

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
March 8, 2018**

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 included James Clevenger, Chairperson; Corinne Finnerty; Sue Anne Gilroy; and Katherine Noel. Staff present included Jennifer Cooper, Ethics Director; Lori Torres, Inspector General; Matthew Savage, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Kelly Haltom, Staff Attorney, and Celeste Croft, Legal Assistant, Office of Inspector General.

Others present were Adrienne Brune, Staff Attorney/Ethics Officer, State Department of Health; Stephanie Mullaney, Deputy Attorney General, Attorney General’s Office; Sarah Kamhi, Assistant General Counsel, Department of Revenue; Rachel Russell, Deputy General Counsel, Department of Child Services; Tammera Glickman, Assistant General Counsel, Department of Administration; Deana Smith, Attorney, State Department of Health; Beth Green, General Counsel, Department of Workforce Development; Joan Blackwell, Chief of Staff, Attorney General’s Office; Jacqueline Tucker, Program Coordinator 6, Department of Child Services; Yonda Snyder, former Director of Division of Aging, Family & Social Services Administration; Debbie Pierson, Deputy Director of Division of Aging, Family & Social Services Administration; Latosha Higgins, Managing Attorney/Ethics Officer, Family & Social Services Administration; Michael Kaufmann, EMS Medical Director, Department of Homeland Security; Jonathan Whitham, General Counsel/Ethics Officer, Department of Homeland Security; Mark Tidd, Ethics Officer/Special Advisor; Sylvia Watson, General Counsel, State Library; Molly Funk, Administrative Assistant, Attorney General’s Office; and Hilari Sautbine, Attorney, Department of Health.

II. Adoption of Agenda and Approval of Minutes

Commissioner Finnerty moved to adopt the Agenda and Commissioner Gilroy seconded the motion which passed (4-0). Commissioner Noel moved to approve the Minutes of the February 8, 2018 Commission Meeting and Commissioner Finnerty seconded the motion which passed (4-0).

III. Request for Formal Advisory Opinion

**2018-FAO-007 Yonda Snyder, former Director, Division of Aging
 Latosha Higgins, Managing Attorney/Ethics Officer
 Family & Social Services Administration**

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), requested a Formal Advisory Opinion on the behalf of Yonda Snyder. Ms. Snyder is resigning from FSSA and establishing a professional practice, a limited liability company, with Debbie Pierson, an FSSA colleague, effective February 28, 2018.

Ms. Snyder joined FSSA as an employee of the State Personnel Department, embedded in FSSA as the Director of Human Resources in 2013. On January 6, 2014, she became the Director of the Division of Aging (DA). Ms. Snyder submitted her resignation to FSSA on February 1, 2018. Her resignation from state government became effective February 28, 2018.

As DA Director, Ms. Snyder was responsible for the development, implementation and oversight of programs, operations and policies relating to the provision of information, resources, and publicly funded long-term care services to individuals with physical disabilities and the aged. Ms. Snyder was responsible for overseeing the procurement, negotiation, implementation and oversight of all contracts and grants executed by the DA. She also participated in the procurement, negotiation, and oversight of contracts executed through the Office of Medicaid Policy and Planning (OMPP) that were related to work administered by the DA but funded by Medicaid.

The DA has designation authority, as the State Unit on Aging, for Area Agencies on Aging and Aging and Disability Resource Centers. Ms. Snyder oversaw the work of the DA in carrying out these responsibilities; including overseeing the administration of the grants and contracts with the organizations carrying out these responsibilities. The DA does not perform any licensing activities, but does certify entities to participate in Medicaid waiver programs as providers of home and community based services, and Ms. Snyder oversaw the work of the unit tasked with this responsibility.

Ms. Snyder did not perform any oversight activities related to licensure. The DA role is limited to certification of entities to participate in Medicaid waiver programs as providers of home and community based services and the conduct of Medicaid compliance reviews every three years. This includes both licensed and unlicensed providers of services. Licensing and regulatory oversight of providers is the province of the Indiana State Department of Health (ISDH) for providers required by law to be licensed. The DA collaborated with ISDH on provider requirements relating to Medicaid rules. The DA has an MOU with ISDH to grant waivers to ISDH licensure requirements so that providers can be certified to participate in Medicaid waiver programs. Ms. Pierson oversees the work of the unit tasked with this responsibility.

