

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
March 10, 2022**

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 were Katherine Noel, Chair; Corinne Finnerty; and Kenneth Todd (by telephone). Office of Inspector General staff present included David Cook, Inspector General; Tiffany Mulligan, Chief of Staff and Chief Legal Counsel and Interim State Ethics Director; Mark Mader, Staff Attorney; Doreen Clark, Staff Attorney; Jan Kruse, Special Agent; Cindy Scruggs, Director of Administration; and Nathan Baker, Legal Assistant.

Others present were Jessica Keyes, Ethics Officer, Family and Social Services Administration; Beth Green, General Counsel/Ethics Officer, Department of Workforce Development; Jennifer Cooper, Ethics Officer, Management Performance Hub; John Walls, Chief Counsel and Ethics Officer, Indiana Attorney General’s Office; Kristi Shute, Deputy General Counsel, Indiana Department of Homeland Security; Jared Linder, Chief Information Officer, Family and Social Services Administration; Connor Norwood, Chief Data Officer, Family and Social Services Administration; and Sean Gorman.

II. Adoption of Amended Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda, and Commissioner Todd seconded the motion with the request that the Agenda be amended slightly to reserve some time at the end of the meeting for personal time to address the Commission. There was no objection to Commissioner Todd’s request, and the Commission passed the amended agenda (3-0).

Commissioner Todd moved to approve the Minutes of the February 10, 2022, Commission Meeting, and Commissioner Finnerty seconded the motion, which passed (3-0).

**III. Request for Formal Advisory Opinion
2022-FAO-004**

WITHDRAWN

**IV. Request for Formal Advisory Opinion
2022-FAO-005
Dr. Frank Messina, Director of Clinical Operations
Jessica Keyes, Ethics Officer
Indiana Family and Social Services Administration**

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Dr. Frank Messina, the

new Director of Clinical Operations for FSSA's Office of Medicaid Policy and Planning (OMPP). Specifically, Ms. Keyes is requesting an opinion from the Commission to ensure that Dr. Messina's continued outside employment/professional activity with Eskenazi Health (Eskenazi) and Indiana University (IU) School of Medicine is acceptable under the Code while he is employed at FSSA.

Dr. Messina started in his role at FSSA on February 7, 2022. Prior to accepting his position with the State, Dr. Messina worked in the Emergency Department of Eskenazi. Dr. Messina wishes to continue this outside employment with Eskenazi while serving in his role as OMPP's Director of Clinical Operations.

Also, prior to accepting the position with the State, Dr. Messina was on the faculty with IU School of Medicine. Dr. Messina is on unpaid leave from the IU School of Medicine. He retains his faculty appointment, and he would like to maintain that appointment moving forward in his role as OMPP's Director of Clinical Operations.

Dr. Messina is directly employed by IU Health Physicians, which contracts with Eskenazi to staff its Emergency Department. IU Health Physicians pays Dr. Messina hourly, and Dr. Messina does not bill his patients or insurance directly. Dr. Messina is considered a supplemental employee. IU Health Physicians will continue to pay him on an hourly basis for his work at Eskenazi, rather than Dr. Messina billing patients or insurance. As Dr. Messina will be providing patient care in the Emergency Department, this could potentially include Medicaid patients similar to any other physician providing medical services for IU Health Physicians. His compensation would not be tied to the charges and collections that he generates or the payer mix of the patients for which he cares; however, his fees may be paid from general Medicaid funds.

As OMPP's Director of Clinical Operations, Dr. Messina's duties include providing medical oversight, expertise and leadership to projects and operations within OMPP. He reports to the Medicaid Director. Dr. Messina's position oversees all clinical operations within OMPP and as performed by the Managed Care Entities. He is generally not in a position to make decisions regarding specific Medicaid providers, and any direction he would provide regarding protocols, policies or procedures that might impact external stakeholders would apply to all clinical specialists, hospital administrators and any other providers uniformly.

