

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**DAVID W. SMITH and DONALD  
LAMBRECHT,  
Petitioners,**

**v.**

**GOVERNOR THOMAS W. WOLF, in his  
official capacity as Governor of the  
Commonwealth of Pennsylvania and  
COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF HUMAN SERVICES,  
Respondents.**

**No. 177 MD 2015  
ORIGINAL  
JURISDICTION**

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**PETITIONERS' APPLICATION FOR ENFORCEMENT OF PERMANENT INJUNCTION**

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Petitioners David W. Smith ("Mr. Smith") and Donald Lambrecht ("Mr. Lambrecht") (collectively, "Petitioners"), pursuant to Pennsylvania Rule of Appellate Procedure 1701(b)(1) and (2), request enforcement of this Court's order in the above-captioned matter as against Respondents Governor Thomas W. Wolf ("Gov. Wolf") and the Department of Human Services ("Department" or "DHS") (collectively, "Respondents"):<sup>1</sup>

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<sup>1</sup> By way of notice to this Court, because Mr. Smith is unable to travel and Mr. Lambrecht is unable to leave Mr. Smith unattended, Petitioners will request that, should their participation be necessary, they participate in any court proceedings by telephone. Additionally, lead counsel for Petitioners will be out of the Commonwealth July 17–21, 2017.

## INTRODUCTION

1. This Court's permanent injunction in this matter prohibited Gov. Wolf and the Department from "taking any future actions in accordance with" certain sections of Executive Order 2015-05 ("Executive Order") on the basis that the Executive Order allowed a labor organization to insert itself into the relationship between Direct Care Workers ("DCWs") and those for whom they care. A true and correct copy of this Court's final majority Opinion and Order<sup>2</sup> ("Majority Opinion") on the merits is incorporated and attached as "Exhibit A." Majority Op. 7.

2. One such section of the Executive Order, if not enjoined, would have allowed Respondents and the DCW Representative to "[d]evelop[ ] an orientation program for [DCWs] working in a Home Care Services Program." A true and correct copy of the Executive Order is attached hereto as "Exhibit B." Executive Order, at 3.b(2)(f).

3. Despite this Court's permanent injunction, Respondents have nevertheless established such an orientation program, made it mandatory for many DCWs, ensured that the program is conducted by an organization intimately

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<sup>2</sup> This Court adopted and applied its analysis in Markham v. Wolf, 147 A.3d 1259 (Pa. Cmwlth. 2016), to this matter, and reached substantively the same conclusion in both matters

connected to the former DCW Representative, and even forced DCWs attending the mandatory orientation into an “[i]ntroduction to a DCW representative.” A true and correct copy of the Grant Agreement, Amendment 3, is attached as “Exhibit C” and incorporated herein by reference. Ex. C, at Rider 3 ¶ 5.c.

### **PROCEDURAL HISTORY & FACTS**

4. On February 27, 2015, Gov. Wolf issued the Executive Order. Ex. B.
5. On October 14, 2016, this Court issued in this matter a Majority Opinion on the merits. Ex. A.
6. The Majority Opinion, in sum,
  - a. invalidated sections of the Executive Order permitting a DCW Representative to bargain for terms and conditions of employment;
  - b. declared any past actions taken pursuant to those sections void ab initio;
  - c. entered a permanent injunction prohibiting Respondents from “taking any future actions in accordance with” certain sections of the Executive Order, Majority Op. 7; and
  - d. overruled Gov. Wolf’s and the Department’s ripeness claims.

7. On October 24, 2016, Gov. Wolf and the Department filed a notice of appeal to the Pennsylvania Supreme Court, where the parties have now fully briefed the issues on appeal.

8. On November 10, 2016, this Court issued a Memorandum Opinion and Order permanently vacating the automatic supersedeas and restoring the permanent injunction issued in the Majority Opinion. A true and correct copy of this Court's Memorandum and Opinion vacating the automatic supersedeas is attached hereto as "Exhibit D."

9. This Court specified that its Memorandum and Opinion vacating the automatic supersedeas and restoring the permanent injunction

shall not preclude Respondents from communicating with DCWs as is necessary to perform their duties, in the manner the parties communicated prior to issuance of Executive Order 2015-05.

Ex. D, at 5.

10. Executive Order 2015-05 would have required that the Department and the so-called "DCW Representative" discuss, among other changes to terms and conditions of DCWs' employment, "[d]evelopment of an orientation program for [DCWs]." Executive Order, at 3.b(2)(f).

11. The DCW Representative “elected” by DCWs pursuant to the Executive Order was the United Homecare Workers of Pennsylvania (“UHCWP”), a joint effort of the Service Employees International Union (“SEIU”) and American Federation of State, County, and Municipal Employees. Markham, 147 A.3d at 1268.

### RECENT DEVELOPMENTS

12. On or about February 23, 2017, the Department executed an amendment to its Grant Agreement with Public Partnerships, LLC (“PPL”), a Department contractor enlisted to provide financial management services to DCWs, including Mr. Lambrecht. Ex. C.

13. Pursuant to the Grant Agreement, PPL must require many DCWs to undergo mandatory “DCW Program Orientation.” Ex. C, at Rider 3 ¶ 5. DCWs’ attendance must be “in-person” unless impossible “due to geographic limitations.” Id.

14. Mandatory orientation for DCWs did not exist prior to issuance of Executive Order 2015-05.

15. DCW Program Orientation must include, “at a minimum,” an “[i]ntroduction to a DCW representative.” Id. at ¶ 5.c.

16. PPL must provide DCW Program Orientation using unnamed “DHS approved sub-contractors.” Id. at ¶ 5. Accordingly, the DCW Program Orientation subcontract was not awarded by competitive sealed bidding pursuant to section 512 of the Commonwealth Procurement Code, 62 Pa.C.S. § 512.

17. The budgeted annual payment to such “approved” subcontractor is \$1,250,000.00. Ex. C, at 24; see also Letter from the Department to PPL, dated May 11, 2017 (“Funding Increase Letter”). A true and correct copy of the Funding Increase Letter is attached hereto as “Exhibit E.”

18. The approved subcontractor selected by Respondents turns out to be “The Training and Education Fund” (“Fund”) a nonprofit organization with an initial registered office address shared with UHCWP and the SEIU. A true and correct copy of the Fund’s Articles of Incorporation is attached hereto as “Exhibit F.”

19. The Fund’s Articles of Incorporation were filed on November 23, 2016, less than two weeks after this Court’s Memorandum Opinion and Order vacating the automatic supersedeas in this matter. Ex. F.

20. Materials disseminated to DCWs reveal that the DCW Program Orientation was the product of discussions between PPL and the Fund beginning

as early as January 2017. A true and correct copy of the document “Direct Care Worker Orientation Information” is attached thereto as “Exhibit G.”

21. Respondents violated the terms of the permanent injunction in this matter by imposing on DCWs a mandatory orientation program, an activity in accordance with—indeed, specifically intended by—the Executive Order, violating the permanent injunction entered by this Court.

22. Additionally, Respondents violated the terms of the permanent injunction by requiring, at such orientation, that DCWs receive an “[i]ntroduction to a DCW representative,” Ex. C at Rider 3 ¶ 5.c, a person or entity providing services in accordance with—in fact, a central feature of—the Executive Order, violating the permanent injunction entered by this Court.

23. Respondents further violated the terms of the permanent injunction by enlisting and paying the Fund, an entity closely linked to the UHCWP, \$1,250,000 to provide the mandatory orientation program.

**WHEREFORE**, Petitioners request that, after Respondents’ response to this Application is submitted in 14 days, this Court hold a hearing and ultimately enforce its order, preserve the status quo, and, if necessary, hold Respondents in contempt for violation of the permanent injunction entered in this matter.

Respectfully submitted,

THE FAIRNESS CENTER

July 14, 2017

A handwritten signature in black ink, appearing to read "David R. Osborne", is written over a solid horizontal line.

**David R. Osborne**

PA Attorney ID#: 318024

**Karin M. Sweigart**

PA Attorney ID#: 317970

225 State Street, Suite 303

Harrisburg, PA 17101

844-293-1001

david@fairnesscenter.org

karin@fairnesscenter.org

*Counsel for Petitioners*

# **Exhibit A**

*Commonwealth Court's final majority Opinion and Order on the merits,  
October 14, 2016*



Petitioners assert the Executive Order is an unauthorized exercise of power, is unconstitutional and is in conflict with existing labor and health laws. Respondents counter that Petitioners' claims are not ripe and their challenge lacks merit. Addressing similar contentions, this Court recently analyzed the validity of the Executive Order in Markham v. Wolf, \_\_\_ A.3d \_\_\_ (Pa. Cmwlth., No. 176 M.D. 2015, filed September 22, 2016) (en banc) (Markham). Following Markham, we grant Petitioners' application for summary relief as to those provisions of the Executive Order declared invalid (Sections 3 and 4, and parts of Sections 1 and 5). Also, we deny Respondents' application for summary relief as to the invalid provisions of the Executive Order. Further, we overrule their preliminary objections to the extent they are not mooted by our decision on the merits.

### **I. Background**

Other than the identity of the Petitioners, the background of this case is substantially similar to that set forth in Markham. Therefore, we incorporate the "Background," including terminology, from Markham by reference.

Petitioners here filed a petition for review containing identical claims to those contained in the petition for review the petitioners in Markham filed. Respondents filed preliminary objections to the petition for review. Specifically, they allege the action is not ripe because Petitioners raise purely speculative harm. Respondents also object in the nature of a demurrer to the claims that the Executive Order does the following: exceeds the Governor's authority; conflicts with statutory authority, (the Attendant Care Services Act,<sup>1</sup> (Act 150) the

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<sup>1</sup> Act of December 10, 1986, P.L. 1477, as amended, 62 P.S. §§3051-3058.

Pennsylvania Labor Relations Act<sup>2</sup> (PLRA), and the Public Employe Relations Act<sup>3</sup> (PERA)); and, violates the PLRA or PERA.

Lambrecht is a DCW who provides personal care to Smith, a participant in a Home Care Program through Act 150. Lambrecht has provided services to Smith for more than 25 years. Petitioners claim a direct, substantial and present interest in the controversy.

Petitioners allege the Executive Order interferes with the unique relationship between a DCW providing in-home care, and the participant who employs him. Specifically, Smith alleges “the insertion of a union between he and his [DCW] will limit [his] authority ... to make decisions about, direct the provision of, and control his direct care services.” Pet. for Review, ¶3. Respondents thus disturb the employment relationship, creating a barrier and alternative communication structure regarding terms and conditions. Lambrecht also claims injury in that his “name and home address will be made available to employee organizations for the purpose of canvassing and recruitment, and he will be subjected to unwanted exclusive representation by a labor organization ... [that] may materially alter the terms and conditions of [his] employment.” *Id.*, ¶4. Moreover, Lambrecht alleges he did not want representation by UHCWP. As a result, he is harmed because such representation is required for at least one year under the Executive Order’s terms.

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<sup>2</sup> Act of June 1, 1937, P.L. 1168, as amended, 43 P.S. §§211.1-13.

<sup>3</sup> Act of July 23, 1970, P.L. 563, as amended, 43 P.S. §§1101.101-2301.

The parties entered into stipulations prior to the preliminary injunction hearing in April 2015. Then President Judge Dan Pellegrini conducted the hearing, after which he issued a preliminary injunction order identical to the order issued in Markham. The parties then entered into a second stipulation in June 2015.

After briefing, and hearing argument seriatim with Markham, this case is ready for disposition.

## **II. Discussion**

The underlying claims are the same as those set forth in Markham. Accordingly, we adopt our analysis that applies to this case. However, we analyze Respondents' preliminary objection to the ripeness of Petitioners' claim separately.

### **A. Preliminary Objections**

“The question of standing is rooted in the notion that for a party to maintain a challenge to an official order or action, he must be aggrieved in that his rights have been invaded or infringed.” Franklin Twp. v. Dep't of Env'tl. Res., 452 A.2d 718, 719 (Pa. 1982). Ripeness involves a related challenge to whether the injury alleged is speculative as opposed to real and concrete. See Robinson Twp., Washington Cnty. v. Com., 83 A.3d 901 (Pa. 2013) (recognizing overlap between doctrines of standing and ripeness, especially as to allegations of speculative harm).