Ms. Snyder was involved in the contracting process for the following entities: netlogx, the Lewin Group, Indiana 211, and Ascend. The DA contract with netlogx is for the development and implementation of data and compliance monitoring and reporting systems. The netlogx contract expires June 30, 2018. Additionally, the DA has a contract with the Lewin Group to provide environmental scans, data analysis, and technical assistance to the DA in support of the agency's "Long Term Care Transformation Project" including the amendment and renewal of the DA's Aged and Disabled Waiver. This contract will expire June 30, 2020. The Indiana 211 contract is for the administration of the Adult Protective Services Hotline and for the establishment and maintenance of a statewide resource database, and it expires October 31, 2018. She also oversaw the administration of an OMPP contract with Ascend, a division of Maximus, for the provision of

software and assessments relating to preadmission screening and resident review statewide. The Ascend contract expires June 30, 2018. There is currently a Request for Proposals in process for this function and an amendment to extend this contract is in progress. Maximus is a contractor to other divisions of FSSA; however, Ms. Snyder was not involved in the contracting process for any contracts other than the DA contract with Ascend.

Ms. Snyder's limited liability consulting firm will provide technical assistance to states, other government entities, and direct service providers on matters relating to the access and provision of long term services and supports in home and community based settings. Focus areas include Preadmission Screening and Resident Review, No Wrong Door systems, and the Centers for Medicare and Medicaid Services Final Rule on Home and Community Based Services (the "Settings Rule"). Examples of the types of work that Ms. Snyder anticipates her business providing include:

- Evaluation and research, analysis and report writing
- Business process optimization and systems implementation
- Quality assurance and quality improvement
- Stakeholder engagement planning and facilitation
- Transition planning and remediation monitoring.

Ms. Snyder anticipates the possibility that the work that her professional practice hopes to do will be as a contractor or subcontractor to other entities who seek to add subject matter expertise and/or capacity to their engagements with states, other government entities, or provider networks. The market of organizations with specific knowledge in some of the areas above is small. Although the need for these services is great, Ms. Snyder estimates that there are less than a dozen large companies providing the same services she plans to offer through her professional practice. Additionally, she believes the number of entities providing assistance with preadmission screening and resident review is even smaller. Therefore, Ms. Snyder anticipates the potential for referrals to subcontract with some of the organizations that she has previously overseen as contractors to the DA for work in other states. These subcontracts would not involve any contracts Ms. Snyder was involved in the negotiation or administration of during her employment with FSSA.

Ms. Snyder has been advised of the disclosure requirements of IC 4-2-6-11(i), and she plans to comply. She also knows and understands that Indiana's ethics laws will continue to apply to her as a business owner of a professional practice. She understands and agrees not to divulge confidential information of FSSA during her post-employment endeavors. Furthermore, Ms. Snyder understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Based on the information presented, FSSA believes that Ms. Snyder's plans to establish her professional practice to provide consulting services are permissible under Indiana's ethics laws. They are seeking a Formal Advisory Opinion for confirmation.

The advisory opinion stated the following analysis:

Ms. Snyder's post-employment professional practice/consulting opportunity implicates the provisions of the Code pertaining to confidential information and post-employment. The application of each provision to Ms. Snyder's prospective post-employment opportunity is analyzed below.

A. Confidential Information

IC 4-2-6-6 prohibits Ms. Snyder 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.

Ms. Snyder confirmed that she would not utilize confidential information in her professional consulting practice. So long as any compensation Ms. Snyder receives through her professional practice does not result from confidential information, her post-employment consulting opportunities would not violate IC 4-2-6-6.

B. 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. Snyder from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation and therefore includes a client or customer of a self-employed individual.

First, Ms. Snyder 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 (IDOA). The information provided by Ms. Higgins indicates that Ms. Snyder understands this restriction and has agreed to abide by the one-year restriction regarding registering as an executive branch lobbyist.

To the extent that Ms. Snyder does not engage in executive branch lobbying for one year after leaving state employment, her intended post-employment consulting work would not violate this provision of the post-employment rule.

Second, Ms. Snyder 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 her role as DA Director, Ms. Snyder has been substantially involved in the negotiation and administration of numerous contracts for FSSA. According to the information provided by Ms. Higgins, Ms. Snyder anticipates that the LLC would potentially receive

referrals to subcontract with some of the organizations that she has previously overseen as contractors to the DA for work in other states.

The Commission finds that Ms. Snyder's involvement in these contracts would trigger the cooling off requirement and she would be prohibited from accepting employment from any of these organizations for one year after leaving state employment. However, since she is establishing a professional practice, her LLC could enter into a business relationship with any of these organizations if she meets the disclosure requirements in IC 4-2-6-11(i)(1)-(3) and files a disclosure with the State Ethics Commission within 180 days of leaving state service. The disclosure must (1) be signed by Ms. Snyder; (2) certify that Ms. Snyder 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 Ms. Snyder.

