

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
April 12, 2018**

**I. Call to Order**

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included James Clevenger, Chairperson; Corinne Finnerty; Sue Anne Gilroy; Priscilla Keith; and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Matthew Savage, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Kelly Haltom, Staff Attorney; Darrell Boehmer, Director of Field Investigations; and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Sarah Kamhi, Assistant General Counsel, Department of Revenue; Rachel Russell, Ethics Officer/Deputy General Counsel, Department of Child Services; Tammera Glickman, Assistant General Counsel, Department of Administration; Deana Smith, Attorney, State Department of Health; Beth Green, General Counsel, Department of Workforce Development; Latosha Higgins, Managing Attorney/Ethics Officer, Family & Social Services Administration; Mark Tidd, Ethics Officer/Special Advisor, Department of Transportation; Sylvia Watson, General Counsel, Department of Child Services; Jeffrey Chapman, II, Director of Provider Services, Family & Social Services Administration; Jared Prentice, Compliance Director, Department of Revenue; Kendra Leatherman, Legislative Director, Auditor of State; Whitney Fritz, Staff Attorney, Department of Child Services; and Michelle Stanley, Legal Specialist, State Board of Accounts.

**II. Adoption of Agenda and Approval of Minutes**

Commissioner Gilroy moved to adopt the Agenda and Commissioner Finnerty seconded the motion which passed (5-0). Commissioner Noel moved to approve the Minutes of the March 8, 2018 Commission Meeting and Commissioner Gilroy seconded the motion which passed (5-0).

**III. Inspector General’s Report**

Inspector General Lori Torres informed the Commission that the Inspector General’s Report was now available as part of the Commission’s regular monthly meeting packet, which was posted on the Office’s website prior to each month’s meeting, thus making the information available to the public as well.

Inspector Torres then discussed informal advisory opinions, stating that all five attorneys in her office reviewed every single informal advisory opinion drafted, but that only four actually drafted same. Inspector Torres then explained that the reason behind the extensive review process was to ensure the consistency of the information being provided to requestors. Inspector Torres also explained how each request for an informal advisory opinion was internally catalogued, but still

treated confidentially, and therefore, not shared with anyone. Inspector Torres further stated that there had been 75 informal advisory opinions issued in the first quarter of 2018, as compared to the 371 total informal advisory opinions issued in all of 2017. Inspector Torres stated that she expected this decline for 2018, as the biennial ethics training would not be taking place during 2018, which was what she believed prompted the spike in informal advisory opinions requested during 2017. The Inspector General further stated that the office used the number of informal advisory opinions requested as an internal key performance indicator as well as an overall measurement of the culture within state government, in terms of individuals having a desire to comply with the rules as opposed to people just acting and then dealing with the associated consequences of breaking ethics rules at a later time, if or when they were caught.

Inspector Torres also discussed the special agents' investigations, stating that requests to investigate arrived via mail and email and from walk-ins and telephone calls as well as through submissions from the website, which were then given to the attorneys to screen within one to three business days. The Inspector further stated that the office received 100 requests to investigate during the first quarter for 2018, as opposed to the 60 it received during the first quarter of 2017. Inspector Torres stated that of the 100 requests to investigate received during the first quarter, only 19 were actually opened, as many of the requests fell outside of the office's jurisdiction. Inspector Torres compared that with the nine cases opened during this same time period in 2017. The Inspector further stated that the office was short one special agent and that it had been for the entire first quarter of 2018. She stated that the office had recently filled this position, but that the increase in pay at Indiana State Police made finding a quality candidate difficult, as the office usually hires former state troopers once they reach retirement level. Inspector Torres then stated that 11 investigations were closed during the first quarter of 2018 and that this time last year 19 investigations were closed, which she believed was at least partly due to the former Inspector General, Cynthia Carrasco, wrapping up outstanding matters before moving on to the Governor's Office. In response to Commissioner Gilroy's inquiry regarding the average length of time between when a case was opened and when it was closed, Inspector Torres explained that the time length could vary, but that per the special agents' job performance expectations, 80% of open cases were required to be closed within either 120 or 180 days, and that the agents met this expectation, with the exception of a few random cases that took multiple years to investigate.

Inspector Torres then went on to discuss the office's website enhancements, stating that previously individuals could only obtain alerts for investigation reports and items related to the State Ethics Commission, but that the office had added subscription alerts for additional items, such as when agendas and meeting minutes were posted. She further stated that the subscription alerts may not be working at this particular moment, but that IOT was working on resolving associated issues. Inspector Torres also stated that the formal advisory opinions page was updated after each formal advisory opinion was approved by the Commission. She also stated that there were subscription alerts for news releases, ethics officer resources, and rulemaking. The Inspector also said that Minutes, agendas, and public packets have all been posted online for about the last year or so.

