

# INVESTIGATIVE REPORT

Cynthia Carrasco, Inspector General

OFFICE: FAMILY AND SOCIAL SERVICES ADMINISTRATION  
TITLE: CONTINGENCY FEE CONTRACT  
CASE ID: 2015-05-0060  
DATE: MAY 12, 2015

*Inspector General Staff Attorney Kristi Shute, after examination and review, reports as follows:*

The purpose of this report is to fulfill the statutory requirements of I.C. 4-6-3-2.5 regarding contingency fee contracts. The Indiana General Assembly directed the Office of the Inspector General (“OIG”) to review contingency fee contracts for possible conflicts of interest and code of ethics violations through Public Law 101, which became effective in July 2011.

On May 6, 2015, the Family and Social Services Administration (“FSSA”) notified the OIG that it wished to enter into a contingency fee contract with the law firm Petry, Fitzgerald & Less, P.C. (“Firm”), located in Hebron, Indiana. The contract’s purpose is to provide certain Medicaid estate recovery services. FSSA determined that a private attorney is needed to analyze financial data and collect past Medicaid expenditures it has paid out. In its request, FSSA explained that the Firm will provide legal representation for the purpose of recovering funds spent on behalf of Medicaid recipients through the State’s Medicaid entitlement programs, including filing claims in existing estates, opening estates when necessary and filing claims in those estates. Specifically, the Firm will receive and review an initial set of approximately 85,000 records of deceased Medicaid recipients and determine if those recipients still have assets in their names available for recovery. The Firm would then determine the nature and extent of

the possible recovery, open estates on behalf of the State as a creditor if necessary, and recover the assets for FSSA. The goal is to effectively and efficiently return previously spent Medicaid assets to the State.

Pursuant to I.C. 4-6-3-2.5(b), FSSA is required to make a written determination before entering into the contract that contingency fee representation is cost effective and in the public interest. FSSA made such a determination and explained its reasoning. FSSA advised that it does not have appropriate legal and financial resources to handle the matter internally and must seek outside counsel with the specific knowledge, experience, and expertise in completing similar projects on behalf of the State. The agency estimated that the time, labor and direct expense, both to start-up the project and to move the project forward, is cost-prohibitive. The agency anticipates that potentially hundreds of estates may be open and litigated within the initial several months of the project.

In addition, FSSA noted that the project is novel in that outside counsel will have control over the process for determining which estates to pursue for recovery. The agency has pursued recovery in approximately the same manner and by the same outside counsel in previous years with documented results. The Firm completed this special project on a contingency fee basis in 2008, and again in 2010 and 2011. The Firm collected approximately \$7,370,825 for the State Medicaid program during that time. The assets located by the Firm are assets that the State does not find in its recovery efforts.

Moreover, FSSA needs outside counsel with a unique range of knowledge and skills to perform this work. For example, experience in collection of assets is critical to successfully perform this work. This project requires quick and continual work because assets are regularly removed from circulation and recovery is available on an ongoing, continuing basis. Because the

ability to recover from any particular estate is time limited, the sooner FSSA can initiate this project, the more estates it will be able to recover from. Having outside counsel who has engaged in similar work in the past will allow FSSA to recover assets more quickly than using counsel without such experience.

Furthermore, I.C. 4-6-3-2.5(d) requires the Attorney General's Office to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case FSSA, determines in writing that requesting proposals is not feasible under the circumstances. In its request, FSSA explained that, in 2011, it issued a Request for Proposals ("RFP") to award contracts for estate recovery services. Unlike the current proposed contract, FSSA awarded contracts to firms and assigned them specific recovery cases. Under the 2011 RFP, FSSA awarded contracts to the Firm and to three other firms on an hourly basis, rather than on a contingency fee basis. Under the proposed contingency fee contract, FSSA will provide the names and other identifying information to locate the assets and obtain recovery.

In the past, the Firm has been able to identify and recover assets for FSSA that the State was unaware of and did not track. The Firm's work has helped FSSA recover an additional revenue source that the agency had not originally projected. These efforts can be done in conjunction with the recovery efforts of State employees and contract counsel working on specific cases on an hourly fee basis. As such, the Firm has the unique ability to identify and collect the assets expected to be part of this project.

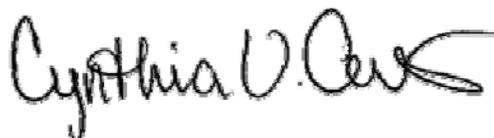
FSSA's Estate Recovery section will be managing the Firm's work going forward. Neither the Estate Recovery's Director nor his staff or any of their immediate family members serve as an officer, a director, a trustee, a partner, or an employee of the Firm.

After careful examination and review, the OIG has determined that the contract will not violate the code of ethics or any statute or agency rule concerning conflicts of interest. First, it does not appear that the Firm employs any state employees. Likewise, there is no information to indicate that any FSSA employee or immediate family member has a financial interest in the Firm or the contract itself. Moreover, the information provided does not suggest or indicate that any FSSA 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, it has been determined that entering into the contract will not violate the code of ethics or any statute or agency rule concerning conflicts of interest. This Report is issued in compliance with the above noted statutory requirements.

Dated this 12th day of May, 2015.

APPROVED BY:

A handwritten signature in black ink that reads "Cynthia V. Carrasco". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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Cynthia Carrasco, Inspector General