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STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION FOR BEHAVIORAL HEALTH

Lori A. Weaver  
Commissioner

Katja S. Fox  
Director

129 PLEASANT STREET, CONCORD, NH 03301  
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October 2, 2023

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division for Behavioral Health, to enter into a **Retroactive, Sole Source** amendment to an existing contract with the vendor listed below, in **bold**, for the provision of public guardianship services, by increasing the price limitation by \$188,702 from \$13,167,923 to \$13,356,625 with no change to the contract completion date of June 30, 2024, effective retroactive to July 1, 2023 upon Governor and Council approval. 100% General Funds.

The original contract was approved by Governor and Council on June 24, 2020, item #18 and most recently amended with Governor and Council approval on June 29, 2022, item #24.

Contractor Name	Vendor Code	Area Served	Current Amount	Increase (Decrease)	Revised Amount
Office of Public Guardian	166528-B001	Concord, NH	\$10,369,995	\$188,702	\$10,558,697
Tri-County Community Action Program	177195-B009	Berlin, NH	\$2,797,928	\$0	\$2,797,928
<b>Total:</b>			<b>\$13,167,923</b>	<b>\$188,702</b>	<b>\$13,356,625</b>

Funds are available in the following accounts for State Fiscal Year 2024, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**See attached fiscal details.**

**EXPLANATION**

This request is **Retroactive** because the Department was unable to start the amendment process until the request for funds was approved through the state budget, which was effective July 1, 2023. This request is **Sole Source** because MOP 150 requires all amendments to agreements previously approved as sole source to be identified as sole source.

The purpose of this request is to increase the per diem rate the Department will reimburse the Contractor for public guardianship services from \$8.94 to \$9.49 per ward, per day. In addition, the number of Bureau of Elderly and Adult Services (BEAS) wards is increasing by two (2) from 47 to 49, and the Long Term Supports and Services/Division for Behavioral Health (LTSS/DBH) wards is increasing by five (5) from 790 to 795.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 2

Approximately 1,124 individuals will be served through June 30, 2024.

Public guardianship services are necessary to meet the State's statutory obligations to safeguard incapacitated individuals who are in state institutions as well as in community mental health and developmental service programs, statewide. Services provided ensure that the guardianships are maintained and limited in accordance with the standards embodied in RSA 464-A.

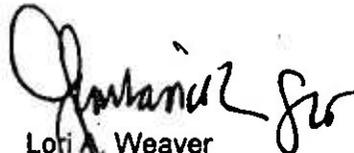
The Contractor will continue to mentor and train family members who are willing to serve as guardians but who require a period of support. Providing this support will remove the need for a public guardian in these cases, which results in a fiscal savings due to not needing to engage permanent public guardianship services.

The Department will continue monitoring services through the required quarterly and annual Contractor reporting.

Should the Governor and Council not authorize this request, the Department would be out of compliance with the requirements of NH RSA 135-C:60, NH RSA 171-A:10, II, and NH RSA 161-F:52. Additionally, individuals with mental illness, developmental disabilities and incapacitated adults who are abused, neglected or exploited, would be left at risk of substantial harm because of their inability to provide their own food, shelter, health care, safety, or to manage their personal affairs.

Area served: Statewide.

Respectfully submitted,



Lori A. Weaver  
Commissioner

**Fiscal Detail Sheet**  
**Guardianship Services (SS-2021-DBH-01-GUARD-01-A02)**

*Tri-County Community Action Program*

VC: 177195-B009

**05-95-92-922010-4114 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT. HHS: BEHAVIORAL HEALTH DIV, BUREAU OF MENTAL HEALTH SERVICES, GUARDIANSHIP SVCS**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	102-500731	Contracts for Prog Svc	92204114	\$699,482.00	\$0	\$699,482.00
2022	102-500731	Contracts for Prog Svc	92204114	\$699,482.00	\$0	\$699,482.00
2023	102-500731	Contracts for Prog Svc	92204114	\$699,482.00	\$0	\$699,482.00
2024	102-500731	Contracts for Prog Svc	92204114	\$699,482.00	\$0	\$699,482.00
<b>Total</b>				<b>\$2,797,928.00</b>	<b>\$0</b>	<b>\$2,797,928.00</b>

*Office of Public Guardian*

VC: 166528-B001

**05-95-92-922010-4114 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT. HHS: BEHAVIORAL HEALTH DIV, BUREAU OF MENTAL HEALTH SERVICES, GUARDIANSHIP SVCS**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	102-500731	Contracts for Prog Svc	92204114	\$2,320,162.50	\$0	\$2,320,162.50
2022	102-500731	Contracts for Prog Svc	92204114	\$2,320,162.50	\$0	\$2,320,162.50
2023	102-500731	Contracts for Prog Svc	92204114	\$2,348,775.00	\$0	\$2,348,775.00
2024	102-500731	Contracts for Prog Svc	92204114	\$2,348,775.00	(\$868,870)	\$1,479,905.00
<b>Subtotal</b>				<b>\$9,337,875.00</b>	<b>(\$868,870)</b>	<b>\$8,469,005.00</b>

**05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT, HHS: ELDERLY & ADULT SVCS DIV, GRANTS FOR SOCIAL SVC PROG, SOCIAL SERVICES BLOCK GRANT**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	074-500589	Grants For Pub Asst And Rel	48130201	\$130,047	\$0	\$130,047
2022	074-500589	Grants For Pub Asst And Rel	48130201	\$130,047	\$0	\$130,047
2023	074-500589	Grants For Pub Asst And Rel	48130201	\$156,939	\$0	\$156,939
2024	074-500589	Grants For Pub Asst And Rel	48130201	\$156,939	\$12,790	\$169,729
<b>Subtotal</b>				<b>\$573,972</b>	<b>\$12,790</b>	<b>\$586,762</b>

**05-95-93-923010-5947 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT. HS: DLTSS DEVELOPMENTAL SVCS, DIV OF DEVELOPMENTAL SVCS, PROGRAM SUPPORT**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2023	102-500731	Contracts for Prog Svc	48130201	\$229,074	\$0	\$229,074
2024	102-500731	Contracts for Prog Svc	48130201	\$229,074	\$1,044,782	\$1,273,856
<b>Subtotal</b>				<b>\$458,148</b>	<b>\$1,044,782</b>	<b>\$1,502,930</b>
<b>Total</b>				<b>\$10,369,995</b>	<b>\$188,702</b>	<b>\$10,558,697</b>

<b>Grand Total</b>	<b>\$13,167,923</b>	<b>\$188,702</b>	<b>\$13,356,625</b>
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**State of New Hampshire  
Department of Health and Human Services  
Amendment #2**

This Amendment to the Guardianship Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and the Office of Public Guardian ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on June 24, 2020 (Item #18), as amended on June 29, 2022 (Item #24), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract as amended and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract, and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:  
\$10,558,697
2. Modify Exhibit B, Scope of Services, Subsection 1.3. Guardianship and Protection Services, Paragraph 1.3.4. to read:  
1.3.4. For persons referred to Contractor by the Department's Office of Client and Legal Services pursuant to NH RSA 136-C:60 and NH RSA 171-A:10 II, the Contractor shall serve the current total of 790 wards receiving guardianship services as well as any new persons referred for services, in accordance with Paragraph 1.1.7 above, for a total of up to 795 wards during the contract period.
3. Modify Exhibit B, Scope of Services, Subsection 1.3. Guardianship and Protection Services, Paragraph 1.3.6. to read:  
1.3.6. The Contractor shall provide guardianship services for no more than 49 persons, as referred by the Bureau of Elderly and Adult Services pursuant to NH RSA 161-F:52, at any point in time during the contract period.
4. Modify Exhibit C, Payment Terms, Subsection 3.1, to read:  
3.1. The per diem reimbursement rate for the provision of guardianship over the person services or guardianship over the estate services, as approved by the Office of Client and Legal Services for all Bureau of Mental Health Services or Bureau of Developmental Services wards, shall be \$9.49 per ward, per day, for up to 795 wards, as follows:
  - 3.1.1. The per diem rate shall be \$9.49 per ward, per day, for guardianship over the person services.
  - 3.1.2. The per diem rate shall be \$9.49 per ward, per day, for guardianship over the estate services.
  - 3.1.3. In the instance when the Contractor is the guardian over the person and guardian over the estate of a ward, the Department shall reimburse the Contractor for each service in accordance with 3.1.1 and 3.1.2 above.
5. Modify Exhibit C, Payment Terms, Subsection 3.3, to read:  
3.3 The per diem reimbursement rate for the provision of guardianship over the person services or guardianship over the estate services as requested by the Bureau of Elderly and Adult Services shall be \$9.49, per ward, per day, for up to 49 wards, as follows:
  - 3.3.1. The per diem rate shall be \$9.49 per ward, per day, for guardianship over the

person services.

- 3.3.2. The per diem rate shall be \$9.49 per ward, per day, for guardianship over the estate services.
- 3.3.3. In the instance when the Contractor is the guardian over the person and guardian over the estate of a ward, the Department shall reimburse the Contractor for each service in accordance with 3.3.1 and 3.3.2 above.

DS  
IM

All terms and conditions of the Contract and prior amendments not modified by this Amendment remain in full force and effect. This Amendment shall be effective retroactive to July 1, 2023, upon Governor and Council approval.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

10/17/2023  
Date

DocuSigned by:  
*Katja S. Fox*  
Name: Katja S. Fox  
Title: Director

Office of Public Guardian

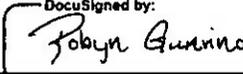
10/10/2023  
Date

DocuSigned by:  
*Linda Mallon*  
Name: Linda Mallon  
Title: Executive Director

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

10/19/2023  
Date

DocuSigned by:  
  
Name: Robyn Guarino  
Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

\_\_\_\_\_  
Date

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

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that OFFICE OF PUBLIC GUARDIAN is a New Hampshire Nonprofit Corporation registered to transact business in New Hampshire on July 14, 1983. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 30453

Certificate Number: 0006326753



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 27th day of September A.D. 2023.

A handwritten signature in black ink, appearing to read "D. Scanlan", is written over a faint circular stamp.

David M. Scanlan  
Secretary of State

**CERTIFICATE OF AUTHORITY**

I, Roger P. Jobin, hereby certify that  
(Name of the elected Officer of the Corporation/LLC; cannot be contract signatory)

1. I am a duly elected Clerk/Secretary/Officer of Office of Public Guardian  
(Corporation/LLC Name)

2. The following is a true copy of a vote taken at a meeting of the Board of Directors/shareholders, duly called and held on September 21, 2023, at which a quorum of the Directors/shareholders were present and voting.  
(Date)

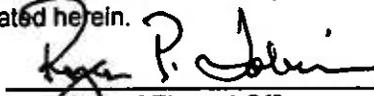
VOTED: That Linda Mallon, Executive Director (may list more than one person)  
(Name and Title of Contract Signatory)

is duly authorized on behalf of Office of Public Guardian to enter into contracts or agreements with the State  
(Name of Corporation/ LLC)

of New Hampshire and any of its agencies or departments and further is authorized to execute any and all documents, agreements and other instruments, and any amendments, revisions, or modifications thereto, which may in his/her judgment be desirable or necessary to effect the purpose of this vote.

3. I hereby certify that said vote has not been amended or repealed and remains in full force and effect as of the date of the contract/contract amendment to which this certificate is attached. This authority was valid **thirty (30) days prior to and remains valid for thirty (30) days** from the date of this Certificate of Authority. I further certify that it is understood that the State of New Hampshire will rely on this certificate as evidence that the person(s) listed above currently occupy the position(s) indicated and that they have full authority to bind the corporation. To the extent that there are any limits on the authority of any listed individual to bind the corporation in contracts with the State of New Hampshire, all such limitations are expressly stated herein.

Dated: 10/24/2023

  
\_\_\_\_\_  
Signature of Elected Officer  
Name: Roger P. Jobin  
Title: President of Board of Directors



# OPG Mission Statement

The OPG Articles of Agreement and By-Laws articulate the following objectives and mission:

This corporation is created for the following reasons:

- A. The provision of guardianship, co-guardianship and conservatorship services for individuals found to be legally incapacitated pursuant to N.H. RSA 464-A and other applicable statutes.
- B. To be designated as the Public Guardianship and Protection Program pursuant to N.H. RSA 547-B.
- C. The provision of protective services, other than guardianship services that are consistent with the intent of N.H. RSA 464-A. Such protective services may include, but not be limited to, power of attorney, client representative, or services as a representative or protective payee.
- D. The provision of guardianship and other fiduciary services to minors.
- E. The provision of private fiduciary services.

The mission statement expresses OPG's already well established philosophy as follows:

**"It is the goal of this corporation to protect the legal and human rights and civil liberties of all individuals it serves by exercising the highest ethical standards in decision making on behalf of others and by ensuring that the individual dignity of its clients is respected."**

**OFFICE OF PUBLIC GUARDIAN, INC.**

**Financial Statements**

**June 30, 2022 and 2021**

**and**

**Independent Auditor's Report**

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**FINANCIAL STATEMENTS**  
June 30, 2022 and 2021

**TABLE OF CONTENTS**

	<u>Page(s)</u>
INDEPENDENT AUDITOR'S REPORT	1-2
<b>FINANCIAL STATEMENTS</b>	
Statements of Financial Position	3
Statements of Activities	4
Statement of Functional Expenses - June 30, 2022	5
Statement of Functional Expenses - June 30, 2021	6
Statements of Cash Flows	7
NOTES TO FINANCIAL STATEMENTS	8-16



**CERTIFIED PUBLIC ACCOUNTANTS**  
608 Chestnut Street • Manchester, New Hampshire 03104  
(603) 622-7070 • Fax: (603) 622-1452 • [www.vachonclukay.com](http://www.vachonclukay.com)

## **INDEPENDENT AUDITOR'S REPORT**

To the Board of Directors  
Office of Public Guardian, Inc.

