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May 31, 2011

VIA ELECTRONIC AND HAND DELIVERY

Michael Veit
Director of Purchasing
Contracts and Purchasing Section
Arizona Health Care Cost Containment System ("AHCCCS")
701 E. Jefferson, MD 5700
Phoenix, AZ 85034

Re: RFP NO.: YH12-0001/SCAN Long Term Care Bid Award Protest

Dear Mr. Veit:

This law firm represents SCAN Long Term Care ("SCAN"). Arizona Health Care Cost Containment System ("AHCCCS") did not award the Arizona Long Term Care System ("ALTCS") Elderly & Physically Disabled ("E/PD") contract to SCAN. Please accept this as SCAN's formal protest of this decision and SCAN's request for an award of an uncapped ALTCS EPD contract for Maricopa County.¹

Pursuant to the requirements of Arizona Administrative Code ("A.A.C.") R9-22-604, SCAN provides the following information in support of this protest:

Interested Party/Protesting Party:	SCAN Long Term Care 1313 E. Osborn Road, Suite 150 Phoenix, AZ 85014
Bid Solicitation Number:	YH12-0001
Relief Requested:	Award of the ALTCS contract for Maricopa County

¹ Please note that SCAN has submitted several requests for public records related to the bid scoring and other items. Not all records have been provided to SCAN, and some have been provided after the initial record disclosure provided by AHCCCS. SCAN reserves the right to submit additional protests as it receives and reviews additional public records from AHCCCS.

Michael Veit
May 31, 2011
Page 2

All additional information required under A.A.C. § R9-22-604, including a detailed statement of the legal and factual basis for the protest, are provided in the remaining portions of this letter. This protest is based on scoring errors committed by AHCCCS, that if corrected would add points to SCAN's overall score. AHCCCS has declined to disclose all weighting associated with the scoring so this protest is based on a point by point analysis. SCAN reserves the right to further protest the calculation of the points and scoring upon receipt of the weighting criteria from AHCCCS. SCAN acknowledges the scoring team's monumental task of reviewing and scoring all submitted bids and recognizes that errors occur. However, SCAN requests that the scoring errors be corrected and that SCAN's overall score be adjusted as requested in the following point by point analysis.

A. ORGANIZATION SCORING ERRORS

1). The first "Organization" category scoring error falls under the subcategory titled "Organization and Staffing Submission Requirement Item 3, Criteria 1 – CEO/Administrator." SCAN's Chief Executive Officer ("CEO") Elizabeth Russell has more than five (5) years of experience in a medicaid managed care program.² Nevertheless, AHCCCS awarded zero (0) points to SCAN for the CEO/Administrator's experience in a Medicaid managed care program. This error should be corrected and SCAN should be awarded one (1) additional point. The scorer also awarded zero (0) points to SCAN for its CFO, Randy Stone. Mr. Stone has 9 years of experienced with LA Care Health Plan, a Medicaid Managed Care Organization and should have been awarded one (1) point.³

2). The second "Organization" category scoring error falls under the subcategory titled "Organization Claims Submission Requirement, Item 7, Criteria 1 – Evaluation Requirement." SCAN's submission contained all of the elements specifically required under this category. However, SCAN was awarded zero (0) points for the remittance advice submissions based upon the Scoring Team's assertion that it was "[u]nable to locate SOC - SOC and copay are not equivalent." SCAN has reviewed Evercare's remittance advice submission and noted that AHCCCS awarded Evercare one (1) point for this item. Evercare's remittance advice submission was comparable to SCAN's and did not mention SOC.⁴ SCAN respectfully requests that this error be corrected and that SCAN be awarded one (1) point for the scoring of Item 7, Criteria 1.

² See SCAN Organization, ALTCS RFP Evaluation Tool, Evaluation Criteria 1, page 32, SCAN Long Term Care Bid, page 38.

³ See SCAN Organization, ALTCS RFP Evaluation Tool, Evaluation Criteria 1, page 38, SCAN Long Term Care Bid, page 42.

⁴ Compare SCAN Organization ALTCS RFP Evaluation Tool, Item 7, Criteria 1, with Evercare Organization ALTCS RFP Evaluation Tool, Item 7, Criteria 1.