Referring back to her earlier mention of rulemaking, the Inspector stated that they were in the process of readopting Indiana Administrative Code Title 42 in its entirety with no changes because it is scheduled to sunset at the end of 2018, which is the end of the seven year period. Next year, she further stated, that a re-adoption or a modification of Title 40 would be discussed.

The Inspector then mentioned the office's Twitter account, @InInspectorGen, which is ran by State Ethics Director Jen Cooper, who tweets anywhere from daily to every three days regarding the Commission meetings, formal advisory opinions, internal happenings, and the announcement of new Commission members. Commissioner Gilroy admitted that she was a follower of the office's Twitter account.

The second to last item the Inspector General mentioned was the ethics officer audit her office recently conducted, which referred to the examination into whether every agency had a current ethics officer designation on file, and her plan to get those current.

Lastly, the Inspector discussed the status of her office's required 2017 Annual Report to be filed with the Legislative Council, which had an original target completion date of February, 2018. Because the Annual Report had not yet been completed, Inspector Torres stated that her office would email the Report to the Commission as well as post it on the office's website next week, once it had been submitted to the Legislative Council.

#### **IV. Request for Formal Advisory Opinion**

**2018-FAO-0010 Jeffrey Chapman, II, Director of Provider Services  
Latosha Higgins, Managing Attorney/Ethics Officer  
Family & Social Services Administration**

Jeffrey Chapman is a state employee with the Family and Social Services Administration (FSSA) as the Director of Provider Services within the Office of Medicaid Policy and Planning (OMPP). The OMPP oversees the contracts for four Managed Care Entities (the MCEs): Managed Health Services (MHS), MD Wise, Anthem, and CareSource. Each of these MCEs have their own contracts with the State to provide managed care services. The MCEs are responsible for administering Medicaid benefits to members enrolled in Hoosier Healthwise, Hoosier Care Connect, and the Healthy Indiana Plan (HIP).

Mr. Chapman first joined the OMPP as the HIP Provider Relations Manager in February 2016. The Provider Relations Manager position is part of the Provider Services unit in OMPP. In March of 2017, Mr. Chapman was promoted as the Provider Services Director, reporting to the Deputy Medicaid Director.

OMPP Provider Services is responsible for enrolling new Medicaid providers, publishing provider communication and resources on IndianaMedicaid.com, and offering provider education in the form of Medicaid workshops, webinars, provider association meetings, and an

annual seminar. Each of the workshops offers a presentation by the State's fiscal agent, DXC Technology, in addition to the four MCEs.

As the Provider Services Director, Mr. Chapman is responsible for the oversight of the DXC Technology contract as it pertains to the member and provider call center, written correspondence, provider enrollment, and provider relations. Mr. Chapman also acts as a resource for Medicaid providers needing assistance resolving issues with DXC Technology and the MCEs. This requires collaboration between himself and the MCEs to reach a resolution. The State has no jurisdiction over claims submitted by a provider to an MCE but does have a team dedicated to MCE contract compliance. While Mr. Chapman communicates to the MCEs to address provider inquiries, he has no contract oversight, and he was not part of the contract RFP process. During the fall of 2016, a HIP and Hoosier Healthwise contract was awarded to four MCEs, including CareSource. Mr. Chapman was not part of the review or award decision, but he did collaborate with a team of about 30 individuals for readiness reviews to ensure the MCEs were capable of fulfilling the contractual responsibilities.

Mr. Chapman provides that he has not been a part of the contracts, RFI, or RFP for any of the MCEs. He further provides that he has not been in a position that would allow for a discretionary decision affecting the outcome of the negotiation or nature of the administration of any of the MCE's contracts. Additionally, the OMPP does not make any regulatory or licensing decisions with the State.

As the Director of Health Partnerships for CareSource, Mr. Chapman would be required to work with providers who have contracts with CareSource to assist with issues presented. Mr. Chapman would also have more operational responsibilities including working in conjunction with the VP of Market Operations to develop the regional plan to meet population specific needs, align to market requirements, and meet corporate goals. In addition Mr. Chapman would serve as a subject matter expert (SME), leading a regional team in areas of Value Based Reimbursement (VBR), Integration, Health Partner Relations, and operations to support regional and state performance goals.

Mr. Chapman requested an informal advisory opinion from the Indiana Office of Inspector General on March 7, 2018, prior to submitting an application and discussing potential employment with CareSource. The informal advisory opinion addressed the general application of the conflict of interests and post-employment rules to a position with one of the MCEs (not identified at that point). Mr. Chapman provides that a screen was put in place to avoid any potential conflict of interests, and he has not been involved with or made any decisions that could impact CareSource. He submitted his application to CareSource on March 19, 2018.

Mr. Chapman requested a formal advisory opinion to determine if it would be permissible to accept a position with CareSource immediately after leaving state employment.