Our Supreme Court recognized DCWs and participants are sufficiently impacted by the Executive Order “from a standing perspective.” Markham v. Wolf, 136 A.3d 134, 146 (Pa. 2016). Here, Petitioners are a DCW

and a participant who fostered a unique relationship over more than 25 years. They have an interest in maintaining the integrity of their relationship. Moreover, participants have a direct, substantial and immediate interest in maintaining control over their relationship with DCWs, which control is protected by Act 150.

Petitioners allege the Executive Order causes harm in that it interferes with the unique DCW-participant relationship by inserting the Department in a position of authority and influence, without input from participants. Further, the Executive Order created a process for unionizing DCWs, and empowering a Designated Representative to negotiate terms and conditions of employment with the Department. That negotiation process, called “meet and confer,” is designed to result in a MOU that may bind participants in terms of wages, hours and benefits.

Although the specifics as to how that relationship would be altered are not now known, the interference with the relationship is concrete, and presently occurring. Participants’ abilities to control and direct their care are undermined when they are excluded from a negotiation process designed to affect terms and conditions of employment. As employers, participants have a real and concrete interest in maintaining the status quo that the Executive Order disturbs. Contrary to Respondents’ characterization, that harm is not speculative.

For these and the reasons set forth more thoroughly in Markham, we overrule Respondents’ preliminary objection to the ripeness of Petitioners’ claims.

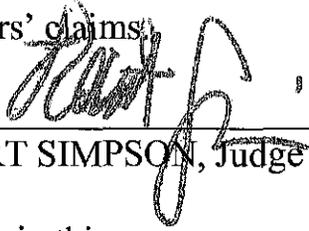
## B. Summary Relief

From our review, Petitioners' application for summary relief is substantively similar to the application the petitioners filed in Markham. Thus, we adopt and apply our analysis in Markham to the declaratory and injunctive relief claims here.

## III. Conclusion

For the reasons set forth above and as incorporated from Markham, we grant Petitioners' application for summary relief in part as to those sections of the Executive Order we declared invalid in Markham, (E.O. Sections 1(d) and 1(e), 3 and 4, and Sections 5(b) through 5(g)). Respondents are also enjoined from enforcing those sections of the Executive Order or taking any actions in accordance with those sections. Pa. Pub. Util. Comm'n v. Israel, 52 A.2d 317 (Pa. 1947). Conversely, we deny Respondents' application for summary relief in part, as to the invalid sections and subsections of the Executive Order. Respondents' application for summary relief is granted in part, only as to the provisions of the Executive Order that retain their validity.

As a result, the preliminary objections of Respondents in the nature of a demurrer are rendered moot. See Leach v. Turzai, 118 A.3d 1271 (Pa. Cmwlth. 2015), aff'd, 141 A.3d 426 (Pa. 2016). We overrule Respondents' preliminary objection challenging the ripeness of Petitioners' claims.

  
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ROBERT SIMPSON, Judge

Judge Covey did not participate in the decision in this case.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

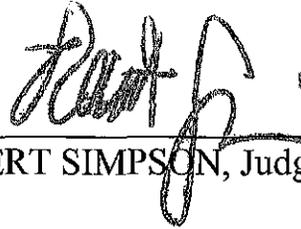
David W. Smith and	:	
Donald Lambrecht,	:	
Petitioners	:	
	:	
v.	:	No. 177 M.D. 2015
	:	
Governor Thomas W. Wolf, in his	:	
official capacity as Governor of the	:	
Commonwealth of Pennsylvania and	:	
Commonwealth of Pennsylvania,	:	
Department of Human Services,	:	
Respondents	:	

**ORDER**

**AND NOW**, this 14<sup>th</sup> day of October, 2016, having declared certain sections and subsections of Executive Order 2015-05 **INVALID** in Markham v. Wolf, \_\_ A.3d \_\_ (Pa. Cmwlth., No. 176 M.D. 2015, filed September 22, 2016) (en banc), Petitioners’ Application for Summary Relief pursuant to Pa. R.A.P. 1532(b) is **GRANTED in PART**, only as to Sections 1(d) and 1(e), 3, 4, and Sections 5(b) through 5(g) of the Executive Order; and **JUDGMENT** is entered in their favor as to those sections and subsections only. Respondents’ Application for Summary Relief is **DENIED in PART**, as to Sections 1(d) and (e), 3 and 4, and Sections 5(b) through 5(g) of Executive Order 2015-05, and **GRANTED in PART**, and **JUDGMENT** is entered in their favor as to the remaining provisions.

Pursuant to Markham, Respondents are **ENJOINED** from prospectively enforcing the sections of Executive Order 2015-05 declared invalid and *void ab initio*, or taking any future actions in accordance with those sections.

**AND FURTHER**, Respondents' preliminary objection to the ripeness of Petitioners' claims is **OVERRULED** for the reasons set forth in the foregoing opinion. Respondents' preliminary objections in the nature of a demurrer are **DISMISSED** as **MOOT**.



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ROBERT SIMPSON, Judge

**Certified from the Record**

OCT 14 2016

**and Order Exit**

# **Exhibit B**

*Executive Order 2015-05*



# 2015-05 - Participant-Directed Home Care Services

<h2>EXECUTIVE ORDER</h2> <h3>Commonwealth of Pennsylvania</h3> <h4>Governor's Office</h4>	
<p><b>Subject:</b> Participant-Directed Home Care Services</p>	<p><b>Number:</b> 2015-05</p>
<p><b>Date:</b> 02/27/2015</p>	<p><b>By Direction of:</b> Tom Wolf, Governor</p>

WHEREAS, the administration is committed to ensuring that Pennsylvania residents have access to quality home care services; and

WHEREAS, direct care workers are individuals who provide vital home care services to Pennsylvania's seniors and people with disabilities who require assistance; and

WHEREAS, without assistance from direct care workers who are paid through various programs administered by the Department of Human Services through its Office of Long Term Living, these residents otherwise would require institutional care, such as that provided in a nursing home; and

WHEREAS, residents who are consumers of in-home personal care services must maintain the right to select and direct the daily work of direct care workers who provide services through the programs administered by the Department of Human Services; and

WHEREAS, the average cost of providing in-home personal care services is typically much less than the cost of care provided in nursing homes or similar institutional settings, and Pennsylvania's home care services programs therefore save the Commonwealth millions of dollars per year; and

WHEREAS, the demand for direct home care services is expected to rise in the coming years in light of Pennsylvania's aging population; and

WHEREAS, the quality of life for Pennsylvania's seniors and people with disabilities is significantly improved by the option of received self-directed in-home care services; and

WHEREAS, direct care workers typically earn low wages and receive no benefits, paid time off, or standardized training; and

WHEREAS, as a result, the pool of direct care workers available for consumers of in-home care services in Pennsylvania suffers from high turnover and inconsistent quality; and

WHEREAS, reform of the Commonwealth's home care programs requires careful consideration of its economic impact and must ensure Pennsylvania's right to receive the maximum amount of federal funds to which it is entitled and, therefore, should be informed by input from all interested stakeholders; and

WHEREAS, the administration believes there is a need to improve both the quality of home care and the working conditions of direct care workers and that these two goals are related;

NOW, THEREFORE, I, Thomas W. Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth of Pennsylvania, do hereby direct the following:

- 1. Definitions.** As used in this Executive Order, the following definitions shall apply:
  - a.** "Department" means the Department of Human Services.
  - b.** "Deputy Secretary" means the Deputy Secretary of Human Services for Long Term Living.

- c. "Direct Care Worker" means a person who provides Participant-Directed Services in a Participant's home under a Home Care Service Program.
  - d. "Direct Care Worker List" means a monthly list compiled at the direction of and maintained by the Department of the names and addresses of all Direct Care Workers who have within the previous three (3) months been paid through a Home Care Service Program that provides Participant-Directed Services. The list shall specify the program through which each Direct Care Worker is paid, but nothing that would identify the name of any participant.
  - e. "Direct Care Worker Representative" means the designated representative elected according to the procedure outlined in Paragraph 3.
  - f. "Home Care Service Programs" means the following programs administered by OLTL, and any successor program:
    - (1) The Aging Waiver Program.
    - (2) The Attendant Care Waiver Program.
    - (3) The CommCare Waiver Program.
    - (4) The Independence Waiver Program.
    - (5) The OBRA Waiver Program.
    - (6) The Act 150 Program.
  - g. "OLTL" means the Department's Office of Long Term Living.
  - h. "Participant" means a person who receives services from a Direct Care Worker under a Home Care Service Program.
    - i. "Participant-Directed Services" means personal assistance services, respite, and Participant-Directed community supports or similar types of services provided to a senior or a person with a disability who requires assistance and wishes to hire, terminate, direct and supervise the provision of such care pursuant to the Home Care Service Programs, provided now and in the future, to (i) meet such person's daily living needs, (ii) ensure such person may adequately function in such person's home, and (iii) provide such person with safe access to the community. Participant-Directed Services does not include any care provided by a worker employed by an agency as defined by *Section 802.1 of the Health Care Facilities Act (35 P.S. § 448.802a)*.
  - j. "Secretary" means the Secretary of Human Services.
- 2. Advisory Group on Participant-Directed Home Care.** There is hereby established an Advisory Group to ensure the quality of long-term Participant-Directed Home Care that shall be known as the Governor's Advisory Group on Participant-Directed Home Care. The Advisory Group shall advise the Governor's Office and executive branch agencies and offices of the Commonwealth (including the Department) on ways to improve the quality of care delivered through the Home Care Services Programs.
- a. The Advisory Group shall be composed of seven (7) members, who shall serve at the pleasure of the Governor. The seven members shall include the Secretary, or a designee (who shall serve as chairperson of the Advisory Group), and the Deputy Secretary, or a designee. The remaining five (5) members of the Advisory Group shall be appointed by the Governor, and will include both participants or their surrogates and advocates for seniors and people with disabilities.
  - b. Commencing no later than June 30, 2015, the Advisory Group shall meet at least quarterly to study and discuss the experiences and best practices of other states that administer similar programs to provide Participant-Directed Home Care Services. In particular, the Advisory Group shall review the following subjects:
    - (1) Establishment and maintenance of policies, practices and procedures designed to ensure that the Commonwealth continues its efforts to reduce the numbers of Pennsylvania residents currently on waiting lists to receive services through the Home Care Service Programs.
    - (2) Evaluation of the work of OLTL so as to ensure that the program standards of the Home Care Service Programs are being met as they apply to the provision of Participant-Directed Services. However, the Advisory Group shall not be allowed to review the activities of the Department pertaining to pending reviews and investigations that involve potential fraud or criminal conduct, unless the information is publicly available.
    - (3) Establishment and maintenance of policies, practices and procedures designed to ensure that the Commonwealth continues its efforts to rebalance resources for long term care services from institutional care to home and community based services.
    - (4) Establishment and maintenance of policies, practices and procedures designed to ensure that the Commonwealth continues to adhere to the principles of participant-direction, independent living and consumer choice.
    - (5) Any other issues that the Governor may deem appropriate.

**3. Direct Care Worker Representative.** The Secretary shall recognize a representative for the Direct Care Workers for the purpose of discussing issues of mutual concern through a meet and confer process.

**a. Election Process.** The Secretary shall designate the American Arbitration Association to conduct an election and certify the election outcome, pursuant to the following process:

(1) An election shall be conducted to designate a representative when an organization seeking to be so designated presents signed authorization cards to the Governor, or his designee, demonstrating that at least ten (10%) percent of the providers identified on the most recent Direct Care Worker List (as described below) choose to be represented by such organization.

(2) All Direct Care Workers identified on the most recent Direct Care Worker List (at the time the election is requested) shall be eligible to vote in an election. If the majority of votes cast in the election are for the petitioning organization, the American Arbitration Association shall certify the election results, and the Secretary shall recognize the organization as the Direct Care Worker Representative. There shall only be one Direct Care Worker Representative recognized at any time.

(3) The recognized Direct Care Worker Representative shall continue to act as such for so long as such organization complies with its responsibilities concerning representation of Direct Care Workers. Direct Care Workers who wish to remove the Direct Care Worker Representative shall seek such removal in accordance with the election process set forth in this Order. Direct Care Workers may not seek such removal earlier than one (1) year after the organization is recognized as the Direct Care Worker Representative.