Michael Veit
May 31, 2011
Page 3

B. PROGRAM SCORING ERRORS

1). The first “Program” category scoring error falls under the subcategory titled “Case Management Requirement 24: Case Management Scenarios, Case A: Oscar, Criteria 4.” Criteria 4 is worded as follows: “Other proposed steps/actions likely to improve members/caregivers’ health, quality of life and overall system experience.” AHCCCS awarded SCAN zero (0) points under this subcategory based upon its allegation that: “All (SCAN’s) responses fell within parameters of numbers 1 through 3.” This is inaccurate. SCAN’s response clearly indicated other steps/actions to improve the member’s health, quality of life and overall system experience, as follows:

- “The CM requests a pharmacy review in CareEnhance® Clinical Management Software (CCMS®) through SCAN’s Pharmacy Department to eliminate medication or side effects as a cause of Oscar’s recent confusion.”⁵
- “To reside at home, Oscar will need a safe entry and exit from the house. The CM explains important elements of a home safety plan such as smoke detectors, evacuation route, lights, etc. and clarifies the plan will be completed at his home assessment after discharge.”⁶
- “The CM explains the Community Transition Service through AHCCCS and limitations to Oscar and April advising them to contact the CM regarding previously unidentified needs as quickly as possible after Oscar’s return home. It is explained that there is a 90 day period in which these needs may be met under the Community Transition Service.”⁷
- “Oscar needs to develop a social network in the community. Oscar needs support in his adjustment to his recent injury and reintegration into the community. Oscar may need employment in the future. . . . When Oscar is able, he will be referred to the Work Incentive Planning and Assistance (WIPA) office.”⁸

Based upon the above answers that SCAN provided which controvert the score of “zero” points that SCAN was awarded in this subcategory, SCAN respectfully requests that AHCCCS correct this error and award SCAN four (4) additional points to its score for Item 24, Case A, Criteria 4.⁹

⁵ See SCAN RFP Response, p. 165, second paragraph.

⁶ See SCAN RFP Response, p. 166, first full paragraph.

⁷ See SCAN RFP Response, p. 166, third full paragraph.

⁸ See SCAN RFP Response, p. 167, fifth paragraph.

⁹ Evercare failed to identify transportation in its response. AHCCCS awarded Evercare the maximum number of points. SCAN respectfully requests that it receive equitable consideration.

Michael Veit
May 31, 2011
Page 4

2). The second “Program” category scoring error falls under the subcategory titled “Case Management Requirement 24: Case Management Scenarios, Case B: Magda, Criteria 3.” Criteria 3 is worded as follows: “Other proposed steps/actions likely to improve members/caregivers’ health, quality of life and overall system experience.” AHCCCS awarded SCAN zero (0) points for Criteria 3 based upon its allegation that “All SCAN’s responses fell within parameters of numbers 1 through 2.” This is inaccurate. SCAN’s response clearly indicated other steps/actions to improve the member’s health, quality of life and overall system experience, as follows:

- “The need for Power of Attorney, Mental Health Power of Attorney, and advanced directives is discussed with Raquel and Magda given the recent diagnosis of early stage dementia.”¹⁰
- “Raquel needs support for herself and education on Magda’s condition. . . . The CM provides information to Raquel on the Alzheimer’s Association and caregiver support groups, including the SCAN Connections Resource Center.”¹¹

Based upon the above answers that SCAN provided which controvert the score of “zero” points that SCAN was awarded in this subcategory, SCAN respectfully requests that AHCCCS correct this error and award SCAN two (2) additional points to its score for Item 24, Case B, Criteria 3.

3). The third “Program” category scoring error falls under the subcategory titled “Case Management Requirement 24: Case Management Scenarios, Case C: Wanda, Criteria 1 and 2.” The first bullet point under Criteria 1 is worded as follows: “Consideration of care planning . . . member’s acuity in ALF setting.” Here, AHCCCS awarded SCAN zero (0) points. The first bullet point under Criteria 2 is worded “Discussion with ALF provider about improved communication on admissions (authorization) and member’s acuity level upon admission or readmission.” Here, AHCCCS again awarded SCAN zero (0) points. SCAN should have been awarded one (1) point for its response to each of these bullet points because SCAN clearly referenced substantive discussion with the provider and the Interdisciplinary Team (IDT) evaluating the acuity level of the member as follows:

- “The provider is educated that member moves are to be authorized by the CM and reviewed for appropriateness prior to admission to the facility. . . . Network Management Department is notified of the assisted living facility’s activities so that the SCAN Provider Representative can complete follow-up activities with the provider.”¹²

¹⁰ See SCAN RFP Response, p. 169, second paragraph.

