

Date: March 16, 2021

To: Oregon Public Defense Contractors

From: Heather Pate, OPDS Contracts Manager
Amy Jackson, OPDS Contracts Analyst
Billy Strehlow, OPDS Contracts Analyst
David K Orton, OPDS Contracts Analyst
Megan Doak, OPDS Contracts Analyst

2021 OPDS Contracts Work Plan

Background

Beginning in February 2019, under the direction of the PDSC and the recommendations of the Sixth Amendment Center report, "The Right to Counsel in Oregon," the Office of Public Defense (OPDS) contracts team worked to establish a new contracting model for all non-PCRPP entities providing Public Defense in Adult Criminal and Juvenile cases. This new model focused on:

- (1) Attorney Full-Time Equivalent (FTE) with expected caseloads reflective of 115% of guidelines as set by the National Advisory Commission on Criminal Justice Standards and Goals (NAC);
- (2) Urban/Non-Urban designation by population per county for establishment of FTE rates; and
- (3) Revenue neutrality.

On December 17, 2020, the PDSC approved contracts established under this model, which subsequently went into effect January 1, 2021.

Current Focus

With barely 60 days since the inception of the new contracting model, the OPDS contracts team is already working to further improve the model and bring it even closer in-line with the recommendations made by the Sixth Amendment Center. It is the agency's goal to make the state of Oregon an example of ethical, effective, and sustainable public defense.

To this end, the OPDS contracts team will spend 2021 focusing on the following:

Realignment of the Contract Period

The OPDS contracts team has proposed that public defense contracts be realigned to an even-year fiscal biennium, with the next full contract period commencing July 1, 2022 and concluding June 30, 2024. This change will allow contracts to better align with the State of Oregon's odd-year fiscal/budget biennium.

This realignment will necessitate the implementation of a 6-month contract extension, as current contracts are set to expire at the end of 2021.

Data Collection and Review

OPDS is working to compile and review caseload data received under the new contract model. Per the current contract's General Terms, monthly caseload data is due within 20 days of the end of each month. January's data was submitted by providers February 20th, with February data expected by March 20th. Both data sets will be available to contract staff once it is compiled and checked for errors.

This will give the contract analysts two months of data as a point of discussion during the year's first formal quarterly meetings with providers, scheduled to occur in late March and April of 2021. These meetings will provide valuable insight into the successes and dependences of the model. Along with the caseload statistics, the providers' perception of how well the new model is working will be a key element to understanding its relevancy. This information will allow OPDS to execute effective strategic planning and better prioritize resources within the agency around the new contracting model. It will also aid in synergizing future contracts with the recommendations of the Sixth Amendment Center and creating a best practices model of representation with standardized components akin to those inherent to Parent Child Representation Program (PCRP).

There are trends and issues specific to 2021 to consider as well. Most unambiguously, it is the hope that the fog of COVID-19 shall be lifted before year's end. With it is the anticipation for resolution of the great log-jam of cases that are currently inflating workloads and causing attorneys and contract administrators concern regarding their ethical responsibilities. How/when these cases resolve and how that normalizes caseloads and assignments overall will assist in understanding the path forward for two-year contracts beginning July 1, 2022.

Quarterly Meeting Topics:

- Adequacy of Contracted FTE/Caseload (using OPDS Caseload Statistics, Criminal Justice Commission (CJC) Data, Oregon Judicial Department (OJD) Data)
- Entity Staffing Needs
- Distribution of Contract Funds
- Non-Routine Expenditure Usage
- Complaints Received by OPDS Regarding Entity
- Entity Needs
- Complicated/Complex Case Issues
- Other (Open-Ended)

Contracting Model Enhancement Workgroup

Together, OPDS General Counsel and the contracts team will initiate and participate in a workgroup with selected providers, with the goal of formulating recommendations and solutions for issues deemed critical for successful future contracting and enhancement. Having providers participate in this workgroup will not only allow diverse opinions and valuable front-line experience, it will also enhance collaborative relationships between providers and OPDS. The workgroup will meet on a robust schedule with prioritized topics and objectives. Initially, the workgroup will focus on topics appropriate for the formulation of a fully developed Request for Proposal (RFP) for the biennial contracts scheduled to begin July 1, 2022. Ultimately, however, the totality of the workgroup's attention will be flexible and phased over the next 3 years, as necessary.

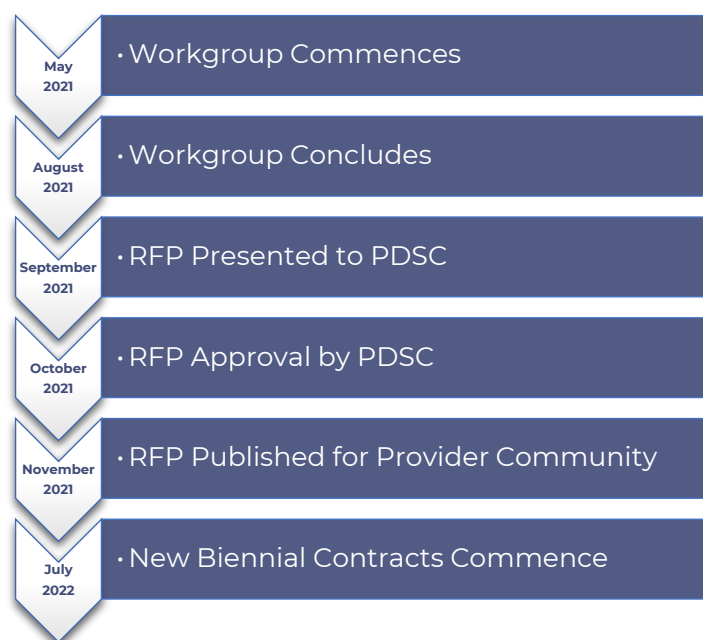
Workgroup Topics:

- Administration Costs as a Standardized Rate Based on Entity Type (PD Office, Consortium, Law Firm)
- Definition of "Staff" (non-attorneys) in Contract Terms
- "Staff"-to-Attorney Ratio(s)
- Overhead Costs (i.e. facility, utility, etc.) as a Standardized Rate (currently Urban/Non-Urban)
- Pay Scale for Attorneys based on Experience
- Guidelines for Valuation of Specialty Courts (special emphasis on Courts that require more "staff" than attorneys)

The finding of the workgroup's initial phase may also be partially incorporated into the 6-month contract extensions necessary for the biennial realignment. These contract extensions can be formulated and proposed at the PDSC's preference and direction.

If you are interested in participating with this workgroup, please email Heather.L.Pate@opds.state.or.us no later than March 26th, 2021.

The workgroup's efforts, RFP, and biennial contract will meet the following expected timeline:



Final Considerations

While the contracts team's work plan for 2021 is substantial, it is necessary to move public defense forward to a sustainable contracting model. However, even with its progression, some ideas have been discussed but left to future consideration. Once the model can be further refined, that is sustainable and ethical regarding caseload and payment of providers for quality defense, competition for contracts may not be far behind. Careful thought will need to be given to how OPDS, RFPs, and contracts can not only withstand competitive bids, but also be litigation-proof. As lessons have been learned through the former and current contract models, so too will lessons result from the first contract of its kind beginning July 1, 2022. Ultimately, OPDS has taken a large, first step towards the sustainable, progressive, and efficient management of public defense, but will not rest on its laurels and will continue to press forward until Oregon is the standard by which all other public defense agencies are measured.