

42 IAC 1-5-14 Post-employment restrictions (IC 4-2-6-11)
42 IAC 1-5-6 Conflict of interests; decisions and voting (IC 4-2-6-9)
IC 4-2-6-6 Compensation resulting from confidential information

An FSSA employee sought advice regarding whether accepting employment at CareSource, one of FSSA's Managed Care Entities (MCEs) would create conflicts of interests under the Code of Ethics, as the employee served on the readiness review team to ensure MCEs were able to fulfill contractual obligations. SEC determined that the employee's post-employment opportunity would not violate any ethics rules as long as the employee did not receive compensation resulting from confidential information; the employee did not participate in any decisions or votes or matters related to same in which he or CareSource would benefit from the outcome for the remainder of his state employment; and the employee did not engage in any executive branch lobbying for one year following his state employment. Further, the SEC determined that the cooling off period did not apply to the employee, as the employee did not engage in the negotiation or administration of any contracts between CareSource and the State, nor did the employee make any regulatory or licensing decisions that directly affected CareSource, its parent, or its subsidiary. SEC also found that the employee's participation on the readiness review team was not personal or substantial enough to trigger the particular matter prohibition of the post-employment rule.

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The Indiana State Ethics Commission (Commission) issues the following advisory opinion concerning the State Code of Ethics (Code) pursuant to IC 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

BACKGROUND

The employee 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).

The employee 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, the employee 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, the employee 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. The employee 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 the employee 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. The employee 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.

The employee 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, the employee would be required to work with providers who have contracts with CareSource to assist with issues presented. The employee 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 the employee 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.

The employee 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). The employee 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.

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

ISSUE

1. What rules in the Code apply to the employee's prospective post-employment opportunity with CareSource?
2. Would it be acceptable under the Code for the employee to accept employment with CareSource immediately after leaving state employment?
3. Would the employee be prohibited from working on CareSource's contract with FSSA on which he participated in the contract readiness reviews for all of the MCEs?

RELEVANT LAW

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

IC 4-2-6-9 (42 IAC 1-5-6)

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-11 (42 IAC 1-5-14)

One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

- (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.
- (12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;
before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
 - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
 - (B) any contract that:
 - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and
 - (ii) is no longer active.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee's or a special state appointee's:
 - (A) state officer or appointing authority authorizing the waiver; and
 - (B) agency ethics officer attesting to form.
- (2) The waiver must include the following information:
 - (A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.
 - (B) The nature of the duties to be performed by the employee for the prospective employer.
 - (C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.
 - (D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.
 - (E) The extent of economic hardship to the employee if the request for a waiver is denied.
- (3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

- (4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

- (1) made decisions as an administrative law judge; or
- (2) presided over information gathering or order drafting proceedings;

that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

- (1) be signed by the former state officer, employee, or special state appointee;
- (2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and
- (3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

ANALYSIS

A. Confidential Information

IC 4-2-6-6 prohibits the employee 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.

The employee confirmed that he would not be required to utilize any confidential information in his prospective employment with CareSource. So long as any compensation the employee 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 the employee 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, the employee 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. The Ethics Officer provided that the employee 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 the employee and FSSA have taken the necessary steps to ensure the employee 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 the employee 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 the employee from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, the employee 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).

The employee provided that he does not anticipate engaging in any lobbying activities in his prospective employment with CareSource. To the extent that the employee 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, the employee 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.

The employee 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. The employee 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. The employee also represented that FSSA has no authority or jurisdiction to make any determinations between providers and MCEs.

The Commission finds that the employee 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, the employee 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 the employee 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, the employee 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 the employee 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, the employee 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.

The employee 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. The employee and the Ethics Officer both provided that the employee 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 the employee'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 the employee would be able to assist CareSource with this contract if needed in his prospective position.

CONCLUSION

Subject to the foregoing analysis and the application of the one-year restriction regarding executive branch lobbying, the Commission finds that the employee's post-employment opportunity with CareSource would not violate the post-employment restrictions found in IC 4- 2-6-11.

Respectfully Submitted,

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Ethics Director