

Contract for Services
Between the
State of Washington
Office of Insurance Commissioner
And
Acumen, LLC

This Contract is made and entered into by and between the state of Washington, Office of Insurance Commissioner, hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR."

Acumen, LLC
500 Airport Blvd., Suite 100
Burlingame, San Mateo County
California 94010

Federal TIN: 91-1748582

Purpose

The purpose of this contract is to engage the CONTRACTOR to prepare a report that evaluates the cost-sharing for prescription drugs individual and small group health plans in Washington State, and provide a determination of whether the variation in cost-sharing creates a discriminatory benefit design. The report will include an updated analysis of plan year (PY) 2017 data a full analysis of PY 2018 data, and a mapping of PY 2017 to PY2018 analyses.

The report will include recommendations for rulemaking that would assure substantial equivalence of prescription drug cost-sharing. The AGENCY will use the report to inform an evaluation and determination of whether prescription drug cost-sharing is resulting in adverse selection. The report will also assist AGENCY staff in identifying discriminatory benefit design in formulary drug selection and cost-sharing.

Scope of work

- A. Exhibit A, attached hereto and incorporated by reference, contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
- B. CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as included in CONTRACTOR'S Technical Proposal dated February 8, 2018, attached as Exhibit B, and as detailed below.

CONTRACTOR must produce a written report that addresses at least the following:

PY 2018

- Apply previously developed evaluation process for identifying discriminatory benefit design, including three measures:
 - i. Proportion of condition-associated drug utilization covered by a plan;
 - ii. Proportion of condition-associated drug utilization subjected to prior authorization requirements by the plan; and
 - iii. Difference between the formulary tier cost-sharing that is applied to condition-associated drug costs and the average formulary tier cost sharing for other conditions on average in the plan.

PY 2017

- Extend existing PY 2017 analysis to include additional investigation of coverage for hemophilia clotting factors by:
 - i. Supporting AGENCY to draft a letter to issuers to solicit additional information regarding coverage of clotting factors used to treat hemophilia;
 - ii. Provide subject matter expertise in formulating responses to any issuer questions related to the letter; and
 - iii. Use information provided by issuers to investigate potential discrimination related to these medical drugs.

Plan Year Comparison and Analysis

- Evaluate the variation in prescription drug cost-sharing in the PY 2017 and PY 2018 health plan filings for the individual and small group markets;
- Determine whether that variation results in discriminatory benefit design;
- Develop analyses comparing formulary cost-sharing and potential discrimination over time by evaluation and mapping of PY 2017 and PY 2018 data; and
- Compare coverage and cost-sharing for the identified conditions in the individual and small group markets as well as the large-group benchmarks over the two years to assess changes in potentially discriminatory practices over time.

CONTRACTOR's report must make recommendations for rulemaking to assure substantial equivalence of prescription drug cost-sharing and must meet all requirements defined in this Contract and its Exhibits.

- C. The following written reports or other written documents (deliverables) must be produced according to the table below. Deliverable due dates are subject to change upon mutual written agreement of AGENCY and CONTRACTOR.

Date	Sender	Deliverable
Three (3) business days after contract execution	AGENCY	PY 2018 data
Three (3) business days after contract execution	CONTRACTOR	Report for issuer outreach
3/8/18	AGENCY	Draft clotting factor letter
3/15/18	CONTRACTOR	Feedback on draft clotting factor letter
4/15/18	AGENCY	Responses from issuer regarding draft report finding
4/20/18	AGENCY	Reponses from Issuers regarding clotting factor letter
6/1/18	CONTRACTOR	Draft report section for PY 2018 analysis
6/15/18	AGENCY	Feedback on draft report section for PY 2018 analysis
7/2/18	CONTRACTOR	First draft 2017/2018 report
7/16/18	AGENCY	Feedback on first draft 2017/2018 report
7/23/18	CONTRACTOR	Second draft 2017/2018 report for issuer outreach
8/21/18	AGENCY	Responses from issuers regarding second draft 2017/2018 report findings
9/11/18	CONTRACTOR	Final draft 2017/2018 report
9/18/18	AGENCY	Minor feedback on final draft 2017/2018 report
9/25/18	CONTRACTOR	Final 2017/2018 report

All CONTRACTOR written reports and other deliverables required under this contract must be delivered to the AGENCY Contract Manager.

