

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
19 DHR 02194

Aetna Better Health of North Carolina  
Inc d/b/a Aetna Better Health of North  
Carolina,

Petitioner,

v.

State of North Carolina Department of  
Health and Human Services Division of  
Health Benefits,

Respondent,

and

UnitedHealthcare of North Carolina,  
Inc.,

Respondent-Intervenor,

and

Blue Cross and Blue Shield of North  
Carolina,

Respondent-Intervenor,

and

WellCare of North Carolina, Inc.,

Respondent-Intervenor,

and

AmeriHealth Caritas of North Carolina,  
Inc.,

Respondent-Intervenor,

and

Carolina Complete Health, Inc.,

Respondent-Intervenor.

**ORDER ON  
PETITIONER'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

THIS MATTTTER COMES on for consideration on the Motion for Preliminary Injunction (the "Motion") filed by Petitioner, Aetna Better Health of North Carolina, Inc. d/b/a Aetna Better Health of North Carolina ("Petitioner" or "Aetna"). In support of, and in opposition to, the Motion, Petitioner, Respondent, and Respondent-Intervenors filed numerous affidavits and other evidentiary materials. On 15 May 2019, this Tribunal held a hearing on the Motion.

Having considered the Motion, briefs, exhibits, and affidavits supporting and opposing the Motion, and the parties' arguments at the hearing on the Motion, the Undersigned finds and concludes that the Petitioner's request for a preliminary injunction should be DENIED for the reasons explained below.

## I.

### BACKGROUND

1. This case arises from the State's transformation of its Medicaid delivery system from one that is primarily based on a fee-for-service model to a managed care system operated by Prepaid Health Plans ("PHPs") under capitated contracts. N.C. Sess. Law 2015-245, as amended (the "Transformation Act").<sup>1</sup> The transformation is intended to "provide budget predictability for the taxpayers of this State while ensuring quality care to those in need." N.C. Sess. Law 2015-245, § 1.

2. Pursuant to the Transformation Act, the General Assembly mandated that Respondent, the North Carolina Department of Health and Human Services (the "Department"), conduct a procurement as directed in the Transformation Act and award PHP contracts resulting from that competitive process. *See generally* N.C. Sess. Law 2015-245, as amended. The Department issued a request for proposals, and, after receiving eight proposals, the Department conducted an evaluation process.

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<sup>1</sup> N.C. Sess. Law 2015-245 was amended by N.C. Sess. Law 2016-121; N.C. Sess. Law 2017-57, § 11H.17.(a); N.C. Sess. Law 2017-186, Part IV; N.C. Sess. Law 2018-5, § 11H.10.(c); N.C. Sess. Law 2018-48; N.C. Sess. Law 2018-49, §§ 4-6.

3. At the conclusion of the evaluation process, the Department's Evaluation Committee determined that Aetna was the fifth-ranked offeror. The Department awarded four statewide PHP contracts and two regional PHP contracts to five separate awardees but did not award any contract to Aetna. Petitioner's Motion seeks a stay of the implementation efforts for the awarded PHP contracts pending the resolution of this contested case.

## II.

### PROCEDURAL HISTORY

4. On 5 March 2019, Aetna submitted a request for a bid protest meeting to the Department protesting the Department's decision not to award it a statewide contract. A bid protest meeting was held on 4 April 2019, and the Department denied Aetna's request for relief by the Protest Denial Letter on 12 April 2019. Petition ¶ 6. Aetna filed its Petition and the Motion on 16 April 2019.

5. The Department and Respondent-Intervenors<sup>2</sup> filed their memoranda in opposition to the Motion on 3 May 2019 and Aetna filed its brief in support on 10 May 2019. The Tribunal heard argument on the request for a stay on 15 May 2019. The Motion is now ripe for determination.

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<sup>2</sup> The Tribunal granted the motions to intervene of UnitedHealthcare of North Carolina, Inc. ("United"), Blue Cross and Blue Shield of North Carolina ("BCBSNC"), WellCare Health Plans of North Carolina, Inc. ("WellCare"), and AmeriHealth Caritas North Carolina, Inc. ("ACNC"), and Carolina Complete Health, Inc. ("CCH") (collectively, the "Intervenors"). The Intervenors have been granted rights in this matter as full parties. United, BCBSNC, WellCare, and ACNC submitted materials and made argument to the Tribunal. CCH did not take a position on the Motion.

