

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTH FLORIDA COMMUNITY CARE  
NETWORK, LLC d/b/a COMMUNITY  
CARE PLAN (SERIOUS MENTAL  
ILLNESS),

Case Nos. 18-3511BID

Petitioner,

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

Respondent.

FLORIDA MHS, INC., d/b/a  
MAGELLAN COMPLETE CARE,

Case Nos. 18-3516BID

18-3517BID

18-3518BID

18-3519BID

Petitioner,

Case Nos.

18-3520BID

18-3521BID

vs.

18-3523BID

18-3528BID

18-3530BID

AGENCY FOR HEALTH CARE  
ADMINISTRATION

18-3531BID

18-3534BID

Respondent.

WELLCARE OF FLORIDA, INC., d/b/a STAYWELL  
HEALTH PLAN OF FLORIDA SERIOUS  
MENTAL ILLNESS SPECIALTY PLAN,

Intervenor.

**WELLCARE OF FLORIDA, INC. d/b/a STAYWELL HEALTH PLAN OF FLORIDA  
SERIOUS MENTAL ILLNESS SPECIALTY PLAN'S MOTION IN LIMINE**

Intervenor, WellCare of Florida, Inc., d/b/a Staywell Health Plan of Florida (“Staywell”), respectfully requests that this honorable tribunal issue an order pursuant to Rule 28-106.204, Florida Administrative Code, precluding the Petitioners, Florida MHS, Inc. d/b/a Magellan Complete Care (“Magellan”) and South Florida Community Care Network, LLC, d/b/a Community Care Plan (“CCP”), from offering into evidence any testimony or documentation regarding the underlying facts or arguments concerning *Iowa Total Care, Inc., Meridian Health Plan of Iowa, Inc. and Aetna Better Health of Iowa, Inc., v. Iowa Department of Human Services, et al., Appeal 16001573; 16001590; and 16001623*, Proposed Order, (IA DOAH Nov. 25, 2015), and Final Decision, (Iowa Dep’t of Human Services, Dec. 18, 2015). This Iowa case concerns the State of Iowa’s determination in an administrative bid protest proceeding that WellCare of Iowa<sup>1</sup>, violated Iowa procurement procedures, and was removed as the winning bid. The underlying facts and arguments concerning the Iowa decision are not relevant to the issue raised by Magellan’s Amended Petition in paragraphs 49 through 57 that Staywell’s response regarding terminated contracts in ITN, Attachment A, Exhibit A-2-c made it a non-responsible and non-responsive vendor.<sup>2</sup>

The relevant portion of the ITN Attachment A, Exhibit A-2-c, Additional Required Certifications and Statements (10-2-17), attached as Exhibit 1 to this Motion, requested that potential bidders provide the following:

15. CERTIFICATION REGARDING TERMINATED CONTRACTS

I hereby certify that my organization (including its subsidiaries and affiliates) has not unilaterally or willfully terminated any previous contract prior to the end of the

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<sup>1</sup> WellCare of Iowa, Inc. is owned by WellCare Management Group, Inc., which also owns WellCare of Florida, Inc., making the two entities affiliates of each other.

<sup>2</sup> Staywell notes that CCP has not amended its Petition to raise this issue; however, CCP has questioned Staywell’s corporate representative concerning this certification. Therefore, the Motion in Limine is directed to both Magellan and CCP.

contract with a State of the Federal government and has not had a contract terminated by a State or the Federal government for cause, prior to the end of the contract, within the past five (5) years (since July 14, 2012), **other than those listed on Page 6 of this Exhibit.**

AND

16. LIST OF TERMINATED CONTRACTS

(Emphasis added).

The ITN, Exhibit A-2-c instructs the potential bidder to:

List the terminated contracts in chronological order and provide a **brief description** (half-page or less) of the reason(s) for the termination. Additional pages may be submitted; however, no more than five (5) additional pages should be submitted in total.

(Emphasis added).

Staywell identified the Iowa termination in its response as follows:

Respondent Name: WellCare of Florida, Inc., as an affiliate of WellCare of Iowa, Inc. (WCIA).