### **Opinion**

We have audited the accompanying financial statements of the Office of Public Guardian, Inc. (a nonprofit organization), which comprise the statements of financial position as of June 30, 2022 and 2021, and the related statements of activities, functional expenses, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Office of Public Guardian, Inc. as of June 30, 2022 and 2021, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Office of Public Guardian, Inc. and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Office of Public Guardian, Inc.'s ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always

detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of Public Guardian Inc.'s internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Office of Public Guardian, Inc.'s ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*Nashon Clukay & Company PC*

Manchester, New Hampshire  
October 12, 2023

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENTS OF FINANCIAL POSITION**  
 June 30, 2022 and 2021

<b>ASSETS</b>	<u>2022</u>	<u>2021</u>
<b>CURRENT ASSETS:</b>		
Cash	\$ 995,992	\$ 1,039,763
Accounts receivable, net of allowance for uncollectible receivables of \$30,000 in 2022 and 2021	113,055	95,734
Contracts receivable	216,346	226,683
Prepaid expenses	32,489	35,151
<b>TOTAL CURRENT ASSETS</b>	<u>1,357,882</u>	<u>1,397,331</u>
<b>PROPERTY AND EQUIPMENT:</b>		
Condominium unit	1,181,782	1,181,782
Office furniture and equipment	142,105	142,105
Computer equipment	185,508	185,508
	<u>1,509,395</u>	<u>1,509,395</u>
Less accumulated depreciation	739,186	684,047
<b>PROPERTY AND EQUIPMENT, NET</b>	<u>770,209</u>	<u>825,348</u>
<b>OTHER NONCURRENT ASSETS:</b>		
Restricted cash	4,068	3,963
Investments-restricted	168,078	191,965
Software, net of accumulated amortization of \$143,527 in 2021 and 2020	-	-
<b>TOTAL OTHER NONCURRENT ASSETS</b>	<u>172,146</u>	<u>195,928</u>
<b>TOTAL ASSETS</b>	<u>\$ 2,300,237</u>	<u>\$ 2,418,607</u>
<b>LIABILITIES AND NET ASSETS</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 31,636	\$ 55,966
Accrued liabilities:		
Accrued payroll	49,850	64,373
Accrued vacation	248,249	250,692
Other	50,397	67,567
Current portion of long-term liabilities	26,329	25,109
<b>TOTAL CURRENT LIABILITIES</b>	<u>406,461</u>	<u>463,707</u>
<b>NONCURRENT LIABILITIES:</b>		
Mortgage notes payable, less current portion of \$24,602 in 2022 and \$23,462 in 2021	422,039	446,648
Notes payable, less current portion of \$1,727 in 2022 and \$1,647 in 2021	29,633	31,361
<b>TOTAL NONCURRENT LIABILITIES</b>	<u>451,672</u>	<u>478,009</u>
<b>TOTAL LIABILITIES</b>	<u>858,133</u>	<u>941,716</u>
<b>NET ASSETS:</b>		
Without donor restrictions:		
Undesignated	1,269,958	1,280,963
With donor restrictions:		
Purpose restrictions	72,146	95,928
Endowment funds	100,000	100,000
<b>TOTAL NET ASSETS</b>	<u>1,442,104</u>	<u>1,476,891</u>
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<u>\$ 2,300,237</u>	<u>\$ 2,418,607</u>

*See notes to financial statements*

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENTS OF ACTIVITIES**  
For the Years Ended June 30, 2022 and 2021

	<u>2022</u>	<u>2021</u>
<b>CHANGES IN NET ASSETS WITHOUT DONOR RESTRICTIONS:</b>		
<b>SUPPORT AND REVENUE:</b>		
Fees and grants from governmental agencies	\$ 2,511,367	\$ 2,443,271
Other fees	2,310,973	2,358,272
Investment return, net	1,655	1,792
Other income	1,578	683
<b>TOTAL SUPPORT AND REVENUE WITHOUT DONOR RESTRICTIONS</b>	<u>4,825,573</u>	<u>4,804,018</u>
<b>EXPENSES:</b>		
Program expense	3,483,670	3,312,762
Management and General Expenses	1,352,908	1,427,729
<b>TOTAL EXPENSES</b>	<u>4,836,578</u>	<u>4,740,491</u>
<b>INCREASE (DECREASE) IN NET ASSETS WITHOUT DONOR RESTRICTIONS</b>	<u>(11,005)</u>	<u>63,527</u>
<b>CHANGE IN NET ASSETS WITH DONOR RESTRICTIONS:</b>		
Investment return, net	<u>(23,782)</u>	<u>36,789</u>
<b>INCREASE (DECREASE) IN NET ASSETS WITH DONOR RESTRICTIONS</b>	<u>(23,782)</u>	<u>36,789</u>
<b>CHANGE IN NET ASSETS</b>	(34,787)	100,316
<b>NET ASSETS - July 1</b>	<u>1,476,891</u>	<u>1,376,575</u>
<b>NET ASSETS - June 30</b>	<u>\$ 1,442,104</u>	<u>\$ 1,476,891</u>

*See notes to financial statements*

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENT OF FUNCTIONAL EXPENSES**  
For the Year Ended June 30, 2022

		<u>Supporting Services</u>		
	<u>Program</u> <u>Services</u>	<u>Management</u> <u>and</u> <u>General</u>	<u>Total</u> <u>Supporting</u> <u>Services</u>	<u>Total</u> <u>Expenses</u>
<b>SALARIES AND RELATED EXPENSES:</b>				
Salaries	\$ 2,544,185	\$ 918,704	\$ 918,704	\$ 3,462,889
Employee benefits	373,700	134,943	134,943	508,643
Payroll taxes	202,188	73,011	73,011	275,199
	<u>3,120,073</u>	<u>1,126,658</u>	<u>1,126,658</u>	<u>4,246,731</u>
<b>OTHER EXPENSES:</b>				
Occupancy	64,169	23,171	23,171	87,340
Professional services	19,337	6,982	6,982	26,319
Computer and software expenses	61,458	22,192	22,192	83,650
Staff development	11,735	4,238	4,238	15,973
Office expenses	118,440	42,769	42,769	161,209
Travel	58,691	-	-	58,691
Insurance		50,772	50,772	50,772
Depreciation and amortization		55,139	55,139	55,139
Bad debts		10,238	10,238	10,238
Mortgage interest	17,155	6,195	6,195	23,350
Other	12,612	4,554	4,554	17,166
Total	<u>\$ 3,483,670</u>	<u>\$ 1,352,908</u>	<u>\$ 1,352,908</u>	<u>\$ 4,836,578</u>

*See notes to financial statements*

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENT OF FUNCTIONAL EXPENSES**  
For the Year Ended June 30, 2021

	<u>Program Services</u>	<u>Supporting Services Management and General</u>	<u>Total Supporting Services</u>	<u>Total Expenses</u>
<b>SALARIES AND RELATED EXPENSES:</b>				
Salaries	\$ 2,359,210	\$ 948,712	\$ 948,712	\$ 3,307,922
Employee benefits	392,643	157,894	157,894	550,537
Payroll taxes	187,878	75,551	75,551	263,429
	<u>2,939,731</u>	<u>1,182,157</u>	<u>1,182,157</u>	<u>4,121,888</u>
<b>OTHER EXPENSES:</b>				
Occupancy	32,453	13,050	13,050	45,503
Professional services	20,985	8,439	8,439	29,424
Computer and software expenses	64,249	25,837	25,837	90,086
Staff development	8,290	3,334	3,334	11,624
Office expenses	190,850	76,747	76,747	267,597
Travel	22,870	-	-	22,870
Insurance	-	39,731	39,731	39,731
Depreciation and amortization	-	56,037	56,037	56,037
Bad debts	-	8,993	8,993	8,993
Mortgage interest	17,480	7,029	7,029	24,509
Other	15,854	6,375	6,375	22,229
Total	<u>\$ 3,312,762</u>	<u>\$ 1,427,729</u>	<u>\$ 1,427,729</u>	<u>\$ 4,740,491</u>

*See notes to financial statements*

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**STATEMENTS OF CASH FLOWS**  
For the Years Ended June 30, 2022 and 2021

	<u>2022</u>	<u>2021</u>
<b>Cash Flows From Operating Activities:</b>		
Cash received from clients and third-party payers	\$ 2,284,992	\$ 2,388,443
Cash received from governmental agencies	2,521,704	2,388,109
Interest and dividends	1,655	1,792
Cash paid to employees	(3,479,855)	(3,354,742)
Cash paid to suppliers	<u>(1,347,150)</u>	<u>(1,319,599)</u>
Net Cash Provided (Used) by Operating Activities	<u>(18,654)</u>	<u>104,003</u>
<b>Cash Flows From Investing Activities:</b>		
Purchase of investments	(13,084)	(26,318)
Realized gains on investments	10,966	6,779
Cash received from interest and dividends	<u>2,223</u>	<u>3,950</u>
Net Cash Provided (Used) for Investing Activities	<u>105</u>	<u>(15,589)</u>
<b>Cash Flows From Financing Activities:</b>		
Payments on mortgages and notes	<u>(25,117)</u>	<u>(23,957)</u>
Net Cash Used for Financing Activities	<u>(25,117)</u>	<u>(23,957)</u>
Net Increase (Decrease) in Cash	(43,666)	64,457
Cash, Beginning of Year	<u>1,043,726</u>	<u>979,269</u>
Cash, End of Year	<u>\$ 1,000,060</u>	<u>\$ 1,043,726</u>
<b>Supplemental Data:</b>		
Interest paid	\$ 23,350	\$ 24,509
Unrealized gain (loss) on investments	<u>(36,971)</u>	<u>26,060</u>
	<u>\$ (13,621)</u>	<u>\$ 50,569</u>

See notes to financial statements

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS**  
For the Years Ended June 30, 2022 and 2021

**NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Organization and Purpose*

The Office of Public Guardian, Inc. (the "Entity") was incorporated as a non-profit organization on July 14, 1983. The Entity was established to provide guardianship, co-guardianship and conservatorship services for individuals found to be legally incapacitated pursuant to New Hampshire State law (RSA 464-A) and other applicable statutes. Protective services other than guardianship may include, but are not limited to, power of attorney, client representative, or services as a representative or protective payee.

*Accounting Policies*

The accounting policies of the Office of Public Guardian, Inc. conform to accounting principles generally accepted in the United States of America as applicable to non-profit organizations, except as indicated hereafter. The following is a summary of significant accounting policies.

*Basis of Accounting*

The financial statements have been prepared using the accrual basis of accounting.

*Basis of Presentation*

The accompanying financial statements are presented on the accrual basis of accounting and have been prepared to focus on the Organization as a whole and to present balances and transactions according to the existence or absence of donor-imposed restrictions.

*Net Assets Without Donor Restrictions* – Net assets available for use in general operations and not subject to donor or certain grantor restrictions. These net assets may be used at the discretion of management and the Entity's Board of Directors.

*Net Assets with Donor Restrictions* – Net assets subject to donor or certain grantor-imposed restrictions. Some donor-imposed restrictions are temporary in nature, such as those that will be met by the passage of time or other events specified by the donor. Other donor-imposed restrictions are perpetual in nature, where the donor stipulates that resources be maintained in perpetuity. Donor-imposed restrictions are released when a restriction expires, that is, when the stipulated time has elapsed, when the stipulated purpose for which the resource was restricted has been fulfilled, or both.

*Recognition of Contributions and Donor Restrictions*

Contributions are recognized when the donor makes a promise to give to the Entity that is, in substance, unconditional. The Entity reports contributions restricted by donors as increases in net assets without donor restrictions if the restrictions expire (that is, when a stipulated time restriction end or purpose restriction is accomplished) in the reporting period in which the revenue is recognized. All other donor restricted contributions are reported as increases in net assets with donor restrictions, depending on the nature of the restrictions. When a restriction expires, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the statements of activities as net assets released from restrictions.

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2022 and 2021

***Cash and Cash Equivalents***

Cash and cash equivalents include cash on hand and other cash accounts with a maturity of 90 days or less. For purposes of the Statements of Cash Flows, cash and cash equivalents consist of the following:

As presented on the Statements of Financial Position:	<u>2022</u>	<u>2021</u>
Cash	\$ 995,992	\$ 1,039,763
Cash, restricted	4,068	3,963
	<u>\$ 1,000,060</u>	<u>\$ 1,043,726</u>

***Significant Concentrations of Credit Risk***

The Entity's cash balances exceed amounts insured by the Federal Deposit Insurance Corporation (FDIC). Deposits held by the bank at June 30, 2022 include cash of \$308,431 which is not covered by depository insurance. As of June 30, 2021, the uninsured cash balance was \$566,214.

***Restricted Cash and Investments***

Restricted cash and investments consist of cash and investments for the Graupner Endowment Fund, a donor restricted contribution.

***Investments***

Investments, consisting of equity and fixed income mutual funds, are reported at their fair values in the statements of financial position. Net investment return/(loss) is reported in the statements of activities and consists of interest income, realized and unrealized gains and losses, and less external investment expenses.

***Property and Equipment***

Property and equipment are stated at cost. The Entity's policy is to capitalize expenditures for major improvements and to charge operations currently for expenditures which do not extend the lives of related assets. The provision for depreciation is determined by the straight-line method at rates intended to depreciate or amortize the cost of related assets over their estimated useful lives as follows:

	<u>Years</u>
Furniture and Equipment	3 - 10
Buildings and Improvements	10 - 40

Depreciation expense was \$55,139 and \$56,037 for the years ended June 30, 2022 and 2021, respectively.

***Bad Debts***

The Entity uses the reserve method for accounting for bad debts. For the years ended June 30, 2022 and 2021, the Entity reserved \$30,000 as an allowance for uncollectible receivables. Management estimated these allowances by evaluating the probability of collection on a per account basis.

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2022 and 2021

*Accrued Vacation*

Full time employees accrue Paid Time Off (PTO) during their first year of employment at a rate of 9.38 hours per completed month of service. After the first year of service employees are credited with 150 to 262.5 hours of PTO for that year on January 1st, based on each employee's years of service. Employees may carry over 37.5 to 150 hours of unused PTO into each calendar year based on their years of service. Any accrued, but unused PTO is payable to the employee upon separation from employment and has been recorded as a liability at year end.

*Income Taxes*

The Entity is exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is also exempt from State of New Hampshire income taxes and, therefore, has made no provision for Federal or State income taxes. In addition, the Entity has been determined by the Internal Revenue Service not to be a "Private Foundation" within the meaning of Section 509(a) of the Code. The Entity is annually required to file a Return of Organization Exempt from Income Tax (Form 990) with the IRS. FASB Accounting Standards Codification Topic 740 entitled Accounting for Income Taxes requires the Entity to report uncertain tax positions for financial reporting purposes. The Entity had no uncertain tax positions as of June 30, 2022 and, accordingly does not have any unrecognized tax benefits that need to be recognized or disclosed in the financial statements.

*Fair Value of Financial Instruments*

Cash and equivalents, accounts receivable, contracts receivable, accounts payable, and accrued expenses are carried in the financial statements at amounts which approximate fair value due to the inherently short-term nature of the transactions. The fair values determined for financial instruments are estimates, which for certain accounts may differ significantly from the amounts that could be realized upon immediate liquidation.

*Revenue Recognition*

The Entity recognizes contributions, donations, and other miscellaneous income when cash is received. Interest income is recognized monthly as accrued. The Entity recognizes revenue from contracts with customers in the form of guardianship services provided to individuals. Services provided to individuals are charged to governmental contracts when eligible, and for those not eligible, charged as "private pay."

The Entity has revenue derived from governmental contracts for guardianship services provided, which are based upon certain performance requirements. Revenue from governmental contracts is recognized when the Entity has met the performance requirements specified by contract provisions. For governmental contracts, services are billed on a monthly basis in arrears.

Private pay guardianship services are billed in one of three methods: hourly for services related to estate/financial matters and monthly flat rate for guardianship over person; per diem for court appointed guardianship over person; and on a percentage basis for trusts and guardianship services of a minor. Per diem services are billed in advance, while hourly, flat rate and percentage-based services are billed after services have been provided. The Entity recognizes revenue for private pay services at the point in time when customers are billed. Receivables may be recorded in advance of services provided.

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2022 and 2021

*Functional Allocation of Expenses*

The costs of program and supporting services activities have been summarized on a functional basis in the statements of activities. The statements of functional expenses present the natural classification detail of expenses by function.

The financial statements report certain categories of expenses that are attributed to more than one program or supporting function. Accordingly, certain indirect costs have been allocated among the programs and supporting services benefited, based primarily on percentage allocations calculated based on hours worked (time and effort). The expenses that are allocated include employee benefits, payroll taxes, occupancy, professional services, computer and software expense, office expense, mortgage interest, and other miscellaneous expenses.

*Advertising Expense*

The Entity expenses advertising costs as incurred.

*Pervasiveness of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures during the reporting period. Actual results could differ from those estimates.

**NOTE 2--ECONOMIC DEPENDENCE**

The Entity's primary source of support are fees and grants received from the State of New Hampshire totaling \$2,511,367 (52% total revenue), and \$2,443,271 (51% total revenue) for the years ended June 30, 2022 and 2021, respectively. Revenue is recognized as earned under the terms of the contract based on units and level of services provided. Other support originates as charges for private services, interest, and other income. The contract has been renewed through the fiscal year ended June 30, 2023.

**NOTE 3--LIQUIDITY AND AVAILABILITY**

The Entity regularly monitors the availability of resources required to meet its operating needs and other contractual commitments. Cash reserves in excess of daily operational needs are invested in money market and savings accounts to maximize investment return while maintaining safety and liquidity.

The following table reflects the Entity's financial assets as of June 30, 2022 and 2021, reduced by amounts that are not available to meet general expenditures within one year of the statement of financial position date because of donor restrictions.