### III.

#### FACTUAL BACKGROUND

6. This Tribunal recites the following factual basis solely for the purpose of deciding this Motion. These facts are not binding at a final hearing on the merits. *Lohrmann v. Iredell Mem'l Hosp., Inc.*, 174 N.C. App. 63, 75 (2005) (noting that it is “well settled that findings of fact made during a preliminary injunction proceeding are not binding upon a court at a trial on the merits”).

##### *A. The Medicaid Transformation Act*

7. In September 2015, the General Assembly enacted the Transformation Act, North Carolina Session Law 2015-245, requiring transformation of the State’s Medicaid program for most beneficiaries and services from a predominantly fee-for-service model to a Medicaid managed care model. The Transformation Act was amended several times between 2015 and 2018. *See supra*, footnote 1.

8. North Carolina’s Medicaid managed care program is expected to serve over 1.6 million people and involve annual funds of about \$6 billion. Affidavit of James Edward Ludlam, IV (“Ludlam Aff.”), ¶ 6.

9. The Transformation Act gives the Department the “full authority to manage the State’s Medicaid and NC Health Choice programs” and requires it to “be responsible for planning and implementing the Medicaid transformation required by this act.” N.C. Sess. Law 2015-245, § 4(1). Among many other tasks, the Transformation Act further requires the Department to “[o]versee, monitor, and enforce capitated PHP contract performance;” “[e]nsure sustainability of the

transformed Medicaid and NC Health Choice programs:” and “[e]nter into capitated PHP contracts for the delivery of the Medicaid and NC Health Choice services ...” *Id.* § 5(3), (4), (6).

10. The Transformation Act required the Department to award four statewide PHP contracts to entities to operate and administer an at-risk, Medicaid managed care business. *Id.* § 4(6), as amended by N.C. Sess. Law 2018-48. The Transformation Act also directed the Department to award “up to 12” regional PHP contracts. N.C. Sess. Law 2015-245, § 4(6), as amended by N.C. Sess. Law 2018-48. It further directed the Department to define six regions comprised of whole contiguous counties that reasonably distribute covered populations across the State. *Id.* § 5(2).

11. A PHP is defined in pertinent part as “an entity, which may be a commercial plan *or* provider-led entity that operates or will operate a capitated contract for the delivery of services . . . .” *Id.* § 4(2), as amended by N.C. Sess. Law 2018-48 (emphasis added).

12. A commercial plan (“CP”) is “a person, entity or organization, profit or nonprofit, that undertakes to provide or arrange for the delivery of health care services to enrollees on a prepaid basis except for enrollee responsibility for copayments and deductibles and holds a PHP license issued by the Department of Insurance.” *Id.* § 4(2)a, as amended by N.C. Sess. Law 2018-48.

13. A provider-led entity (“PLE”) is an entity that meets all of the following criteria:

1. A majority of the entity's ownership is held by an individual or entity that has as its primary business purpose the ownership or operation of one or more capitated contracts described in subdivision (3) of this section or Medicaid and NC Health Choice providers.
2. A majority of the entity's governing body is composed of individuals who (i) are licensed in the State as physicians, physician assistants, nurse practitioners, or psychologists and (ii) have experience treating beneficiaries of the North Carolina Medicaid program.
3. Holds a PHP license issued by the Department of Insurance.

*Id.* at 4(2)b, as amended by N.C. Sess. Law 2018-48.

14. CPs could submit offers for statewide contracts only. PLEs could submit proposals for one of the statewide contracts, for a contract for one or more of six regions covering the state, or for both. Affidavit of Mona M. Moon ("Moon Aff.") ¶15, Ex. A (RFP § II, p. 8).

***B. Design of the Procurement***

15. The procurement that is the subject action is the culmination of efforts by many people over several years and has spanned two administrations. Ludlam Aff. ¶¶ 3, 5. It has involved multiple divisions within the Department and other state agencies, such as the Department of Insurance. Affidavit of Sarah Gregosky ("Gregosky Aff."), ¶ 3.

16. In developing RFP #30-190029-DHB (the "RFP"), the Department acknowledged the significance of Medicaid managed care succeeding, and the risk and potential implications of its failure including the potential impacts on

beneficiaries, providers, and PHPs. Ludlam Aff. ¶¶ 6-9. It also considered the risk to the financial viability of a plan if a PHP does not secure enough members. *Id.*; Affidavit of Julia Kraemer Lerche (“Lerche Aff.”), ¶ 3.

