



State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

DATE: January 27, 2011

PPL No. 11-002

TO: Local Governmental Agency (LGA) Coordinators for
County-Based Medi-Cal Administrative Activities (CMAA)

SUBJECT: Contingency Fee Contracts Policy

This policy and procedure letter is to reiterate our policy that, in general, Federal Financial Participation (FFP) is not available for the costs of Medicaid contingency fee contracts.

This policy clarification is based upon provisions of OMB Circular A-87 and regulations that administrative costs must be necessary and reasonable for the proper and efficient administration of the program. The cost of professional and consultant services are allowable when reasonable in relation to the services rendered and when not contingent upon recovery of costs from the Federal Government, see OMB Circular A-87 § 33(a); and 45 CFR 74.45.

Contingency fees in FFP paid as Medicaid Administration will be allowed if they meet all of the following conditions:

1. The fee must be contingent upon Medicaid cost avoidance savings or recoveries in which the Federal Government shares. The intent of the contingency fee contract(s) must be to produce Medicaid program savings, not additional expenditures reported for FFP. Payments contingent upon recoveries from the Federal Government are not allowable.
2. The contingency fee contract(s) must be awarded based upon a competitive procurement that includes issuance of a request for proposal or invitation for bid which is formally advertised and targets a wide audience. Only free and open competition can support the kind of price or cost analyses required by 45 CFR 74.45 and the OMB cost principles to demonstrate that the contract costs are reasonable in relation to the services rendered. And,

3. The savings upon which the contingency fee payment is based must be adequately defined and that determination of fee payments documented to Department of Health Care Services satisfaction.

There must be documentation that the cost of a professional service contract is reasonable under OMB Circular A-87 in relation to the time and effort expended in performing the service. A contingency fee arrangement fails to guarantee that the fee will bear an appropriate relationship to the amount of time and effort required to perform the professional services.

The only exception to the general prohibition on contingency fee contract(s) is for contracts for collecting Medicaid third party liability payments, as described in § 2975 of the State Medicaid Manual.

The reiteration of the above policy is effective with respect to qualifying contingency fee payments related to documented Medicaid Administrative Activities.

If you have any questions or require further assistance regarding this PPL, please contact Rick Record at (916) 552-9592, or myself at (916) 552-9615 or Geraldine.Baucom@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY GERI BAUCOM

Geri Baucom, Chief
Administrative Claiming, Local and School Services Branch

cc: Mr. Patrick Sutton
LGA MAA/TCM Consultant
221 Encounter Bay
Alameda, CA 94502