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Direct Fax: 785.232.9983

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Jeffery L. Carmichael
Robert W. Coykendall
Robert K. Anderson
Karl R. Swartz
Roger L. Theis
Diane H. Sorensen
Janet Huck Ward
Roger N. Walter
James D. Young
Kelly S. Herzik

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Cameron V. Michaud
Ryan M. Peck
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*Resident & Licensed in FL
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July 5, 2018

VIA ELECTRONIC MAIL
AND HAND DELIVERY

Kansas Department of Administration
Office of Chief Counsel
Attn: Designated Records Custodian
CSOB, Suite 500
1000 S.W. Jackson
Topeka, Kansas 66612
Email: philip.michael@ks.gov

Re: Pending KORA Requests, Bid Protest, State of Kansas Request for Proposal EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care ("KanCare 2.0 RFP")

Dear Mr. Philip:

Our client, Amerigroup Kansas, Inc. ("Amerigroup"), has submitted through counsel two letters under the Kansas Open Records Act ("KORA"), K.S.A. 45-215 *et seq.*, requesting public records from the State of Kansas in connection with the referenced matter. See **Exhibit A** (attached). These letters comprise seventeen separate requests for public records relevant to a range of subject matters.

You acknowledged receipt of Amerigroup's requests by letter on June 26, 2018. See **Exhibit B** (attached). In that letter you confirmed that your office was in the process of locating public records responsive to Amerigroup's requests and

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indicated that you would provide, as soon as possible, (1) copies of the requested records and/or (2) confirmation of the absence of any such records and/or (3) a request for clarification.

On July 2, 2018, I sent you an email requesting a face-to-face meeting to discuss the status of Amerigroup's requests. Your response:

"The following linked website was provided Thursday, June 28 <http://admin.ks.gov/offices/procurement-and-contracts/kancare-award>. This site contains proposals, award documents, evaluation documents, and available correspondence. Our IT is working to review for any additional correspondence requested, but I do not have additional information at this time."

The purpose of this letter is to follow up on your latest response and to suggest a plan to ensure all public agencies involved in the KanCare 2.0 RFP satisfy their official duties under KORA. To that end, we have prepared an examination matrix for the pending requests. *See Exhibit C* (attached). This matrix will help us: (1) identify the nature and location of all public records responsive to Amerigroup's requests, (2) determine which records have been produced to date, and (3) formulate a plan to address promptly any delays or impediments to disclosure.

As we move forward in the process please note the following definitions and rules:

- "Public record" is defined as "any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of: (1) any public agency; and (2) any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations of any public agency." K.S.A. 2016 Supp. 45-217(g)(1).
- The definition of "public record" includes records provided to a public agency by third parties. Kan. Atty. Gen. Op. No. 93-132.
- "Public agency" is defined to include: (1) "the state or any political or taxing subdivision of the state or any office, agency or instrumentality; and (2) any other entity receiving or expending and supported in whole or in part by [public funds]." K.S.A. 2016 Supp. 45-217(f).

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- The custodian of records is required to give a detailed explanation of the cause of any delays and advise the requesting party of the place and earliest time and date the records will be available. K.S.A. 2016 Supp. 45-218(d).
- If a records request is denied or portions of a record are redacted on the basis of an asserted KORA exception, the agency must cite the closure exception upon request. K.S.A. 45-218(d).

I will contact you before the close of business today to make arrangements for an on-site records inspection and to schedule a time to meet and confer.

Respectfully,

A handwritten signature in black ink, appearing to be 'Trevor C. Wohlford', with a stylized, flowing script.

Trevor C. Wohlford

EXHIBIT A



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

106 EAST COLLEGE AVENUE, SUITE 900
TALLAHASSEE, FL 32301-7732
850.222.6100 TEL
850.561.6475 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
850.513.3382
rhosay@foley.com EMAIL

CLIENT/MATTER NUMBER
092595-0462

June 22, 2018

VIA ELECTRONIC MAIL

Kansas Department of Administration
Office of Chief Counsel
Attn: KORA Request
CSOB, Suite 500, 1000 SW Jackson
Topeka, KS 66612
DOA_KORA@ks.gov
philip.michael@ks.gov

Re: Open Records Request pertaining to State of Kansas Request for Proposal
EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care ("RFP")

Dear Mr. Philip:

This firm represents Amerigroup Kansas, Inc. ("Amerigroup"). On behalf of Amerigroup, and pursuant to The Kansas Open Records Act ("KORA"), K.S.A. 45-215, *et. seq.*, we request the opportunity to inspect, examine, and copy all public records, as defined by KORA, that are in the custody of any employees, agents, or other representatives of the Kansas Department of Administration, with regards to the RFP.

