

**MINUTES OF THE MEETING OF  
THE INDIANA STATE ETHICS COMMISSION  
February 14, 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 Acting Chairperson Corinne Finnerty; Sue Anne Gilroy and Katherine Noel. OIG Staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Tiffany Mulligan, Chief Legal Counsel; Heidi Adair, Staff Attorney; Cindy Scruggs, Director of Administration; Jack Bedan, Special Agent and Dale Brewer, Legal Assistant.

Others present were Beth Green, General Counsel and Ethics Officer, DWD; Stephanie Mullany, Deputy Attorney General, OAG; Molly Skarbeck, Administrative Assistant, OAG; Jared Prentice, Ethics Officer, DOR; Mattheus Mitchel, Compliance and Ethics Specialist, DOR; Latosha N. Higgins, Managing Attorney and Ethics Officer, FSSA; Christopher B. Serak, Ethics Officer and Prequalification Director, INDOT; Sarah E. Kamhi, Assistant General Counsel, DOR; Tamera Glickman, Assistant General Counsel, IDOA; Samantha Walton, HIP Operations Manager, FSSA; Sylvia Watson, General Counsel, ISL; Chris Kulik, Staff Attorney, ISDH; Deana Smith, Ethics Officer, ISDH; Erika Steuerwald, ISDH; and Manda Clevenger, Staff Attorney and Privacy Officer, ISDH.

**II. Selection of Acting Chair**

A motion was made by Commissioner Noel to appoint Commissioner Finnerty as acting chair for the February 14, 2019, Commission meeting. Commissioner Gilroy seconded, and the motion passed. (3-0)

**III. Adoption of Agenda and Approval of Minutes**

Commissioner Noel moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed. (3-0) Commissioner Gilroy moved to approve the Minutes of the January 10, 2019 Commission Meeting and Commissioner Noel seconded the motion which passed. (3-0)

**IV. Request for Formal Advisory Opinion: Post Employment Restrictions**

**2019-FAO-002    Samantha Walton, HIP Operations Manager  
                          Latosha N. Higgins, Ethics Officer  
                          Family and Social Services Administration**

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), requested an advisory opinion on behalf of Samantha Walton, Healthy Indiana Plan (HIP) Operations Manager in the Office of Medicaid Policy and Planning (OMPP). Specifically, Ms. Higgins is requesting an opinion from the Commission addressing any conflicts of interests and post-employment restrictions that would apply to Ms. Walton.

Ms. Walton began working for FSSA in 2014 as the Executive Assistant to the Medicaid Director. In 2017, she became the HIP Operations Manager. Her position is responsible for working with the Quality and Outcomes Section in OMPP to establish and measure the quality components of HIP. She is responsible for assisting with the development and implementation of the Medicaid quality strategy plan related to HIP. Her responsibilities include managing operations of the HIP program and working with the OMPP Quality & Outcomes Section to monitor the compliance of the four managed care entities (MCE) that contract with FSSA as their performance directly impacts the operations of the program. Ms. Walton supervises two staff members who are responsible for handling client case concerns and process questions related to the program, MCEs, State, or provider. Each member of her staff is responsible for dealing with customer complaints for their assigned MCEs. Her staff reviews the matters on their own and if they have questions they consult Ms. Walton on the scenario of the case. There is a third staff member who is responsible for the same tasks but solely focuses on Gateway to Work, a component of HIP and for all four MCEs.

Ms. Walton receives information regarding trends in the program by reviewing reports to see what can be done to correct data discrepancies between the eligibility, fiscal, and MCE systems. She provides guidance to the Division of Family Resources, ICES, DXC Technology, and the MCEs on interim solutions to systematic problems that arise. The information and guidance she provides is shared equally with the MCEs. The MCEs all receive the same information. If she identifies an issue with compliance she escalates the matter to contract compliance. Ms. Walton does not provide any recommendations regarding the action that should be taken regarding an MCE's compliance. Nor does she have authority to recommend any course of action.