¹¹ See SCAN RFP Response, p. 170, third paragraph

¹² See SCAN RFP Response, p. 171, first paragraph.

Michael Veit
May 31, 2011
Page 5

- “The CM discusses with the family and facility health changes and needed service changes going forward should be coordinated with the CM. This ensures a decision is made accounting for all service options available as well as a safe plan.”¹³
- “The CM informs Wanda and her son that an interdisciplinary team (IDT) will be scheduled to discuss all of Wanda’s needs.”¹⁴
- “Within three business days of the assessment, an IDT staffing is held to review Wanda’s care plan. The team reviews the medical records from the hospital, PCP and oncologist. They discuss the member’s specific cancer diagnosis/type, cancer staging, disease progression, prognosis, cancer treatment plan whether it is curative or palliative, risk factors associate with her treatment, co-morbidities and her current status as assessed by the CM. The facility care plan is reviewed along with the doctor orders. Outstanding facility quality issues and current monitoring activities are discussed. Wanda is currently non-ambulatory and is at risk for skin breakdown. She will need to be evaluated by a Home Health Nurse to monitor her condition and coordinate any skilled needs.”¹⁵

Based upon the above answers which SCAN provided which controvert the score of zero (0) points that SCAN was awarded for Criteria 1 and Criteria 2 of Item 24, Case C, SCAN respectfully requests that AHCCCS correct this error and award SCAN one (1) point for its response to these items, for a total of two (2) points.

4). The fourth “Program” category scoring error falls under the subcategory titled “Case Management Requirement 24: Case Management Scenarios, Case D: Roger, Criteria 1.” AHCCCS indicated that SCAN did not address the “coordination between medical and psychiatric care providers” or “pharmacy review, neurological referral” in its response. However, this is inaccurate. SCAN clearly addressed each of these issues in its response, as follows:

- “The CM explains that an Interdisciplinary Team (IDT) is appropriate to provide input regarding Roger’s behavioral, psychiatric, and medical needs.”¹⁶
- “The history of Roger’s traumatic brain injuries (TBI) and any neuropsychological evaluation previously completed are integral to appropriately planning his care.”¹⁷

¹³ See SCAN RFP Response, p. 172, first paragraph.

¹⁴ See SCAN RFP Response, p. 172, second paragraph.

¹⁵ See SCAN RFP Response, p. 172, third paragraph.

¹⁶ See SCAN RFP Response, p. 175, first paragraph.

Michael Veit
May 31, 2011
Page 6

Based upon the above answers which SCAN provided, SCAN respectfully requests that AHCCCS award SCAN two (2) additional points for Item 24, Case D, Criteria 1.

5). The fifth “Program” category scoring error falls under the subcategory titled “Case Management Requirement 24: Case Management Scenarios, Case D: Roger, Criteria 3.” Here, AHCCCS awarded SCAN zero (0) points based upon its allegation that SCAN did not address respite care. This is inaccurate. SCAN clearly addressed respite care in its response as follows:

- “The CM also reviews appropriate use of respite and explains how Joyce can utilize this service by contacting the CM.”¹⁸

Furthermore, in Evercare’s response to the same scenario and the same question, AHCCCS noted that Evercare was missing the respite requirement but gave Evercare credit because it provided day care.¹⁹ SCAN clearly addressed day care in its response but was not provided with any credit. SCAN specifically stated:

- “The CM completes and prints a Service Plan with Roger and Joyce indicating Roger will receive Attendant Care, a day program, and a behavioral health service referral.”²⁰
- ”Joyce signs the plan indicating she is in agreement with the Attendant Care, day program and behavior health referral. She is advised that the specific type of day program and behavior health service may be adjusted after input from the IDT.”²¹

For the reasons provided above, SCAN respectfully requests that AHCCCS correct its scoring error and award SCAN an additional point for its response to Item 24, Case D, Criteria 3. SCAN also respectfully requests that AHCCCS reconsider the criteria used for Evercare’s scoring given its inconsistent application.