Please contact the undersigned as soon as possible regarding this request. As time is of the essence, we request permission to inspect all records that are immediately available while we are awaiting copies in full response to this request. Further, inspection may allow us to narrow this open records request and thus provide for a more efficient and effective handling of this request.

The specific documents requested include, but are not limited to:

1. A complete copy of the procurement file for the RFP;
2. All bids, replies, responses, proposals and/or best and final offers submitted in response to the RFP, including all exhibits and attachments provided with said bids, replies, responses and proposals by any and all prospective responders, bidders and/or vendors;
3. All internal memoranda relating to the RFP;
4. All drafts of the RFP, and any other types of procurement documents that preceded issuance of the RFP;
5. All drafts of addenda or amendments to the RFP;

AUSTIN
BOSTON
CHICAGO
DALLAS
DENVER

DETROIT
HOUSTON
JACKSONVILLE
LOS ANGELES
MADISON

MEXICO CITY
MIAMI
MILWAUKEE
NEW YORK
ORLANDO

SACRAMENTO
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEE

TAMPA
WASHINGTON, D.C.
BRUSSELS
TOKYO



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6. All documents demonstrating how the RFP was created;
7. All internal and external correspondence or email regarding or relating to the RFP or the services sought in the RFP that was sent or received by any employees, agents, or other representatives of the Kansas Department of Administration including, but not limited to, all correspondence with any third party including vendors, potential vendors, or persons acting on behalf of vendors;
8. All recommendations, justifications, notes, spreadsheets, and related documents, whether electronic or otherwise, that relate to the RFP;
9. All recordings, transcriptions or meeting minutes of meetings related to the RFP, including, without limitation, meetings of any members of the Procurement Negotiation Committee;
10. All evaluations, score sheets, ranking documents, scoring or evaluation instructions, negotiation documents, recommendations, justifications, agency decision documents, notes, spreadsheets, and related documents, whether electronic or otherwise, that relate to the RFP;
11. All communications, correspondence or email between the Kansas Department of Administration and any actuaries, including without limitation, Optumas, related to the cost evaluation, actuarially sound rate range, actuarial memorandums and any actuarial certifications submitted to the Centers for Medicare & Medicaid Services (CMS) in connection with the RFP or the services sought by the RFP;
12. All work papers, memoranda, notes, charts, evaluation or other documents developed or used by any actuaries, including without limitation Optumas, to support the development of the rate ranges for the RFP;
13. All communications, correspondence or email between any employees, agents, or other representatives of the Kansas Department of Administration, or any members of the Procurement Negotiation Committee or Management Review Team, and any employees, agents, or other representatives of any other Kansas state agency or governmental body, regarding or relating in any way to the RFP or any of the services sought by the RFP, or any of the funding for the services sought by the RFP, from January 1, 2018, to June 22, 2018.
14. All communications, correspondence or email between or among any of the members of the Procurement Negotiating Committee or the Management Review Team regarding the RFP, the evaluation of responses to the RFP, any of the services sought by the RFP, or any of the funding for the services sought by the RFP;
15. All documents produced to any party regarding the RFP, including all documents, records or other materials requested by any legal counsel or representative for any vendor that responded to the RFP, and released by the Kansas Department of Administration to said legal counsel or representative (please include the actual open records request itself).



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We understand that there may be a charge for providing copies of the requested records, and request that you advise of any such charges as soon as possible. Thank you for your assistance in this regard.

Sincerely,

A handwritten signature in cursive script that reads 'Robert H. Hosay'.

Robert H. Hosay

cc: William Sneed (via e-mail)

June 25, 2018

VIA ELECTRONIC MAIL

Kansas Department of Administration
Office of Chief Counsel
Attn: KORA Request
CSOB, Suite 500, 1000 SW Jackson
Topeka, KS 66612
DOA_KORA@ks.gov
philip.michael@ks.gov

Kansas Department of Health and Environment
KORA Officer
1000 SW Jackson, Suite 560
Topeka, KS 66612
kdhe.KORAOfficer@ks.gov
kara.titus@ks.gov

Re: Follow-up Open Records Request pertaining to State of Kansas Request for Proposal EVT0005464, KanCare 2.0 Medicaid & CHIP Capitated Managed Care ("RFP")

Dear Mr. Philip and Ms. Titus:

This firm represents Amerigroup Kansas, Inc. ("Amerigroup"). As you know, we have previously submitted a request to the Kansas Department of Administration for records relating to the RFP. On behalf of Amerigroup, and pursuant to The Kansas Open Records Act ("KORA"), K.S.A. 45-215, *et. seq.*, we request the opportunity to inspect, examine, and copy certain additional public records, as defined by KORA, that are in the custody of any employees, agents, or other representatives of the Kansas Department of Administration, with regards to the RFP.

Please contact the undersigned as soon as possible regarding this request. As time is of the essence, we request permission to inspect all records that are immediately available while we are awaiting copies in full response to this request. Further, inspection may allow us to narrow this open records request and thus provide for a more efficient and effective handling of this request.

