

State of Alaska, Department of Health and Social Services
Division of Division Name
Grants & Contracts Support Team
P.O. Box 110650, Juneau, AK 99811-0650

FORENSIC EVALUATION PROVIDER AGREEMENT

_____, (Provider) enters into a Provider Agreement with the State of Alaska, Department of Health & Social Services (DHSS) for the purpose of providing forensic competency evaluation or mental culpability evaluation services to criminal defendants for the State of Alaska Alaska Psychiatric Institute (API). By entering into this Provider Agreement, the Provider agrees to the following, including all applicable provisions of the following Appendices:

APPENDICES:

- A. 7 AAC 81, Grant Services for Individuals, Revised 6/23/06
- B. Alaska Statutes appendices: B-1. AS 12.47.100; and B-2. AS 12.47.110; and B-3. AS 12.47.070.
- C. Privacy and Security Procedures for Providers
- D. Resolution-Waiver of Sovereign Immunity
- E. SOA DHSS HIPAA BAA (Business Associate Agreement)

I. PROVIDER ELIGIBILITY

The Provider agrees to the provisions of 7 AAC 81, Grant Services for Individuals (Appendix A), as well as all other applicable state and federal law; and declares and represents that it meets the eligibility requirements for a Service Provider for this Agreement. With the signed Agreement, the Provider must submit the following documentation:

- A. Proof of a Federal Tax ID Number;
- B. A current State of Alaska Business License;
- C. Alaska Native entities¹ entering into a Provider Agreement with DHSS must provide a waiver of immunity from suit for claims arising out of activities of the Provider related to this Agreement using Appendix D;
- D. Service personnel must be licensed psychologist or psychiatrist. Provide a copy of valid and current license;
- E. Necessary licensing/certifications for the service facility;
- F. Certificates of Insurance per Section IX (B) of this Provider Agreement;
- G. Completed Appendix: E. SOA DHSS HIPAA Business Associate Agreement (BAA)

By submission for the signed Agreement, the Provider further agrees that they will comply with the following:

- A. The provisions of Appendix C, Privacy & Security Procedures.
- B. Facilities utilized for delivery of services meet current fire code, safety and ADA standards and are located where clients of the program services have reasonable and safe access.

¹ "Alaska Native entity" means an Alaska Native organization that the Secretary of the Interior acknowledges to exist as an Indian tribe through the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

- C. During the effective period of this Agreement, the provider agrees to keep current any and all licenses, certifications and credentials required of the provider agency, staff and facility to qualify for providing services to DHSS clients through this Agreement and to keep current the necessary documentation on file with DHSS to demonstrate compliance.
- D. Prior to delivery of services, the provider must be credentialed, fingerprinted, background-checked, and on-boarded by API. This includes providing record of immunizations.
- E. API Policy and Procedures.

II. DESCRIPTION OF SERVICES

Under this program, providers will perform forensic evaluations of defendants who are ordered by the court to undergo an evaluation to determine whether the defendant is competent to stand trial under AS 12.47.100-110, or an evaluation to determine issues under AS 12.47.070.

Providers will also provide testimony as needed (requested or subpoenaed by parties in the criminal litigation) regarding these forensic evaluations.

Providers will be expected to perform evaluations in Department Of Corrections (DOC) facilities when the defendant is in custody and to arrange outpatient evaluations for defendants not in custody.

Providers may be expected to perform evaluations in any location in Alaska, but service will typically occur in Anchorage. Provider must obtain pre-authorization from the API Program Contact to provide service in a location outside of Anchorage. Providers may be able to provide evaluations by audio-visual telecommunication if technically feasible and compliant with privacy laws including Appendix E.

Specific tasks may include, but are not limited to:

1. Receive orders for evaluation from the applicable court via Administration and Taku Forensics Team at API. Participate in Forensics Team meetings as requested (typically once a week).
2. Advise the Court and/or the Department of Corrections/DHSS/API Forensic Team (as appropriate) within three business days of assignment to indicate the schedule for evaluation.
3. Coordinate and schedule evaluation appointments with officers of the Alaska Court System, when necessary in a timely manner.
4. Request information necessary for completion of the evaluation from the API Forensic Team, including, but not limited to: charging documents, criminal history, victim/witness statements, discovery materials, prior medical and psychiatric history.
5. Review received documents prior to initiation of the evaluation.
6. Perform psychological and forensic evaluation and testing as necessary to complete an industry standard evaluation.
7. Perform evaluations in correctional facilities (typically in Anchorage, and possibly by audio-visual telecommunications) when the defendant is in custody.
8. Schedule and perform outpatients with patients not in custody (to be completed at API or at the contractor's place of business, or location that patient and evaluator can agree on; or, if possible, by audio-visual telecommunication).