Period of performance

The period of performance under this contract will be from March 12, 2018, or last date of execution, whichever is later, through September 30, 2018.

In the event that additional funding becomes available, AGENCY reserves the right to extend this contract for analysis of additional Plan Years.

Compensation

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract must not exceed two hundred eight thousand, nine hundred sixty-four (\$208,964.00) dollars. Contractor may invoice for payment per the following schedule:

Compensation Table			
Invoice Month	Deliverable Due	Percentage of Max Compensation	Payment Amount
March	No Deliverable	10	\$20,896.40
April	No Deliverable	10	\$20,896.40
May	No Deliverable	10	\$20,896.40
June	PY 2018 Section Draft Due	15	\$31,344.60
July	2017/2018 Draft Report Due	15	\$31,344.60
August	No Deliverable	10	\$20,896.40
September	2017/2018 Final Report Due	30	\$62,689.20
Maximum Compensation for This Contract			\$208,964.00

Billing procedures and payment

AGENCY will pay CONTRACTOR upon acceptance of services provided and receipt of properly completed invoices, which must be submitted to the billing address below not more often than monthly.

Electronic invoices sent to contracting@oic.wa.gov are preferred.

Mailing address
Office of Insurance Commissioner
Attn: Contracting
PO Box 40255
Olympia, WA 98504-0255

Payment is considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed invoices. Payment, or in the case of Electronic Funds Transfer, notice of payment will be sent to the address designated by the CONTRACTOR in association with the statewide payee information on file with DES. It is the responsibility of the CONTRACTOR to ensure their statewide payee information is accurate. If the CONTRACTOR does not have a payee number, the CONTRACTOR will be required to obtain one before payment will be made.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract will be made by the AGENCY.

AGENCY shall withhold ten (10%) percent from each payment until acceptance by the AGENCY of the final report.

Contract management

The Contract Manager for each of the parties is the contact person for all communications and billings regarding the performance of this contract.

CONTRACTOR Contract Manager

Kristy Piccinini
Acumen, LLC
500 Airport Blvd., Suite 100
Burlingame, CA 94010
650/558-8882 ext. 159
kpiccinini@acumenllc.com

AGENCY Contract Manager

Molly Nollette
Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255
360/725.7117
MollyN@oic.wa.gov

From time to time, CONTRACTOR or AGENCY contacts may change. Any change to the CONTRACTOR or AGENCY representative listed above shall be provided to the other party by email notification. The party in receipt of the change notice will confirm receipt of the notice by email notification to the party initiating the change.

Data classification, sharing and security

CONTRACTOR acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of Public Information, Sensitive Information, Confidential Information, and/or Confidential Information Requiring Special Handling as defined below.

Public Information: information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Sensitive Information: information that may not be specifically protected from disclosure by law, but is for official use only. Sensitive information is generally not released to the public unless specifically requested.

Confidential Information: information that is specifically protected from disclosure by law. Confidential Information includes: personal information about individuals, such as financial account information, regardless of how that information is obtained; information concerning employee personnel records; information regarding IT infrastructure and security of computer and telecommunications systems.

Confidential Information Requiring Special Handling: information that is specifically protected from disclosure by law and for which especially strict handling requirements are dictated, such as by statutes, regulations, or agreements; or serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

Information received under this contract may be *Confidential Information Requiring Special Handling*.

CONTRACTOR agrees to protect all material and information, other than Public Information, obtained under this contract as Confidential Information, unless notified by the AGENCY in writing to treat the material or information with lessened or heightened protections.

CONTRACTOR will not to make use of material and information for any purpose other than the performance of this contract. CONTRACTOR will release information obtained under this contract, other than Public Information, only to authorized employees, agents, or subcontractors, requiring such information for the purposes of carrying out this contract, and only after such persons have signed the nondisclosure agreement provided to the CONTRACTOR by the AGENCY.

