South Dakota Health Professionals Assistance Program
Program Service Committee
PUBLIC MEETING
Tuesday, January 31, 2017
2:00 PM (CST)/1:00 PM (MST)

To participate by:
DDN Sites: Pierre: DDN-Pierre/Cap A, 500 E. Capitol, Room B12 Pierre, SD 57501

In person: Board Conference Room, 101 N. Main Avenue, Suite 215 (on 2nd Floor), Sioux Falls, SD 57104

Purpose: pursuant to SDCL 36-2A-3 Program service committee--Duties. The participating boards shall establish a program service committee consisting of one representative appointed by each participating board from its board membership or staff. The committee shall meet at least annually or as often as necessary to transact its business.

Materials for this meeting can be accessed via the South Dakota Boards and Commissions Portal at: http://boardsandcommissions.sd.gov/ and a hard copy is available at 101 N. Main Ave. Ste. 301 Sioux Falls SD 57104

Agenda

1. Call to Order & Roll Call of the Health Professionals Assistance Program Service Committee: Members from:
   a. Dentistry
   b. Medical and Osteopathic Examiners
   c. Nursing
   d. Pharmacy

2. Approval of Agenda

3. Approval of Minutes


5. Review draft administrative rules

6. Executive session to discuss contract and consult with legal per SDCL 1-25-2 (1), (3) and (4)

7. Determine next meeting date

8. Adjournment
Health Professionals Assistance Program
Program Service Committee
Thursday January 19, 2017 12:00 PM (CST)/11:00 AM (MST)

1. Pierre - Public DDN site: CAP A, 500 E. Capitol Ave., Room B12, Pierre, SD 57501
2. Board Conference Room: 101 N. Main Ave., Suite 215, Sioux Falls, SD 57104

Unapproved Draft Minutes
Thursday, January 19, 2017 12:00 – 2:00 PM (CST)

Program Service Committee Members:
Present: Gloria Damgaard, RN, MS; Margaret Hansen, PA-C, MPAS; Brittany Novotny, JD, MBA; Kari Shanard-Koenders R. Ph.

Participating Boards Staff:
Present: Tyler Klatt, Misty Rallis, Francie Miller

Counsel:
Present: Assistant AG William Golden (Medical and Osteopathic Examiners)

Program Personnel:
Amanda McKnelly (Midwest Health Management Services, LLC.), Maria Piacentino (Midwest Health Management Services, LLC.)

The meeting was called to order at 12:00 PM and a quorum was established.

A motion to approve the agenda was ratified (Shanard-Koenders, Hansen/Unanimous).

A motion to approve the minutes with the amendment of: “Gloria Damgaard requested to meet with the program personnel, Midwest Health Management Services, LLC. to review their budget” was ratified (Hansen/Novotny/Unanimous).

Discussion was held regarding Program processes, confidentiality and Program Personnel finances.

A motion to request a rule be drafted that fully addresses the issue of confidentiality related to participant records as well as other rules was ratified (Novotny/Shanard-Koenders/Unanimous).

Executive session pursuant to SDCL 1-25-2 (3) to consult with legal counsel (Hansen/Novotny/Unanimous) was entered at 1:22 pm and the public meeting resumed at 2:11 pm.

The committee determined the next scheduled program service committee meeting to be January 31, 2017 at a time to be determined by Gloria Damgaard who then called the meeting adjourned at approximately 2:15 pm.

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1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body’s website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.
CHAPTER 36-2A
HEALTH PROFESSIONALS ASSISTANCE PROGRAM

36-2A-1 Definitions.
36-2A-2 Joint health professionals assistance program.
36-2A-3 Program service committee--Duties.
36-2A-4 Evaluation committees.
36-2A-5 Duties of evaluation committee.
36-2A-6 Application to program--Admission evaluation.
36-2A-7 Eligibility for program.
36-2A-8 Denial of admission to program.
36-2A-9 Program participation components.
36-2A-10 Fees and costs.
36-2A-12 Confidentiality of program participants' records.
36-2A-13 Immunity from liability for reports and actions related to duties.
36-2A-14 Promulgation of rules.
36-2A-15 Determination of expenses to be borne by participating boards.