Dr. Messina will work with FSSA's Pharmacy Team, led by a Pharmacy Director and Coverage and Benefits Team. Occasionally, Dr. Messina will assist FSSA's Program Integrity Team when the medical director is unavailable. The Program Integrity Team is primarily responsible for reviewing suspected cases of fraud and abuse and making recommendations regarding Medicaid providers. Usually, the OMPP Medical Director serves on the Program Integrity Team and participates in the meetings. Furthermore, the reviews conducted by the Program Integrity Team usually concern the actions of an individual and not an entity; therefore, it is unlikely FSSA would make a decision that would have a unique impact on IU Health Physicians, Eskenazi or their related entities. If the situation presented itself, FSSA would screen Dr. Messina from participating in such decisions by having his colleague, Dr. Mary Reilly, be given full authority to handle such matters independently.

At this time, Dr. Messina's role does not include any contract administration or rulemaking as OMPP's Director of Clinical Operations. There may be an opportunity for rule or contract review; however, these reviews would be on matters applicable to all Medicaid providers generally. Dr. Messina understands that he would need to be screened from any issues involving only IU Health Physicians or Eskenazi.

Dr. Messina's shifts with Eskenazi will generally be on Wednesdays, but he may assist in other shifts on evenings or weekends to assist with coverage. Dr. Messina has no concerns with being able to meet the weekly 37.5 regular work hours in his role as Director of Clinical Operations. Dr. Messina understands that he cannot use state funds for outside employment with either Eskenazi or IU School of Medicine.

Dr. Messina believes that it is important to continue to work in the Emergency Department to maintain skills through patient contact, which will allow continued access to real world issues that OMPP faces and oversees. Eskenazi is a safety-net hospital, meaning that it provides health care and related services to the uninsured, Medicaid members and other vulnerable populations regardless of the ability to pay.

Dr. Messina has and will continue to pay for his own licensing fees and certifications. He has not and will not serve in a managerial or leadership role with Eskenazi or IU Health Physicians, his direct employer.

Eskenazi and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA, specifically with FSSA's Division of Mental Health and Addiction (DMHA). DMHA also certifies Eskenazi's community mental health center. IU Health Physicians is affiliated with IU Health. FSSA's divisions have three active contracts with IU Health. The contracts with Eskenazi and IU Health are at the division level, and none are with OMPP. The FSSA divisions have ownership of the contracts. Ms. Keyes writes that Dr. Messina will not sign or negotiate these contracts as OMPP's Director of Clinical Operations.

Dr. Messina also would like to maintain his appointment with the IU School of Medicine while he is employed with FSSA. Dr. Messina has taken an unpaid leave of absence and has maintained his title and the full rights of a faculty member. He will not receive benefits or salary from IU School of Medicine during his leave of absence, but he must continue to abide by the professional standards of the medical school to remain a faculty member in good standing. This leave is renewed annually.

According to Ms. Keyes, Dr. Messina understands the duty to maintain confidential information learned through his employment with the State and that he is prevented from divulging confidential information or allowing anyone, including Eskenazi and IU Health Physicians, from benefitting from such information.

Ms. Keyes is seeking the Commission's opinion regarding the application of any of the rules

in the Code to Dr. Messina's continued outside employment with Eskenazi and IU School of Medicine.

The analysis stated the following:

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his official duties that his ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity.

Based on the information provided by Ms. Keyes, Dr. Messina's employment at Eskenazi would not create a conflict under this provision. Dr. Messina has not and will not serve in a supervisory or leadership role with Eskenazi or IU Health Physicians, his direct employer. Instead, he will be providing patient care in the Emergency Department.

His other outside employment/professional activity would not provide Dr. Messina with compensation of a substantial value. Dr. Messina is taking an unpaid leave of absence from his position with IU School of Medicine and will not receive any benefits or salary during this time.

Ms. Keyes provides that Dr. Messina understands that he is prohibited from disclosing confidential information that he may have access to by virtue of his state employment in any of his outside positions. Nothing in the information presented suggests that Dr. Messina would use or attempt to use his state position for any unwarranted privileges or exemptions for anyone, including Eskenazi, IU Health Physicians or the IU School of Medicine. Dr. Messina held both of his outside positions prior to becoming the OMPP Director of Clinical Operations.