CONTRACTOR will not release, divulge, publish, transfer, sell, disclose, or otherwise make the material and information known to any other party, person or entity except as provided in this contract.

CONTRACTOR agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access, use, disclosure, modification or loss to material and information collected,

used, or acquired in connection with this Contract. All Confidential Information, and information treated as Confidential Information, stored by the CONTRACTOR will be encrypted using industry standard algorithms or cryptographic modules validated by the National Institute of Standards and Technology (NIST).

Confidential Information transmitted by the CONTRACTOR to the AGENCY or to any employee, agent, or subcontractor under this agreement must be made using a method that ensures:

1. All manipulations or transmissions of data during the exchange are secure.
2. If intercepted during transmission the data cannot be deciphered.
3. When necessary, confirmation is received when the intended recipient receives the data.
4. Encryption methods use industry standard algorithms, or cryptographic modules validated by the National Institute of Standards and Technology (NIST).

CONTRACTOR's records are subject to inspection, review or audit in accordance with the Retention of Records section above. Any breach of this provision may result in termination of the Contract.

AGENCY reserves the right to monitor, audit, or investigate the use of material or information collected, used, or acquired by CONTRACTOR through this contract.

Immediately upon expiration or termination of this Contract, CONTRACTOR must return all material and information to AGENCY, destroy the individual identifiers associated with the records or record information, and notify this agency to this effect in writing and take whatever other steps AGENCY requires of CONTRACTOR to protect AGENCY's material and information. AGENCY reserves the right to monitor, audit, or investigate the use of material or information collected, used, or acquired by CONTRACTOR through this contract.

Prior to disclosure of any information received under this contract, CONTRACTOR must collect completed Notice of Nondisclosure forms for each employee, agent, or subcontractor that will have access to material and information for this contract. CONTRACTOR shall ensure that Notice of Nondisclosure forms are available for inspection upon AGENCY request.

AGENCY policy acknowledgement

CONTRACTOR staff will adhere to applicable AGENCY policies, as identified by AGENCY, while on-site and/or while working with AGENCY staff. Applicable policies and an acknowledgement form will be provided for CONTRACTOR review and acknowledgment; completed forms must be provided to AGENCY prior to work commencing on this contract.

Insurance

The CONTRACTOR must provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR must provide insurance coverage, which must be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance must be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
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3. The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies.

All policies must be primary to any other valid and collectable insurance. CONTRACTOR must instruct the insurers to give AGENCY thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR must submit to AGENCY within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section. CONTRACTOR must submit renewal certificates as appropriate during the term of the contract.

Assurances

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

Order of precedence

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency must be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations;
2. Special terms and conditions as contained in this basic contract instrument;
3. Exhibit A – General Terms and Conditions;
4. Exhibit B – Contractor’s Technical Proposal;
5. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

Entire agreement

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, will be deemed a part hereof.

Conformance

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

Approval

This contract is subject to the written approval of the AGENCY'S authorized representative and must not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of eight (8) pages and two (2) attachments, is executed by the persons signing below, who warrant they have the authority to execute the contract.

Acumen, LLC

Office of Insurance Commissioner

Signature

Signature

Greg Boro
Name

Molly Nollette
Name

Director of Business Operations
Title

Deputy Commissioner, Rates and Forms
Title

Date

Date

GENERAL TERMS AND CONDITIONS

Definitions

As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" shall mean the Office of Insurance Commissioner of the State of Washington, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "AGENT" shall mean the Commissioner, and/or the delegate authorized in writing to act on the Commissioner's behalf.
- C. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the CONTRACTOR.
- D. "SUBCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this contract under a separate contract with the CONTRACTOR. The terms "SUBCONTRACTOR" and "SUBCONTRACTORS" means SUBCONTRACTOR(s) in any tier.

Access to data

The CONTRACTOR shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONTRACTOR'S reports, including computer models and methodology for those models.

Advance payments prohibited

No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the AGENCY.

Amendments

This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

Americans with Disabilities Act (ADA) OF 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35

The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

Assignment

Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the AGENCY.

