

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

FILED
AHCA
AGENCY CLERK

2013 OCT 31 P 12: 52

WELLCARE OF FLORIDA, INC. d/b/a
STAYWELL HEALTH PLAN OF FLORIDA,

Petitioner,

DOAH NOS.
13-4110 ; 13-4109
13-4108

vs.

STATE OF FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION,

AHCA NOS.
020-12/13 ; 025-12/13
026-12/13

Respondent,

RENDITION NO.: AHCA-13 - 1021 -S-BID

FINAL ORDER

THE PARTIES resolved all disputed issues and executed a Settlement Agreement based on their mutual interests. The parties are directed to comply with the terms of the attached settlement agreement. Based on the foregoing, this file is CLOSED.

DONE and ORDERED on this the 30 day of October 2013, in Tallahassee, Florida.


ELIZABETH DUDEK, SECRETARY
Agency for Health Care Administration

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO A JUDICIAL REVIEW WHICH SHALL BE INSTITUTED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A SECOND COPY ALONG WITH FILING FEE AS PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA RULES OF APPELLATE PROCEDURE. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

**WELLCARE OF FLORIDA, INC. d/b/a
STAYWELL HEALTH PLAN OF
FLORIDA,**

Petitioner,

v.

**AHCA ITN NO. 020-12/13
 025-12/13
 026-12/13**

**STATE OF FLORIDA AGENCY FOR
HEALTH CARE ADMINISTRATION,**

Respondent.

_____ /

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into this ~~27th~~^{29th} day of October, 2013, by and between the State of Florida Agency for Health Care Administration ("AHCA") and WellCare of Florida, Inc d/b/a Staywell Health Plan of Florida. ("WellCare").

II. RECITALS

A. On December 28, 2012, AHCA issued Invitations to Negotiate ("ITN") designated AHCA ITN 017-12/13 (Region 1), ITN 018-12/13 (Region 2), ITN 019-12/13 (Region 3), ITN 020-12/13 (Region 4), ITN 021-12/13 (Region 5), ITN 022-12/13 (Region 6), ITN 023-12/13 (Region 7), ITN 024-12/13 (Region 8), ITN 025-12/13 (Region 9), ITN 026-12/13 (Region 10), and ITN 027-12/13 (Region 11) (collectively "MMA ITN"), soliciting replies from vendors to provide Managed Medical Assistance Services to Medicaid recipients for the Statewide Medicaid Managed Care Program MMC.



B. On or before March 29, 2013, the reply date required by the ITN, AHCA received numerous replies from several different vendors, many of whom submitted replies in more than one of the eleven designated regions. WellCare submitted replies, and was invited to negotiate, in all eleven Regions..

C. On September 23, 2013, following the evaluation of the responders' replies to the MMA ITN, AHCA selected several responders in each of the 11 regions with whom it conducted face-to-face negotiations. WellCare was not selected for contract awards in regions 1, 4, 9, and 10.

D. On October 7, 2013, WellCare filed its written protest of AHCA's intended awards for Managed Medicaid Assistance ("MMA") contracts in Region 4, 9, and 10. The Division of Administrative Hearings has assigned WellCare's protests DOAH Case Nos. 13-004108BID through 13-004110BID.

E. The Parties to this Agreement desire to amicably resolve all claims, defenses, issues, and causes of action that were raised, may have been raised, or could have been raised in the proceedings commenced by WellCare's Formal Protests filed October 7, 2013 (or in any subsequent notices of protest or Formal Protests), or in any other forum, administrative or judicial, concerning proposed awards for the MMA ITN.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in this Agreement, and for valuable and mutual consideration, receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are confirmed as true and correct and are incorporated herein by reference. The recitals are a substantive and contractual part of this Agreement.



2. **Substantive Issue.** WellCare has submitted a formal protest to challenge the Agency's proposed decisions in Regions 4, 9, and 10.

