



**Review of the Department for Medicaid Services’
Region 8 Partnership Selection Process**

SUMMARY

We found nothing to indicate that the bid and evaluation process for the Region 8 Medicaid Managed Care Partnership was done in an inappropriate manner. All the evaluators stated to auditors that they had no discussions with individuals inside or outside the Cabinet regarding advice or assistance for either of the two competing bids.

If the competing groups do not form a single partnership, the Department may still be faced with awarding the contract to one of the bidders regardless of the divisiveness that may cause within the region. Given that the partnership entities in region 3 and 5 have for-profit elements in their ownership structure, it is not inconceivable that region 8 or the other regional partnerships will have for-profit entities as owners. Continuing delays could have a negative impact on the Department’s fiscal year 2000 budget.

Background

On September 27, 1998, the Department for Medicaid Services issued a public notice to obtain letters of interest from groups that wanted to be recognized as the sole source provider of Medicaid managed care services in one of six Partnership regions. (Two regions, based in Louisville and Lexington already had partnership programs in operations.) If a single group expressed interest, it would be sent a Request for Application. Upon completion of the application, the Department could negotiate a personal services contract.

However, two groups submitted letters of interest for Region 8, a 19-county area serving about 125,000 Medicaid recipients in Eastern Kentucky: MidSouth Healthcare, Inc. (MidSouth) and Region 8 Managed Care Health Partnership, Inc. (Region 8 MCHP). Appendix I provides some details about each group and how they are organized.

On December 21, 1998, the Department sent a letter to both groups informing them that because it had received two responses, it was required by the Kentucky Model Procurement Code at KRS 45A to initiate another step in the procurement. This additional step was a competitive selection process that would enable the Department to

select a single provider in Region 8. After this decision was made, the following actions occurred:

- January 4, 1999: the Department issued a Request for Proposal to MidSouth and to Region 8 MCHP.
- March 1, 1999: the Department selected MidSouth as the single service provider for Region 8.
- March 12, 1999: Region 8 MCHP protested the selection of MidSouth.
- March 16, 1999: The Department cancelled the RFP.
- March 24, 1999: MidSouth protested the cancellation of the RFP.

The Department sent a follow-up letter to both groups on March 29 asking them to come together and form and/or endorse a single source provider by April 30, 1999. If that does not occur, the Department will reissue an RFP to the two groups and conduct another evaluation of proposals.

Briefing Report Objectives, Scope, and Methodology

Given the interest of members of the Kentucky General Assembly, the Auditor of Public Accounts reviewed the process for selecting a single provider for Region 8 to determine whether it was carried out in an appropriate manner and in compliance with applicable laws, regulations, and policies. In conducting this review, we did the following:

- interviewed officials of the Cabinet for Health Services’ Department for Medicaid Services
- interviewed officials of the Finance and Administration Cabinet’s Department for Administration
- reviewed the Request for Proposal
- reviewed the proposals submitted
- reviewed the evaluators’ score sheets
- interviewed the seven evaluators
- reviewed the protests filed by the two groups

This briefing report and its findings and conclusions do not constitute a full performance audit of the bid evaluation process. If an audit had been conducted, additional

information relevant to the findings and conclusions may have come to our attention.

Findings

Nothing came to our attention that would indicate that the bid and evaluation process was handled inappropriately.

The Commissioner of the Department for Administration in the Finance and Administration Cabinet reviewed Medicaid's procurement process. He agreed with the decision to issue a personal services contract. When more than one letter of intent was submitted in response to the original public notice, a sole source contract was no longer applicable. The Cabinet was then required to follow the procurement procedures in the KRS 45A.690 to KRS 45A.725 related to competitive procurement.

The Commissioner of the Department for Administration indicated that he reviewed the RFP before it was issued and the evaluation process of the Cabinet.

The proposals were evaluated on the basis of criteria spelled out in the Request for Proposal. The specific criteria were the following:

Background, Governance, and Entity Requirements	35%
Financial	25%
Network and Services	30%
Quality Improvement and MIS	10%

Seven reviewers within the Cabinet independently scored the proposals. Although most reviewer's scores were fairly close to each other, 5 ranked MidSouth higher than Region 8 MCHP. The other two reviewers ranked Region 8 MCHP higher.