Attorneys' fees

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

Confidentiality/safeguarding of information

The CONTRACTOR shall not use or disclose any information concerning the AGENCY, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the AGENCY, or as may be required by law.

Conflict of interest

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the AGENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the AGENT makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

Copyright provisions

Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the AGENCY. The AGENCY shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY.

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

Covenant against contingent fees

The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for securing business.

The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

Disallowed costs

The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its SUBCONTRACTORS.

Disputes

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with AGENT.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issue(s);
 - State the relative positions of the parties;
 - State the CONTRACTOR'S name, address, and contract number; and
 - Be mailed to the AGENT and the other party's (respondent's) contract manager within 3 working calendar days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working calendar days.
3. The AGENT shall review the written statements and reply in writing to both parties within 10 working days. The AGENT may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

Duplicate payment

The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

Indemnification

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom.

CONTRACTOR'S obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTORS' agents, employees, representatives, or any SUBCONTRACTOR or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to CONTRACTOR'S or any SUBCONTRACTOR'S performance or failure to perform the contract. CONTRACTOR'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

Independent capacity of the contractor

The parties intend that an independent CONTRACTOR relationship will be created by this contract. The CONTRACTOR and his or her employees or agents performing under this contract are not employees or agents of the AGENCY. The CONTRACTOR will not hold himself/herself out as or claim to be an officer or employee of the AGENCY or of the State of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

Industrial insurance coverage

The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, AGENCY may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund. The AGENCY may deduct the amount owed by the CONTRACTOR to the accident fund from the amount payable to the CONTRACTOR by the AGENCY under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

Licensing, accreditation and registration

The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

Limitation of authority

Only the AGENT or AGENT'S delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or

condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the AGENT.

Noncompliance with nondiscrimination laws

In the event of the CONTRACTOR'S non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

Nondiscrimination

During the performance of this contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies.

Privacy

Personal information including, but not limited to, "Protected Health Information," collected, used, or acquired in connection with this contract shall be protected against unauthorized use, disclosure, modification or loss. CONTRACTOR shall ensure its directors, officers, employees, SUBCONTRACTORS or agents use personal information solely for the purposes of accomplishing the services set forth herein. CONTRACTOR and its SUBCONTRACTORS agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as otherwise required by law.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages related to the CONTRACTOR'S unauthorized use of personal information.

Publicity

The CONTRACTOR agrees to submit to the AGENCY all advertising and publicity matters relating to this contract wherein the AGENCY'S name is mentioned or language used from which the connection of the AGENCY'S name may, in the AGENCY'S judgment, be inferred or implied. The CONTRACTOR agrees not to publish or use such advertising and publicity matters without the prior written consent of the AGENCY.

Records maintenance

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the AGENCY, personnel duly authorized by the AGENCY, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Registration with department of revenue

The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

Right of inspection

The CONTRACTOR shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

Savings

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the AGENCY may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the AGENCY'S discretion under those new funding limitations and conditions.

Severability

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

Site security

While on AGENCY premises, CONTRACTOR, its agents, employees, or SUBCONTRACTORS shall conform in all respects with physical, fire or other security policies or regulations.

Subcontracting

Neither the CONTRACTOR nor any SUBCONTRACTOR shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to the Department for any breach in the performance of the CONTRACTOR'S duties. This clause does not include contracts of employment between the CONTRACTOR and personnel assigned to work under this contract.

Additionally, the CONTRACTOR is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. CONTRACTOR and its SUBCONTRACTORS agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

Taxes

All payments accrued because of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the CONTRACTOR or its staff shall be the sole responsibility of the CONTRACTOR.

