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Montana's Sole-Source Contract with iCare: Violations of Anti-Corruption Laws, ADA Principles, and Budgetary Restrictions

Abstract

This paper examines the legal and ethical implications of the State of Montana's decision to enter into a sole-source contract with iCare Management LLC, a Connecticut-based company, for the care of discharged patients from the Montana State Hospital and inmates from state prisons. The analysis focuses on potential violations of anti-corruption laws, the Americans with Disabilities Act (ADA) principles, budgetary restrictions, and regulatory frameworks governing public procurement.

At the federal level, the paper explores whether Montana's contracting process contravenes the Federal False Claims Act (FCA), the Federal Procurement Integrity Act (FPIA), and other anti-corruption statutes that mandate transparency and fairness in public contracts. Drawing from case law such as *United States v. Neifert-White Co.* and *United States ex rel. Marcus v. Hess*, this paper explores whether the process constitutes a misuse of federal funds.

The paper further outlines critical violations of ADA and independent living principles, particularly the right to self-determination and the *Olmstead* Decision's mandate for community-based care. By citing cases such as *Olmstead v. L.C.* and *Townsend v. Quasim*, the analysis highlights the failure to prioritize community integration, a key ADA mandate.

Additionally, the paper delves into budgetary laws and restrictions governing the use of public funds, including Medicaid and Medicare funds, and evaluates whether Montana's contract adheres to regulations set by the Centers for Medicare and Medicaid Services (CMS). Key cases such as *Horne v. Flores* and *Centers for Medicare & Medicaid Services v. Georgia Department of Comm. Health* is used to assess compliance with federal guidelines.

Lastly, the paper provides a checklist to assess whether the contract violates Montana's procurement laws, including criteria for sole-source contracts and the competitive request for proposals (RFP) process. Case law like *United States v. O'Connell* is applied to explore potential violations, while *Doe v. Arizona Department of Health Services* is used to examine the legality of transferring patients out of state without consent. A consolidated bibliography and a list of recommended readings are provided for further research.



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1. Anti-Corruption Legal Provisions: Federal and State Perspective

The decision by the State of Montana to enter into a sole-source contract with iCare Management LLC raises serious concerns regarding the potential violation of both federal and state anti-corruption laws. The lack of transparency surrounding this contract — specifically the absence of competitive bidding, public disclosure of contract details, and an explanation of how iCare was chosen — calls into question the legality of this process under both federal and Montana law.

1.1 Federal Anti-Corruption Laws

At the federal level, the Federal False Claims Act (FCA) imposes liability on any entity that defrauds government programs like Medicaid and Medicare. In *United States v. Neifert-White Co.*, the Supreme Court ruled that the FCA applies broadly to all fraudulent claims against the government. The application of this law to Montana's contract with iCare could involve any potential misuse of Medicaid and Medicare funds without proper competition or justification for the sole-source contract.

Similarly, the Federal Procurement Integrity Act (FPIA) regulates the conduct of federal contracts, including those funded by federal programs like Medicaid. In *United States ex rel. Marcus v. Hess*, the Court found that rigging the bidding process constituted fraud under the FCA. The absence of competitive bidding in Montana's process could be seen as a violation of both the FCA and the FPIA.

Additionally, the Anti-Kickback Statute prohibits exchanging anything of value to induce referrals or business involving any item or service payable by federal healthcare programs. If any incentives were offered to secure iCare's role in this contract, this statute would be relevant.



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1.2 Montana Anti-Corruption Laws

At the state level, Montana Code Annotated (MCA), Title 45, Chapter 7 outlines provisions related to official misconduct, bribery, and conflicts of interest. The secrecy around the contract and the failure to disclose details such as pricing or contract duration could violate these statutes. For instance, in *City of Billings v. Public Utilities Commission*, the Montana Supreme Court stressed the importance of public transparency in contracts, which is at issue here.

Moreover, the Montana Procurement Act (MCA Title 18) mandates that contracts funded by public money must be subject to competitive bidding, with sole-source contracts permitted only under specific circumstances. The failure to follow these rules in the iCare contract suggests a violation of state procurement laws.