3. **AHCA Award Decision and Posting.** In order to avoid the time, expense, and uncertainty of litigation, the Parties agree to enter into this Settlement Agreement carried out pursuant to sections 120.57(3)(d)1, 120.57(4), Fla. Stat., or otherwise based on the authority of AHCA to award contracts under the MMA ITN. The rates and expanded benefits previously agreed to by WellCare in Region 4 will apply to AHCA ITN 020-12/13. WellCare understands and agrees that AHCA will post notices of these contract awards to WellCare and provide a point of entry for persons who may be adversely affected to protest the decision to award a contract to WellCare in Region 4 pursuant to Section 120.57(3)(b), Fla. Stat. AHCA further states that – subject to the conditions and terms set forth in Paragraph 4, below – once this award to WellCare in Region 4 is posted, AHCA will not award any additional awards in Regions 3 or 4.

4. **Other Pending Protests and Potential Outcomes.** WellCare understands and agrees that:

- (a) Notices of Protest and Formal Protests were filed by other responders in all eleven (11) MMA solicitations;
- (b) new Notices of Protest may be subsequently filed protesting the award of the additional contract to WellCare in Region 4;
- (c) that the final disposition of all administrative and judicial litigation and appeals concerning the 11 Regions may result in the rejection of replies as nonresponsive or the rejection of responders as non-responsible, the reevaluation or rescoring of replies, and renegotiation with some or all responders in such regions;



(d) that the result of such rejections, determinations of nonresponsiveness or nonresponsibility, or of the reevaluation, rescoring, and renegotiation, may be the award of contracts to responders other than those preliminary awarded contracts on the September 23, 2013 postings for each of the 11 Regions, the October 3, 2013 postings of additional awards in Regions 3, 7, and 11, the October 22, 2013, posting of an additional award in Region 11, the October 23, 2013 posting of an additional award in Region 8, and the October 25, 2013 posting the additional awards in Regions 7, 9 and 11, or subsequent award of this additional contract to WellCare in Region 4;

(e) that responders initially proposed for award on the September 23 postings, the October 3, 2013 postings of additional awards in Regions 3, 7, and 11, the October 22, 2013 posting of an additional award in Region 11, the October 23, 2013 posting of an additional award in Region 8, the October 25, 2013 posting of additional awards in Regions 7, 9, or 11, or the proposed award of this additional contract to WellCare in Region 4, might not be proposed for award following such rejection, reevaluation, rescoring, or renegotiation; and

(f) that the finality of this Settlement Agreement and of the Voluntary Dismissal with Prejudice required by this Settlement Agreement will not be affected by any such rejections or determinations of nonresponsiveness or nonresponsibility as to any responder, including WellCare; or by any reevaluation, rescoring, or renegotiations with any responder, including WellCare; or by the addition of any new contract awardees or the rescission of a previous preliminary contract award, including to WellCare. WellCare further stipulates



and agrees that the consequence of its dismissal with prejudice of all of its pending formal protests bars any future protests by WellCare of contracts awarded by AHCA pursuant to the MMA IIN.

5. **Notices of Voluntary Dismissal with Prejudice.** No later than one business day following the execution of the Settlement Agreement by both Parties, WellCare will file with the Agency and the Division of Administrative Hearings, Notice of Voluntary Dismissal with Prejudice of its Formal Protests in Regions 4, 9 and 10. WellCare understands and agrees that the effect of these voluntary dismissals is final, and is not affected by possible or actual protests by persons adversely affected by the preliminary award decisions posted on September 23, 2013, October 3, 2013, October 22, 2013, October 23, 2013, October 25, 2013, or by the additional award decisions discussed in Paragraphs 3 and 4 above, or by the outcome of any such protests. AHCA will enter a final order adopting the terms of this Settlement Agreement.

6. **Applicable Law.** The Parties are entitled to enforce this Settlement Agreement under the laws of the State of Florida, the Rules of the Medicaid Program, and all other applicable laws. The Parties agree that the validity, interpretation and enforcement of this Agreement and the exhibits thereto shall be governed by the laws of the State of Florida without regard to its choice of laws principles.

7. **Exclusive Venue and Jurisdiction.** Exclusive venue and jurisdiction for any action brought to interpret, challenge or enforce the terms of this Agreement (including all exhibits hereto), or the Final Order adopting this Agreement, shall lie solely in the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida.

8. **Authority of Signatories.** The signatories of the Parties to this Agreement stipulate, represent and warrant that they are duly authorized by their respective principal Parties



to enter into this Agreement, and have full power and authority to bind their respective principal Parties to the terms of this Agreement.