**b. Meet and Confer Process.** The Secretary, the Deputy Secretary, and the Direct Care Worker Representative shall meet and confer to address concerns of Direct Care Workers and ways to improve the quality of care provided under the Home Care Services Programs.

(1) The Secretary, the Deputy Secretary and the Direct Care Worker Representative shall meet at least monthly, on mutually agreeable dates and times.

(2) The Secretary, the Deputy Secretary and the Direct Care Worker Representative shall discuss relevant issues, including the following:

(a) The quality and availability of Participant-Directed Services in the Commonwealth, within the framework of principles of participant-direction, independent living and consumer choice.

(b) The improvement of the recruitment and retention of qualified Direct Care Workers.

(c) The development of a Direct Care Worker registry or worker-participant matching service to provide routine, emergency and respite referrals of qualified Direct Care Workers to participants who are authorized to receive long-term, in-home care services under one of the Home Care Service Programs.

(d) Standards for compensating Direct Care Workers, including wage ranges, health care benefits, retirement benefits and paid time off.

(e) Commonwealth payment procedures related to the Home Care Services Programs.

(f) Development of an orientation program for Direct Care Workers working in a Home Care Services Program.

(g) Training and professional development opportunities for Direct Care Workers.

(h) Voluntary payroll deductions for Direct Care Workers.

(3) The Direct Care Worker Representative shall have the opportunity to meet with the Governor, or his designee, at least once annually to discuss the outcome of the meet and confer sessions with the Secretary.

**c. Memorandum of Mutual Understanding.**

(1) Mutual understandings reached during the meet and confer process shall be reduced to writing. Where appropriate, and with the approval of the Governor, understandings reached through the meet and confer process will be implemented as the policy of the Department related to Direct Care Workers providing Participant-Directed Services. If any such mutual understanding requires legislation or rulemaking, the Direct Care Worker Representative may make recommendations for legislation or rulemaking to the relevant body.

(2) Nothing in this Executive Order shall compel the parties to reach mutual understandings.

(3) In the event the parties are unable to reach mutual understandings, the Governor or a designee will convene a meeting of the parties to understand their respective positions and attempt to resolve the issues of disagreement.

**4. Direct Care Worker List.**

**a.** The Secretary shall compile a list each month of the names and addresses of all Direct

Care Workers ("DCW List") who, within the previous three (3) months, have been paid through a Home Care Service Program that provides Participant-Directed Services. The DCW List shall specify every program through which each Direct Care Worker was paid. However, the DCW List shall not include the name of any participant, any designation that a Direct Care Worker is a relative of a participant, or any designation that the Direct Care Worker's home address is the same as a participant's address.

**b.** An employee organization that has as one of its primary purposes the representation of direct care workers in their relations with the Commonwealth or other public entities may petition the Secretary to represent a particular unit of Direct Care Workers.

**c.** Upon a showing made to the Secretary by an employee organization described in Subparagraph 4.b. that at least 50 Direct Care Workers support the organization's petition to provide representation, the Secretary within seven (7) days shall provide to the organization the most recent DCW List, and, for an additional six (6) months thereafter, upon request shall supply subsequent monthly lists.

**d.** Any vendor or contractor that provides financial management services for the Commonwealth in connection with any Home Care Service Program shall assist and cooperate with the Department in compiling and maintaining the DCW List. The Secretary shall ensure that all existing and future contracts with vendors or contractors providing financial management services for the Commonwealth require the fiscal intermediary to cooperate in the creation and maintenance of the DCW List.

**5. No Change to Existing Rights and Relationships.**

**a.** Nothing in this Executive Order shall be construed to limit communication between or among Commonwealth employees, representatives of employee associations, the heads of executive branch agencies, and the Governor. The provisions of this Executive Order shall not be construed or interpreted to diminish any rights, responsibilities, powers or duties of individual employees in their service to the Commonwealth. Further, the provisions of this Executive Order shall not diminish or infringe upon any rights, responsibilities, powers or duties conferred upon any officer or agency by the Constitution or laws of the Commonwealth of Pennsylvania.

**b.** Nothing in this Executive Order shall be interpreted to grant Direct Care Workers the status of Commonwealth employees. The provisions of this Executive Order shall not be construed or interpreted to create collective bargaining rights or a collective bargaining agreement under any federal or state law.

**c.** Nothing in this Executive Order or in any Memorandum of Mutual Understanding that may be reached hereunder shall alter the unique relationship between the individual participants and Direct Care Workers. Participants shall retain the rights to select, hire, terminate and supervise a Direct Care Worker. This Executive Order is not intended to grant any right, or to imply that Direct Care Workers have any right, to engage in a strike or other collective cessation of the delivery of services.

**d.** Nothing in this Executive Order, or in any Memorandum of Mutual Understanding that is reached hereunder, shall alter the rights of Direct Care Workers, including the right to become a member of a labor organization or to refrain from becoming a member of labor organization.

**e.** In accordance with all applicable federal and Commonwealth laws, all existing or future vendors or contractors providing financial management services for the Commonwealth shall refrain from interfering with a Direct Care Worker's decision to join or refrain from joining a labor organization.

**f.** This Executive Order and any Memorandum of Mutual Understanding reached hereunder shall not be interpreted to require a Direct Care Worker to support a labor organization in any way.

**g.** Nothing in this Executive Order, or in any Memorandum of Mutual Understanding that is reached thereunder, shall limit a Direct Care Worker's ability, individually or in concert with others, to petition the Commonwealth regarding any issue of concern.

**6. Cooperation by Commonwealth Agencies.** Agencies under the Governor's jurisdiction shall take all steps necessary to implement the provisions of this Executive Order.

**7. Effect and Duration.** This Executive Order shall be effective immediately and remain in effect until amended or rescinded by the Governor.

Attached File:  [2015-05.pdf](#)

# Exhibit C

*Grant Agreement Amendment 3, between the Department of Human  
Services and Public Partnerships, LLC*

COPY - I.D.

Procurement

GRANT NUMBER:

4100061881

**PENNSYLVANIA  
DEPARTMENT OF HUMAN SERVICES**

**Grant Agreement  
Amendment 3**

**Financial Management Services**

**NAME AND ADDRESS**

**PCG Public Partnerships LLC  
148 State St. Floor 10  
Boston, MA 02109-2510**

**FEDERAL I.D. NUMBER: [REDACTED]  
SAP VENDOR NUMBER: 215082**

**Marc Fenton [mfenton@pegus.com](mailto:mfenton@pegus.com)**

## **AMENDMENT NO. 3**

### **GRANT AGREEMENT NO. 4100061881 FOR FINANCIAL MANAGEMENT SERVICES**

This Amendment No. 3 to Grant Agreement No. 4100061881 is made between the Commonwealth of Pennsylvania, Department of Human Services, formerly Department of Public Welfare hereinafter referred to as the "Department" or "DHS" and Public Partnerships LLC("Grantee"), operating at 148 State Street, Tenth Floor, Boston, MA 02109.

#### **WITNESSETH:**

WHEREAS, DHS's Office of Long-Term Living ("OLTL") and Office of Developmental Programs ("ODP"), and the Pennsylvania Department of Aging ("PDA"), administer certain home and community based waiver and state-funded programs for eligible individuals;

WHEREAS, individuals enrolled in these Commonwealth administered programs may choose to receive Participant Directed Services ("PDS");

WHEREAS, Federal law requires individuals receiving PDS through the Consumer Directed Model to utilize the services of a Vendor Fiscal/Employer Agent ("VF/EA") that serves as a fiscal intermediary and provides Financial Management Services ("FMS") to individuals or their representatives;

WHEREAS, in accordance with the Commonwealth's established grant policy and procedure, the Commonwealth used a competitive process to select the Grantee to provide FMS to individuals in the Consumer Directed Model of services;

WHEREAS, the parties entered into Grant Agreement No. 4100061881 for Financial Management Services (the "Agreement"); and

WHEREAS, DHS and the Grantee have identified the need to amend the Agreement to reflect DHS's and Grantee's agreement regarding additional services to be provided to individuals in the Consumer Directed Model of services.

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth in this Amendment to the Agreement, the parties intending to be legally bound, hereby agree as follows:

1. Rider 1A, Payment Provisions of Amendment #2, is hereby deleted in its entirety and replaced with the new "Rider 1B, Payment Provisions" that is attached to this Amendment #3.
2. Attachment C of Amendment #1, "Grantee's Final Cost Submittal" is hereby deleted in its entirety and replaced by the attached Attachment C1.
3. In addition to the services described in the Agreement and the amendments thereto, Grantee will perform the services described and in conformance with Rider 3 Services and Rider 4 Service Level Agreements, as may be amended.
4. This Amendment #3 will be effective on January 1, 2017 and shall continue in effect for the entire Agreement term.
5. The Riders and Attachments referenced above are hereby made a part of this Agreement.
6. Except as expressly modified herein, all other terms and conditions of the Agreement remain in effect.

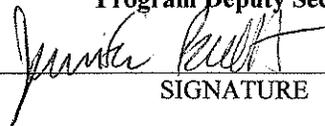
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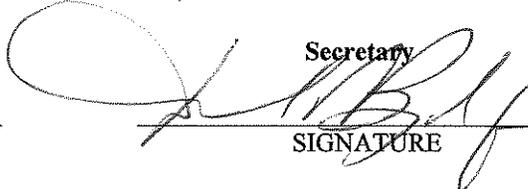
IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by its duly authorized officials.

  
 \_\_\_\_\_  
 SIGNATURE  
 PRINT OR TYPE NAME AND TITLE

**GRANTEE**  
 Marc H. Fenton, President PPL  
 \_\_\_\_\_  
 SIGNATURE  
 PRINT OR TYPE NAME AND TITLE

**COMMONWEALTH OF PENNSYLVANIA  
 DEPARTMENT OF HUMAN SERVICES**

**Program Deputy Secretary**  
  
 \_\_\_\_\_  
 SIGNATURE

**Secretary**  
  
 \_\_\_\_\_  
 SIGNATURE

FEB 23 2017

**COMPTROLLER OPERATIONS**

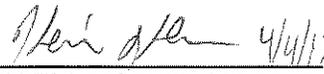
I hereby certify that funds in the amount shown are available under the Appropriation Symbols shown

AMOUNT	SOURCE	APPROPRIATION SYMBOL	PROGRAM

  
 \_\_\_\_\_  
 SIGNATURE COMPTROLLER OPERATIONS 04/12/2017

**Approved as to Legality and Form:**

  
 \_\_\_\_\_  
 OFFICE OF LEGAL COUNSEL  
 DEPARTMENT OF HUMAN SERVICES  
 3/10/17

  
 \_\_\_\_\_  
 DEPUTY ATTORNEY GENERAL  
 OFFICE OF ATTORNEY GENERAL  
 (when required)

  
 \_\_\_\_\_  
 DEPUTY GENERAL COUNSEL  
 OFFICE OF GENERAL COUNSEL  
 (when required) 3/17/17

## RIDER 1B

### PAYMENT PROVISIONS

#### 1. Compensation.

Subject to the availability of state and federal funds and the terms and conditions of this Agreement, DHS will compensate the Grantee for services performed under this Agreement, which includes RFA No. 22-11 Lot Nos. 1, 2 and 3 services, in accordance with this Rider 1B, Payment Provisions, in the estimated amount of \$26,776,000.40.

Grantee shall perform all services at the prices quoted in the Agreement, including Attachment C. The Grantee will only be paid for services in the manner provided below. The Grantee will not be allowed or paid travel or per diem expenses.

- a. Payroll Payment. Prior to January 1, 2013, the Department will make payment to the Grantee in the amount of eighteen million dollars (\$18,000,000.00). Grantee shall use these funds to cover the payroll payments to Direct Care Workers ("DCW") for the bi-weekly payroll period that begins on January 1, 2013.

The Department will recoup the entire payroll payment by placing weekly credits of \$900,000.00 on all payments scheduled to be made to the Grantee between February 13, 2013 and June 26, 2013.

