

## **Amendments to Third Party Contract Language**

### ***Frequently Asked Questions***

The State's Fiscal year 2011 budget required every department to maximize existing resources during fiscally challenging times. In combination with a variety of other mission-driven initiatives, the Departments of Human Services (DHS) and Children and Families (DCF) collaborated to re-define allowable costs within third party contracts. The contract amendments detail parameters for the use of state contract funds with respect to employee salaries, severance packages, travel, conference attendance and continuing education. Below you will find a comprehensive Q&A based upon inquiries from providers impacted by the contract amendments.

#### **Scope of Amendments**

**Question:** Are any organizations exempt from the two Departments' implementation of the Third Party Contract Amendments ("Amendments")?

**Answer:** No. ALL organizations that have Third Party Contracts with either Department, regardless of whether the organization is for-profit, not for profit, a hospital, or another branch of government are subject to the Amendments, effective with contracts entered into or renewed on or after July 1, 2010. However, any fixed/fee for service rate contracts set prior to the adoption of these amendments is not subject to these amendments. Any new or modified fixed/fee for service contracts entered into after July 1, 2010 will be subject to these contract amendments.

**Question:** Do the Amendments apply to Vendor, Individual Provider Agreements, or Professional Service Consultant contracts?

**Answer:** No, Vendor, Individual Provider Agreements, or Professional Service Consultant contracts are not impacted by these Amendments.

**Question:** What if my agency has a contract with "fixed rate" or "fee for service" components and "estimated claims" components?

**Answer:** The Contract Amendments will be applied to the "estimated claims" components which renew on or after July 1, 2010. If the rates/fees are increased, the Contract Amendments will be applied to the "fixed rate" or "fee for service" unit cost, regardless of when the rates were established.

**Question:** When do the Amendments take effect?

**Answer:** The Amendments take effect with contracts renewing on or after July 1, 2010.

**Question:** If I have a contract that renews on the calendar year, when do the Amendments take effect?

**Answer:** Contracts renewed on a calendar year basis will have these Amendments take effect on January 1, 2011, and continue prospectively thereafter.

**Question:** How will the Amendments impact contract reimbursable ceilings for contracts renewing on or after July 1, 2010?

**Answer:** Each Department is committed to working directly with each provider as each incorporates these Amendments into contracts. Your Contract Administrator will work with your agency to modify your agency's contract, consistent with the Amendments and the revised policy requirements. This may result in a lower reimbursable ceiling for Provider Agencies whose employee(s) exceed the salary limitations as prescribed in Amendments #1 and #2. Provider Agencies will be permitted to redirect any non-salary contract savings that may accrue as a result of limitations prescribed in Amendments #4 through #8 as otherwise permitted by contract policy and upon Departmental approval into other cost components of the agency's reimbursable budget.

### **Amendments #1 and #2: Salary Compensation Limitation**

**Question:** How will my agency's gross revenue be determined for purposes of establishing DCF and DHS' participation towards agency employees' salaries?

**Answer:** An organization's gross revenue will be based upon the "Total Support and Revenues" reported in the most recent consolidated audit report submitted by the organization to DCF and/or DHS.

**Question:** What if an agency is one division or entity within a larger organization?

**Answer:** If your agency submitted an unconsolidated audit, your agency's gross revenue will be based on the revenue reported in the unconsolidated audit. If your agency submitted a consolidated audit, the revenue will be based on the larger organization's revenue as reported in the audit. At this point in time, your agency will not be required to submit an unconsolidated audit.

**Question:** What if my agency contracts with multiple Divisions within one Department and/or contracts across Departments?

**Answer:** Each Department's Divisions and both Departments will coordinate to ensure that they are utilizing the same audit information to establish an agency's revenue base.

**Question:** Is Medicaid revenue considered non-contract funding?

**Answer:** Medicaid revenue accounted for as part of a contract with DCF or DHS is considered contract funding and may not be redirected to offset the limitations outlined in the Contract Amendments.

**Question:** Some multi-state agencies utilize management contracts with the out of state organization. How will these management contracts be impacted by the new contract language related to limitations on salary and fringe benefits?

