

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Singh An</i>	DATE <i>9-18-08</i>
------------------------------	-------------------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000152</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>CC: Ms. For Kner, Depo cleaned 9/15/08, letter attached.</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____
	<input type="checkbox"/> FOIA DATE DUE _____
	<input checked="" type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth Street, Suite 4120
Atlanta, Georgia 30303-8909



August 10, 2008

Emma Forkner, Director
Department of Health & Human Services
P. O. Box 8206
Columbia, SC 29202-8206

Dear Ms. Forkner,

"Section 1903(b)(4) of the Social Security Act and Federal Regulations at 42 CFR 438.810 prohibit Federal Financial Participation (FFP) for the expenditures of an enrollment broker unless the broker and its subcontractors are: (1) independent of any managed care entities or other health care providers in the State in which they provide enrollment services; and (2) are free from conflict of interest. An entity is not independent for the purpose of qualifying as an enrollment broker if it owns, is owned by, or is a provider of services in the State in which it acts as a broker, whether or not the provider of services participates in the Medicaid program in that State.

Freedom from conflict of interest means that no person who is an owner, employee, consultant of the broker or a subcontractor, or has any contract with the broker may have any direct or indirect financial interest with a managed care entity or health care provider that furnishes services in the State in which the broker or subcontractor provides enrollment services. In this context, "any direct or indirect financial interest" exists whenever a broker, its parent companies or subsidiaries, or any other organization with the same parent company, have a contractual relationship with any health care providers or managed care entities in the State in which they act or intend to act as HCFA Software Control Page 2 09/11/2008 a broker.

Please respond to this letter no later than September 15, 2008 with the following information:

- (1) the name of any and all entities which perform enrollment broker functions as defined at 42 CFR 438.810, with whom you have a contract or some other arrangement in your State;
- (2) the name of any parent corporations or subsidiaries of the entity performing enrollment broker functions;
- (3) a description of any direct or indirect financial interest (as defined above) any of these entities have in any health care providers or managed care entities in your State; and
- (4) the length, expiration date of the current enrollment broker contract, and when it was approved by CMS.

RECEIVED

SEP 12 2008

Log: SunJtm
C. CF, nps

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Ms. Emma Forkner
August 10, 2008
Page 2

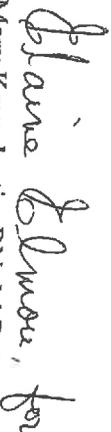
It is also your obligation to verify that all entities responding to proposals for enrollment broker contracts identify all contractual and other relationships that the bidder, its parent companies and subsidiaries have with any health care providers or managed care entities in the State, so that FFP will be available for any enrollment broker contract you submit to CMS for approval.

We have attached an example of a conflict of interest provision in one State's enrollment broker contract that we believe contains language which would protect the State from executing an enrollment broker contract on which it cannot claim FFP. You may find it helpful to modify this language for your own use in both requests for proposals and enrollment broker contracts.

The CMS will be reviewing the information you provide and determining whether it complies with Federal law and regulations. We will advise you of any compliance issues as soon as they are identified. If you have any contracts for which FFP is not available, you will be given a deadline to come into compliance before FFP is cut off. In such instances we will work with you through this process to ensure that this important component of a Medicaid managed care program can continue uninterrupted.

If you have any questions, please contact Mary Kaye Justis in this office at (404) 562-7175.

Sincerely,



Mary Kaye Justis, RN, M.B.A.
Acting Associate Regional Administrator
Division of Medicaid & Children's Health
Operations

Attachment

ATTACHMENT

EXAMPLE OF CONTRACT LANGUAGE PROHIBITING CONFLICT OF INTEREST IN ENROLLMENT BROKER CONTRACTS

Avoidance of Conflicts of Interest by Contractor

A. _____ intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, _____ reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to _____ review and prior approval.

B. Conflicts of interest include, but are not limited to:

- 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.
- 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

C. If _____ is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) business days from the date of notification of the conflict by _____ to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by _____ and cannot be resolved to the satisfaction of _____, the conflict will be grounds for terminating the Contract. _____ may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

D. Contractor Responsibilities

The Contractor shall submit for _____ review and approval, a "Conflict of Interest Disclosure Statement" (Disclosure Statement), a "Conflict of Interest Disclosure Statement Questionnaire" (Questionnaire) and as necessary, a "Conflict of Interest Disclosure Avoidance Plan" (Avoidance Plan), using the following timetable:

- 1) Originals two (2) weeks after Contract Effective Date (CED);
- 2) An update January 1st of each calendar year thereafter;

- 3) The originals completed by new Program personnel within ten (10) business days of their hire; and
- 4) An update completed by Program personnel who experience a change in holdings that may create a real or apparent conflict of interest within ten (10) business of such change.