Financial assets available for general expenditure, reduced by donor or other restrictions limiting their use, within one year of the balance sheet date, comprise the following:

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2022 and 2021

	<u>2022</u>	<u>2021</u>
Cash	\$ 1,000,060	\$ 1,043,726
Investments	168,078	191,965
Accounts receivable	113,055	95,734
Contracts receivable	<u>216,346</u>	<u>226,683</u>
Total Financial Assets	1,497,539	1,558,108
Less:		
Net assets with donor restrictions	<u>(172,146)</u>	<u>(195,928)</u>
Financial Assets Available to Meet Cash Needs for General Expenditures Within One Year	<u>\$ 1,325,393</u>	<u>\$ 1,362,180</u>

**NOTE 4--INVESTMENTS**

Fair Value Measurements

The Entity reports under the Fair Value Measurements pronouncements of the FASB Accounting Standards Codification (FASB ASC 820-10), which establishes a framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs of valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurement) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy are described below.

**Level 1** – Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Entity has the ability to access at the measurement date.

**Level 2** – Inputs to the valuation include:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets or liabilities in markets that are not active;
- Inputs other than quoted prices that are observable for the asset or liability;
- Inputs that are derived principally from or corroborated by observable market data by correlation or other means.

If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.

**Level 3** – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

In some cases, the inputs used to measure the fair value of an asset or a liability might be categorized within different levels of the fair value hierarchy. In those cases, the fair value measurement is categorized in its entirety in the same level of the fair value hierarchy as the lowest level input that is significant to the entire measurement. Assessing the significance of a particular input to entire measurement requires judgment, taking into account factors specific to the asset or liability. The categorization of an asset within the hierarchy is based upon the pricing transparency of the asset and does not necessarily correspond to our assessment of the quality, risk, or liquidity profile of the asset or liability.

Following is a description of the valuation methodologies used for assets measured at fair value.

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**

For the Years Ended June 30, 2022 and 2021

*Equity and fixed income mutual funds:* Valued at the closing price reported on the active market on which the individual securities are traded.

The following tables set forth by level, within the fair value hierarchy, the Entity's assets measured at fair value on a recurring basis, as of June 30, 2022 and 2021:

	Assets at Fair Value as of June 30, 2022			
	Level 1	Level 2	Level 3	Total
Equity mutual funds	\$ 112,765			\$ 112,765
Fixed income mutual funds	55,313			55,313
Total Assets at Fair Value	<u>\$ 168,078</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 168,078</u>

	Assets at Fair Value as of June 30, 2021			
	Level 1	Level 2	Level 3	Total
Equity mutual funds	\$ 141,438			\$ 141,438
Fixed income mutual funds	50,527			50,527
Total Assets at Fair Value	<u>\$ 191,965</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 191,965</u>

**NOTE 5--ENDOWMENTS**

The Board of Directors of the Entity has interpreted the State Prudent Management of Institutional Funds Act (SPMIFA) as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. Because of this interpretation, the Entity classifies the original value of the gift as donor restricted net assets which are permanently restricted. The remaining portion of the donor-restricted endowment fund is classified as donor restricted net assets until approved for expenditure when it is reclassified to unrestricted net assets. The Entity appropriates amounts for expenditure in a manner consistent with the standard of prudence prescribed by SPMIFA. In accordance with SPMIFA, the Entity considers the following factors in making a determination to appropriate or accumulate donor-restricted endowment funds: (1) duration and preservation of the endowment funds; (2) the purposes of the Entity and the endowment fund; (3) general economic conditions; (4) effect of inflation and deflation; (5) the expected total return from income and the appreciation of investments; (6) other resources of the Entity; and (7) the investment policy of the Entity.

The Entity has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of income of funding to programs supported by its endowment while seeking to maintain the purchasing power of those endowment assets over the long-term. Endowment assets include those assets of donor-restricted funds that the Entity must hold in perpetuity or for donor-specified periods. Under this policy, as approved by the Board of Directors, the endowment assets are invested in a manner that is intended to achieve an after-cost total real rate of return, including investment income as well as capital appreciation, which exceeds the annual distribution with acceptable levels of risk. The Entity expects its endowment assets, over time, to produce an average return of approximately 10% annually. Actual returns in any given year may vary from this amount.

To satisfy its long-term rate of return objectives, the Entity relies on a total return strategy in which investment returns are achieved through both capital appreciation and current yield. The Entity targets a diversified asset allocation which includes equity and debt securities. This is intended to result in a

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2022 and 2021

consistent inflation-protection rate of return that has enough liquidity to make an annual distribution of approximately \$5,000 on average while growing the fund, if possible.

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the level that the donor or SPMIFA requires the Entity to retain as a fund of perpetual duration.

The following tabulation summarizes the relationship between carrying values and market values of investment assets for the years ending June 30, 2022 and 2021:

For the year ended June 30, 2022:

	<u>Purpose Restricted</u>	<u>Endowment Funds</u>	<u>Total</u>
Donor restricted net assets as of July 1, 2021	\$ 95,928	\$ 100,000	\$ 195,928
Investment return:			
Investment income, net of fees	13,189		13,189
Net appreciation	<u>(36,971)</u>		<u>(36,971)</u>
Donor restricted net assets as of June 30, 2022	<u>\$ 72,146</u>	<u>\$ 100,000</u>	<u>\$ 172,146</u>

For the year ended June 30, 2021:

	<u>Purpose Restricted</u>	<u>Endowment Funds</u>	<u>Total</u>
Donor restricted net assets as of July 1, 2020	\$ 59,139	\$ 100,000	\$ 159,139
Investment return:			
Investment income, net of fees	10,729		10,729
Net appreciation	<u>26,060</u>		<u>26,060</u>
Donor restricted net assets as of June 30, 2021	<u>\$ 95,928</u>	<u>\$ 100,000</u>	<u>\$ 195,928</u>

**NOTE 6--LONG-TERM DEBT**

At June 30, 2022 and 2021, mortgage and notes payable consists of the following:

	<u>2022</u>	<u>2021</u>
\$584,000 mortgage note payable with bank, secured by property, payable in monthly installments of \$3,774, through October 2035. Note includes variable interest at a rate of 4.75% per annum through November 2025, subsequent interest will be 2.25% plus the Ten Year Federal Home Loan Bank Index Rate.	\$ 446,641	\$ 470,110

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
 For the Years Ended June 30, 2022 and 2021

\$41,000 unsecured note payable with bank, payable in monthly installments of \$265 through October 2035. Note includes variable interest at a rate of 4.75% per annum through November 2025, subsequent interest will be 2.25% plus the Ten Year Federal Home Loan Bank Index Rate.

Less current portion

	<u>31,360</u>	<u>33,008</u>
	478,001	503,118
	<u>26,329</u>	<u>25,109</u>
	<u>\$ 451,672</u>	<u>\$ 478,009</u>

Debt service requirements are as follows:

<u>Year</u>	<u>Amount</u>
2023	\$ 26,329
2024	27,607
2025	28,947
2026	30,590
2027	32,156
Thereafter	<u>332,372</u>
	<u>\$ 478,001</u>

**NOTE 7--REVENUE FROM CONTRACTS WITH CUSTOMERS**

The following table provides information about significant balances on contracts with customers for the prior three years:

	<u>Receivables</u>	<u>Contract Assets</u>	<u>Contract Liabilities</u>
June 30, 2022	\$ 350,142	\$ -	\$ -
June 30, 2021	\$ 349,763	\$ -	\$ -
June 30, 2020	\$ 330,081	\$ -	\$ -

**NOTE 8--RETIREMENT PLAN**

The Entity has a tax deferred annuity plan under Section 403(b) of the Internal Revenue Code for all full-time employees. An employee becomes eligible to participate at the commencement of employment and is vested when an initial contribution is made. Employer contributions are made on each participant's behalf; contribution rates were 5% and 6% of gross wages for the years ended June 30, 2022 and 2021, respectively. The Entity contributed \$105,454 and \$141,742 for the years ended June 30, 2022 and 2021, respectively, to the plan.

**NOTE 9--AGENCY FUNDS**

The Entity maintains guardian accounts on behalf of the wards of the State of New Hampshire in a custodial capacity. These funds amounted to approximately \$32,737,761 and \$35,069,668 as of June 30, 2022 and 2021, respectively. The assets and related obligations have not been reflected on the Statements of Financial Position at June 30, 2022 or 2021.

**OFFICE OF PUBLIC GUARDIAN, INC.**  
**NOTES TO FINANCIAL STATEMENTS (CONTINUED)**  
For the Years Ended June 30, 2022 and 2021

**NOTE 10--SUBSEQUENT EVENTS**

Subsequent events have been evaluated through October 12, 2023, which is the date the financial statements were available to be issued.

**OFFICE OF PUBLIC GUARDIAN  
BOARD OF DIRECTORS**

**President**

Roger Jobin

**Treasurer**

Raymond F. Bower

**Secretary/Clerk**

Michael Fuerst, Esq.

Michael Palmieri

Nina Gardner

Judith Jones, Esq.

Robert Magan, CFA

Robert A. Wells, Esq.

Revised . Sep-23

**LINDA MALLON, ESQUIRE**

Office of Public Guardian  
2 Pillsbury St., Suite 400  
Concord NH 03301  
(603) 224-8041  
lmallon@opgnh.org

**EDUCATION:** **Franklin Pierce Law Center**, Concord, New Hampshire  
Juris Doctor, 1982  
Admission to New Hampshire Bar, 1982

**Trinity College**, Hartford, Connecticut  
B.A., American Studies, 1977

**PROFESSIONAL  
EXPERIENCE:**

**OFFICE OF PUBLIC GUARDIAN**  
Concord, New Hampshire

**Executive Director**, 1998-Present  
**Deputy Director**, 1985-1998  
**Public Guardian**, 1984-1985

- Responsible for directing a non-profit organization certified by the NH Supreme Court to provide public guardianship throughout the State of NH to qualified indigent citizens receiving services through the Department of Health and Human Services and Department of Corrections
- Responsible for overseeing the provision of private guardianship and other fiduciary services to individuals statewide
- Provide supervision; consultation and training to twenty-six staff members including attorneys, medical professionals and social workers
- Develop organizational policies and procedures
- Provide education, training and other consultative services on a state, regional and national basis

**NEW ENGLAND NON-PROFIT  
HOUSING CORPORATION**

Concord, New Hampshire  
**Staff Attorney, 1982-1984**

**NEW HAMPSHIRE LEGAL ASSISTANCE  
INSTITUTIONAL LAW PROJECT**

Concord, New Hampshire  
**Law Clerk, 1981-1982**

- Statewide program concerned with matters affecting the rights of institutionalized and disabled persons in the areas of mental health, developmental disabilities, juvenile and prison law.
- Focus on pursuing remedies which enabled these individuals to live in the least restrictive, most integrated community setting possible.

**CERTIFICATIONS: Center for Guardianship Certification**

- Certified Master Guardian
- Certified Proctor for CGC exams

**MEMBERSHIPS: National Guardianship Association**

- Ethics Committee; First Responder
- Nominating Committee

**New Hampshire Bar Association**

- Elder Law, Estate Planning and Probate Section

**Probate Court Task Force on Professional Guardians**

**Long Term Care Ombudsman Advisory Committee**

**Incapacitated Adult Fatality Review Committee**

**Foundation for Healthy Communities**

- Healthcare Decisions Coalition

## **Tracy M. Culberson, Esq.**

### **Experience**

*2015 – Current      Office of Public Guardian*

#### **General Counsel / National Certified Guardian**

- Provide legal counsel as necessary to assist in the provision of guardianship services to incapacitated clients throughout New Hampshire.
- Provide guardianship services to incapacitated adults

*2011 – Current      Culberson Legal Services of New Hampshire, PLLC*

#### **Owner / Solo Practitioner**

- Legal services to include probate litigation, elder law and estate planning, and Nursing Home Abuse Litigation

*2006-2011      Office of the New Hampshire Attorney General, Concord NH*

#### **Assistant Attorney General**

- Head of the Elder Abuse and Financial Exploitation Unit
- Prosecuted cases of homicide, abuse, neglect, and financial exploitation of elderly and incapacitated adults in Superior, District, and Probate Courts throughout the State of New Hampshire. Notable prosecutions include:
- Trained medical professionals, first responders, judges, court personnel, emergency service providers, and adult protection workers in identifying signs and symptoms of elder abuse, neglect, self-neglect and exploitation, mandatory reporting, investigation techniques and evidence preservation.
- Drafted and filed State's response to defendant's appeal to Supreme Court.
- Chairman of the Incapacitated Adult Fatality Review Committee.

*2005-2006      Office of the Hillsborough County Attorney, Manchester NH*

#### **Assistant County Attorney**

- Represented the State and Hillsborough County in Juvenile, District and Superior Courts.
- Prosecution of misdemeanor and felony-level crimes.
- Presentation of felony cases to the grand jury for indictment.

Co-Director of Communities Against Senior Exploitation (CASE) Partnership.

*1992-2005*

*Goffstown Police Department,*

*Goffstown NH*

#### **Police Officer / Prosecutor**

- Certified New Hampshire Police Officer
- Instructed and trained police officers in the areas of juvenile law, criminal and motor vehicle law enforcement and adjudication, search and seizure, use of force, constitutional law, and the laws of arrest.
- Drafted, reviewed, and executed search and arrest warrants.
- Training and experience in the investigation of felonies and serious misdemeanors to include homicide, sexual assault, child neglect and abuse, robbery, burglary, arson, fraud, internet crimes and financial exploitation.

2005-2007 Plymouth State University, Plymouth, NH

**Adjunct Faculty**

- Instructor within the Department of Criminal Justice.  
Specific instruction in courses to include "Criminal Adjudication", "The Constitution and the Criminal Justice Protocol" and "Domestic Violence and Juvenile Justice".

2005-Current New Hampshire Police Standards and Training Council, Concord NH

**Guest Lecturer**

- Instructor for in-service training of police officers attending "Basic Police Prosecutor" Course.
- Lectured on topics to include "The Rules of Evidence", "Case Preparation and Analysis" and "Elder Abuse and Financial Exploitation Investigation".
- Facilitator of mock DWI trials.
- 

**Education**

2004 Massachusetts School of Law North Andover, MA

- Juris Doctor Degree

1992 Saint Anselm College Goffstown, NH

- Bachelor of Arts Degree
  - Completion of requirements for Criminal Justice in 1992
- Completion of requirements for English in 1998

**Certifications and Professional Organization Memberships**

2008-Current – Chair of Incapacitated Adult Fatality Review Committee

2006-Current – Co-Chairperson of Law Enforcement Sub-Committee of the Elder Abuse Advisory Council

2006-Current – Panel Member of Long-Term Care Safety Net Committee

2004 – Member of the Massachusetts Bar Association BA-159542

2004 – Member of the New Hampshire Bar Association BA-16430

2005 – Justice of the Peace – New Hampshire

- 1992 – Certified New Hampshire Police Officer

**Continuing Legal Education**

- Trial Advocacy I – National District Attorney's Association: Trial Advocacy II – National District Attorney's Association: Prosecuting Cases of Elder Abuse – National District Attorney's Association: Advanced Cross Examination: Nuts and Bolts of Criminal Law: Access to Public Records: New Hampshire Bar Association Practical Skills Course: Communities Against Senior Exploitation (CASE) Partnership: NH Attorney General's Child Abuse and Domestic Violence Conference.

**Other**

- **Board of Directors: Honor Flight New England**
- **Board of Directors for Suncook Youth Soccer**
- **Conversational French; Percussionist.**

**Mary K. Michaud**

**EDUCATION**

**Master of Social Work, 1990**

State University of New York at Albany, Albany, NY  
NH LICSW, 1996 (currently on inactive status)

**B.A. Psychology, 1986**

St. Anselm College, Manchester, NH

**PROFESSIONAL  
EXPERIENCE**

**Office of Public Guardian, 1998-present**

Concord, NH

**Director of Guardianship Services, July 2017-present**

- Provide oversight and management of guardian department, directly supervising 18 professional guardians, including 2 team leaders.
- Serve as a member of the management team, participating in organizational decisions.
- Responsible for making caseload assignments to ensure manageable caseload size and composition.
- In conjunction with Executive Director and Associate Director, responsible for hiring new guardians. Provide orientation and training for new guardians and oversee ongoing training for all guardians.
- Serve as primary guardian for several individuals.

