



# INVESTIGATIVE REPORT

David Cook, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL  
TITLE: CONTINGENCY FEE CONTRACT  
CASE ID: 2021-12-0373  
DATE: DECEMBER 29, 2021

*After examination and review, Office of Inspector General Staff Attorney Doreen Clark reports as follows:*

The purpose of this Report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set forth in Ind. Code §4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflicts of interests.

On December 28, 2021, the Office of the Indiana Attorney General (OAG) notified the IG that it wished to enter into a contingency fee contract with Liston & Deas, PLLC (Counsel), a law firm. The OAG explains that Counsel will represent the State of Indiana in recovering funds from Centene Corporation (Centene) and each of its subsidiaries; including, but not limited to, Indiana Managed Health Service, Inc., Centene Management Corporation and Envolve Pharmacy Solutions, Inc.; as a pharmacy benefit manager for breach of contract and breach of various obligations to the State.

Under the contingency fee contract, the State will compensate Counsel only for legal services rendered and for costs and expenses incurred if Counsel obtains any recovery for the State under the following contingency fee agreement: (1) Twenty-five (25%) of any recovery exceeding two million dollars (\$2,000,000) and that is not more than ten million dollars (\$10,000,000); (2) Twenty percent (20%) of any part of recovery exceeding ten million (\$10,000,000) and not more than fifteen million dollars (\$15,000,000); (3) Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000); (4) Ten percent (10%) of any part of a recovery of more than twenty million dollars (\$20,000,000) and not more than twenty-five million (\$25,000,000); or (5) Five percent (5%) of any part of a recovery of more than twenty-five million dollars (\$25,000,000).

Pursuant to Ind. Code §4-6-3-2.5(b), an agency is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity, and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG made such a determination and considered all five factors outlined in the statute. The OAG explains that the matter to be handled by Counsel is based on work from the OAG's Medicaid Fraud Control Unit (MFCU), and it would take MFCU substantial time to undertake the matter. The OAG states that Counsel is equipped with the expertise to efficiently pursue complex pharmacy benefit matters. Furthermore, the OAG states that although MFCU possesses the knowledge to handle the claims arising from Centene's breach of contract and obligations as a

pharmacy benefit manager, MFCU will not be able to simultaneously undertake the matter while managing its regular workload. As a result, the OAG finds it necessary to contract with Counsel to assist with this matter. The OAG also notes that Counsel has completed an extensive multi-year investigation into this matter. The OAG believes the State's interest will be best protected if managed by Counsel given their specialized knowledge, services and extensive history with Medicaid rules and with Centene. Finally, OAG states the recovery is specific to Indiana pharmacy benefit claims, including Medicaid funds.

According to the OAG, no employee of the OAG or immediate family member of an OAG employee has any financial interest with Counsel. Likewise, the OAG provides that no OAG employee or immediate family member of an OAG employee has a financial interest in the contract itself. Furthermore, Counsel does not employ any state employees. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, and after careful review and examination, the IG finds that entering into this contingency fee contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. This Report is issued in compliance with the above noted statutory requirements.

Dated: December 29, 2021

APPROVED BY:

  
David Cook, Inspector General