Accordingly, the Commission finds that Dr. Messina's outside employment positions with Eskenazi and IU School of Medicine would not create a conflict of interests for him under IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Messina from participating in any decision or vote, or matter relating to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Messina from participating in any decision or vote, or matter relating

to that decision or vote, if a business organization which employs him has a financial interest in the matter.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify his or her Ethics Officer and Appointing Authority and seek an advisory opinion from the Commission or file a written disclosure statement.

Dr. Messina is serving as OMPP's Director of Clinical Operations and will be working in the Emergency Department at Eskenazi periodically. Dr. Messina will serve as a supplemental employee, and IU Health Physicians will pay him on an hourly basis for his work at Eskenazi through IU Health Physicians.

Accordingly, Dr. Messina would have a potential conflict of interests if he is in a position to participate in decisions or votes, or matters related to such decisions or votes, in which he, Eskenazi, IU Health Physicians or IU Health would have a financial interest in the outcome.

Ms. Keyes explains that Eskenazi and IU Health Physicians are Indiana Medicaid enrolled Providers. Each have Indiana Health Coverage Program provider agreements with FSSA and receive Medicaid reimbursement. Eskenazi has five active contracts with FSSA, specifically with DMHA. DMHA also certifies Eskenazi's community mental health center. IU Health Physicians is affiliated with IU Health. FSSA's divisions have three active contracts with IU Health. The contracts with Eskenazi and IU Health are at the division level, and none are with OMPP. The FSSA divisions have ownership of the contracts. Ms. Keyes writes that Dr. Messina will not sign or negotiate these contracts as OMPP's Director of Clinical Operations.

The Commission finds that Dr. Messina does not have an identified potential conflict of interests at this time. Should Dr. Messina as OMPP's Director of Clinical Operations be in a position to participate in a matter that could uniquely affect Eskenazi, IU Health Physicians or IU Health, FSSA must institute a screening mechanism whereby it would delegate any such decisions, and matters related to such decisions, to an FSSA colleague.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Keyes provides that Eskenazi has five active contracts with FSSA's DMHA. FSSA's divisions have three active contracts with IU Health.

Ms. Keyes and Dr. Messina informed the Commission that IU Health will not compensate Dr. Messina with funds from a state contract or state grant. They advised that Dr. Messina's fees may be paid from general Medicaid funds; such funds are not considered to be derived from a state contract.

The Commission find that FSSA has taken the appropriate steps to ensure Dr. Messina will not have a conflict of interests under both the Code and Indiana criminal code and that Dr. Messina would not have a financial interest in a state contract that would create a conflict of interests.

D. Confidential information

Dr. Messina is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. Messina from accepting any compensation from any employment, transaction or investment that is entered into or made as a result of material information of a confidential nature. The term “person” is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as IU Health. In addition, the definition of “information of a confidential nature” is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Messina is exposed to or has access to such confidential information in his new position at FSSA, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including any of his outside employers, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Messina from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Dr. Messina from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental or institutional policy or regulation.

To the extent that Dr. Messina observes these provisions regarding his outside employment/professional activities, his outside positions would not violate these ethics laws.

Subject to the foregoing analysis, the Commission finds that Dr. Messina’s continued outside employment positions with Eskenazi and IU School of Medicine would not create a conflict of interests under the Code of Ethics so long as FSSA implements a screen that would prohibit Dr. Messina from participating in any matters in which Eskenazi, IU Health Physicians or IU Health would have a unique financial interest.

Commissioner Finnerty moved to approve the Commission’s findings, and Commissioner Todd seconded the motion, which passed (3-0).

V. Request for Formal Advisory Opinion

2022-FAO-006

Connor Norwood, Chief Data Officer

Jessica Keyes, Ethics Officer

Indiana Family and Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of Connor Norwood, Chief Data Officer (CDO) for FSSA, regarding a post-employment opportunity.

In his role as CDO with FSSA, Mr. Norwood supports the enterprise data warehouses for the Supplemental Nutrition Assistance Program (SNAP)/Temporary Assistance for Needy Families (TANF) and Medicaid data analytics; designs, develops and implements an agency-wide data governance strategy to support data-driven culture; conducts research studies and program evaluation to answer agency and state priorities around health policy and health services delivery; collaborates with the Office of the Governor and other state agencies to harness the power of data to achieve state policy goals; and fosters intra-division relationships and direct integration of data/analytics programs across the agency.