9. Dictate, and arrange for transmittal of evaluations to the requesting court within reasonable timeframes giving consideration to the pending volume and length of time each case requires. Evaluations will be timely.
10. Arrange for testimony as needed to support the opinion rendered to the court. This may either be at the court's request, via subpoena, or by mutual arrangement of the involved parties.
11. Testify when requested and as needed to support previously performed evaluations.
12. Track date of receipt of court orders, date of evaluation, findings, and eventual outcome, if known. Convey this information to API via the API Forensics Team.
13. Provide annual report which should include number of cases managed, types of services provided, average cost per case, and any other reasonable data point requested.
14. Work with interpreters when needed, and notify API Forensics Team if it appears an interpreter may be required to effectively perform the service. API will arrange for interpretive services.
15. Provider must receive advance approval for services outside of the above items.

III. CLIENT ELIGIBILITY

The target population will be:

- A. criminal defendants undergoing a court-ordered evaluation for competency to stand trial. These evaluations may be the initial evaluation under AS 12.47.100 and/or subsequent evaluations under AS 12.47.110.
- B. criminal defendants undergoing a court-ordered evaluation for issues arising under AS 12.47.070.

IV. BILLING

Providers submitting claims to DHSS for services provided to a client shall include itemized charges describing only the DHSS approved services.

The following rates apply:

1. Flat fee of \$1200 per completed competency evaluation report under AS 12.47.100 – 110.
2. Flat fee of \$2400 per completed mental culpability evaluation report under AS 12.47.070.
3. In addition to report, provider may bill for court preparation and testimony at the rate of \$150 per hour.
4. Fee of \$150 per hour for time spent solely in travel status if the provider is traveling more than 50 miles from their place of business to a community where the evaluation will occur. Travel status begins two hours prior to airline departure and ends one hour after the airline arrives at the destination.

Providers will not receive reimbursement outside of this fee structure without prior written approval of the Program Contact, and documentation justifying any deviation.

Provider travel to a facility located in State or out of State to evaluate a defendant must be approved in advance by the Program Contact and conducted according to the below guidelines.

State Approved Travel Guidelines:

The state will cover costs associated with travel per the criteria listed below. Expenses above these criteria must be approved in advance by the Program Contact.

- Air Travel: copies of receipts and boarding passes for flights must be submitted with the invoice. The State will reimburse for coach travel only.
- Hotel: copies of original hotel receipts at commercial facilities must be submitted with the invoice. Actual lodging expenses that exceed \$300 room rate per night, excluding taxes, must be approved in advance by the Program Contact.
- Rental Car: copies of the rental car receipt and agreement must be submitted with the invoice. Rental should be for a mid-size or less vehicle (unless approved in advance) and the rental period is to cover the business travel only.
- Ground Transportation: between the Provider's home and the airport; between the destination airport and hotel, via airport shuttle, courtesy van, or taxi service.
- Per Diem: The maximum amount for food and all other travel related incidentals is \$60 per day, per person, unless a lesser amount is indicated per the table at this link: <http://doa.alaska.gov/dof/travel/resource/rates.pdf>

NOTE: costs of parking violations will not be reimbursed.

Except when good cause for delay is shown, DHSS will not pay for services unless the Provider submits a claim within 30 days of the date the service was provided. DHSS is the payer of last resort; therefore determination of payment by a primary payer source (private insurance, Medicaid, etc.) constitutes good cause for delay.

Claims for which DHSS issues payment are considered certified as true and accurate, unless written notice of an error is sent by the Provider to DHSS within 30 days after the receipt of electronically transferred funds or endorsement of the issued payment warrant.

Invoicing:

The Provider will submit monthly invoices detailing services performed.

The invoice must be in a format approved by the Program Contact and must include:

- Provider's name, address, and phone number
- Invoice number
- Clear direction to the Alaska Psychiatric Institute
- Detailed and itemized description of services performed and time billed.

Providers may submit claims in paper form, or electronically. Refer to Section VI of this document for explicit instructions about the submission of confidential or other sensitive information. Providers will be responsible for using appropriate safeguards to maintain and insure the confidentiality, privacy, and security of information transmitted to DHSS until such information is received by DHSS.

V. SUBCONTRACTS

Subcontracts are not allowed under the terms of this Provider Agreement.

