



Washington State
Department of Social
& Health Services

Report to the Legislature

Report on the Process for Establishing Medicaid Rates for Assisted Living Facilities and Adult Family Homes

c. 4, 2013 Laws, 2d sp. s. Sec. 206(9)

December 1, 2013

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EXECUTIVE SUMMARY

c. 4 2013 Laws, 2d sp. s. Sec 206(9) states:

Within the amounts appropriated in this section, in a report to the appropriate fiscal committees of the legislature that must be submitted by December 1, 2013, the department of social and health services must describe the process for establishing Medicaid rates for assisted living and adult family homes. The report must include information about licensing and physical plant standards, contracting provisions, and per capita and biennial expenditures for assisted living and adult family homes.

Each Medicaid resident of an Adult Family Home (AFH) or Assisted Living Facility (ALF) is assessed using the Comprehensive Assessment Reporting Evaluation (CARE) tool, which places them in one of seventeen acuity-based classification groups. Each classification group has an assigned daily payment rate that is paid to each provider for each day that resident is served. The differences in the payment rates for each classification are largely based on the relative difference in staff time required to assist them.

Adult Family Homes (AFH) are a type of residential care setting licensed by the Department of Social and Health Services to provide services for six or fewer residents. The homes are private businesses that provide the residents with a room, meals, laundry, supervision, and personal care and assume responsibility for the general safety and well-being of the resident. Some provide nursing or other special care and services. AFHs providing services to Medicaid clients contract individually with the state. In fiscal year 2013 there were 7,249 AFH residents receiving Medicaid.

A statewide bargaining unit of adult family providers has existed since 2008. Since 2009, Medicaid daily rates for AFHs have been set through the resulting collective bargaining agreement between the state and the Washington State Residential Care Council. Legislative House Bill 2111 – codified as RCW 41.56.029 – established collective bargaining rights for owners of Adult Family Homes that receive payments from Medicaid. The Washington State Residential Care Council was elected as the sole and exclusive representative for approximately 2,600 providers of AFH care services who receive payments from Medicaid and State-funded long-term care programs. The collective bargaining agreement is negotiated every two years.

Assisted Living Facilities (ALF) are a type of residential care setting licensed by the Department of Social and Health Services to provide services for seven or more residents. ALFs providing services to Medicaid clients contract individually with the State. In fiscal year 2013 there were 6,942 ALF residents receiving Medicaid.

ALF rates were informed by the collective work of Department and stakeholders in 2003 to establish proxy estimates for the cost of providing ALF services. The workgroups selected various industry benchmarks for wage and salary levels, supplies, insurance, food, utilities, and capital costs. The workgroups adjusted the benchmarks for three geographic regions – King county, Metropolitan Statistical Area (MSA), and non-MSA. The Department used this information to inform rate setting beginning in April, 2003. In 2008, the number of classification groups and payment levels were expanded from twelve to seventeen to provide consistency of acuity classifications across both in-home and residential settings.

The basic ALF rate can be contractually amended to provide Expanded Community Services (ECS), Specialized Dementia Care Program (SDCP), or the Capital Add-on that provides an incentive for facilities that serve a high proportion of Medicaid residents.

PROCESS FOR ESTABLISHING MEDICAID RATES FOR ADULT FAMILY HOMES

The Department follows the federal guidelines found in 42 U.S.C. § 1396a(a)(30)(A) (“Section 30(A)”) when establishing rates. Medicaid rates must “bear a reasonable relationship” to the costs that “efficient and economical” providers incur in furnishing “quality services.” To establish the “reasonable relationship,” the state “must rely on responsible cost studies” that provide “reliable data” as a basis for determining rates. There is no “prescribed method of analyzing and considering” the Section 30(A) factors. The state “must assure a reasonable relationship exists between costs and rates.” Specified is that the “final body” that will determine a Medicaid payment rate must “study the impact” of a proposed rate on the statutory factors of efficiency, economy, quality, and access before setting the rate. Therefore, the Legislature must study the Section 30(A) factors before making a final decision.

Each individual who receives Medicaid funded services in an AFH is placed in one of 17 classification levels based on a comprehensive assessment of their level of disability, cognitive limitations, diagnoses, and other factors. Each level has a corresponding daily rate that is paid to the facility to care for that individual that was initially developed using a model based on proxy estimates as described below and has since been modified through collective bargaining after adult family home providers negotiated their first collective bargaining agreement in 2009. A facility may receive several different rates based upon the service needs of its mix of individual Medicaid residents.

Before adult family home owners were given collective bargaining rights, a rate model was created for purposes of establishing the rates for each classification. The model was developed with input from residential care industry representatives, providers, and interested parties and utilized a collection of data, the conduct of time studies, and selecting benchmarks or proxies that best represented the necessary and reasonable costs of providing AFH care and services. The Department designed a pricing model to establish per resident day market rates for providing AFH services for each CARE classification and for the three geographic regions – King county, Metropolitan Statistical Area (MSA), and non-MSA.

Since 2009, Medicaid daily rates for AFHs have been set through the resulting collective bargaining agreement between the state and the Washington State Residential Care Council. Legislative House Bill 2111 – codified as RCW 41.56.029 – established collective bargaining rights for owners of Adult Family Homes (AFH) that receive payments from Medicaid. The Washington State Residential Care Council was elected as the sole and exclusive representative for approximately 2,600 providers of AFH care

services who receive payments from Medicaid and State-funded long-term care programs. The Governor is the employer solely for the purposes of collective bargaining.

By statute, this bargaining unit has interest arbitration available as a method for resolving bargaining impasses. The scope of bargaining for AFH is limited solely to:

1. Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements;
2. Health and welfare benefits;
3. Professional development and training;
4. Labor-management committees;
5. Grievance procedures; and
6. Other economic matters.

The parties commence bargaining in May of even numbered years. Bargained tentative agreements or arbitration awards must be completed and a request for funds necessary to implement the compensation and benefit provisions must be submitted to the director of Office of Financial Management (OFM) by October 1st prior to the legislative session at which the requests are to be considered. If the director of OFM certifies the agreement or award as financially feasible, the request for funds necessary to implement the agreement or award is included in the governor's proposed operating budget. The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, the agreement is reopened for the sole purpose of renegotiating the funds necessary to implement it.

The rates can be contractually amended to provide Expanded Community Services (ECS).

ECS is provided to clients who have been identified by the Department as having exceptional care needs due to behavioral or mental health issues. An ECS client is an individual who has been or is being relocated from Eastern or Western State Hospital or who has been identified by the Department as requiring expanded community services.

In recent years, rates have received adjustments for new state requirements. The rates have been adjusted upward for new costs incurred for increases in license fees and for additional training requirements.

LICENSING AND PHYSICAL PLANT STANDARDS – ADULT FAMILY HOMES

Licensing

Responsibility for licensing AFHs belongs to Residential Care Services (RCS) in the Aging and Long-Term Support Administration (AL TSA). All AFH license applicants undergo a thorough process that includes:

- Undergoing criminal background checks on all providers, staff, caregivers, and anyone who will have unsupervised access to residents. Individuals identified with certain disqualifying crimes will not be able to work unsupervised with vulnerable people but can work in other capacities at the home. A national fingerprint based background check is also required for long-term care workers hired after January 7, 2012.
- Conducting financial assessments which determine whether the applicant has enough funding available to operate the business.
- Reviewing complaints received by the Department of Social and Health Services or the Department of Health to identify issues of concern about the applicant.
- Reviewing the status of the applicant's professional license, such as a registered nursing license, to check for actions taken against the license by DOH.
- Reviewing compliance history to determine if the applicant has been a previously licensed provider and his or her historical compliance with state licensing requirements.
- Ensuring completion of the Department-approved orientation.
- Ensure that the providers and caregivers have completed required education and training. Unless exempt from training requirements, long-term care workers hired on or after January 7, 2012 must complete 75 hours of training within 120 days of hire and become certified as home care aides within 200 days of hire.
- Checking for caregiving experience to verify if the applicant has met the minimum hours of successful direct caregiving experience.
- Conducting on-site inspections to ensure homes are in compliance with licensing requirements.