We asked each reviewer via a telephone interview to discuss the basis for his or her scoring. Each indicated their specific reasoning based on the proposals. Each also indicated that they had not been approached by individuals internal or external to the Cabinet regarding advice or assistance to one bidder or the other.

The Commissioner of the Department for Medicaid Services based his initial decision to award the proposal to MidSouth on these evaluation results.

Region 8 MCHP's protest of the award became moot when the Request for Proposal was canceled, but the protest points appeared to be questionable.

- *The Lt. Governor attended a charity dinner with at least one individual who was associated with both groups.*

One of the key points of the protest that was reported in the media was that representatives of MidSouth attended a dinner with the Lt. Governor on January 11, 1999, one week after the Request for Proposals had been issued. We found this to be true. However, we also found that at least one of the attendees was associated with Region 8 MCHP as well as with MidSouth.

- *There is no prohibition on a for-profit group getting the partnership contract.*

The protest made a point about MidSouth being a for-profit group and that as a result, profits that could be used to pay local health care providers in Region 8 would leave Kentucky.

Two observations: One, the Department contracted with a for-profit corporation in Region 3. The majority owner of the Region 5 entity the Department contracted with also is for-profit. Unlike the MidSouth for-profit group, these entities are based in Kentucky. The other observation is that the Department will negotiate a capitation rate based on historical fee-for-service expenditures. The partnership is obligated to provide all necessary health care service within that capitation payment. Whether an entity is for-profit or not-for-profit should not have an impact on the health care services provided to Medicaid recipients.

- *The evaluation of the provider network was based not on numbers of letters of intent each group had in hand, but on the basis of the process that the region would use to create its provider network.*

Region 8 MCHP's protest argued that MidSouth had fewer letters of support and that the scoring failed to properly evaluate the network, resulting in the erroneous awarding of the contract to MidSouth.

In its responses to questions posed at the bidders' conference, the Department noted it "is not our intention to have the bidder procure all the providers in the network that will be needed for this proposal, but to indicate who is already in the network and how the bidder intends to insure that all necessary providers can be delivered prior to start-up."

In the evaluation process, there were six required responses relating to the provider program network. Two of these requirements asked the respondent to list the providers that have submitted letters of intent or signed contracts to be

in the network. Three other requirements asked the respondent for its plan for implementing the network. Six evaluators rated MidSouth higher on the section dealing with Network and Services. Appendix II provides a more in-depth discussion of the protest points.

The Department had the authority to cancel the Request for Proposal.

The Request for Proposal states that the Department reserves the right to cancel this Request for Proposal or any part thereof at any time for any reason. In addition, KRS 45A.105 states

"An invitation for bids, a request for proposals, or other solicitation may be canceled, or all bids or proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the Commonwealth and approved by the purchasing officer."

The Commissioner's March 16, 1999, letter to each group canceled the Request for Proposal because it was determined to be in the best interest of the Commonwealth.

When we spoke with the Commissioner, he said this determination was based, in part, on the divisiveness and negative feelings generated by the award to MidSouth. He indicated there was a considerable amount of pressure on the Department from local providers and the media. He also said the Department wanted the two groups to work together to come up with the solution that would best serve Medicaid recipients in Region 8.

Observations and Concerns

There is a risk of continued divisiveness if the two groups cannot find a way to work together.

If the two groups are able to come together to provide health services in Eastern Kentucky, there should be a positive outcome. Medicaid recipients will be served by a unified partnership that should be able to begin providing health care services in a relatively short period of time.

On the other hand, if the groups do not come together, a new Request for Proposal will be issued. The Commissioner indicated that the new Request for Proposal would only be sent to MidSouth and Region 8 MCHP. The new proposals would be evaluated in a similar manner as they were the first time and a single source would be selected to be the partnership group for Region 8. If this happens, the Department will most likely be in the same divisive situation again.

By pushing the process back until at least April 30, the implementation of managed care throughout the state is delayed even further.

The Department's budget for fiscal years 1999 and 2000 is based on an anticipated savings of \$117 million because of the managed care initiative. Department officials said this savings assumes all 8 partnerships will be in place by July 1, 1999.