The Commission further finds that Ms. Snyder should file an initial disclosure upon the LLC's entering into a contract with a company that would otherwise trigger the cooling off period within the 180 days; this disclosure can then be amended to include additional information when future contracts are executed. In the alternative, she can file a separate disclosure form each time the LLC enters into a contract with one of these entities during the 180 day period, and this would also meet the requirements in IC 4-2-6-11(i)(1)-(3). The State Ethics Director will prepare a standardized form for this disclosure and assist Ms. Snyder and Ms. Higgins in the filing process as needed.

Third, Ms. Snyder 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.

The Commission finds that this provision does not apply as Ms. Higgins has provided that Ms. Snyder did not perform any oversight activities related to licensure in her role as DA Director and did not make any regulatory or licensing decisions that applied to the potential clients of the LLC.

Fourth, Ms. Snyder is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose was to influence her in her official capacity as a state employee. Ms. Snyder has already left state employment and nothing in the information provided suggests that any of the organizations with whom her LLC may contract attempted to influence her in her former official capacity as a state employee.

Finally, Ms. Snyder 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.

Ms. Snyder has personally and substantially participated in various contracts during her state employment. However, Ms. Snyder provided that the LLC will not enter into subcontracts that involve contracts for which she was involved in the negotiation or administration during her employment with FSSA.

The Commission finds that Ms. Snyder must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that she may have personally and substantially worked on during her state employment.

The Commission found that the professional practice Ms. Snyder is establishing will be able to enter into subcontracts with entities with whom she would be prohibited from being employed by for one year after leaving state employment so long as she meets the disclosure requirements under IC 4-2-6-11(i)(1)-(3).

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

IV. Request for Formal Advisory Opinion

**2018-FAO-008 Debbie Pierson, Deputy Director, Division of Aging
Latosha Higgins, Managing Attorney/Ethics Officer
Family & Social Services Administration**

Latosha Higgins, Ethics Officer for the Indiana Family and Social Services Administration (FSSA), requested a Formal Advisory Opinion on the behalf of Debbie Pierson. Ms. Pierson is resigning from FSSA and establishing a professional practice, a limited liability company, with Yonda Snyder, an FSSA colleague.

Ms. Pierson joined FSSA as a Projects Manager in the Division of Aging (DA) in 2013. In March 2015, she became the Deputy Director of the DA. Ms. Pierson submitted her resignation to FSSA on February 9, 2018. Her resignation from state government will become effective March 9, 2018.

As Deputy Director of the DA, Ms. Pierson was responsible for assisting DA Director Snyder (Director) with the development, implementation and oversight of programs, operations and policies relating to the provision of information, resources, and publicly funded long-term care services to individuals with physical disabilities and the aged. Ms. Pierson was also responsible for assisting the Director with overseeing the procurement, negotiation, implementation and day-to-day management and oversight of all contracts and grants executed by the DA. She also participated in the procurement, negotiation, and oversight of contracts executed through the Office of Medicaid Policy & Planning (OMPP) that were related to work administered by the DA but funded by Medicaid.

The DA has designation authority, as the State Unit on Aging, for Area Agencies on Aging and Aging and Disability Resource Centers. Ms. Pierson assisted the Director with oversight of the

work of the DA in carrying out these responsibilities; including overseeing the administration of the grants and contracts with the organizations carrying out these responsibilities. The DA does not perform any licensing activities but does certify entities to participate in Medicaid waiver programs as providers of home and community based services, and Ms. Pierson assisted the Director with overseeing the work of the unit tasked with this responsibility.

Ms. Pierson did not perform any oversight activities related to licensure. The DA role is limited to certification of entities to participate in Medicaid waiver programs as providers of home and community based services and the conduct of Medicaid compliance reviews every three years. This includes both licensed and unlicensed providers of services. Licensing and regulatory oversight of providers is the province of the Indiana State Department of Health (ISDH) for providers required by law to be licensed. The DA collaborated with ISDH on provider requirements relating to Medicaid rules. The DA has an MOU with ISDH to grant waivers to ISDH licensure requirements so that providers can be certified to participate in Medicaid waiver programs. Ms. Pierson assisted with the oversight of the work of the unit tasked with this responsibility.

