

**IOWA DEPARTMENT OF HUMAN SERVICES
HOOVER STATE OFFICE BUILDING – FIFTH FLOOR
DES MOINES, IOWA 50319**

<p>Iowa Total Care, Inc. Meridian Health Plan of Iowa, Inc., and Aetna Better Health of Iowa, Inc.,</p> <p style="text-align:center">Appellants,</p> <p>v.</p> <p>Iowa Department of Human Services,</p> <p style="text-align:center">Respondent,</p> <p>Amerigroup Iowa, Inc., AmeriHealth Caritas, Inc., United Healthcare Plan of the River Valley, Inc., and WellCare of Iowa, Inc.,</p> <p style="text-align:center">Intervenors.</p>	<p>Appeal No. 16001573 Appeal No. 16001590 Appeal No. 16001623</p> <p style="text-align:center">FINAL DECISION</p>
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Aetna Better Health (Aetna), WellCare of Iowa, Inc. (WellCare), Meridian Health Plan of Iowa, Inc. (Meridian), and the Iowa Department of Human Services (DHS) filed timely Requests for Review of the Proposed Decision issued on November 25, 2015. Review was granted on December 8, 2015.

For the reasons set forth below, the Notice of Intent to Award is **AFFIRMED** as to Amerigroup Iowa, Inc., AmeriHealth Caritas, Inc., and UnitedHealthcare Plan of the River Valley. The Notice of Intent to Award is **REVERSED** as to WellCare of Iowa, Inc. and its contract with DHS is terminated.

STANDARD OF REVIEW

In reviewing the Proposed Decision, the undersigned, as substitute decision maker, “stands in the shoes” of DHS Director Palmer in this matter. Pursuant to the Iowa Administrative Procedure Act, the following is the standard of review for agency review of an ALJ’s proposed decision:

On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. The agency may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law that the agency finds to be in error.

Iowa Code § 17A.15. In addition, in my review, I give deference to findings of fact that are impacted by credibility determinations made, expressly or impliedly, by the ALJ who presided at the hearing.

SCOPE OF REVIEW

In issuing this Final Decision, a careful review of the record was conducted. This included a review of the Proposed Decision; transcripts from the five day contested case hearing, including admitted exhibits¹; post-hearing briefs from the parties; four Requests for Review from Meridian Health Plan of Iowa, Inc. (Meridian), Aetna Better Health of Iowa, Inc. (Aetna), WellCare of Iowa, Inc. (WellCare), and the Department of Human Services (DHS); briefs from Iowa Total Care, Inc. (Iowa Total Care), Amerigroup Iowa, Inc. (Amerigroup), AmeriHealth Caritas, Inc. (AmeriHealth), and UnitedHealthcare Plan of the River Valley, Inc. (UnitedHealthcare); and Offers of Proof of expert testimony of John S. Pachter and Dr. Kelly Hannum.²

NOTE: The following tracks the structure of the ALJ's Proposed Decision.

FINDINGS OF FACT

I adopt the "Findings of Fact" set forth at pages 3 through 32 of the Proposed Decision.

CONCLUSIONS OF LAW

DHS contacting authority and applicable review standards

DHS authority to contract with managed care organizations

I adopt the Conclusions of Law set forth under this heading at pages 32 through 34 of the Proposed Decision.

I make the following additional Conclusion of Law: "The legislature also specifically recognized DHS's authority to "transition to managed care" and enter into "managed care" contracts for the delivery of Medicaid services. 2015 Iowa Acts, ch. 137 (S.F. 505), § 115."

Applicable procurement procedures

I adopt the Conclusions of Law set forth in the first three paragraphs under this heading at pages 34 and 35 of the Proposed Decision.

¹ On December 10, 2015, Aetna filed a Motion to Correct Proposed Decision on Exhibits Admitted into Evidence. Aetna's Motion was granted on December 11, 2015, to reflect that Exhibits 5166-5168, 5170-5173, 5174 (instead of 5274), and 5210-5215 were admitted into evidence in the contested case hearing. The Findings of Fact contained in the Proposed Decision are adopted in this Final Decision, as amended with the aforementioned exhibits.

² The ALJ excluded this testimony on procedural grounds. My review of the record as a whole included the offers of proof and that evidence has been considered in reaching my final decision.

The fourth and fifth full paragraphs under this heading at page 35 of the Proposed Decision are moved to the sub-section “Alleged organizational conflict of interest” and will be addressed therein.

I reverse the Conclusions of Law set forth in the first full paragraph on page 36.

Standard of Review

I reverse the Conclusions of Law set forth in the first two paragraphs under this heading at pages 36 and 37 of the Proposed Decision.

I adopt the Conclusions of Law set forth in the third and fourth paragraphs under this heading at pages 37 and 38 of the Proposed Decision.

I reverse the Conclusions of Law set forth in the fifth and sixth full paragraphs under this heading at page 38 of the Proposed Decision.

Review of the Medicaid RFP procurement process

I adopt the Conclusions of Law set forth in the first paragraph under this heading on page 38 of the Proposed Decision.

Alleged organizational conflict of interest

The first paragraph under this heading is deleted as superfluous.