1.3 Bibliographical References

- *United States v. Neifert-White Co.*, 390 U.S. 228 (1968).
- *United States ex rel. Marcus v. Hess*, 317 U.S. 537 (1943).
- *City of Billings v. Public Utilities Commission*, 67 P.3d 216 (Mont. 2003).
- Montana Public Procurement Act:
https://leg.mt.gov/bills/mca/title_0180/chapter_0040/

2. ADA and Independent Living Principles

The principles of the Americans with Disabilities Act (ADA) and the philosophy of independent living are foundational in protecting the rights of individuals with disabilities. The state's decision to enter into this contract without meaningful input from affected individuals and disability advocacy organizations may violate core ADA principles, particularly the right to self-determination and community integration as outlined in the *Olmstead Decision*.



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2.1 Self-Determination and 'No Decisions About Us, Without Us'

Self-determination is a fundamental right under the ADA, ensuring that individuals with disabilities have a say in decisions affecting their care. The *Townsend v. Quasim* decision underscores the importance of offering choices to individuals regarding their care settings. Montana's contract with iCare may have disregarded this key principle when it bypassed input from these individuals.

2.2 The Olmstead Decision and Community Integration

The Supreme Court's ruling in *Olmstead v. L.C.* emphasized the right of individuals with disabilities to receive care in the least restrictive, community-based setting. If Montana's contract results in patients being placed in more restrictive institutional environments, this could constitute a violation of *Olmstead*. Further, the decision in *Sanchez v. Johnson* reaffirmed that states are obligated to provide services in integrated settings whenever possible rather than defaulting to institutional care.

2.3 Person-Centered Planning

In *Ball v. Rodgers*, the Ninth Circuit emphasized the need for person-centered planning under Medicaid's home- and community-based services (HCBS) waiver. Montana's decision-making process, which appears to lack input from individuals directly affected by the contract, violates this standard of care.

2.4 Bibliographical References

- *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003).
- *Olmstead v. L.C.*, 527 U.S. 581 (1999).
- *Sanchez v. Johnson*, 416 F.3d 1051 (9th Cir. 2005).
- *Ball v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007).



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3. Budgetary Laws and Restrictions

Montana's contract with iCare also raises issues related to state and federal budgetary laws. The absence of detailed financial disclosures, such as the contract's price and duration, violates transparency requirements for state contracts involving public funds. Additionally, the contract must comply with strict federal regulations governing Medicaid and Medicare funds.

3.1 State Appropriations Law and Public Bidding

Montana's Procurement Act (MCA Title 18) mandates competitive bidding for contracts involving public funds unless a sole-source contract can be fully justified. In *Horne v. Flores*, the Supreme Court ruled that states must demonstrate that their use of federal funds aligns with federally mandated conditions. Montana's use of Medicaid funds in its contract with iCare could similarly be scrutinized if the contract is found to be non-compliant with state or federal requirements.

3.2 Medicaid, Medicare, and CMS Regulations

The Centers for Medicare & Medicaid Services (CMS) impose stringent guidelines on the use of federal funds. The case of *Centers for Medicare & Medicaid Services v. Georgia Department of Comm. Health* illustrates how states can face penalties for the misuse of Medicaid funds. If Montana's contract with iCare fails to comply with CMS regulations, it could face similar consequences.

3.3 Financial Transparency and Accountability

Under CMS Manual System, the management of Medicare and Medicaid funds must be fully transparent and accountable. Montana's lack of disclosure



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regarding the financial details of this contract raises questions about compliance with CMS standards.

3.4 Bibliographical References

- Horne v. Flores, 557 U.S. 433 (2009).
- Federal Medicaid Statute, 42 U.S.C. § 1396.
- Centers for Medicare & Medicaid Services v. Georgia Dep't of Comm. Health, DAB No. 2172 (CMS 2008).
- CMS Manual System: <https://www.cms.gov/>

4. Legal and Regulatory Violations

Montana's sole-source contract with iCare also presents potential violations of the state's procurement laws. Sole-source contracts can only be awarded under specific circumstances, and the state's decision-making process must be transparent and well-documented.