AFH are charged an initial licensing fee as well as an annual licensing fee. The fees fluctuate each year and are established in the state omnibus appropriations act.

Physical Plant Standards

In addition to any state and local building codes, there are physical plant requirements specific to AFH covering a range of standards from bedroom size and kitchen facilities

to safety and maintenance. If an AFH is a new building or is an existing building being converted for use as an AFH, it must meet the current, stricter standards of the state building code for construction of an AFH. If a facility is an existing facility it is grandfathered in and does not need to make changes to comply with the more recent standards. These plant standards are extensive and include but are not limited to:

- Bedrooms must be outside rooms with natural light and have a closet or wardrobe. Bedrooms must include a bed, mattress, and sheets if the resident does not wish to use their own. Each resident must have direct and unrestricted access from the bedroom to the common areas and bathrooms. There are additionally rules on who can and cannot share rooms. Single occupancy rooms must have at least eighty square feet while double occupancy rooms must have at least one hundred twenty square feet.
- The home must ensure that every area used by residents has a direct access to at least one exit that does not pass through another area, which may be locked from the opposite side.
- Common areas must be “homelike” and be large enough for all residents of the home to use at the same time. Common areas may not be used as bedrooms.
- If a home wants to remodel or conduct construction they must notify the residents of the move date and their options. The home must also notify the Department of their plans for where the residents will be moved and their plans for ensuring care during the relocation.
- Every bedroom, bathroom, and closet door must open from the inside and the outside. All exit doors must open from the inside without a key or special knowledge.
- Audio monitoring or video monitoring with an audio component may not be conducted in the home except in certain circumstances. Those circumstances include: In an entrance or exit if it is focused only on the door and not the area where the residents gather; outdoor areas not commonly used by residents; designated smoking areas if residents are assessed as needing supervision for smoking and they are monitored at any time the area is used by such residents; or in a bedroom if requested by a resident using that bedroom. If the monitoring is requested by a resident, the resident must identify a threat to their health, safety, or personal property. If the resident shares a room, the written consent of the roommate must be obtained. The monitoring must be reevaluated at least quarterly and cease if the resident or the roommate withdraws consent.
- Grab bars or hand rails must be installed to meet the needs of each resident. Minimally they must be installed in tubs and showers.
- Kitchen facilities must ensure adequate space for food handling, preparation, and storage, as well as be kept in a clean and sanitary manner.

- The home must have adequate lighting for each task a resident or staff does, as well as provide emergency lighting that is readily accessible.
- The home must be maintained to be safe and free of hazards. Systems such as heating, cooling, plumbing, laundry, etc. must be safe and functioning, and the water accessible to residents may not exceed one hundred twenty degrees. The home must be kept free of vermin.
- Sewage and liquid wastes must discharge into a public sewer or an approved independent sewage system.
- The site of an AFH must be on a well-drained site free from hazardous conditions, excessive noise, dust, and smoke or odors.
- Each resident must have reasonable storage space for clothing and personal possessions, as well as a lockable container upon request unless their room is private and lockable.
- The home must have at least one working non-pay telephone that is accessible and has privacy.
- The minimum temperature in a home must be sixty-eight degrees during waking hours and sixty degrees during sleeping hours. The minimum and maximum temperature in a room used by a resident must be comfortable for that resident and not compromise their health or safety.
- There must be at least one indoor flush toilet per five residents and household members as well as sinks with hot and cold running water. In homes licensed after July 1, 2007, each resident must have access to a toilet, shower, or tub without going through another resident's room.
- Residents must be protected from water hazards and bodies of water both at the home and when being accompanied to other locations. Any water hazard added or modified after July 1, 2007 that is over twenty four inches deep must be surrounded by a fence and gates at least forty eight inches high with audible alarms when any doors or gates that lead to the water hazard are opened.
- Clean and healthy water must be supplied for the home. Any non-potable water must be labeled to avoid use as a drinking water source.
- The sill height of bedroom windows must not be higher than forty four inches above the floor. The bedroom window must have a minimum opening area of 5.7 square feet, or 5.0 square feet for grade level windows. The minimum height for a bedroom window is twenty four inches and the minimum width is twenty inches. The window must be able to be opened from the inside without a key or any special knowledge.

PER CAPITA AND BIENNIAL EXPENDITURES – ADULT FAMILY HOMES

For fiscal year 2013 (July 1, 2012 through June 30, 2013), the weighted average daily rate for adult family home clients was \$85.91. The total annual cost for adult family home clients for fiscal year 2013 was \$224,675,000. The total biennial cost for adult family home clients for the 2011-2013 biennium was \$437,891,000. Figure 1.1 is a table of the per capita and annual expenditures for AFH clients dating back to fiscal year 2008.

Figure 1.1

Fiscal Year	Clients	Weighted Average Daily Rate	Annual Cost	Adjustment to Rate	Reason
FY08	5,746	\$71.23	\$149,377,000	3.2%	Vendor Rate Increase
FY09	6,098	\$77.52	\$172,544,000	Change to 17 level care system	
FY10	6,438	\$75.85	\$178,233,000	-4%	Vendor Rate Decrease
FY11	6,829	\$75.84	\$189,038,000	N/A	N/A
FY12	6,984	\$83.64	\$213,216,000	\$2.01	Training Increase
FY13	7,249	\$84.91	\$224,675,000	\$0.63	Increase in Licensing/Training
FY14	7,444	\$85.84	\$233,244,000	\$0.14	Increase in Licensing

CONTRACTING PROVISIONS – ADULT FAMILY HOMES

Each Adult Family Home contracts individually with the state. If an AFH wishes to contract with the Department as an ECS qualified provider, they must evaluate how many beds can be designated for ECS. A new contract is written and signed which supersedes the previous contract. The new contract specifies the number of ECS and non-ECS beds that the home may have.

A sample of the Adult Family Home Contract is attached.

PROCESS FOR ESTABLISHING MEDICAID RATES FOR ASSISTED LIVING FACILITIES

The Department follows the federal guidelines found in 42 U.S.C. § 1396a(a)(30)(A) (“Section 30(A)”) when establishing rates. Medicaid rates must “bear a reasonable relationship” to the costs that “efficient and economical” providers incur in furnishing “quality services.” To establish the “reasonable relationship,” the state “must rely on responsible cost studies” that provide “reliable data” as a basis for determining rates. There is no “prescribed method of analyzing and considering” the Section 30(A) factors. The state “must assure a reasonable relationship exists between costs and rates.” Specified is that the “final body” that will determine a Medicaid payment rate must “study the impact” of a proposed rate on the statutory factors of efficiency, economy, quality, and access before setting the rate. Therefore, the Legislature must study the Section 30(A) factors before making a final decision.

Medicaid payment rates are set for ALFs based on the CARE classification, and geographic area. Rates are individual-specific. Therefore, a facility may receive several different rates based upon the service needs of its individual Medicaid residents.

A rate model was originally used for purposes of establishing Medicaid ALF rates. Department staff and residential care industry representatives, providers, and interested parties formed workgroups. Over a two year period (fiscal year 2001 through fiscal year 2003), the workgroups conducted research and held monthly meetings to discuss their results, proposals, and issues.

During this process, cost components of providing Home and Community residential care and services were systematically identified and proxies or benchmarks were chosen to represent the market prices for these components. The workgroups chose to use proxies and benchmarks for identified costs because of the prohibitive cost of collecting and updating actual cost data from the state’s ALF providers.