VI. CONFIDENTIALITY AND SECURITY OF CLIENT INFORMATION

The Provider will ensure compliance with the Health Insurance Portability & Accountability Act of 1996 (HIPAA), the Health Information Technology for Economical and Clinical Health Act of 2009 (HITECH), and 45 C.F.R. 160 and 164, if applicable, and other federal and state requirements for the privacy and security of protected health information the Provider receives, maintains, or transmits, whether in electronic or paper format. Client information is confidential and cannot be released without the HIPAA-compliant written authorization of the client and DHSS, except as permitted by other state or federal law.

By entering into this Agreement the Provider acknowledges and agrees to comply with the Privacy and Security Procedures for Providers as set forth in Appendix C to this Agreement.

Confidential Reporting Instructions

Before transmitting personally identifiable client information reported under the terms of this Agreement, the Provider must call or email the DHSS Program Contact. To protect confidentiality, the Provider must first establish the mechanism for a secure electronic file transfer. Or, the Provider may fax the information to the Program Contact, after clearly identifying it as confidential on the cover page of the fax transmission. Alternatively, the Provider may submit hard copy information in a sealed envelope, stamped “confidential” placed inside another envelope. This information must be sent by certified, registered or express mail, or by courier service, with a requested return receipt to verify that it was received by the appropriate individual or office.

DHSS has also adopted a platform called Direct Secure Messaging (DSM), which meets HIPAA requirements for data encryption. Do not, under any circumstances, send Electronically Protected Health Information (EPHI) or other sensitive data in email. In order to transfer these files in a HIPAA-compliant manner through email, the provider must use DSM. Additionally, DSM must be used only for the transfer of EPHI or other sensitive data, and not for other communications. Please review the FAQs about DSM at this link: <http://dhss.alaska.gov/hit/pages/direct-secure-messaging.aspx> and information concerning the Alaska Personal Information Protection Act at <http://www.law.state.ak.us/department/civil/consumer/4548.html>

DSM contact information for this Provider Agreement:

Primary program contact: Melissa Luce, melissa.luce@hss.soa.directak.net
 First back-up program contact: Mark Kraft, mark.kraft@hss.soa.directak.net
 Second back-up program contact: Aretha Tyus, aretha.tyus@hss.soa.directak.net

VII. REPORTING AND EVALUATION

The Provider agrees to comply with 7 AAC 81.120, Confidentiality and 7 AAC 81.150, Reports, and other applicable state or federal law regarding the submission of information, including the provisions of Section VI of this Agreement. The Provider agrees to submit any reporting information required under this Agreement and to make available information deemed necessary by DHSS to evaluate the efficacy of service delivery or compliance with applicable state or federal statutes or regulations.

The Provider agrees to provide state officials and their representatives access to facilities, systems, books and records, for the purpose of monitoring compliance with this Agreement and evaluating services provided under this Agreement.

VIII. RECORD RETENTION

The Provider will retain financial, administrative, and confidential client records in accordance with 7 AAC 81.180 and with Appendix C to this Agreement. Upon request, the Provider agrees to provide copies of the Provider's records created under this Agreement to the Department of Health and Social Services, under the health oversight agency exception of HIPAA. The Provider will seek approval and instruction from DHSS before destroying those records in a manner approved by DHSS. In the event a Provider organization or business closes or ceases to exist as a Provider, the Provider must notify DHSS in a manner in compliance with 7 AAC 81.185 and Appendix C to this Agreement.

IX ADMINISTRATIVE POLICIES

- A. The Provider must have established written administrative policies and apply these policies consistently in the administration of the Provider Agreement without regard to the source of the money used for the purposes to which the policies relate. These policies include: employee salaries, and overtime, employee leave, employee relocation costs, use of consultants and consultant fees, training, criminal background checks, if necessary for the protection of vulnerable or dependent recipients of services, and conflicts of interest, as well as the following:
1. Compliance with OSHA regulations requiring protection of employees from blood borne pathogens and that the Alaska Department of Labor must be contacted directly with any questions;
 2. Compliance with AS 47.05.300-390 and 7 AAC 10.900-990. Compliance includes ensuring that each individual associated with the provider in a manner described under 7 AAC 10.900(b) has a valid criminal history check from the Department of Health and Social Services, Division of Health Care Services, Background Check Program ("BCP") before employment or other service unless a provisional valid criminal history check has been granted under 7 AAC 10.920 or a variance has been granted under 7 AAC 10.935. For specific information about how to apply for and receive a valid criminal history check please visit <http://dhss.alaska.gov/dhcs/Pages/cl/bgcheck/default.aspx> or call (907) 334-4475 or (888) 362-4228 (intra-state toll free);
 3. Compliance with AS 47.17, Child Protection, and AS 47.24.010, Reports of Harm, including notification to employees of their responsibilities under those sections to report harm to children and vulnerable adults;
 4. If providing residential and/or critical care services to clients of DHSS, the Provider shall have an emergency response and recovery plan, providing for safe evacuation, housing and continuing services in the event of flood, fire, earthquake, severe weather, prolonged loss of utilities, or other emergency that presents a threat to the health, life or safety of clients in their care.