36-2A-1. Definitions. Terms used in this chapter mean:

(1) "Health professionals assistance program," a confidential program designed to monitor the treatment and continuing care of any regulated health professional who may be unable to practice with reasonable skill and safety, if the professional's mental health issues or substance use disorder is not appropriately managed;

(2) "Impaired," the inability of a licensee to practice his or her health-related profession with reasonable skill and safety as a result of mental health issues or substance use related disorders;

(3) "Participating board," a health-related licensing board listed in Title 36 which agrees with other health-related licensing boards to jointly conduct a health professionals assistance program. The program is available to participating health-related licensing boards in conjunction with, or as an alternative to, other sanctions which a health-related board may impose upon its licensees pursuant to disciplinary actions within its jurisdiction;

(4) "Program personnel," persons or contracted entities employed by, or contracted with, the health professionals assistance program service committee to provide services for the health professionals assistance program.


36-2A-2. Joint health professionals assistance program. Health-related licensing boards listed under Title 36 may jointly conduct a health professionals assistance program to protect the
public from impaired persons regulated by the boards. The health professionals assistance program does not affect a board's authority to discipline violators of a board's practice act.


36-2A-3. Program service committee--Duties. The participating boards shall establish a program service committee consisting of one representative appointed by each participating board from its board membership or staff. The committee shall meet at least annually or as often as necessary to transact its business. The duties of the committee include:

(1) Establishing the annual health professionals assistance program budget and the pro rata share of program expenses to be borne by each participating board;

(2) Determining the qualifications, duties, and compensation for program personnel;

(3) Hiring program personnel or contracting with entities;

(4) Approving policies and procedures for the health professionals assistance program and providing guidance to the program personnel;

(5) Annually approving members of the health professionals assistance program evaluation committees as outlined in this chapter;

(6) Approving treatment facilities and services to which health professionals assistance program participants may be referred; and

(7) Conducting an annual evaluation of the health professionals assistance program.

Source: SL 1996, ch 227, § 3; SL 2013, ch 171, § 3.

36-2A-4. Evaluation committees. The health professionals assistance program service committee shall establish one or more evaluation committees. Each evaluation committee shall include one actively practicing licensed health care professional with demonstrated expertise in the field of mental health or substance use disorder from each health-related profession participating in the health professionals assistance program.


36-2A-5. Duties of evaluation committee. Duties of an evaluation committee include:

(1) Evaluate each applicant for admission to the health professionals assistance program according to criteria established pursuant to § 36-2A-14;

(2) Develop individual participation agreements for health professionals assistance program participants;
(3) Evaluation of any program participant for discharge according to criteria established pursuant to § 36-2A-14;

(4) Review participant progress and recommend amendments for participation agreements as indicated;

(5) Maintain the confidentiality of the names, identities, and treatments of applicants and participants considered by the committees; and

(6) Report any applicant who has been denied admission to the health professionals assistance program to the applicable participating licensing board.


36-2A-6. Application to program--Admission evaluation. Any applicant may access the health professionals assistance program by self-referral, board referral, or referral from another person or agency, such as an employer, coworker, or family member. An evaluation of the admission application shall be conducted by program personnel. The health professionals assistance program personnel shall advise the applicant of the program requirements and the implications of noncompliance and shall secure the cooperation of the applicant with the health professionals assistance program. Any applicant who refuses to cooperate with the program admission evaluation shall be reported to the applicable participating board or entity.


36-2A-7. Eligibility for program. Admission to the health professionals assistance program is available to any person who is impaired and:

(1) Holds licensure as a health care professional in this state;

(2) Is eligible for and in the process of applying for licensure as a health care professional in this state; or

(3) Is enrolled as a student in a program leading to licensure as a health care professional.


36-2A-8. Denial of admission to program. The evaluation committee may deny admission to the health professionals assistance program if the applicant:

(1) Is not eligible for licensure in this state;

(2) Diverted controlled substances for other than personal use;
(3) Creates too great a risk to the public by participating in the health professionals assistance program as determined by the evaluation committee and program personnel;

(4) Has engaged in sexual misconduct that meets the criteria for denial of admission established by the participating boards; or

(5) Has been terminated from any health professional assistance program.


36-2A-9. Program participation components. The health professionals assistance program participation components may include requirements for treatment and continuing care, worksite monitoring, practice restrictions, random drug screening, support group participation, filing of reports, and other requirements as necessary for successful completion of the health professionals assistance program.


36-2A-10. Fees and costs. Each health professionals assistance program participant shall pay an initial participation fee set pursuant to § 36-2A-14 as well as all costs associated with physical, psychosocial, or other related evaluations, treatment, and random drug screens.


36-2A-11. Termination of participation in program--Report to board. The health professionals assistance evaluation committee may terminate a person's participation in the program based upon:

(1) Failure to cooperate or comply with the individualized participation agreement; or

(2) Violation of the practice act of the applicable health care profession during participation in the program.