Termination for cause

In the event the AGENCY determines the CONTRACTOR has failed to comply with the conditions of this contract in a timely manner, the AGENCY has the right to suspend or terminate this contract. Before suspending or terminating the contract, the AGENCY shall notify the CONTRACTOR in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

The AGENCY reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the CONTRACTOR from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONTRACTOR or a decision by the AGENCY to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the CONTRACTOR: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of the AGENCY provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

Termination for convenience

Except as otherwise provided in this contract, the AGENCY may, by 10 calendar days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the AGENCY shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

Termination procedures

Upon termination of this contract, the AGENCY, in addition to any other rights provided in this contract, may require the CONTRACTOR to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the AGENCY, and (iv) the protection and preservation of property, unless the termination is for default, in which case the AGENT shall determine the extent of the liability of the AGENCY. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The AGENCY may withhold from any amounts due the CONTRACTOR such sum as the AGENT determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the CONTRACTOR shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;

2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the CONTRACTOR under the orders and subcontracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the AGENT to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the AGENCY and deliver in the manner, at the times, and to the extent directed by the AGENT any property which, if the contract had been completed, would have been required to be furnished to the AGENCY;
6. Complete performance of such part of the work as shall not have been terminated by the AGENT; and
7. Take such action as may be necessary, or as the AGENT may direct, for the protection and preservation of the property related to this contract, which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

Treatment of assets

- A. Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs.
- B. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this contract.
- C. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY that results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- D. If any AGENCY property is lost, destroyed or damaged, the CONTRACTOR shall immediately notify the AGENCY and shall take all reasonable steps to protect the property from further damage.
- E. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this contract
- F. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR'S employees, agents or SUBCONTRACTORS.

U.S. Department of Treasury, Office of Foreign Assets Control

The agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations,

which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the agency will download the current OFAC SDN file and compare it to agency and statewide vendor files. In the event of a positive match, the agency reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the CONTRACTOR in writing and terminate the contract according to the Termination for Convenience provision without making payment. The agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

Waiver

Waiver of any default or breach shall not be deemed a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by authorized representative of the AGENCY.

CONTRACT NO. K201908
REPORT ON PRESCRIPTION DRUG COST SHARING
AND DISCRIMINATORY BENEFIT DESIGN

FEBRUARY 8, 2018



ACUMEN

Partner:
The SPHERE Institute
Pacific Consulting Group (PCG)

TECHNICAL PROPOSAL

Submitted to:
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INTRODUCTION

Acumen, LLC and our partners, including our non-profit partner firm, The SPHERE Institute (henceforth “Acumen”) and the Pacific Consulting Group (PCG), submit this proposal to the State of Washington Office of Insurance Commissioner (OIC) to perform additional analysis of plan year (PY) 2017 data and a full analysis of PY 2018 data using the framework developed under contract number K201902, Report on Prescription Drug Cost Sharing and Discriminatory Benefit Design.

The remainder of this technical proposal proceeds as follows. Section A describes the PY 2017 project methodology. Section B discusses updates to the PY 2017 work as well as the methodology for adapting the analysis for PY 2018. Section C presents our project schedule indicating the completion of work elements.

A. PROJECT APPROACH/METHODOLOGY

This section describes Acumen’s approach to analyzing potentially discriminatory cost-sharing practices for prescription drugs in the 2017 Washington State individual and small-group markets. Acumen will leverage the experience gained working with the PY 2017 data to include PY 2018 data in a final report covering the plans offered in both years. The approach to analyzing the PY 2018 data will draw heavily from the three major tasks used to develop the draft report evaluating cost-sharing for prescription drugs in the 2017 WA individual and small group markets: developing methods for identifying discriminatory benefit design, forming recommendations for rule-making to promote more consistent formulary design, and consolidating the results of the analysis and recommendations into a report.

For the PY 2017 report, the Acumen team developed methods to identify discriminatory benefit design. First, Acumen identified two groups of medical conditions: those that the literature review and clinician opinion identified as likely to face discrimination, and those identified as unlikely to face discrimination. Next, Acumen identified large-group plans as unlikely to engage in discriminatory cost-sharing because of their relative insulation from the incentives faced by individual and small group plans (e.g. risk adjustment). Using this framework, the PY 2017 report used three measures to examine potential discrimination related to prescription drug coverage, access, and formulary tier placement for a particular medical condition:

- (1) proportion of condition-associated drug utilization covered by the plan,
- (2) proportion of condition-associated drug utilization subjected to prior authorization requirements by the plan, and
- (3) difference between the formulary tier cost sharing that is applied to condition-associated drug costs and the average formulary tier cost sharing for other conditions on average in the plan.