Mr. Norwood plans to leave state employment within the next couple of months and open his own solo practice consulting firm (Firm) as a limited liability company. The Firm will provide consultation regarding data and analytics and assist customers in data management and their data practice. Mr. Norwood initially will be the only employee in the Firm. He has been working on creating a business implementation plan for the Firm as he wraps up his state employment.

As part of his business implementation plan, Mr. Norwood has been in communication with a potential client, EImagine. EImagine provides technology consulting. Mr. Norwood's discussions with EImagine have centered around data management and EImagine's data practice and how that might fit in with Mr. Norwood's Firm. Mr. Norwood and EImagine also discussed information regarding EImagine's infrastructure and the systems and benefits EImagine has in place that could be beneficial to Mr. Norwood in starting the Firm. These systems and benefits include human resources services and similar systems and services.

EImagine is a current contractor with FSSA. FSSA contracted with EImagine to support the Care Management for Social Services system (CaMSS) for FSSA's Division of Aging, Division of Mental Health and Addiction and with an option to extend to the Bureau of Developmental Disability Services. This system is part of the larger integrated care and case management system initiative to modernize and consolidate various care management applications through FSSA. EImagine provides technology consulting, maintenance and operations support for CaMSS and system enhancement services to expand the CaMSS systems should other FSSA divisions desire to implement them. EImagine will work to plan, design, develop and implement solution enhancements with CaMSS. A recent contract amendment added cloud migration as a service under the contract, as well.

EImagine's current contract with FSSA is related to technology and does not have a data practice component. EImagine does not provide advance analytics or data science work/information for FSSA. Additionally, in his state employment, Mr. Norwood has not worked with EImagine and has not interacted with any of EImagine's employees working on the CaMSS contract. Mr. Norwood does not and has not overseen contract negotiation or administration regarding EImagine and does not make decisions or vote on matters directly related to EImagine in his role as CDO.

Mr. Norwood's Firm will perform work related to data management and practice. His discussions with EImagine have been to explore work he could contract with EImagine to perform on the data side of their practice. Mr. Norwood and EImagine have discussed resources that could be shared or referrals made regarding business infrastructure.

Ms. Keyes writes that Mr. Norwood will not be engaged in any lobbying for the Firm. Additionally, she provides that he was not involved in contract negotiation or administration involving EImagine and he did not make any regulatory or licensing decisions related to EImagine while with the State. Finally, Mr. Norwood has not worked on any particular matters as a state employee on which he will be working for EImagine while working for the Firm.

According to Ms. Keyes, Mr. Norwood understands that he would be prohibited from representing or assisting EImagine on any particular matter in which he personally and substantially participated as a state employee, and this restriction would apply to other contracts with the Firm as well. Mr. Norwood also understands the restrictions against divulging confidential information learned through state employment.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code to Mr. Norwood's post-employment opportunity and specifically his potential business relationship with EImagine.

The analysis stated the following:

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Norwood 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. Norwood receives does not result from confidential information, his potential employment with the Firm and business relationship with EImagine would not violate IC 4-2-6-6.

B. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits Mr. Norwood 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)(3) and (4) prohibit him from participating in any decision or vote or matter related to a decision or vote, in which a business organization in which he is serving as a member, partner or employee or with whom he is negotiating employment 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, Mr. Norwood has already begun negotiations with EImagine as a potential client of the Firm. As such, Mr. Norwood 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 prospective business relationship with EImagine, would have a financial interest in the outcome of the matter.

Ms. Keyes writes that Mr. Norwood has not worked with EImagine and has not interacted with any of EImagine's employees working on the CaMSS contract; therefore, FSSA has not yet identified a potential conflict of interests. If a potential conflict of interests is identified during Mr. Norwood's remaining employment with the State, IC 4-2-6-9(b) requires Mr. Norwood to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with the OIG.

Furthermore, Mr. Norwood 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, the Firm or EImagine 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. Norwood from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Norwood 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.