6). The sixth “Program” category scoring error falls under the subcategory titled “Case Management Requirement 24: Case Management Scenarios, Case D: Roger, Criteria 4.” Criteria 4 is worded as follows: “Other proposed steps/actions likely to improve members/caregivers’ health, quality of life and overall system experience.” AHCCCS awarded SCAN zero (0) points under this subcategory based upon its allegation that: “All responses fell within parameters of numbers 1 through 3.” This is inaccurate. SCAN’s response clearly indicated other steps/actions to improve the member’s health, quality of life and overall system experience. Specifically, in

¹⁷ *Id.*

¹⁸ See *SCAN RFP Response*, p. 176, third paragraph.

¹⁹ See “*Evercare, Qualitative Scoring Tool for Case Management Requirement 24: Case Management Scenarios, Case D: Roger*,” which specifically states: “Respite not specifically noted but increase in independence and day programs decreases sister’s need for caregiving.”

²⁰ See *SCAN RFP Response*, p. 175, first paragraph.

²¹ *Id.*

Michael Veit
May 31, 2011
Page 7

its response SCAN's CM provided the following additional information to Joyce concerning the resources available to her: "The CM provides information to Joyce on the Brain Injury Association of Arizona, the Arizona Governor's Council on Spinal and Head Injuries, caregiver support groups and mental health associations. The CM also reviews appropriate use of respite and explains how Joyce can utilize this service by contacting the CM."²² SCAN therefore respectfully requests that AHCCCS correct this error and award SCAN an additional five (5) points for its response to Item 24, Case D, Criteria 4.

C. MEDICAL MANAGEMENT SUBMISSION REQUIREMENT – QUESTION 25, CRITERIA 7

AHCCCS awarded SCAN zero (0) points for its response to Question 25, Criteria 7, based upon its allegations that SCAN "does not have three (3) reports" and "The offeror submitted three reports. However, one of the reports, the ED usage by Member Report, does not include variances such [as] under or over utilization or high cost."²³ AHCCCS seemed to apply different criteria to SCAN in scoring this section than it applied to other plans. For example, AHCCCS awarded Evercare one (1) point for its response even though, as AHCCCS specifically noted, Evercare did not include a length of stay report.²⁴ Additionally, AHCCCS awarded Bridgeway one (1) point for its response even though, as AHCCCS specifically noted, Bridgeway did not include any reports for length of stay, inpatient days, member and/or provider drug overutilization, HCBS utilization or facility/institutional utilization.²⁵ Finally, AHCCCS awarded Mercy Care one (1) point for its response even though, as AHCCCS specifically noted, Mercy Care did not provide a member or provider over drug utilization report.²⁶

In light of the disparities identified above, and based upon the response that SCAN provided, SCAN respectfully requests that AHCCCS award SCAN one (1) point for Criteria 7.

D. QUALITY MANAGEMENT REQUIREMENT 31, QUALITY OF CARE SCENARIO, CASE A: LICENSURE RISK – QUALITATIVE SCORING TOOL, CRITERIA 1 AND 2

With respect to Criteria 1 under "Quality Management Requirement 31, Case A" AHCCCS alleged that SCAN's response "[did] not discuss coordination with and updating AHCCCS." This is inaccurate in light of the fact that SCAN's response included the following language:

²² See SCAN RFP Response, p. 176, third paragraph.

²³ See SCAN ALTCS RFP Evaluation Tool, No. 25, Criteria 7

²⁴ See Evercare RFP Response, pp. 170-172.

²⁵ See Bridgeway RFP Response, pp. 193-195.

²⁶ See Mercy Care RFP Response, pp. 170-172.

Michael Veit
May 31, 2011
Page 8

- “In addition, SCAN, in collaboration with the other program contractor, will notify the AHCCCS Division of Health Care Management about the potential loss of this provider and their relicensing issue. The notification will be made in writing and include how this network change will affect the delivery of service and the plan for maintaining quality care to affected members. SCAN will also notify in writing the AHCCCS Clinical Quality Management (CQM) unit in writing as expeditiously as the situation demands.”²⁷
- “If it is determined that the facility will remain unlicensed, the NM Department will begin the contract termination process and notify the facility that SCAN will be relocating our members using a member communication plan developed in collaboration with the facility and AHCCCS.”²⁸
- “In the case of a quality of care issue, the QM Department may send a nurse to the facility to assess the allegations and determine and/or confirm the level of risk to our members. The QM Department also notifies the appropriate regulatory agencies, including but not limited to, AHCCCS, ADHS, Adult Protective Services and/or law enforcement if necessary.”²⁹
- “As the member moves take place and are completed, SCAN will keep AHCCCS apprised of the status of each member.”³⁰
- “The QM Department notifies the AHCCCS CQM when all members have been safely transferred.”³¹

In light of the fact that SCAN’s response contained the above-referenced language and clearly discussed coordinating with and updating AHCCCS, SCAN respectfully requests that AHCCCS award SCAN one (1) point for its response to Item 31, Quality of Care Scenario-Case A: Licensure Risk – Qualitative Scoring Tool, Criteria 1.