Ms. Pierson was involved in the contracting process for the following entities: netlogx, the Lewin Group, Indiana 211, and Ascend. The DA contract with netlogx is for the development and implementation of data and compliance monitoring and reporting systems. The netlogx contract expires June 30, 2018. Additionally, the DA has a contract with the Lewin Group to provide environmental scans, data analysis, and technical assistance to the DA in support of the agency's "Long Term Care Transformation Project" including the amendment and renewal of the DA's Aged & Disabled Waiver. This contract will expire June 30, 2021. She also assisted the Director with the oversight of the administration of an OMPP contract with Ascend, a division of Maximus, for the provision of software and assessments relating to pre admission screening and resident review statewide. The Indiana 211 contract is for the administration of the Adult Protective Services Hotline and for the establishment and maintenance of a statewide resource database, and it expires October 31, 2018. The Ascend contract expires June 30, 2018. There is currently a Request for Proposals in process for this function, and an amendment to extend this contract is in progress. Maximus is a contractor to other divisions of FSSA; however, Ms. Pierson was not involved in the contracting process for any contracts other than the DA contract with Ascend.

Ms. Pierson's limited liability consulting firm will provide technical assistance to states, other government entities, and direct service providers on matters relating to the access and provision of long term services and supports in home and community based settings. Focus areas include Preadmission Screening and Resident Review, No Wrong Door systems, and the Centers for Medicare and Medicaid Services Final Rule on Home and Community Based Services (the "Settings Rule"). Examples of the types of work that Ms. Pierson anticipates her business providing include:

- Evaluation and research, analysis and report writing
- Business process optimization and systems implementation
- Quality assurance and quality improvement
- Stakeholder engagement planning and facilitation
- Transition planning and remediation monitoring.

Ms. Pierson anticipates the possibility that the work that her professional practice hopes to do will be as a contractor or subcontractor to other entities who seek to add subject matter expertise and/or capacity to their engagements with states, other government entities, or provider networks. The market of organizations with specific knowledge in some of the areas above is small. Although the need for these services is great, Ms. Pierson estimates that there are less than a dozen large companies providing the same services she plans to offer through her professional practice. Additionally, she believes the number of entities providing assistance with preadmission screening and resident review is even smaller. Therefore, Ms. Pierson anticipates the potential for referrals to subcontract with some of the organizations that she has previously overseen as contractors to the DA for work in other states. These subcontracts would not involve any contracts Ms. Pierson was involved in the negotiation or administration of during her employment with FSSA.

Ms. Pierson has been advised of the disclosure requirements of IC 4-2-6-11(i), and she plans to comply. She also knows and understands that Indiana's ethics laws will continue to apply to her as a business owner of a professional practice. She understands and agrees not to divulge confidential information of FSSA during her post-employment endeavors. Furthermore, Ms. Pierson understands and agrees to abide by the one-year restriction regarding registering as an executive branch lobbyist.

Based on the information presented, FSSA believes that Ms. Pierson's plans to establish her professional practice to provide consulting services are permissible under Indiana's ethics laws. They are seeking a Formal Advisory Opinion for confirmation.

The advisory opinion stated the following analysis:

Ms. Pierson's post-employment professional practice/consulting opportunity implicates the provisions of the Code pertaining to confidential information, conflicts of interests, and post-employment. The application of each provision to Ms. Pierson's prospective post-employment opportunity is analyzed below.

C. Confidential Information

IC 4-2-6-6 prohibits Ms. Pierson 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.

Ms. Pierson confirmed that she would not utilize confidential information in her professional consulting practice. So long as any compensation Ms. Pierson receives through her professional practice does not result from confidential information, her post-employment consulting opportunities would not violate IC 4-2-6-6.

D. Conflict of interests - decisions and votes

IC 4-2-6-9(a)(1) prohibits Ms. Pierson from participating in any decision or vote, or matter related to any such decision or vote, if she has a financial interest in the outcome of the

matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Pierson from participating in any decision or vote, or matter related to such decision or vote, in which an organization with whom she is serving as an officer, a director, a member, a trustee, a partner, or an employee 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 in a purchase, sale, lease, contract, option or other transaction between an agency and any person; or involving property or services.”

In this case, Ms. Pierson has informed FSSA of her plans to establish the consulting business with Ms. Snyder and has resigned from FSSA effective March 9, 2018. Ms. Pierson must ensure that she does not participate in any decisions or votes, or matters relating to any such decision or vote, in which she would have a financial interest in the outcome of the matter for the remainder of her state employment. Further, if she identifies a potential conflict of interests, she must follow the requirements in IC 4-2-6-9(b) to avoid violating this rule.