17. The Department developed the RFP using not only its own employees, who had relevant experience, but also subject matter expert consultants. Ludlam Aff. ¶ 10. For example, the Department retained Manatt, Phelps & Phillips, LLP (“Manatt”), a national consulting firm with Medicaid managed care experience, for review and assistance with development of the RFP. *Id.* The Department also employed Mercer, a global consulting firm, as an actuarial consultant. Lerche Aff. ¶ 4. Among other things, Mercer assisted the Department in considering the minimum number of covered lives needed to ensure financial viability of PHPs providing Medicaid managed care under contracts awarded through the Department’s competitive procurement process. *Id.*

18. Before issuing the RFP, the Department sought input from legislators, the United States Centers for Medicare and Medicaid Services (“CMS”), other states, industry experts, and stakeholders regarding the design and implementation of Medicaid managed care in North Carolina. Ludlam Aff., ¶ 6.

***C. The RFP and the Department’s Evaluation Process***

19. The Department issued the RFP on 9 August 2018 to solicit offers for PHPs through a competitive procurement process. Moon Aff. ¶ 3.

20. The RFP, with all addenda, comprises approximately 1,000 pages, and is divided into the following sections: Section I (Introduction); Section II (General

Procurement Information and Notice to Offerors); Section III (Definitions, Contract Term, General Terms and Conditions, Other Provisions and Protections); Section IV (Minimum Qualifications); Section V (Scope of Services); Section VI (Contract Performance); Section VII (Attachments A-N); Section VIII (Attachment O. Offeror's Proposal and Response); and Section IX (Draft Rate Book).<sup>3</sup> Moon Aff. ¶ 3 and Ex. A.

21. Section V (Scope of Services) is 221 pages long and includes detailed requirements for (A) Administration and Management; (B) Members; (C) Benefits and Care Management; (D) Providers; (E) Quality and Value; (F) Stakeholder Engagement; (G) Program Operations; (H) Claims and Encounter Management; (I) Financial Requirements; (J) Compliance; and (K) Technical Specifications. Moon Aff. ¶ 3 and Ex. B.

22. Section VIII (Attachment O. Offeror's Proposal and Response) is 108 pages long and sets forth the 65 Evaluation Questions, 7 Use Case Scenarios, and various tables and information that the offeror must complete. Moon Aff. ¶ 3 and Ex. C. The Evaluation Questions themselves often refer back to other sections of the RFP or requested documents that contain detailed and specific requirements. *See, e.g. id.* p. 28 (Evaluation Question 24 refers to Section V.B.6, "Member Grievances and Appeals," which section contains more than 10 pages of

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<sup>3</sup> Although several sections of the RFP were attached as evidentiary exhibits before the Tribunal, the entire RFP is available as a public record on the Department's website: <https://www.ncdhhs.gov/request-information>.



requirements and standards for evaluation by the Evaluation Committee); *see also* Moon Aff. ¶ 3 and Ex. B.

23. The RFP notified potential offerors that the Department would be establishing an Evaluation Committee to review their proposals and make award recommendations. (RFP § II, pp. 16).

24. At proposal opening on 19 October 2018, the Department received proposals from eight offerors: Aetna; ACNC; BCBSNC; CCH; North Carolina Provider Owned Plans, Inc., dba My Health by Health Providers (“MyHealth”); Optima Family Care of North Carolina, Inc. (“Optima”); United; and WellCare. Ludlam Aff. ¶ 18. Aetna, a CP, submitted a proposal for a statewide contract. Petition ¶ 26.

25. To review the proposals, the Department established an Evaluation Committee that included individuals with significant experience with Medicaid, complex government programs, and managed care. Ludlam Aff. ¶ 19. The Evaluation Committee consulted subject matter experts during the evaluation process, including a physician, pharmacists, nurses, and social workers, with expertise in various areas relevant to the evaluation. *Id.*

26. The Evaluation Committee had access to the full RFP for its review and scoring. *Id.* at Ex. D thereto, Kickoff Meeting, Slides 10-11. The full RFP contains detailed and specific guidance and parameters for offerors and also for evaluators considering proposals received from offerors.