B. Without limiting the provider's indemnification, it is agreed that the Provider shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Provider's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to DHSS with the signed Provider Agreement prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this agreement and shall be grounds for termination of the Provider's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

1. **Worker's Compensation Insurance:** The Provider shall provide and maintain, for all employees engaged in work under this agreement, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.
2. **Commercial General Liability Insurance:** Covering all business premises and operations used by the Provider in the performance of services under this Agreement with minimum coverage limits of \$300,000 combined single limit per claim.
3. **Commercial General Automobile Liability Insurance:** Covering all vehicles used by the Provider in the performance of services under this Agreement with minimum coverage limits of \$300,000 combined single limit per claim.
4. **Professional Liability Insurance:** Covering all errors, omissions, or negligent acts in the performance of professional services under this Agreement. This insurance is required for all Providers of clinical or residential services, or for any other Provider for whom a mistake in judgment, information, or procedures may affect the welfare of clients served under the Provider Agreement. Limits required per the following schedule:

| Agreement Amount | Minimum Required Limits |
|-----------------------|--|
| Under \$100,000 | \$300,000 per Claim / Annual Aggregate |
| \$100,000 - \$499,999 | \$500,000 per Claim / Annual Aggregate |
| \$500,000 - \$999,999 | \$1,000,000 per Claim / Annual Aggregate |
| \$1,000,000 or over | Refer to State of Alaska Risk Management |

X EQUAL EMPLOYMENT OPPORTUNITY

The Provider shall adhere to Alaska State Statutes regarding equal employment opportunities for all persons without regard to race, religion, color, national origin, age, physical or mental disability, gender or any other condition or status described in AS 18.80.220(a)(1) and 7 AAC 81.100. Notice to this effect must be conspicuously posted and made available to employees or applicants for employment at each location that services are provided under this Provider Agreement; and sent to each labor union with which the provider has a collective bargaining agreement. The Provider must include the requirements for equal opportunity employment for contracts and subcontracts paid in whole or in part with funds earned through this Agreement. Further, the Provider shall comply with federal and state statutes and regulations relating to the prevention of discriminatory employment practices.

XI CIVIL RIGHTS

The Provider shall comply with the requirements of 7 AAC 81.110 and all other applicable state or federal laws preventing discrimination, including the following federal statutes:

- A. The Civil Rights Act of 1964, (42 U.S.C. 2000d);
- B. Drug Free Workplace Act of 1988, (41 U.S.C. 701-707);
- C. Americans with Disabilities Act of 1990, 41 U.S.C.12101-12213).

The Provider will establish procedures for processing complaints alleging discrimination on the basis of race, religion, national origin, age, gender, physical or mental disability or other status or condition described in AS 18.80.220(a)(1) and 7 AAC 81.110(b).

In compliance with 7 AAC 81.110(c), the Provider may not exclude an eligible individual from receiving services, but with concurrence from DHSS, may offer alternative services to an individual if the health or safety of staff or other individuals may be endangered by inclusion of that individual.

XII ACCOUNTING AND AUDIT REQUIREMENTS

The Provider shall maintain the financial records and accounts for the Provider Agreement using generally accepted accounting principles.

DHSS may conduct an audit of a provider's operations at any time the department determines that an audit is needed. The auditor may be a representative of DHSS; or a representative of the federal or municipal government, if the Agreement is provided in part by the federal or municipal government; or an independent certified public accountant. The Provider will afford an auditor representing DHSS or other agency funding the agreement, reasonable access to the Provider's books, documents, papers, and records if requested. Audits must be conducted in accordance with the requirements of 7 AAC 81.160; including the requirement for a Provider to refund money paid on a questioned cost or other audit exception, if they fail to furnish DHSS with a response that adequately justifies a discovery of questioned costs or other audit exceptions.

