



County of Santa Cruz

OFFICE OF THE COUNTY COUNSEL

701 OCEAN STREET, SUITE 505, SANTA CRUZ, CA 950604068
(831) 454-2040 FAX: (831) 454-2115

SAMUEL TORRES, JR., COUNTY COUNSEL

CHIEF ASSISTANT

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Assistants

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Jane M. Scott

Rahn Garcia

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Pamela Fyfe

Ellen Aldridge

Kim Baskett

Lee Gulliver

Dana McRae

September 21, 2000

Agenda: October 17, 2000

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, California 95060

Re: Authorize County Counsel to Contract for Legal Services

Dear Members of the Board:

Over the past several years, the County's Mental Health Program has been engaged in appeals of several federal audit disallowances concerning our Medicaid (Medi-Cal) and Medicare programs. In particular, our Medicare-funded Partial Hospitalization and Outpatient Treatment Programs have faced disallowances based on arbitrary interpretations of the relevant federal statutes and regulations by the federal government's fiscal intermediaries. Specific Medicare issues include changes in documentation requirements and billing of social worker services delivered incident to a physician visit. The Mental Health Program is also appealing the State's decision to use a different facility allocation methodology for determining Medi-Cal reimbursable treatment costs delivered in a social rehabilitation (board and care) facility. The combined impacts of these issues on appeal represent over \$200,000 per year in federal revenue received by the County.

In the past, our Office has contracted with the law firm of Foley & Lardner which specializes in this area of the law, for a limited amount of legal consultation services to advise the Program concerning these appeals. This law firm consults with and represents a number of California counties relative to Medi-Cal and Medicare reimbursement issues. One of the appeals filed by the Mental Health Program is now being scheduled for formal

administrative hearing, and Mental Health has suggested that Foley & Lardner represent the County based on the firm's prior work with and understanding of the County's legal position.

An agreement in the amount of \$50,000 has been prepared and attached for your review. This amount represents an estimate of the costs associated with the representation required at the formal administrative hearing itself, as well additional consulting services related to the other audit issues referred to above. The funds for this contract are already budgeted in the Mental Health Program, however, the contract would be administered by this Office.

IT IS THEREFORE RECOMMENDED that your Board authorize the County Counsel to contract with Foley & Lardner to provide legal consultation and representation services involving Medicare and Medicaid audits.

Very truly yours,


SAMUEL TORRES, JR., COUNTY COUNSEL

By


Rahn Garcia

Chief Assistant County Counsel

RECOMMENDED:



SUSAN A. MAUFUELLO
County Administrative Officer

cc: County Administrative Office
HSA Administrator
Mental Health Director

**AGREEMENT FOR
LITIGATION CONSULTANT SERVICES**

THIS AGREEMENT, by and between the **County of Santa Cruz** (hereafter called “County”), and **FOLEY & LARDNER**, a general partnership doing business in California (hereinafter called “Consultant”).

WITNESSETH:

WHEREAS:

(a) The Board of Supervisors empowers the County Counsel to contract for needed litigation consulting services; and

(b) From time to time, the County Counsel needs consulting services to initiate and/or defend lawsuits on behalf of the County; and

(c) Consultant is willing and able to provide said services for County for the consideration and upon the terms set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, **THE PARTIES HERETO AGREE AS FOLLOWS:**

1. **Services.** County agrees that Consultant is to render independent consulting services to provide prelitigation consulting, representation services at administrative hearings, and other legal services relating to the Health Services Agency’s participation in the Medicare and Medicaid programs.

2. **Fees and Expenses.** In consideration of the Consultant’s performance of this Agreement, County agrees to pay the Consultant fees and necessary expenses calculated in accordance with Consultant’s hourly rate and expense method of billing, not to exceed a total amount of \$50,000 without prior written consent. Fees and expenses are to be charged as per Exhibit “A” attached hereto and made a part hereof.

3. **Monthly Accounting.** Consultant agrees to account regularly, within thirty (30) days after the end of each month, for time expended and for necessary expenses incurred in performance of its services during the preceding month.

4. **Indemnity.** Consultant shall indemnify and hold County, its officers, agents, and employees, harmless against any and all claims or legal actions made against County arising from or in connection with Consultant’s performance of the services rendered pursuant to this Agreement, excepting any liability caused by the acts or omissions of the County, its officers, agents, or employees.

5. **Independent Contractor.** Nothing in this Agreement shall be construed or interpreted to make Consultant anything but an independent contractor and in all its activities and operations pursuant to this Agreement, Consultant shall for no purposes be considered an employee or agent of County.

6. **Authority to Bind County.** It is understood that Consultant, in its performance of any and all duties under this Agreement, has no authority to bind County to any agreements or undertakings with respect to any and all persons or entities with whom Consultant deals in the course of its business.

7. **Non-disclosure of Information.** Consultant shall not disclose, without express written consent of County, information relating to County business which has been submitted by County to Consultant pursuant to the services to be rendered pursuant to this Agreement. In the event that this Agreement is terminated, Consultant shall immediately return to County all papers, documents and the like belonging to County.

8. **Termination.**

(a) County reserves the right to terminate this Agreement at any time or to discharge Consultant at any time. In the event of such discharge, County shall compensate Consultant for its services and necessary expenses actually rendered up to and including the date of discharge.