The workgroups selected various industry benchmarks for wage and salary levels, supplies, insurance, food, utilities, and capital costs. Using the product of these workgroups, the Department designed a pricing model to establish per resident day market rates for providing ALF services for each CARE classification and for the three geographic regions – King county, Metropolitan Statistical Area (MSA), and non-MSA.

The Department began using this information to inform rate setting, beginning in April, 2003. In 2008 the number of classification groups and payment levels were expanded

from twelve to seventeen to provide consistency of acuity classifications across both in-home and residential settings.

The weighted average daily rate for state fiscal year 2004 was \$59.50. The weighted average rate for the mid-point of FY13 was 11% higher, at \$65.79. The basic ALF rate can be contractually amended to provide Expanded Community Services (ECS), Specialized Dementia Care Program (SDCP), or a facility may receive the Capital Add-on.

ECS is provided to clients who have been identified by the Department as having exceptional care needs due to behavioral or mental health issues. An ECS client is an individual who has been or is being relocated from Easter or Western State Hospital or who has been identified by the Department as requiring expanded community services.

SDCP is a care model based on meeting the needs of individuals with dementia. It promotes optimum health and quality of life in an environment that accommodates cognitive deficits, maximizes functional abilities, and promotes aging in place.

The Capital Add-on is supplemental to the assessed daily CARE rate. Currently the Capital Add-on rate is paid to any ALF that has a Medicaid occupancy percentage of sixty percent or greater.

LICENSING AND PHYSICAL PLANT STANDARDS – ASSISTED LIVING FACILITIES

Licensing

Responsibility for licensing ALFs belongs to RCS in ALTSA. All ALF license applicants undergo a thorough process that includes:

- Undergoing criminal background checks on all providers, staff, caregivers, and anyone who will have unsupervised access to residents. Individuals identified with certain disqualifying crimes will not be able to work unsupervised with vulnerable people but can work in other capacities at the home. A national fingerprint based background check is also required for certain individuals.
- Conducting financial assessments which determine whether the applicant has enough funding available to operate the business so residents get the highest of care in the safest setting.
- Reviewing complaints received by DSHS or the state Department of Health (DOH) to identify issues of concern about the applicant.

- Reviewing the status of the applicant's professional license, such as a registered nursing license, to check for actions taken against the license by DOH.
- Reviewing compliance history to determine if the applicant has been a previously licensed provider and his or her historical compliance with state licensing requirements.
- Ensuring that the providers and caregivers have completed required education and training. Unless exempt from training requirements, long-term care workers hired on or after January 7, 2012 must complete 75 hours of training within 120 days of hire and become certified as home care aides within 200 days of hire.
- Reviewing the structural and fire safety of the facility. These reviews are conducted by DOH and the State Fire Marshal.
- Conducting on-site inspections to ensure homes are in compliance with licensing requirements.

ALFs are charged an initial licensing fee as well as an annual licensing fee. The fees fluctuate each year and are established in the state omnibus appropriations act.

Physical Plant Standards

In addition to any state and local building codes, there are physical plant requirements specific to ALFs covering a range of standards from heating and cooling to bedroom size. These plant standards are extensive and include but are not limited to:

- Stamped "approved" construction documents as well as data on materials used in construction must be retained on the premises.
- If the ALF provides intermittent nursing services, the facility must provide space for the storage and handling of clean equipment, as well as the cleaning and disinfecting of soiled equipment. If any ALF that provides intermittent nursing was issued a project number on or after September 1, 2004, or upon initiating intermittent nursing services in an existing facility, the facility must provide a clean utility room and a soiled utility room.
- The means to summon on-duty staff must be provided in resident units as well as common areas and corridors accessible to residents. For facilities issued a project number on or after September 1, 2004 there must also be the means to summon on-duty staff from all bathrooms, toilet rooms, resident living rooms, and sleeping rooms. There must also be a way for residents, families, and other visitors to contact staff inside from outside the building after hours. If an intercom system is installed in a facility with a project number dated on or after September 1, 2004, the intercom must have a mechanism to allow a resident to control whether or not announcements are broadcast in and whether or not

conversations within the resident's room can be monitored from outside the room.

- There must be at least one non-pay telephone that is available to staff and residents and offers privacy.
- Both hot and cold water with adequate pressure must be available throughout the facility. Hot water between 105°F and 120°F must be provided to all sinks in resident rooms, toilet rooms, and bathrooms, as well as all bathing fixtures used by residents. Non-potable water must be labeled as such.
- Sewage and liquid wastes must discharge into a public sewer or an approved on-site sewage system.
- There must be adequate and clean garbage containers that are accessible to staff and residents and emptied frequently.
- Electric fixtures must meet the comfort and safety needs of the residents as well as be sufficient for the activities of residents and staff. Lighting in residents' rooms must be sufficient to meet the resident's needs, preferences, and choices. Lighting in common areas must meet the Illuminating Engineering Society of North America's recommendations for lighting common areas as established in the handbook edition in effect when the facility paid a construction review fee.
- Temperatures in the facility must be kept at a minimum of 60°F during sleeping hours and 68°F during waking hours except in rooms for activities requiring physical exertion or rooms where residents can control the temperature in their own units.
- Rooms must be ventilated to prevent excessive odors or moisture, and to remove smoke. If smoking is permitted in the assisted living facility, the smoking areas must be designated and ventilated.
- Each resident sleeping room must have eighty or more square feet in a one-person sleeping room or seventy or more square feet per resident in a room occupied by two or more residents. If two residents share a private apartment with a sleeping room, living room, and bathroom where the total square footage of the apartment excluding the bathroom is two hundred and twenty square feet, the sleeping room of the residents may be less than one hundred forty square feet. Each room must have unrestricted direct access to a common-use area. A sleeping area may not be used as a passageway. Sleeping areas must have one or more outside window.
- Facilities issued a project number on or after September 1, 2004, a lockable drawer or other secure space must be provided. In facilities issued a project number before September 1, 2004, a secure space must be provided upon resident request. Each resident must have a separate storage facility in or adjacent to the room to store clothing and personal items.

- Bedrooms must have a bed, mattress, and sheets for each resident except where residents have mutually agreed to share a bed.
- Bathrooms must be provided so as to meet the needs of each resident. Grab bars must be installed to minimize falls, including at each bathing fixture and toilet. Each toilet room must have a toilet as well as a sink in or adjacent to the toilet room. There must be at least one toilet and one handwashing sink for every eight residents who do not have access to a private toilet room. There must be at least one bathing fixture for every twelve residents who do not have access to a private toilet room. Rooms with more than one toilet or bathing fixture must offer visual privacy and be designated as for women or men.
- Laundry services must be provided with separate areas for clean and soiled laundry. Laundry facilities may not be located in rooms used for open food storage, food preparation, or food service.
- There must be one or more day room areas for social and recreational activities. Day room areas must total one hundred and fifty square feet or ten square feet per resident, whichever is larger, for facilities licensed on or before December 31, 1988. Day room areas must total one hundred and fifty square feet or twenty square feet per resident, whichever is larger, for facilities licensed after December 31, 1988. The day room areas must be furnished to meet the residents' needs.
- Adequate storage space must be provided for supplies, equipment, and linens. A separate storage space must be maintained for disinfectants and poisonous compounds.
- The facility must maintain nonskid surfaces on all stairways and ramps used by residents.
- Handrails must be installed on stairways with more than one step riser and on ramps with a slope of greater than one to twenty. They must be installed in halls and corridors if necessary for resident safety.
- The facility must provide a safe, sanitary, and well-maintained environment for residents that is kept in good repair. A housekeeping supply area must have a sink separate from food preparation and service areas.
- Potentially hazardous supplies and equipment must be secured with consideration given to the assessed needs and abilities of the residents.
- Areas used for storing, handling, and cleaning soiled laundry, areas used for cleaning soiled nursing care equipment, areas for disposing of refuse, and/or areas for storing housekeeping supplies may be combined in a single area if it is equipped with a two-compartment sink, a clinical service sink, a work counter or table, mechanical ventilation to the outside, and locked storage for supplies.