The evaluation committee shall report terminations to the applicable participating board.


36-2A-12. Confidentiality of program participants' records. All records of health professionals assistance program participants are confidential and are not subject to discovery or subpoena. Only authorized program personnel and health professionals assistance evaluation committee members may have access to participant records unless the participant voluntarily provides for written release of the information. A participating board may only have access to records of participants who were referred by the board, who refused to cooperate with the health professionals assistance program, or who have been terminated by the health professionals assistance program in accordance with § 36-2A-11. Records shall be maintained in accordance with § 36-2A-14.

36-2A-13. Immunity from liability for reports and actions related to duties. Any person, agency, institution, facility, or organization making reports to the participating board or health professionals assistance program regarding an individual suspected of practicing while impaired or reports of a participant's progress or lack of progress in the health professionals assistance program is immune from civil liability for submitting a report in good faith to the health professionals assistance program. Members and staff of the participating boards, health professionals assistance program evaluation committees, and health professionals assistance program personnel acting in good faith are immune from civil liability for any actions related to their duties under this chapter.


36-2A-14. Promulgation of rules. The Board of Nursing and the Board of Medical and Osteopathic Examiners, with the approval of the other participating boards, may jointly promulgate rules pursuant to chapter 1-26 for implementation of the health professionals assistance program, including:

(1) Committee structure and program personnel;

(2) Admission criteria;

(3) Criteria for denial of admission;

(4) Required participation components;

(5) Termination of participation and discharge criteria;

(6) Confidentiality and retention of program records;

(7) Annual evaluation of effectiveness of the program;

(8) Participation fees; and

(9) Procedures for establishing the annual budget and prorating program expenses.


36-2A-15. Determination of expenses to be borne by participating boards. The health professionals assistance program expenses to be borne by each participating board shall be determined by the health professionals assistance program service committee in accordance with § 36-2A-14.

STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
BETWEEN

SD Department of Health
SD Board of Nursing and Board of Medical and
Osteopathic Examiners
Health Professionals and Assistance Program
4305 South Louise Avenue Suite 201
Sioux Falls, SD 57106
Referred to as "State"

Midwest Health Management Services, LLC
3130 West 57th Street Suite 111
Sioux Falls, SD 57108
Referred to as "Consultant"

State and Consultant hereby enter into a contract for Professional Services.

I. CONSULTANT

A. The term of this Contract shall begin June 1, 2016 and end May 31, 2017.

B. Consultant is not a full or part-time employee of State or any agency of the state of
South Dakota.

C. Consultant, as an independent contractor, is solely responsible for the withholding and
payment of applicable income and Social Security taxes due and owing from money
received under this contract.

D. Consultant will not use equipment, supplies or facilities owned by the state of South
Dakota.

E. Consultant will not purchase capital assets or equipment using State funds.

F. Consultant agrees to:

1. The scope of work for the contracted Health Professionals Assistance
Program is separated into the areas of program administration and case
management. A program director with overall responsibility for the program,
case managers, a medical director and necessary support staff will be
required to manage all aspects of the program for all areas of the state.
Contractors must have experience in the area of mental health services and
substance use disorders. The Program Director must be a Master's level
prepared Licensed Professional Counselor and a licensed chemical
dependency counselor. Case managers must be licensed chemical
dependency counselors and master's prepared in mental health or related
field as licensed professional counselors. The program will assure that the
number of case managers will be sufficient to support a caseload that meets
the needs of the participating licensing boards. Licensed professionals will
have priority for program admission. The medical director must be a
licensed physician.

2. Program Administration:

   Overall responsibility for implementation of the SD Health Professionals
   Assistance Program (SDHPAP) in accordance with SDCL 36-2A including:
a. Coordination of the SDHPAP evaluation committee(s) throughout the state as needed for admission and monitoring of program applicants and participants. The evaluation committee structure and duties are defined in SDCL 36-2A.

b. Coordination of the SDHPAP service committee meetings on an annual basis or as often as necessary to transact its business. Provide an annual report of program activities to the service committee. The responsibilities of the program service committee are defined in SDCL 36-2A.

c. Establish and maintain an electronic system of management of program participant information, compliance monitoring and drug testing. Participating licensing boards will have access to all information on board mandated participants.

d. Develop and implement a mental health monitoring component of the SDHPAP in conjunction with the program service committee within 8 weeks of the contract implementation.