27. The RFP states that the scoring of proposals will be based on the following criteria:

- Offeror Qualifications/ Experience (20% weight)
- Scope of Services (70% weight)
- Use Cases (5% weight)
- Client References (5% weight)
- Bonus Points: Marketplace Participation (2.5% weight)

Moon Aff. Ex. A (RFP § II, pp. 17-19). The “Scope of Services” subsection was further broken down into eight sub-subsections, with individual weights ranging from 5% to 25% of the total evaluation. *Id.*

28. The Department developed a scoring rubric, allocated available points to all evaluation questions and information required as forecasted in the RFP, and composed a scoring guide for the scoring members of the Evaluation Committee to use. Moon Aff. ¶ 9 and Ex. E. The scoring guide gave detailed guidance to the scoring members to consider in evaluating each aspect of each offeror’s proposal. *Id.* Most of the evaluation questions were to be evaluated using a “5 Level Rating Scale” where the scoring members were directed to apply a “Substantially Exceeds,” “Exceeds,” “Meets,” “Partially Meets,” or “Does Not Meet” rating to the requested components of the evaluation question. *Id.*; *see also* Moon Aff. ¶ 7 and Ex. D (Kickoff Meeting, Slide 15).

29. At the initial kickoff meeting on 17 October 2018, the Evaluation Committee received both the short and long definitions of what each of the five ratings meant in order to provide an objective and consistent framework for evaluation. Moon Aff. ¶ 7 and Ex. D, Kickoff Meeting, Slide 15. The Department

also provided the Scoring Guide to the Evaluation Committee members. Moon Aff. ¶ 9 and Ex. E, PHP Scoring Guide.

30. Over the course of four months the Evaluation Committee conducted 46 meetings. Moon Aff. ¶ 6. The Evaluation Committee rated the proposals by section for each offeror using a consensus method of scoring by which the voting members would agree on a particular rating for each offeror's response to each question. *Id.* at ¶ 8. At least five of the seven voting members were required to be present for purposes of rating or scoring responses. *Id.* The Evaluation Committee made, recorded and kept notes of its meetings. *Id.* at Ex. F. After the Evaluation Committee completed its scoring, the Department's Medicaid contracting section conducted a quality assurance review of the scoring. *Id.* ¶ 14.

31. Of the offerors that submitted proposals, WellCare received the highest score followed by United, BCBSNC, ACNC, Aetna, My Health, CCH, and Optima. *Id.* ¶ 16.

32. The highest scoring offeror, WellCare, received 71.824% of the total possible points (with a score of 736.19304), and the fourth ranked statewide offeror, ACNC, received 68.943% of the total possible points (with a score of 706.66204). *Id.* Aetna received a score of 704.60144. *Id.*

#### ***D. Contract Awards***

33. After conducting its evaluation process, the Evaluation Committee recommended the award of the statewide contracts to the four highest rated offerors

(WellCare, United, BCBSNC, and ACNC). *Id.* at ¶ 19. The committee did not recommend the award of any regional contracts. *Id.* at ¶ 20.

34. The Evaluation Committee made its recommendation to Mona M. Moon, North Carolina Medicaid's Chief Operating Officer. *Id.* ¶ 22. Ms. Moon then made the recommendation to the Department's Deputy Secretary of NC Medicaid, Dave Richard. *Id.* Mr. Richard accepted the Evaluation Committee's recommendation regarding the award of the four statewide contracts, and he also recommended the award of a contract to CCH for Regions 3 and 5. *Id.*

35. Department Secretary Mandy Cohen accepted Mr. Richard's recommendation, and, on 4 February 2019, the Department awarded statewide PHP contracts arising out of the RFP to WellCare, United, BCBSNC, and ACNC, and regional PHP contracts covering Regions 3 and 5 to CCH. *Id.* The contracts consisted of the RFP and the successful offerors' responses, along with other documents specifically enumerated in the RFP. *Id.* at Ex. A (RFP § I, p. 8).

***E. Implementation Activities***

36. Since the award of PHP contracts on 4 February 2019, the Department and the Intervenors began work toward implementing Medicaid managed care. Gregosky Aff. ¶ 4.

37. Over 300 Department employees, consultants, and contractors are working on behalf of the Department to implement Medicaid managed care. *Id.* As of 8 April 2019:

- a. The Department had hosted 208 meetings with the contract awardees;

- b. The contract awardees had provided 819 deliverables to the Department required under their contracts; and
- c. The Department had reviewed and provided feedback on 196 of those deliverables.

