

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
August 8, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:01 a.m. Commission members present included Katherine Noel, Chairperson; Sue Anne Gilroy; Corinne Finnerty; and Kenneth Todd. Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Kelly Elliott, Staff Attorney; Heidi Adair, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Cynthia Scruggs, Director of Administration, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Ryan Locke, Deputy Treasurer of State, Office of Treasurer of State; Troy Montigney, Executive Director, Indiana Education Savings Authority/Office of Treasurer of State; Sarah Kamhi, Assistant General Counsel and Director, Department of Revenue; Aaron Hunter, Healthy Indiana Plan Analyst, Family and Social Services Administration; James French, Attorney and Ethics Officer, Indiana Department of Environmental Management; Beth Green, General Counsel, Department of Workforce Development; Sylvia Watson, General Counsel, Indiana State Library; Laura Turner, Deputy General Counsel, Indiana Criminal Justice Institute; William Anthony, Deputy Attorney General, Office of Attorney General; Deana Smith, Attorney and Ethics Officer, Indiana State Department of Health; Chris Kulik, Staff Attorney, Indiana State Department of Health; Latosha M. Higgins, Managing Attorney and Ethics Officer, Family and Social Services Administration; and, Tammera Glickman, Deputy General Counsel, Indiana Department of Administration.

II. Adoption of Amended Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the amended Agenda reflecting the withdrawn Formal Advisory Request 2019-FO-0013 and Commissioner Gilroy seconded the motion which passed (4-0). Commissioner Gilroy moved to approve the Minutes of the July 11, 2019 Commission Meeting and Commissioner Todd seconded the motion which passed (4-0).

III. Consideration of Office of the Indiana Treasurer of State Waiver of Post-Employment Restrictions for Troy Montigney

Ryan Locke, Office of the Indiana Treasurer of State Deputy Treasurer of State and General Counsel, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Todd seconded the motion which passed (4-0).

IV. Consideration of Limited Use of State Property Policy for Indiana Office of Inspector General

Inspector General Lori Torres presented a Policy on Limited Personal Use of State Property/Resources to the Commission for consideration and adoption. This policy establishes guidelines for limited personal use of state property/resources by state employees and special state appointees of the Office of Inspector General.

Commissioner Gilroy moved to approve the policy, and Commissioner Finnerty seconded the motion which passed (4-0)

V. Request for Formal Advisory Opinion

2019-FAO-0014

Aaron Hunter, Healthy Indiana Plan Analyst

Latosha Higgins, Managing Attorney/Ethics Officer

Family & Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Aaron Hunter, Client Healthy Indiana Plan (HIP) Analyst Operations Manager in FSSA's Office of Medicaid Policy and Planning (OMPP).

Mr. Hunter began working for FSSA in this position in 2018. In this position, he works with Managed Care Entities (MCEs) and is responsible for assisting with customer service efforts; participating in regular customer service team meetings with MCEs; researching and tracking member issues; and responding to inquiries from members, legislators and other officials. Additionally, his duties include routine reporting of cases and issues; identifying critical customer service issues; and bringing them to the HIP team attention for policy and system resolution.

MCE members pay MCEs for health coverage through the State. Mr. Hunter provides trouble shooting by assisting the members in opening up their account with the State. Mr. Hunter is also responsible for relaying information to MCEs and directing the flow of Medicaid/HIP applications to MCEs. The individual applying for state health insurance selects the MCE, and Mr. Hunter directs the application accordingly.

On July 16, 2019, Mr. Hunter notified Ms. Higgins that he applied and interviewed for a Regulatory Contract Manager position with CareSource, one of the MCEs that contracts with FSSA to coordinate care for members enrolled in Indiana Medicaid programs. CareSource is a nonprofit managed care company based in Dayton, Ohio. The company offers Medicaid managed care plans, Medicare Advantage plans and Marketplace insurance plans in multiple states. Mr. Hunter learned about the position after uploading his resume in June 2019 to various online job

search websites. On July 1, 2019, CareSource contacted him requesting a phone interview on July 3, 2019. CareSource then conducted a second interview with him on July 11, 2019.

