



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: FAMILY AND SOCIAL SERVICES ADMINISTRATION (FSSA)
TITLE: FSSA POST-EMPLOYMENT
CASE ID: 2016-08-0170
DATE: August 23, 2017

Inspector General Staff Attorney Stephanie Mullaney, after an investigation by Special Agent Mike Mischler, reports as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse, and wrongdoing in the executive branch of state government. IC 4-2-7-2(b). The OIG also investigates criminal activity and ethics violations by state workers. IC 4-2-7-3.

On August 12, 2016, the OIG received a complaint on its online hotline alleging that a former FSSA employee (the Employee) left her position at FSSA and began to work for an FSSA contractor called the Public Consulting Group, Inc. (PCG). Specifically, the complaint alleged that the Employee worked as the Director of the State Home and Community-based Services (HCBS) Waiver program at FSSA and now worked at PCG as their HCBS expert. The OIG received a second anonymous complaint about the Employee on August 30, 2016. This complaint stated that the Employee worked as the Policy Director at FSSA's Office of Medicaid Policy and Planning (OMPP) and that the Employee had the final say on behalf of OMPP regarding whether the contract between FSSA and PCG would be extended.

Special Agent Mike Mischler conducted an investigation. During his investigation, Special Agent Mischler interviewed several FSSA employees, and he also reviewed emails, contracts, and other documents.

During the investigation, Special Agent Mischler obtained an overview on the circumstances that led FSSA to enter into a contract with PCG. Special Agent Mischler learned that in 2014, FSSA's federal oversight agency, the Centers for Medicare and Medicaid Services (CMS), issued a new rule for Medicaid authorities regarding HCBS settings and waivers. CMS requires all states to come into compliance with the new HCBS rule by March 17, 2019. In order to come into compliance with this new rule, three divisions at FSSA that utilize HCBS waivers (the Division of Aging Services, the Division of Disability and Rehabilitative Services, and the Division of Mental Health and Addition) needed to make extensive changes to their HCBS waiver programs.

In addition to making specific changes required by the new rule, CMS also required all states to develop an overall transition plan to ensure that the State will come into compliance with the new HCBS rule in a timely manner. FSSA created a plan referred to as the Statewide Transition Plan (STP). To help manage FSSA's STP, the Director of FSSA's Division of Disability and Rehabilitative Services signed a contract with PCG for STP project management services. According to this contract, PCG was to provide an overall work plan for FSSA's STP, including timelines and responsibilities, to keep the FSSA divisions that utilize HCBS waivers progressing toward full compliance with the new HCBS rule.

Special Agent Mischler also obtained information about OMPP's organizational structure and the Employee's role within the agency. He learned that the Employee worked as the Director of OMPP's Policy and Program Development Section from June 2015 until July 2016. As the Director of the Policy and Program Development Section, the Employee was the head of this section, and she reported directly to the Deputy Medicaid Director. The Policy and Program Development Section consisted of three units, with a manager overseeing each unit. The

Employee directly supervised the manager of each unit. One of the units within her section was the State Plan & HCBS Unit. The Employee's job description stated her responsibilities included working with state employees and contractors "to evaluate and develop legislation, policies for coverage and benefits, Home and Community-based Services, and State Plan Amendments."

During his interviews with various FSSA staff, Special Agent Mischler also learned that OMPP has a compliance and oversight role regarding the use of Medicaid funds by other divisions at FSSA and that OMPP also serves as a liaison between FSSA and FSSA's federal oversight agency, CMS. Because of this role, OMPP also engaged in a management function regarding the STP for the HCBS waiver program and worked directly with PCG on PCG's project management duties. Specifically, because the Employee's section contained the State Plan & HCBS Unit, the Employee and her staff worked as the liaison between the various FSSA divisions and CMS regarding the STP, and the Employee and her staff also worked with the various FSSA divisions and PCG to submit documentation and obtain approvals from CMS on various parts of the STP.

Special Agent Mischler's investigation found that, as part of OMPP's project management role in the STP, the Employee engaged in directing communication between the FSSA divisions and PCG regarding the contract's deliverables, she attended meetings and participated in discussions with PCG regarding the completion of various parts of the STP, and she also attended quarterly HCBS Steering Committee meetings, which PCG scheduled pursuant to the terms of the contract.