Based on the information provided, Mr. Norwood would not be engaging in any lobbying activities in his prospective employment with the Firm. To the extent that Mr. Norwood does not engage in executive branch lobbying for one year after leaving state employment, his intended employment with the Firm and business relationship with EImagine would not violate this provision of the post-employment rule.

Second, Mr. Norwood 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.

EImagine has an active contract with FSSA; however, Mr. Norwood does not and has not overseen contract negotiation or administration with EImagine, and he does not make decisions or votes directly related to EImagine in his role as CDO. Accordingly, this restriction would not prohibit Mr. Norwood from working for the Firm or pursuing a business relationship with EImagine upon leaving state employment.

Third, Mr. Norwood 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. Keyes provides that Mr. Norwood has not made any regulatory or licensing decisions related to EImagine in his role with the State. Accordingly, this provision of the cooling off restriction would not prohibit Mr. Norwood from working for the Firm or pursuing a business relationship with EImagine.

Fourth, Mr. Norwood 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 EImagine has discussed working with Mr. Norwood in an attempt to influence him in his capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to Mr. Norwood's intended employment opportunity with the Firm or his potential business with EImagine.

Finally, Mr. Norwood 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. Norwood would be prohibited from representing or assisting the Firm, EImagine or any other person, in a particular matter in which he personally and substantially participated as a state employee.

Ms. Keyes provides that Mr. Norwood understands that he would be prohibited from representing or assisting EImagine on any particular matter in which he personally and substantially participated as a state employee, and this would apply to other contracts for the Firm as well.

Mr. Norwood should keep in mind that he is prohibited from assisting the Firm, EImagine or any other person on any of the other particular matters listed above on which he may have personally and substantially worked during his state employment.

Subject to the foregoing analysis, the Commission finds that Mr. Norwood's post-employment opportunity with the Firm and potential business relationship with EImagine would not violate the post-employment restrictions found in IC 4-2-6-11.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Todd seconded the motion, which passed (3-0).

VI. Request for Formal Advisory Opinion

2022-FAO-007

Jessica Keyes, Ethics Officer

Jared Linder, Chief Information Officer

Indiana Family & Social Services Administration

Jessica Keyes is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Keyes is requesting an advisory opinion on behalf of FSSA.

Ms. Keyes asks how the Code would apply to an FSSA employee holding a voting position as a member of the Indiana Health Information Exchange (IHIE) Board (Board). IHIE is seeking to add a voting member from FSSA to the Board, through updating their bylaws. FSSA does not currently have a member on the Board; however, IHIE has requested an FSSA voting member be added to the Board due to the needs of FSSA for certain information/data. FSSA also has a unique voice/perspective on issues relating to exchange of health information, which can change what data is used/collected and how it is integrated to improve access to the same. Ms. Keyes writes that there is no known compensation available for the FSSA role on the Board.

The Regenstrief Institute founded IHIE in 2004 as a non-profit organization. IHIE is a 501(c)(3) supporting organization. IHIE facilitates sharing of patient medical records between providers and makes health information available to approximately 50,000 providers in Indiana and surrounding states. IHIE is the main information exchange for patient records, serving all of Indiana. IHIE operates the Indiana Network for Patient Care (INPC), which is the clinical data repository where contracted providers both send and utilize data. Indiana Medicaid is a provider of data to the INPC, along with the hospital systems.

The composition of the IHIE board includes hospital systems, healthcare associations, academia, state representatives and community members. The information sent and received can include data, such as lab results, radiology reports, hospital admissions and hospital discharge.

FSSA has at least three active contracts with IHIE at present. The first requires IHIE to provide a customized clinical data repository and reporting for FSSA's Maternal Opioid Misuse Indiana Initiative program, including admission, discharge and transfers (ADT) reporting regarding the usage of healthcare resources and reduced healthcare costs, clinical value reporting regarding clinical data from the data repository in consumable format and care manager access to analyze data for a specific segment of the Medicaid population.

The second contract is a two-part contract involving a data use agreement for IHIE to obtain data and provide ADT alerts regarding the usage of healthcare resources and a joinder agreement creating membership in the INPC.