- b. Transition fee. The Commonwealth will pay the Grantee a forty-five dollar (\$45.00) transition fee for each participant receiving FMS who is transitioned to Grantee during the transition period, (10/01/2012 – 12/31/2012). For all transferred participants, the Commonwealth will issue a one-time payment to the Grantee following the transition period.
- c. Start-up fee for new FMS participants. Beginning on the effective date of this Agreement and continuing for the entire term, the Commonwealth will pay the Grantee a one-time start-up fee in the amount of two-hundred and seventy-seven dollars (\$277) for all newly eligible FMS participants that enroll to receive FMS from the Grantee. The Department will pay start-up fees on a one-time basis for each eligible FMS participant that completed the enrollment process with the Grantee. The Department will pay the start-up fee only for newly enrolled FMS participants and not for those participants receiving FMS from another provider that are transitioned to the Grantee during the transition period.
- d. Monthly Vendor Fiscal/Employer Agent ("VF/EA") Administrative fee. Beginning in October 2012 and continuing for the entire term of this Agreement, the Commonwealth will pay the Grantee a Monthly VF/EA Administrative fee for each enrolled FMS participant at the rates listed in Attachment C1. The Grantee may only charge a Monthly VF/EA Administrative fee for a participant if there is a paid service claim on record on behalf of the participant during the particular month. The Grantee may not charge the Commonwealth a Monthly VF/EA Administrative fee and a Start-up fee for the same participant in the same month.
  - (1) Grantee must submit its initial VF/EA claim within 180 days of the date on which the FMS services were rendered and must resubmit any rejected claim within 365 days of the date of service. Grantee must submit FMS claims in accordance with Department billing and provider agreement requirements as well participants' service plans.

- (2) Grantee is solely responsible for the reconciliation and resubmission of claims for VF/EA services that have been rejected or suspended. Grantee will establish and maintain a process for reconciling and resubmitting denied or suspended MA claims for VF/EA claims submitted for payment through PROMIS<sup>e</sup>™.

e. Medical Assistance (“MA”) Reimbursements.

- (1) The Grantee shall submit all MA reimbursement claims for all authorized direct services provided to common law employers through PROMIS<sup>e</sup>™, the Commonwealth’s claims processing and management information system. Grantee must submit claims in the required format and include all necessary and required information, including any additional information required by the Department. Grantee will be paid in accordance with the Interim Payment Process as outlined in the attached Appendix 1 or reimbursed on a bi-weekly basis for Payroll Schedule A/ODP and Payroll Schedule B as exemplified in the attached Appendix 2 (the “Default Payment”) for all payments issued per a valid authorization so long as Grantee’s claim for payment otherwise conforms to the requirements of this Agreement.
  - (2) In accordance with 55 Pa.Code §1101.68, Grantee must submit its initial claims within 180 days of the date on which services were rendered and must resubmit any rejected claim within 365 days of the date of service. Grantee must submit claims in accordance with Department billing and provider agreement requirements as well as participants’ service plans.
  - (3) Grantee is solely responsible for the reconciliation and resubmission of claims for direct services which have been rejected or suspended. Grantee will establish and maintain a process for reconciling and resubmitting any denied or suspended MA claims for waiver direct care services submitted for payment through PROMIS<sup>e</sup>™, including but not limited to claims related to payments for qualified DCWs, vendors, small unlicensed providers and independent contractors.
  - (4) DHS will make a one-time payment of \$2,768,256.20 (comprised of \$578,130.23 related to services for ODP waiver participants and \$2,190,125.97 related to services for OLTL waiver participants) to reimburse Grantee for payroll payments made for direct care services provided in State Fiscal Years (“SFY”) 2012-2013 and 2013-2014 made by Grantee but for which it was unable to receive MA reimbursements as provided for under the Agreement. Grantee will be paid in full for all MA reimbursement owed by DHS for direct care services provided in SFYs 2012-2013 and 2013-2014.
- f. Shared Savings Payment. In consideration of the Grantee’s efforts to obtain savings for the Department, DHS will make a shared savings payment to Grantee consisting of a base payment of \$90,000 plus a quarterly payment for calendar year 2015. The Department will calculate the quarterly payment after receipt of the quarterly Wage to Invoice Reports for ODP and OLTL by comparing the Workers’ Compensation Insurance value to what the cost would have been under the calendar year 2014 rate of 5%. The Department will not consider report entries with values outside of the rate of 2.8%, plus or minus 0.03% (2.77% to 2.83%) in the calculation. The Department will make a quarterly shared savings payment applicable to quarters one through four of calendar year 2015 equal to 3.5% of the state share of 50% of the calculated difference.

- g. 40/60 Rule Waiver Compliance report payment. DHS will make an all-inclusive one-time payment of \$16,500 to Grantee for Grantee's report of relatives/legal guardians who provide Companion and/or Home and Community Habilitation services as specified in Rider 3, Item 1. DHS will authorize payment to Grantee following the DHS Contract Administrator's written acceptance of the initial report.
- h. Enhanced Services 2:1 Report. DHS will make an all-inclusive one-time payment of \$5,607 to Grantee to provide DHS/ODP with a monthly report that identifies DCWs (aka Support Service Workers [SSWs]) who provide 2:1 staff-to-participant Enhanced Home and Community Habilitation and/or Enhanced Respite as specified in Rider 3, Item 2. DHS will authorize payment to Grantee following the DHS Contract Administrator's written acceptance of the initial report.
- i. Second semi-annual participant satisfaction survey. DHS will make an all-inclusive one-time payment of \$26,500 to Grantee to conduct a semi-annual participant satisfaction survey and provide a report documenting the results of the survey. DHS will authorize payment to Grantee following the DHS Contract Administrator's written acceptance of the survey results report.
- j. Regional Enrollment Specialists. DHS will make an all-inclusive monthly payment of \$35,186.67 for a maximum of twelve (12) months for a total of \$422,240.00 for an additional five (5) regional enrollment specialists to conduct in-home Common Law Employer (CLE) training and assist the CLE with completing the CLE and DCW enrollment documents.

Grantee is not entitled to any additional consideration, compensation, salary, wages, or any other type of remuneration for these regional enrollment services other than that provided for in this Amendment #3.

- k. Service Coordination/Enhanced Claiming Outreach. DHS will make an all-inclusive monthly payment of \$37,500 for a maximum of twelve (12) months for a total of \$450,000 for additional enhanced outreach services to Service Coordination Entities to resolve submitted MA claims which have been denied. Grantee is not entitled to any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered other than that provided for in the Amendment #3.
- l. Domestic Care Worker Orientation.
  - (1) DHS will make an all-inclusive monthly payment of \$23,333.33 to Grantee for a maximum of twelve (12) months for a total of \$280,000 for the implementation of DCW Orientation services.
  - (2) DHS will make an all-inclusive monthly payment of \$20,833.33 to Grantee for a maximum of twelve (12) months for a total of \$250,000 for Payroll Production and Distribution costs for the administration, tracking and monitoring of DCW orientation, including tracking the hours and the DCWs who attend DCW orientation.
  - (3) DHS will make an all-inclusive monthly payment of \$15,625.00 to Grantee for a maximum of twelve (12) months for a total of \$187,500 for administrative costs to monitor subcontractor providing the DCW Orientation.
  - (4) The Grantee shall submit a monthly invoice to DHS for reimbursement of subcontractor costs for providing the DCW Orientation. Grantee must submit invoices that include all necessary and required information to support the invoiced amounts, including any additional

information required by the Department. DHS will authorize payments to a maximum of \$1,250,000 for Calendar Year 2017.

- (5) The Grantee shall submit a monthly invoice to DHS for reimbursement of payments of hourly wages paid to DCWs who attend the DCW Orientation in the month. Grantee must submit invoices that include all necessary and required information to support the invoiced amounts, including any additional information required by the Department. DHS will authorize payments to a maximum of \$445,900 for Calendar Year 2017.

- m. Coordinating and Communicating with SCEs/MCOs. DHS will make an all-inclusive monthly payment of \$46,296.25 for a maximum of twelve (12) months for a total of \$555,555 for additional services related to coordination and communication with Service Coordination Entities and Managed Care Organizations. Grantee is not entitled to any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered other than that provided for in the Amendment #3.

2. For all payments made under this Agreement, DHS shall exempt Grantee from relevant internal cash management procedures to ensure prompt payment. If, through no fault of the Grantee, DHS does not reimburse Grantee for a previous Payroll Schedule A/ODP or Schedule B prior to the date in which Grantee is scheduled to make its next payment for that respective Payroll Cycle, DHS shall expedite payment to Grantee for all clean and valid claims adjudicated as paid in PROMISE™ at that time. Grantee is not required to make a payment for Payroll Schedule A/OPD or for Payroll Schedule B until it has been reimbursed for all clean and valid claims timely billed for the previous respective Payroll Schedule A/OPD or Payroll Schedule B.

3. Electronic Payment. The Commonwealth will make payments through the Automated Clearing House (ACH) Network. Within ten (10) days of contract award, the Grantee must submit or have already submitted its ACH information within its user profile in the Commonwealth's procurement system (SRM). At the time of submitting ACH information, the Grantee will also be able to enroll to receive remittance via electronic addenda.

It is the responsibility of the Grantee to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.

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### Appendix 1

**Interim Payment Process Schedule:** During the period the Interim Payment Process is in effect, the department proposes a process that would project the amount of cash outlay and provide Grantee funding in advance of attendant payroll disbursement. The department will project the payroll amount using PROMISE paid claims. The timelines for each event during the payroll process is described in the following table, with a sample schedule for illustrative purposes showing the schedule for Payroll Schedule A and B for each pay period starting with the first payroll period end date on or after July 6, 2013 for each payroll schedule. Note Payroll Schedule A is inclusive of OLTL & ODP.

Event	Timeline	Payroll Schedule A Period 1	Payroll Schedule B Period 1	Payroll Schedule A Period 2	Payroll Schedule B Period 2
Pay Period Begin	Sunday - 2 weeks following the previous start date	6/30/2013	6/23/2013	7/14/2013	7/7/2013
Pay Period End	2 <sup>nd</sup> Saturday following the Sunday start date	7/13/2013	7/6/2013	7/27/2013	7/20/2013
Interim Payment Calculation	Note -used DPW's dates which was a range of 5 days ending on the Friday before pay period end date	7/8/2013 – 7/12/2013	7/1/2013 – 7/5/2013	7/22/2013 – 7/26/2013	7/15/2013 – 7/19/2013
Debit Gross Adjustment Entered Into PROMISE	Note- used DPW's date which was the Friday before pay period end date	7/12/2013	7/5/2013	7/26/2013	7/19/2013
Attendant Timesheets Due To PPL	Tuesday following pay period end date	7/16/2013	7/9/2013	7/30/2013	7/23/2013
Credit Gross Adjustment Entered Into PROMISE	Used DPW date which was same as 837 to PROMISE	7/18/2013	7/11/2013	8/1/2013	7/25/2013
837 to PROMISE	Thursday following the timesheet due to PPL date	7/18/2013	7/11/2013	8/1/2013	7/25/2013
Gross Adjustment/Interim Payment Date	2 days (Wed) before payroll disbursement date (Note - Payment Date = payment received by PPL)	7/24/2013	7/17/2013	8/7/2013	7/31/2013
Payroll Disbursement Date	The 2 <sup>nd</sup> Friday following the timesheet due date	7/26/2013	7/19/2013	8/9/2013	8/2/2013
835 Remittance Advice Date	The Monday following the 837 to PROMISE date	7/22/2013	7/15/2013	8/5/2013	7/29/2013
835 Payment Date	The 2 <sup>nd</sup> Wednesday following the 835 Remittance Advice Date	7/31/2013	7/24/2013	8/14/2013	8/7/2013

APPENDIX 2

EXEMPLAR DEFAULT PAYMENT SCHEDULE

Event	Timeline	Sample Payroll A	Sample Payroll A
Pay Period Begin	Sunday - 2 weeks following the previous start date	6/30/2013	7/14/2013
Pay Period End	2 <sup>nd</sup> Saturday following the Sunday start date	7/13/2013	7/27/2013
Attendant Timesheets Due To PPL	Tuesday following pay period end date	7/16/2013	7/30/2013
837 to PROMISE	Thursday following the timesheet due to PPL date	7/18/2013	8/1/2013
Payroll Disbursement Date	The 2 <sup>nd</sup> Friday following the timesheet due date	7/26/2013	8/9/2013
835 Remittance Advice Date	The Monday following the 837 to PROMISE date	7/22/2013	8/5/2013
835 Payment Date	The 2 <sup>nd</sup> Wednesday following the 835 Remittance Advice Date	7/31/2013	8/14/2013