*Id.* at ¶ 5.

38. The Department has identified features and tasks that must be completed before performance of the contracts. *Id.* ¶ 8. The Department expected 210 features and 790 tasks to have been completed by the end of April 2019, and an additional 274 features and 650 tasks to have been completed by the end of May 2019. *Id.* Additional CMS approvals are needed before launch. Ludlam Aff. ¶ 24. Notices to potential program beneficiaries must be printed, beneficiaries must be educated about their choices, and open enrollment must occur. Gregosky Aff. ¶¶ 6, 7. Provider contracts also must be finalized. *See id.* ¶ 9.

***F. Aetna's Bid Protest***

39. Aetna submitted a request for a bid protest meeting pursuant to 1 N.C. Admin. Code 05B .1519(c)(1) and the terms of the RFP. (Petition ¶ 5). A protest meeting was held before Principal Deputy Secretary Susan Perry-Manning on 4 April 2019. (Petition ¶ 6). On 12 April 2019 Principal Deputy Secretary Perry-Manning issued her decision denying Aetna's protest. *Id.* This contested case followed.

## IV.

### ANALYSIS

#### A. *Standard of Review*

40. Petitioner brings this contested case pursuant to the Administrative Procedure Act of North Carolina (“NC APA”), N.C. Gen. Stat. § 150B-23 *et. seq.* The NC APA specifically authorizes an Administrative Law Judge to “[s]tay the contested action by the agency pending the outcome of the case, upon such terms [s]he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65[.]” N.C. Gen. Stat. § 150B-33(b)(6).

41. Rule 65 of the North Carolina Rules of Civil Procedure authorizes the issuance of a preliminary injunction. Like a temporary restraining order, a preliminary injunction serves to maintain the status quo pending trial on the merits. *Providence Volunteer Fire Dep’t v. Town of Weddington*, \_\_ N.C. App. \_\_, 800 S.E.2d 425, 435 (2017).

42. A preliminary injunction “is an *extraordinary measure.*” *Ridge Cmty. Inv’rs, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977) (emphasis added). It will be issued *only* if: (i) a petitioner is able to show the likelihood of success on the merits of its case *and* (ii) is likely to sustain irreparable loss unless the injunction is issued or if, in this Tribunal’s opinion, such relief appears necessary for the protection of petitioner’s rights during the course of litigation. *Providence Volunteer Fire Dep’t*, \_\_ N.C. App. at 435; *see also* G. Gray Wilson, North Carolina Civil Procedure § 65-1 (2018). The burden is on the petitioner to

establish its right to a preliminary injunction. *Pruitt v. Williams*, 288 N.C. 368, 372, 218 S.E.2d 348, 351 (1975).

***B. Analysis***

43. Aetna argues that it is entitled to a stay because it is likely to succeed on the merits of its claims and it will suffer irreparable harm absent a stay. In support of its Motion, Aetna argues the merits of its claims. This Tribunal has carefully considered the parties' arguments and, in summary, concludes that Aetna has not demonstrated the likelihood of success on the merits of its claims.

44. The actions contested by Aetna in this contested case relate to the Department's procurement of capitated PHP contracts as part of the State's Medicaid Transformation.

45. The Department is the "single state agency" charged with administering the State's Medicaid program. 42 U.S.C. § 1396a(a)(5) (requiring "the establishment or designation of a single State agency to administer or to supervise the administration of the plan . . ."); N.C. Gen. Stat. § 108A-54 ("The Department is authorized to establish a Medicaid Program . . ."); N.C. Gen. Stat. § 108A-54.1A ("The Department [] is expressly authorized and required to take any and all necessary action to amend the State Plan and waivers in order to keep the program within the certified budget, except as provided in G.S. 108A-54(f)"). Because the Department has the "full authority to manage the State's Medicaid and NC Health Choice programs," it is unsurprising that the General Assembly vested it with the responsibility "for planning and implementing the transformation required

by the [act.]” N.C. Sess. Law 2015-245, § 4(1). This included the procurement of capitated PHP contracts. *Id.* at § 4(3).

