



Robert P. Astorino
County Executive

Department of Social Service

Kevin McGuire
Commissioner

Philippe Gille
First Deputy Commissioner

44719

Date: February 9, 2015

To: Board of Acquisition and Contract

From: Kevin M. McGuire
Commissioner of Social Services

Re: Authority for the County of Westchester to enter into agreements with the New York State Department of Health, the law firm of Whiteman Osterman & Hanna, LLP and the law firm of Nancy Rose Stormer, P.C., governing the disclosure of Medicaid and medical data in connection with the County's potential recovery of medical assistance reimbursements that may be owed by New York State to the County.

Authority is respectfully requested for the County of Westchester (the "County") to enter into a Confidentiality Agreement and a Stipulation and Agreement (hereinafter collectively referred to as the "Agreements") with the New York State Department of Health, the law firm of Whiteman Osterman & Hanna, LLP and the law firm of Nancy Rose Stormer, P.C., governing the disclosure of certain Medicaid and medical data in connection with the County's potential recovery of medical assistance reimbursements that may be owed by New York State to the County.

On October 6, 2014, by Act No. 2014-179, the County Board of Legislators authorized the County enter into an agreement (the "Retainer Agreement") to retain, at County expense, the law firm of Whiteman Osterman & Hanna, LLP ("WOH") for the provision of legal representation on behalf of the County in connection with obtaining recovery of medical assistance reimbursements that may be owed by New York State (the "State") to the County, and to approve Nancy Rose Stormer, P.C. ("Stormer") to act as a sub-consultant to WOH in

connection with its provision of this work. On November 20, 2014, Your Honorable Board authorized the Retainer Agreement. In furtherance of the aforesaid authorizations and the Retainer Agreement, WOH has advised that the Agreements must be executed and submitted to the New York State Department of Health and the New York State Attorney General's Office before the New York State Department of Health will voluntarily provide certain critical documentation to the County and its attorneys.

The Agreements will govern the disclosure of the Medicaid and medical data and ensure the confidentiality of the data. The Confidentiality Agreement will require the County to indemnify and hold the State of New York harmless against all claims and costs in connection with the County's obligations under the Agreements. Specifically the indemnification clause states:

"Business Associate [County] shall indemnify and hold the State harmless against all claims and costs resulting from acts/omissions of the [County] in connection with the [County's] obligations under this Agreement. The [County] shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the State from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law Section 208, caused by any intentional act or negligence of the [County], its agents, employees, partners or subcontractors, without limitation (emphasis not added); provided, however, that the [County] shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State."

The goal and objective of the proposed Agreements is to obtain critical, documents from the New York State Department of Health on a voluntary basis in order to assist in the recovery of medical assistance reimbursements that may be owed from the State. The proposed Agreements will serve a public purpose by providing the County with the critical documents necessary to assist in the recovery of medical assistance reimbursements from the State. The goal and objective of the proposed Agreement will be tracked and monitored by the Department of Social Services.

I respectfully recommend the adoption of the attached Resolution.

KMM/jpi

RESOLUTION

Upon a communication from the Commissioner of Social Services, be it hereby:

RESOLVED, that the County of Westchester is authorized to enter into agreements with the New York State Department of Health, the law firm of Whiteman Osterman & Hanna, LLP and the law firm of Nancy Rose Stormer, P.C., governing the disclosure of certain Medicaid and medical data in connection with the County's potential recovery of medical assistance reimbursements that may be owed by New York State to the County; and be it further

RESOLVED, that one of the aforesaid Agreements will contain the following indemnification provision:

“Business Associate [County] shall indemnify and hold the State harmless against all claims and costs resulting from acts/omissions of the [County] in connection with the [County's] obligations under this Agreement. The [County] shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the State from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law Section 208, caused by any intentional act or negligence of the [County], its agents, employees, partners or subcontractors, without limitation (emphasis not added); provided, however, that the [County] shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State .”

And be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be
Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
N/A	N/A	N/A	N/A	N/A	N/A

Budget Funding Year(s): N/A Start Date: 11/01/14 End Date: N/A
(must match resolution)

Funding Source Tax Dollars: N/A
State Aid: N/A
\$N/A Federal Aid: N/A
(must match resolution) Other: N/A

APPROVED BOARD OF ACQUISITION & CONTRACT - 02/12/2015 - DOMYRY VIEIRA, SECRETARY