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nonprofit community.

Human Services Committee Public Hearing

March 13, 2007

Bills Numbered

1338: AAC A Cost of Living Increase for Private Providers of Health and Human Services

1396: AAC Concerning the State Purchase of Service Contracts for Health and Human Services

By Nora Duncan, Public Policy Specialist

Good afternoon honored members of the Human Services Committee. My name is Nora Duncan and I am the Public Policy Specialist for the CT Association of Nonprofits. CT Nonprofits has a membership of over 500 nonprofit organizations state-wide, approximately 300 of which contract with the state to provide critical health and human services to hundreds of thousands of children and adults every day in every city and town. I am here today on behalf of those state funded members to support bills numbered 1338 and 1396.

1338: AAC A Cost of Living Increase for Private Providers of Health and Human Services

This bill starts the process of giving the state-contracted nonprofit community the much needed Cost of Living Adjustment (COLA) necessary to enhance wages and salaries, maintain benefits and meet the increasing costs of doing business. A simple low-wage pool, as proposed in the Governor's budget, is insufficient because it fails to address benefits, salaries, energy increases and general inflation and only targets three state agencies. An attached document provides examples of why a simple low-wage pool is not the answer to the nonprofit funding crisis.

The Governor's budget includes NO COLA over the biennium. Flat funding is the equivalent of budget cuts. Expenses grow regardless of whether budgets keep pace. As you have heard time and time again the COLA needed is 7% in SFY08 and 5% in SFY09. This by no means makes up for the historical under-funding of the last two decades, but it does provide enough to make a significant impact in the daily lives of those employed by and served by community based nonprofit organizations. Without the COLA it is inevitable that program cuts will be necessary, waiting lists will grow, staff will be laid off and the burden will continue to shift from the community based nonprofit sector to hospitals and state run institutions such as the Department of Correction.

This Committee will have an opportunity today and throughout the session, including in the forum the Committee has graciously agreed to host on March 29th, to hear directly from community based nonprofit providers about the need for a 12% COLA over the biennium and the consequences of failing to meet that need. These needs are as real as any other facing the General Assembly this session. The community based nonprofit sector is the safety net for the most vulnerable members of our society and where people turn when they have nowhere else to go.

Please note that the COLA has historically been applied to the *Department of Correction and the Children's Trust Fund* and they are left out of the language in this bill. Please include them and pass this bill.

1396: AAC Concerning the State Purchase of Service Contracts for Health and Human Services

This bill allows the Secretary of the Office of Policy and Management (OPM) to waive competitive procurement requirements in contracts between the state and private providers of health and human services as needed. This is necessary not to avoid competition, but to protect vital and critical services from being rebid when doing so risks the health and safety of those being served. Some rebidding may be appropriate and some may not. It is important to allow for a distinction. It is probably necessary to explain the circumstances faced by the entire health and human services system.

Attached you will find a letter from November 2005 to the Secretary Genuario from the Attorney General. That letter resulted in OPM asking all Purchase of Service state agencies to prepare competitive bidding plans for all health and human services contracts over the next several years. This means re-bidding of approximately \$1.5 billion in services. That will include plans for every Department of Mental Retardation (DMR) group home, every domestic violence shelter, every Child Guidance Clinic, every mental health social club, every substance abuse treatment center, every AIDS residence, and the list goes on.

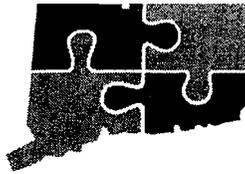
You can easily see the obvious concerns of re-bidding someone's permanent home and having fragile environments turned upside down. Maybe it is not as easy to see the concerns of re-bidding a homeless shelter, with some clients who only use it on the coldest and most dangerous days of the year. What happens on the night when it is dangerously cold and the homeless shelter has moved from its location of 20 years to one on the other side of town? It is probably even less easy to see the concerns that arise when one considers how nonprofit health and human services providers diversify funding and contracting to make the community based system work day in and day out.