- Areas used for storing and handling clean laundry and areas used for storing and handling clean nursing supplies may be combined in a single area if it is equipped with a handwashing sink and work counter or table.
- Poisonous or toxic plants may not be used in areas accessible to residents who, based on their diagnosed condition or cognitive disabilities, may ingest or have harmful contact with such plants.

CONTRACTING PROVISIONS – ASSISTED LIVING FACILITIES

In order for an ALF to contract with the Department they must submit an application that is reviewed by the Department. The Department also reviews inspection and complaint investigation findings as well as any other documents they consider relevant. The Department may limit the number of contracts for Specialized Dementia Care. Contracted ALFs must provide the services agreed upon in the resident's negotiated service agreement as approved by the Department case manager.

ALFs contract individually with the Department and provide one or more of the following service packages:

Assisted Living

- Private apartments, with an emphasis on privacy, independence, and personal choice
- Intermittent nursing services
- Medication administration and personal care services

Adult Residential Care (ARC)

- Medication assistance and personal care services
- Limited supervision as required

Enhanced Adult Residential Care (EARC)

- Medication administration and personal care services
- Intermittent nursing services
- No more than two people can share a room

A sample of the Assisted Living Facility Contract is attached.

PER CAPITA AND BIENNIAL EXPENDITURES – ASSISTED LIVING FACILITIES

For fiscal year 2013 (July 1, 2012 through June 30, 2013), the weighted average daily rate for ALF clients receiving Assisted Living (AL) was \$67.65. The total annual cost for AL clients for fiscal year 2013 was \$115,032,000. The total biennial for AL clients for the 2011-2013 biennium was \$230,993,000. Figure 2.1 is a table of the per capital and annual expenditures for AL clients dating back to fiscal year 2008. Any changes to the daily rate that cannot be attributed to adjustments to rates are due to changes in acuity in the client population.

Figure 2.1

Fiscal Year	Clients	Weighted Average Daily Rate	Annual Cost	Adjustment to Rate	Reason
FY08	4,384	\$69.65	\$ 111,460,000	6%	Vendor Rate Increase
FY09	4,446	\$70.26	\$ 114,007,000	Change to 17 level care system	
FY10	4,586	\$67.68	\$ 113,277,000	-4%	Vendor Rate Decrease
FY11	4,562	\$67.88	\$ 113,019,000	\$0.20	Training Increase
FY12	4,632	\$68.58	\$ 115,961,000	-\$0.13	Decrease because training delayed
FY13	4,659	\$67.65	\$ 115,032,000	2% Vendor Rate Decrease \$0.39 increase for training	
FY14	4,750	\$67.95	\$ 117,823,000	\$0.14	Increase in Licensing

For fiscal year 2013, the weighted average daily rate for ALF clients receiving ARC or EARC was \$61.91. The total annual cost for ARC and EARC clients for fiscal year 2013 was \$51,585,000. The total biennial cost for ARC and EARC clients for the 2011-2013 biennium was \$103,100,000. Figure 2.2 is a table of the per capita and annual expenditures for ARC and EARC clients dating back to fiscal year 2008. Any changes to the daily rate that cannot be attributed to adjustments to rates are due to changes in acuity in the client population.

Figure 2.2

Fiscal Year	Clients	Weighted Average Daily Rate	Annual Cost	Adjustment to Rate	Reason
FY08	1,924	\$60.10	\$ 42,215,000	6%	Vendor Rate Increase
FY09	2,022	\$62.87	\$ 46,398,000	Change to 17 level care system	
FY10	2,088	\$62.38	\$ 47,545,000	-4%	Vendor Rate Decrease
FY11	2,130	\$62.55	\$ 48,635,000	\$0.20	Training Increase
FY12	2,259	\$62.48	\$ 51,515,000	-\$0.13	Decrease because training delayed
FY13	2,283	\$61.91	\$ 51,585,000	2% Vendor Rate Decrease \$0.39 increase for training	
FY14	2,334	\$61.89	\$ 52,736,000	\$0.14	Increase in Licensing

Attachments

Adult Family Home and Assisted Living Service Contracts



CLIENT SERVICE CONTRACT

Adult Family Home (AFH)

DSHS Contract Number:
[Click here to enter text.](#)
 Program Contract Number:
[Click here to enter text.](#)

This Contract is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below.

Social Service Payment System Number:
[Click here to enter text.](#)

CONTRACTOR NAME Click here to enter text.	CONTRACTOR Doing Business As (DBA) Click here to enter text.
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CONTRACTOR MAILING ADDRESS Click here to enter text. Click here to enter text. Click here to enter text. Click here to enter text.	ADULT FAMILY HOME (AFH) STREET ADDRESS Click here to enter text. Click here to enter text. Click here to enter text. Click here to enter text.
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CONTRACTOR Uniform Business Identifier (UBI) Click here to enter text.	CONTRACTOR DSHS INDEX NUMBER Click here to enter text.	AFH LICENSE NUMBER
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CONTRACTOR CONTACT Click here to enter text.	CONTRACTOR TELEPHONE Click here to enter text.	CONTRACTOR FAX Click here to enter text.	CONTRACTOR E-MAIL ADDRESS Click here to enter text.
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DSHS ADMINISTRATION Click here to enter text.	DSHS DIVISION Click here to enter text.	DSHS CONTRACT CODE Click here to enter text.
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DSHS CONTACT NAME AND TITLE Click here to enter text. Click here to enter text.	DSHS CONTACT ADDRESS Click here to enter text. Click here to enter text. , Click here to enter text. Click here to enter text.
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DSHS CONTACT TELEPHONE Click here to enter text.	DSHS CONTACT FAX Click here to enter text.	DSHS CONTACT E-MAIL ADDRESS Click here to enter text.
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IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? Click here to enter text.	CFDA NUMBER(S) N/A
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CONTRACT START DATE Click here to enter text.	CONTRACT END DATE Click here to enter text.	CONTRACT MAXIMUM CONSIDERATION Fee for Service
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This Contract contains all of the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind the parties. The parties signing below warrant that they have read and understand this Contract and have authority to enter into this Contract.

CONTRACTOR SIGNATURE Click here to enter text.	PRINTED NAME AND TITLE	DATE SIGNED
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CONTRACTOR SIGNATURE Click here to enter text.	PRINTED NAME AND TITLE	DATE SIGNED
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DSHS REPRESENTATIVE SIGNATURE Click here to enter text.	PRINTED NAME AND TITLE Click here to enter text. , Click here to enter text.	DATE SIGNED
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DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.
 - b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
 - c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
 - d. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
 - e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
 - f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
 - h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.
 - i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
 - j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
 - k. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.
 - l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
 - m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.

DSHS General Terms and Conditions

- n. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
 - o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
 - p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
 - q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
 - r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.
2. **Amendment.** This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
3. **Assignment.** The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.
4. **Billing Limitations.**
- a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
 - b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
 - c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.
5. **Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.**
- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:

DSHS General Terms and Conditions

- (1) as provided by law; or,
 - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
- (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
 - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
 - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
 - (c) Verifying after transmittal that the fax was received by the intended recipient.
 - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
 - (a) Use a Trusted System.
 - (b) Encrypt the Confidential Information, including:
 - i. Encrypting email and/or email attachments which contain the Confidential Information.
 - ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.
 - (5) Send paper documents containing Confidential Information via a Trusted System.
 - (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.
- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.
- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site

DSHS General Terms and Conditions

through shredding, pulping, or incineration.

- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.
7. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.
8. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.
9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.
10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.
13. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.
14. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which,

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by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.

