



State of West Virginia
Office of the Attorney General

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**WRITTEN DETERMINATION REGARDING THE APPOINTMENT OF
OUTSIDE COUNSEL ON BEHALF OF THE WEST VIRGINIA DEPARTMENT
OF HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES**

The West Virginia Department of Health and Human Resources Bureau for Medical Services (hereinafter "Bureau") has requested permission to appoint its previous legal counsel, Covington & Burling in a pending litigation matter.

As background, the law firm of Covington & Burling was appointed in April of 2010, to represent the Bureau in conjunction with the decision of the Centers for Medicare/Medicaid Services ("CMS") to disallow Medicaid expenditures for school based health services. In July of 2012, Covington & Burling was again appointed to represent the Bureau in "litigation involving Medicaid payments to federal-qualified health centers."

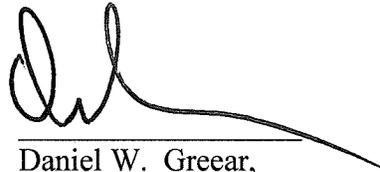
Pursuant to the initial agreement, Covington & Burling previously represented the Bureau in litigation involving the CMS's decision to disallow certain Medicaid expenditures for school-based health services incurred in 1992-2000 (rendered in January of 2010). While that case has since concluded, Covington & Burling is currently litigating a related matter on behalf of the Bureau that involves the CMS's decision to disallow Medicaid expenditures for school-based health services incurred in 2001-2003 (rendered in November of 2012). With respect to this ongoing matter, the Bureau is in need of continuing and time-sensitive legal service as there is an impending briefing deadline for the Bureau.

In accordance with the Attorney General's Policy on Outside Counsel (Policy #WVAGO-004), the Office of the Attorney General has determined that it is both cost-effective and in the interest of the public to authorize the appointment of Covington & Burling to continue as outside counsel to represent the Bureau in the current legal matter, based on the following factors:

- Covington & Burling has previously served as counsel for the Bureau in a related matter involving the CMS's decision to disallow Medicaid expenditures for school based health services, and the firm has already begun representing the Bureau in this matter.
- Covington & Burling is knowledgeable of the issues raised in this matter and has developed expertise not currently possessed by the Office of the Attorney General in counseling other states on the disallowance of Medicaid expenditures.

- The Office of the Attorney General does not currently have sufficient and appropriate legal resources to meet the Bureau's immediate need for counsel.
- The legal matter in question involves complex and challenging legal issues that would require a significant time commitment from the Office of the Attorney General to familiarize itself with the particular issues in this case and CMS's disallowance decisions generally.
- Prompt and informed legal representation is needed to protect the Bureau's interests in this ongoing matter.
- Covington & Burling is the only law firm in position to timely provide the legal services needed.

Inasmuch as this matter involves both (1) an emergency situation that requires time-sensitive legal services that cannot adequately be provided by the Office of Attorney General; and (2) the continuation of a previous legal appointment necessary to avoid disruption in a pending legal matter, the Office of the Attorney General determines that requests for proposal are not feasible pursuant to sections (D)(1) & (2) of Policy #WVAGO-004 and accordingly authorizes the Bureau to re-appoint Covington & Burling to perform the legal services in question.

A handwritten signature in black ink, appearing to read 'D. Greear', with a long horizontal flourish extending to the right.

Daniel W. Greear,
Chief Counsel

Date Signed: May 6, 2013