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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 82-2018

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED
07/11/2018 8:19 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Revisions to CCO Recertification Requirements Necessary to Align with 2019 Contract Extensions

EFFECTIVE DATE: 07/15/2018 THROUGH 10/02/2018

AGENCY APPROVED DATE: 07/10/2018

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NEED FOR THE RULE(S):

The Division needs to amend these rules to ensure that there is continuity of services for members who are currently enrolled in CCOs until the next contract cycle.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits. These rules need to be adopted promptly so that the Authority may ensure that there is continuity of services for members who are currently enrolled in CCOs until the next contract cycle.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

AMEND: 410-141-3010

SUSPEND: Temporary 410-141-3010 from DMAP 20-2018

RULE SUMMARY: The current CCO contract and rules require that the holder of the contract be a certified CCO. Because of how the certifications were completed and the current timing of the contract expiration, there will need to be a "bridging" certification to ensure that there is continuity of services for members who are currently enrolled in CCOs until the next contract cycle. This bridging will bring the certification dates in alignment with the contract expiration of December 31, 2019. The bridging procedure needs to be effective by August 1, 2018. To accomplish this, OHA will be extending the certification by amending the OAR so that certification will be extended until the end of the contract.

CHANGES TO RULE:

410-141-3010

CCO Application, Certification, and Contracting Procedures ¶

- (1) The Authority shall establish an application process for entities seeking certification and contracts as CCOs.¶
- (2) The Authority shall use the following RFA processes for CCO certification and contracting:¶
- (a) The Authority shall provide public notice of every RFA on its website. The RFA shall indicate how prospective applicants ~~will be~~ made aware of addenda by posting notice of the RFA on the electronic system for notification to the public of Authority procurement opportunities or, upon request, by mailing notice of the availability of the RFA to persons that have expressed interest in the RFA;¶
- (b) The RFA process begins with a public notice that shall be communicated using the Authority's website. A public notice of an RFA shall identify the certification requirements for the contract, the designated service areas where coordinated care services are requested, and a sample contract;¶
- (c) The RFA may specify that applicants must submit a letter of intent to the Authority within the specified time period. The letter of intent does not commit any applicant to apply. If a letter of intent is required, the Authority may not consider applications from applicants who fail to submit a timely letter of intent except as provided in the RFA;¶
- (d) The RFA may request applicants to appear at a public meeting to provide information about the application;¶
- (e) The RFA ~~wish~~ shall request information from applicants ~~in order~~ to allow the Authority to engage in appropriate state supervision necessary to promote state action immunity under state and federal antitrust laws;¶
- (f) The Authority shall consider only applications that are responsive, completed as described in the RFA, and submitted in the time and manner described in the RFA. The RFA may require submission of the application on its web portal in accordance with OAR 137-047-0330 Electronic Procurements. If electronic procurement is used, applications shall be accepted only from applicants who accept the terms and conditions for use of the Authority's web portal.¶
- (3) ~~At r~~ Recertification the Authority may p shall be valid for the duration of the CCO's contract term, unless OHA specifies a different term. The Authority may use the following processes for recertification:¶
- (a) Permit a current CCO contractor to submit an abbreviated application that focuses only on additional or different requirements specific to the recertification and new contract or the new addenda or capacity or other purposes within the scope of the RFA; or¶
- (b) Use existing contract deliverables to make a recertification determination. ¶
- (4) The Authority shall evaluate applications for certification ~~on the basis~~ of criteria in OAR 410-141-3015, information contained in the RFA, the application, and any additional information that the Authority obtains. Application evaluations shall be based on RFA criteria:¶
- (a) The Authority may enter ~~into~~ negotiation with applicants concerning potential capacity and enrollment in relation to other available or potentially available capacity; the number of potential enrollees within the service area; and other factors identified in the RFA;¶
- (b) The Authority shall notify each applicant that applies for certification of its certification status;¶
- (c) Applicants that meet the RFA criteria shall be certified to contract as a CCO.¶
- (5) Review for certification:¶
- (a) The Authority shall issue certification only to applicants that meet the criteria in OAR 410-141-3015, meet the requirements, and provide the assurances specified in the RFA. The Authority determines whether the applicant qualifies for certification based on the application and any additional information and investigation that the Authority may require;¶
- (b) The Authority determines an applicant is eligible for certification when the applicant meets the requirements of the RFA including written assurances satisfactory to the Authority that the applicant:¶
- (A) Provides ~~or will provide~~ the coordinated care services in the manner described in the RFA and the Authority's rules;¶
- (B) Is responsible and meets ~~or will meet~~ standards established by the Authority and DCBS for financial reporting and solvency;¶
- (C) Is organized and operated and shall continue to be organized and operated in the manner required by the contract and described in the application; and.¶

(D) Shall comply with any assurances it ~~has given~~ the Authority.¶

(6) The Authority shall certify CCOs for a period of six years from the date the certification application is approved, unless the Authority certifies a CCO for a shorter period.¶

(7) The Authority may determine that an applicant is potentially eligible for certification in accordance with section (9). The Authority is not obligated to determine whether an applicant is potentially eligible for certification if, in its discretion, the Authority determines that sufficient applicants eligible for certification are available to attain the Authority's objectives under the RFA.¶

(8) The Authority may determine that an applicant is potentially eligible for certification if:¶

(a) The Authority finds that the applicant is reasonably capable of meeting the operational and solvency requirements of the RFA within a specified period of time; and¶

(b) The applicant enters into discussions with the Authority about areas of qualification that must be met before the applicant is operationally and financially eligible for certification. The Authority shall determine the date and required documentation and written assurances required from the applicant;¶