XIII LIMITATION OF APPROPRIATIONS

DHSS is funded with State/Federal funds, which are awarded on an annual basis. During each state fiscal year, DHSS may authorize payment of costs under a Provider Agreement only to the extent of money allocated to that fiscal year. Because there is a fixed amount of funding on an annual basis, it may at times be necessary for DHSS to prioritize the client population served under this agreement. Limitations may include but are not limited to a moratorium on types of services, or a moratorium by geographic region served, or a restriction of services to clients with defined needs. The decision to limit billable services shall be based solely on available funding.

XIV INDEMNIFICATION AND HOLD HARMLESS OBLIGATION

The Provider shall indemnify, hold harmless, and defend DHSS from and against any claim of, or liability for error, omission, or negligent or intentional act of the Provider under this Agreement. The Provider shall not be required to indemnify DHSS for a claim of, or liability for, the independent negligence of DHSS. If there is a claim of, or liability for, the joint negligent error or omission of the Provider and the independent negligence of DHSS, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis.

“Provider” and “DHSS,” as used within this section and Section IX (B), include the employees, agents, or Providers who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in DHSS’s selection, administration, monitoring, or controlling of the Provider and in approving or accepting the Provider’s work.

XV AMENDMENT

The Provider acknowledges that state and federal laws relating to information privacy and security, protection against discriminatory practices, and other provisions included in this agreement may be evolving and that further amendment to this Agreement may be necessary to insure compliance with applicable law. Upon receipt of notification from DHSS that change in law affecting this Agreement has occurred, the Provider will promptly agree to enter into negotiations with DHSS to amend this Agreement to ensure compliance with those changes.

XVI TERMINATION OF AGREEMENT AND APPEALS

The Provider agrees to notify DHSS immediately if it is no longer eligible to provide services based on applicable Provider eligibility requirements set out in Section I of this Agreement. Notification of non-eligibility will result in automatic termination of this Agreement. Failure to comply with the terms of this Agreement and/or standards outlined in the Agreement and its appendices may result in non-payment and automatic termination of the Agreement by DHSS.

A Provider may appeal the decision to terminate a Provider Agreement under 7 AAC 81.200. All appeals will be conducted in accordance with Section 7AAC 81.200-210 of the Alaska Administrative Code.

Except as noted above, DHSS may terminate this Agreement with 30 days' notice. A Provider may also terminate the Agreement with 30 days' notice, but must provide assistance in making arrangements for safe and orderly transfer of clients and information to other Providers, as directed by DHSS.

This Agreement remains in force until the Provider or DHSS terminates the Agreement or a material term of the Agreement is changed.

I certify that I am authorized to negotiate, execute and administer this agreement on behalf of the Provider agency named in this agreement, and hereby consent to the terms and conditions of this agreement, and its appendices and attachments.

PROVIDER

DEPT. OF HEALTH & SOCIAL SERVICES

Signature of Authorized Provider Representative & Date

Signature of DHSS Representative & Date

Printed Name Provider Representative & Title

Amy A. Burke; Grants, Contracts & Facilities Chief
Printed Name - DHSS Representative & Title

Provider Contact & Mailing Address

DHSS Contacts & Mailing Addresses

PROGRAM CONTACT

Melissa Luce, Paralegal II
API Taku Forensic Unit
3700 Piper St.
Anchorage, AK 99508
(ph) 907-269-7137 (direct)
(ph) 907-269-7100 (front desk)
(fax) 907-269-7146

Provider Phone Number/ Fax Number

ADMINISTRATIVE CONTACT

Alyssa Hobbs, Grants Administrator
Grants & Contracts Support Team
PO Box 110650
Juneau, AK 99811-0650
Ph. 907-465-1187 / Fax 907-465-8678
Alyssa.Hobbs@alaska.gov

Provider Email Address

Provider's Federal Tax ID Number - Do Not List SSN

Provider's IRIS Vendor Number

Providers must identify the business entity type under which they are legally eligible to provide service and intending to enter into this Provider Agreement.

Check Entity Type:

- Private For-profit Business, licensed to do business in the State of Alaska
- Non-Profit Organization Incorporated in the State of Alaska, or tax exempt under 26 U.S.C. 501(c)(3)
- Alaska Native Entity, as defined in 7 AAC 78.950(1) All applicants under this provision must submit with their signed Agreement, a Waiver of Sovereign Immunity, using the form provided as Appendix D to this Provider Agreement.
- Political Subdivision of the State (City, Borough or REAA)