**PAYROLL SCHEDULE - A**

**PENNSYLVANIA OLTL Participant Directed Models of Service  
2017-2018**

**Holiday**

Pay Period START DATE	Pay Period END DATE	Timesheet Received By 12:00 PM	Check or Direct Deposit Issued
SUNDAY	SATURDAY	TUESDAY	FRIDAY
11/27/2016	12/10/2016	12/13/2016	12/23/2016
12/11/2016	12/24/2016	12/27/2016	1/6/2017
12/25/2016	1/7/2017	1/10/2017	1/20/2017
1/8/2017	1/21/2017	1/24/2017	2/3/2017
1/22/2017	2/4/2017	2/7/2017	2/17/2017
2/5/2017	2/18/2017	2/21/2017	3/3/2017
2/19/2017	3/4/2017	3/7/2017	3/17/2017
3/5/2017	3/18/2017	3/21/2017	3/31/2017
3/19/2017	4/1/2017	4/4/2017	4/14/2017
4/2/2017	4/15/2017	4/18/2017	4/28/2017
4/16/2017	4/29/2017	5/2/2017	5/12/2017
4/30/2017	5/13/2017	5/16/2017	5/26/2017
5/14/2017	5/27/2017	5/30/2017	6/9/2017
5/28/2017	6/10/2017	6/13/2017	6/23/2017
6/11/2017	6/24/2017	6/27/2017	7/7/2017
6/25/2017	7/8/2017	7/11/2017	7/21/2017
7/9/2017	7/22/2017	7/25/2017	8/4/2017
7/23/2017	8/5/2017	8/8/2017	8/18/2017
8/6/2017	8/19/2017	8/22/2017	9/1/2017
8/20/2017	9/2/2017	9/5/2017	9/15/2017
9/3/2017	9/16/2017	9/19/2017	9/29/2017
9/17/2017	9/30/2017	10/3/2017	10/13/2017
10/1/2017	10/14/2017	10/17/2017	10/27/2017
10/15/2017	10/28/2017	10/31/2017	11/10/2017
10/29/2017	11/11/2017	11/14/2017	11/24/2017
11/12/2017	11/25/2017	11/28/2017	12/8/2017
11/26/2017	12/9/2017	12/12/2017	12/22/2017
12/10/2017	12/23/2017	12/26/2017	1/5/2018
12/24/2017	1/6/2018	1/9/2018	1/19/2018
1/7/2018	1/20/2018	1/23/2018	2/2/2018
1/21/2018	2/3/2018	2/6/2018	2/16/2018

**FAX SIGNED TIMESHEETS TO PPL AT (855) 858-8162**  
or mail to: Public Partnerships, LLC, P.O. Box 1108 Wilkes Barre, PA 18773-1108

Learn how to submit timesheets quickly using the BetterOnline™ Portal at  
<http://www.publicpartnerships.com/programs/pennsylvania/PADPWOLTL/program.asp>

## PAYROLL SCHEDULE - B

### PENNSYLVANIA OLTL Participant Directed Models of Service 2017 - 2018

Holiday

Pay Period START DATE	Pay Period END DATE	Timesheet Received By 12:00 PM	Check or Direct Deposit Issued
SUNDAY	SATURDAY	TUESDAY	FRIDAY
11/20/2016	12/3/2016	12/6/2016	12/16/2016
12/4/2016	12/17/2016	12/20/2016	12/30/2016
12/18/2016	12/31/2016	1/3/2017	1/13/2017
1/1/2017	1/14/2017	1/17/2017	1/27/2017
1/15/2017	1/28/2017	1/31/2017	2/10/2017
1/29/2017	2/11/2017	2/14/2017	2/24/2017
2/12/2017	2/25/2017	2/28/2017	3/10/2017
2/26/2017	3/11/2017	3/14/2017	3/24/2017
3/12/2017	3/25/2017	3/28/2017	4/7/2017
3/26/2017	4/8/2017	4/11/2017	4/21/2017
4/9/2017	4/22/2017	4/25/2017	5/5/2017
4/23/2017	5/6/2017	5/9/2017	5/19/2017
5/7/2017	5/20/2017	5/23/2017	6/2/2017
5/21/2017	6/3/2017	6/6/2017	6/16/2017
6/4/2017	6/17/2017	6/20/2017	6/30/2017
6/18/2017	7/1/2017	7/4/2017	7/14/2017
7/2/2017	7/15/2017	7/18/2017	7/28/2017
7/16/2017	7/29/2017	8/1/2017	8/11/2017
7/30/2017	8/12/2017	8/15/2017	8/25/2017
8/13/2017	8/26/2017	8/29/2017	9/8/2017
8/27/2017	9/9/2017	9/12/2017	9/22/2017
9/10/2017	9/23/2017	9/26/2017	10/6/2017
9/24/2017	10/7/2017	10/10/2017	10/20/2017
10/8/2017	10/21/2017	10/24/2017	11/3/2017
10/22/2017	11/4/2017	11/7/2017	11/17/2017
11/5/2017	11/18/2017	11/21/2017	12/1/2017
11/19/2017	12/2/2017	12/5/2017	12/15/2017
12/3/2017	12/16/2017	12/19/2017	12/29/2017
12/17/2017	12/30/2017	1/2/2018	1/12/2018
12/31/2017	1/13/2018	1/16/2018	1/26/2018
1/14/2018	1/27/2018	1/30/2018	2/9/2018

FAX SIGNED TIMESHEETS TO PPL AT (855) 858-8162

or mail to: Public Partnerships, LLC, P.O. Box 1108 Wilkes Barre, PA 18773-1108

Learn how to submit timesheets quickly using the BetterOnline™ Portal at

<http://www.publicpartnerships.com/programs/pennsylvania/PADPWOLTL/program.asp>

## RIDER 3

### SERVICES

The Grantee will provide the following additional services under its Agreement:

1. 40/60 Rule, Waiver Compliance. Grantee will provide DHS/ODP with a monthly report that identifies and tracks DCWs (aka "SSWs") who are relatives or legal guardians of the participant and who provide more than 40 hours of Companion and/or Home and Community Habilitation services to the participant under the Consolidated or Person/Family Directed Support waivers in any given work week, AND cases where multiple DCWs who are relatives or legal guardians of the participant provide a collective total of more than 60 hours of Companion and/or Home and Community Habilitation services to the participant under the Consolidated and/or Person/Family Directed Support waivers in any given work week.
2. 2:1 Enhanced Services Report. Grantee will provide DHS/ODP with a monthly report that identifies DCWs (aka SSWs) who provide 2:1 staff-to-participant Enhanced Home and Community Habilitation and/or Enhanced Respite. The Grantee will include in the report the number of DCWs working that meet Consolidated and/or Person/Family Directed Support waiver qualifications, the number of hours worked and whether the hours worked are consistent with the authorized hours in the participant's Individual Support Plan ("ISP"). This report will be produced for up to ten (10) participants who received 2:1 Enhanced Services.
3. Common Law Employer ("CLE") In-Home Orientation and Skills Training.
  - a. PPL will mail out Enrollment Documents within 3 business days of a valid service coordinator referral; up to 5 days, with exception. Grantee will return to the CLE erroneously completed documents with the erroneous items highlighted in a cover letter. Within seven (7) business days of receiving correctly completed enrollment documents, Grantee will process the CLE enrollment documents.
  - b. Grantee will provide a report, on a monthly basis, that lists outstanding items as to why any CLE is not able to be enrolled in the training.
  - c. Regional Enrollment Specialists. Grantee will utilize regional enrollment specialists to provide home visitation to:
    - Expedite paperwork processing;
    - Decrease the enrollment timeframe for participants and DCWs;
    - Provide a hands-on, targeted and comprehensive CLE orientation that allows participant-CLEs to direct their services confidently and in compliance with program rules and waiver policies. The enrollment specialist will provide face-to-face assistance to help a participant understand;
      - his or her role as an employer,
      - how to review, approve and submit DCW service hours,
      - how to report fraud and abuse,
      - how to report workers' compensation claims,
      - how to avoid adverse unemployment costs that impact wages that can be paid, and
      - additional information, as appropriate.
  - d. The Process to Implement in-Home Visits. Once a referral is received, Grantee will schedule home visits with participants and their candidate DCWs. Grantee must contact referred participants-CLEs within 7 business days of the Grantee receiving their referral from a service coordinator. Grantee

must use specially-trained Customer Service representatives to make, at minimum, three (3) outbound call attempts to each participant-CLE to provide a Grantee introduction and to schedule a home visit using the Grantee appointment schedule.

Once an appointment is set-up, Grantee's regional enrollment specialist will visit the participant-CLE. Before the visit, Grantee will encourage participant-CLEs, via a confirmation for the appointment, to start the enrollment process for at least one DCW using the *PPL Over-the-Phone-Enrollment* phone line. If used, the regional enrollment specialist will print out and bring the documents to the visit to assist with the completion of the DCW's enrollment forms while in the home, unless it is determined that the packets were received by the participant upon confirmation of the appointment.

If the referred participant-CLE is not able to agree to an appointment at the time of the outbound call, Grantee will provide participant-CLE with a phone number to schedule a visit. Grantee also will provide to those who prefer to receive training over the phone an opportunity to schedule a phone visit.

Grantee will:

- Require each regional enrollment specialist meet with a minimum of 2-3 participants per day, five days per week.
- Have regional enrollment specialists complete enrollments in a manner that is efficient and minimizes travel costs.
- Have the majority of its regional enrollment specialists work on a full-time basis.
- Have enrollment specialists in five regions: Northwest (Erie), Southwest (Pittsburgh), Central (Harrisburg), Northeast (Wilkes-Barre/Scranton), and Southeast (Philadelphia). Grantee will provide additional specialists to support these regions and newly identified regions at no additional cost.

Grantee's regional enrollment specialists will:

- Launch a second round of outbound calls to participant-CLEs not contacted at the initial reach-out or who did not call back to schedule an appointment.
- Alert enrollment managers to necessary assistance needed from service coordinators (e.g. a corrected phone number).
- Assist with additional items up to the assignment of a DCW's "Good to Go" start date (after the home visit).
- Contact participants that have a "Good to Go" worker, but who are not using their participant-directed services.

Grantee's enrollment managers will monitor enrollment specialists. Enrollment managers will track the:

- Length of time from referral to enrollment.
  - Error rate of forms collected by the enrollment specialists.
  - Performance of specialists in homes by shadowing them on visits on at least a quarterly basis.
  - Program knowledge of enrollment specialists through in-office and other staff training to maintain program quality and to provide updates.
- e. Scheduling Tool and Outbound Call Technology. Grantee will use a scheduling tool that allows shared access for customer service staff and enrollment staff to schedule and update appointments for completion, or reschedule. Grantee will restrict program database to allow

only authorized staff to access and update data. Grantee's tool will have real-time advantage that schedules only available appointment slots and allows for data to export into a format available for analysis and monitoring of the enrollment specialists' visitations.

Grantee must use an outbound auto-call technology that allows for outbound dials that, once dispositioned, are answered by trained customer service staff. The capability to be *ready to engage* reduces the inefficiencies of cold call dialing that seldom produces effective results. Grantee enrollment specialist must make follow-up calls to participants who did not answer or where updated information is provided by a service coordinator.

- f. Reporting on the Enrollment Specialist Implementation. Grantee will provide a report, monthly, that provides the measures for the Service Level Agreement in Rider 4, including:
- The timeframe from referral to call-out for all participant-CLEs referred during the month; and
  - The call experience, including;
    - Appointment Scheduled.
    - Visit Denied.
    - Left Voicemail to call back to schedule appointment.
    - Needs additional information from service coordinator to make call (i.e.-wrong number).
  - The timeframe from referral date to the date CLE enrollment documents are mailed.
  - The timeframe from Grantee's receipt of correctly completed CLE enrollment documents to the complete processing of these documents.