I adopt and insert the Conclusions of Law set forth in the fourth and fifth full paragraphs under the heading “Applicable procurement procedures” on page 35 of the Proposed Decision.

I adopt and insert the Conclusions of Law set forth in the text of footnote 18 on page 36 of the Proposed Decision and move that text to the body of the decision.

I make the following additional Conclusions of Law: “I conclude therefore that the regulatory guidance relied upon by the Medco court does not govern the conflict analysis in this procurement; nonetheless, as discussed below, I conclude that even if I were to apply the Medco standard, there was no ‘organizational conflict of interest’ that would require nullifying the entire RFP process.”

I adopt the Conclusions of Law set forth in the second, third, fourth, fifth, and sixth full paragraphs under this heading at pages 39 and 40 of the Proposed Decision.

Non-disclosure of prior litigation, penalties, and regulatory sanctions

I reverse the Conclusions of Law set forth in the first paragraph under this heading on pages 40 and 41 of the Proposed Decision.

I make the following additional Conclusions of Law: “As set forth in the findings of fact, three of the successful bidders omitted reference to prior litigation and/or regulatory actions in their proposals. The three questions that must be answered with regard to these undisclosed matters is whether they fell within the scope of the information requested by the RFP, whether Iowa DHS’s decision to permit WellCare to submit “clarifying” information was improper, and whether the failure to disclose the information should result in disqualification of the bidders under the terms of the RFP.”

I adopt the Conclusions of Law set forth in the second paragraph under this heading at page 41 of the Proposed Decision.

WellCare

I adopt the Conclusions of Law set forth in the first six paragraphs under this heading at pages 41 and 42 of the Proposed Decision.

I reverse the Conclusions of Law set forth in the seventh, eighth, ninth, and tenth paragraphs under this heading at page 43 of the Proposed Decision.

I make the following additional Conclusions of Law: “In this case, the full record now before me shows that WellCare failed to disclose highly relevant information both in its initial response to the RFP and in its “clarifying” answer. In doing so, WellCare not only violated the terms of the RFP but also deprived the agency decision-makers – both the evaluation committee and Director Palmer – of the opportunity to fully exercise their discretion in determining which Bid Proposals would provide ‘the greatest benefit to the Agency.’ Accordingly, with the benefit of that record, I now conclude that WellCare’s Bid Proposal is disqualified and the subsequent contract between WellCare and DHS is terminated.”

UnitedHealthcare

I adopt the Conclusions of Law set forth in the two paragraphs under this heading at pages 43 and 44 of the Proposed Decision.

AmeriHealth Caritas

I adopt the Conclusions of Law set forth in the paragraph under this heading on page 44 of the Proposed Decision.

Communication during the RFP “blackout” period

I adopt the Conclusions of Law set forth under this heading at pages 44 through 46 of the Proposed Decision.

I make the following additional Conclusions of Law: “In this case, the full record now before me shows that WellCare not only explicitly violated sections 2.1 and 2.2 of the RFP, but also violated the spirit of the section which prohibits attempts to interfere with or influence the

procurement process. Although the record does not show that WellCare succeeded in its efforts, the intent was clear. The integrity of and confidence in our public procurement process is an agency priority. I therefore conclude that WellCare's Bid Proposal is disqualified pursuant to RFP section 2.15.1 and the subsequent contract between WellCare and DHS is terminated."

Evaluation methodology

I adopt the Conclusions of Law set forth in the first two paragraphs under this heading on pages 46 and 47 of the Proposed Decision.

Independence of evaluators / bias claims

I adopt the Conclusions of Law set forth in the five paragraphs under this heading on pages 47 and 48 of the Proposed Decision.

Use of consensus scoring

I adopt the Conclusions of Law set forth in the four paragraphs under this heading on pages 48 and 49 of the Proposed Decision.

Use of subject matter experts

I adopt the Conclusions of Law set forth under this heading on page 49 of the Proposed Decision.

Zero-to-4 scoring scale

I adopt the Conclusions of Law set forth under this heading on page 49 of the Proposed Decision.

Documentation of basis for decision

I adopt the Conclusions of Law set forth under this heading on pages 49 and 50 of the Proposed Decision.

Sequential scoring of proposals

I adopt the Conclusions of Law set forth under this heading on pages 50 and 51 of the Proposed Decision.

The scores

I adopt the Conclusions of Law set forth under this heading on pages 51 and 52 of the Proposed Decision.

Recommendation to the Director

I adopt the Conclusions of Law set forth under this heading on pages 52 and 53 of the Proposed Decision.

Due Process violation arising from appeal procedure

I adopt the Conclusions of Law set forth under this heading on page 54 of the Proposed Decision.

I also note that throughout this appeal process, Aetna has repeatedly sought to further expedite the timeline for other parties and the decision-makers.

FINAL ORDER

The Notice of Intent to Award is AFFIRMED as to Amerigroup Iowa, Inc., AmeriHealth Caritas, Inc., and UnitedHealthcare Plan of the River Valley. The Notice of Intent to Award is REVERSED as to WellCare of Iowa, Inc. and its contract with DHS is hereby terminated.

Dated this 18th day of December, 2015.



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A copy of this Final Decision was sent to the following parties via email on December 18, 2015.

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