E. 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 any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met.

Ms. Higgins provides that Ms. Pierson expects her LLC to receive referrals from FSSA contractors for consulting work/subcontracts. However, the LLC has not entered into any contracts or subcontracts at this time. Accordingly, Ms. Pierson does not have a financial interest in a state contract. Further, this rule does not apply to former state employees, only current employees. Accordingly, it will not apply to Ms. Pierson after March 9, 2018.

F. 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. Pierson from accepting employment from an employer for 365 days from the date that she leaves state employment under various circumstances. Employer is defined in IC 4-2-6-1(a)(10) as any person from whom a state employee receives compensation and therefore includes a client or customer of a self-employed individual.

First, Ms. Pierson 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 (IDOA). The information provided by Ms. Higgins indicates that Ms. Pierson understands this restriction and has

agreed to abide by the one-year restriction regarding registering as an executive branch lobbyist.

To the extent that Ms. Pierson does not engage in executive branch lobbying for one year after leaving state employment, her intended post-employment consulting work would not violate this provision of the post-employment rule.

Second, Ms. Pierson 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 her role as DA Deputy Director, Ms. Pierson has been substantially involved in the negotiation and administration of numerous contracts for FSSA. According to the information provided by Ms. Higgins, Ms. Pierson anticipates that the LLC would potentially receive referrals to subcontract with some of the organizations that she has previously overseen as contractors to the DA for work in other states.

The Commission finds that Ms. Pierson's involvement in these contracts would trigger the cooling off requirement and she would be prohibited from accepting employment from any of these organizations for one year after leaving state employment. However, since she is establishing a professional practice, her LLC could enter into a business relationship with any of these organizations if she meets the disclosure requirements in IC 4-2-6-11(i)(1)-(3) and files a disclosure with the State Ethics Commission within 180 days of leaving state service. The disclosure must (1) be signed by Ms. Pierson; (2) certify that Ms. Pierson 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 Ms. Pierson.

The Commission further finds that Ms. Pierson should file an initial disclosure upon the LLC's entering into a contract with a company that would otherwise trigger the cooling off period within the 180 days; this disclosure can then be amended to include additional information when future contracts are executed. In the alternative, she can file a separate disclosure form each time the LLC enters into a contract with one of these entities during the 180 day period, and this would also meet the requirements in IC 4-2-6-11(i)(1)-(3). The State Ethics Director will prepare a standardized form for this disclosure and assist Ms. Pierson and Ms. Higgins in the filing process as needed.

Third, Ms. Pierson 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.

The Commission finds that this provision does not apply as Ms. Higgins has provided that Ms. Pierson did not perform any oversight activities related to licensure in her role as DA Deputy Director and did not make any regulatory or licensing decisions that applied to the potential clients of the LLC.

Fourth, Ms. Pierson is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose was to influence her in her official capacity as a state employee. Ms. Pierson has already resigned from state employment, and nothing in the information provided suggests that any of the organizations with whom her LLC may contract attempted to influence her in her former official capacity as a state employee.

Finally, Ms. Pierson 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.

Ms. Pierson has personally and substantially participated in various contracts during her state employment. However, Ms. Pierson provided that the LLC will not enter into subcontracts that involve contracts for which she was involved in the negotiation or administration during her employment with FSSA.

The Commission finds that Ms. Pierson must ensure compliance with the particular matter restriction and refrain from assisting or representing any person on any of the particular matters listed above that she may have personally and substantially worked on during her state employment.

The Commission found that the professional practice Ms. Pierson is establishing will be able to enter into subcontracts with entities with whom she would be prohibited from being employed by for one year after leaving state employment so long as she meets the disclosure requirements under IC 4-2-6-11(i)(1)-(3).

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

V. Request for Formal Advisory Opinion

**2018-FAO-009 Michael Kaufmann, State Medical Director
Jonathan Whitham, General Counsel/Ethics Officer
Indiana Department of Homeland Security**

Jonathan Whitham is the Ethics Officer for the Indiana Department of Homeland Security (IDHS). He sought an opinion from the Commission on behalf of Dr. Michael Kaufmann, the new State Medical Director for IDHS. Dr. Kaufmann's official duties and responsibilities as State Emergency Medical Services (EMS) Medical Director are set forth in IC 10-19-7-5. Dr. Kaufmann is the second person to be appointed to the position, succeeding Dr. Michael L. Olinger.

Dr. Kaufmann's position through IDHS is as an hourly State employee, but he has other outside employers. His schedule with IDHS fluctuates based upon his work schedule for these other employers.