**Guardian Supervisor, 2014-2017**

- Provide direct supervision, consultation and performance oversight for professional guardian staff.
- Provide orientation and training for new guardians.
- Serve as primary guardian for several individuals.

**Staff Guardian, 1998-present**

- Provide advocacy and informed decision making for individuals deemed incapacitated by the NH Probate Court due to intellectual disability, mental illness, traumatic brain injury and/or dementia.
- Collaborate with families, medical providers, nursing homes, area agencies, community mental health centers, state psychiatric hospital, and other inpatient, residential and outpatient providers to ensure best possible outcomes for individuals in least restrictive settings.

**Genesis Behavioral Health (fka Genesis-The Counseling Group), 1996-1998**

Laconia, NH

**Case Management Coordinator, 1997-1998**

- Provided administrative and clinical oversight of Community Support Program clinical case management and independent living services for individuals with serious and persistent mental illness.

**Clinical Case Manager, 1996-1997**

- Provided primary therapy and case management services for adults with serious and persistent mental illness.
- Performed Emergency Services clinical evaluations

**Gateway Center for Human Development, Brunswick, GA, 1995-1996**

**Interim Program Manager**

- Managed psychosocial day treatment program for adults with mental illness during agency search for permanent manager.

**Rensselaer County Department of Mental Health, 1990-1995**

Troy, NY

**Intensive Case Manager, 1991-1995**

- Provided outreach and support for adults with serious and persistent mental illness at risk for homelessness, incarceration or recurring psychiatric hospitalization.

**Mental Health Social Worker, 1990-1991**

- Responsible for primary therapy and case management services for adults with mental illness.

**ANDREA L. SISSON, CPA**  
**Office of Public Guardian**  
**2 Pillsbury St., Suite 400**  
**Concord, NH 03301**  
**(603) 224-8041**

**SUMMARY:**

- 18 years of experience with local CPA firms working with a wide range of clients including small service businesses, non-profit organizations and multi-million dollar manufacturing companies.
- Co-founded and managed local payroll service bureau.
- Proficient in various types of tax return preparation, all areas of accounting, bookkeeping and payroll.
- Designed and implemented customized bookkeeping systems for clients.
- Hired, trained and supervised staff at various levels.

**PROFESSIONAL EXPERIENCE:**

**Office of Public Guardian Concord, New Hampshire**  
**Director of Finance**

**10/2007-Present**

- Responsible for all financial aspects of the organization including daily accounting work, preparation of financial statements, preparation of payroll for 27 person staff, creation of budgets
- Responsible for supervision of all administrative staff and oversight of all administrative functions of the entity
- Assist in the development of organizational policies and procedures as a member of the management team

**Peter C. Brankman and Company, P.C. Concord, New Hampshire**  
**Senior Staff Accountant/Manager**

**10/2004 – 10/2007**

- Managed individual tax portion of practice (400-500 returns); controlled work flow, supervised staff, prepared returns in a fast-paced deadline driven environment.
- Designed and implemented paperless individual tax processing system.
- Perform compilations, reviews and audits of various for profit and non-profit client financial statements.
- Designed and implemented bookkeeping systems for clients.
- Trained and supervised staff on all types of engagements.

**D'Agnes, Robinson and Company/Stephen C. Robinson and Company, /McLarney and Company (Same firm various owners) Concord, New Hampshire**

**Staff Accountant/Senior Staff Accountant/Manager 9/1989 – 6/2004**

- Assisted and advised clients with various accounting and management functions.
- Installed and set up accounting software packages; train client personnel.
- Managed all bookkeeping clients.
- Designed and implemented accounting and internal control procedures.
- Managed work flow through busy tax seasons
- Hired, trained and supervised staff.

**EDUCATION:**

- BS in Accounting, Bentley College May 1989

Office of Public Guardian  
Key Personnel 7/1/2023 – 6/30/2024 Contract Amendment

Name	Job Title	Salary Amount Paid from this Contract
Linda Mallon	Executive Director	\$66,373
Tracy Culberson	Director of Legal Services	\$65,175
Mary Michaud	Director of Guardianship Services	\$49,546
Andrea Sisson	Director of Finance	\$48,458

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Lori A. Shibaette  
Commissioner

Katja S. Fox  
Director

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION FOR BEHAVIORAL HEALTH

129 PLEASANT STREET, CONCORD, NH 03301  
603-271-9544 1-800-852-3345 Ext. 9544  
Fax: 603-271-4331 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

May 31, 2022

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division for Behavioral Health, to amend existing contracts with the Contractors listed below for the provision of public guardianship services, by exercising contract renewal options by increasing the total price limitation by \$6,868,540 from \$6,299,383 to \$13,167,923 and extending the completion dates from June 30, 2022 to June 30, 2024, effective upon Governor and Council approval. 4% Federal Funds. 96% General Funds.

The original contracts were approved by Governor and Council on June 24, 2020, item #18.

Contractor Name	Vendor Code	Area Served	Current Amount	Increase (Decrease)	Revised Amount
Office of Public Guardian	166528-B001	Concord, NH	\$4,900,419	\$5,469,576	\$10,369,995
Tri-County Community Action Program	177195-B009	Berlin, NH	\$1,398,964	\$1,398,964	\$2,797,928
		<b>Total:</b>	<b>\$6,299,383</b>	<b>\$6,868,540</b>	<b>\$13,167,923</b>

Funds are available in the following accounts for State Fiscal Years 2022 and 2023, and are anticipated to be available in State Fiscal Year 2024, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

See attached fiscal details.

**EXPLANATION**

The purpose of this request is to continue providing and to expand guardianship services, statewide, for individuals with mental illness or developmental disabilities, as well as incapacitated adults who are abused, neglected or exploited thereby leaving them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs. This action also raises the per diem rate for guardianship services to \$8.94.

24  
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His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 2

representing an increase of almost 10% from the current rate of \$8.25 for one (1) of the Contractors in order to more closely align with the Contractor's demonstrated current market rate for these services.

Approximately 1,117 individuals will be served during State Fiscal Years 2023 and 2024.

Guardianship services are necessary to meet the State's statutory obligations to safeguard incapacitated individuals who are in state institutions as well as in community mental health and developmental service programs, statewide. Services provided ensure that the guardianships are maintained and limited in accordance with the standards embodied in NH RSA 464-A from July 1, 2020 to June 30, 2024.

Contracted services include mentoring and training services for family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate the need for a public guardian in these cases, which results in a fiscal savings due to not needing to engage permanent public guardianship services.

The Department will continue monitoring contracted services by reviewing quarterly and annual reports provided by the Contractors.

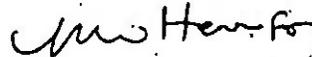
As referenced in Form P-37, General Provisions, Paragraph 17, and Exhibit A, Revisions to Standard Contract Provisions, Paragraph 1.2., of the original agreements, the parties have the option to extend the agreements for up to two (2) additional years, contingent upon satisfactory delivery of services, available funding, agreement of the parties and Governor and Council approval. The Department is exercising its option to renew services for two (2) of the two (2) years available.

Should the Governor and Executive Council not authorize this request, the Department would be out of compliance with the requirements of NH RSA 135-C: 60; NH RSA 171-A: 10, II; and NH RSA 161-F: 52. Additionally, individuals with mental illness, developmental disabilities and incapacitated adults who are abused, neglected or exploited, would be left at risk of substantial harm because of their inability to provide their own food, shelter, health care, safety, or to manage their personal affairs.

Source of Federal Funds: Assistance Listing Number #93.667, FAIN #TBD.

The Department will request General Funds in the event that Federal Funds are no longer available and services are still needed.

Respectfully submitted,



Lori A. Shibinette  
Commissioner

**05-95-92-922010-4114 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT. HHS: BEHAVIORAL HEALTH DIV, BUREAU OF MENTAL HEALTH SERVICES, GUARDIANSHIP SVCS**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	102-500731	Contracts for Prog Svc	92204114	\$3,019,644.50	\$0	\$3,019,644.50
2022	102-500731	Contracts for Prog Svc	92204114	\$3,019,644.50	\$0	\$3,019,644.50
2023	102-500731	Contracts for Prog Svc	92204114	\$0	\$3,048,257.00	\$3,048,257.00
2024	102-500731	Contracts for Prog Svc	92204114	\$0	\$3,048,257.00	\$3,048,257.00
			<b>Subtotal</b>	<b>\$6,039,289.00</b>	<b>\$6,096,514.00</b>	<b>\$12,135,803.00</b>

**05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT, HHS: ELDERLY & ADULT SVCS DIV; GRANTS FOR SOCIAL SVC PROG. SOCIAL SERVICES BLOCK GRANT**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2021	102-500731	Contracts for Prog Svc	48130201	\$130,047	\$0	\$130,047
2022	102-500731	Contracts for Prog Svc	48130201	\$130,047	\$0	\$130,047
2023	102-500731	Contracts for Prog Svc	48130201	\$0	\$156,939	\$156,939
2024	102-500731	Contracts for Prog Svc	48130201	\$0	\$156,939	\$156,939
			<b>Subtotal</b>	<b>\$260,094</b>	<b>\$313,878</b>	<b>\$573,972</b>

**05-95-93-923010-5947 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT. HS: DLTSS-DEVELOPMENTAL SVCS, DIV OF DEVELOPMENTAL SVCS, PROGRAM SUPPORT**

State Fiscal Year	Class / Account	Class Title	Job Number	Current Budget	Increased (Decreased) Amount	Revised Budget
2023	102-500731	Contracts for Prog Svc	48130201	\$0	\$229,074	\$229,074
2024	102-500731	Contracts for Prog Svc	48130201	\$0	\$229,074	\$229,074
			<b>Subtotal</b>	<b>\$0</b>	<b>\$458,148</b>	<b>\$458,148</b>

<b>Grand Total</b>	<b>\$6,299,383</b>	<b>\$6,868,540</b>	<b>\$13,167,923</b>
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**State of New Hampshire  
Department of Health and Human Services  
Amendment #1**

This Amendment to the Guardianship Services contract is by and between the State of New Hampshire, Department of Health and Human Services ("State" or "Department") and Office of Public Guardian ("the Contractor").

WHEREAS, pursuant to an agreement (the "Contract") approved by the Governor and Executive Council on June 24, 2020, (Item #18), the Contractor agreed to perform certain services based upon the terms and conditions specified in the Contract and in consideration of certain sums specified; and

WHEREAS, pursuant to Form P-37, General Provisions, Paragraph 17, and Exhibit A, Revisions to Standard Contract Provisions, Paragraph 1.2., the Contract may be amended upon written agreement of the parties and approval from the Governor and Executive Council; and

WHEREAS, the parties agree to extend the term of the agreement, increase the price limitation, or modify the scope of services to support continued delivery of these services; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and conditions contained in the Contract and set forth herein, the parties hereto agree to amend as follows:

1. Form P-37 General Provisions, Block 1.7, Completion Date, to read:  
June 30, 2024
2. Form P-37 General Provisions, Block 1.9, Contracting Officer for State Agency, to read:  
Robert W. Moore, Director
3. Form P-37, General Provisions, Block 1.8, Price Limitation, to read:  
\$10,369,995
4. Modify Exhibit B, Scope of Services, Subsection 1.3. Guardianship and Protection Services, Paragraph 1.3.4. to read:
  - 1.3.4. For persons referred to Contractor by the Department's Office of Client and Legal Services pursuant to NH RSA 136-C:60 and NH RSA 171-A:10 II, the Contractor shall serve the current total of 755 wards receiving guardianship services as well as any new persons referred for services, in accordance with Paragraph 1.1.7 above, for a total of up to 790 cases during the contract period.
5. Modify Exhibit B, Scope of Services, Subsection 1.3. Guardianship and Protection Services, Paragraph 1.3.6. to read:
  - 1.3.6. The Contractor shall provide guardianship services for no more than 47 persons, as referred by the Bureau of Elderly and Adult Services pursuant to NH RSA 161-F:52, at any point in time during the contract period.
6. Modify Exhibit C, Payment Terms, Section 1, to read:
  1. This Agreement is funded by:
    - 1.1. 94% General funds.
    - 1.2. 6% Federal funds, Social Services Block Grant, as awarded on August 4, 2021, by the U.S. Department of Health and Human Services, Administration for Children and Families CFDA #93.667, FAIN TBD.
7. Modify Exhibit C, Payment Terms, Section 3, to read:
  3. The State shall pay the Contractor a per diem, per case rate for services provided in fulfillment of this Agreement in accordance with the per diem rates as follows:
    - 3.1. The per diem reimbursement rate for the provision of guardianship over the person

services or guardianship over the estate services, as approved by the Office of Client and Legal Services for all Bureau of Mental Health Services or Bureau of Developmental Services wards, shall be \$8.94 per ward, per day, for up to 790 wards, as follows:

- 3.1.1. The per diem rate shall be \$8.94 per ward per day for guardianship over the person services.
- 3.1.2. The per diem rate shall be \$8.94 per ward per day for guardianship over the estate services.
- 3.1.3. In the instance when the Contractor is the guardian over the person and guardian over the estate of a ward, the Department shall reimburse the Contractor for each service in accordance with 3.1.1 and 3.1.2 above.
- 3.2. The hourly reimbursement rate for the provision of training in Exhibit B Section 1, Subsection 1.4, Paragraph 1.4.1 shall be \$60.00, not to exceed 25 hours for a total amount of \$1,500.00.
- 3.3. The per diem reimbursement rate for the provision of guardianship over the person services or guardianship over the estate services as requested by the Bureau of Elderly and Adult Services shall be \$8.94, per ward, per day, for up to 47 wards, as follows:
  - 3.3.1. The per diem rate shall be \$8.94 per ward per day for guardianship over the person services.
  - 3.3.2. The per diem rate shall be \$8.94 per ward per day for guardianship over the estate services.
  - 3.3.3. In the instance when the Contractor is the guardian over the person and guardian over the estate of a ward, the Department shall reimburse the Contractor for each service in accordance with 3.3.1 and 3.3.2 above.
- 3.4. The per diem rates will be extended to the last day of the month following the month in which the ward dies or for whom guardianship service are terminated.
- 3.5. For wards referred for guardianship services by the Bureau of Elderly and Adult Services, the actual cost paid by Contractor for expenses incurred in the performance of Contractors duties for guardianship over the estate under this Agreement, including, but not limited to, filing fees, bond costs and appraisal fees where no other source of reimbursement exists, shall not exceed \$3,574.50.

All terms and conditions of the Contract not modified by this Amendment remain in full force and effect. This Amendment shall be effective July 1, 2022, or upon Governor and Council approval, whichever is later.

IN WITNESS WHEREOF, the parties have set their hands as of the date written below,

State of New Hampshire  
Department of Health and Human Services

6/2/2022

Date

DocuSigned by:

*Katja S. Fox*

Name: Katja S. Fox

Title: Director

Office of Public Guardian

6/2/2022

Date

DocuSigned by:

*Linda Mallon*

Name: Linda Mallon

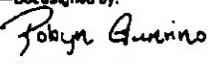
Title: Executive Director

The preceding Amendment, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

6/3/2022

Date

DocuSigned by:  
  
 Name: Robyn Guarino  
 Title: Attorney

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on: \_\_\_\_\_ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:  
Title:

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MAC



**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LEGAL AND REGULATORY SERVICES**

Lori A. Shiboette  
Commissioner

Melissa A. St. Cyr, Esq.  
Chief Legal Officer

129 PLEASANT STREET, CONCORD, NH 03301-3857  
603-271-9443 1-800-857-3345 Ext. 9443  
Fax: 603-271-1912 TDD Access: 1-800-735-2964  
www.dhhs.nh.gov

June 8, 2020

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**REQUESTED ACTION**

Authorize the Department of Health and Human Services, Division for Behavioral Health, to enter into Sole Source contracts with the vendors listed below in an amount not to exceed \$6,299,383 to provide public guardianship services, with the option to renew for up to two (2) additional years, effective July 1, 2020, or upon Governor and Council approval, whichever is later, through June 30, 2022. 2% Federal Funds. 98% General Funds.