Ms. Walton is interested in leaving state employment for a position as a Market Service Manager with CareSource. CareSource is 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. On November 20, 2018, Ms. Walton notified Ms. Higgins that she applied for and had a first interview for the Market Service Manager position with CareSource.

As the HIP Operations Manager, Ms. Walton regularly interacts with CareSource. The majority of her interactions are with an analyst who reviews member issues with her team or the compliance section when there are questions or clarifications needed related to all MCEs. In 2016, while working as the HIP Compliance Analyst, Ms. Walton participated in scoring the HIP portion of the MCE Request for Proposals (RFP). The RFP was a large scale project, and Ms. Walton was a member of a team working on scoring the RFP. There were four sections for the RFP, Ms. Walton only participated in scoring the HIP section, and her score was only one part of

the overall process. Her score was not binding on the total score of each MCE. Ms. Walton was not part of the team that made the final decision to award a contract to CareSource.

Ms. Higgins provides that Ms. Walton has not engaged in the negotiation or administration of any contract between the State and CareSource nor was she in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with CareSource.

Once OMPP was made aware of Ms. Walton's interest in employment with CareSource, she was removed from working on any issues related their contract operations. A different person was assigned to handle all correspondence with CareSource. In addition, Ms. Walton has not participated in any one-on-one operational meetings with CareSource regarding HIP POWER account reconciliation or Gateway to Work operations. Nor did she participate in any onsite reviews to see if CareSource was ready to operate the new Gateway to Work program. 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 Manger and Quality and Outcomes Section Director are the primary point of contact for the MCEs. CareSource has an assigned contract manager.

Ms. Walton's role as Market Service Manager with CareSource would include consulting with market leaders and the accountable executive to ensure initiatives align with the company's overall business strategy and to develop business cases for new investments.

Ms. Higgins writes that Ms. Walton knows and understands that Indiana's ethics laws will continue to apply to her as a private sector employee. She understands and agrees not to divulge confidential information of FSSA during her post-employment endeavors. Furthermore, Ms. Walton 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 Ms. Walton's post-employment opportunity with CareSource.

The advisory opinion stated the following analysis:

*A. Confidential Information*

IC 4-2-6-6 prohibits Ms. Walton 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 Ms. Walton receives does not result from confidential information, her potential employment with CareSource would not violate IC 4-2-6-6.

*B. Conflict of Interests*

IC 4-2-6-9(a)(1) prohibits Ms. Walton from participating in any decision or vote, or matter related to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits her from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom she 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, Ms. Walton would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which she, by virtue of her employment negotiations with the vendor, or the vendor itself would have a financial interest in the outcome of the matter.

IC 4-2-6-9(b) requires a state employee who recognizes a potential conflict of interests to notify her 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 Ms. Walton notified her and the agency of the potential opportunity with CareSource in November of 2018, and FSSA took steps to screen her from matters in which CareSource would have a financial interest in the outcome of any decisions or votes she would make as part of her responsibilities as HIP Operations Manager. Specifically, Ms. Higgins provides that Ms. Walton was removed from working on any issues related to their contract operations. A different person was assigned to handle all correspondence with CareSource. In addition, Ms. Walton has not participated in any one-on-one operational meetings with CareSource since beginning employment negotiations with CareSource. Ms. Higgins then requested this formal advisory opinion on Ms. Walton’s behalf.

To the extent that she continues to not participate in any decisions or votes, or matters relating to any such decisions or votes, in which she or CareSource has a financial interest in the outcome of the matter for the remainder of her state employment, and she ensures that FSSA’s appointing authority has been notified of the identified potential conflict of interests, the Commission finds that Ms. Walton has complied with 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 Ms. Walton from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances.

First, Ms. Walton 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 Ms. Walton understands she is prohibited from engaging in any lobbying activities in her prospective employment with CareSource. To the extent that Ms. Walton does not engage in executive branch lobbying for one year after leaving state employment, her intended employment with CareSource would not violate this provision of the post-employment rule.

Second, Ms. Walton 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.