We currently operate in a system where bureaucracy rules and it rules with a slow and sometimes disjointed hand. Payments for contracts that have been in existence for a decade get paid months and months late. Programs operate without contracts because the state bureaucracy can not meet timely contracting deadlines. A single program may be built on an intricate system of state contracts.

Here is an example of the intricacies of contracting and funding: the Department of Correction (DOC), Judicial Branch and Department of Mental Health and Addiction Services (DMHAS) all purchase beds in one treatment facility. The budget for that program balances itself as would a three legged stool. If DOC re-bids its portion of the contract and it does not award it to the existing program, the stool loses a leg and collapses, rendering it useless. The history of Purchase of Service in Connecticut has set up countless examples just like this one that, to date, has not been addressed by OPM.

I am not sure that this bill goes far enough. I urge the members of the Committee to read the attached Attorney General letter, consider how the re-bidding of \$1.5 billion in health and human services will impact your individual communities and the State of Connecticut, and consider what additional steps might be necessary, such as *legislative oversight* in the planning process.

Your assistance and support is greatly appreciated and you should feel free to contact me with questions or to put you in contact with a community based nonprofit provider in your area. Thank you.



The Governor's proposed budget does not include any overall increases for the biennium, having a potentially crippling effect on nonprofit provider organizations.

The State of Connecticut continues to rely heavily on nonprofit health and human service organizations to meet the needs of its citizens through Purchase of Service contracts. These nonprofit health and human service organizations require investment because they are as critical a part of the state's infrastructure as good schools and roads. Our state contracting nonprofits have been historically under-funded and their future ability to serve the needs of our most vulnerable citizens depends on fair contracts and reimbursements. Budget adjustments to meet increasing and necessary operating expenses for food, energy, utilities, transportation, workers compensation, health and liability insurance are essential for sustainability. Nonprofits must be able to offer competitive wages benefits and maintain a healthy infrastructure. Yet the State's level of reimbursement continues to lag far behind the real world cost of doing business and nonprofits cannot possibly raise enough money to compensate for the difference.

Reasons Why a Low Wage Pool is Not the Answer:

▶ A low wage pool for only DMR, DMHAS and DCF, as proposed by the Governor, will not address the needs of other vital services and omits those who provide the following programs and services:

Meals on Wheels (DSS)	Adult Daycare (DSS)
Independent Living Centers (DSS)	Child Day Care (DSS)
School Readiness (DSS)	Sexual Assault Crisis Services (DPH)
Community Health Centers (DPH)	Homeless Shelters (DSS)
Domestic Violence Programs (DSS)	Child & Elderly Nutrition Programs (DSS)
Food Pantries (DSS)	Employment & Job Training (DSS, Judicial, DOC)
Halfway Houses (DOC)	Brain Injury Services (DSS)
Elderly Transportation (DSS)	Substance Abuse Treatment (DOC, Judicial)
HIV/AIDS Housing (DSS)	After School Programs (DSS, Judicial)
Home Health Care – Visiting Nurse (DSS)	Vocational Rehabilitation (DSS)
Genetic Disease Programs (DPH)	Childhood Lead Poisoning (DPH)
Breast & Cervical Cancer Programs (DPH)	Alzheimer Respite Care (DSS)
Teen Pregnancy Prevention (DSS)	Fatherhood Initiative (DSS)
Alternatives to Incarceration (Judicial)	Juvenile Services (Judicial)

▶ A low wage pool does not address the infrastructure and ever increasing operating expenses incurred to keep doors open in any business or organization (e.g. gasoline for transportation, heating/cooling costs, health insurance costs, workers compensation expense, food, maintenance, etc.)

▶ Programs with multiple state agency funding sources will receive an increase for only some of their staff. For instance, an addiction treatment program funded by DMHAS, DOC and the Judicial Branch will only receive wage pool funds through DMHAS, creating inequities between staff.

▶ An increase in the wages of direct service/care workers frequently triggers an automatic increase for immediate supervisors in unionized organizations. Funds are not provided for this inevitable chain reaction.