46. The Department’s discretion under the Transformation Act is broad, but it is not unbridled. Under the NC APA, the Department, may not exceed its authority or jurisdiction, act erroneously, fail to use proper procedure, act arbitrarily or capriciously, or fail to act as required by law or rule. N.C. Gen Stat. §150B-23. Indeed, to prevail in this contested case, Aetna must demonstrate that it was deprived of property or otherwise substantially prejudiced<sup>4</sup> and the Department acted in a manner contrary to the NC APA. *Id.*

47. Aetna makes a variety of arguments that relate to the evaluation and scoring of various questions, including but not limited to the sufficiency of certain of its responses to certain RFP questions. It primarily contends the Department made scoring errors that improperly (i) inflated ACNC’s score and (ii) lowered Aetna’s total score. (Petition ¶¶ 65-88)

48. “Effective contracting demands broad discretion.” *See, e.g. Lockheed Missiles & Space Co., Inc. v. Bentsen*, 4 F.3d 955, 958 (Fed. Cir. 1993). Thus, while requests for proposals, such as the RFP, sets forth objective criteria, the assessment of this criteria necessarily includes some subjective analysis by the Department. *See, e.g. AAIS Corp. v. Dep’t of Admin. Servs.*, 93 Conn. App. 327, 332, (2006) (recognizing the assessment of objective criteria in an RFP “necessarily includes

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<sup>4</sup> The harm required to establish substantial prejudice cannot be conjectural or hypothetical; it must be concrete, particularized, actual or imminent. *Surgical Care Affiliates*, 235 N.C. App. 620, 631 (2014).



some subjective analysis by the [agency]" and that subjective analysis "is a wholly permissible exercise of the [agency's] discretion").

49. When considering Aetna's arguments, this Tribunal finds that Aetna has failed to show a likelihood of success at this time of demonstrating by a preponderance of the evidence the requisite bad faith, lack of fair and careful consideration, or lack of any course of reasoning and exercise of judgment that would warrant revisiting the scores.

50. It is generally recognized that a reviewing body "does not have authority to override" discretionary decisions made by an agency when that "discretion is exercise in good faith and in accordance with law." *Lewis v. N.C. Dep't of Human Res.*, 92 N.C. App. 737, 740 (1989). Rather, such decisions may only be reversed where "patently in bad faith" or "whimsical" in the sense they "indicate a lack of fair and careful consideration" or "fail to indicate any course of reasoning and the exercise of judgment." *Id.* at 740 (internal citations and quotations omitted). It is presumed, absent evidence to the contrary, that an agency "discharge[d] its duties in good faith and exercise[d] [its] power in accord with the spirit and purpose of the law." *Painter*, 288 N.C. 165, 178, (1975); *see also Richardson v. N.C. Dept of Pub. Instruction Licensure Section*, 199 N.C. App. 219, 223-24 (2009) (recognizing that an "agency's decision is presumed to be made in good faith and in accordance with governing law.")

51. Due regard is to be given in contested cases to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within

the agency's specialized knowledge. N.C. Gen. Stat. Ann. § 150B-34. The current record before the Tribunal shows that, as with most requests for proposals, reasonable people could reach different conclusions on how any particular response should have been scored had they been sitting as a member of the Evaluation Committee. But that potential for disagreement is far from sufficient to warrant setting aside the Department's decision, particularly where, as here, the Evaluation Committee appeared to evaluate offerors' responses in a manner that was reasonable and consistent with the RFP criteria and used a consensus scoring approach that would account for potential differences among committee members.

52. The "arbitrary or capricious standard is a difficult one to meet." *Lewis*, 92 N.C. at 740. Aetna, at this point, has met its high burden of showing that it is likely to succeed on the merits of its arguments that the Department was arbitrary or capricious in its scoring and evaluation of the RFP such that the Department's award decision should be set aside.

53. This Tribunal need not reach the question of whether Aetna will suffer irreparable harm given the conclusion reached on Aetna's likelihood of success on the merits.

## V.

### CONCLUSION

54. Aetna has not met its burden to show that it is entitled to a preliminary injunction. The Motion is therefore DENIED.

SO ORDERED, this the 26th day of June, 2019.

A handwritten signature in blue ink that reads "Tenisha S. Jacobs". The signature is written in a cursive style with a long horizontal flourish extending to the right. Below the signature is a solid blue horizontal line.

Tenisha S Jacobs  
Administrative Law Judge

## CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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This the 26th day of June, 2019.



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