In 2016, while working as the HIP Compliance Analyst, Ms. Walton did participate in the RFP process for all four of the MCEs as part of a team that scored the HIP portion of the RFP for all four of the MCE contracts. There were four sections of the RFP, Ms. Walton only participated in scoring the HIP section, and her score was only one part of the overall process. The RFP process is part of the contract negotiations that eventually led to CareSource's contract with FSSA.

In Formal Advisory Opinion [17-I-10](#), the Commission found that a former FSSA Contract Compliance Manager who was part of a team who scored portions of the MCE RFP was not subject to the one-year cooling off period. The Commission found that this employee's limited participation (scoring only the HIP portions as part of a team of scorers) in the scoring of the RFP was not enough to constitute a discretionary decision affecting the outcome of the negotiation of the contract.

Consistent with 17-I-10, the Commission finds that Ms. Walton's limited participation in the scoring of this RFP is not enough to constitute a discretionary decision affecting the outcome of the negotiation of a contract. Accordingly, Ms. Walton would not be subject to the cooling off restriction for her role in this RFP process, and she may accept employment with CareSource immediately upon leaving state employment.

The Commission further finds that although some of Ms. Walton's current duties for FSSA appear to come close to or at least relate to the administration of a contract, it does not appear that Ms. Walton had the discretionary authority to affect the nature of CareSource's MCE contract. Although Ms. Walton escalates concerns to other FSSA divisions regarding MCEs not meeting a contract requirement, Ms. Higgins explained that another division at FSSA is responsible for MCE accountability. 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 who makes any discretionary decisions regarding the nature of the administration of their contract.

Accordingly, Ms. Walton would not be subject to the cooling off restriction for her role in the RFP process and other duties related to the CareSource contract, and she may accept employment with CareSource immediately upon leaving state employment.

Third, Ms. Walton 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.

Based on the information provided, Ms. Walton has never made a regulatory or licensing decision that directly applied to CareSource during the course of her state employment. Accordingly, the Commission finds that she is not prohibited under this provision from accepting employment with CareSource immediately upon leaving state employment.

Fourth, Ms. Walton 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. The information presented to the Commission does not suggest that CareSource has extended an offer of employment to Ms. Walton in an attempt to influence her in her capacity as a state employee. Accordingly, the Commission finds that this restriction would not apply to her intended employment opportunity with CareSource.

Finally, Ms. Walton 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.

According to the information provided, Ms. Walton's prospective position as Market Service Manager with CareSource would include consulting with market leaders and the account executives to ensure initiatives align with the company's overall business strategy and to develop business cases for new investments. Ms. Walton will not have any responsibilities regarding CareSource's MCE contract with FSSA nor, to the best of her knowledge, will she have to communicate with FSSA.

The Commission finds that Ms. Walton must ensure compliance with the particular matter restriction and refrain from assisting CareSource or any other person on any of the particular matters listed above in which she may have participated personally and substantially during her state employment.

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

Commissioner Gilroy moved to approve the Commission's finding, and Commissioner Noel seconded the motion which passed. (3-0)

**V. Consideration of the Agreed Settlement  
In the Matter of Adam K. Jones/Case Number 2018-07-0183  
Tiffany Mulligan, Chief Legal Counsel  
Office of Inspector General**

Tiffany Mulligan presented the proposed Agreed Settlement to the Commission for their approval, reminding them that they had approved Probable Cause in this case at their December meeting and if the Commission accepts the Agreed Settlement it will be the final disposition of the proceedings involving Mr. Jones.

Commissioner Noel made a motion to approve the Agreed Settlement. Commissioner Gilroy seconded the motion which passed. (3-0)

**VI. Director's Report**

State Ethics Director, Jen Cooper, stated that the number of informal advisory opinions issued by the Office of Inspector General since the last meeting was 26. Ms. Cooper reported that the OIG was currently completing the process of the annual filing requirements of the Financial Disclosure Statements. At present, the OIG has received over 1700 filings and indicated that the OIG will have a full report of the number of statements received and any that have failed to report.

**VII. Adjournment**

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

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