With two managed care regions in operations, the Department is on-target for its fiscal year 1999 expenditures, although further delays call into question the Department's fiscal year 2000 budget. However, Department officials said they will meet their fiscal year 2000 budget. Delays in implementing managed care in the other six regions will mean that the Department will have to explore other ways to meet their budget.

Appendix I

Description of Competing Partnership Groups

Region 8 serves more than 125,000 Medicaid recipients in 19 counties in Eastern Kentucky: Martin, Johnson, Magoffin, Pike, Floyd, Perry, Breathitt, Lee, Owsley, Knott, Letcher, Harlan, Leslie, Clay, Laurel, Whitley, Knox, Wolfe, and Bell. Medicaid expenditures are more than \$300 million annually.

Two competing groups, Mid-South Healthcare and Region 8 Managed Care Health Partnership, submitted proposals to be the partnership entity for the region. The main players in each group are described below.

Mid-South Healthcare, Inc.

Mid-South Healthcare, Inc. is a for-profit Kentucky corporation that is applying for a Certificate of Authority to operate an HMO in Kentucky.

Partnership Board	Source of Capital
<p>The partnership board is composed of consumers and providers representing many different geographic areas and provider types of Region 8, including providers who have traditionally served Medicaid clients. The final structure of this Board is under development, but is expected to include representation from equity and non-equity members.</p> <p>The makeup of the Board—the policy making and oversight group—will be split.</p> <p>49% representation of consumers and providers appointed by the equity members representing the following categories:</p> <ul style="list-style-type: none"> • 4 consumers • at least one public health department representative • 4 providers • Kentucky Commission for Children With Special Health Care Needs representative <p>26% Centene Corporation 25% Providers (51% representation of equity members)</p>	<p>MS II (formed and owned by original incorporators of Mid-South PCA (non-profit Kentucky corporation owned by Region 8</p> <p style="text-align: right;">} 49%</p> <p>Centene Corporation 51%</p> <p>Centene Corporation will provide administrative and management services for the partnership entity.</p>

Region 8 Managed Care Health Partnership

This entity will be a nonstock, nonprofit corporation with membership status to the partnership open to all providers in the region. It will hold the HMO license.

<p align="center">Partnership Board (43 members)</p>	<p align="center">Source of Capital</p>
<p>Class A members are "financial sponsors" who contributed capital. These members appoint 51% of the Board members.</p> <p>Class B members are participating providers and consumers, appointed by their constituency groups</p> <p>Representation on the Board is as follows:</p> <ul style="list-style-type: none"> 13 hospitals 3 primary care clinics 10 physicians 2 other providers 2 dentists 8 non-physician providers 5 consumers 	<p>Capital loans to start the partnership will be provided by the following entities:</p> <p>Class A members who are "financial sponsors" 68%</p> <ul style="list-style-type: none"> Region's largest hospital system Primary care systems Other provider groups <p>The Administrative Service Organization (ASO) will fund furniture and equipment for its employees under its future contract } 32%</p> <p>The ASO also will supply a loan to the partnership }</p> <p>The Partnership will hire a core staff to complete start-up activities, provide daily management and oversight of ongoing operations, and manage program functions with and through an Administrative Services Organization. Negotiations are ongoing with AmeriHealth Mercy Health Plan to be the ASO.</p>