Client's Name: Iowa Department of Human Services (IA DHS)

Term of Contract: October 9, 2015- December 2015

Description of Services: WCIA was to provide managed care services for Iowan Medicaid enrollees. **Exhibit 1, attached.**

Staywell provided the following brief description requested by the ITN concerning the Iowa termination:

Contract was not terminated for performance. WCIA was initially awarded a contract pursuant to Iowa's Request for Proposal MED-16-009. Unsuccessful bidders protested, but IA DHS entered contracts with awardees pending the outcome of the protests. Proceedings related to the protest concluded in December 2015 when the Iowa Department of Administrative Services issued a Final Order reversing the Notice of Intent to Award to WCIA and terminating the contract between WCIA and IA DHS.

Magellan's allegations turn on whether Staywell's disclosure shows that it is a non-responsible and non-responsive vendor based on the ITN's request that potential vendors identify contracts terminated "for cause," and provide a brief description of the reasons for the contract

termination. Staywell, in its response, identified the Iowa contract as one that was terminated and provided a brief description of that termination.<sup>3</sup> Therefore, it clearly complied with the ITN. In fact, Magellan concedes this point, at least in part. Although Magellan alleges in paragraphs 50 and 53 of its Amended Petition that Staywell’s certification was “untrue,” Magellan’s own pleading in paragraph 54 refutes this argument as Magellan acknowledged that Staywell disclosed the Iowa contract in the place allotted for disclosure of contracts terminated for cause. Therefore, Magellan’s only real complaint here is the sufficiency of the detail provided in Staywell’s brief description of the contract termination.

In response to this narrow issue, both Magellan and CCP seek to broadly reopen the Iowa litigation and have the Administrative Law Judge delve into the facts determined in Iowa. None of the facts and arguments set out in the Iowa case are relevant to the certification issue raised by Magellan. The question is whether Staywell identified the terminated contract (which Magellan actually admits that Staywell did), and whether Staywell gave a complete and truthful answer in its description – which Staywell also did, as a matter of undisputed fact. Indeed, had AHCA had any concerns about the sufficiency or accuracy of AHCA’s description, the terms of the ITN allowed AHCA to seek clarification or additional information from Staywell. *See* ITN, Attachment A, page 24 of 41. However, because Staywell provided enough information to allow AHCA to evaluate Staywell’s ITN response, no such clarification was needed. Therefore, any discussion or testimony concerning the facts contained in the Iowa bid protest case are irrelevant,

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<sup>3</sup> Staywell’s decision to disclose the terminated Iowa contract is a demonstration of Staywell’s transparency and forthcoming response. Clearly, Iowa, like Florida, has an administrative process for challenging a contract award. Under the Iowa administrative process, the administrative law judge and the state agency determined the award to WellCare Iowa was contrary to Iowa’s procurement law. Consequently, WellCare Iowa had yet to perform under the contract while the administrative bid challenge was pending.

and only designed to create prejudice without any probative value. None of the facts that Magellan and CCP seek to elicit in the Iowa bid protest case are relevant to issues of AHCA's determination to award Staywell the SMI Specialty Plan. Consequently, this Court should grant the Motion in Limine to exclude testimony concerning the facts surrounding the Iowa bid protest case.

Based on the foregoing, the Staywell respectfully requests this Court exclude any evidence concerning the underlying facts from the 2015 Iowa bid protest.

Respectfully submitted this 23rd day of August, 2018.

/S/ Thomas P. Crapps  
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## CERTIFICATE OF SERVICE

I certify that I have served a true and correct copy of the foregoing to the following listed below this 23rd day of August, 2018:

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/S/THOMAS P. CRAPPS



**EXHIBIT A-2-c**  
**ADDITIONAL REQUIRED CERTIFICATIONS AND STATEMENTS**  
**(10-2-17)**

The respondent must disclose any business relationship(s) in the space provided below:

**Although respondent does not have any business relationship (as defined in Section 409.966(3)(e), Florida Statutes) with any other Managed Care Plan that is a potential respondent to this solicitation, respondent's provider network contains certain provider entities that may respond to this solicitation as Provider Service Networks (PSNs).**

**AND**

**13. COMPLETE MEDICAID PROVIDER ENROLLMENT PACKAGE SUBMISSION**

I hereby certify my organization, if awarded a Contract, shall provide the Agency with an accurate and complete Medicaid Provider Enrollment Application, including all ownership and principal fingerprint cards and processing fees, within thirty (30) days after the Contract award is complete.