e. Consult with a medical director for the program that is a licensed physician, preferably a board certified physician in the areas of addiction medicine and psychiatry.

f. Develop and maintain updated criteria for approval of substance use disorder/mental health services to which program participants may be referred within the state of SD and for specialized services in other states.

g. Coordinate clinical services and resources with providers for access as needed by program participants.

h. Assure that appropriate levels of confidentiality are maintained for the program as defined in SDCL-36-2A as well as all other applicable state and federal standards.

i. Recommend the development and review of policies and procedures for the SDHPAP program for approval by the program service committee on an ongoing basis in accordance with local and national standards of practice for the treatment of substance use and mental health disorders.

j. Provide educational seminars for healthcare providers and facilities to promote understanding and access to the SDHPAP.

k. Serve a public spokesperson for the SDHPAP.

l. Provide a liaison to each of the health care licensing boards participating in the SDHPAP for the purpose of information sharing and management of board referred program participants.

m. Supervise all personnel involved in the program implementation.
n. Provide utilization reports to the licensing boards for the purpose of financial management.

3. Case Management Services:

Case management services are provided by staff in conjunction with the evaluation committee. The case management services include all aspects of program participation to enhance the wellness of the program participants and maintain public safety requirements. Functions include the following activities:

a. Implementation of participation agreements, making indicated changes according to need.

b. Facilitate the management of referral to clinical services as the need arises

c. Facilitate and manage the delivery of support groups for participants.

d. Coordinate all aspects of compliance monitoring as it relates to the individual treatment program. Examples of compliance monitoring include but are not limited to: completing quarterly meetings, random drug screens, support group attendance, referrals for treatment and continuing care, practice restrictions, work site reports, and the filing of any other necessary reports.

e. Maintain participant records in accordance with established policy.

f. Maintain confidentiality of program participants.

G. INSURANCE: Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:
Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than $1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:
Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:
Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than $1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

4. Worker’s Compensation Insurance:
Consultant shall procure and maintain workers’ compensation and employers’ liability insurance as required by South Dakota law.
5. Certificates of Insurance:
Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State’s Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

II. STATE

A. State will pay, upon State's satisfaction that services have been completed, up to $400,000.00 with Board of Nursing and Board of Medical and Osteopathic Examiners each paying $200,000.00.

B. State will not pay Consultant expenses as a separate item.

C. TOTAL CONTRACT AMOUNT (Not to Exceed) $400,000.00. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.

D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30th, shall be submitted no later than June 15th so payment may be made in the same Fiscal Year as the services are provided.

E. State agrees to:

1. Except for such discretion as is provided, to give full and complete discretion in the conduct for the duties and responsibilities set for in state law and SD Administrative Law.
2. Provide access to disciplinary records as necessary for Board referral of participants in the SDHPAP program.
3. Pay monthly for services rendered.

III. OTHER PROVISIONS

A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
B. INTEGRATION: This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.

C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.

D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.


F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12548, including Debarment and Suspension and Participant Responsibilities, 29 C.F.R. § 9.510 (1980).

G. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.

H. NONASSIGNMENT/SUBCONTRACTING: Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

I. FEDERAL AND STATE LAWS: Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-1213, and any amendments thereof, Section 306 of the Clean Air Act, and Section 306 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.

J. OWNERSHIP: All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.

K. REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE: Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability.
L. SEVERABILITY: In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.

M. AUDIT REQUIREMENTS: (EXPENDING $750,000 OR MORE)
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending $750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General’s approval should be obtained annually. The auditor must follow the Auditor General’s guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filled with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor’s report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.

N. FORCE MAJEURE: Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure”. As used in this contract, “force majeure” means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

O. CONTRACT ORIGINAL AND COPIES: An original of this contract will be retained by the State Auditor’s Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.

P. RECORD RETENTION/EXAMINATION: Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.

Q. LICENSING AND COMPLIANCE: The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant’s failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

R. CONFIDENTIALITY OF INFORMATION: For the purpose of the sub-paragraph, “State Proprietary information” shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State’s information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State’s officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State’s information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State’s Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5.
modified by SDCL 1-27-1.6, SDCL 28-1-28, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party’s rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

S. CONFLICT OF INTEREST: Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain. Any potential conflict of interest must be disclosed in writing.