The Disclosure Statement shall fully describe any direct or indirect interest the Contractor, any parent or any subcontractor, has in any MCO, PIHP, PAHP, PCCM or other health care provider in _____ (as defined in Title 42, CFR, Subpart 438.810), together with the name and position description of the Contractor, any parent, or subcontractor employee, director, consultant, or officer about whom the disclosure is being made.

At a minimum, the Contractor's Disclosure Statement shall disclose the name and address of any and all MCO, PIHP, PAHP, PCCM or other health care provider in _____ in which:

- 1) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's, or any parent corporation's or any subcontractor's employee, director, consultant, or officer has a direct or indirect interest of any dollar amount.
- 2) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's or any parent corporation's or any subcontractor's employees, directors, consultants, or officers assigned to the Contract is a director, officer, partner, trustee, employee, or holder of a management position, or is self-employed; and
- 3) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's, or any parent corporation's or any subcontractor's employees, directors, consultants, or officers assigned to the Contract, has derived any direct or indirect income within the twelve (12) months immediately prior to the submittal of a proposal.

Questionnaires shall be completed by all Contractor Program personnel, and, of those with real or apparent conflict of interests, Avoidance Plans shall be completed. The Contractor shall provide copies of all Questionnaires, and as necessary, all Avoidance Plans, to the _____ using the timetable described above.

The Contractor shall disclose the name of any proposed subcontractor, consultant, officer, director, or employee who was employed by the State of _____, the Governor's Office, Health and Human Services Agency, State Controller's Office, Office of the Attorney General, and/or the Legislature as of _____ 2008.

If a real or apparent conflict exists, the Contractor shall, together with the Disclosure Statement and Questionnaire, submit an Avoidance Plan and

procedures to hold separate such relationships and/or to safeguard against conflicts. If the Contractor has nothing to disclose under this section, it shall so certify in its Disclosure Statement.

The Contractor shall furnish to the _____ the ownership and control information required by Title 42, CFR, Subpart 438.810 prior to CED.

The Contractor's Representative, or the selected designee, shall certify under penalty of perjury that such reports and updates to such reports are accurate, complete and current to the best of that individual's knowledge and belief unless the requirement is expressly waived by the Contracting Officer in writing.

The Avoidance Plan shall include procedures to:

- 1) Guard against conflict of interest;
- 2) Hold separate any disclosed relationships or any potential conflict of interest relationships that could arise during the life of the Contract, including but not limited to such problematic matters as financial interactions, reporting, sharing of office space, staff interactions, or Contractor fulfillment of Contract responsibilities; and
- 3) Ensure that the Contractor shall discharge its responsibilities and duties with disinterested skill, zeal, diligence, and that no Contractor's, parent corporation's, or subcontractor's employee, officer, director, or consultant will be in a position to exploit that position for private benefit or for other Contractor, or parent corporation or subcontractor interests which are or may be in conflict with _____ interests.



Log 152

State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Folkner
Director

September 15, 2008

Mary Kaye Justis, RN, M.B.A.
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations
Centers for Medicare & Medicaid Services
61 Forsyth Street, Suite 4T20
Atlanta, Georgia 30303-8909

RE: Request for Information on Enrollment Broker

Dear Ms. Justis:

Please allow this correspondence to serve as a response to your August 10, 2008 letter requesting information on the enrollment broker for South Carolina's Medicaid program. South Carolina currently contracts with Maximus, Inc. to perform its enrollment broker functions. The parent corporations or subsidiaries identified by Maximus are as follows:

- Citadel Limited Partnership
- Citadel Investment Group, L.L.C.
- Kenneth Griffin
- Citadel Wellington, LLC
- Citadel Kensington Global Strategies Fund Ltd.
- Citadel Equity Fund Ltd.
- Citadel Derivatives Group LLC
- Citadel Credit Products Ltd.
- Franklin Resources, Inc.
- JANA Partners, LLC
- Royce & Associates, LLC
- T. Rowe Price Associates, Inc.
- Wellington Management Company, LLP

Mary Kaye Justis, RN, M.B.A.
September 15, 2008
Page 2

I have enclosed a copy of the Disclosure of Ownership and Control Interest Statement Form completed by Maximus. This form does not indicate that Maximus has any direct or indirect financial interest in any health care providers or managed care entities in South Carolina. The current enrollment broker contract is for a period of five years and will expire on March 31, 2012. This contract was approved by CMS on December 3, 2007. Also enclosed is a copy of the approval letter.