(c) If the Authority determines that an applicant potentially eligible for certification cannot become certified within the time announced in the RFA for contract award, the Authority may:¶

(A) Offer certification at a future date when the applicant demonstrates to the Authority's satisfaction that the applicant is eligible for certification within the scope of the RFA; or¶

(B) Inform the applicant that it is not eligible for certification.¶

(9) The Authority may award contracts to certified CCOs for administering the Oregon Integrated and Coordinated Health Care Delivery System.¶

(10) The Authority shall enter into ~~or renew a~~ new contract or contract renewal with a CCO only if the CCO has been certified and the Authority determines that the contract would be within the scope of the RFA and consistent with the purposes and effective administration of the Oregon Integrated and Coordinated Health Care Delivery System that includes but is not limited to:¶

(a) The capacity of any existing CCO in the region compared to the capacity of an additional CCO for the number of potential enrollees in the addenda;¶

(b) The number of CCOs in the region.¶

(11) The application is the applicant's offer to enter into a contract and is a firm offer for the period specified in the RFA. The Authority's award of the contract constitutes acceptance of the offer and binds the applicant to the contract:¶

(a) Except to the extent the applicant is authorized to propose certain terms and conditions pursuant to the RFA, an applicant may not make its offer contingent on the Authority's acceptance of any terms or conditions other than those contained in the RFA;¶

(b) Only an entity that the Authority ~~has~~ certified to contract as a CCO may enter into a contract as a CCO. Certification to contract as a CCO does not assure the CCO ~~that it will be offered a contract~~;¶

(c) The Authority may award multiple contracts or make a single award or limited number of awards to all certified or potentially certified applicants ~~in order~~ to meet the Authority's needs, including but not limited to adequate capacity for the potential enrollees in the service area, maximizing the availability of coordinated care services, and achieving the objectives in the RFA;¶

(d) Subject to any limitations in the RFA, the Authority may ~~renew~~ execute a contract renewal for CCO services by amending an existing contract or issuing a replacement contract without issuing a new RFA;¶

(e) The suspension or termination of a CCO contract issued under an RFA due to noncompliance with contract requirements or by a CCO's voluntary suspension or termination shall also be a suspension or termination of certification.¶

(12) Disclosure of application contents and release of information:¶

(a) Except for the letter of intent to apply and the technical application (~~with the exception of~~ except for information that has been clearly identified and labeled confidential in the manner specified in the RFA), information may not be disclosed to any applicant or the public until the award date. No information may be given to any applicant or the public relative to its standing with other applicants before the award date except under the

following circumstances:-¶¶

(A) The information in the application may be shared with the Authority, DCBS, CMS, and those individuals involved in the application review and evaluation process; and-¶¶

(B) Information may be provided by the applicant to the public as part of a public review process.-¶¶

(b) Application information may be disclosed on the award date (~~with the exception of~~except for information that has been clearly identified and labeled confidential in the manner specified in the RFA) if the Authority determines it meets the disclosure exemption requirements.-¶¶

~~(13) CCOs may apply to participate in the CMS Medicare/Medicaid Alignment Demonstration, but participation is not required. This rule does not replace the CMS requirements related to the Medicare/Medicaid Alignment Demonstration, such as the CMS notice of intent to apply and required components for Part D coverage. The RFA provides information about the demonstration requirements. Upon approval of the demonstration by CMS, the Authority shall conduct jointly with CMS the evaluation for certification for the Medicare/Medicaid Alignment Demonstration and the award of three-way contracts between CMS, the state, and applicants who have been certified to contract as a CCO and participate in the demonstration.-¶¶~~

~~(14) The Authority shall interpret and apply this rule to satisfy federal procurement and contracting requirements in addition to state requirements applicable to contracts with CCOs. The Authority must seek and receive federal approval of CCO contracts.-¶¶~~

~~(15) Except where inconsistent with the preceding sections of this rule, the Authority adopts the following Department of Justice (DOJ) Model Public Contract Rules (as in effect on January 1, 2012) to govern RFAs and certification and contracting with CCOs:-¶¶~~

~~(a) OAR 137-046-- General Provisions Related to Public Contracting: OARs 137-046-0100, 137-046-0110, and 137-046-0400 through 137-046-0480;-¶¶~~

~~(b) OAR 137-047-- Public Procurements for Goods or Services: OARs 137-047-0100, 137-047-0260 through 137-047-0670, 137-047-700 to 137-047-0760 (excluding provisions governing judicial review), and 137-047-0800;-¶¶~~

~~(c) In applying the DOJ Model Rules to RFAs under this rule:-¶¶~~

~~(A) An application is a proposal under the DOJ Model Rules;-¶¶~~

~~(B) An RFA is an RFP under the DOJ Model Rules;-¶¶~~

~~(C) Certification as a CCO is pre-qualification under the DOJ Model Rules;-¶¶~~

~~(D) Provisions of the Public Contracting Code referenced in the DOJ Model Rules are ~~considered to be~~ incorporated therein;-¶¶~~

~~(E) Definitions in the DOJ Model Rules govern this rule except where a term is defined in section (1) of this rule.-¶¶~~

~~(16) Judicial review of the Authority's decisions relating to a solicitation protest, certification, or contract award is governed by the Oregon Administrative Procedures Act (APA). The RFA may establish when an Authority decision may be considered a final order for purposes of APA review.~~

Statutory/Other Authority: ORS 414.615, 414.625, 414.635, 414.651, 413.042

Statutes/Other Implemented: ORS 414.610 - 414.685