**Answer:** The Salary Compensation Limitations as set forth in the Contract Amendment cover only the individuals compensated in whole or part through the contract directly or in the case of multiple levels of G&A allocation, as employees. The Salary Compensation Limitations do NOT address salaries and/or fringe benefits for consultants or work done by sub-contractors.

**Question:** What is the possibility of applying the executive salary proration to the salary only, without doing so as a percentage?

**Answer:** Executive and Administrative salaries will be calculated based upon the percentage of time spent on performing services on behalf of the Provider Agency that are directly related and allocable to the State contract. For example, a CEO in a Provider Agency with gross revenues of over \$20 million will be categorized in the top salary “tier” and the Department’s participation will be limited to a maximum compensation of \$141,000 annually. If the CEO only provides 10% of his/her time working directly on the contract, then the maximum compensation in which the Department will participate would amount to \$14,100 (10% of \$141,000).

**Question:** Will the limitation apply to physicians who are independent contractors?

**Answer:** No, the salary limitations only apply to employees of the Provider Agency under contract with a DHS or DCF contracting component.

**Question:** When will contract ceiling reductions take place: at the beginning of the fiscal year or at the end?

**Answer:** Affected contracts will be reduced prior to the end of the fiscal year and contract modifications may be needed to implement the changes retroactive back to July 1, 2010. Provider Agencies that are reimbursed on a “Fixed rate” and/or “Fee for Service” basis will have their contracts reduced at the time that rates are renegotiated due to, but not limited to: 1) an expansion of existing services; 2) a provision is made for new services performed by the Provider Agency.

**Question:** How will the Department(s) determine what the aggregate is with regard to salary compensation limitation for multiple DHS and DCF contracts?

**Answer:** The Departments have established a database of Provider Agencies that have contracts with both Departments. Contract Administrators will access this database and

based upon the “gross revenues” of the organization, will use the prescribed salary limitation cap established for the revenue “tier” as stated in the Contract Amendment. This salary cap will then be applied against the set number of hours for each employee(s) identified in Annex B, whose salary exceeds the salary limitation guideline. For example, if a Provider Agency’s director works 60 percent of his/her time on a DHS contract and 40 percent of his/her time on a DCF contract, then the contracts would reflect a salary base of \$84,600 (60% of \$141,000) in DHS, and \$56,400 salary base in the DCF contract.

**Question:** Will contract reductions apply to only one specific contract or will salary adjustments be made to all DHS and DCF contracts?

**Answer:** Contract reductions will be made to all affected contracts where an employee(s) salary exceeds the prescribed salary limitation. The maximum allowable salary will be prorated to each contract so that, in aggregate, the employee(s) will not exceed the total salary limitation. For example, if there are four individual contracts held between two or more divisions within DHS or DCF, the total maximum allowable salary would amount to \$141,000 and will be prorated depending on the amount of time the employee performs services for each contract.

### **Amendment #3: Fringe Benefits**

Please note that the language in the May 2010 draft of Amendments included Compensation Limitation for Fringe Benefits (Amendment 3). This Amendment has been removed pending further discussion and consideration. Limitations on Fringe Benefits will not be implemented with July 2010 renewals.

### **Amendment #4: Employee Severance Agreements**

**Question:** Does the language limiting the use of contract monies towards “severance agreements” also restrict the use of contract monies towards accrued time (i.e. vacation days and/or sick days) owed to the employee?

**Answer:** No, not at this time.

**Question:** Would an agency be allowed to maintain its current severance policy if, for instance, that agency has a uniform, across the board policy of four weeks pay rather than two?

**Answer:** An agency may establish a severance policy in excess of two weeks; however funds from the DCF/DHS contract may only be used towards the first two weeks, unless the agency has obtained an exception from the Departmental Component.

**Question:** In the contract documents “Severance” is defined as “dismissal wages”. Is this the definition being used in the amendments document?

**Answer:** Yes. The two terms “dismissal wages” and “severance agreements” are used interchangeably.

#### **Amendment #5: Compensation Limitation for Employee Travel Expenses**

**Question:** Is it permissible for providers to charge the cost of conferences under Amendment 7 and charge the cost of travel under Amendment 5?