4.1 Sole-Source Contract Criteria in Montana

The Montana Procurement Act outlines stringent criteria for awarding sole-source contracts. In *United States v. O'Connell*, the court found that improper use of sole-source contracts could lead to procurement fraud. Montana's decision to award the iCare contract without competitive bidding may similarly be deemed improper.

4.2 Competitive Request for Proposals (RFP) Process

Montana's procurement laws also require public solicitation of competitive bids, as illustrated in *Public Citizen Health Research Group v. Young*, which emphasized the importance of transparency and competition. By bypassing this process, Montana may have violated its own RFP requirements.



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4.3 Exporting Patients Out of State Without Consent

Under the ADA Title II and case law such as *Doe v. Arizona Department of Health Services*, public entities are required to provide services in the least restrictive setting and obtain consent before transferring individuals out of state. If Montana transfers patients to out-of-state facilities without consent, it could face legal challenges under these provisions.

4.4 Bibliographical References

- *United States v. O'Connell*, 890 F.2d 563 (1st Cir. 1989).
- *Public Citizen Health Research Group v. Young*, 831 F.2d 1108 (D.C. Cir. 1987).
- *Doe v. Arizona Department of Health Services*, 275 F.3d 1070 (9th Cir. 2001).
- ADA Title II, 42 U.S.C. §§ 12131-12134.

5. Conclusion

The contract between the State of Montana and iCare Management LLC raises serious concerns about transparency, compliance with legal frameworks, and the protection of individual rights. The added case law highlights Montana's potential violations of anti-corruption statutes, ADA mandates, and procurement regulations. The state's decision to bypass the competitive bidding process and its failure to provide transparency may result in legal consequences, especially regarding Medicaid fund mismanagement and the rights of individuals with disabilities. Montana must prioritize transparency, accountability, and ADA compliance to prevent further legal scrutiny and ensure the fair treatment of its most vulnerable populations.

6. Consolidated Bibliography

1. *United States v. Neifert-White Co.*, 390 U.S. 228 (1968).



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2. **United States ex rel. Marcus v. Hess**, 317 U.S. 537 (1943).
3. **City of Billings v. Public Utilities Commission**, 67 P.3d 216 (Mont. 2003).
4. **Montana Public Procurement Act**, MCA Title 18, Chapter 4:
https://leg.mt.gov/bills/mca/title_0180/chapter_0040/
5. **Townsend v. Quasim**, 328 F.3d 511 (9th Cir. 2003).
6. **Olmstead v. L.C.**, 527 U.S. 581 (1999): <https://www.ada.gov/olmstead/>
7. **Sanchez v. Johnson**, 416 F.3d 1051 (9th Cir. 2005).
8. **Ball v. Rodgers**, 492 F.3d 1094 (9th Cir. 2007).
9. **Horne v. Flores**, 557 U.S. 433 (2009).
10. **Federal Medicaid Statute**, 42 U.S.C. § 1396.
11. **Centers for Medicare & Medicaid Services v. Georgia Dep't of Comm. Health**, DAB No. 2172 (CMS 2008).
12. **CMS Manual System**, Pub. 100-04, Medicare Claims Processing:
<https://www.cms.gov/>
13. **United States v. O'Connell**, 890 F.2d 563 (1st Cir. 1989).
14. **Public Citizen Health Research Group v. Young**, 831 F.2d 1108 (D.C. Cir. 1987).



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15. Doe v. Arizona Department of Health Services, 275 F.3d 1070 (9th Cir. 2001).