Dr. Kaufmann's current outside employment includes the following: Dr. Kaufmann is the Medical Director for EMS at St. Vincent Health and their EMS affiliate organizations; Medical Director for HOPE Clinic of Cicero; and he practices emergency medicine at several St. Vincent Health facilities around central Indiana as an employee/owner with St. Vincent Emergency Physicians, Inc., which provides physician staffing for several local health care facilities. Dr. Kaufmann is the founder, owner, and operator of EMSEducation.net, LLC, On-line EMS Education and Training. Additionally, Dr. Kaufmann participates in the speaker's bureau for Boehringer Ingelheim and is a consultant on certain issues for Eli Lilly and Company.

IDHS's Division of Fire and Building Safety, to which Dr. Kaufmann is assigned, and one of its affiliated commissions—the Indiana EMS Commission—regulate emergency medical technicians, paramedics, and providers of EMS (and their facilities), in accordance with IC 10-19-7-2 and IC 16-31-2-7.

The Medical Director does not have the authority to sign contracts on behalf of IDHS, and the full extent of the Medical Director's function within IDHS and involvement with the EMS Commission has yet to be developed. However, IDHS recognizes that there is a strong possibility that a decision or vote concerning the certification, licensing, sanction, or funding of one of his outside employers or, more likely, an EMT/Paramedic/Provider working under that employer's direction, will come before him at the Division of Fire and Building Safety or EMS Commission and therefore present a conflict of interests for the Medical Director under IC 4-2-6-9.

IDHS has drafted a screening agreement to screen the Medical Director from any decision, discussion or vote by IDHS or the EMS Commission whose outcome might potentially involve, to their benefit or detriment, the financial interests of any of his outside employers (or employees, officers, or agents thereof).

Specifically, the screening agreement states that IDHS will screen Dr. Kaufmann from all IDHS and Indiana EMS Commission decisions and matters whose outcome might potentially involve, to their benefit or detriment, the financial interests of: St. Vincent Health and their EMS affiliate organizations; HOPE Clinic of Cicero; St. Vincent Emergency Physicians, Inc.; EMSEducation.net, LLC; Boehringer Ingelheim; and/or Eli Lilly and Company, or any employees, officers, or agents thereof.

The agreement further contemplates that any decision making authority the Medical Director has related to such matters be retained by his supervisor, the State Fire Marshal. The Medical Director is currently operating under the terms of this draft screening agreement, which the Ethics Officer has submitted for the Commission's review. The Ethics Officer asserts that the IDHS otherwise endorses the Medical Director's outside employment and does not believe such employment is incompatible with the Medical Director's IDHS duties or is in violation of IC 4-2-6-5.5.

The advisory opinion stated the following analysis:

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 when 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 it views them as being in the best position to determine whether a conflict of interests might exist between an employee's state duties and an outside employment opportunity. Mr. Whitham provides that IDHS supports Dr. Kaufmann's outside employment, and he does not believe any of his activities for his outside employers would create a conflict of interests for him under IC 4-2-6-5.5.

Based on the information provided by Mr. Whitham, Dr. Kaufmann is responsible for providing guidance and oversight of IDHS' EMS. Dr. Kaufmann is an hourly employee with IDHS and has several outside employers through which he provides EMS-related services ranging from serving as the Director for EMS at St. Vincent Health to consulting on certain issues for Eli Lilly and Company.

According to the proposed screening policy provided by Mr. Whitham, Dr. Kaufmann would be screened from all IDHS and Indiana EMS Commission decisions and matters whose outcome might potentially involve, to their benefit or detriment, the financial interests of any of his outside employers, or any employees, officers, or agents thereof, would have a financial interest in the outcome.

These decisions and/or any related discussions would be referred to Dr. Kaufmann's supervisor, the State Fire Marshal. Mr. Whitham provided that the screen is intended to ensure that Dr. Kaufmann's outside employment activities do not conflict with his state duties. Further, while screened from some matters, IDHS believes that Dr. Kaufmann would not be required to recuse himself from matters that are critical to the performance of his duties as the State Medical Director.

Moreover, Mr. Whitham confirmed that Dr. Kaufmann would not be required to disclose confidential information to which he may have access by virtue of his position with IDHS. Similarly, nothing in the information presented suggests that he would use or attempt to use his state position for any unwarranted privileges or exemptions. Dr. Kaufmann already was already engaged in his current outside positions prior to becoming the State Medical Director for IDHS.

Accordingly, the Commission finds that Dr. Kaufmann's outside employment would not violate IC 4-2-6-5.5.

B. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Kaufmann 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. Kaufmann from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which he is serving as an employee has a financial interest in the matter.

Dr. Kaufmann is the State Medical Director for IDHS. Dr. Kaufmann is also the Medical Director for Emergency Medical Services at St. Vincent Health and their EMS affiliate organizations; Medical Director for HOPE Clinic of Cicero; and he practices emergency medicine at several St. Vincent Health facilities around central Indiana as an employee/owner with St. Vincent Emergency Physicians, Inc., which provides physician staffing for several local health care facilities. Dr. Kaufmann is the founder, owner, and operator of EMSEducation.net, LLC, On-line EMS Education and Training. Additionally, Dr. Kaufmann participates in the speaker's bureau for Boehringer Ingelheim and is a consultant on certain issues for Eli Lilly and Company.

Accordingly, Dr. Kaufmann would have a potential conflict of interests if he participates in decisions or votes, or matters related to such decisions or votes, in which he or any of the organizations listed above, or any employees, officers, or agents thereof, has a financial interest in the outcome of the matter. Mr. Whitham has provided that it is possible, and in some cases, likely that a decision or vote concerning the certification, licensing, sanction, or funding of one of Dr. Kaufmann's outside employers will come before him at the Division of Fire and Building Safety or EMS Commission.

IC 4-2-6-9(b) provides that a state employee who identifies a potential conflict of interests shall notify the person's appointing authority and seek an advisory opinion from the Commission or file a written disclosure statement. In this case, Dr. Kaufmann, through his Ethics Officer requested an advisory opinion from the Commission as provided in the rule.

IC 4-2-6-9(b)(1) further provides that when a potential conflict of interests arises, the Commission may, with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state employee seeking an advisory opinion from involvement in the matter.

In this case, the IDHS has established a screening agreement providing that Dr. Kaufmann will be screened from all IDHS and Indiana EMS Commission decisions and matters whose outcome might potentially involve, to their benefit or detriment, the financial interests of: St. Vincent Health and their EMS affiliate organizations, HOPE Clinic of Cicero, St. Vincent Emergency Physicians, Inc., EMSEducation.net, LLC, Boehringer Ingelheim, and/or Eli Lilly and Company, or any employees, officers, or agents thereof.

The agreement further contemplates that any decision making authority the Medical Director has related to such matters be retained by his supervisor, the State Fire Marshal. The Medical Director is currently operating under the terms of this draft screening agreement, which the Ethics Officer has submitted for the Commission's review.

The Commission finds the IDHS screen to be satisfactory to prevent Dr. Kaufmann from having a conflict of interests violation under IC 4-2-6-9. The screen should remain in place for the duration of his tenure as the State Medical Director.

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. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met. The term "official responsibility" has been interpreted by the Commission as contracting responsibilities.

Mr. Whitham provides that Dr. Kaufmann does not have authority to sign contracts on behalf of IDHS. Mr. Whitham further provides that Dr. Kaufmann would not receive compensation from any IDHS contracts or grants for any of his current outside positions.

Accordingly, the Commission finds that Dr. Kaufmann would not have a financial interest in a state contract through any of his current outside employers.

D. Confidential information

Dr. Kaufmann 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. Kaufmann from accepting any compensation from any employment, transaction, or investment which 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. 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. Kaufmann is exposed to or has access to such confidential information in his position as the IDHS State Medical Director, he would be prohibited not only from divulging that information but from ever using it to benefit any person, including his outside employers in any manner.

E. Use of state property and Ghost employment

IC 4-2-6-17 prohibits Dr. Kaufmann 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. Likewise, 42 IAC 1-5-13 prohibits Dr. Kaufmann 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. Kaufmann observes these provisions his outside professional activity would not violate these ethics laws.

The Commission found that so long as Dr. Kaufmann adheres to the screening procedures established by IDHS, his outside employment would not be contrary to the Code of Ethics.

Commissioner Noel moved to approve the Commission's findings, and Commissioner Finnerty seconded the motion which passed (3-0). Commissioner Gilroy recused herself from the vote due to her affiliation with St. Vincent.

VI. Request for Formal Advisory Opinion

2018-FAO-002 **Jacqueline Tucker, Program Coordinator 6
Rachel Russell, Deputy General Counsel/Ethics Officer
Department of Child Services**

Jacqueline Tucker is a Program Coordinator 6 at the Indiana Department of Child Services (DCS) Child Support Bureau. In this position, she assists the agency in child support enforcement and ensures children receive financial support from their parents by collecting information using multiple resources on custodial and non-custodial parents. She also conducts investigations in complex cases, which contributes to the collection of millions of dollars distributed on delinquent open cases in child support.