Specifically, we request the following documents:

1. Any and all contracts executed between any winning vendor under the RFP and the Kansas Department of Health and Environment and/or the Kansas Department of Administration with respect to the RFP; and
2. All documents constituting, reflecting, or relating to the "tremendous feedback" received by the Kansas Department of Health and Environment ("KDHE") during the contract evaluation process, as referenced by KDHE Secretary Jeff Andersen in an article entitled "State selects companies to manage Medicaid," published by The Topeka Capital-Journal on Friday, June 22, 2018 (*see*



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<http://www.cjonline.com/news/20180622/kansas-signs-three-year-contracts-with-extensions-with-three-companies-to-manage-medicaid-drops-amerigroup>

We understand that there may be a charge for providing copies of the requested records, and request that you advise of any such charges as soon as possible. Thank you for your assistance in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Ryan Maloney', written over the printed name.

C. Ryan Maloney

EXHIBIT B

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
1000 S.W. JACKSON, SUITE 500
TOPEKA, KS 66612

PHONE: (785) 296-3011
FAX: (785) 296-2702
sarah.shipman@ks.gov

GOVERNOR JEFF COLYER, M.D.
SARAH SHIPMAN, SECRETARY

June 26, 2018

Dear Sir/Madame:

The Kansas Department of Administration has received your written request on 6/22/2018. In accordance with K.S.A. 45-218(d), we have begun the process of determining if we possess any public records meeting the terms of your request and, as soon as possible hereafter, we will provide you with one or more of the following:

1. Copies of the requested public records;
2. A statement concerning our inability to locate any public records meeting the terms of your request;
3. A request for clarification concerning the types of records or information you are seeking;
4. Record requests that can be provided with less than one hour of staff time or less than 100 pages will be provided at no charge. If we determine that our office possesses the public records you request, but are voluminous, difficult to locate, and/or contain information that may include open and closed information, we will provide you with a written estimate of the fees that we will require be pre-paid in order to pay for the actual costs associated with (a) locating and/or retrieving the public records from storage, (b) staff time spent in assisting with making copies of the records, including attorney time spent examining the records for possible closure and/or redaction, and (c) copying and mailing the requested public records;

For requests that exceed one hour of staff time or more than 100 pages amount, the following rates shall apply.

- Copies, 25¢ per page; Mailing, 50¢ for first 5 pages, 25¢ for additional 5 page increments; FAX, 65¢ per 10 page fax. 5 cent additions per 5 cents up to 15 after that at discretion.
- Regarding staff time, there will be charged at the rate of pay for each person(s) whose time is used in order to assist and/or respond to a specific request. This may include the time spent to access records maintained on computer facilities, review records to determine whether closure exceptions apply and/or to redact open from closed information. Attorney time will be charged at \$60 per hour. Clerical time will be charged at \$18 per hour. Information Technology (IT) services will be charged at \$38 per hour.
- Additional fees may be assessed if any other costs are incurred by the Department of Administration in connection with complying with a record request may be assessed to the requester. The agency will provide an estimate of the fees which shall be paid prior to the agency gathering the records. However, in order to assure payment, the final cost of providing access to or furnishing copies must be paid before the records are provided.

If the final cost is less than the estimate, the requestor will be reimbursed for the difference.

5. If we determine that we do possess the records, but that the records are closed by law, we will provide you with that information together with a written citation to the laws allowing or requiring that type of public record to be closed.

We will contact you again, as soon as possible, concerning this matter and your record request. Please feel free to contact me if you have any questions.

Very Truly Yours,

/s/ Philip Michael

Philip R. Michael
Attorney | Office of Chief Counsel

Kansas Department of Administration
1000 SW Jackson, Suite 500 | Topeka, KS 66612
785-291-3013 | DOA_KORA@ks.gov

EXHIBIT C

**RECORDS CUSTODIAN
KORA EXAMINATION MATRIX**

1. Identify each public record responsive to each request that is within your possession, custody or control as the designated custodian of public records for the Kansas Department of Administration.
2. Identify each public record responsive to each request that is within the possession, custody or control of any other public agency or person, and for each such record identify the location of the record and provide the name and contact information for the custodian of the record.
3. Identify each public record responsive to each request that has been published on line, and for each such record provide the web address where the record can be accessed by the public.
4. Identify each public record responsive to each request that has been produced directly to Amerigroup Kansas, Inc. and/or its attorneys.
5. Identify each public record responsive to each request that will be produced, but has not yet been produced, and for each such record provide a detailed explanation of why the record has not been produced and advise of the earliest date and time the record will be available for inspection.
6. Identify each public record responsive to each request that you assert is closed to the public, and for each such record state the asserted legal basis for record closure.