Example: OLTL Call-Out Report

ProgramID	first_name	last_name	Contact	LAST ATTEMPT PHONE NUMBER	LAST CALL TIMESTAMP	LAST DISPOSITION	DIAL ATTEMPTS
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 07:16:59	Outbound-Wrong Phone Number	1
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 07:17:10	Outbound-Wrong Phone Number	1
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Mon, 19 Sep 2016 05:14:08	Outbound-Left Voicemail	3
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 7 Sep 2016 12:21:39	Outbound-Appointment Scheduled	4
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Fri, 17 Jun 2016 09:21:50	Outbound-Appointment Scheduled	2
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 07:43:42	Outbound-Appointment Scheduled	1
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 12:06:15	Outbound-Appointment Scheduled	2
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Fri, 16 Sep 2016 05:11:08	Outbound-Appointment Scheduled	5
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 4 May 2016 10:20:42	Outbound-Appointment Scheduled	5
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 07:23:36	Outbound-Appointment Declined	1
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 12:23:21	Outbound-Appointment Declined	2
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 13:53:41	Outbound-Appointment Declined	4
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Wed, 14 Sep 2016 07:34:39	Outbound-Appointment Declined	1
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Fri, 16 Sep 2016 06:38:09	Outbound-Appointment Declined	5
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Fri, 16 Sep 2016 05:12:27	Operator Intercept	5
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Fri, 16 Sep 2016 05:12:02	No Answer	5
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Mon, 19 Sep 2016 07:30:59	No Answer	5
C#	Participant	Participant	Preferred	xxx-xx-xxxx	Fri, 16 Sep 2016 05:39:55	No Answer	5

- g. Face-to-Face meetings. Grantee will conduct face to face meetings for tasks related to CLE orientation in the participant-CLE's home when requested. During these meetings, Grantee will include discussion of the roles and responsibilities of the CLE and will provide assistance with CLE Packet/Forms completion. Grantee will call CLEs within seven (7) business days of a referral date to set up appointments with the CLE. Grantee will provide a report, on a monthly basis, describing the type of contact made (i.e. - appointment set-up, no answer, declined appointment, wrong number, appointment message left on machine, etc.) and the last contact attempt date. Grantee will make at least three (3) attempts within a five (5)-day period. In addition,
- Grantee will offer over-the-phone CLE orientation and enrollment by enrollment specialists for CLEs who do not want a home visit.

- Grantee will conduct a secondary call-out for appointments where no answers were received.
- Grantee will contact the Service Coordinator to obtain valid phone numbers for wrong numbers.
- Grantee will send a CLE Welcome letter providing the phone number that the CLE can use to schedule a CLE Orientation and Enrollment Session within three (3) business days of referral.

4. Enrolling Qualified DCWs. Grantee will complete DCW document processing within seven (7) business days of receipt of correctly completed documents. Grantee will return to a participant-CLE erroneously completed documents with errors that need to be addressed highlighted with instructions to correct and return to Grantee. Grantee will not send blank DCW packets to the CLE. Grantee will send an application request form with instructions on what information is required to complete an *over-the-phone enrollment* (“OTPE”) session. Grantee will mail out pre-populated DCW forms, following the OTPE session, which reduces the submission of erroneous forms by the DCW/CLE. At the time of the OTPE session, Grantee will begin any required criminal background check processes. The Grantee will provide a participant-CLE with an option to:

- Request a blank DCW packet, or
- Grantee will complete the DCW enrollment, in lieu of OTPE, so that the information is entered upon receipt of the application and a pre-populated DCW form is mailed out.

Face-to-Face Meetings. Grantee will instruct CLEs to invite their DCW candidates to the home visit so that both the CLE and DCW enrollments are reviewed by the Enrollment Specialist; documents are completed with the assistance of the Enrollment Specialist; and any orientation can be provided to the DCW with the CLE present in their home. Grantee will provide CLEs and DCWs with an OTPE team when the CLE and DCW call in their information. Grantee will provide assistance from Customer Service representatives at any time during business hours.

5. DCW Program Orientation. Grantee will conduct DCW program orientation prior to the labeling the DCW as “Good to Go”. Grantee will use DHS approved sub-contractors for this task. Grantee will verify all newly hired DCWs have completed an in-person, pre-service orientation. In the limited situations where in-person pre-service orientation is not possible due to geographic limitations, Grantee will verify that the newly hired DCWs have completed pre-service orientation by a reliable alternative means. Grantee will adhere to the following:

- Pre-service orientation will be mandatory for all new DCW hires.
  - Pre-service orientation will be mandatory for any existing DCW who is newly hired by any participant.
  - Pre-service orientation will be mandatory for any current DCW who was terminated for any reason for thirty days or longer and subsequently hired by a participant.
  - Pre-service orientation will not be required for any DCW who works for a participant prior to the date of this contract.
  - Pre-service orientation is required only once per DCW. It not required for a subsequent participant-DCW relationship.
- a. Grantee will verify all newly hired DCWs have completed an in-person, pre-service orientation. Grantee will build system check-list logic that allows payment to DCWs only when a check-off on a “Good to Go” checklist has been completed. Grantee will verify that alternative means are available when geographic limitations prevent in-person training.
  - b. Grantee will update its new hire packets and other informational material to indicate that pre-service orientation is an OLTL qualification requirement. Grantee will publish contact information for the DCW to schedule pre-orientation training.

- c. Grantee will provide pre-service orientation that, at a minimum, covers the following topics:
  - Operational procedures and paperwork;
  - Roles and responsibilities in the independent living system;
  - Transparency and fraud;
  - Eligibility for public benefits;
  - Worker rights and responsibilities;
  - Introduction to a DCW representative;
  - The role of the Supports Coordinator with respect to the CLE;
  - Following a service plan driven schedule (staying within budgeted units);
  - The CLE as the Employer; and
  - The role of the FMS.
- d. Grantee will provide pre-service orientation that is consistent across the Commonwealth as well as consistent with information provided through support brokers, service coordination entities, or other elements of the participant directed program. The Grantee must include in the pre-service orientation a basic understanding of the functioning and requirements of the participant directed program, including the requirement of not infringing in any way with the role and responsibility of the participant-CLE as the employer to direct, supervise, train, and select the DCW. Grantee will seek input from DCWs and their representatives and other program stakeholders on the pre-service orientation curriculum.
- e. Grantee will pay DCWs who complete pre-orientation training for attending training and for all time spent in the pre-service orientation. Grantee will pay only DCWs who complete all enrollment requirements and whose CLE completes enrollment requirements. Grantee will issue payment within one payroll cycle of both the DCW and CLE being enrolled; and only when the Grantee has received confirmation of a completed orientation and when all enrollment processes are complete.
- f. Grantee will implement an electronic notification process to process and pay pre-service orientation once DCWs are in a *good-to-go* status. Grantee will create an internal billing code that will be used to track and pay pre-service orientation training. This service code would not need to be authorized by service coordinators and would auto-generate as necessary to pay workers.

6. Customer Service.

- a. Grantee will have an accessible in-person presence, including Enrollment Managers and Enrollment Specialists, in each region described in section 3d of this Rider.
- b. Grantee and its sub-grantees will respond to call and call backs according to its agreement with DHS.

7. Billing for Services Rendered. Grantee must submit initial MA and associated fiscal employer agent claims within 180 days and resubmit any rejected or suspended claim with 365 days of the date of service. Grantee must submit claims for which valid timesheets are processed and paid following the described claiming process. The Department denies claims for timesheets submitted outside the DHS timeframes for timely submission through normal claims processing. Grantee must use the process approved by the Department to claim, reconcile and resubmit claims below, which includes its demonstration of interaction with SCEs/MCOs to reconcile claims.

- a. Within 15 business days of the end of the quarter, Grantee must prepare a point in time quarterly report for DHS reflecting denied claims for timely submitted timesheets for dates of service during the prior quarter **only**, i.e., January, February and March will be due 15 business days after the last business day of June.

- b. Within 15 business days of the end of the quarter, Grantee must prepare a point in quarterly report to DHS reflecting denied claims that have not been resolved by the SCEs for dates of service two months prior **only** and submit to OLTL a quarterly,
  - c. Grantee will be solely responsible for the reconciliation and resubmission of claims. Within 15 business days of the end of each quarter, Grantee will prepare a detailed reconciliation report, in a format approved by the department, the denied claims of timely submitted timesheets for dates of services in the prior quarter.
9. Coordinating and Communicating with SCEs/MCOs. Grantee will provide SCEs and MCOs education on utilizing the Better Online Web Portal to view participant utilization to assist SCEs and MCOs in identifying utilization in real time. This provides SCEs with utilization that has been billed as shown in HCSIS and SAMS, but also utilization that represents timesheets in process which have not been billed yet. Grantee will also educate SCEs on how to obtain utilization reports from the Better Online Web Portal. These reports are available to the SCE, 24/7, and can be pulled for specific timeframes needed by the SCE when reviewing its participant's utilization. Grantee will provide assistance to SCEs and MCOs on specific participant utilization/over utilization items in order to assist them with service plan or service utilization issues with the participant-CLE.

Grantee will work with SCE coordinators to gain missing participant-CLE information that is needed to update invalid addresses, phone numbers and CLE information. Grantee will contact SCs for any participant service issues that must be resolved between the participant and the SC. For example, when a participant wants to end date a GAP in Service because they no longer require facility care.

Grantee will assign an Enrollment Manager (EM) to outreach to and provide education to service coordinator administrators and SCs on FMS program rules and processes. The EM also assists with participant service concerns; provides updates on missing items for participants prior to their receipt of services; and provides information on health and welfare concerns. In addition, the EM will provide Better Online Web Portal training which allows the SC to enter referrals, monitor participant utilization, review timesheets, check demographics, etc.

**RIDER 4**

The Department has developed the following minimum performance standards. Failure to meet the performance standards will result in damages, which will be difficult or impractical to ascertain and may result in DHS assessing liquidated damages. In the event of such failures, Grantee agrees that the amount of damages shall be the amounts set forth below and Grantee shall pay such amount as liquidated damages, not as a penalty. Where an assessment is defined as an "up to" amount, the dollar value will be set at the discretion of DHS. DHS may waive an assessment of liquidated damages at its discretion. The DHS Project Manager will give written notice of each failure to meet a performance standard. If DHS does not assess liquidated damages in a particular instance, DHS is not precluded from pursuing other or future assessments relating to those performance metrics and their associated damages. If one failure implicates more than one performance standard, an assessment may be made as to only one performance standard per month. The maximum assessment per month for damages will be limited to \$25,000.

**SERVICE LEVEL AGREEMENTS**

<b>PERFORMANCE STANDARD</b>	<b>TARGET</b>	<b>MINIMUM ACCEPTABLE</b>	<b>MEASURE AND VALIDATION METHOD</b>	<b>NONCOMPLIANT REMEDIAL ACTION</b>	<b>REPORTING FREQUENCY</b>
1. Contact new participants and offer face to face meeting based on prior week's referrals by the Service Coordination Entity (SCE).	Begin call attempts within 7 business days of the referral date.	Begin call attempts within 7 business days of the referral date.	Report of all referrals from prior week and call-out activity.	For each referred participant not contacted within 7 business days, up to a \$5,000 assessment.	Performance Standard to be submitted via monthly four week summary report.

<b>PERFORMANCE STANDARD</b>	<b>TARGET</b>	<b>MINIMUM ACCEPTABLE</b>	<b>MEASURE AND VALIDATION METHOD</b>	<b>NONCOMPLIANT REMEDIAL ACTION</b>	<b>REPORTING FREQUENCY</b>
2. Mail CLE enrollment documents that include a call-in number to set-up appointment within 3 business days of referral date.	Mail CLE enrollment documents within 3 business days; within 5 days with an exception.	Mail documents within 5 business days.	Report of mail out date and referral date.	For each referred participant not having CLE enrollment materials sent within 5 business days, an assessment of up to \$5,000.	Performance Standard to be submitted via monthly summary report.
3. Processing of CLE enrollment including processing of all paperwork.	Completion within 7 business days from receipt of correctly completed documents. Erroneous documents returned with issues highlighted.	7 business days unless acceptable documentation is provided.	Report of comparison of document receipt date to participant's ability to begin services.	For each CLE enrollment not completed within the prescribed timeframe, an assessment of up to \$5,000.	Performance measurement to be submitted via monthly summary report.