Finally, the third contract requires IHIE to work with FSSA and the Indiana Department of Health (IDOH) to refine the difference between quantitative pregnancy tests and qualitative results and other services related to the OB Navigator Program.

Ms. Keyes writes that FSSA would like to pursue a voting position on the Board to allow for a voice on data exchange and improving information for members and future members of FSSA services. Due to the current, and likely ongoing, contracts between FSSA and IHIE relating to

information exchange and data sharing/refining, the FSSA employee who serves as a voting member of the Board could have a conflict of interests due to being a member of the Board, which has a financial interest in FSSA decisions.

Ms. Keyes writes that, to avoid a potential conflict of interests, FSSA could remove any FSSA employee who negotiates, administers or oversees/implements any contracts with IHIE or with decision making/voting authority from consideration for the FSSA position on the Board. She further writes that FSSA is prepared to file a screen for the FSSA employee who would serve on the Board, if approved by the Commission, to screen the employee from participating in decisions, votes or matters relating to decisions or votes in which IHIE would have a financial interest. Furthermore, FSSA will remind any FSSA Board member of the Code rules prohibiting state employees from benefitting from or divulging confidential information learned through state employment.

In February of 2022, the Commission approved allowing the State Health Commissioner or another IDOH employee to serve as a voting member of the Board with the appropriate screening and application of Code requirements. This question is similar to the issue raised by IDOH.

Ms. Keyes seeks a formal advisory opinion on behalf of FSSA on this matter to ensure full compliance with the Code and to avoid any appearance of impropriety that may arise.

The analysis stated the following:

A. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits an FSSA employee from participating in any decision or vote, or matter relating to that decision or vote, if he or she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits an FSSA employee from participating in any decision or vote, or matter relating to that decision or vote, if he or she or a business organization in which the employee serves as a director or a member has a financial interest in the outcome. In addition, the rule requires state employees who recognize a potential conflict of interests to notify their agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure form with the Office of Inspector General.

If an FSSA employee were to serve as a voting member of the Board, the employee would be a director or member of IHIE. Thus, IC 4-2-6-9 would prohibit the FSSA representative on the Board from participating in any decision or vote, or matter related to a decision or vote, for FSSA in which IHIE would have a financial interest. Also, it would trigger the disclosure requirements in IC 4-2-6-9(b) if the participating FSSA employee identifies a potential conflict of interests.

Ms. Keyes provides that FSSA has contracts with IHIE. If the FSSA employee who serves on the Board is in a position to participate in decisions or votes in which IHIE would have a financial interest, such as decisions involving IHIE's contracts with FSSA, then the employee must notify his or her appointing authority and Ethics Officer in writing and either seek a formal advisory opinion or file a written disclosure statement with the Commission.

The Commission finds that FSSA should execute an appropriate screen that prohibits the FSSA employee who sits as a voting member of the Board from participating in any decisions or votes, or matters related to decisions or votes, at FSSA in which IHIE would have a financial interest. So long as FSSA executes an appropriate screen, the Commission finds that the participating FSSA employee would not be in violation of IC 4-2-6-9.

B. Outside Employment/Professional Activity

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central or critical to the performance of his or her official duties that his or her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use his or her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

The Commission generally defers to an agency's ethics officer regarding outside employment or professional activity opportunities since these individuals are in a better position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment or professional activity opportunity.

Based on the information provided by Ms. Keyes, the participating FSSA employee would be serving on the Board in his or her official capacity; therefore, subsections (1) and (2) would not prohibit the FSSA employee from serving on the Board. Regarding subsection (3), the participating FSSA employee is prohibited from using his or her FSSA position to secure unwarranted privileges or exemptions for IHIE or anyone else that subsection (3) prohibits.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition, however, does not apply to an employee that does not participate in or have contracting responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Keyes confirmed that no IDOH employee would receive compensation, including reimbursement for expenses, from IHIE for serving on the Board. Thus, this rule will not apply.

