

#### **42 IAC 1-5-14 Post-Employment (IC 4-2-6-11)**

The Ethics Officer for the Indiana Family and Social Services Administration (FSSA) sought advice on behalf of a Quality Improvement Reviewer regarding a post-employment opportunity with a community mental health center that the employee reviewed while working for FSSA. The Commission finds that the post-employment rule would not prohibit the employee's acceptance of her proposed post-employment opportunity with the community mental health center.

February 13, 2025  
2025-FAO-003

The Indiana State Ethics Commission (Commission) issues the following Formal Advisory Opinion (FAO) 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, Family and Social Services Administration (FSSA) Ethics Officer, Matthew Gerber, and the state employee (Employee) whose post-employment opportunity serves as the basis for this request.

#### **BACKGROUND**

Employee serves as a Quality Improvement Reviewer (Reviewer) for the Division of Mental Health and Addiction (DMHA) within FSSA. FSSA and Employee request the Commission's FAO regarding Employee's potential post-employment opportunity with Aspire Health Indiana (Aspire).

In Employee's current position, she reviews addiction providers as well as community mental health centers (CMHCs) across Indiana. Employee's duties include reviewing policies and consumer charts for compliance with the Indiana administrative code. Each provider is assigned a lead reviewer to serve as their main contact with DMHA and send out notices, draft reports, prepare for reviews and monitor remediation activities. Employee was assigned as the lead reviewer for Aspire's 2024 and 2025 reviews. Other team members review all reviews and reports. Although Employee reviewed Aspire for compliance, she did not manage or make any final determinations as to corrective action plans and did not enforce those determinations.

Employee testified to the Commission that she and her team make recommendations to CMHCs such as whether to update templates or retrain staff, but she and her team do not make other recommendations as they cannot be prescriptive. Employee further explained that she reports data regarding a CMHC's compliance to her FSSA superiors and the ultimate decision-maker is several levels of reporting above her. Employee indicated that she has no discretion regarding what to report or what not to report to her supervisor. She described the reviews she completes for CMHCs as a list where she indicates whether there is compliance with various Indiana Administrative Code provisions. When asked whether this was essentially a checklist of "yes" or "no," she indicated that it was.

Aspire has offered Employee the position of Accreditation and Licensure Specialist. In this role, she would assist the compliance director in preparing reviews and would assist in the remediation of any necessary corrective actions. Her role would not include executive branch lobbying.

Employee indicates that she understands that because she participated in DMHA's reviews of Aspire in 2024 and 2025, the Code of Ethics (Code) prohibits her from representing or assisting Aspire in those particular matters.

Employee authorized FSSA to share the informal advisory opinion she requested and received from the Office of Inspector General (OIG). Based on the information Employee provided to the OIG for the informal advisory opinion, for an agency like Aspire, DMHA creates reports when it finds an agency to be under 85% compliance. DMHA sends these reports to the agency's Director of Quality and CEO. The agency then has thirty days to complete a corrective action plan for how they will address each of the findings. If the agency fails to fulfill the corrective action plan, DMHA can make the agency staff attend trainings led by Employee's team. No fines or financial penalties are associated with the findings. Employee's team at FSSA has the ability to put agencies on a conditional status, meaning the agency would not be allowed new admissions until a corrective action plan is approved. DMHA then re-reviews the agency within 180 days. If the agency does not fulfill remediation during that time, DMHA can terminate certification; however, DMHA does not terminate certifications for CMHCs, such as Aspire. Per the DMHA director, DMHA does not put a CMHC on a conditional status due to the potential effects it could have on the community it serves.

FSSA and employee seek a FAO from the Commission regarding whether the Code's Post-Employment restrictions would prohibit her from accepting employment with Aspire within 365 days of leaving state employment.

## **ISSUES**

Do the Code's post-employment restrictions prohibit Employee from accepting employment with Aspire?

## **RELEVANT LAW**

**IC 4-2-6-11 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 lapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

### **ANALYSIS**

Employee's request for a FAO invokes consideration of the Code's post-employment rule (IC 4-2-6-11).

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 Employee from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Employee is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence her in her official capacity as a state employee. Nothing in the information provided indicates that Aspire has offered this position to Employee to influence her in her FSSA duties.

Second, 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. Employee indicates that her position would not involve any executive branch lobbying. So long as she does not engage in executive branch lobbying, Employee's post-employment opportunity with Aspire would not violate this provision of the post-employment rule.

Third, Employee is prohibited from accepting employment for 365 days from the last day of her state employment from an employer with whom 1) she 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. Nothing in the information provided indicates that Employee was involved in any contracts with Aspire during her state employment.

Fourth, Employee is prohibited from accepting employment for 365 days from the last day of her state employment from an employer for whom she made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

Employee was Aspire's lead reviewer for its 2024 and 2025 reviews with DMHA. In this role, Employee served as Aspire's main contact with DMHA, sent out notices, drafted reports, prepared for interviews and monitored remediation activities. Based on the information Employee provided to the Commission, she did not manage or make any final determinations as to corrective action plans and did not enforce those determinations.

As Employee did not have discretion on what to report to her superiors and merely compiled information to be provided through multiple layers of reporting to the ultimate decision-maker, the Commission finds that Employee did not make a regulatory or licensing decision related to Aspire such that the Code would prohibit Employee from accepting an offer of employment from Aspire. The Commission, however, rejects the idea that this provision solely applies to the top-level decision-maker and acknowledges that the provision may apply to individuals in similar situations with more discretion than Employee. The Commission further acknowledges the fact-sensitive nature of this Code provision.

Finally, Employee is subject to the post-employment rule's "particular matter" prohibition in her prospective post-employment. This restriction prevents her from representing or assisting a person on any of the following twelve matters if she 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.

Employee indicates she understands that due to her participation in DMHA's reviews of Aspire in 2024 and 2025, the Code prohibits her from representing or assisting Aspire in those particular matters.

## **CONCLUSION**

**The Commission finds that in her particular role, Employee did not make any regulatory or licensing decisions related to Aspire; therefore, the Code does not prohibit Employee from accepting Aspire's offer of employment.**

Respectfully Submitted,



---

Regan Perrodin  
State Ethics Commission Director  
Office of Inspector General