**AND**

**14. REQUIRED PLAN READINESS DOCUMENTATION**

I hereby certify my organization, if awarded a Contract, shall submit to the Agency all required Plan Readiness documentation within established timeframes as required in **Attachment A**, Instructions and Special Conditions, **Section E.**, Contract Implementation.

**AND**

**15. CERTIFICATION REGARDING TERMINATED CONTRACTS**

I hereby certify that my organization (including its subsidiaries and affiliates) has not unilaterally or willfully terminated any previous contract prior to the end of the contract with a State or the Federal government and has not had a contract terminated by a State or the Federal government for cause, prior to the end of the contract, within the past five (5) years (since July 14, 2012), other than those listed on **Page 6** of this Exhibit.

**AND**

**16. LIST OF TERMINATED CONTRACTS**

AHCA ITN 005-17/18, Attachment A, Exhibit A-2-c (10-2-17), Page 5 of 8

**ATTACHMENT A**

**EXHIBIT A-2-c**  
**ADDITIONAL REQUIRED CERTIFICATIONS AND STATEMENTS**  
**(10-2-17)**

List the terminated contracts in chronological order and provide a brief description (half-page or less) of the reason(s) for the termination. Additional pages may be submitted; however, no more than five (5) additional pages should be submitted in total.

The Agency is not responsible for confirming the accuracy of the information provided.

The Agency reserves the right within its sole discretion, to determine the respondent to be a non-responsible vendor based on any or all of the listed contracts and therefore may reject the respondent's reply.

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**Respondent Name: WellCare of Florida, Inc., as an affiliate of WellCare of New York, Inc. (WCNY)**

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**Client's Name: New York State Department of Health, Centers for Medicare & Medicaid Services**

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**Term of Terminated Contract: September 5, 2014 - December 31, 2016**

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**Description of Services: WCNY provided managed care services pursuant to a duals demonstration project.**

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**Brief Summary of Reason(s) for Contract Termination: WCNY elected to terminate the Fully Integrated Duals Advantage demonstration program contract for business reasons. Termination was permitted under the terms of the contract.**

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**Respondent Name: WellCare of Florida, Inc., as an affiliate of WellCare of Iowa, Inc. (WCIA)**

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**Client's Name: Iowa Department of Human Services (IA DHS)**

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**Term of Terminated Contract: October 9, 2015 - December 2015**

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**Description of Services: WCIA was to provide managed care services for Iowa Medicaid enrollees.**

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**EXHIBIT A-2-c**  
**ADDITIONAL REQUIRED CERTIFICATIONS AND STATEMENTS**  
**(10-2-17)**

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**Brief Summary of Reason(s) for Contract Termination:**

Contract was not terminated for performance. WCIA was initially awarded a contract pursuant to Iowa's Request for Proposal MED-16-009. Unsuccessful bidders protested, but IA DHS entered contracts with awardees pending the outcome of the protests. Proceedings related to the protest concluded in December 2015 when the Iowa Department of Administrative Services issued a Final Order reversing the Notice of Intent to Award to WCIA and terminating the contract between WCIA and IA DHS.

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**EXHIBIT A-2-c**  
**ADDITIONAL REQUIRED CERTIFICATIONS AND STATEMENTS**  
**(10-2-17)**

Signature below indicates the respondent's full acknowledgement of; understanding of; and agreement with all of the certifications and statements identified above in Items 1 through 16 as written and without caveat.

WellCare of Florida, Inc. d/b/a Staywell Health Plan of Florida  
**Respondent Name**

Trade secret as defined in Section 812.081, Florida  
Statutes

\_\_\_\_\_  
**Authorized Official Signature**

\_\_\_\_\_  
**Date**

10/30/2017

Elizabeth M. Miller  
**Authorized Official Printed Name**

President  
**Authorized Official Title**

Failure to submit, Exhibit A-2-c, Additional Required Certifications and Statements, signed by an authorized official may result in the rejection of response.

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