of surveillance strategies via its Quality Assessment and Improvement (QA&I) processes to ensure access to services. ODP will ensure sufficient provider capacity and will ensure that access is not impeded for individuals requiring residential services. When access issues are identified, the corrective action process will be utilized.

## **B. Provider Capacity Standards**

Describe how the State will ensure (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State has ensured) that its selective contracting program provides a sufficient supply of contracted providers to meet Medicaid beneficiaries' needs.

1. Provide a detailed capacity analysis of the number of providers (e.g., by type, or number of beds for facility-based programs), or vehicles (by type, per contractor for non-emergency transportation programs), needed per location or region to assure sufficient capacity under the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).

At present, there are approximately 400 distinct residential service providers serving individuals in 7,500 locations across the state. ODP's established standard for performance-based contracting is at least two providers of residential services in every county/joinder (a joinder is comprised of multiple counties for the purpose of administering a program). These standards are currently met, and presently, there are 59 providers with a capacity to serve up to 630 additional individuals in residential services. The number of providers will be constantly assessed against the number of individuals requiring the level of service both statewide and regionally.



2. Describe how the State will evaluate and ensure on an ongoing basis that providers are appropriately distributed throughout the geographic regions covered by the selective contracting program so that Medicaid beneficiaries have sufficient and timely access throughout the regions affected by the program (if additional space is needed, please supplement your answer with a Word attachment).

Capacity will be routinely assessed against the number of individuals needing services, with providers added/capacity augmented if needed to address access issues. ODP will evaluate provider capacity against the established standard of two providers in each county/joinder on a quarterly basis through data collected by the AEs and analysis conducted by the PAS. ODP will review the analysis to determine if there are any gaps in provider availability. This process will enable ODP to detect and correct any inconsistency in authorization or utilization patterns.

ODP anticipates that performance-based contracting will increase capacity as providers will be incentivized to increase both their geographic footprint in under-served areas as well as their capacity to serve individuals with complex needs.

## **B. Utilization Standards**

Describe the State's utilization standards specific to the selective contracting program.

1. How will the State (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State) regularly monitor(s) the selective contracting program to determine appropriate Medicaid beneficiary utilization, as defined by the utilization standard described above (if additional space is needed, please supplement your answer with a Word attachment)?

Given the nature of residential services, utilization is high, averaging at least 90% across all services. Periodic absences from a residential setting are expected as individuals visit family and friends, go on vacation, or are hospitalized due to an accident or illness. ODP will monitor utilization through its existing monitoring and oversight activities. This includes semi-annual data analysis comparing service authorizations against claims data to determine utilization rates. These data are reviewed at the individual, provider, and county/joinder level. This process will enable ODP to detect and correct any inconsistency in authorization or utilization patterns.

2. Describe the remedies the State has or will put in place in the event that Medicaid beneficiary utilization falls below the utilization standards described above (if additional space is needed, please supplement your answer with a Word attachment).

Utilization issues that are not a result of an individual's planned absence from the residence will be remediated at the individual level to assure that individuals have access to authorized services. Additionally, if a specific provider is identified to have utilization lower than the established standard, ODP through its QA&I processes will work with the provider to remediate the issue. This would include an analysis to identify the issue(s) and the development of a corrective action plan (CAP) to bring the provider into compliance with the established standard.

## **Part III: Quality**

### **A. Quality Standards and Contract Monitoring**

1. Describe the State's quality measurement standards specific to the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).
  - a. Describe how the State will (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State):
    - i. Regularly monitor(s) the contracted providers to determine compliance with the State's quality standards for the selective contracting program.
    - ii. Take(s) corrective action if there is a failure to comply.
      - i. Residential services (Residential Habilitation, Life Sharing, and Supported Living) are critical to the success of Waiver participants as described in both the Consolidated (0147.R07.02) and Community Living (1486.R01.02) Waivers. ODP's QA&I process, as described in the approved Waivers, will continue to be used to assess and monitor providers of residential services. Quality measures in the Waivers will also be monitored to ensure Waiver participants' health and welfare. Additionally, several provider oversight and monitoring metrics for the purposes of continued licensure/ certification will be implemented.
      - ii. Corrective actions against poor performing providers will occur as described in the approved Consolidated and Community Living Waivers.

2. Describe the State’s contract monitoring process specific to the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).
  - a. Describe how the State will (or if this is a renewal or amendment of an existing selective contracting waiver, provide evidence that the State):
    - i. Regularly monitor(s) the contracted providers to determine compliance with the contractual requirements of the selective contracting program.
    - ii. Take(s) corrective action if there is a failure to comply.
      - i. ODP will utilize its existing QA&I process as described in the approved Community Living and Consolidated Waivers to monitor the performance-based contracting program. When designing its performance-based contracting standards and measures ODP leveraged many existing measures including its current process. Changes to the process, tools, and questionnaires will be made as appropriate. Additionally, providers will be required to self-report data for certain performance measures to the PAS. The PAS will use all of this information to analyze providers' performance measures. ODP will use this information for the on-going evaluation of a provider's tier assignment. Based on the providers performance on the established measures their tier assignment may change over time.
      - ii. Corrective actions against poor performing providers will occur as described in the approved Consolidated and Community Living Waivers.