15. **Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.
16. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the DSHS Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

Additional General Terms and Conditions – Client Service Contracts:

17. **Advance Payment.** DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
18. **Construction.** The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.
19. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.
20. **Health and Safety.** Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any DSHS client with whom the Contractor has contact.
21. **Indemnification and Hold Harmless.**
 - a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
 - b. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
 - c. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
 - d. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.
22. **Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW,

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Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, DSHS may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. DSHS may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DSHS under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

- 23. Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:
- a. Be received by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
 - b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
 - c. Include a statement as to why the Contractor thinks the notice is incorrect; and
 - d. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

- 24. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not subcontract any of the contracted services without the prior approval of DSHS. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.

25. Subrecipients.

- a. General. If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133 and this Agreement, the Contractor shall:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

DSHS General Terms and Conditions

- (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- (4) Incorporate OMB Circular A-133 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
- (5) Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
- (6) Comply with the applicable requirements of either 2 CFR, Part 225 (OMB Circular A-87) or 2 CFR, Part 230 (OMB Circular A-122), and any successor or replacement Circular or regulation; and
- (7) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://www.ojp.usdoj.gov/about/ocr/statutes.htm> for additional information and access to the aforementioned Federal laws and regulations.)

b. **Single Audit Act Compliance.** If the Contractor is a subrecipient and expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

- (1) Submit to the DSHS contact person the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
- (2) Follow-up and develop corrective action for all audit findings; in accordance with OMB Circular A-133, prepare a "Summary Schedule of Prior Audit Findings."

c. **Overpayments.** If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with either 2 CFR, Part 225 (OMB Circular A-87) or 2 CFR, Part 230 (OMB Circular A-122).

26. Termination for Convenience. DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice. The Contractor may terminate this Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to DSHS at the address listed on page 1 of this Contract.

27. Termination for Default. The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:

- a. Failed to meet or maintain any requirement for contracting with DSHS;
- b. Failed to protect the health or safety of any DSHS client pursuant to the section entitled Health and Safety of this Contract;
- c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
- d. Violated any applicable law or regulation.

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If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

- 28. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:
- a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
 - b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
 - c. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
 - d. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
 - e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
 - f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.
- 29. Treatment of Client Property.** Unless otherwise provided, the Contractor shall ensure that any adult client receiving services from the Contractor has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of services to a client, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.
- 30. Treatment of Property.** All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.
- 31. Taxes.**
- a. Where required by statute or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. DSHS will pay sales or use taxes, if any, imposed on the services and materials acquired hereunder. Contractor must pay all other taxes including without limitation Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. DSHS, as an agency of Washington State government, is exempt

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from property tax.

- b. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract in accordance with the requirements of [Title 82 RCW](#) and [Title 458 WAC](#). Out-of-state Contractors must contact the Department of Revenue to determine whether they meet criteria to register and establish an account with the Department of Revenue. Refer to [WAC 458-20-93](#) and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit sales tax, DSHS shall be responsible for paying use tax, if applicable, directly to the Department of Revenue.
- c. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

32. Definitions. The words and phrases listed below, as used in this Contract, shall each have the following definitions:

- a. "Adult Family Home" (AFH), for purposes of this Contract, refers to the AFH identified on Page 1 of this Contract. AFH, as defined in RCW 70.128.010(1), means a residential home in which a person or persons provide personal care, special care, room, and board for more than one but not more than six (6) adults who are unrelated by blood or marriage to the person or persons providing the services.
- b. "Adult Family Home License" means the license issued to an AFH in accordance with chapter 388-76 WAC.
- c. "Admission Agreement" means the written agreement signed by the Client and AFH prior to or at the time the Client is admitted to the AFH and every 24 months thereafter.
- d. "Authorization" and "Authorized" means the Contractor's services have been approved by DSHS.
- e. "Client" means an individual whom DSHS determines to be financially and programmatically eligible to receive services from the Contractor.
- f. "Client Participation" means the amount of the Client's nonexempt income, if any, that the Contractor is entitled to collect directly from the Client and apply to the cost of the Client's authorized care.
- g. "Comprehensive Assessment and Reporting Evaluation (CARE)" means the documentation of the Client's needs, abilities, resources, preferences, and level of care requirements obtained in accordance with section 388-72A WAC or its successor.
- h. "Negotiated Care Plan" (or "Care Plan") means the most recent written plan of care and services to be provided to the client. The Negotiated Care Plan is negotiated between the Contractor and Client (and/or the Client's representative) in accordance with chapter 388-76 WAC
- i. "Service Plan" for purposes of this Contract means a written plan developed by a DSHS case manager or designee, in accordance with chapter 388-71 WAC. The Service Plan describes the Client's needs for authorized services and includes an initial plan for how those needs will be met.

33. Placement.

- a. Immediately upon arranging with the Contractor for placement of a DSHS Client in the Contractor's AFH, DSHS shall forward to the Contractor the Social Services Payment System Authorization (or successor authorization form) and the Client's Comprehensive Assessment and Reporting Evaluation and most recent Service Plan.
- b. Upon placement of a DSHS Client in the Contractor's AFH, the Contractor shall prepare a Client file, which shall be the property of DSHS, and shall contain the

DSHS General Terms and Conditions

documents provided by DSHS and all other documents required to be maintained by this Contract or by DSHS.

- c. The Contractor shall notify the DSHS case manager in writing when a Client requires more care than the Contractor can provide. In addition, the Contractor shall notify the DSHS case manager when there has been a significant change for better or worse in the condition of the client.
- d. When a Client is absent from the AFH for more than seventy-two (72) hours for other than medical reasons, the Contractor shall enter written justification of such absence in the Client's file.
- e. Social leave is limited to no more than 18 days per calendar year. Social leave is defined as leave that is for recreational or socialization purposes, not for medical, therapeutic or recuperative purposes. The Contractor shall notify the case manager within one working day when a Medicaid client takes social leave.

34. Statement of Work.

- a. The Contractor shall provide services to each Client as specified in the Client's authorized Service Plan and Negotiated Care Plan. The most recent Service Plan and Negotiated Care Plan for any Client placed by DSHS in the Contractor's AFH are incorporated in this Contract by reference.
- b. The Contractor shall involve the Client's DSHS case manager in the development of the Negotiated Care Plan and shall provide the case manager with a copy of any changes in the Care Plan.
- c. All work performed under this Contract, the Service Plan and the Negotiated Care Plan shall be performed in accordance with chapters 70.128 and 70.129 RCW and chapter 388-76 WAC, or successor or replacement statutes or regulations.

35. Billing and Payment.

- a. DSHS shall pay the Contractor monthly for services provided to DSHS Clients in accordance with this Contract at the rates established by DSHS, less Client participation. DSHS shall notify the Contractor in writing of any decreases in the daily rate. The Contractor hereby waives written notice of rate increases and further agrees that if performance under this Contract continues, such performance shall be compensated at the subsequent rates(s).
- b. The Contractor shall submit invoices for services provided to each DSHS Client at the intervals prescribed and on forms provided by DSHS.
- c. The Contractor accepts the DSHS payment amount, together with any Client participation amount, as sole and complete payment for the services provided under this Contract. The Contractor shall be responsible for collection of the Client's participation amount (if any) from the Client in the month in which services are provided. DSHS shall not reimburse the Contractor for authorized services not provided to Clients, or for services provided which are not authorized or provided in accordance with this Contract. The Contractor shall not solicit or accept funds for

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any Client's care except as provided in this Contract. The Contractor must disclose in the Admission Agreement all supplemental or additional charges. The Contractor must disclose in the Admission Agreement any changes that could occur if a resident becomes eligible for Medicaid funding. The Contractor shall refund to the Client, on a prorated basis, the amount prepaid for care of that Client in the event that the Client moves out of the home before the end of the month.