Ms. Higgins provides that although Mr. Hunter regularly interacts with CareSource in his current position, he was not part of the team that made the final decision to award a contract to CareSource. Furthermore, Mr. Hunter has not engaged in the negotiation or administration of any contract between the State and CareSource, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with CareSource. He does not make any regulatory or licensing decisions.

According to Ms. Higgins, OMPP's Quality & Outcomes section maintains oversight of the MCEs and manages their contracts to ensure compliance. Contract managers under the leadership of the Managed Care Compliance Manager and Quality and Outcomes Section Director are the primary point of contact for the MCEs. CareSource has an assigned contract manager.

Once OMPP was made aware of Mr. Hunter's interest in employment with CareSource, OMPP removed him from working on any issues related to their contract operations. OMPP assigned a different person to handle all correspondence with CareSource.

The potential CareSource position is different from the duties that Mr. Hunter has currently with the OMPP. Mr. Hunter's role as a Regulatory Contract Manager with CareSource would require him to be responsible for ensuring that CareSource fulfills its contract obligations with the State's HIP 2.0 Program. This would include establishing and maintaining a collaborative working relationship with his assigned regulatory agency (FSSA); serving as the primary liaison per contract requirements with FSSA; and providing replies to requested data or reports from regulators.

Additionally, the position would require him to be the primary person accountable for providing interpretation and guidance to CareSource regarding regulatory requirements and government contract administration. The position would also require him to respond to incoming regulatory and legislative inquiries and issues regarding compliance requirements.

Mr. Hunter has confirmed with Ms. Higgins that he knows and understands that Indiana's ethics laws will continue to apply to him as a private sector employee. He understands and agrees not to divulge confidential information of FSSA to anyone. Furthermore, Mr. Hunter understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code of Ethics to Mr. Hunter's post-employment opportunity with CareSource.

The advisory opinion stated the following analysis:

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Hunter 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. So long as any compensation Mr. Hunter 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. Hunter 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. Hunter would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with CareSource, would have a financial interest in the outcome of the matter.

Ms. Higgins provides that once Mr. Hunter informed her that he had applied and interviewed for the Regulatory Contract Manager position with CareSource, OMPP removed him from working on any issues related to their contract operations. OMPP assigned a different person to handle all correspondence with CareSource.

Based on the information provided, it appears that a potential conflict of interest was identified. IC 4-2-6-9(b) requires that a state employee who identifies a potential conflict of interests notify his agency’s appointing authority and ethics officer and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

Ms. Higgins provides that Mr. Hunter notified her of the potential opportunity with CareSource on July 15, 2019, and FSSA took steps to screen him from matters in which CareSource would have a financial interest in the outcome of any decisions or votes he would make as part of his responsibilities as a Client HIP Analyst, including providing troubleshooting and directing the flow of Medicaid/HIP applications. Ms. Higgins then requested this formal advisory opinion on Mr. Hunter’s behalf.

The Commission finds that Mr. Hunter, with Ms Higgins assistance, has complied with the disclosure requirements under IC 4-2-6-9, including the request for a formal advisory opinion. Mr. Hunter must ensure he continues to refrain from participating in any decisions or votes, or matters relating to any such decisions or votes, in which he or CareSource has a financial interest in the outcome of the matter for the remainder of his state employment.

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

First, Mr. Hunter 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.

Ms. Higgins provides that Mr. Hunter understands he is prohibited from engaging in any lobbying activities in his prospective employment with CareSource. To the extent that Mr. Hunter does not engage in executive branch lobbying for one year after leaving state employment, the Commissioner finds that his intended employment with CareSource would not violate this provision of the post-employment rule.

Second, Mr. Hunter 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.

According to Ms. Higgins, Mr. Hunter has not engaged in the negotiation or administration of any contract between the State and CareSource, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of any contract with CareSource.

The Commission finds that Mr. Hunter did not have any contracting responsibilities in his position at FSSA and would not be subject to the cooling off restriction for his role in interacting with CareSource and the other MCEs as a Client HIP Analysis. Accordingly, he may accept employment with CareSource immediately upon leaving state employment.

Third, Mr. Hunter 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.

