

# Connecticut Nonprofit Human Services Cabinet

90 Brainard Road • Hartford, CT 06114 • (860) 525-5080 • (860) 525-5088 (fax) • nduncan@cnonprofits.org

Connecticut AIDS Resource  
Coalition

Connecticut Association for  
Community Action

Connecticut Association of Area  
Agencies on Aging

Connecticut Association of  
Nonprofits

Connecticut Coalition Against  
Domestic Violence

Connecticut Community Providers  
Association

Connecticut Consortium of Legal  
Services

Connecticut Council of Family  
Services Agencies

Connecticut Sexual Assault Crisis  
Services

Connecticut Women's Consortium

Easter Seals Connecticut

End Hunger Connecticut

Human Services Council

Oak Hill

Planned Parenthood of Connecticut

The Connection, Inc.

The Arc of Connecticut

Wheeler Clinic

## Human Services Committee Public Hearing

March 13, 2007

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

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

Submitted by Nora Duncan, Project Director

The CT Nonprofit Human Services Cabinet is a statewide coalition representing approximately 1,000 nonprofit human service providers. Its mission is to advance a strong and unified nonprofit human services system to most effectively meet community needs.

The Cabinet supports Bills numbered 1338 and 1396.

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

Bill #1338 addresses, in part, the budget crisis faced by the state-contracting community based nonprofit human services community. It provides a much needed Cost of Living Adjustment (COLA) 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.

The Governor's budget does not include any COLA funding for the biennium. Flat funding is the equivalent of budget cuts because expenses grow regardless of whether budgets keep pace.

The Cabinet advocates for a **7% COLA in SFY08 and a 5% COLA in SFY09**. This does not make up for decades of under-funding, but it provides the influx of dollars needed to prevent the nonprofit human services sector from falling further behind in the next biennium. In the mean time, the Cabinet will continue to advocate for long-term solutions to the funding crisis.

Without the COLA it is inevitable that program cuts will be inevitable and this means less people served and staff lay-offs. These are not empty threats because there are examples of this popping up across the state already. At the end of the day, a failure to invest in the significantly more efficient community based nonprofit human services system will mean a cost shift to more costly hospitals and state run institutions such as the Department of Correction.

There appears to be a drafting error that I hope the Committee will address. 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**

Bill #1396 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 competitively bid when doing so risks the health and safety of those being served. Some competitive bidding may be appropriate and some may not, making it critical that there is room for a distinction.

Attached you will find the November 2005 letter to the Secretary Genuario from Attorney General Blumenthal that essentially states there is no statutory distinction between Purchase of Service and Personal Services Agreements. This letter resulted in OPM asking all Purchase of Service state agencies to prepare competitive bidding plans for health and human services contracts over the next several years. This request includes approximately \$1.5 billion in services that touch every city and town in this state.

There are multiple layers of concern in this process that include the moral questions involved with putting out to bid a DMR group home, for instance, which is considered a permanent residence for individuals with disabilities. It is a HOME, not just a program and the disruption to the lives of thousands of people is the risk. Another layer of concern involved the funding intricacies involved when a program is funded by multiple agencies and balances its programming and budget on all of those funding streams. Chaos will reign and programs will close if one state agency bids the contract and awards it to a different organization.

The scenarios and complexities are endless. The Committee is urged to review 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 and review process.

The dedication of this Committee to the nonprofit human services system in Connecticut is appreciated. Please do not hesitate to contact me with questions or more information. Thank you.

## 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