- d. DSHS shall mail the Contractor's payment for services to the address specified as "Contractor Mailing Address" on Page 1 of this Contract. If the Contractor's address changes, the Contractor shall notify Aging and Disability Services Administration, Residential Care Services, PO Box 45600, Olympia WA 98504-5600 and all current Client's DSHS case managers. The monthly payment for each DSHS Client shall not exceed the amount authorized by DSHS for the Client, less Client participation. By submitting a request for payment, the Contractor certifies that he/she/it has performed the services billed in accordance with the Client's Service Plan and Negotiated Care Plan. Payment for services rendered for part of a month shall be prorated. No payment shall be made for partial days.
- e. DSHS shall not pay the Contractor when:
 - (1) The Client on whose behalf payment is made is no longer eligible for the Contractor's services;
 - (2) The Client is absent (not due to admission to a hospital or nursing facility) from the Contractor's AFH in excess of seventy-two (72) hours, unless the absence is justified in writing and placed in the Client's file maintained by the Contractor;
 - (3) The Contractor ceases to meet service provider minimum qualifications as defined in chapter 70.128 RCW and chapter 388-76 WAC, or successor or replacement statute or regulations;
 - (4) DSHS has terminated this Contract; or
 - (5) The Contractor fails to provide services as authorized in the Client's Service Plan or Negotiated Care Plan.
- f. DSHS shall not pay the Contractor or shall reduce the amount of the payment to the Contractor when the Client temporarily is admitted to a hospital or nursing facility and the Contractor must hold the Client's bed for the Client's return in accordance with WAC 388-105-0045 or its successor.

36. Contractor Certifications. The Contractor acknowledges and certifies as follows:

- a. The Contractor has obtained and reviewed the DSHS AFH licensing laws and regulations and shall comply with the requirements set forth therein, and with all supplemental, successor or replacement requirements.
- b. The Contractor certifies and assures DSHS that the Contractor is a licensed adult family home provider and meets the minimum qualifications for adult family home providers as described under chapter 388-76 WAC.

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- c. The Contractor shall not accept any DSHS Client or other placement in excess of the Contractor's licensed capacity as stated in the Contractor's AFH License.
 - d. The Contractor shall not accept any DSHS Client for placement in the Contractor's AFH for which the Contractor has not received the Client's department-authorized Service Plan.
 - e. The Contractor shall immediately notify, in writing, the DSHS Case Manager for each Client in the Contractor's AFH facility, and the Director of the Division of Residential Care Services, at 600 Woodland Square Loop SE, Lacey, Washington 98504/PO Box 45600, Olympia WA 98504-5600, in the event that the Contractor accepts employment with the State of Washington or if the Contractor hires an employee who is a current or former State of Washington employee.
- 37. Death of Clients.** The Contractor shall report all deaths of DSHS Clients under Contractor's care, within twenty-four (24) hours of death, to the Client's Case Manager. The Contractor shall follow up with written notification of the Client's death to the Client's Case Manager within seven (7) days.
- 38. Disputes.**
- a. The rates paid by DSHS in satisfaction of the provisions of this Contract are not subject to administrative review under Chapter 34.05 RCW or any dispute resolution provision of this Contract.
 - b. Pursuant to RCW 70.128.167 and WAC 388-76-715, when the Contractor disagrees with a finding of a violation or an enforcement remedy imposed by DSHS, the Contractor shall have the right to have the violation or enforcement remedy reviewed under the Department's informal dispute resolution process. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification or deletion of a violation or enforcement remedy imposed by DSHS. The dispute resolution process will include, but is not necessarily limited to, an opportunity for review by a DSHS employee who did not participate in, or oversee, the determination of the disputed violation or enforcement remedy. The Contractor may submit a written request for review which must include (1) a copy of the disputed violation or enforcement action, and (2) the reasons for disputing the finding or enforcement action. Requests for review shall be made to the individual identified in the enforcement letter, within ten (10) working days of receipt of the written finding of a violation or enforcement remedy. In addition to a written request, the Contractor may request to present the information in person to a DSHS designee. When requested by the Contractor, DSHS will convene a meeting, when possible, within ten (10) working days of receipt of the request for informal resolution. When requested by the Contractor, DSHS will expedite the dispute resolution process to review violations upon which DSHS issued an order concerning license suspension, stop placement, or a condition on a license. Orders of the Department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution. This informal dispute resolution process is not governed by chapter 34.05 RCW.
- 39. Drug-Free Workplace.** The Contractor, employees, and subcontractors shall abstain from the use of alcohol, marijuana, and/or illegal drugs in the workplace and in the

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performance of their duties under this Contract.

40. Insurance

The Contractor shall at all times comply with the following insurance requirements.

a. General Liability Insurance

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of the parties' performance under this Contract, including but not limited to premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

In lieu of general liability insurance mentioned above, if the contractor is a sole proprietor with less than three contracts, the contractor may choose one of the following three general liability policies but only if attached to a professional liability policy, and if selected the policy shall be maintained for the life of the contract:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees shall be named as additional insured's.

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured's.

or

Premises Liability Insurance and provide services only at their recognized place of business, including coverage for bodily injury, property damage with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees of the state, shall be named as additional insured.

b. Business Automobile Liability Insurance

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The Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. The Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an additional insured.

c. Professional Liability Insurance (PL)

The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

d. Worker's Compensation

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.

e. Employees and Volunteers

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

f. Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.

g. Separation of Insured's

All insurance policies shall include coverage for cross liability and contain a "Separation of Insured's" provision.

h. Insurers

The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

i. Evidence of Coverage

The Contractor shall, upon request by DSHS, submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the Contractor under this Contract. The Certificate of Insurance shall identify the

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Washington State Department of Social and Health Services as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

The Contractor shall maintain copies of Certificates of Insurance, policies, and additional insured endorsements for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.

j. Material Changes

The insurer shall give the DSHS point of contact listed on page one of this Contract 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation.

k. General

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

l. Waiver


The Contractor waives all rights, claims and causes of action against the State of Washington and DSHS for the recovery of damages to the extent said damages are covered by insurance maintained by Contractor.

- 41. Licensed Capacity.** The Contractor's licensed facility capacity shall be in accordance with the Contractor's current AFH License, but may increase or decrease in accordance with the Contractor's AFH license during the term of this Contract without the necessity of amending this Contract. This Contract shall be null and void immediately upon the effective date of revocation or suspension of the Contractor's AFH license, or when the Contractor's AFH License is no longer valid.
- 42. Nursing Services.** The Contractor shall comply with any applicable Nursing Services provisions of WAC 388-71-0194 or its successor.
- 43. Termination Due to Change in Licensee.** The Contractor shall give all DSHS clients in the Contractor's facility and the DSHS Director of the Division of Residential Care Services, PO Box 45600, Olympia, WA 98504-5600, sixty (60) days' prior notice of any proposed change of licensee for the Contractor's AFH facility. This Contract shall automatically terminate on the effective date of a change in licensee.
- 44. Termination Due to Update in Contract.** This Contract is automatically terminated when DSHS and the Contractor identified on Page 1 execute a new Contract for this

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AFH facility address.

- 45. Training.** The Contractor shall participate in training as required by DSHS at the Contractor's expense. At the sole discretion of DSHS, DSHS may reimburse the Contractor for all or any portion of the Contractor's expenses associated with training.