## **B. Coordination and Continuity of Care Standards**

Describe how the State assures that coordination and continuity of care is not negatively impacted by the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).

As ODP transitions to performance-based contracting, it is essential that disruptions in residential services are avoided for individuals and families. To support continuity of care, ODP intends to contract with all currently enrolled providers at the time performance-based contracting begins. Providers who ODP ultimately chooses not to contract with must comply with the regulatory requirements for continuity of care, 55 Pa. Code §§ 6100.301-6100.307. When a provider's contract is not renewed, providers are required to issue written notice at least 45 days prior to the date of the proposed provider transfer to the individual, persons designated by the individual, persons on an individual's service plan team, the designated AE, the supports coordinator, and the Department. If a new provider cannot be found within 45 days, then the current provider must continue to serve the individual until such time that an appropriate provider is found.

## Part IV: Program Operations

### A. Beneficiary Information

Describe how beneficiaries will get information about the selective contracting program (if additional space is needed, please supplement your answer with a Word attachment).

To support the move to performance-based contracting for residential services, ODP undertook an extensive stakeholder input and feedback process. Based on the values described within the Everyday Lives document (developed by ODP, individuals who receive services, families, and service system stakeholders) ODP drafted a framework for the performance-based contracting of residential services and engaged in initial discussions with a variety of stakeholder groups including the Residential Strategic Thinking Group, Information Sharing and Advisory Committee (ISAC), Developmental Disabilities (DD) council, and provider associations. Based on feedback from these groups, ODP further refined its framework and produced and posted for public comment a Selective Contracting Concept Paper. The concept paper was posted for 45 days in June and July of 2023.

During the posting period, ODP hosted six public comment webinars to review the concepts in the Concept Paper, answer questions, and provide an opportunity for public comment. Although not required by CMS, ODP posted the draft 1915(b)(4) waiver application for public comment. Through a notice published in the Pennsylvania Bulletin on April 20, 2024 the Department informed interested persons of the availability of the proposed waiver for public comment. This notice can be accessed online at XXXXXXXXXX. The public comment period was open until June 4, 2024. Written comments were accepted via electronic mail and postal mail. Verbal comments were accepted through teleconferences held on XXXXX. ODP also held a public comment webinar specifically for self-advocates and families on XXXX.

ODP sent notification of the publication the notice in the Pennsylvania Bulletin via our ListServ to providers, supports coordination organizations, advocacy organizations, self-advocates, and families.

Additionally, the AEs will send letters directly to impacted individuals describing the transition to performance-based contracting and what it means to the individual. Supports Coordinators will also provide education and support to individuals and families regarding performance-based contracting.

### B. Individuals with Special Needs.



The State has special processes in place for persons with special needs  
(Please provide detail).

Residential services are, by design, for individuals with special needs so all considerations regarding physical and programmatic accessibility have been addressed through the service design and provider qualifications.

## Section B – Waiver Cost-Effectiveness & Efficiency

### Efficient and economic provision of covered care and services:

1. Provide a description of the State’s efficient and economic provision of covered care and services (if additional space is needed, please supplement your answer with a Word attachment).

Contracting with residential habilitation, life sharing, and supportive living providers through performance-based contracting will result in the efficient and economic provision of residential services across the state. Performance-based contracting will ensure adequate participant choice between providers within a region, increase quality of services provided, and build capacity and sustainability within the delivery system.

2. Project the waiver expenditures for the upcoming waiver period.

Year 1 from: \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Trend rate from current expenditures (or historical figures): 0.00% %

Projected pre-waiver cost \_\_\_\_\_

Projected Waiver cost \_\_\_\_\_

Difference: \_\_\_\_\_

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Year 2 from: \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

Trend rate from current expenditures (or historical figures): 0.00% %

Projected pre-waiver cost \_\_\_\_\_

Projected Waiver cost \_\_\_\_\_

Difference: \_\_\_\_\_

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Year 3 (if applicable) from: \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

*(For renewals, use trend rate from previous year and claims data from the CMS-64)*

Projected pre-waiver cost \_\_\_\_\_

Projected Waiver cost \_\_\_\_\_

Difference: \_\_\_\_\_

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Year 4 (if applicable) from: \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

*(For renewals, use trend rate from previous year and claims data from the CMS-64)*

Projected pre-waiver cost \_\_\_\_\_

Projected Waiver cost \_\_\_\_\_

Difference: \_\_\_\_\_

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Year 5 (if applicable) from:   /  /   to   /  /  

*(For renewals, use trend rate from previous year and claims data from the CMS-64)*

Projected pre-waiver cost      \_\_\_\_\_

Projected Waiver cost            \_\_\_\_\_

Difference:                        \_\_\_\_\_