T. RECYCLING: State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

Maria Eining
Midwest Health Management Services, LLC

Date

Gloria Damgaard
Executive Secretary
SD Board of Nursing

Date

Joan Adam, Director
Division of Administration
Department of Health

Date

Margaret Hansen
Executive Secretary
SD Board of Medical & Osteopathic Examiners

Date

Kari J. Williams
Administrator, Financial Management
Department of Health

Date

State Contact Person: Gloria Damgaard
Phone: (605) 362-2760

Consultant Contact Person: Maria Eining
Phone: (605) 275-4711

The following shall be completed by the Consultant:
Nonprofit _____ Profit _____
Consultant fiscal year beginning _____ and ending _____

The following shall be completed by the State:
MSA Account code 5 2 0 4

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<th>Fund Source Name:</th>
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STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
BETWEEN

Midwest Health Management Services, LLC
3130 West 57th Street, Suite 111
Sioux Falls, SD 57108
Referred to as "Consultant"

SD Department of Health
SD Board of Dentistry
P.O. Box 1079
Pierre, SD 57501
Referred to as "State"

State and Consultant hereby enter into a contract for Professional Services.

I. CONSULTANT

A. The term of this Contract shall begin June 1, 2016 and end May 31, 2017.

B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.

C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.

D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.

E. Consultant will not purchase capital assets or equipment using State funds.

F. Consultant agrees to:

1. Provide monitored recovery services for Board licensees, registrants, or students who have been accepted into a professional program leading to licensure or registration with the Board;

2. In accordance with SDCL 36 2-A, provide documentation to the Board for individuals who have been mandated by the Board to participate in services provided by Consultant. For individuals who voluntarily access the program, aggregate data will be provided to the Board. If a voluntary participant is unable to successfully complete the program, Consultant will provide a report to the Board in accordance with SDCL 36-2A.

G. INSURANCE: Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:
Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than $1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:
Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.
3. **Business Automobile Liability Insurance:**
Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than $1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

4. **Worker's Compensation Insurance:**
Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. **Certificates of Insurance:**
Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

II. **STATE**

A. **State will pay,** upon State's satisfaction that services have been completed, up to $10,000.00.

B. **State will not pay** Consultant expenses as a separate item

C. **TOTAL CONTRACT AMOUNT (Not to Exceed) $10,000.00.** Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.

D. **State will not be held liable for reimbursement of amounts shown on an itemized billing if** not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30th, shall be submitted no later than June 9th so payment may be made in the same Fiscal Year as the services are provided.

E. **State agrees to:** The State will pay upon State's satisfaction that services have been completed.
OTHER PROVISIONS

A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.

B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.

C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.

D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.


F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (500 East Capitol Avenue, Pierre, SD 57501 (605) 773-3351), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves Federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).

G. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.

H. NONASSIGNMENT/SUBCONTRACTING: Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

I. FEDERAL AND STATE LAWS: Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.

J. OWNERSHIP: All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either
the original, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.

K. REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE: Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant’s obligation to report any event to law enforcement or other entities as required by law.

L. SEVERABILITY: In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.

M. AUDIT REQUIREMENTS: (EXPENDING $750,000 OR MORE)
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending $750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapele, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General’s approval should be obtained annually. The auditor must follow the Auditor General’s guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor’s report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.

N. FORCE MAJEURE: Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure”. As used in this contract, “force majeure” means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

O. CONTRACT ORIGINAL AND COPIES: An original of this contract will be retained by the State Auditor’s Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.

P. RECORD RETENTION/EXAMINATION: Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.

Q. LICENSING AND COMPLIANCE: The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant’s failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

R. CONFIDENTIALITY OF INFORMATION: For the purpose of the sub-paragraph, “State Proprietary Information” shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State’s information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State’s officers or employees having authority to disclose such information; (iv) was...
independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-25, SDCL 28-1-32, and SDCL 28-1-88 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

S. CONFLICT OF INTEREST: Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational or conflict of interest, or personal gain. Any potential conflict of interest must be disclosed in writing.

T. RECYCLING: State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

Joan Adam, Director
Division of Administration
Department of Health
Date: 6/27/14

Board President
SD Board of Dentistry
Date: 6/17/2016

Kari J. Williams
Administrator, Financial Management
Department of Health
Date: 7-1-16

Consultant Signature
Date: 5-31-16

State Contact Person: Brittany Novotny
Phone: (605) 224-8118

Consultant Contact Person: Maria Eining
Phone: (605) 275-4711

The following shall be completed by the Consultant:

Nonprofit_____ Profit_____
Consultant fiscal year beginning _____ and ending _____

The following shall be completed by the State:

MSA Account code 5204 ______________________

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<th>Fund Source Name:</th>
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