	CLIENT SERVICE CONTRACT		DSHS CONTRACT NUMBER Click here to enter text.	SOCIAL SERVICE PAYMENT SYSTEM (SSPS) NUMBER Click here to enter text.
	ASSISTED LIVING SERVICES (AL)		ADSA CONTRACT NUMBER Click here to enter text.	
This Contract is between the State of Washington Department of Social and Health Services (DSHS) and the Contractor identified below.				
CONTRACTOR NAME (Must be same as Assisted Living Facility licensee) Click here to enter text.			CONTRACTOR DBA (Facility's Name, if different) Click here to enter text.	
CONTRACTOR MAILING ADDRESS Click here to enter text. Click here to enter text., Click here to enter text. Click here to enter text.			FACILITY SITE ADDRESS Click here to enter text. Click here to enter text. Click here to enter text. Click here to enter text.	
CONTRACTOR STATE UNIFORM BUSINESS IDENTIFIER (UBI) Click here to enter text.		CONTRACTOR'S DSHS INDEX NUMBER Click here to enter text.		DSHS ASSISTED LIVING FACILITY LICENSE NUMBER
CONTRACTOR CONTACT Click here to enter text.	CONTRACTOR TELEPHONE Click here to enter text.	CONTRACT FAX NUMBER Click here to enter text.		CONTRACTOR E-MAIL ADDRESS Click here to enter text.
DSHS ADMINISTRATION Click here to enter text.	DSHS DIVISION Click here to enter text.		DSHS CONTRACT CODE Click here to enter text.	
DSHS CONTACT NAME Click here to enter text. Click here to enter text.			DSHS CONTACT ADDRESS Click here to enter text. Click here to enter text. Click here to enter text. Click here to enter text.	
DSHS CONTACT TELEPHONE Click here to enter text.	DSHS CONTACT FAX Click here to enter text.		DSHS CONTACT E-MAIL ADDRESS Click here to enter text.	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? Click here to enter text.			CFDA NUMBERS Click here to enter text.	
CONTRACT START DATE Click here to enter text.	CONTRACT END DATE Click here to enter text.		MAXIMUM CONTRACT AMOUNT Fee for Service	
This Contract, including the attached Terms and Conditions and any other documents incorporated by reference, contains all of the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind the parties. The parties signing below warrant that they have read and understand this Contract and have authority to enter into this Contract.				
CONTRACTOR SIGNATURE Click here to enter text.		PRINTED NAME AND TITLE		DATE SIGNED
DSHS REPRESENTATIVE SIGNATURE Click here to enter text.		Sandra Daniel, Contract Manager		DATE SIGNED

DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.
 - b. "Confidential Information" or "Data" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
 - c. "Contract" or "Agreement" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
 - d. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
 - e. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
 - f. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - g. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
 - h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.
 - i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
 - j. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
 - k. "Program Agreement" means an agreement between the Contractor and DSHS containing special terms and conditions, including a statement of work to be performed by the Contractor and payment to be made by DSHS.
 - l. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://apps.leg.wa.gov/rcw/>.
 - m. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
 - n. "Secured Area" means an area to which only authorized representatives of the entity possessing

DSHS General Terms and Conditions

the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.

- o. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
- p. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
- q. "Trusted Systems" include only the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service ("USPS") first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
- r. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://apps.leg.wa.gov/wac/>.

2. Amendment. This Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

3. Assignment. The Contractor shall not assign this Contract or any Program Agreement to a third party without the prior written consent of DSHS.

4. Billing Limitations.

- a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
- b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
- c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.

5. Compliance with Applicable Law. At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.

6. Confidentiality.

- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:

(1) as provided by law; or,

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- (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
 - (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
 - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
 - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
 - (c) Verifying after transmittal that the fax was received by the intended recipient.
 - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
 - (a) Use a Trusted System.
 - (b) Encrypt the Confidential Information, including:
 - i. Encrypting email and/or email attachments which contain the Confidential Information.
 - ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.
- Note: If the DSHS Data Security Requirements Exhibit is attached to this contract, this item, 6.b.(4), is superseded by the language contained in the Exhibit.**
- (5) Send paper documents containing Confidential Information via a Trusted System.
- (6) Following the requirements of the DSHS Data Security Requirements Exhibit, if attached to this contract.
- c. Upon request by DSHS, at the end of the Contract term, or when no longer needed, Confidential Information shall be returned to DSHS or Contractor shall certify in writing that they employed a DSHS approved method to destroy the information. Contractor may obtain information regarding approved destruction methods from the DSHS contact identified on the cover page of this Contract.
- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of

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Confidential Information must be reported to the DSHS Contact designated on the contract within one (1) business day of discovery. Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or DSHS.

7. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify DSHS if, during the term of this Contract, Contractor becomes Debarred. DSHS may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term hereof.
8. **Governing Law and Venue.** This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.
9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.
10. **Inspection.** The Contractor shall, at no cost, provide DSHS and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and DSHS client records, wherever located. These inspection rights are intended to allow DSHS and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
11. **Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
12. **Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.
13. **Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of the Contract remains valid and in full force and effect.
14. **Survivability.** The terms and conditions contained in this Contract or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and

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Treatment of Property.

15. **Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.
16. **Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the DSHS Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

Additional General Terms and Conditions – Client Service Contracts:

17. **Advance Payment.** DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
18. **Construction.** The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Contract.
19. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.
20. **Health and Safety.** Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any DSHS client with whom the Contractor has contact.
21. **Indemnification and Hold Harmless.**
 - a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines, of whatsoever kind of nature, arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
 - b. The Contractor's duty to indemnify, defend, and hold DSHS harmless from any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines shall include DSHS' personnel-related costs, reasonable attorney's fees, court costs, and all related expenses.
 - c. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
 - d. Nothing in this term shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.
22. **Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, DSHS may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. DSHS may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by DSHS under this contract, and transmit the deducted amount to the Department of Labor and

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Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

- 23. Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:
- a. Be received by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
 - b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
 - c. Include a statement as to why the Contractor thinks the notice is incorrect; and
 - d. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

- 24. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not subcontract any of the contracted services without the prior approval of DSHS. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.

25. Subrecipients.

- a. General. If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133 and this Agreement, the Contractor shall:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
 - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
 - (4) Incorporate OMB Circular A-133 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
 - (5) Comply with any future amendments to OMB Circular A-133 and any successor or replacement

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Circular or regulation;

- (6) Comply with the applicable requirements of either 2 CFR, Part 225 (OMB Circular A-87) or 2 CFR, Part 230 (OMB Circular A-122), and any successor or replacement Circular or regulation; and
- (7) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to <http://www.ojp.usdoj.gov/about/ocr/statutes.htm> for additional information and access to the aforementioned Federal laws and regulations.)

- b. Single Audit Act Compliance. If the Contractor is a subrecipient and expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:
 - (1) Submit to the DSHS contact person the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
 - (2) Follow-up and develop corrective action for all audit findings; in accordance with OMB Circular A-133, prepare a "Summary Schedule of Prior Audit Findings."
- c. Overpayments. If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with either 2 CFR, Part 225 (OMB Circular A-87) or 2 CFR, Part 230 (OMB Circular A-122).

26. Termination for Convenience. DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice. The Contractor may terminate this Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to DSHS at the address listed on page 1 of this Contract.

27. Termination for Default. The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:

- a. Failed to meet or maintain any requirement for contracting with DSHS;
- b. Failed to protect the health or safety of any DSHS client pursuant to the section entitled Health and Safety of this Contract;
- c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
- d. Violated any applicable law or regulation.

If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

28. Termination or Expiration Procedure. The following terms and conditions apply upon Contract termination or expiration:

- a. The Contractor shall cease to perform any services required by this Contract as of the effective date

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of termination or expiration.

- b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
- c. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
- d. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
- e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
- f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.

29. Treatment of Client Property. Unless otherwise provided, the Contractor shall ensure that any adult client receiving services from the Contractor has unrestricted access to the client's personal property. The Contractor shall not interfere with any adult client's ownership, possession, or use of the client's property. The Contractor shall provide clients under age eighteen (18) with reasonable access to their personal property that is appropriate to the client's age, development, and needs. Upon termination of services to a client, the Contractor shall immediately release to the client and/or the client's guardian or custodian all of the client's personal property.

30. Treatment of Property. All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.

31. Taxes.

- a. Where required by statute or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. DSHS will pay sales or use taxes, if any, imposed on the services and materials acquired hereunder. Contractor must pay all other taxes including without limitation Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. DSHS, as an agency of Washington State government, is exempt from property tax.
- b. Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract in accordance with the requirements of [Title 82 RCW](#) and [Title 458 WAC](#). Out-of-state Contractors must contact the Department of Revenue to determine whether they meet criteria to register and establish an account with the Department of Revenue. Refer to [WAC 458-20-93](#) and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not

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required to collect and remit sales tax, DSHS shall be responsible for paying use tax, if applicable, directly to the Department of Revenue.