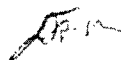
9. **Effective Date.** This Settlement Agreement shall become effective on the date upon which it is fully executed by the Parties.

10. **Copies Effective as Originals.** The Parties agree that a facsimile or photocopy or scanned reproduction of this Settlement Agreement shall be sufficient for the Parties to enforce this Settlement Agreement. The Parties agree that a facsimile signature suffices for an original signature and that the Agreement may be executed in counterpart.

11. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the Parties, including anyone acting for, associated with or employed by them, concerning all matters which could have been raised in the proceedings commenced by WellCare's Protests described above, and supersedes any prior discussions, agreements or understandings; there are no promises, representations or agreements between the Parties other than as set forth herein. This Settlement Agreement has no precedential value.

12. **Subsequent Settlements.** WellCare stipulates and agrees that any Settlement Agreements that the Agency may enter into with any other parties concerning challenges such other parties may have brought to the proposed contract awards posted September 23, 2013, October 3, 2013, October 22, 2013, October 23, 2013, October 25, 2013 or any settlement agreements entered into related to awards in these procurements subsequent to this agreement are not a part of this Agreement; and WellCare agrees that it will not challenge any other such Settlement Agreements or Agency decisions made pursuant to those Settlement Agreements.

13. **Waiver of form of final order.** WellCare expressly waives in this matter its right to any hearing pursuant to Sections 120.569 or 120.57, Florida Statutes, any making of



findings of fact and conclusions of law by the Agency, and all further and other proceedings, administrative or judicial, to which it may be otherwise entitled under the law or the rules of the Agency regarding these proceedings and the issues raised herein. WellCare further agrees that it shall not challenge or contest any Final Order entered in these matters that is consistent with the terms of this Agreement in any forum available to it now or in the future, including its right to any administrative proceeding, state or federal court action, or any appeal.

14. **Modification or Waiver.** No modification or waiver of any provision of the Settlement Agreement shall be valid unless a written amendment to the Agreement is completed and properly executed by the Parties.

15. **Settlement and Compromise.** This is an agreement of settlement and compromise, made in recognition that the Parties may have different or incorrect understandings, information and contentions, as to facts and law, and with each Party compromising and settling any potential correctness or incorrectness of its understandings, information and contentions as to facts and law, so that no lack of information, misunderstanding, or misinformation shall be a ground for rescission hereof.

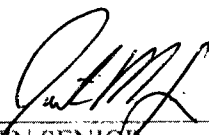
16. **Joint Authorship.** This Settlement Agreement is and shall be deemed jointly drafted and written by all Parties to it and shall not be construed or interpreted against the Party originating or preparing it. Each Party has the right to consult with counsel and has either consulted with counsel or knowingly and freely entered into this agreement without exercising its right to counsel.

17. **Binding Effect on Successors.** This Settlement Agreement shall inure to the benefit of and be binding on each Party's successors, assigns, heirs, administrators, representatives and trustees.

18. **No Admission of Wrongdoing or Error, and Reservation of Rights.** This settlement does not constitute an admission of wrongdoing or error by either Party with respect to this case or any other matter.

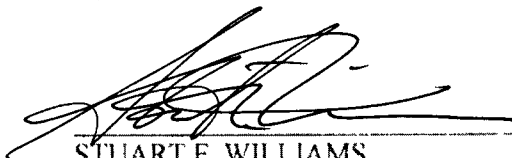
19. **Attorneys' Fees and Costs.** Each Party will bear its own costs and attorneys' fees incurred in this matter.

20. **No Third Party Rights.** The Parties, by their entry into this Agreement, do not intend to, and do not create or convey any rights enforceable by third-parties.



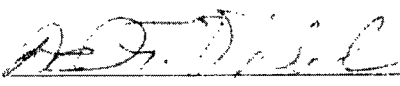
JUSTIN SENICK
Deputy Secretary for Medicaid
Agency for Health Care Administration

10/20/13
Date



STUART F. WILLIAMS
General Counsel
Agency for Health Care Administration

10/29/13
Date



DAVID J. MENCKELS, PRESIDENT
WELLCARE OF FLORIDA, INC. d/b/a
STAYWELL HEALTH PLAN OF FLORIDA

10/29/2013
Date