Alliance for the Betterment of
Citizens with Disabilities

Empowering People: Providers Shaping Policies

Egregious Fiscal and Operational Failures By Public Partnerships, LLC Were Predictable

The egregious fiscal and operational failures by Public Partnerships, LLC ("PPL") in managing two Department of Human Services ("DHS") programs- the Division of Disability Services' ("DDS") Personal Preference Program ("PPP") (recently transferred to the Division of Medical Assistance and Health Services (DMAHS")) and the Division of Development Disabilities' ("DDD") Self-Directed Services ("SDS") were predictable because the Department of Treasury, Division of Purchase and Property ("DPP") awarded the contract to PPL despite the fact that PPL's proposal did not conform with many requirements of the Request for Proposal ("RFP"). In fact, in its proposal, PPL specifically advised that PPL **would not** provide certain services.

As a result, individuals are literally being denied life-critical services. Both programs enable persons with physical and intellectual disabilities and seniors to live in the community by selecting and directing the services that they need. For example, participants can hire employees to assist them with activities of daily of living, such as bathing, dressing, eating, transferring (to and from bed and/or chair) and toileting or maintaining continence (control of bladder and bowel functions).

As outlined in Disability Rights New Jersey's ("DRNJ") letter of August 20, 2018, to the New Jersey State Comptroller, "PPL has consistently demonstrated that it is not equipped to perform the essential functions for the Medicaid beneficiaries it has been contracted to serve." DRNJ reported that PPL's poor performance has caused interruptions in services including incorrect, inconsistent and missing payments for approved services, including payroll, long delays enrolling new participants and unresponsive customer service. Participants are not able to enroll new support personnel, personnel are not being paid, sometimes for weeks, and approved goods and services are not being paid. As a result, workers are resigning so Participants are not receiving services. Participants have also received violation notices of Federal and State labor laws for failing to pay wages to caregivers or payroll withholding to taxing authorities.

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PPL's Response Did Not Conform to Requirements of the RFP

PPL failed to conform with the requirements of the Request for Proposal ("RFP") in numerous ways, including, but not limited to, the following:

- The RFP required the establishment of a $3 million line of credit, thereby assuring a means of cash flow to pay participant's employees. PPL's bid did not include a line of credit as required by the RFP.
- PPL proposed to "pend" payments to workers.
- PPL proposed to cease enrollment of new participants.
- PPL would not commit to conducting individual sessions with participants in order to assess individual needs.
- PPL would not commit to providing home visits or explain how home visits would be implemented.
- Although the RFP required that calls be answered by a live person, PPL responded that calls would be answered by a "live person or PPL's interactive voice response system."
- PPL would not commit to using the State's data entry system and stated its intent not to comply after six (6) months.
- PPL did not include a subcontractor utilization plan, even though this was a requirement of the RFP and is mandated under State law.
- Although the RFP required the contractor to maintain New Jersey offices in the North Region, Central Region and Southern Region so as to be accessible to participants, their families and their employees, PPL indicated its managing staff would be housed in Boston, Massachusetts.
- Although the RFP required that that PPL maintain a call center in New Jersey, PPL stated that its call center would be located in Phoenix, Arizona.

PPL's Failures to Perform Were Predictable

PPL's failures to perform were predictable. The problems that participants, their families and their employees are still experiencing more than a year and a half after PPL assumed full responsibility for the programs are a result of PPL's refusal to comply with the material requirements of the RFP and a result of DPP awarding the contract to a non-compliant bidder. There is direct cause and effect. For example:

- The RFP required the establishment of a $3 million line of credit, thereby assuring a means of cash flow to pay participant's employees, but PPL's bid did not include a line of credit as required by the RFP. As a consequence, personnel are not getting paid and approved goods and services are not being paid. Workers are resigning and participants are not receiving services.
- PPL proposed to "pend" payments to workers. This meant that PPL proposed not to pay workers if there were financial limitations. PPL has not been paying workers as required. Workers are quitting so participants are not getting services. Participants are receiving Federal and State violation notices for wage and hour violations because workers are not being paid as legally required.

- PPL proposed to cease enrollment of new participants. PPL did cease enrollment of new participants and new participants are not being enrolled.
- Although the RFP required that calls be answered by a live person, PPL would not commit to calls being answered by a live person and although the RFP required the contractor to maintain New Jersey offices in the North Region, Central Region and Southern Region so as to be accessible to participants, their families and their employees, PPL indicated its managing staff would be housed in Boston, Massachusetts. Similarly, although the RFP required that that PPL maintain a call center in New Jersey, PPL's call center is located in Phoenix, Arizona. PPL's customer service is unresponsive and ineffective. Because PPL's customer service phone numbers and escalation procedures were not effective, DRNJ staff walked into PPL's office in Princeton to resolve concerns but then PPL staff ceased direct conversations with DRNJ.

Impact of PPL's Failures to Perform

PPL's fiscal and operational failures continue. Despite repeated complaints to DHS by participants and their families, DRNJ and provider and advocacy organizations, DHS has not taken effective action to assure that individuals with disabilities who are dependent upon PPL are able to hire and pay personnel and receive services pursuant to their approved service plans without excessive delays and interruptions. This is significantly impacting literally thousands of the State's most vulnerable citizens. Since Medicaid beneficiaries are not receiving the benefits to which they are legally entitled, it also places the State's Medicaid funding at risk because of non-compliance with the requirements of Medicaid and the Medicaid waiver granted by the Federal government.

Requested and Recommended Legislative Action to Alleviate Current Problems and Prevent Recurrence

The following legislative action is requested and recommended:

- Legislation removing agency discretion in connection with non-conformance with the requirements of Requests for Proposals. While agencies are to assess whether deviations deprive the State of assurance that contracts will be entered into, performed and guaranteed according to specified requirements, agencies are insulated from responsibility or challenge unless their actions are "arbitrary and capricious".
- Legislation requiring preference for New Jersey bidders when proposals between New Jersey bidders and non-New Jersey bidders are otherwise commensurate. The current law only affords preference to New Jersey bidders if the law in the home State of out-of-State bidders gives preference to in-State bidders. Preference for New Jersey bidders will enhance accountability because local vendors are more responsible to their neighbors and more readily answerable if they are not. Preference for New Jersey bidders will also promote New Jersey jobs.
- Legislation requiring DPP/DHS to declare PPL in breach of contract and initiate corrective action as needed to assure expeditious management of fiscal and operational components of the programs including, if necessary, the engagement of replacement vendors in whole or in part.

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Thank you for your consideration and assistance.

For further information, please contact Daniel J. Keating, Ph.D., Executive Director, Alliance for the Betterment of Citizens with Disabilities (609- 581- 8375 or dan@abcdnj.org) or Lisa D. Taylor, Esq., Inglesino, Webster, Wyciskala & Taylor, LLC (973-947-7111 or ltaylor@iwt-law.com

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