Through interviews with various FSSA employees, Special Agent Mischler learned that after the Employee became the Policy Director, she expressed concerns that the STP meetings facilitated by PCG pursuant to the contract were not productive. The Employee then began to

take a more active role in facilitating meetings and communications between the various FSSA divisions and PCG, and she began to serve as the primary person communicating deadlines to FSSA and PCG. Special Agent Mischler obtained emails showing that the Employee and her staff held a meeting in the Employee's office to discuss the need for the Employee's section within OMPP to get more involved in working with the other FSSA divisions and PCG on the STP. Special Agent Mischler found additional emails showing that the Employee and her section organized a meeting with the various FSSA divisions to get an update on their progress on the STP and to discuss ways to improve communication between the FSSA divisions and PCG. Other emails that Special Mischler obtained through the investigation demonstrate that the Employee was often viewed as the STP lead within OMPP, as these emails show other FSSA employees deferring to the Employee regarding STP updates and decisions.

In addition to the meetings that the Employee and her section scheduled within FSSA to discuss how to improve communications between FSSA and PCG, Special Agent Mischler obtained emails and Outlook Calendar invites showing that the Employee attended various meetings between FSSA and PCG regarding the STP. Many of these meetings included discussions about timelines for FSSA divisions to submit document drafts to OMPP and PCG to review of these documents prior to final submission to CMS. Other emails obtained by Special Agent Mischler show the Employee discussing the finalization of a submittal with a PCG employee a few days after a meeting.

Special Agent Mischler also found emails showing that the Employee communicated important decisions and information about the STP to other FSSA divisions and PCG. Emails obtained by Special Agent Mischler show the Employee's subordinates discussing updated timelines on the STP but noting that the timelines discussed were contingent on the Employee's

approval. Special Agent Mischler obtained later emails showing that the Employee communicated formal updated timeframes on the STP to various FSSA divisions and to PCG.

The contract between FSSA and PCG provided that PCG was responsible for facilitating communication and scheduling meetings between the various FSSA divisions to ensure a successful implementation of the STP. The Employee's involvement in working with the FSSA divisions, as well as her perceived role as the lead on the STP from OMPP, affected how FSSA and PCG worked together to implement the STP. Moreover, the contract between PCG and FSSA provided that PCG would review written materials developed by FSSA divisions to ensure consistency. The Employee's involvement in meetings and setting timelines on the STP also affected PCG's work in receiving and reviewing documents under the contract.

Special Agent Mischler's investigation also found that the Employee attended at least one HCBS Steering Committee Meeting with FSSA leadership and PCG, on behalf of FSSA. PCG created this Committee as one of its deliverables in the Contract, and PCG scheduled meetings for the Committee on a quarterly basis. Special Agent Mischler obtained emails showing that a PCG employee emailed the Employee about the next HCBS Steering Committee meeting to ask who should attend from the Employee's section. The Employee responded and told the PCG employee to include both herself and her direct report at the next meeting.

The Employee's last day of state employment was July 8, 2016, and she began employment with PCG on August 8, 2016, approximately thirty days after leaving state employment. The Employee requested and received written advice from FSSA's Ethics Officer in January of 2016 prior to leaving state employment in July of 2016; however, the Employee's request for advice did not include all of the facts revealed in Special Agent Mischler's investigation.

Special Agent Mischler's investigation found that the Employee continued to work on the STP after starting her new position at PCG. Specifically, Special Agent Mischler obtained an HCBS Steering Committee Meeting agenda from October 2016, which shows the Employee attending the meeting in her capacity as a PCG employee. This HCBS Steering Committee meeting is the same type of meeting that the Employee attended in her capacity as a state employee.

On April 13, 2017, the OIG filed an ethics complaint against the Employee alleging that (1) she violated Ind. Code § 4-2-6-11(b)(2) when she engaged in the administration of the contract between FSSA and PCG and was in a position to make a discretionary decision affecting the nature of the administration; and (2) she violated Ind. Code § 4-2-6-11(c) when the Employee represented and/or assisted PCG with that contract after she personally and substantially participated in the contract as an FSSA employee. The Indiana State Ethics Commission (Commission) found probable cause for the complaint on April 13, 2017. The Employee entered into an agreed settlement with the OIG in which she admitted to the facts as alleged in the OIG's complaint and agreed to pay a fine of \$2,000.00. The OIG filed the Settlement Agreement with the Commission on July 6, 2017, and the Commission approved it on August 10, 2017. Payment of the fine of \$2,000 is due by September 9, 2017. Accordingly, this investigation is closed, pending receipt of the fine.

Dated: August 23, 2017

APPROVED BY:



Lori Torres, Inspector General