- c. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Contractor or Contractor's staff shall be Contractor's sole responsibility.

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1. AL Definitions.

- a. "Assisted Living Services" (AL) means a package of services including personal care and limited nursing services, and housing in a private apartment-like unit, that DSHS contracts with a licensed assisted living facility to provide in accordance with Parts I and II of chapter 388-110 WAC.
- b. "Assisted Living Facility" (ALF) [previously known as "*Boarding Home*" (BH)], means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, in accordance with, and as defined in RCW 18.20.020.
- c. "AL Contract" means this AL Contract and the most recent Negotiated Service Agreement (NSA) for each DSHS client placed in the Contractor's AL facility.
- d. "Authorized" means that the services have been approved by DSHS.
- e. "Case Manager" means the DSHS Case Manager assigned to a client.
- f. "Client" means an individual that DSHS determines financially and programmatically eligible for payment of services provided by a licensed ALF that has an AL Contract with DSHS.
- g. "Client participation" means the amount of the client's nonexempt income, if any, that the Contractor shall collect directly from the client and apply to the cost of the client's authorized care.
- h. "DSHS Representative" means any DSHS employee who has delegated Contract signing authority by the Secretary of DSHS or his/her designee to execute this AL Contract.
- i. "Licensed" means the Contractor listed on page one of this Contract has been issued a DSHS ALF license for an AL contract that meets the requirements of Part I and Part II of chapter 388-110 WAC.
- j. "Negotiated Service Agreement" (NSA) means a written agreement of services negotiated between the Contractor and resident and/or the resident's representative to the maximum extent possible. The family or surrogate decision maker, if applicable, also gives input to the NSA. The NSA recognizes the resident's capabilities and choices, defines the division of responsibility in the implementation of the services, and specifies outcomes. The client's Case Manager must also approve the NSA.
- k. "Services" means the services the Contractor shall provide to the client as specified in the client's NSA. Each service shall mean the same as the specific service definition in chapter 388-110 WAC.

2. **Statement of Work.** The Contractor shall comply with all requirements of chapter 18.20 RCW, Assisted Living Facility and chapter 388-78A WAC, Assisted Living Facility. The Contractor shall provide services as required in chapter 388-110 WAC to each client

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placed in the Contractor's AL as specified in the client's NSA and authorized by DSHS and/or DSHS's designee. The NSA for any client placed by DSHS in the Contractor's AL is incorporated in this Contract by reference. All work performed under this Contract and any NSA shall be performed in accordance with chapter 70.129 RCW and chapter 388-110 WAC.

3. Administrative Remedies and Dispute Resolution Options.

- a. Administrative Remedies. Pursuant to WAC 388-110-270(3) and (4), if the Contractor contests any decision by DSHS to impose a remedy, the Contractor shall within twenty-eight days of receipt of the decision: (1) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Office of Administrative Hearings, PO Box 42465, Olympia, WA 98507; and (2) Include in or with the application: (a) The grounds for contesting the department decision; and (b) a copy of the contested department decision. Administrative proceedings shall be governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-08 WAC. If any provision in this section conflicts with chapter 388-08 WAC, the provision in this section governs.
- b. Dispute Resolution. Pursuant to WAC 388-110-280, when the Contractor disagrees with a finding of a violation by DSHS under that chapter, the Contractor shall have the right to have the violation reviewed under the DSHS dispute resolution process. Requests for review shall be made to DSHS within ten days of receipt of the written finding of a violation. When requested by the Contractor, DSHS shall expedite the dispute resolution process to review violations upon which DSHS issued an order concerning contract suspension, stop placement, or a contract condition is based. Orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending dispute resolution. A request for dispute resolution shall be made by the Contractor to: Director, Division of Residential Care Services, PO Box 45600, Olympia, WA 98504-5600. The request shall include (1) the grounds for contesting DSHS' finding of a violation, and (2) a copy of the violation. Dispute resolution is not governed by chapter 34.05 RCW.

Published rates are not subject to administrative review or dispute resolution.

4. Contractor Certifications. The Contractor acknowledges and certifies as follows:

- a. The Contractor has received a copy of the AL licensing packet and shall comply with the requirements set forth therein, and with all supplemental, successor or replacement requirements.
- b. The Contractor shall not accept any DSHS client or other placement in excess of the Contractor's licensed capacity as stated in the Contractor's DSHS ALF license.
- c. The Contractor shall complete a NSA for each DSHS client placed in the Contractor's AL facility within thirty (30) days of placement.
- d. The Contractor and the Contractor's directors, officers, partners, agents and any employees who will provide services under this Contract are not current or former employees of the State of Washington in violation of chapter 42.52 RCW, Ethics in

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Public Service.

- e. The Contractor shall immediately notify the DSHS Case Manager for each client in the Contractor's AL facility and the Director of the Division of Residential Care Services, PO Box 45600, Olympia WA 98504-5600, in the event that the Contractor accepts employment with the State of Washington or if the Contractor hires an employee who is a current or former State of Washington employee.
 - f. For purposes of this Contract, the Contractor acknowledges that the Contractor is an independent contractor and not an officer, employee, or agent of DSHS or the State of Washington. The Contractor shall not hold the Contractor or any of the Contractor's employees out as, nor claim status as, an officer, employee or agent of DSHS or the State of Washington. The Contractor shall not claim for the Contractor or the Contractor's employees any rights, privileges or benefits which would accrue to an employee of the State of Washington. The Contractor shall indemnify and hold DSHS harmless from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Contractor or the Contractor's employees unless otherwise specified in this Contract.
- 5. Death of Clients.** The Contractor shall report all deaths of DSHS clients residing in the Contractor's AL facility within twenty-four (24) hours to the client's DSHS Case Manager.
- 6. Drug-Free Workplace.** The Contractor, employees, and subcontractors shall abstain from the use of alcohol, marijuana, and/or illegal drugs in the workplace and in the performance of their duties under this Contract.
- 7. Payment for Services**
- a. DSHS shall pay to the Contractor a sum per client not to exceed the published rates for AL Facilities. The monthly service payment for all services provided to any DSHS client in the Contractor's AL facility under this Contract shall not exceed the amount authorized for each client. The Contractor hereby waives written notice of subsequent rate changes and further agrees that if performance under this Contract continues, such performance shall be compensated at the subsequent rate(s). Subsequent rate changes shall not require a Contract amendment. Notification of rate changes will be made by publication of the DSHS Aging and Adult Services Administration rates in the Contractor's geographic area. Published rates are not disputable.
 - b. The Contractor accepts the DSHS payment amount, together with any client participation amount, as sole and complete payment for the services provided under this Contract. The Contractor shall be responsible for collection of the client's participation amount (if any) from the client in the month in which services are provided.
 - c. DSHS shall mail the Contractor's payment for services to the mailing address specified on page 1 of this Contract.
 - d. DSHS shall not reimburse the Contractor for authorized services not provided to clients, or for services provided which are not authorized or provided in accordance with the Statement of Work. If DSHS pays the Contractor for services authorized but

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not provided by the Contractor in accordance with this Contract's Statement of Work, the amount paid shall be considered to be an overpayment.

- e. If this Contract is terminated for any reason, DSHS shall pay for only those services authorized and provided through the date of termination.

- 8. **Termination Due to Change in Licensee.** The Contractor shall give all DSHS clients in the Contractor's facilities and the DSHS Director of the Division of Residential Care Services, PO Box 45600, Olympia, WA 98504-5600, sixty (60) days' prior notice of any proposed change of licensee for the Contractor's AL facility. This Contract shall automatically terminate on the effective date of the change in licensee.