If you have any further questions or concerns, please contact Deirdra T. Singleton, General Counsel, at 803-898-2647.

Sincerely,



Emma Forkner
Director

EF/shb

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

Form Approved
OMB NO. 0938-0086

IV. (a) Has there been a change in ownership or control within the last year?
If yes, give date _____

Yes No LB8

(b) Do you anticipate any change of ownership or control within the year?

If yes, when? _____ Yes No LB9

(c) Do you anticipate filing for bankruptcy within the year?

If yes, when? _____ Yes No LB10

V. Is this facility operated by a management company, or leased in whole or part by another organization?

If yes, give date of change in operations _____ Yes No LB11

VI. Has there been a change in Administrator, Director of Nursing, or Medical Director within the last year?

Change in CEO effective 4/21/06. Yes No LB12

VII. (a) Is this facility chain affiliated? (If yes, list name, address of Corporation, and EIN)

Name _____ EIN # _____ Yes No LB13

Address

LB14

VII. (b) If the answer to Question VII.a. is No, was the facility ever affiliated with a chain?

(If yes, list Name, Address of Corporation, and EIN) _____ Yes No LB18

Name

EIN #

Address

LB19

VIII. Have you increased your bed capacity by 10 percent or more or by 10 beds, whichever is greater, within the last 2 years? N/A

If yes, give year of change _____ Current beds _____ LB16 Prior beds _____ LB17 Yes No LB15

EVER KNOWINGLY AND WILLFULLY MAKES OR CAUSES TO BE MADE A FALSE STATEMENT OR REPRESENTATION OF THIS STATEMENT, MAY BE PROSECUTED UNDER APPLICABLE FEDERAL OR STATE LAWS. IN ADDITION, KNOWINGLY AND WILLFULLY FAILING TO FULLY AND ACCURATELY DISCLOSE THE INFORMATION REQUESTED MAY RESULT IN DENIAL OF A REQUEST TO PARTICIPATE OR WHERE THE ENTITY ALREADY PARTICIPATES, A TERMINATION OF ITS AGREEMENT OR CONTRACT WITH THE STATE AGENCY OR THE SECRETARY, AS APPROPRIATE.

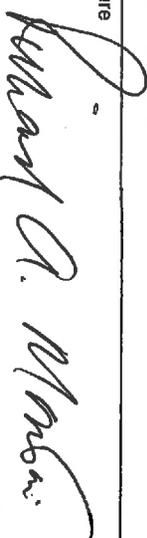
Authorized Representative (Typed)

Richard A. Montoni

Title

President and Chief Executive Officer

Signature



Date

September 20, 2006

Remarks

**III. (a) and (c) Due to space constraints, MAXIMUS provides this information on Pages 2(a) and 2(b).

/Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth St., Suite 4120
Atlanta, Georgia 30303-8909



December 3, 2007

RECEIVED

DEC 06 2007

Ms. Emma Forkner, Director
South Carolina Department of Health and Human Services
P. O. Box 8206
Columbia, South Carolina 29202-8206

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Ms. Forkner:

We are pleased to inform you that we are hereby approving the South Carolina Department of Health and Human Services (SCDHHS) enrollment broker contract with Maximus, Inc. The contract, which becomes effective April 1, 2007, for a five-year period, meets the necessary requirements for the Balanced Budget Act. The contract will be the culmination of an RFP issued in the May 15, 2006 in which Maximus, Inc. was the successful bidder. This contract is not to exceed \$4,616,025 for the first year, \$7,549,766 for the second year and \$6,615,118 for the third year, \$5,872,604 for the fourth year, \$5,737,602 for the fifth year or \$30,391,115 total computable (State and Federal financial participation) for the 5-year period.

If changes are made to the contract after execution of the contract, please submit the signed contract amendment to CMS for prior approval. If any future financial review reveals inaccuracies in the cost data, we reserve the right to recover the federal share of any unallowable costs resulting from the inaccuracies. In addition, if errors in the cost data are later determined, you will be required to adjust your quarterly expenditure report to the Centers for Medicare & Medicaid Services.

If you have questions or concerns, please contact Elaine Elmore at 404-562-7408 or

Elaine.Elmore@cms.hhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Gavens', written over a horizontal line.

Jay Gavens
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations

State Department of Health and Human Services
 Transmittal for Director's Signature

Item(s) to be signed: Letter to Ms. Mary ^KRaye Justis, CMS.

Indicate reason Director's signature is needed. It is agency policy that a letter of this nature be signed by the Director.