With respect to Criteria 2 under “Quality Management Requirement 31, Case A” AHCCCS alleged that SCAN’s response “[d]id not mention working with ADHS or facility on obtaining license/compliance.” This is inaccurate, as SCAN’s response contained the following language: “In the scenario presented, the NM Department had already begun the process of working with the facility owner and ADHS to assist and support efforts to secure a license.”³² In light of the fact that SCAN’s response specifically contained this language, SCAN respectfully

²⁷ See SCAN RFP Response, p. 198, second to last paragraph.

²⁸ See SCAN RFP Response, p. 199, lines 3-6.

²⁹ SCAN RFP Response p. 199, paragraph 3.

³⁰ SCAN RFP Response, p. 200, bottom of paragraph 2.

³¹ SCAN RFP Response, p. 200 bottom of paragraph 3.

³² See SCAN RFP Response, p. 198, second paragraph under “Ongoing Monitoring.”

Michael Veit
May 31, 2011
Page 9

requests that AHCCCS award SCAN one (1) point for its response to “Item 31, Quality of Care Scenario – Case A: Licensure Risk – Qualitative Scoring Tool, Criteria 2.”

E. QUALITY MANAGEMENT REQUIREMENT 31: QUALITY OF CARE SCENARIO – CASE B: ENVIRONMENTAL RISK, QUALITATIVE SCORING TOOL, CRITERIA 1 AND 5

With respect to Criteria 1 of the above-referenced Case Scenario, SCAN respectfully requests that AHCCCS award an additional point for collaboration with additional stakeholders under the “other” criteria for the third bullet point based upon the fact that SCAN’s response specifically speaks to collaboration with “other program contractors, nearby nursing facilities, local hospitals and emergency services.”³³

With respect to Criteria 5 of the above-referenced Case Scenario, SCAN respectfully requests that AHCCCS award SCAN the full five (5) points instead of the two (2) points that SCAN was awarded. In comparing AHCCCS’s notes in response to Evercare’s answers to Criteria 5, SCAN noted that AHCCCS gave Evercare credit for its statement that it would coordinate media inquiries with AHCCCS, which SCAN clearly mentioned in its response.³⁴ Additionally, AHCCCS gave Evercare credit for its statement that it would coordinate weekend BH counseling for members, which SCAN also clearly addressed and mentioned in its response.³⁵ Finally, AHCCCS gave Evercare credit for its statement that it would supply fans, generators and water bottles for hydration but did not give SCAN credit for the fact that it stated that it would use hydration stations and temporary air conditioning units.³⁶

F. CONCLUSION AND RELIEF REQUESTED

The final scoring among the bidders was very close. SCAN has identified scoring errors that diminished its final total point score by twenty-six (26) points. Although SCAN has yet to receive some of the weighting methodology employed by AHCCCS, SCAN expects its final score to be improved to an overall score that would merit the award of an uncapped contract with AHCCCS for the ALTCS EPD program for contract year 2012.

For all of the reasons set forth herein, SCAN respectfully requests that its RFP Response be re-scored, that it be assigned points that it should have been awarded, that its RFP Response be reevaluated and that it be awarded an uncapped contract for RFP No.: YH12-0001.

³³ See SCAN RFP Response, p. 201 & 202, top of page.

³⁴ See SCAN RFP Response, p. 202, top of page.

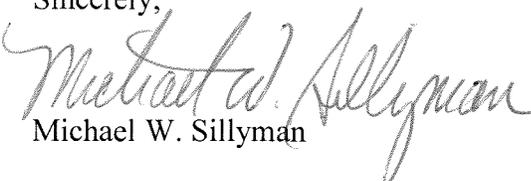
³⁵ See SCAN RFP Response, p. 202, last bullet point.

³⁶ See SCAN RFP Response, p. 202, second and third paragraphs.

KUTAK ROCK LLP

Michael Veit
May 31, 2011
Page 10

Sincerely,


Michael W. Sillyman

cc: Elizabeth Russell