Vendor Name	Vendor Code	Area Served	Contract Amount
Office of Public Guardian	166528-B001	Concord, NH	\$4,900,419
Tri-County Community Action Program	177195-B009	Berlin, NH	\$1,398,964
		<b>Total:</b>	<b>\$6,299,383</b>

Funds are available in the following accounts for State Fiscal Year 2021, and are anticipated to be available in State Fiscal Year 2022, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

**SEE ATTACHED FISCAL DETAILS**

**05-96-92-922010-4114 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT, HHS: BEHAVIORAL HEALTH DIV, BUREAU OF MENTAL HEALTH SERVICES,  
GUARDIANSHIP SVCS**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	102-500731	Contracts for Prog Svc	92204114	\$3,019,644.50
2022	102-500731	Contracts for Prog Svc	92204114	\$3,019,644.50
			<b>Subtotal</b>	<b>\$6,039,289.00</b>

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 2 of 3

**05-96-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS  
DEPT, HHS: ELDERLY & ADULT SVCS DIV, GRANTS FOR SOCIAL SVC PROG, SOCIAL  
SERVICES BLOCK GRANT**

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	102-500734	Contracts for Prog Svc	48130201	\$130,047
2022	102-500734	Contracts for Prog Svc	48130201	\$130,047
			<i>Subtotal</i>	<b>\$260,094</b>
			<b>Total</b>	<b>\$6,299,383</b>

**EXPLANATION**

This request is Sole Source because the vendors are the only vendors able to provide the necessary services. RSA 547-B establishes the Public Guardianship and Protection Program for guardianship services to be provided per NH RSA 135-C:60 and NH RSA 171-A:10. NH RSA 547-B:6 requires the Department to contract with one or more organizations that the New Hampshire Supreme Court has designated as a public guardianship and protection program. The Office of Public Guardian and Tri-County Community Action Program are the only organizations the New Hampshire Supreme Court has designated as public guardianship and protection programs.

The purpose of this request is to provide guardianship services, statewide, for up to 1092 individuals with mental illness or developmental disabilities, as well as incapacitated adults who are abused, neglected or exploited, leaving them at risk of substantial harm because of their inability to provide for their own food, shelter, health care, safety, or to manage their personal affairs.

These services are necessary to meet the State's statutory obligations to safeguard incapacitated individuals who are in state institutions as well as in community mental health and developmental service programs, statewide. Services provided ensure that the guardianships are maintained and limited in accordance with the standards embodied in RSA 464-A from July 1, 2020 to June 30, 2022.

Contracted services include mentoring and training services for family members who are willing to serve as guardian but who require a period of support. Providing this support will obviate the need for a public guardian in these cases, which results in a fiscal savings due to not needing to engage permanent public guardianship services.

Approval of the Contracts will allow the vendors to provide protection services on a statewide basis. These Contracts also meet the requirements of NH RSA 135-C:60, NH RSA 171-A: 10, 11 and NH RSA 161-F:52. The vendors agree to seek reimbursement from other payer sources, including social security, when providing protection services.

The attached Contracts include language that reserves the right to renew each contract for up to two (2) additional years, subject to the continued availability of funds, satisfactory performance of contracted services and Governor and Executive Council approval.

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
Page 3 of 3

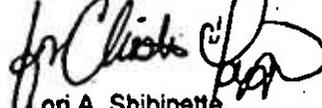
Should the Governor and Council not authorize this request the Department would be out of compliance with the requirements of NH RSA 135-C: 60; NH RSA 171-A: 10, II; and NH RSA 161-F: 52. Additionally, individuals with mental illness, developmental disabilities and incapacitated adults who are abused, neglected or exploited, would be left at risk of substantial harm because of their inability to provide their own food, shelter, health care, safety, or to manage their personal affairs.

Areas served: Statewide.

Source of Funds: CFDA #93.667, FAIN #2001NHSOSR75

The Department will request General Funds in the event that Federal Funds are no longer available and services are still needed.

Respectfully submitted,

  
Lori A. Shibinette  
Commissioner

Financial Detail

05-95-92-922010-4114 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, MHS:BEHAVIORAL HEALTH DIV OF, BUREAU OF MENTAL HEALTH SERVICES, GUARDIANSHIP SVCS

Office of Public Guardian					
State Fiscal Year	Class Title	Class Account	Current Amount	Increase/(Decrease)	Revised Amount
2021	Contracts for Program Services	102-500731	\$0.00	\$2,320,162.50	\$2,320,162.50
2022	Contracts for Program Services	102-500731	\$0.00	\$2,320,162.50	\$2,320,162.50
	<i>Subtotal</i>		\$0.00	\$4,640,325.00	\$4,640,325.00

Tri-County Community Action Program					
State Fiscal Year	Class Title	Class Account	Current Amount	Increase/(Decrease)	Revised Amount
2021	Contracts for Program Services	102-500731	\$0.00	\$699,482.00	\$699,482.00
2022	Contracts for Program Services	102-500731	\$0.00	\$699,482.00	\$699,482.00
	<i>Subtotal</i>		\$0.00	\$1,398,964.00	\$1,398,964.00

05-95-48-481010-9255 HEALTH AND SOCIAL SERVICES, HEALTH AND HUMAN SVCS DEPT OF, MHS:ELDERLY - ADULT SERVICES, GRANTS TO LOCALS, SOCIAL SERVICES BLOCK GRANT

Office of Public Guardian					
State Fiscal Year	Class Title	Class Account	Current Amount	Increase/(Decrease)	Revised Amount
2021	Contracts for Program Services	102-500734	\$0.00	\$130,047.00	\$130,047.00
2022	Contracts for Program Services	102-500734	\$0.00	\$130,047.00	\$130,047.00
	<i>Subtotal</i>		\$0.00	\$260,094.00	\$260,094.00
	<b>Grand Total</b>		\$0.00	\$6,299,383.00	\$6,299,383.00

FORM NUMBER P-37 (version 12/11/2019)

Subject: Guardianship Services (SS-2021-DBH-01-GUARD-01)

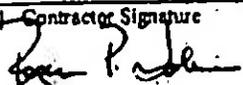
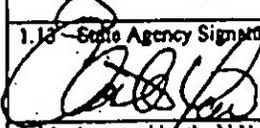
**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**I. IDENTIFICATION.**

<b>1.1 State Agency Name</b> New Hampshire Department of Health and Human Services		<b>1.2 State Agency Address</b> 129 Pleasant Street Concord, NH 03301-3857	
<b>1.3 Contractor Name</b> Office of Public Guardian		<b>1.4 Contractor Address</b> 2 Pillsbury Street, Suite 400 Concord, NH 03301	
<b>1.5 Contractor Phone Number</b> (603) 224-8041	<b>1.6 Account Number</b> 05-95-92-922010-4114-102-500731 05-95-48-481010-9255-102-500734	<b>1.7 Completion Date</b> June 30, 2022	<b>1.8 Price Limitation</b> \$4,900,419
<b>1.9 Contracting Officer for State Agency</b> Nathan D. White, Director		<b>1.10 State Agency Telephone Number</b> (603) 271-9631	
<b>1.11 Contractor Signature</b>  Date: 6-5-2020		<b>1.12 Name and Title of Contractor Signatory</b> ROGER P. ABBIN PRESIDENT	
<b>1.13 State Agency Signature</b>  Date: 6-8-2020		<b>1.14 Name and Title of State Agency Signatory</b> Christa Tasson Associate Commissioner	
<b>1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)</b> By: _____ Director, On: _____			
<b>1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable)</b> By: Catherine Pinos On: 06/08/20			
<b>1.17 Approval by the Governor and Executive Council (if applicable)</b> O&C Item number: _____ G&G Meeting Date: _____			

**2. SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**9. TERMINATION.**

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

**10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

**13. INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omission of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. **CONFLICTING TERMS.** In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

New Hampshire Department of Health and Human Services  
Guardianship Services



EXHIBIT A

**REVISIONS TO STANDARD CONTRACT PROVISIONS**

**1. Revisions to Form P-37, General Provisions**

1.1. Paragraph 3, Subparagraph 3.1, Effective Date/Completion of Services, is amended as follows:

3.1. Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire as indicated in block 1.17, this Agreement, and all obligations of the parties hereunder, shall become effective on July 1, 2020 ("Effective Date").

1.2. Paragraph 3, Effective Date/Completion of Services, is amended by adding subparagraph 3.3 as follows:

3.3. The parties may extend the Agreement for up to two (2) additional year(s) from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.3. Paragraph 12, Assignment/Delegation/Subcontracts, is amended by adding subparagraph 12.3 as follows:

12.3. Subcontractors are subject to the same contractual conditions as the Contractor and the Contractor is responsible to ensure subcontractor compliance with those conditions. The Contractor shall have written agreements with all subcontractors, specifying the work to be performed and how corrective action shall be managed if the subcontractor's performance is inadequate. The Contractor shall manage the subcontractor's performance on an ongoing basis and take corrective action as necessary. The Contractor shall annually provide the State with a list of all subcontractors provided for under this Agreement and notify the State of any inadequate subcontractor performance.

New Hampshire Department of Health and Human Services  
Guardianship Services



EXHIBIT B

Scope of Services

1. Statement of Work

1.1. Scope of Work Applicable to all Guardianship Services

- 1.1.1. For the purposes of this agreement, all references to days shall mean calendar days.
- 1.1.2. For the purposes of this agreement ward shall mean the individual for whom guardianship of the individual and/or estate is appointed by the Circuit Court - Probate Division.
- 1.1.3. The Contractor shall provide public guardianship and protection services to safeguard the liberty and well-being of individuals who, because of functional limitations, have suffered, are suffering, or are likely to suffer substantial harm due to an inability to:
  - 1.1.3.1. Provide personal needs for food, clothing, shelter, health care or safety; or
  - 1.1.3.2. Manage their property or financial affairs.
- 1.1.4. The Contractor shall provide public guardianship and protection services to persons at risk of harm to themselves, their estates or both the person and estate, for whom the State of New Hampshire has a responsibility to safeguard pursuant to New Hampshire (NH) Revised Statutes Annotated (RSA) 135-C:60, Guardianship; NH RSA 161-F:52, Guardianship; and NH RSA 171-A:10, Residential Services; Legal Counsel and Guardianship.
- 1.1.5. The Contractor shall provide public guardianship services to persons in Section 1.1.4, statewide, in accordance with NH RSA 464-A, Guardians and Conservators and NH RSA 547-B, Public Guardianship and Protection Program, which include appointments as guardian, conservator, or temporary guardian of the person and/or estate of a ward.
- 1.1.6. The Contractor will provide protection services to persons in Paragraph 1.1.4, statewide, that include actions necessary to carry out the duties as a duly designated representative or protective payee; client representative; attorney-in-fact; or other similar agent, as prescribed by applicable law, rule, or agreement.
- 1.1.7. The Contractor shall provide services to individuals only upon receiving prior approval from the Department of Health and Human Services, Office of Client and Legal Services or the Bureau of Elderly and Adult Services.
- 1.1.8. The Contractor shall refer clients to the Disability Rights Center - NH, the New Hampshire Legal Assistance or other attorney when referrals

Office of Public Guardian

Contractor Initials RPS

New Hampshire Department of Health and Human Services  
Guardianship Services



EXHIBIT B

- from the Department's Office of Client and Legal Services for guardianship and protection services may be inappropriate, in order that an administrative appeal, or other appropriate legal action, can be taken on behalf of the client.
- 1.1.9. The Contractor shall direct any referrals for individuals made to the Contractor for guardianship and protection services to the Department's Office of Client and Legal Services when referrals are received from agencies that include, but are not limited to:
- 1.1.9.1. The Glenclyff Home for the Elderly;
  - 1.1.9.2. New Hampshire Hospital;
  - 1.1.9.3. Community agencies in the mental health system;
  - 1.1.9.4. Agencies in the developmental services system; and
  - 1.1.9.5. Agencies in the adult and elderly system.
- 1.1.10. The Contractor shall not be reimbursed by the Department for services in the event the Contractor provides guardianship and protection services to individuals who are not screened and approved by the Department's Office of Client and Legal Services or Bureau of Elderly and Adult Services, unless the Contractor:
- 1.1.10.1. Provides documentation satisfactory to the Department that circumstances not within the control of the Contractor occurred and the Contractor made reasonable efforts to decline the guardianship appointments.
  - 1.1.10.2. Includes documentation of the efforts made to decline guardianship appointments with its monthly invoices.
  - 1.1.10.3. The State has responsibility to safeguard the person pursuant to RSA 135-C:60, RSA 171-A:10, II, and RSA 161-F:52.
- 1.1.11. The Contractor shall provide guardianship and protection services to individuals as defined in paragraph 1.1.4, in accordance with the "Standards of Practice" and "A Model Code of Ethics for Guardians" developed by the National Guardianship Association.
- 1.1.11.1. Notwithstanding the ethics and standards for guardians cited in Paragraph 1.1.11, for monthly visits, the Contractor shall make quarterly face-to-face visits with the ward or more frequent visits as required in individual circumstances, in accordance with Contractor's accepted practice.
  - 1.1.11.2. The Contractor shall attempt to have a video conference, or telephone contact if technology for a video conference is not

New Hampshire Department of Health and Human Services  
Guardianship Services



**EXHIBIT B**

available, with the ward in the instance the ward is out of the State of New Hampshire for an extended period of time and it would not be feasible for the Contractor to see the ward face to face on the basis outline in Section 1.1.11.1 above.

- 1.1.11.3. The Contractor may suspend face-to-face visits, as required in Section 1.1.11.1 until an alternative plan can be developed that maintains personal safety of all parties, if the ward exhibits unsafe behavior or is in unsafe environmental or public health conditions, or is aggressive to the point of physical harm to the Contractor.
- 1.1.12. In any action brought in Circuit Court-Probate Division to limit or otherwise reduce the scope of a guardianship over an individual served, the State shall appear with the Contractor where the State agrees that it is necessary to present the State's position on the action proposed.
- 1.1.13. The Contractor shall not provide individuals with direct services, which include:
  - 1.1.13.1. Psychotherapy;
  - 1.1.13.2. Case management;
  - 1.1.13.3. Transportation;
  - 1.1.13.4. Financial aid; or
  - 1.1.13.5. Other social services available through governmental or nonprofit agencies.
- 1.1.14. The Contractor agrees to work closely with the Bureau of Elderly and Adult Services Adult Protection Social Workers for a period, to be determined by the level of need following a referral, to support the client's transition from protection services provided by the State to guardianship services provided by the Contractor. The Contractor agrees that the Department's Bureau of Elderly and Adult Services, Adult Protection Service Social Workers retains the case management function of the clients during the transition period.
- 1.1.15. The Contractor has responsibilities as an independent decision-maker acting in a fiduciary capacity with respect to the individuals served and the decisions to be made on behalf of individuals shall not be directed or influenced by the State.
- 1.1.16. The Contractor may provide guardianship and protection services to Individuals other than those who are referred for services pursuant to this Agreement, ensuring:
  - 1.1.16.1. Pursuant to NH RSA 547 B: 7, no funds provided under this Agreement are expended for those persons.

New Hampshire Department of Health and Human Services  
Guardianship Services



**EXHIBIT B**

- 1.1.16.2. Sufficient records, which are subject to the Department's examination, are included and clearly document that the funds received under this Agreement are expended in accordance with this Agreement.
- 1.1.17. The Contractor shall accept and investigate complaints from the Department regarding services performed, including the circumstances pertaining to the complaint, and ensure a written response containing the results of the investigation is submitted to the Department no later than thirty (30) days from the date the complaint is received by the Contractor.
- 1.1.18. The Contractor shall allow wards to participate in consumer satisfaction surveys unless the Contractor provides written reasons to the Department that state why a particular ward should not be allowed to participate.
- 1.1.19. The Contractor agrees that if the performance of services involves the collection, transmission, storage, or disposition of data on behalf of the Department including substance use disorder (SUD) data created by a Part 2 provider, the Contractor shall maintain the data subject to the requirements stated in 45 CFR Part 2.
- 1.2. Guardianship Services**
- 1.2.1. The listing and description of services to be provided to wards are not intended to restate existing rules and regulations currently in place, but rather to clarify the relationship of the Contractor with respect to its wards who need and receive services in the developmental services; mental health services; or elderly and adult systems.
- 1.2.2. The Contractor agrees that all of the responsibilities referenced in Subsection 1.2 are contingent upon the actual authority granted in each individual court order specifying the extent and scope of guardianship for each individual ward.
- 1.2.3. The Contractor shall make decisions regarding the residential and day placement of each ward, utilizing:
- 1.2.3.1. The standards of least restrictive environment; and
  - 1.2.3.2. What is in the best interests of the individual ward.
- 1.2.4. The Contractor shall ensure all legally necessary steps are taken to enable the individual ward to receive comprehensive:
- 1.2.4.1. Evaluations; and
  - 1.2.4.2. Treatment and services.