<p>4. Enrollment of direct care workers from correctly completed forms to "Good to Go" status.</p>	<p>Completion of document processing within 7 business days of receipt of correctly completed documents. Erroneous documents returned with issues highlighted.</p>	<p>7 business days (unless acceptable documentation for a delay is provided); This minimum standard assumes that only the State Police background check is required and that the DCW has no record. Childline and FBI Clearance require longer dissemination times by the agency.</p>	<p>Report of comparison of receipt of DCW documents to "Good to Go" date.</p>	<p>For each direct care worker enrollment not completed within the prescribed timeframe, an assessment of liquidated damages up to \$5,000.</p>	<p>Performance measurement to be submitted via monthly summary report.</p>
<p>5. Conduct face to face meetings as requested by new participants to orient to program and complete any necessary paperwork.</p>	<p>Visit occurs on dates scheduled with participant during call-out.</p>	<p>Visit occurs on dates scheduled with participant during call-out.</p>	<p>Visit occurred on date scheduled (unless cancelled or rescheduled by participant).</p>	<p>For each home visit not conducted on scheduled date, an assessment of liquidated damages up to \$5,000.</p>	<p>Report of Scheduled Visits with status of visit.</p>
<p>6. Level of Customer satisfaction based on customer satisfaction surveys.</p>	<p>Bi-annually from beginning of period.</p>	<p>95% satisfaction rate from active participants.</p>	<p>Submitted survey results from representative sample of participants.</p>	<p>Develop corrective action plan outlining how the vendor will address poor satisfaction results. Failure to develop a plan that addresses satisfaction will result in an assessment of liquidated damages to \$5,000.</p>	<p>Performance measurement to be submitted Bi-annually.</p>

<p>7. Prepare a point-in-time quarterly report for PA DHS reflecting denied claims for dates of service during the month prior only. Report will exclude timely denial for timesheets submitted late after report is generated. Note: Report will exclude timely denial for timesheets submitted late after report is generated.</p>	<p>Report must be generated 15 days after the last business day of each quarter and submitted to each SCE within 5 business days.</p>	<p>10 business days from 15 days after the last business day of the quarter.</p>	<p>Prepare a quarterly summary report to include the name of each SCE, the total number of affected participants and the date that the report was sent.</p>	<p>Failure to prepare and distribute the report will result in an assessment of liquidated damages of up to \$5,000.</p>	<p>Performance measurement to be reported quarterly.</p>
<p>8. Prepare a point-in-time quarterly report for PA DHS reflecting denied claims that have not been resolved by the SCEs for dates of service two months prior only, i.e. March's report should reflect January's denied claims after outreach to the SCEs. Note: Report will exclude timely denial for timesheets submitted late after report is generated.</p>	<p>Report should be generated 15 days after the last business day of each quarter and submitted to DHS within 5 business days.</p>	<p>10 business days from the last business day of each quarter.</p>	<p>Submitted report quarterly.</p>	<p>Failure to prepare and distribute the report will result in a penalty of up to \$5,000.</p>	<p>Performance measurement to be reported quarterly.</p>

<p>9. Prepare a quarterly detailed reconciliation report of the denied claims for timely submitted timesheets for dates of service during the quarter prior <b>only</b>, i.e. January, February and March will be due 15 day after the last business day of June.</p>	<p>Report should be generated 15 days after the last business day of the last month in the quarter and submitted to DHS within 5 business days.</p>	<p>10 business days from the 15 days after the last business day of the last month in the current quarter.</p>	<p>Submitted report quarterly.</p>	<p>Failure to prepare and distribute the report will result in an assessment of liquidated damages of up to \$5,000.</p>	<p>Performance measurement to be reported quarterly.</p>
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Cost Submittal - Amendment 3 Grant Agreement 4100061881

*Attachment C*

	Administrative Fee	Annual Total
<b>1. Monthly VF/EA Service Fee</b>		
Estimated Number of Current Consumers - <i>not</i>	\$80.60	\$16,918,262.40
Estimated Number of Current Consumers - <i>not</i>	\$104.00	\$5,967,936.00
	<b>Deliverable Price</b>	<b>Annual Total</b>
<b>2. 40/60 Rule Report</b>	\$16,500.00	\$16,500.00
	<b>Deliverable Price</b>	<b>Annual Total</b>
<b>3. 2:1 Enhanced Services Report</b>	\$5,607.00	\$5,607.00
	<b>Deliverable Price</b>	<b>Annual Total</b>
<b>4. Second Semi-Annual Survey</b>	\$26,500.00	\$26,500.00
	<b>Monthly Price</b>	<b>Annual Total</b>
<b>5. Regional Enrollment Specialists</b>	\$35,186.67	\$422,240.00
	<b>Monthly Price</b>	<b>Annual Total</b>
<b>6. Service Coordination/Enhanced Claiming Outreach</b>	\$37,500.00	\$450,000.00
	<b>Monthly Price</b>	<b>Annual Total</b>
<b>7. Domestic Care Worker Orientation</b>	\$23,333.33	\$280,000.00
	<b>Monthly Price</b>	<b>Annual Total</b>

**8. Payroll Production and Distribution Costs for DCW Orientation**      \$20,833.33      \$250,000.00

	Monthly Price	Annual Total
<b>9. Subcontractor monitoring</b>	\$15,625.00	\$187,500.00

	Max By Invoice	Annual Total
<b>10. Subcontractor costs for providing DCW</b>	\$15,625.00	\$1,250,000.00

	Max By Invoice	Annual Total
<b>11. Payments to workers attending DCW</b>	\$15,625.00	\$445,900.00

	Monthly Price	Annual Total
<b>12. SCE/MCO Coordination/Communication</b>	\$46,296.25	\$555,555.00

**Estimated Annual Total**      \$26,776,000.40

# Exhibit D

*Commonwealth Court's Memorandum and Opinion vacating automatic  
supersedeas, November 10, 2016*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

David W. Smith and	:	
Donald Lambrecht,	:	
Petitioners	:	
	:	
v.	:	No. 177 M.D. 2015
	:	Submitted: November 1, 2016
Governor Thomas W. Wolf, in his	:	
official capacity as Governor of the	:	
Commonwealth of Pennsylvania and	:	
Commonwealth of Pennsylvania,	:	
Department of Human Services,	:	
Respondents	:	

**BEFORE: HONORABLE ROBERT SIMPSON, Judge**  
**Filed: November 10, 2016**

**MEMORANDUM OPINION**

Before this Court are the Application for Emergency Relief, and earlier filed Expedited Application to Vacate any Automatic Supersedeas, also seeking alternative relief, (collectively, Applications) filed by David W. Smith and Donald Lambrecht (collectively, Petitioners), and the answers thereto.

**Background**

By order dated October 14, 2016 (Order), this Court invalidated certain sections of Executive Order 2015-05 (Executive Order) issued by Governor Thomas W. Wolf (Governor), declaring them void *ab initio*, and permanently enjoining prospective enforcement or other activities in reliance on those sections. Smith v. Wolf (Pa. Cmwlth., No. 177 M.D. 2015, filed October 14, 2016) (en banc) (unreported); see Markham v. Wolf \_\_ A.3d \_\_ (Pa. Cmwlth., No. 176 M.D. 2015, filed September 22, 2016) (en banc). The Executive Order pertained to direct care

workers (DCWs) whose services to eligible aged or disabled individuals (participants) are paid by the Department of Human Services, Office of Long Term Living (Department).

This Court held the Governor exceeded his executive authority by enacting the majority of the provisions in the Executive Order, namely Sections 1(d) and 1(e), 3, 4, and Sections 5(b) through 5(g), such that those provisions were invalid (Invalidated Provisions). Markham. Further, we reasoned the Invalidated Provisions disrupted the unique relationship between DCWs and participants, and were inconsistent with the Attendant Care Services Act<sup>1</sup> (Act 150), the Pennsylvania Labor Relations Act<sup>2</sup> (PLRA), and the Public Employe Relations Act<sup>3</sup> (PERA). We also found the Invalidated Provisions warranted a permanent injunction. Additionally, we held Petitioners established the ripeness of their claims because the Invalidated Provisions caused concrete harm in that Smith is a participant who receives care from Lambrecht, his DCW. Smith.

In anticipation of an appeal,<sup>4</sup> the same day that this Court filed its en banc decision in Smith, Petitioners filed their Expedited Application to Vacate any

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<sup>1</sup> Act of December 10, 1986, P.L. 1477, as amended, 62 P.S. §§3051-3058.

<sup>2</sup> Act of June 1, 1937, P.L. 1168, as amended, 43 P.S. §§211.1-13.

<sup>3</sup> Act of July 23, 1970, P.L. 563, as amended, 43 P.S. §§1101.101-.2301.

<sup>4</sup> This application ripened when Respondents appealed the Order.

Automatic Supersedeas, or in the alternative, Restore the Preliminary Injunction<sup>5</sup> Pending Appeal (Expedited Application).

On October 24, 2016, the Governor and the Department (collectively, Respondents) filed a notice of appeal with our Supreme Court. Respondents' appeal effectuated an automatic supersedeas under Pa. R.A.P. 1736(b).<sup>6</sup> Thus, Respondents may implement the Invalidated Provisions while the appeal is pending.

The next day, Petitioners filed their Application for Emergency Relief, asking to vacate an automatic supersedeas, and renewing their Expedited Application.

### **Legal Standard**

“It is well-established that in order to prevail on a motion to vacate an automatic supersedeas, the petitioner must establish: 1) that he is likely to prevail on the merits; 2) that without the requested relief he will suffer irreparable injury; and[,] 3) that the removal of the automatic supersedeas will not substantially harm other interested parties or adversely affect the public interest.” Rickert v. Latimore Twp., 960 A.2d 912, 923 (Pa. Cmwlth. 2008) (quoting Solano v. Pa. Bd. of Prob. & Parole, 884 A.2d 943, 944 (Pa. Cmwlth. 2005)). Petitioners bear the burden of proving each prerequisite.

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<sup>5</sup> Then-President Judge Dan Pellegrini issued a preliminary injunction on April 23, 2015, enjoining the Governor from entering any memorandum of mutual understanding pursuant to the Executive Order.

<sup>6</sup> Pa. R.A.P. 1736 applies to an appeal filed by the Commonwealth or any officer thereof acting in his official capacity.

For the reasons set forth in our memorandum opinion filed in Markham v. Wolf (Pa. Cmwlth., No. 176 M.D. 2015, filed November 10, 2016) (unreported) (single j. op.), that apply equally here, we incorporate that analysis and find Petitioners established grounds to vacate the automatic supersedeas here.

### **Conclusion**

For the foregoing reasons and those incorporated by reference, Petitioners established the elements needed to vacate the automatic supersedeas.<sup>7</sup> Because the automatic supersedeas is vacated, it is unnecessary to address Petitioners' request, in the alternative, to restore the preliminary injunction.

Accordingly, the Court enters the following:

### **ORDER**

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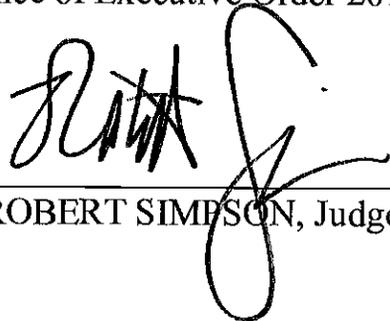
**AND NOW**, this 10<sup>th</sup> day of November, 2016, in accordance with our order dated November 1, 2016, the relief granted therein **CONTINUES IN EFFECT**;

**AND THEREFORE**, the automatic supersedeas effectuated by Respondents' appeal of this Court's order dated October 14, 2016, is **VACATED**, thus **RESTORING** the injunction and all other terms of that Order, pending disposition of the appeal to the Supreme Court;

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<sup>7</sup> As this Court permanently enjoined the Invalidated Provisions, vacating the supersedeas is the functional equivalent to restoration of an injunction. G. RONALD DARLINGTON, ET AL., PA. APP. PRACTICE §1732:8 n.1 (West 2011-12 ed.) (citing Mazzie v. Com., 432 A.2d 985 (Pa. 1981)).

**AND FURTHER**, this ORDER shall not preclude Respondents from communicating with DCWs as is necessary to perform their duties, in the manner the parties communicated prior to issuance of Executive Order 2015-05.

A handwritten signature in black ink, appearing to read 'Robert Simpson', written over a horizontal line.