DATE REQUESTED BY:	CONTACT PERSON & PHONE #:
	Nikole Haltiwanger - 898-2648

APPROVALS

1) DIVISION DIRECTOR/BUREAU CHIEF SIGNATURE:	Date:
2) DEPUTY DIRECTOR'S SIGNATURE: Deirdra T. Singleton	Date:
3) OTHER (Please indicate) Nikole Haltiwanger	Date:

FOR DIRECTOR'S USE ONLY

DATE RETURNED: _____ APPROVED _____ DISAPPROVED _____

/Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth St., Suite 41720
Atlanta, Georgia 30303-8909



December 3, 2007

RECEIVED

DEC 06 2007

Ms. Emma Forkner, Director
South Carolina Department of Health and Human Services
P. O. Box 8206
Columbia, South Carolina 29202-8206

Department of Health & Human Services
OFFICE OF THE DIRECTOR

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Sincerely,

Jay Gavens
Acting Associate Regional Administrator
Division of Medicaid & Children's Health Operations

Department of Health & Human Services
Centers for Medicare & Medicaid Services
61 Forsyth Street, Suite 4120
Atlanta, Georgia 30303-8909

RE: Log 152
(on return to Aug 10th - LTR)
CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

September 10, 2008

RECEIVED

Emma Forkner, Director
Department of Health & Human Services
P. O. Box 8206
Columbia, SC 29202-8206

SEP 22 2008

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Log: Myers
N/A
cc: Mr. Forkner,
Depts

Dear Ms. Forkner,

“Section 1903(b)(4) of the Social Security Act and Federal Regulations at 42 CFR 438.810 prohibit Federal Financial Participation (FFP) for the expenditures of an enrollment broker unless the broker and its subcontractors are: (1) independent of any managed care entities or other health care providers in the State in which they provide enrollment services; and (2) are free from conflict of interest. An entity is not independent for the purpose of qualifying as an enrollment broker if it owns, is owned by, or is a provider of services in the State in which it acts as a broker, whether or not the provider of services participates in the Medicaid program in that State.

Freedom from conflict of interest means that no person who is an owner, employee, consultant of the broker or a subcontractor, or has any contract with the broker may have any direct or indirect financial interest with a managed care entity or health care provider that furnishes services in the State in which the broker or subcontractor provides enrollment services. In this context, “any direct or indirect financial interest” exists whenever a broker, its parent companies or subsidiaries, or any other organization with the same parent company, have a contractual relationship with any health care providers or managed care entities in the State in which they act or intend to act as HCFA Software Control Page 2 09/15/2008 a broker.

Please respond to this letter no later than September 22, 2008 with the following information:

- (1) the name of any and all entities which perform enrollment broker functions as defined at 42 CFR 438.810, with whom you have a contract or some other arrangement in your State;
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- (4) the length, expiration date of the current enrollment broker contract, and when it was approved by CMS.

Ms. Emma Forkner
September 10, 2008
Page 2

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We have attached an example of a conflict of interest provision in one State's enrollment broker contract that we believe contains language which would protect the State from executing an enrollment broker contract on which it cannot claim FFP. You may find it helpful to modify this language for your own use in both requests for proposals and enrollment broker contracts.

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Mary Kaye Justis, RN, M.B.A.
Acting Associate Regional Administrator
Division of Medicaid & Children's Health
Operations

Attachment

ATTACHMENT

**EXAMPLE OF CONTRACT LANGUAGE PROHIBITING CONFLICT
OF INTEREST IN ENROLLMENT BROKER CONTRACTS**

Avoidance of Conflicts of Interest by Contractor

A. _____ intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, _____ reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to _____ review and prior approval.

B. Conflicts of interest include, but are not limited to:

- 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.
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- C. If _____ is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) business days from the date of notification of the conflict by _____ to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by _____ and cannot be resolved to the satisfaction of _____, the conflict will be grounds for terminating the Contract. _____ may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

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- 2) The Contractor, or any parent corporation, or any subcontractor, or any of the Contractor's or any parent corporation's or any subcontractor's employees, directors, consultants, or officers assigned to the Contract is a director, officer, partner, trustee, employee, or holder of a management position, or is self-employed; and
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- 3) Ensure that the Contractor shall discharge its responsibilities and duties with disinterested skill, zeal, diligence, and that no Contractor's, parent corporation's, or subcontractor's employee, officer, director, or consultant will be in a position to exploit that position for private benefit or for other Contractor, or parent corporation or subcontractor interests which are or may be in conflict with _____ interests.

*