New Hampshire Department of Health and Human Services  
Guardianship Services



**EXHIBIT B**

- 1.2.5. The Contractor shall advocate for and request all necessary and appropriate services to which the ward is entitled in accordance with:
  - 1.2.5.1. The ward's service and/or treatment plan;
  - 1.2.5.2. The ward's expressed preferences or best interests consistent with the Contractor's Code of Ethics and National Guardianship Association Standards of Practice; and
  - 1.2.5.3. Established Department standards and State law, including seeking alternative service providers.
- 1.2.6. The Contractor shall be available to give or withhold consent to proposed care, when legally necessary, which includes, but is not limited to:
  - 1.2.6.1. Medical care;
  - 1.2.6.2. Professional care;
  - 1.2.6.3. Counseling;
  - 1.2.6.4. Treatment;
  - 1.2.6.5. Behavioral health services;
  - 1.2.6.6. Changes to service and/or treatment plans; and
  - 1.2.6.7. Other clinically or legally significant treatment plans or services.
- 1.2.7. The Contractor shall ensure the ward's civil rights are protected within the context of the decision-making on behalf of the ward, while refraining from unwarranted intrusion into the life of the ward.
- 1.2.8. The Contractor shall be available to make all decision as required by RSA 464-A:26 and work collaboratively with the Department relative to any of the ward's debts owed to the State of New Hampshire, if the Contractor is guardian of the ward's estate.
- 1.2.9. The Contractor shall remain current of the facts or circumstances that may impact the decisions to perform the functions specified in Subsection 1.2.
- 1.2.10. The Contractor shall maintain appropriate contact with each ward to ensure services reflect the personal preferences, values, and desires of the ward to the fullest extent possible in order to make informed decisions on behalf of the ward.
- 1.2.11. The Contractor shall obtain all available information regarding the ward or the ward's situation in order to be fully aware of all risks and benefits of any proposed course of action, as well as any alternatives that may

New Hampshire Department of Health and Human Services  
Guardianship Services



EXHIBIT B

exist when making decisions on behalf of the ward. The Contractor, in addition to having required personal contact with the ward, may:

- 1.2.11.1. Contact other important and significant people in the ward's life.
- 1.2.11.2. Interact with the ward's case manager.
- 1.2.11.3. Interact with others who share responsibility for meeting the needs of the ward.

1.3. Guardianship and Protection Services

- 1.3.1. The Contractor shall accept all protection services cases referred by the Department's Office of Client and Legal Services or Bureau of Elderly and Adult Services.
- 1.3.2. The Department shall make every attempt to obtain a Release of Information from the proposed client for the Contractor, except where prohibited from doing so by law.
- 1.3.3. The Contractor shall be involved in the screening process for protection cases, as appropriate, or refer the client to the Disability Rights Center - NH, New Hampshire Legal Assistance or other attorney in order that an administrative appeal or other appropriate legal action can be taken on behalf of the client.
- 1.3.4. For persons referred to Contractor by the Department's Office of Client and Legal Services pursuant to NH RSA 136-C:60 and NH RSA 171-A:10 II, the Contractor shall serve the current total of 732 wards receiving guardianship services as well as any new persons referred for services, in accordance with Paragraph 1.1.7 above, for a total of up to 770 cases during the contract period.
- 1.3.5. The Contractor shall receive letters of approval for each new case assigned to the Contractor by the Department's Office of Client and Legal Services.
- 1.3.6. The Contractor shall provide guardianship services for no more than 42 persons, as referred by the Bureau of Elderly and Adult Services pursuant to NH RSA 161-F:52, at any point in time during the contract period.
- 1.3.7. The Contractor shall schedule a training with New Hampshire Hospital no later than November 15, 2020, which shall:
  - 1.3.7.1. Address the roles and responsibilities of:
    - 1.3.7.1.1. The Contractor;
    - 1.3.7.1.2. New Hampshire Hospital; and

New Hampshire Department of Health and Human Services  
Guardianship Services



EXHIBIT B

1.3.7.1.3. Community agencies.

- 1.3.7.2. Address the legal and ethical obligations and limitations of the Contractor.
- 1.3.7.3. Develop best practices relative to service planning in order to facilitate discharge of patients as soon as practicable.

1.4. Technical Assistance

- 1.4.1. The Contractor may provide technical assistance to private guardians or training to staff that provide direct services to wards who are clients of the Department, which includes:
  - 1.4.1.1. Area agency staff; and
  - 1.4.1.2. Mental health staff.
- 1.4.2. The Contractor shall provide the technical assistance or training described in Paragraph 1.4.1, only after receiving confirmation from the private guardian or the agency staff that specifies the Office of Client and Legal Services approved specified number of hours for technical assistance or training over a period not to exceed six (6) months.
- 1.4.3. The Contractor may provide technical assistance for up to ten (10) private guardians per year.

1.5. Staffing

- 1.5.1. The Contractor shall ensure staff providing guardianship services successfully complete a minimum of 20 hours of orientation training.
- 1.5.2. The Contractor shall ensure staff providing guardianship services successfully complete a minimum of 10 hours of continuing education, annually.

2. Exhibits Incorporated

- 2.1. The Contractor shall use and disclose Protected Health Information in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 CFR Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and in accordance with the attached Exhibit I, Business Associate Agreement, which has been executed by the parties.
- 2.2. The Contractor shall manage all confidential data related to this Agreement in accordance with the terms of Exhibit K, DHHS Information Security Requirements.
- 2.3. The Contractor shall comply with all Exhibits D through K, which are attached hereto and incorporated by reference herein.

3. Reporting Requirements

Office of Public Guardian

SS-2021-DBH-01-GUARD-01

Contractor Initials RPJ

Date 6-5-2020

New Hampshire Department of Health and Human Services  
Guardianship Services



**EXHIBIT B**

3.1. The Contractor shall provide quarterly reports of all written complaints filed against the Contractor, which includes:

- 3.1.1. A copy of the written complaint.
- 3.1.2. Steps taken to resolve the complaint.
- 3.1.3. The date that the complaint was resolved.
- 3.1.4. Steps to be taken in the following quarter to mitigate similar complaints from being filed in the future.

3.2. The Contractor shall provide an annual report, no later than August 1<sup>st</sup> that identifies names of guardians providing services with the number of continuing education hours obtained over the previous 12 month, ensuring supporting documentation is available for Department review upon request.

**4. Performance Measures**

4.1. The Contractor shall actively and regularly collaborate with the Department to enhance contract management, improve results, and adjust program delivery and policy based on successful outcomes.

**5. Additional Terms**

**5.1. Impacts Resulting from Court Orders or Legislative Changes**

5.1.1. The Contractor agrees that, to the extent future state or federal legislation or court orders may have an impact on the Services described herein, the State has the right to modify Service priorities and expenditure requirements under this Agreement so as to achieve compliance therewith.

**5.2. Culturally and Linguistically Appropriate Services (CLAS)**

5.2.1. The Contractor shall submit and comply with a detailed description of the language assistance services they will provide to persons with limited English proficiency and/or hearing impairment to ensure meaningful access to their programs and/or services within ten (10) days of the contract effective date.

**5.3. Operation of Facilities: Compliance with Laws and Regulations**

5.3.1. In the operation of any facilities for providing services, the Contractor shall comply with all laws, orders and regulations of federal, state, county and municipal authorities and with any direction of any Public Officer or officers pursuant to laws which shall impose an order or duty upon the contractor with respect to the operation of the facility or the provision of the services at such facility. If any governmental license or permit shall be required for the operation of the said facility or the performance of the said services, the Contractor will procure said license or permit, and will at all times comply with the terms and conditions of

New Hampshire Department of Health and Human Services  
Guardianship Services



EXHIBIT B

each such license or permit. In connection with the foregoing requirements, the Contractor hereby covenants and agrees that, during the term of this Contract the facilities shall comply with all rules, orders, regulations, and requirements of the State Office of the Fire Marshal and the local fire protection agency, and shall be in conformance with local building and zoning codes, by-laws and regulations.

6. Records

6.1. The Contractor shall keep records that include, but are not limited to:

6.1.1. Books, records, documents and other electronic or physical data evidencing and reflecting all costs and other expenses incurred by the Contractor in the performance of the Contract, and all income received or collected by the Contractor.

6.1.2. All records must be maintained in accordance with accounting procedures and practices, which sufficiently and properly reflect all such costs and expenses, and which are acceptable to the Department, and to include, without limitation, all ledgers, books, records, and original evidence of costs such as purchase requisitions and orders, vouchers, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls, and other records requested or required by the Department.

6.1.3. Statistical, enrollment, attendance or visit records for each recipient of services, which records shall include all records of application and eligibility (including all forms required to determine eligibility for each such recipient), records regarding the provision of services and all invoices submitted to the Department to obtain payment for such services.

6.1.4. Medical records on each patient/recipient of services.

6.2. During the term of this Contract and the period for retention hereunder, the Department, the United States Department of Health and Human Services, and any of their designated representatives shall have access to all reports and records maintained pursuant to the Contract for purposes of audit, examination, excerpts and transcripts. Upon the purchase by the Department of the maximum number of units provided for in the Contract and upon payment of the price limitation hereunder, the Contract and all the obligations of the parties hereunder (except such obligations as, by the terms of the Contract are to be performed after the end of the term of this Contract and/or survive the termination of the Contract) shall terminate, provided however, that if, upon review of the Final Expenditure Report the Department shall disallow any expenses claimed by the Contractor as costs hereunder the Department shall retain the right, at its discretion, to deduct the amount of such expenses as are disallowed or to recover such sums from the Contractor.

New Hampshire Department of Health and Human Services  
Guardianship of Services



**EXHIBIT C**

Payment Terms

1. This Agreement is funded by:
  - 1.1. 97% General funds.
  - 1.2. 3% Federal funds, Department of Health and Human Services, Administration for Children and Families, Social Services Block Grant CFDA #93.667, FAIN #2001NHSOSR75
2. For the purposes of this Agreement:
  - 2.1. The Department has identified the Contractor as a Subrecipient, in accordance with 2 CFR 200.0, et seq.
  - 2.2. The de minimis Indirect Cost Rate of 10% applies in accordance with 2 CFR §200.414.
  - 2.3. The Department has identified this Contract as NON-R&D, in accordance with 2 CFR §200.87.
3. The State shall pay the Contractor a per diem, per case rate for services provided in fulfillment of this Agreement in accordance with the per diem rates as follows:
  - 3.1. The per diem reimbursement rate for the provision of guardianship over the person services or guardianship over the estate services, as approved by the Office of Client and Legal Services for all Bureau of Mental Health Services or Bureau of Developmental Services wards, shall be \$8.25 per ward, per day, for up to 770 wards, as follows:
    - 3.1.1. The per diem rate shall be \$8.25 per ward per day for guardianship over the person services.
    - 3.1.2. The per diem rate shall be \$8.25 per ward per day for guardianship over the estate services.
    - 3.1.3. In the instance when the Contractor is the guardian over the person and guardian over the estate of a ward, the Department shall reimburse the Contractor for each service in accordance with 3.1.1 and 3.1.2 above.
  - 3.2. The hourly reimbursement rate for the provision of training in Exhibit B Section 1, Subsection 1.4, and Paragraph 1.4.1 shall be \$60.00, not to exceed 25 hours for a total amount of \$1,500.00.
  - 3.3. The per diem reimbursement rate for the provision of guardianship over the person services or guardianship over the estate services as requested by the Bureau of Elderly and Adult Services shall be \$8.25, per ward, per day, for up to 42 wards; as follows:
    - 3.3.1. The per diem rate shall be \$8.25 per ward per day for

New Hampshire Department of Health and Human Services  
Guardianship of Services



EXHIBIT C

- guardianship over the person services.
- 3.3.2. The per diem rate shall be \$8.25 per ward per day for guardianship over the estate services.
- 3.3.3. In the instance when the Contractor is the guardian over the person and guardian over the estate of a ward, the Department shall reimburse the Contractor for each service in accordance with 3.3.1 and 3.3.2 above.
- 3.4. The per diem rates will be extended to the last day of the month following the month in which the ward dies or for whom guardianship service are terminated.
- 3.5. For wards referred for guardianship services by the Bureau of Elderly and Adult Services, the actual cost paid by Contractor for expenses incurred in the performance of Contractor's duties for guardianship over the estate under this Agreement, including, but not limited to, filing fees, bond costs and appraisal fees where no other source of reimbursement exists, shall not exceed \$3,574.50.
4. Payment to the Contractor for the provision of services requested by the Department's Bureaus of Mental Health Services or Developmental Services shall be made on a monthly basis subject to the following conditions:
- 4.1. The Contractor shall submit invoices on a monthly basis in accordance with procedures and instructions established by the Office of Client and Legal Services and provided to the Contractor.
- 4.2. The Contractor shall submit a list of wards served during the month with the monthly invoice.
- 4.3. The Department shall pay the Contractor in accordance with the per diem rates identified in Section 3.
- 4.4. The Contractor may be compensated for time spent traveling and appearing in the Circuit Court-Probate Division preceding appointment, as follows:
- 4.4.1. The hourly rate of \$60.00 shall be billed using a six (6) minute unit by submitting a monthly invoice that details the actual time spent.
- 4.4.2. The maximum billable amount for each case preceding appointment by the Circuit Court-Probate Division shall be \$300 per case.
- 4.5. The Contractor shall provide a copy of the court notice to the Department with the monthly invoice when the Contractor is appointed guardian over the person and/or guardian over the estate and when the Contractor no

New Hampshire Department of Health and Human Services  
Guardianship of Services



EXHIBIT C

- longer provides guardianship over the person and/or estate.
- 4.6. The Contractor shall review cases referred by the Office of Client and Legal Services on a monthly basis and transfer individuals to a different funding mechanism, if possible, to allow more openings for additional referrals from the Office of Client and Legal Services.
  - 4.7. The Contractor shall transfer the ward from the Office of Client and Legal Services funded slot within sixty (60) days of alternate funding becoming available.
  5. Payment to the Contractor for the provision of services requested by the Bureau of Elderly and Adult Services (BEAS) shall be made on a monthly basis subject to the following conditions:
    - 5.1. The Contractor shall submit invoices on a monthly basis in accordance with procedures and instructions established by the Bureau of Elderly and Adult Services and provided to the Contractor.
    - 5.2. The Contractor shall submit a list of wards served during the month with the monthly invoice.
    - 5.3. The Department shall pay the Contractor in accordance with the per diem rates identified in Section 3.
    - 5.4. The Contractor shall provide a copy of the court notice to the Department with the monthly invoice when the Contractor is appointed guardian of a person and/or guardian over the estate and when the Contractor no longer provides guardianship over the person and/or the estate.
    - 5.5. The Contractor shall review cases on a monthly basis and transfer individuals to a different funding mechanism, if possible, to allow more openings for additional referrals from BEAS.
    - 5.6. The Contractor shall transfer wards from a BEAS funded slot within sixty (60) days of alternate funding becoming available.
  6. The Contractor shall seek reimbursement from other payer sources when providing protection services as described in Paragraph 1.1.16 of Exhibit B, Scope of Services. The Department shall not reimburse for services under this Agreement for protection services described in Paragraph 1.1.16 of Exhibit B, Scope of Services.
  7. The Contractor shall submit an invoice in a form satisfactory to the State by the fifteenth (15th) working day of the following month, which identifies and requests reimbursement for authorized expenses incurred in the prior month.
  8. The Contractor shall ensure each invoice is completed, dated and returned to the Department in order to initiate payment.
  9. In lieu of hard copies, all invoices may be assigned an electronic signature and

**New Hampshire Department of Health and Human Services  
Guardianship of Services**



**EXHIBIT C**

emailed to [dhhs.dbhinvoicesmhs@dhhs.nh.gov](mailto:dhhs.dbhinvoicesmhs@dhhs.nh.gov), or invoices may be mailed to:

Tanja Godtfredsen  
Department of Health and Human Services  
105 Pleasant Street  
Concord, NH 03301

10. The State shall make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available, subject to Paragraph 4 of the General Provisions Form Number P-37 of this Agreement.
11. The final invoice shall be due to the State no later than forty (40) days after the contract completion date specified in Form P-37, General Provisions Block 1.7 Completion Date.
12. The Contractor must provide the services in Exhibit B, Scope of Services, in compliance with funding requirements.
13. The Contractor agrees that funding under this Agreement may be withheld, in whole or in part in the event of non-compliance with the terms and conditions of Exhibit B, Scope of Services.
14. Notwithstanding anything to the contrary herein, the Contractor agrees that funding under this agreement may be withheld, in whole or in part, in the event of non-compliance with any Federal or State law, rule, or regulation applicable to the services provided, or if the said services or products have not been satisfactorily completed in accordance with the terms and conditions of this agreement.
15. Notwithstanding Paragraph 18 of the General Provisions Form P-37, changes limited to adjusting amounts within the price limitation and adjusting encumbrances between State Fiscal Years and budget class lines through the Budget Office may be made by written agreement of both parties, without obtaining approval of the Governor and Executive Council, if needed and justified.
16. Audits
  - 16.1. The Contractor is required to submit an annual audit to the Department if any of the following conditions exist:
  - 16.2. Condition A - The Contractor expended \$750,000 or more in federal funds received as a subrecipient pursuant to 2 CFR Part 200, during the most recently completed fiscal year.
  - 16.3. Condition B - The Contractor is subject to audit pursuant to the requirements of NH RSA 7:28, III-b, pertaining to charitable organizations receiving support of \$1,000,000 or more.