16. ADA Title II, 42 U.S.C. §§ 12131-12134:
https://www.ada.gov/ada_title_II.htm

7. Recommended Readings

- 1. The Federal False Claims Act: A Guide for Whistleblowers and Legal Practitioners** - This guide provides an in-depth analysis of the Federal False Claims Act, with insights into how it applies to government contracts and public funds. It is recommended for understanding the legal landscape surrounding potential fraud in state contracts.
- 2. ADA and Olmstead Compliance for Public Institutions** - A comprehensive resource that explains the ADA's legal requirements, with a special focus on the **Olmstead Decision**. It is highly recommended for understanding how states must prioritize community integration over institutionalization for individuals with disabilities.
- 3. Procurement Integrity: A Legal Perspective on Public Contracting** - This book offers insights into federal and state procurement laws, including the Federal Procurement Integrity Act. It is crucial for analyzing Montana's contracting processes and identifying potential violations.
- 4. Medicaid and Medicare Compliance: Legal and Financial Considerations** - A practical resource that explores the legal guidelines for managing Medicaid and Medicare funds, with a focus on CMS regulations. It is particularly useful for assessing Montana's compliance with federal guidelines in the iCare contract.
- 5. Independent Living and Disability Rights: Policy, Practice, and the ADA** - This book offers a thorough overview of independent living principles, focusing



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on how public policies like the ADA promote self-determination and community-based care. It is recommended for understanding the broader implications of Montana's decisions for disability rights.

Checklist: Evaluating the Montana-iCare Contract for Legal and Regulatory Violations

1. Anti-Corruption Legal Provisions: Federal and State Perspective

1.1 Federal False Claims Act (FCA)

- Did Montana follow correct procedures in disclosing and justifying the contract?
- Are there any indications of misleading or fraudulent claims regarding the need for this sole-source contract?

1.2 Federal Procurement Integrity Act (FPIA)

- Were there any potential conflicts of interest or lack of transparency in how the contract was awarded to iCare?

1.3 Montana Code Annotated (MCA) Title 45, Chapter 7

- Did the state disclose all necessary information about the contract, including financial terms and the identity of iCare?
- Were there any unethical practices, such as collusion or bribery, in awarding this contract?



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1.4 Public Accountability Laws

- Has Montana made the contract publicly available for scrutiny?
- Was the public notified and given an opportunity to challenge or question the contract?

2. ADA and Independent Living Principles

2.1 Self-Determination

- Were patients given the option to decide where they would receive care?
- Did the state consult individuals affected by this contract about their preferences?

2.2 No Decisions About Us Without Us

- Were disability advocacy groups, such as Disability Rights Montana, involved in the decision-making process?

2.3 Olmstead Decision Compliance

- Does this contract prioritize community-based care over institutionalization?
- Are the patients at risk of being placed in more restrictive settings in violation of the Olmstead Decision?



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2.4 Community Integration

Does the contract comply with ADA mandates that require the least restrictive environment for individuals with disabilities?

2.5 Person-Centered Planning

Did Montana develop person-centered plans for each patient, reflecting their preferences, needs, and goals?

3. Budgetary Laws and Restrictions

3.1 State Appropriations Law

Did the Montana Legislature approve the necessary budget for this contract?

Was the contract allocated within existing budgetary limits, and were funds lawfully appropriated?

3.2 Public Bidding and Procurement Laws

Did Montana justify the use of a sole-source contract, meeting all legal requirements for bypassing a competitive process?

Was the lack of an estimated price or timeframe disclosed to the public?

4 CMS Regulations

Does the contract meet all federal CMS requirements for the use of Medicaid and Medicare funds?



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Were Medicaid and Medicare funds properly allocated and disclosed for the services provided under this contract?

5 Financial Transparency

Has Montana disclosed all necessary financial information, including the contract price, duration, and performance standards?

6. Legal and Regulatory Violations

6.1 Sole-Source Contract Criteria (Montana Procurement Act)

Was the contract properly justified as a sole-source contract, in compliance with the stringent criteria set by state law?

Were there other vendors who could have provided the service, and if so, why were they excluded?

6.2 Proper Decision-Making Process

Was the decision-making process transparent, with public notice and opportunities for stakeholder input?

Were disability advocacy groups or affected individuals consulted in the decision?

7 Competitive Request for Proposals (RFP) Criteria

Did the state violate RFP criteria by not soliciting bids from other potential vendors?

Was a clear set of evaluation criteria established for potential contractors, and if so, was iCare properly evaluated against them?



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8 Exporting Patients Out of State

- Can Montana legally transfer patients out of state without their consent, given the requirements of the Olmstead Decision?

- Are patients being placed in settings that violate their right to community-based, least restrictive environments?