



STATE OF CONNECTICUT  
OFFICE OF POLICY AND MANAGEMENT

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TESTIMONY PRESENTED TO THE  
CONNECTICUT GENERAL ASSEMBLY  
HUMAN SERVICES COMMITTEE  
February 24, 2009

*Gale Mattison*  
*Executive Financial Officer, Office of Finance*  
*Office of Policy and Management*  
*450 Capitol Avenue*  
*Hartford, CT*

RAISED BILL NO. 954  
AAC PERSONAL SERVICE AGREEMENTS

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Senator Doyle, Representative Walker, and distinguished members of the Human Services Committee, my name is Gale Mattison. I am the Executive Financial Officer of the Office of Finance, within the Office of Policy and Management (OPM). I thank you for the opportunity to speak to you today about Raised Bill No. 954, *An Act Concerning Personal Service Agreements*. OPM supports the bill and recommends its passage.

*Personal Service Agreements*

To begin, I would like to address those sections (1-5) of the bill that concern personal service agreements (PSAs).

The current statutes require executive branch agencies to report to OPM about their PSA activity on a semi-annual basis (in December and June). The statutes further require OPM to prepare a summary report of this activity for the legislature on an annual basis (in September).

The bill makes a technical change to these reporting requirements, namely, it eliminates the requirement that State agencies report semi-annually to OPM about their PSA activity. This requirement is no longer necessary with the implementation of Core-CT.

Before the implementation of Core-CT, sixty-five-plus (65+) State agencies generated individual reports on their PSA activity and submitted the information to OPM on Excel spreadsheets. They did this twice a year. Once a year, OPM compiled that information into a summary report for the legislature. It was a labor- and time-intensive process for everyone involved.

Since 2005, agencies have been required to enter their contracting data into Core-CT. OPM now has the ability to generate reports about the agencies' PSA activity using Core-CT and we no longer require agencies to submit semi-annual reports to us. For the last

two years, OPM's annual report to the legislature has been based on data generated centrally from Core-CT.

In summary, this legislative proposal is a technical change that reflects OPM's current business practices. It also results in a better report to the legislature. When OPM centrally runs the report in Core-CT, using the same [identical] parameters for all agencies, the reliability and validity of the resulting data are greatly improved.

### *Purchase of Service*

Now I would like to address those sections (6-7) of the bill that concern the purchase of service (POS).

C.G.S. 4-70b requires the Secretary of OPM to "establish uniform policies and procedures for obtaining, managing and evaluating the quality and cost effectiveness of human services purchased from private providers." This bill clarifies POS contracting, as well as OPM's responsibility for establishing uniform policies and procedures for the purchase of health and human services.

First, this bill amends the definition of "purchase of service" in order to clarify the appropriate use of POS contracts and to distinguish them from PSAs (and other types of agreements). POS contracts are primarily used with private provider organizations and municipalities to obtain direct health and human services for an agency's clients. Unlike PSAs, POS contracts are never executed with individuals and are never used to obtain services that benefit the State agency itself.

Second, this bill reflects the Office of the Attorney General's Formal Opinion (No. 031) issued on November 9, 2005 that there is no legal distinction between a PSA and a POS contract. (See copy attached.) The opinion further states that POS contracts, like PSAs, are subject to the competitive procurements provisions of C.G.S. Sections 4-212 to 4-219, inclusive. Although OPM expects agencies to competitively procure services when it is in the best interests of the State and the agency's clients, an agency has the option of requesting a waiver from competitive procurement from OPM. OPM has approved – and will continue to approve – such waiver requests for certain services, under certain defined circumstances.

Third, this bill replaces biennial with annual reporting to the legislature. Since OPM requires agencies to enter all contract data into Core-CT, we are now able to provide the legislature with more detailed and current contracting information than in the past. We support aligning POS and PSA reporting requirements so that OPM will report to the legislature every year, rather than every other year.

Fourth, and finally, this bill requires an agency to use a standard POS contract for the purchase of direct health and human services. The standard contract consists of two parts. Part I includes the scope of services, contract performance, budget reports, and other program and agency-specific provisions. Part II incorporates mandatory language approved by the Office of the Attorney General. The standard contract maximizes uniformity to the extent possible, while allowing for programmatic and policy flexibility.

Thank you for this opportunity to speak to you today. I will be happy to answer any questions you may have.

Attachment:

Office of the Attorney General, *Formal Opinion (No. 031)*, November 9, 2005

**ATTACHMENT**

**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

Source: <http://www.ct.gov/ag/cwp/view.asp?A=1770&Q=306482>