New Hampshire Department of Health and Human Services  
Guardianship of Services



EXHIBIT C

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- 16.4. Condition C - The Contractor is a public company and required by Security and Exchange Commission (SEC) regulations to submit an annual financial audit.
  - 16.5. If Condition A exists, the Contractor shall submit an annual single audit performed by an independent Certified Public Accountant (CPA) to the Department within 120 days after the close of the Contractor's fiscal year, conducted in accordance with the requirements of 2 CFR Part 200, Subpart F of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.
  - 16.6. If Condition B or Condition C exists, the Contractor shall submit an annual financial audit performed by an independent CPA within 120 days after the close of the Contractor's fiscal year.
  - 16.7. In addition to, and not in any way in limitation of obligations of the Contract, it is understood and agreed by the Contractor that the Contractor shall be held liable for any state or federal audit exceptions and shall return to the Department all payments made under the Contract to which exception has been taken, or which have been disallowed because of such an exception.

New Hampshire Department of Health and Human Services  
Exhibit D



**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS**

- US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS**
- US DEPARTMENT OF EDUCATION - CONTRACTORS**
- US DEPARTMENT OF AGRICULTURE - CONTRACTORS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). The January 31, 1989 regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691), and require certification by grantees (and by inference, sub-grantees and sub-contractors), prior to award, that they will maintain a drug-free workplace. Section 3017.630(c) of the regulation provides that a grantee (and by inference, sub-grantees and sub-contractors) that is a State may elect to make one certification to the Department in each federal fiscal year in lieu of certificates for each grant during the federal fiscal year covered by the certification. The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment. Contractors using this form should send it to:

Commissioner  
NH Department of Health and Human Services  
129 Pleasant Street,  
Concord, NH 03301-6505

1. The grantee certifies that it will or will continue to provide a drug-free workplace by:
  - 1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - 1.2. Establishing an ongoing drug-free awareness program to inform employees about
    - 1.2.1. The dangers of drug abuse in the workplace;
    - 1.2.2. The grantee's policy of maintaining a drug-free workplace;
    - 1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - 1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - 1.4. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
    - 1.4.1. Abide by the terms of the statement; and
    - 1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - 1.5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency

RPJ

New Hampshire Department of Health and Human Services  
Exhibit D



has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

- 1.6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 1.4.2, with respect to any employee who is so convicted
  - 1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- 1.7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6.

2. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (street address, city, county, state, zip code) (list each location)

Check  if there are workplaces on file that are not identified here.

Vendor Name: Office of Public Guardian

6-5-2020  
Date

Roger P. Johnson  
Name: ROGER P JOHNS  
Title: PRESIDENT

New Hampshire Department of Health and Human Services  
Exhibit E



**CERTIFICATION REGARDING LOBBYING**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

US DEPARTMENT OF HEALTH AND HUMAN SERVICES - CONTRACTORS  
US DEPARTMENT OF EDUCATION - CONTRACTORS  
US DEPARTMENT OF AGRICULTURE - CONTRACTORS

- Programs (indicate applicable program covered):
- \*Temporary Assistance to Needy Families under Title IV-A
  - \*Child Support Enforcement Program under Title IV-D
  - \*Social Services Block Grant Program under Title XX
  - \*Medicaid Program under Title XIX
  - \*Community Services Block Grant under Title VI
  - \*Child Care Development Block Grant under Title IV

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, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement (and by specific mention sub-grantee or sub-contractor).
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 (and by specific mention sub-grantee or sub-contractor), the undersigned shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, attached and identified as Standard Exhibit E-1.)
3. The undersigned shall require that the language of this certification be included in the award document for 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.

Vendor Name: *Office of Public Guardian*

6-5-2020  
Date

*Roger P. John*  
Name: ROGER P JOHN  
Title: PRESIDENT

New Hampshire Department of Health and Human Services  
Exhibit F



**CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS.**

The Vendor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of Executive Office of the President, Executive Order 12549 and 45 CFR Part 76 regarding Debarment, Suspension, and Other Responsibility Matters, and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

**INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this proposal (contract), the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the NH Department of Health and Human Services' (DHHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when DHHS determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, DHHS may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the DHHS agency to whom this proposal (contract) is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76. See the attached definitions.
6. The prospective primary participant agrees by submitting this proposal (contract) that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by DHHS.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by DHHS, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (of excluded parties).
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

New Hampshire Department of Health and Human Services  
Exhibit F



information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- 10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, DHHS may terminate this transaction for cause or default.

PRIMARY COVERED TRANSACTIONS

- 11. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - 11.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - 11.2. have not within a three-year period preceding this proposal (contract) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - 11.3. are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - 11.4. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

- 12. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal (contract).

LOWER TIER COVERED TRANSACTIONS

- 13. By signing and submitting this lower tier proposal (contract), the prospective lower tier participant, as defined in 45 CFR Part 78, certifies to the best of its knowledge and belief that it and its principals:
  - 13.1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
  - 13.2. where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal (contract).
- 14. The prospective lower tier participant further agrees by submitting this proposal (contract) that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Vendor Name: Office of Public Guardian

6-5-2020  
Date

Roger P. John  
Name: Roger P. John  
Title: PRESIDENT

New Hampshire Department of Health and Human Services  
Exhibit G



**CERTIFICATION OF COMPLIANCE WITH REQUIREMENTS PERTAINING TO  
FEDERAL NONDISCRIMINATION, EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS AND  
WHISTLEBLOWER PROTECTIONS**

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

Vendor will comply, and will require any subgrantees or subcontractors to comply, with any applicable federal nondiscrimination requirements, which may include:

- the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. Section 3789d) which prohibits recipients of federal funding under this statute from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act requires certain recipients to produce an Equal Employment Opportunity Plan;
- the Juvenile Justice Delinquency Prevention Act of 2002 (42 U.S.C. Section 5672(b)) which adopts by reference, the civil rights obligations of the Safe Streets Act. Recipients of federal funding under this statute are prohibited from discriminating, either in employment practices or in the delivery of services or benefits, on the basis of race, color, religion, national origin, and sex. The Act includes Equal Employment Opportunity Plan requirements;
- the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, which prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin in any program or activity);
- the Rehabilitation Act of 1973 (29 U.S.C. Section 794), which prohibits recipients of Federal financial assistance from discriminating on the basis of disability, in regard to employment and the delivery of services or benefits, in any program or activity;
- the Americans with Disabilities Act of 1990 (42 U.S.C. Sections 12131-34), which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation;
- the Education Amendments of 1972 (20 U.S.C. Sections 1681, 1683, 1685-86), which prohibits discrimination on the basis of sex in federally assisted education programs;
- the Age Discrimination Act of 1975 (42 U.S.C. Sections 6106-07), which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It does not include employment discrimination;
- 28 C.F.R. pt. 31 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order No. 13279 (equal protection of the laws for faith-based and community organizations); Executive Order No. 13559, which provide fundamental principles and policy-making criteria for partnerships with faith-based and neighborhood organizations;
- 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations); and Whistleblower protections 41 U.S.C. §4712 and The National Defense Authorization Act (NDAA) for Fiscal Year 2013 (Pub. L. 112-239, enacted January 2, 2013) the Pilot Program for Enhancement of Contract Employee Whistleblower Protections, which protects employees against reprisal for certain whistle blowing activities in connection with federal grants and contracts.

The certificate set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government wide suspension or debarment.

Exhibit G

Vendor Initials

PPJ

Certification of Compliance with requirements pertaining to Federal Nondiscrimination, Equal Treatment of Faith-Based Organizations and Whistleblower protections

New Hampshire Department of Health and Human Services  
Exhibit G



In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, to the applicable contracting agency or division within the Department of Health and Human Services, and to the Department of Health and Human Services Office of the Ombudsman.

The Vendor identified in Section 1.3 of the General Provisions agrees by signature of the Contractor's representative as identified in Sections 1.11 and 1.12 of the General Provisions, to execute the following certification:

- 1. By signing and submitting this proposal (contract) the Vendor agrees to comply with the provisions indicated above.

Vendor Name: Office of Public Guardian

Roger P. Jobin

Name: Roger P. Jobin

Title: PRESIDENT

6-5-2020

Date

EXHIBIT G

Vendor Initials

RPJ

Certification of Compliance with requirements pertaining to Federal nondiscrimination, Equal Treatment of Faith-Based Organizations, and WHI whistleblower protections.

New Hampshire Department of Health and Human Services  
Exhibit H



CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, Part C - Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), 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, 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 does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Vendor identified in Section 1.3 of the General Provisions agrees, by signature of the Contractor's representative as identified in Section 1.11 and 1.12 of the General Provisions, to execute the following certification:

1. By signing and submitting this contract, the Vendor agrees to make reasonable efforts to comply with all applicable provisions of Public Law 103-227, Part C, known as the Pro-Children Act of 1994.

Vendor Name: Office of Public Guardian

6-5-2020  
Date

Roger P. Jobin  
Name: ROGER P. JOBIN  
Title: PRESIDENT

New Hampshire Department of Health and Human Services



Exhibit I

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**  
**BUSINESS ASSOCIATE AGREEMENT**

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Department of Health and Human Services.

(1) **Definitions.**

- a. "**Breach**" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.
- b. "**Business Associate**" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "**Covered Entity**" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "**Designated Record Set**" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "**Data Aggregation**" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "**Health Care Operations**" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "**HITECH Act**" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164 and amendments thereto.
- i. "**Individual**" shall have the same meaning as the term "individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "**Privacy Rule**" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
- k. "**Protected Health Information**" shall have the same meaning as the term "protected health information" in 45 CFR Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

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Date

6-5-2024

New Hampshire Department of Health and Human Services



Exhibit I

- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.103.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

(2) Business Associate Use and Disclosure of Protected Health Information.

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, Business Associate, including but not limited to all its directors, officers, employees and agents, shall not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HIPAA Privacy, Security, and Breach Notification Rules of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business

New Hampshire Department of Health and Human Services



Exhibit I

Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. The Business Associate shall notify the Covered Entity's Privacy Officer immediately after the Business Associate becomes aware of any use or disclosure of protected health information not provided for by the Agreement including breaches of unsecured protected health information and/or any security incident that may have an impact on the protected health information of the Covered Entity.
- b. The Business Associate shall immediately perform a risk assessment when it becomes aware of any of the above situations. The risk assessment shall include, but not be limited to:
  - o The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - o The unauthorized person used the protected health information or to whom the disclosure was made;
  - o Whether the protected health information was actually acquired or viewed
  - o The extent to which the risk to the protected health information has been mitigated.

The Business Associate shall complete the risk assessment within 48 hours of the breach and immediately report the findings of the risk assessment in writing to the Covered Entity.

- c. The Business Associate shall comply with all sections of the Privacy, Security, and Breach Notification Rule.
- d. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- e. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section 3 (l). The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI

New Hampshire Department of Health and Human Services



Exhibit I

pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard Paragraph #13 of the standard contract provisions (P-37) of this Agreement for the purpose of use and disclosure of protected health information.

- f. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- g. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- h. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.
- i. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- j. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- k. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- l. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business

3/2014

Contractor Initials RPJ

Date 6-5-2020

New Hampshire Department of Health and Human Services



Exhibit I

Associate maintains such PHI. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

(4) Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to Individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by Individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered Entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(5) Termination for Cause

In addition to Paragraph 10 of the standard terms and conditions (P-37) of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit I. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) Miscellaneous

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, amended from time to time. A reference in the Agreement, as amended to include this Exhibit I, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule.

3/2014

Contractor Initials

RPJ

Date

6-5-2020

New Hampshire Department of Health and Human Services



Exhibit I

- e. Segregation. If any term or condition of this Exhibit I or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit I are declared severable.
- f. Survival. Provisions in this Exhibit I regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section (3) I, the defense and indemnification provisions of section (3) e and Paragraph 13 of the standard terms and conditions (P-37), shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit I.

Department of Health and Human Services  
The State

*[Signature]*  
Signature of Authorized Representative

*Christie Tappan*  
Name of Authorized Representative

*Associate Commissioner*  
Title of Authorized Representative

*6-8-2020*  
Date

*Office of Public Guardian*  
Name of the Contractor

*Roger P. Jordan*  
Signature of Authorized Representative

*ROGER P JORDAN*  
Name of Authorized Representative

*PRESIDENT*  
Title of Authorized Representative

*6-5-2020*  
Date

New Hampshire Department of Health and Human Services  
Exhibit J



**CERTIFICATION REGARDING THE FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) COMPLIANCE**

The Federal Funding Accountability and Transparency Act (FFATA) requires prime awardees of individual Federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more. If the initial award is below \$25,000 but subsequent grant modifications result in a total award equal to or over \$25,000, the award is subject to the FFATA reporting requirements, as of the date of the award. In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Department of Health and Human Services (DHHS) must report the following information for any subaward or contract award subject to the FFATA reporting requirements:

1. Name of entity
2. Amount of award
3. Funding agency
4. NAICS code for contracts / CFDA program number for grants
5. Program source
6. Award title descriptive of the purpose of the funding action
7. Location of the entity
8. Principle place of performance
9. Unique identifier of the entity (DUNS #)
10. Total compensation and names of the top five executives if:
  - 10.1. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25M annually and
  - 10.2. Compensation information is not already available through reporting to the SEC.

Prime grant recipients must submit FFATA required data by the end of the month, plus 30 days, in which the award or award amendment is made.

The Contractor identified in Section 1.3 of the General Provisions agrees to comply with the provisions of The Federal Funding Accountability and Transparency Act, Public Law 109-282 and Public Law 110-252, and 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), and further agrees to have the Contractor's representative, as identified in Sections 1.11 and 1.12 of the General Provisions execute the following Certification:

The below named Contractor agrees to provide needed information as outlined above to the NH Department of Health and Human Services and to comply with all applicable provisions of the Federal Financial Accountability and Transparency Act.