ROBERT SIMPSON, Judge

Certified from the Record

NOV 10 2016

and Order ~~Exit~~

# Exhibit E

*May 11, 2017 Funding Increase Letter from the Department of Human  
Services to Public Partnerships, LLC*



**pennsylvania**  
DEPARTMENT OF HUMAN SERVICES

*Procurement*

May 11, 2017

Public Partnerships LLC  
148 State Street, 10<sup>th</sup> Floor  
Boston, MA 02109-2510

Grant No: 4100061881

Dear Grantee:

This is to inform you that we are adjusting your grant to increase the grant cost as follows:

Current Grant Amount	\$1,206,700.00
Increase / (Decrease)	\$1,206,700.00 <i>\$ 2,660,994.60</i>
Total Grant Amount	\$2,413,400.00 <i>\$ 3,867,694.60</i>

Please attach this funding adjustment to your grant. It represents a new grant amount.

*JCM*  
*5/31/17*

*Candice Thompson*  
Secretary or Designee

5.11.17  
Date

*Sally Army*  
DHS Office of General Counsel

5/15/17  
Date

*Beck*  
Comptroller Operations

5/31/17  
Date

# Exhibit F

*The Training and Education Fund's Articles of Incorporation*

ARTICLES OF INCORPORATION  
DOMESTIC NONPROFIT CORPORATION

**THE TRAINING AND EDUCATION FUND**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE-CORPORATION BUREAU  
308 NORTH OFFICE BUILDING  
HARRISBURG, PA 17120

1. The name of the Corporation is as follows:

**The Training and Education Fund**

2. The address of the initial registered office of the Corporation in the Commonwealth of Pennsylvania is as follows:

**1500 N. 2nd Street, Suite 16**  
**Harrisburg, Pa 17102**  
Dauphin County



TCO161123JF1119

3. The purpose of the Corporation is as follows:

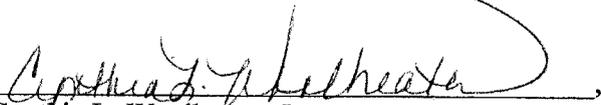
The Corporation shall be organized and operated exclusively for charitable and educational purposes as permitted within the scope of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and its regulations, as they now exist or as they may hereafter be amended. In furtherance of these purposes, the Corporation may exercise all rights and powers conferred by the laws of the Commonwealth of Pennsylvania upon nonprofit corporations.

4. The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise. No part of the net earnings of the Corporation shall inure to the benefit of any Director or officer of the Corporation or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation effecting one or more of its purposes), and no Director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.
5. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.
6. The Corporation is incorporated under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

7. The Corporation is organized on a nonstock basis.
8. ~~The Corporation shall have no members.~~
9. The name and address of the incorporator of the Corporation is as follows:

Cynthia L. Woolheater  
600 Grant Street, 44th Floor  
Pittsburgh, Pa 15219
10. The term of existence of the Corporation shall be perpetual.
11. The Corporation shall be governed by a Board of Directors which shall consist of such numbers of Directors as may be fixed from time to time in the Bylaws of the Corporation, but in no event shall the Board of Directors of the Corporation consist of fewer than three (3) Directors.
12. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and its regulations, as they now exist or as they may hereafter be amended. In addition, notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization contributions to which are deductible under Section 170(c)(2) of the Code and its regulations, as they now exist or as they may hereafter be amended.
13. Upon dissolution of the Corporation or the winding up of its affairs, the Board of Directors shall, after making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent United States Internal Revenue law, as the Board of Directors shall determine. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes. Under no circumstances shall any assets be distributed, upon dissolution, upon sale of substantially all of the assets or otherwise, to Directors, officers or employees of the corporation.

In testimony whereof, the Incorporator has signed these Articles of Incorporation of the Corporation this 23rd day of November, 2016

  
Cynthia L. Woolheater, Incorporator

# Exhibit G

*Direct Care Worker Orientation Information*

# Direct Care Worker Orientation Information

effective for worker intakes after 7/01/2017

## How was stakeholder input received?

Public Partnerships and the subcontractor, The Training and Education Fund, brought together current CLE's, Participants and workers in the program to provide input to the development of the curriculum.

We notified the Public Partnerships Advisory Group on April's Advisory Meeting call of the orientation requirement and reviewed the process.

Participants/workers and Public Partnerships staff attended pilot sessions of the Pre-service orientation in May.

## How was the Orientation curriculum developed?

Public Partnerships has been working with the Training and Education Fund, to build the curriculum in accordance with OLTL requirements since January.

- Public Partnerships provided the curriculum to OLTL for approval. Main curriculum topics include,
- Understanding Independent Living Principles
- Recognizing and Reporting Fraud, Abuse and Neglect
- Worker's Rights
- Operational Procedures and Paperwork including but not limited to, who the employer is, timesheet requirements, pay schedules, overtime requirements, etc.

## How will/was the orientation advertised?

Public Partnerships has sent a post card advising of the new requirement and the 7/01 effective date.

New CLE instructions will include the new requirement for their DCW in the new hire application.

New DCWs Pre-Populated Packets will include the new requirement.

When the CLE and DCW call the over-the-phone enrollment number to sign up as a worker, the Public Partnerships representative will remind them of the new requirement. Public Partnerships strongly encourages the use of over-the-phone enrollment, and currently, 90% of new hires use the over-the-phone enrollment method to provide their information. At that time the Public Partnerships representative will provide the worker call-in information to The Training and Education Fund.

In mid-June, Public Partnerships will add orientation information to the message of the day, on the customer service line.

The Regional Enrollment Manager notified their Service Coordinators of the Orientation and the mechanics of the process at the beginning of June.

## The Mechanics.

Each day, a file with new DCW intake information will be uploaded to a secure site. The information will include the DCW E# to indicate that this is a worker that needs to complete the Orientation prior to providing services. There is no participant information transferred to the subcontractor. Only the C# for determining the worker/CLE association.

- The file will also include DCWs who are currently working for a participant; but are being hired by another participant on and after 7/01.
- The file will also include DCWs who have been terminated by their participant 30 days or longer and are being re-hired.

The Training Group utilized data to determine the number of DCWs that live in each county, and used that information to rough out the number of sessions in each area. This is their baseline and will be adjusted as we see how this lines up with actual experience.

Currently all counties have at least one identified site for training. In the highly populated areas, there are multiple sites to be used concurrently however not all will be used every month, they have extras as back up in-case it is needed. The training unit staff are still nailing down additional locations to fill out areas like State College and Altoona.

In highly populated PDS counties (like Philadelphia) they will have sessions planned multiple times per week. In the lesser populated areas, sessions will be scheduled weekly and as demand for the session dictates.

The DCW will be contacted by the Training and Education Fund and scheduled for the closest orientation site. This will occur within 24 hours of receiving a daily file load of new worker intakes from Public Partnerships.

For example, if a worker calls in their new hire information today to Public Partnerships, the sub will have the workers name and number to call them to set up the appointment, tomorrow. The representative on the phone will assist them with the closest sessions available. *Again, it is important to note that the subcontractor will call the DCW to schedule an orientation session. The worker should expect a call from The Training and Education Fund.*

The DCW can also call to schedule a session the day after they have provided their information to Public Partnerships' over the phone enrollment. The phone number is included in the new hire paperwork and enrollment documents for the CLE/DCW. (If the DCW calls in, they must already have their E#.)

Each day, a file with the DCWs who have completed the orientation will be uploaded from The Training Fund to Public Partnerships. This file will update our system for any worker who has completed the Orientation. Once the worker has completed the Orientation, they will not need to recomplete the Orientation for other employers they work for.

Upon completion of an in-person, pre-service orientation, The Training and Education Fund issues a certificate of completion to the DCW and notifies Public Partnerships by updating the DCW electronic record on a secure file.

The DCW will be paid for 3.5 hours at minimum wage for their completed Orientation after they are good to go and on or before their first payment for services provided.

If the DCW does not complete the enrollment process, they will not be paid for the Orientation.

#### **Sessions information.**

The Training and Education Fund was provided both historical and trending data related to worker concentration in each county and region. They have agreements with host sites to hold sessions based on their analysis of projected frequency of Orientation need for each county. Session locations, dates and times will be provided to the worker at the time of the appointment. Sessions are scheduled to provide the ability for a worker to attend an Orientation during the time that the enrollment process is being completed. In order to allow for as many spots as possible to be conducted in each session, sessions are limited to DCWs, Public Partnerships monitors and OLTL designated staff.

No Impact on the Public Partnerships G2G process.

Once the worker has completed their enrollment materials, the background checks are processed fully, and the Orientation is complete; and the authorization for services (for new participants) from the SC has been received by Public Partnerships, the DCW will be able to provide services.

As previously mentioned, scheduled sessions will be set up with enough frequency to allow for the orientation to occur in parallel to the enrollment processing cycle time; which includes,

- Home Visits to the CLE (optional but strongly encouraged) to train on the employer role, business rules and assist with the completion of enrollment documents, and more
- Calling Public Partnerships with DCW new hire information
- Processing Background Checks, including clearance from the CLE for any DCWs who have a history (background checks where a DCW has a record normally take 3 weeks to fully process).
- Completion of the pre-populated DCW packet
- Processing the packets

Many of the above activities already occur in parallel with each other. The orientation is another activity that can occur during the enrollment period without delaying the "good to go" process. The timeframes related to including direct care worker orientation will be monitored closely to ensure that the orientation program will not slow down the direct care worker enrollment process. Workers should be sure to keep their scheduled session appointment so that enrollment is not delayed.

#### **Geographic Limitations to Orientation Sessions.**

On rare occasions, if the DCW is geographically unable to attend a training, the T&EF arrange for training materials to be sent to the DCW to review. An Orientation representative from the Training and Education Fund will follow-up with scheduled visit to review the curriculum with the worker. Here is how the process works:

1. The Training and Education Fund identifies a worker who cannot attend an in-person session due to geographical limitations.
2. The Training and Education Fund mails a packet of information to the worker. This packet includes the same information that is provided at the in-person orientation.
3. The Training and Education fund will schedule with a Pre-Service Orientation facilitator for the following week. The worker is expected to review the packet or modules prior to the call.
4. During the orientation phone call, the instructor walks through the material and asks questions to ensure that the worker understands the information. Following the phone call, the facilitator certifies that the worker has completed the orientation and mails a certificate of completion to the worker. The notification to Public Partnerships is the same as in-person orientation.

The Training and Education Fund may provide the 'geographically challenged' Orientation curriculum on-line in the future.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that foregoing has on this date been served on the following:

Kenneth L. Joel, Esq.  
Maryanne M. Lewis, Esq.  
Office of Attorney General - Litigation Section  
15th Floor, Strawberry Square  
Harrisburg, PA 17120  
*Counsel for Respondents*

Sean M. Concannon, Esq.  
Office of General Counsel  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
*Counsel for Respondents*

Joel L. Frank, Esq.  
James C. Sargent, Jr., Esq.  
Maureen M. McBride, Esq.  
Scot R. Withers, Esq.  
Lamb McErlane PC  
24 East Market Street  
P.O. Box 565  
West Chester, PA 19381  
*Counsel for Michael C. Turzai*

Bruce M. Ludwig, Esq.  
Willig, Williams & Davidson  
1845 Walnut St., 24<sup>th</sup> Floor  
Philadelphia, PA 19103-4708  
*Counsel for United Home Care Workers of PA*

Tara L. Smith, Esq.  
Jason M. Staloski, Esq.  
Nora Winkelman, Esq.  
Pennsylvania House of Representatives  
House Democratic Caucus  
620 Main Capitol Building  
Harrisburg, PA 17120

*Counsel for Democratic Caucuses of Pennsylvania Senate and House of Representatives*

Joshua P. Rubinsky, Esq.  
Amy E. Galer, Esq.  
Brodie & Rubinsky, P.C.  
121 South Broad Street, Suite 800  
Philadelphia, PA 19107

*Counsel for Voices for Independence and Liberty Resources, Inc.*

Mark Stadler, Esq.  
Burns White, LLC  
106 Isabella Street  
Pittsburgh, PA 15212-5841  
*Counsel for TRIPIL Services*

Claude J. Hafner, Esq.  
Shannon A. Sargent, Esq.  
Pennsylvania Senate  
State Capitol Building, Rm 535  
Harrisburg, PA 17120

July 14, 2017



**David R. Osborne**

PA Attorney ID#: 318024

**Karin M. Sweigart**

PA Attorney ID#: 317970

The Fairness Center

225 State Street, Suite 303

Harrisburg, PA 17101

844-293-1001

david@fairnesscenter.org

karin@fairnesscenter.org