D. Gifts

The participating FSSA employee also should be aware of 42 IAC 1-5-1, which is the gift rule. The gift rule states, in part, that a state employee shall not knowingly solicit, accept or receive any gift, favor, service, entertainment, food, drink, travel expenses or registration fees from: (1) a

person who has a business relationship with the employee's agency; or (2) a person who is seeking to influence an action by the employee in his or her official capacity.

"Business relationship" is defined in IC 4-2-6-1(a)(5) to include the dealings of a person with an agency seeking, obtaining, establishing, maintaining or implementing (i) a pecuniary interest in a contract or purchase with an agency; (ii) a license or permit requiring the exercise of an agency's judgment or discretion; or (iii) a lobbyist.

The general prohibition on gifts is subject to the eight exceptions outlined in subsection (b) of 42 IAC 1-5-1, or the agency's appointing authority may waive its application in certain circumstances as provided for in subsections (c) and (d).

Ms. Keyes provides that FSSA has a contract with IHIE. As such, IHIE has a business relationship with FSSA, and an FSSA employee is prohibited from accepting any gifts from IHIE, unless an exception applies or the FSSA employee obtains a gift waiver.

E. Confidential information

The participating FSSA employee is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. To the extent that the participating FSSA employee will possess information of a confidential nature by virtue of his or her position with FSSA that could be used to benefit the Board, IHIE or any other person or entity, the participating FSSA employee must ensure that he or she complies with these rules.

Subject to the foregoing analysis, the Commission finds that the participating FSSA employee would have a potential conflict of interests under IC 4-2-6-9 if he or she were to participate in decisions or votes, or matters related to such decisions and votes for FSSA in which IHIE would have a direct financial interest in the outcome of the matter. The Commission further finds that FSSA should implement a screening mechanism to ensure the participating FSSA employee does not participate in any decisions or votes, or matters relating to such decisions and votes, in which IHIE has a financial interest.

Commissioner Todd moved to approve the Commission's findings, and Commissioner Finnerty seconded the motion, which passed (3-0).

VII. Interim Ethics Director's Report

Tiffany Mulligan, OIG's Chief of Staff and Chief Legal Counsel, started by reporting that Sean Gorman has been hired as the new State Ethics Director and will have his first day on March 14, 2022. The OIG is very excited for Mr. Gorman to begin as Ethics Director, and he will take over providing reports to the Commission beginning with the April meeting.

Ms. Mulligan then took the opportunity to introduce the two new Staff Attorneys, Mark Mader and Doreen Clark, to the Commission at this first in-person meeting since 2020.

Ms. Mulligan went on to report that OIG staff has issued 23 informal advisory opinions since the previous last meeting. The majority of these requests dealt with questions concerning conflicts of interests, use of state property, ghost employment, outside employment, post-employment and gifts.

The deadline for the 2021 Financial Disclosure Statement filing period was February 2, 2022. As of this meeting date, less than five filers remained, and the OIG anticipates that we will have full compliance with this requirement by the April Commission meeting. Ms. Mulligan also indicated that the OIG is still working on the Ethics Training, which should be completed later this year.

Ms. Mulligan yielded the floor to Inspector General David Cook who took the opportunity to address the Commission. He first introduced himself as this was the first time he was able to do so in-person. The Inspector General then addressed Commissioner Todd regarding his tenure with the Commission, and because this was the Commissioner's final meeting, Inspector General Cook thanked Commissioner Todd for his service and presented a Certificate to Commissioner Todd to show gratitude for his years of service.

VIII. Personal Time – Commissioner Kenneth Todd

Commissioner Todd began his personal time to thank Inspector General Cook for the Certificate and gratitude shown. He said it had been an honor and privilege to serve on the State Ethics Commission and with his fellow Commissioners. Commissioner Todd also thanked the OIG Staff for their ongoing facilitation of the Commission meetings.

Commissioner Todd ended by wishing his fellow Commissioners well in their continued service. Both Commissioner Finnerty and Commission Chair Noel offered their thanks to Commissioner Todd and also wished him well.

IX. Adjournment

Commissioner Todd moved to adjourn the public meeting of the State Ethics Commission. Commissioner Finnerty seconded the motion, which passed (3-0).

The public meeting adjourned at 10:35 a.m.