Contractor Name: Office of Public Guardian

6-5-2016  
Date

Roger P. Jobin  
Name: Roger P. Jobin  
Title: PRESIDENT

New Hampshire Department of Health and Human Services  
Exhibit J



FORM A

As the Contractor identified in Section 1.3 of the General Provisions, I certify that the responses to the below listed questions are true and accurate.

- The DUNS number for your entity is: 96988514
- In your business or organization's preceding completed fiscal year, did your business or organization receive (1) 80 percent or more of your annual gross revenue in U.S. federal contracts, subcontracts, loans, grants, sub-grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

X NO \_\_\_\_\_ YES

If the answer to #2 above is NO, stop here

If the answer to #2 above is YES, please answer the following:

- Does the public have access to information about the compensation of the executives in your business or organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 8104 of the Internal Revenue Code of 1986?

\_\_\_\_\_ NO \_\_\_\_\_ YES

If the answer to #3 above is YES, stop here

If the answer to #3 above is NO, please answer the following:

- The names and compensation of the five most highly compensated officers in your business or organization are as follows:

Name: _____	Amount: _____

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



A. Definitions

The following terms may be reflected and have the described meaning in this document:

1. "Breach" means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. With regard to Protected Health Information, "Breach" shall have the same meaning as the term "Breach" in section 164.402 of Title 45, Code of Federal Regulations.

2. "Computer Security Incident" shall have the same meaning "Computer Security Incident" in section two (2) of NIST Publication 800-61, Computer Security Incident Handling Guide, National Institute of Standards and Technology, U.S. Department of Commerce.

3. "Confidential Information" or "Confidential Data" means all confidential information disclosed by one party to the other such as all medical, health, financial, public assistance benefits and personal information including without limitation, Substance Abuse Treatment Records, Case Records, Protected Health Information and Personally Identifiable Information.

Confidential Information also includes any and all information owned or managed by the State of NH - created, received from or on behalf of the Department of Health and Human Services (DHHS) or accessed in the course of performing contracted services - of which collection, disclosure, protection, and disposition is governed by state or federal law or regulation. This information includes, but is not limited to Protected Health Information (PHI), Personal Information (PI), Personal Financial Information (PFI), Federal Tax Information (FTI), Social Security Numbers (SSN), Payment Card Industry (PCI), and or other sensitive and confidential information.

4. "End User" means any person or entity (e.g., contractor, contractor's employee, business associate, subcontractor, other downstream user, etc.) that receives DHHS data or derivative data in accordance with the terms of this Contract.

5. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder.

6. "Incident" means an act that potentially violates an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. Incidents include the loss of data through theft or device misplacement, loss or misplacement of hardcopy documents, and misrouting of physical or electronic

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



mail, all of which may have the potential to put the data at risk of unauthorized access, use, disclosure, modification or destruction.

7. "Open Wireless Network" means any network or segment of a network that is not designated by the State of New Hampshire's Department of Information Technology or delegate as a protected network (designed, tested, and approved, by means of the State, to transmit) will be considered an open network and not adequately secure for the transmission of unencrypted PI, PFI, PHI or confidential DHHS data.
8. "Personal Information" (or "PI") means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, personal information as defined in New Hampshire RSA 359-C:19, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.
9. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.
10. "Protected Health Information" (or "PHI") has the same meaning as provided in the definition of "Protected Health Information" in the HIPAA Privacy Rule at 45 C.F.R. § 160.103.
11. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C, and amendments thereto.
12. "Unsecured Protected Health Information" means Protected Health Information that is not secured by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.

I. RESPONSIBILITIES OF DHHS AND THE CONTRACTOR

A. Business Use and Disclosure of Confidential Information.

1. The Contractor must not use, disclose, maintain or transmit Confidential Information except as reasonably necessary as outlined under this Contract. Further, Contractor, including but not limited to all its directors, officers, employees and agents, must not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
2. The Contractor must not disclose any Confidential Information in response to a

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



request for disclosure on the basis that it is required by law, in response to a subpoena, etc., without first notifying DHHS so that DHHS has an opportunity to consent or object to the disclosure.

3. If DHHS notifies the Contractor that DHHS has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Contractor must be bound by such additional restrictions and must not disclose PHI in violation of such additional restrictions and must abide by any additional security safeguards.
4. The Contractor agrees that DHHS Data or derivative therefrom disclosed to an End User must only be used pursuant to the terms of this Contract.
5. The Contractor agrees DHHS Data obtained under this Contract may not be used for any other purposes that are not indicated in this Contract.
6. The Contractor agrees to grant access to the data to the authorized representatives of DHHS for the purpose of inspecting to confirm compliance with the terms of this Contract.

II. METHODS OF SECURE TRANSMISSION OF DATA

1. Application Encryption. If End User is transmitting DHHS data containing Confidential Data between applications, the Contractor attests the applications have been evaluated by an expert knowledgeable in cyber security and that said application's encryption capabilities ensure secure transmission via the Internet.
2. Computer Disks and Portable Storage Devices. End User may not use computer disks or portable storage devices, such as a thumb drive, as a method of transmitting DHHS data.
3. Encrypted Email. End User may only employ email to transmit Confidential Data if email is encrypted and being sent to and being received by email addresses of persons authorized to receive such information.
4. Encrypted Web Site. If End User is employing the Web to transmit Confidential Data, the secure socket layers (SSL) must be used and the web site must be secure. SSL encrypts data transmitted via a Web site.
5. File Hosting Services, also known as File Sharing Sites. End User may not use file hosting services, such as Dropbox or Google Cloud Storage, to transmit Confidential Data.
6. Ground Mail Service. End User may only transmit Confidential Data via *certified* ground mail within the continental U.S. and when sent to a named individual.
7. Laptops and PDA. If End User is employing portable devices to transmit Confidential Data said devices must be encrypted and password-protected.
8. Open Wireless Networks. End User may not transmit Confidential Data via an open

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



wireless network. End User must employ a virtual private network (VPN) when remotely transmitting via an open wireless network.

9. Remote User Communication. If End User is employing remote communication to access or transmit Confidential Data, a virtual private network (VPN) must be installed on the End-User's mobile device(s) or laptop from which information will be transmitted or accessed.
10. SSH File Transfer Protocol (SFTP), also known as Secure File Transfer Protocol. If End User is employing an SFTP to transmit Confidential Data, End User will structure the Folder and access privileges to prevent inappropriate disclosure of information. SFTP folders and sub-folders used for transmitting Confidential Data will be coded for 24-hour auto-deletion cycle (i.e. Confidential Data will be deleted every 24 hours).
11. Wireless Devices. If End User is transmitting Confidential Data via wireless devices, all data must be encrypted to prevent inappropriate disclosure of information.

III. RETENTION AND DISPOSITION OF IDENTIFIABLE RECORDS

The Contractor will only retain the data and any derivative of the data for the duration of this Contract. After such time, the Contractor will have 30 days to destroy the data and any derivative in whatever form it may exist, unless, otherwise required by law or permitted under this Contract. To this end, the parties must:

A. Retention

1. The Contractor agrees it will not store, transfer or process data collected in connection with the services rendered under this Contract outside of the United States. This physical location requirement shall also apply in the implementation of cloud computing, cloud service or cloud storage capabilities, and includes backup data and Disaster Recovery locations.
2. The Contractor agrees to ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
3. The Contractor agrees to provide security awareness and education for its End Users in support of protecting Department confidential information.
4. The Contractor agrees to retain all electronic and hard copies of Confidential Data in a secure location and identified in section IV. A.2
5. The Contractor agrees Confidential Data stored in a Cloud must be in a FedRAMP/HITECH compliant solution and comply with all applicable statutes and regulations regarding the privacy and security. All servers and devices must have currently-supported and hardened operating systems, the latest anti-viral, anti-hacker, anti-spam, anti-spyware, and anti-malware utilities. The environment, as a

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



whole, must have aggressive intrusion-detection and firewall protection.

6. The Contractor agrees to and ensures its complete cooperation with the State's Chief Information Officer in the detection of any security vulnerability of the hosting infrastructure.

B. Disposition

1. If the Contractor will maintain any Confidential Information on its systems (or its sub-contractor systems), the Contractor will maintain a documented process for securely disposing of such data upon request or contract termination, and will obtain written certification for any State of New Hampshire data destroyed by the Contractor or any subcontractors as a part of ongoing, emergency, and/or disaster recovery operations. When no longer in use, electronic media containing State of New Hampshire data shall be rendered unrecoverable via a secure wipe program in accordance with industry-accepted standards for secure deletion and media sanitization, or otherwise physically destroying the media (for example, degaussing) as described in NIST Special Publication 800-88, Rev 1, Guidelines for Media Sanitization, National Institute of Standards and Technology, U. S. Department of Commerce. The Contractor will document and certify in writing at time of the data destruction, and will provide written certification to the Department upon request. The written certification will include all details necessary to demonstrate data has been properly destroyed and validated. Where applicable, regulatory and professional standards for retention requirements will be jointly evaluated by the State and Contractor prior to destruction.
2. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to destroy all hard copies of Confidential Data using a secure method such as shredding.
3. Unless otherwise specified, within thirty (30) days of the termination of this Contract, Contractor agrees to completely destroy all electronic Confidential Data by means of data erasure, also known as secure data wiping.

IV. PROCEDURES FOR SECURITY

- A. Contractor agrees to safeguard the DHHS Data received under this Contract, and any derivative data or files, as follows:

1. The Contractor will maintain proper security controls to protect Department confidential information collected, processed, managed, and/or stored in the delivery of contracted services.
2. The Contractor will maintain policies and procedures to protect Department confidential information throughout the information lifecycle, where applicable, (from creation, transformation, use, storage and secure destruction) regardless of the media used to store the data (i.e., tape, disk, paper, etc.).

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



3. The Contractor will maintain appropriate authentication and access controls to contractor systems that collect, transmit, or store Department confidential information where applicable.
4. The Contractor will ensure proper security monitoring capabilities are in place to detect potential security events that can impact State of NH systems and/or Department confidential information for contractor provided systems.
5. The Contractor will provide regular security awareness and education for its End Users in support of protecting Department confidential information.
6. If the Contractor will be sub-contracting any core functions of the engagement supporting the services for State of New Hampshire, the Contractor will maintain a program of an internal process or processes that defines specific security expectations, and monitoring compliance to security requirements that at a minimum match those for the Contractor, including breach notification requirements.
7. The Contractor will work with the Department to sign and comply with all applicable State of New Hampshire and Department system access and authorization policies and procedures, systems access forms, and computer use agreements as part of obtaining and maintaining access to any Department system(s). Agreements will be completed and signed by the Contractor and any applicable sub-contractors prior to system access being authorized.
8. If the Department determines the Contractor is a Business Associate pursuant to 45 CFR 160.103, the Contractor will execute a HIPAA Business Associate Agreement (BAA) with the Department and is responsible for maintaining compliance with the agreement.
9. The Contractor will work with the Department at its request to complete a System Management Survey. The purpose of the survey is to enable the Department and Contractor to monitor for any changes in risks, threats, and vulnerabilities that may occur over the life of the Contractor engagement. The survey will be completed annually, or an alternate time frame at the Department's discretion with agreement by the Contractor; or the Department may request the survey be completed when the scope of the engagement between the Department and the Contractor changes.
10. The Contractor will not store, knowingly or unknowingly, any State of New Hampshire or Department data offshore or outside the boundaries of the United States unless prior express written consent is obtained from the Information Security Office leadership member within the Department.
11. Data Security Breach Liability. In the event of any security breach Contractor shall make efforts to investigate the causes of the breach, promptly take measures to prevent future breach and minimize any damage or loss resulting from the breach. The State shall recover from the Contractor all costs of response and recovery from

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



the breach, including but not limited to: credit monitoring services, mailing costs and costs associated with website and telephone call center services necessary due to the breach.

12. Contractor must, comply with all applicable statutes and regulations regarding the privacy and security of Confidential Information, and must in all other respects maintain the privacy and security of PI and PHI at a level and scope that is not less than the level and scope of requirements applicable to federal agencies, including, but not limited to, provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), DHHS Privacy Act Regulations (45 C.F.R. §5b), HIPAA Privacy and Security Rules (45 C.F.R. Parts 160 and 164) that govern protections for individually identifiable health information and as applicable under State law.
13. Contractor agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Confidential Data and to prevent unauthorized use or access to it. The safeguards must provide a level and scope of security that is not less than the level and scope of security requirements established by the State of New Hampshire, Department of Information Technology. Refer to Vendor Resources/Procurement at <https://www.nh.gov/doi/vendor/index.htm> for the Department of Information Technology policies, guidelines, standards, and procurement information relating to vendors.
14. Contractor agrees to maintain a documented breach notification and incident response process. The Contractor will notify the State's Privacy Officer and the State's Security Officer of any security breach immediately, at the email addresses provided in Section VI. This includes a confidential information breach, computer security incident, or suspected breach which affects or includes any State of New Hampshire systems that connect to the State of New Hampshire network.
15. Contractor must restrict access to the Confidential Data obtained under this Contract to only those authorized End Users who need such DHHS Data to perform their official duties in connection with purposes identified in this Contract.
16. The Contractor must ensure that all End Users:
  - a. comply with such safeguards as referenced in Section IV A. above, implemented to protect Confidential Information that is furnished by DHHS under this Contract from loss, theft or inadvertent disclosure.
  - b. safeguard this information at all times.
  - c. ensure that laptops and other electronic devices/media containing PHI, PI, or PFI are encrypted and password-protected.
  - d. send emails containing Confidential Information only if encrypted and being sent to and being received by email addresses of persons authorized to receive such information.

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



- e. limit disclosure of the Confidential Information to the extent permitted by law.
- f. Confidential Information received under this Contract and individually identifiable data derived from DHHS Data, must be stored in an area that is physically and technologically secure from access by unauthorized persons during duty hours as well as non-duty hours (e.g., door locks, card keys, biometric identifiers, etc.).
- g. only authorized End Users may transmit the Confidential Data, including any derivative files containing personally identifiable information, and in all cases, such data must be encrypted at all times when in transit, at rest, or when stored on portable media as required in section IV above.
- h. in all other instances Confidential Data must be maintained, used and disclosed using appropriate safeguards, as determined by a risk-based assessment of the circumstances involved.
- i. understand that their user credentials (user name and password) must not be shared with anyone. End Users will keep their credential information secure. This applies to credentials used to access the site directly or indirectly through a third party application.

Contractor is responsible for oversight and compliance of their End Users. DHHS reserves the right to conduct onsite inspections to monitor compliance with this Contract, including the privacy and security requirements provided in herein, HIPAA, and other applicable laws and Federal regulations until such time the Confidential Data is disposed of in accordance with this Contract.

V. LOSS REPORTING

The Contractor must notify the State's Privacy Officer and Security Officer of any Security Incidents and Breaches immediately, at the email addresses provided in Section VI.

The Contractor must further handle and report Incidents and Breaches involving PHI in accordance with the agency's documented Incident Handling and Breach Notification procedures and in accordance with 42 C.F.R. §§ 431.300 - 306. In addition to, and notwithstanding, Contractor's compliance with all applicable obligations and procedures, Contractor's procedures must also address how the Contractor will:

1. Identify Incidents;
2. Determine if personally identifiable information is involved in Incidents;
3. Report suspected or confirmed Incidents as required in this Exhibit or P-37;
4. Identify and convene a core response group to determine the risk level of Incidents and determine risk-based responses to Incidents; and

New Hampshire Department of Health and Human Services

Exhibit K

DHHS Information Security Requirements



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5. Determine whether Breach notification is required; and, if so, identify appropriate Breach notification methods, timing, source, and contents from among different options, and bear costs associated with the Breach notice as well as any mitigation measures.

Incidents and/or Breaches that implicate PI must be addressed and reported, as applicable, in accordance with NH RSA 359-C:20.

VI. PERSONS TO CONTACT

A. DHHS Privacy Officer:

DHHSPrivacyOfficer@dhhs.nh.gov

B. DHHS Security Officer:

DHHSInformationSecurityOffice@dhhs.nh.gov