The advisory opinion stated the following analysis:

*A. Confidential Information*

IC 4-2-6-6 prohibits Mr. Chapman from accepting any compensation from any employment, transaction, or investment that was entered into or made as a result of material information of a confidential nature.

Mr. Chapman confirmed that he would not be required to utilize any confidential information in his prospective employment with CareSource. So long as any compensation Mr. Chapman receives does not result from confidential information, his potential employment with CareSource would not violate IC 4-2-6-6.

#### *B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits Mr. Chapman from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits him from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, “an interest arising from employment or prospective employment for which negotiations have begun.”

In this case, employment negotiations have already begun. Accordingly, Mr. Chapman is prohibited from participating in any decision or vote, or matter related to a decision or vote, in which CareSource would have a financial interest in the outcome of the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement. Ms. Higgins provided that Mr. Chapman informed her, his supervisor, and the FSSA appointing authority of his employment negotiations with CareSource and that he has been screened from all CareSource matters.

The Commission finds that Mr. Chapman and FSSA have taken the necessary steps to ensure Mr. Chapman does not participate in any decisions or votes, or matters relating to such decisions or votes, in which CareSource has a financial interest. The screening mechanism implemented by FSSA must remain in effect for the remainder of his state employment to ensure that Mr. Chapman would not violate this rule.

#### *C. Post-Employment*

IC 4-2-6-11 consists of two separate limitations: a “cooling off” period and a “particular matter” restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Chapman from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Chapman is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration (IDOA).

Mr. Chapman provided that he does not anticipate engaging in any lobbying activities in his prospective employment with CareSource. To the extent that Mr. Chapman does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with CareSource would not violate this provision of the post-employment rule.

Second, Mr. Chapman is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

Mr. Chapman provides that he was not a part of the contracts, RFIs, or RFPs for any of the MCEs, including CareSource's contract, but he did assist in some parts of the readiness reviews to ensure the MCEs were able to fulfill their contractual obligations. He was part of a team consisting of 30 individuals who conducted these reviews, which were subject to further review and approval by his supervisors. Mr. Chapman notes that he has no oversight over CareSource's contract in his current position. He advised that his interactions with the MCEs, including CareSource, include facilitating mediations and communications with providers regarding problems with claim reimbursements and ensuring the MCEs present at educational workshops. Mr. Chapman also represented that FSSA has no authority or jurisdiction to make any determinations between providers and MCEs.

The Commission finds that Mr. Chapman did not negotiate or administer a contract with CareSource nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of CareSource's contract. Accordingly, the Commission further finds that the employee is not prohibited under this provision from accepting employment with CareSource immediately upon leaving state employment.

Third, Mr. Chapman is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

The Commission finds that this provision does not apply as Mr. Chapman provided that he has not made any regulatory or licensing decisions during his state employment. Consequently, he is not prohibited under this provision from accepting employment with CareSource immediately upon leaving state employment.

Fourth, Mr. Chapman is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information provided does not suggest that CareSource has extended an offer of employment to Mr. Chapman in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to his intended employment opportunity with CareSource.

Finally, Mr. Chapman is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project, or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

Mr. Chapman was one of 30 people who participated in the MCEs' contract readiness reviews to ensure the MCEs, including CareSource, were capable of fulfilling the contractual responsibilities. Mr. Chapman and Ms. Higgins both provided that Mr. Chapman had a limited role in this process and was not involved in any final decisions regarding any of the MCE contracts, including CareSource's contract.

The Commission finds that Mr. Chapman's participation in CareSource's contract, through his participation on the contract readiness team, was not personal or substantial. Accordingly, the particular matter restriction would not apply to the CareSource contract and Mr. Chapman would be able to assist CareSource with this contract if needed in his prospective position.

The Commission found that Mr. Chapman's post-employment opportunity with CareSource would not violate the post-employment restrictions found in IC 4-2-6-11, so long as he refrains from engaging in executive branch lobbying for one year after leaving state employment.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Noel seconded the motion which passed (5-0).

## **V. Director's Report**

State Ethics Director, Jen Cooper, stated that on March 9, 2018, her office received the last outstanding Financial Disclosure Statement, making the total number of 2017 financial disclosure statements received 2,074, including both required and non-required filers, which was about 150 more than received last year. Ms. Cooper further stated that this year, unlike last year, no required filers refused to file their Financial Disclosure Statement.

Ms. Cooper also mentioned that the number of informal advisory opinions issued since the last meeting was 29, which discussed conflicts of interests, ghost employment, use of state property, gifts, post-employment restrictions, and political activity.

**VI. Adjournment**

Commissioner Noel moved to adjourn the public meeting of the State Ethics Commission and Commissioner Finnerty seconded the motion, which passed (5-0).

The public meeting adjourned at 10:28 a.m.