Ms. Higgins provides that Mr. Hunter does not make any regulatory or licensing decisions in his position with FSSA. The Commission finds that Mr. Hunter has never made any regulatory or licensing decisions that applied to CareSource as a state employee, and he is not prohibited under this provision from accepting employment with CareSource immediately upon leaving state employment.

Fourth, Mr. Hunter 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 presented to the Commission does not

suggest that CareSource has extended an offer of employment to Mr. Hunter 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. Hunter 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.

In this instance, Mr. Hunter would be prohibited from representing or assisting CareSource, as well as any other person, in a particular matter in which he personally and substantially participated as a state employee.

Ms. Higgins provides that Mr. Hunter's prospective job responsibilities with CareSource would be different from the duties that Mr. Hunter has currently with the OMPP. Mr. Hunter's role as a Regulatory Contract Manager with CareSource would require him to be responsible for ensuring that CareSource fulfills its contract obligations with the State's HIP 2.0 Program. This would include establishing and maintaining a collaborative working relationship with his assigned regulatory agency (FSSA); serving as the primary liaison per contract requirements with FSSA; and providing replies to requested data or reports from regulators.

Although he interacted with CareSource and the other MCEs and assisted in troubleshooting matters with them, Mr. Hunter did not have any contract responsibilities as an FSSA employee. It does not appear that he actually worked on CareSource's contract itself. Accordingly, the Commission finds that Mr. Hunter did not personally and substantially participate in CareSource's contract while an FSSA employee, and he would not be prohibited from working on this contract for CareSource, as it appears he would be doing in his prospective position as the Regulatory Contract Manager for CareSource.

The Commission further finds that Mr. Hunter must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters that he may have been personally and substantially involved in during his state employment.

Commissioner Todd moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

VI. Consideration of Rule Adoption

Title 40

Kelly Elliott, Staff Attorney

Tiffany Mulligan, Chief Legal Counsel

Indiana Office of Inspector General

Indiana Office of Inspector General Staff Attorney Kelly Elliott presented an update to the information presented at the July 2019 SEC Meeting to the rule promulgation of Title 40, Article 2 of the Indiana Administrative Code.

Since the July meeting, the State Ethics Commission (SEC), staffed by the Office of Inspector General (OIG), held a public hearing on July 25, 2019, to receive public comments on the proposed rule amendments to 40 IAC 2. No individuals present at the public hearing wished to provide a comment.

The public comment period ended on July 25, 2019. The OIG did not receive any written public comments regarding the proposed rule amendments to 40 IAC 2. Additionally, the Small Business Ombudsman with the Indiana Economic Development Corporation reviewed the proposed rule and economic impact analysis for small businesses associated with the rule changes and concluded the proposed rule will impose no additional requirements or costs on small businesses.

On June 26, 2019, the Legislative Services Agency (LSA) provided the OIG with suggested changes to the proposed rule. The OIG made changes to the proposed rule published in the Indiana Register based on the suggestions. The changes made to the proposed rule are as follows:

1. Remove the term “either” from 40 IAC 2-2-2(c);
2. Add a definition for “commission” to 40 IAC 2-3-1.5 to clarify the rule applies to the SEC and remove the term “state ethics” from 40 IAC 2-3-1 and 40 IAC 2-4.5-1; and
3. Reword 40 IAC 2-3-4.1(e)(3) to change the placement of the term “if known.”

Attorney Elliott, on behalf of the OIG, respectfully requested that the SEC adopt proposed rule 40 IAC 2.

Commissioner Noel moved to approve the rule, and Commissioner Gilroy seconded the motion which passed (4-0).

VII. Director’s Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 28 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, the use of state property, and gifts.

Ms. Cooper also stated that the public hearing in the Arvin Copeland matter had been continued from September 13, 2018 to December 13, 2018 in order to allow the parties’ additional time to reach a settlement in lieu of having a hearing.

VIII. Adjournment

Commissioner Todd moved to adjourn the public meeting of the State Ethics Commission and Commissioner Finnerty seconded the motion, which passed (4-0).

The public meeting adjourned at 10:23 a.m.