(b) Consultant may terminate this Agreement at any time by giving written notice of termination to the Office of the County Counsel.

9. **Notices.** The service and delivery of all notices and/or papers shall be deemed duly and properly given or made five days after being mailed via the U.S. Postal Service, postage prepaid and addressed as follows:

To County: Office of the County Counsel
701 Ocean Street, Room 505
Santa Cruz, California 95060
Attn: Samuel Torres, Jr., County Counsel

EXHIBIT A

0050

**FOLEY & LARDNER HOURLY RATES FOR CALIFORNIA LAWYERS AND
SELECTED NON-CALIFORNIA LAWYERS
EFFECTIVE: SEPTEMBER 1, 2000**

<u>PERSONNEL</u>	<u>OFFICE</u>	<u>HOURLY RATE</u>
<u>PARTNERS</u>		
Abalona, William	Sacramento	305
Alberti, William	San Francisco	365
Aronson, Peter	Los Angeles	475
Barbatano, Salvatore	Los Angeles	370
Blacker, Richard	Los Angeles	395
Brophy, Carol	San Francisco	310
Brown, Lowell	Los Angeles	375
Carlucci, Thomas	San Francisco	335
Cohn, Jonathon	Los Angeles	295
Conn, Larry	Los Angeles	350
Cordero, Darryl	Los Angeles	370
Costakos, Jeffrey	Denver	360
Driscoll, Thomas	San Francisco	425
Eady, Edsell	San Francisco	400
Ferris, Peter	San Diego	325
Geenen, Nancy	San Francisco	350
Goldstein, Robert	San Diego	375
Hendrickson, Jay	San Francisco	325
Hoffman, Sam	San Diego	375
Isackson, Carol	San Diego	350

EXHIBIT A

0051

**FOLEY & LARDNER HOURLY RATES FOR CALIFORNIA LAWYERS AND
SELECTED NON-CALIFORNIA LAWYERS
EFFECTIVE: SEPTEMBER 1, 2000**

<u>PERSONNEL</u>	<u>OFFICE</u>	<u>HOURLY RATE (\$)</u>
<u>PARTNERS</u>		
Koenen, Frederick	San Francisco	285
Klein, Robert	Los Angeles	450
Kostant , Ralph	Los Angeles	395
Lee, Anita	Los Angeles	350
Leventhal, Robert	Los Angeles	375
Lindeke, Jonathan	San Francisco	375
Marshall, Larry	San Diego	325
Meinhardt , Robyn	Denver	335
Moore, Patrick	Los Angeles	385
Moser, Gregory	San Diego	375
Oppenheim, Charles	Los Angeles	355
Paine, Shirley	San Francisco	315
Parrish, Stephen	San Francisco	325
Penner, Ingeborg	San Francisco	325
Richardson, Clare	Los Angeles	340
Rodriguez, Denise	Los Angeles	395
Root, George	San Diego	395
Scarano, R. Michael	San Diego	375
Schieble, Mark	San Francisco	400
Seiden, Richard	Los Angeles	420
Sevell, Robert	Los Angeles	395

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<u>PERSONNEL</u>	<u>OFFICE</u>	<u>HOURLY RATE (\$)</u>
<u>PARTNERS</u>		
Simerlein, Steven	San Diego	255
Smason, Tami	Los Angeles	345
Stephens, Dorothy	Sacramento	300
Stewart, Paul	San Francisco	395
Wagner Cammarano, Terri	Los Angeles	335
Waltz, Judith	San Francisco	350
Weissburg, Carl	Los Angeles	450
Wilson, Jon	Los Angeles	400
 <u>OF COUNSELS</u>		
Bates, Jeffrey	Los Angeles	300
Cheatham, Robert	San Francisco	300
DesJardins, Cathleen	San Francisco	360
Devine, Antoine	San Francisco	285
Evers, William	San Francisco	400
Genesen, Tracy	San Francisco	275
Jensen, Lawrence	San Francisco	275
Enders, Robert	Los Angeles	450
Lesko, Joseph	San Diego	310
Norvell, Mary	San Diego	280
Wenbourne, Robert	Sacramento	275

EXHIBIT A

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EFFECTIVE: SEPTEMBER 1, 2000**

<u>PERSONNEL</u>	<u>OFFICE</u>	<u>HOURLY RATE (\$)</u>
<u>ASSOCIATES</u>		
Anwar, Hema	Los Angeles	235
Arshagouni, Paul	Los Angeles	185
Ashby, Julie	San Diego	220
Baird, James	San Francisco	275
Benator , Sarah	Los Angeles	185
Blanchard-Saiger, Gail	Sacramento	205
Cho, Shirley	Los Angeles	205
Cochran, Gregory	San Francisco	180
Cohen, Howard	Los Angeles	295
Dawood, Sam	San Francisco	200
Douglas, John	San Francisco	235
Dow, Steven	San Francisco	215
Duncan, Margaret McCahill	San Diego	220
Elson, Elizabeth	Los Angeles	185
Eskin, Ryan	Los Angeles	185
Hafey, Amy	Los Angeles	275
Hagen, Harold	San Francisco	235
Hall, Gregory	Los Angeles	175
Hennington, Lorna	Los Angeles	260
Hwang, Joseph	San Francisco	215
Isaacs, Jack	San Francisco	230
Jaber , Susan	San Francisco	185