Appendix II Review of Region 8 MCHP's Protest of Award of RFP to MidSouth

Protest Point	Auditor's Discussion of the Protest Point
<p>Award of the RFP to MidSouth is contrary to law, arbitrary and capricious and not in the public interest.</p>	
<p>MidSouth is not a coalition of consumers and health care providers in both the private and public sectors.</p>	<p>Although MidSouth is 51% owned by a for-profit corporation, 75% of its governing Board consists of consumers and providers.</p>
<p>MidSouth does not have a governing body that currently meets the requirements of having broad provider and consumer representation.</p>	<p>MidSouth is in the process of developing its governing board. Before the Department for Medicaid Services signs a contract with a managed care partnership, that entity has to have a governing board established that meets the regulatory requirements. The entity does not have to have the governing board in place yet.</p>
<p>MidSouth is a for-profit entity and its profits will go to an out-of-state firm, rather than stay with health care providers in Eastern Kentucky. In addition, in the event of dissolution, remaining Region 8 assets will go to indigent care in Eastern Kentucky.</p>	<p>There is no prohibition on a for-profit entity being selected to negotiate a partnership contract with the Department. The partnership will be required to provide a pre-established level of health care services within its negotiated capitation payment. Whether any partnership "profits" go to a for-profit firm or to local health care providers should not have an impact on the level of services provided to Medicaid recipients in Eastern Kentucky.</p>
<p>Region 8 had significantly more letters of support from providers than MidSouth did; failure to properly evaluate the network resulted in erroneous awarding of the contract to MidSouth</p>	<p>The written responses to questions raised at the bidders' conference stated,</p> <p>"it is not our intention to have the bidder procure all the providers in the network that will be needed for this proposal, but to indicate who is already in the network and how the bidder intends to ensure that all necessary providers can be delivered prior to start-up."</p> <p>In the evaluation process, there were six required responses relating to the provider program network. Two of these requirements asked the respondent to list the providers that have submitted letters of intent or signed contracts to be in the network. Three other requirements asked the respondents for its plan for implementing the network. The winning bidder will be required to have the network in place and reviewed by the Cabinet prior to the partnership beginning operations.</p>
<p>No due diligence was performed on Centene Corporation's financials, which, according to Dunn & Bradstreet, showed a relatively low net worth and a net operating loss.</p>	<p>The Department for Medicaid Services requires that the partnership meet various financial standards. The Department of Insurance reviews each partnership's financial data on a quarterly basis to ensure it is solvent. Four evaluators rated the Region 8 MCHP proposal higher in the financial area and one evaluator rated the two groups the same.</p>

Appendix II Review of Region 8 MCHP's Protest of Award of RFP to MidSouth

Protest Point	Auditor's Discussion of the Protest Point
<p>The Procurement Decision by the Health Services Cabinet Was Contrary to Law Because it Violated Kentucky's Model Procurement Code and Kentucky's Procurement Regulations</p>	
<p>The use of a non-competitive negotiated personal service contract was an inappropriate way to award the partnership contract.</p>	<p>According to Don Speer, Commissioner, Department for Administration, Finance and Administration Cabinet, the Department for Medicaid Services appropriately determined it wanted to enter into a personal services contract with a managed care partnership to provide health care services in Eastern Kentucky. When it received two letters of intent in response to the original public notice, the Department was in a competitive situation and was obligated to follow the requirements of the procurement statutes relating to personal services contracts. (KRS 45A.690 to 45A.725)</p> <p>The Department was not selecting a sole source provider through its Request for Proposal. It was selecting a single provider (the winning bidder) with which it could negotiate a partnership contract.</p>
<p>MidSouth should be disqualified from the bid process because of improper ex parte contacts with state government officials.</p>	
<p>MidSouth officials lobbied state officials for the contract when they had dinner with the Lt. Governor one week after the RFP had been issued.</p> <p>The RFP states,</p> <p>"Please be advised that you or anyone acting on your behalf are not to make any contact with any Cabinet for Health Services (CHS) employee or officials for assistance or advice concerning this RFP, or your proposal in response to this RFP, other than Richard T. Heine, Ph.D.....or staff designated by him for the purpose of providing general information on the content of the RFP. A violation of this condition constitutes grounds for rejecting the proposal."</p>	<p>According to news accounts, the Lt. Governor asked the Secretary of the Cabinet for Health Services if MidSouth was getting a fair chance to bid. These same accounts indicate that the Secretary said the conversation with the Lt. Governor was limited to a question about the fairness of the process. There is no specific law that would prohibit this contact.</p> <p>We spoke with all seven individuals who evaluated the proposals. They all said they had had no contacts with anyone from either of the two groups bidding for the proposal. They also all said they had had no contacts with anyone in the Department for Medicaid Services about the proposal except the evaluation team leader.</p> <p>The Commissioner for Medicaid Services said he had never spoken to the Secretary about the Lt. Governor's dinner.</p> <p>Even though individuals associated with MidSouth attended the dinner, at least <u>one</u> person who attended the dinner was listed as an initial member of the Region 8 Managed Care Health Partnership.</p>

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General Questions

General questions should be directed to Donna Dixon, Intergovernmental Liaison, or Ed Lynch, Director of Communications, at (502) 564-5841 or the address above.