▶ Job positions which are fully or partially funded by federal dollars are not provided for in this proposed wage pool. A comparable job funded with federal dollars will not be able to keep pace with the goals of the Governor's proposal.

Attorney General's Opinion

Attorney General, Richard Blumenthal

November 9, 2005

The Honorable Robert L. Genuario
Secretary
Office of Policy and Management
450 Capitol Avenue
Hartford, CT 06106-1308

Dear Secretary Genuario:

You have asked for my opinion as to whether there is a legal distinction between a Personal Service Agreement ("PSA") and a Purchase of Service Contract ("POS"). Specifically, you also ask the following questions:

1. What statutory provisions require that a PSA be reviewed by the Attorney General as to form;
2. What distinction exists that exempts a POS from said statutory requirements; and
3. What distinction exists, if any, that exempts a POS from the statutory requirement contained in Conn. Gen. Stat. §4-212, et seq.

In my opinion, there is no legal distinction between a PSA and a POS, even though the Office of Policy and Management ("OPM") may choose to establish certain administrative procedures treating these types of agreements differently; they are both valid vehicles for entering into binding State contracts. As discussed more fully below, the answers to your questions are as follows:

1. The Attorney General's authority to review PSA and POS contracts is contained within Conn. Gen. Stat. §3-125, which provides that the "Attorney General shall have general supervision over all legal matters in which the state is an interested party." Contracts are legal "matters" and the state is "an interested party" in all state contracts.
2. POS contracts are not exempt from review by this office.
3. POS contracts, like Purchase of Service Agreements, are subject to the competitive procurement provisions of Conn. Gen. Stat. § 4-212 et seq.

Discussion

Your question asking whether POS contracts, like PSA contracts, are subject to the competitive procurement provisions of Conn. Gen. Stat. § 4-212 et seq was already answered in an earlier Opinion of the Attorney General, see 2004 Conn. Op. Atty. Gen. 020 (2004) (attached for your convenience). This Office concluded in that Opinion that contracts between a state agency and a private entity for the provision of certain human services for the benefit of both the public (typically through a POS) and state agencies (typically through a PSA) are subject to the competitive procurement requirements of Conn. Gen. Stat. § 4-212 et seq. unless otherwise exempted by statute. As we stated in that opinion: "Questions have been raised as to whether Conn. Gen. Stat. § 4-212 applies to contracts for services to the public, or only to contracts for services provided directly to state agencies. An examination of the relevant statutes and their legislative history indicates that Conn. Gen. Stat. § 4-212 applies in both instances."

The authority for the Attorney General to review contracts is contained in Conn. Gen. Stat. §3-125, which gives the Attorney General "general supervision over all legal matters in which the state is an interested party. . . ." Contracts are legal documents that set forth the state's rights and obligations, and the state is "an interested party" in every one of its contracts. As such, they are subject to review by this Office as the Attorney General

deems it to be appropriate. See *id.*, Op. Atty. Gen. 020 (2004). There is nothing unique about POS contracts that would suggest that they be treated differently from other state contracts or that they should be exempt from review by this Office.

In posing your question of whether there is a legal distinction between a PSA and a POS that exempts a POS from review by this office you reference an August 9, 2001 letter that I wrote to Department of Social Services Commissioner Patricia Wilson-Coker. That letter states that there is no specific statute requiring this Office to review every state contract. While there is no statutory requirement that this office review every state contract, Conn. Gen. Stat. §3-125 gives the Attorney General the specific discretionary authority to determine whether review of all or any particular contract is appropriate and advisable. In regard to the "managed care contracts for the State's Medicaid program," referenced in the August 9, 2001 letter, the Attorney General determined that this office would not review those particular contracts because they were not "consistent with the positions [this office had] taken in related litigation or in the best interests of Connecticut's citizens." Consequently, the statements made to Commissioner Wilson-Coker specifically related only to the 2001 Medicaid managed care contracts and did not relate to PSA or POS contracts generally.

I trust this letter provides you with the answers to your questions. If you need further information, please contact me.

Very truly yours,

RICHARD BLUMENTHAL