**Answer:** No. The two Amendments focus on different activities. Amendment 7 limits the use of funds for agency sponsored events that benefit agency staff. Amendment 5 clarifies the scope of costs that may be charged to a DCF/DHS contract for agency employees to attend non-agency sponsored conferences.

**Question:** The Amendment states that contract funds may be used to reimburse employees for mileage up to the federal reimbursement rate. May providers increase the mileage allowance?

**Answer:** Provider Agencies may increase the mileage allowance they pay employees so long as there are funds available within the contract to do so; however, the contract with the Departmental Component will not reimburse the Provider Agency above the Federal mileage allowance.

#### **Amendment #6: Compensation Limitation for Employee Tuition Reimbursement**

**Question:** Will the Departments be willing to consider any additional costs in tuition reimbursement on a case-by-case basis based on the size of the organization? Larger agencies with a significant number of staff will be penalized with a dollar limit for tuition reimbursement of \$5000.

**Answer:** The Departments will allow Provider Agencies to allocate contract monies, not to exceed the lesser of \$5000 or 1% of the operating budget for tuition reimbursement costs. Any costs above this limitation will be borne entirely by the Provider Agency.

#### **Amendment #7: Compensation Restriction for Provider Agency Sponsored Meetings, Conferences, Training, or Special Events.**

**Question:** Is it permissible for providers to charge the cost of conferences under Contract Amendment 7 and charge the cost of travel under Amendment 5?

**Answer:** No. (As referred to in Amendment #5) The two Amendments focus on different activities. Amendment 7 limits the use of funds for agency sponsored events which benefit agency staff. Amendment 5 clarifies the scope of costs which may be charged to a DCF/DHS contract for agency employees to attend non-agency sponsored conferences.

**Question:** Do the limitations placed on refreshments apply to mandated all-day trainings for new employees?

**Answer:** Yes, Provider Agencies will only be reimbursed for the cost of nominal refreshments, e.g. coffee, tea, water, soda, donuts, pastries. Any additional costs will be bourn entirely by the Provider Agency.

### **Amendment #8: Criteria for and Processing a Vehicle Request**

**Question:** Are providers who received approval from DCF or DHS to use contract funds to lease vehicles required to terminate those leases when their DCF/DHS contract renews?

**Answer:** No, agencies are not expected to terminate vehicle leases upon the renewal of their DCF/DHS contract(s). Provider requests to enter into vehicle leases on or after July 1, 2010 (regardless of the contract renewal date) will be subject to the terms outlined in the Amendment Section 8(iv).

**Question:** Do Provider Agencies have the discretion to permit their employees to take agency vehicles home?

**Answer:** Yes, however vehicles purchased with DCF/DHS funds are to meet programmatic needs. DCF and DHS recognize that Provider Agencies transport clients in agency owned vehicles and there are occasions where it is expedient for an employee to travel directly from his/her home to the client's residence. DCF and DHS also recognize job responsibilities might require an agency employee to travel among sites.

**Question:** What is the process for approval for the fleet management program? How often will the process need to be completed? Will it be completed with each contract renewal or can it be done every two years if there are no changes to the fleet program? If the fleet management program does not include any leased vehicles, is approval still needed for the program? Specify how the approval process would work for the four ways that most providers acquire vehicles: outright cash, financing, capital lease, and operating lease.

**Answer:** If a Provider Agency currently maintains a fleet management program and leases the vehicles necessary to carry out the functions under the prescribed contract, the associated costs to maintain this fleet will be reviewed by the Contract Administrators at the time of contract renewal. For those Provider Agencies that lease vehicles under a fleet management program, once the Contract Administrator has reviewed and approved the program, no further approval will be required for the replacement of a vehicle when the lease expires or the vehicle is no longer roadworthy. Any other purchase of a vehicle, whether by cash, financing, capital lease or operating must follow the procedures of your contracting entity. Any exceptions to the contract amendment pertaining to the replacement or new vehicle purchase will be handled on a case by case basis with the respective Department Contracting component.