

APPENDIX H-2

PERFORMANCE GUARANTEE REQUIREMENTS AND DOCUMENTS

The Contractor shall provide for the benefit of EOHHS documentation of any combination of: a restricted cash reserve; a performance bond of standard commercial scope issued by a surety company doing business in the State; an irrevocable letter of credit; or a written guarantee from the Contractor's parent or organization (hereafter, collectively, the Performance Guarantees) for as long as the Contractor has outstanding liabilities relating to the Contract of \$500,000 or more, or for 15 months after the termination or expiration date of the Contract, whichever is later. The Performance Guarantees shall guarantee, in the event of insolvency or for any other reason that the Contractor fails to meet such obligations: (1) payment of the Contractor's obligations to Providers, Non-Network Providers, and other obligees, if any, under the Contract; and (2) performance by the Contractor of its obligations under the Contract.

All documents constituting evidence of or related to the Performance Guarantees shall be submitted to EOHHS for prior review and approval.

1. A cash reserve payable to EOHHS and maintained in a restricted, segregated escrow account in:
 - a. a bank doing business in the Commonwealth and insured by the Federal Deposit Insurance Corporation, or
 - b. a savings and loan association doing business in the Commonwealth and insured by the Federal Savings and Loan Insurance Corporation, or
 - c. a credit union doing business in the Commonwealth and insured by the National Credit Union Association.
2. A performance bond shall be payable to EOHHS, an agency of the Commonwealth of Massachusetts. In the event that the performance bond obtained by the Contractor must be renewed on a periodic basis, Contractor agrees that at least ninety (90) days prior to the expiration of the then current term of the performance bond, Contractor shall pursue extension of the performance bond through the next succeeding term, and by thirty (30) days prior to said expiration, shall obtain a Continuation Certificate from the surety company, and shall immediately thereafter provide a copy of said Continuation Certificate and other written evidence of such continuation of the performance bond to EOHHS. In the event Contractor is unable to obtain a continuation of the then-current performance bond, Contractor shall immediately notify EOHHS and shall obtain another form of financial guarantee prior to the expiration of the performance bond.
3. An irrevocable letter of credit shall be payable to EOHHS, an agency of the Commonwealth of Massachusetts, and issued by:
 - a. a bank doing business in the Commonwealth and insured by the Federal Deposit Insurance Corporation, or
 - b. a savings and loan association doing business in the Commonwealth and insured by the Federal Savings and Loan Insurance Corporation, or

- c. a credit union doing business in the Commonwealth and insured by the National Credit Union Association.
4. A written guarantee from the Contractor's parent or organization indicating that the Contractor's parent or organization agrees to undertake the Contractor's complete obligations under the Contract in the event of default in the Contractor's performance.

In the event of the Contractor's insolvency or a default by the Contractor under the Contract, EOHHS shall, in addition to any other remedies it may have under the Contract, obtain payment under the Performance Guarantees for the purposes of the following:

1. paying any damages sustained by Providers, Non-Network Providers and other obligees, if any, under the Contract by reason of a breach of the Contractor's obligations under the Contract;
2. reimbursing EOHHS for any payments made by EOHHS on behalf of the Contractor; and
3. reimbursing EOHHS for any extraordinary administrative expenses incurred by reason of a breach of the Contractor's obligations under the Contract, including, but not limited to, expenses incurred after termination of the Contract by EOHHS for reasons other than the convenience of the State.

In the event EOHHS agrees to accept substitute security in lieu of the Performance Guarantees as defined herein, the Contractor agrees to execute any and all documents and perform any and all acts necessary to secure and enforce EOHHS's security interest in such substitute security including, but not limited to, security agreements and necessary UCC filing pursuant to the Massachusetts Uniform Commercial Code. In the event such substitute security is agreed to and accepted by EOHHS, the Contractor acknowledges that it has granted EOHHS a security interest in such substitute security to secure performance of its obligations under the Contract. The Contractor is solely responsible for establishing the credit-worthiness of all forms of substitute security. EOHHS may, after written notice to the Contractor, withdraw its permission for substitute security, in which case the Contractor shall provide EOHHS with the Performance Guarantees as herein described.

AMOUNT

The Contractor may, subject to EOHHS's review and approval, obtain in any combination a performance bond, letter of credit or cash reserve. The combination of all such Performance Guarantees must be maintained in an amount equal to 45 days of the Contractor's covered services capitation payment revenue for the Contract Year, as projected by EOHHS.

1. The amount of the Performance Guarantees shall be established by EOHHS prior to the start of each Contract Year. This requirement must be satisfied by Contractor not later than 15 days after notification by EOHHS of the amount required.
2. EOHHS may require an increase in the amount of the financial stability requirement throughout the Contract Year. The Contractor shall have 15 days after notification by EOHHS to meet the new requirement.

The Performance Guarantees that must be maintained after the Contract term shall be the lesser of (1) the amount of the Performance Guarantee on the last day of the Contract; or (2) the total amount of outstanding liabilities related to the Contract, as determined by EOHHS in its sole discretion.

GUARANTEES OF THE CORPORATE PARENTS OR GENERAL PARTNERS OF THE CONTRACTOR

Without limiting any of the foregoing, EOHHS reserves the right to require that shareholders, general partners of the Contractor, its parent(s), or all of the foregoing provide personal guarantees or stock pledges, or both, in order to guarantee and secure any obligations set forth in this section in excess of the amounts of the Performance Guarantees.

REPORTING

If the Performance Guarantee is fulfilled with a cash reserve according to **Section 2.15.B.1.d.1** of the Contract, the Contractor shall submit monthly documentation (including bank statements) to EOHHS confirming that a cash reserve meeting the requirements of this section is maintained on the same schedule as the monthly financial reports required under **Appendix E-4**.