Acumen leveraged the results of this analysis to draft policy recommendations for Washington State. Results from the PY 2017 analysis will be shared with issuers by OIC as appropriate, and Acumen will provide support for issuer questions as well as incorporate their responses into the final report.

B. ADDITIONAL PY 2017 ANALYSIS AND ASSESSMENT OF PY 2018

Acumen will extend the existing PY 2017 analysis to include (1) additional investigation of coverage for hemophilia clotting factors and (2) incorporate responses from issuers. For the first task, Acumen will provide support to OIC in drafting a letter to issuers to solicit additional information regarding coverage of clotting factors used to treat hemophilia, as well as subject matter expertise in formulating responses to any issuer questions related to the letter. The information provided by issuers will be used to investigate potential discrimination related to these medical drugs. For the second task, Acumen will provide an updated version of the PY 2017 analysis for WAOIC’s use in conducting outreach to issuers. Issuer responses to the findings in the draft report will be incorporated into the final version of the report.

To assess PY 2018, Acumen will review the conditions identified for the previous year for appropriateness for inclusion in the PY 2018 analysis. The relevant active ingredients associated with each condition will be updated to account for any new active ingredients introduced to treat a relevant condition or previously identified active ingredients that were removed from the market. The large-group benchmarks will also be updated to reflect PY 2018 large-group formularies.

In addition to replicating the original PY 2017 analysis using plans offered in PY 2018, Acumen will also develop analyses comparing formulary cost-sharing and potential discrimination over time. The comparative analyses will first address changes in the individual and small group markets from 2017 to 2018, including changes in number of plans offered by metal level and tier structure. Acumen will then identify plans that expand or reduce overall formulary coverage in 2018 relative to 2017. This will involve developing a mapping from PY 2017 plans to PY 2018 plans. Finally, Acumen will compare coverage and cost-sharing for the identified conditions in the individual and small group markets as well as the large-group benchmarks over the two years to assess changes in potentially discriminatory practices over time.

C. PROJECT SCHEDULE

Acumen proposes the following timeline for the combined PY 2017 and 2018 analyses, as shown in [Table](#).

Table 1. Project Deadlines

Deliverable	Sender	Deadline
Updated 01/02/2018 Report for Issuer Outreach	Acumen	3 Business Days after Date of Contract Execution
Draft Clotting Factor Letter	OIC	Thursday, March 08, 2018
Feedback on Draft Clotting Factor Letter	Acumen	Thursday, March 15, 2018
Discussion of Feedback on Draft Clotting Factor Letter	Acumen	week of March 19, 2018
PY 2018 Data delivered to Acumen	OIC	3 Business Days after Date of Contract Execution
Support for Questions on Clotting Factor Letter	Acumen	March 26, 2018 through April 26, 2018, as needed

Deliverable	Sender	Deadline
Responses from Issuers Contacted Regarding 03/08/2018 draft Report Findings	OIC	Sunday, April 15, 2018
Responses from Issuers Regarding Clotting Factor Letter	OIC	Friday, April 20, 2018
Draft Report Section for PY 2018 Analysis	Acumen	Friday, June 01, 2018
Feedback on Draft Report Section for PY 2018	OIC	Friday, June 15, 2018
Draft 2017/2018 Report (2017 Analysis updated to include clotting factors and issuer responses; 2018 Analysis updated in response to OIC feedback)	Acumen	Monday, July 02, 2018
Feedback on 2017/2018 Report	OIC	Monday, July 16, 2018
Updated 07/16/2018 draft for Issuer Outreach	Acumen	Monday, July 23, 2018
Responses from Issuers Contacted Regarding Report Findings	OIC	Tuesday, August 21, 2018
Almost final 2017/2018 Report	Acumen	Tuesday, September 11, 2018
Minor feedback on "Almost final 2017/2018 draft"	OIC	Tuesday, September 18, 2018
Final 2017/2018 Report	Acumen	Tuesday, September 25, 2018