Ms. Tucker requested advice regarding whether she can accept a part-time position with Journey Support Services, LLC (Journey) as a home-based caseworker and/or supervised visit facilitator while still working full-time for DCS's Child Support Bureau. Ms. Tucker would be responsible for monitoring supervised visits with parents and children, home visits, facilitation and transportation, supporting and monitoring progress of parenting skills and other tools needed to help families with their journey to reunification.

Journey has a contract with DCS and Ms. Tucker provides that she would be working as an employee sub-contractor for Journey. If she takes the outside position, she will have interaction with DCS case workers for each case she is required to complete. She will not be involved in the contract process for DCS or for the outside agency, and she does not participate in any decisions or votes at DCS that involve Journey.

Ms. Tucker completed the Department of Child Services' Supplemental Employment Authorization on October 30, 2017. Her supervisor did not approve the outside employment position and instead referred the matter to DCS' Ethics Officer at that time, Erica Sullivan. Ms. Sullivan denied the request, noting that she believed there was too much potential for a conflict of interests with Ms. Tucker's official DCS duties and referred Ms. Tucker to the State Ethics Commission for a final determination on the matter. Ms. Tucker advises that she respectfully disagrees with Ms. Sullivan's decision and believes that her current DCS position has no similarities with her prospective position at Journey. She is asking the Commission for a Formal Advisory Opinion so that she can have a final determination on this matter.

The advisory opinion stated the following analysis:

F. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5(a) if it results in the employee: 1) receiving compensation of substantial value when 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.

DCS Policy Number HR-3-5 requires DCS employees to obtain supervisory approval prior to engaging in outside employment. Ms. Tucker completed the Department of Child Services' Supplemental Employment Authorization on October 30, 2017. Her supervisor did not approve the outside employment position and instead referred the matter to DCS' Ethics Officer at that time, Erica Sullivan. Ms. Sullivan denied the request, noting that she believed there was too much potential for a conflict of interests with Ms. Tucker's official DCS duties and referred Ms. Tucker to the State Ethics Commission for a final determination on the matter.

A written advisory opinion issued by the Commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

The Commission finds that it is unable to provide a statement that Ms. Tucker's outside employment opportunity with Journey would not violate subsection (a)(1) or (a)(2).

The Commission has concerns about conflicts of interests under this rule. Based on the information provided, Journey has a contract with DCS, and Ms. Tucker would have clients who are also DCS clients while working for Journey. Ms. Tucker would also potentially

encounter child support related matters involving her Journey clients while performing her DCS duties. The Commission did not receive enough information from Ms. Tucker to determine if she would be able to avoid violating these subsections.

DCS Policy Number HR-3-5 also provides in part that “no employee of DCS shall have any outside employment or hold any contractual relationship that is with any business entity, agency, or individual that is subject to regulation by, or is doing business with, DCS...”

Accordingly, the Commission cannot approve Ms. Tucker’s outside employment opportunity with Journey.

G. Conflict of interests-decisions and votes

IC 4-2-6-9 (a)(1) prohibits Ms. Tucker from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Ms. Tucker from participating in any decision or vote, or matter relating to that decision or vote, if a business organization in which she is negotiating employment with or serving as an employee has a financial interest in the matter. The definition of “financial interest” in IC 4-2-6-1(a)(11) includes, in part, “an interest arising from employment”.

Ms. Tucker currently works as a Program Coordinator 6 for DCS and is seeking outside employment with Journey. As she is negotiating employment, and if she begins working for Journey, she would be prohibited from participating in any decisions or votes, or matters relating to those decisions or votes, in which she or Journey would have a financial interest in the outcome.

IC 4-2-6-9(b) requires that when a potential conflict of interests is identified, a state employee shall notify their appointing authority and ethics officer in writing and either (1) seek an advisory opinion from the Commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter; or (2) file a written disclosure to be filed with the Commission meeting the requirements of IC 4-2-6-9(b)(2)(A)-(D). Both options require the implementation of a screen that would ensure the employee does not participate in the matters that would create a conflict of interests.

As a Program Coordinator 6, Ms. Tucker is responsible for assisting DCS in child support enforcement. At its public meeting on January 11, 2018, the Commission found that there is a possibility that Ms. Tucker could encounter individuals who owe child support and who are also clients of Journey. The Commission further found that it is also possible that Ms. Tucker could encounter her own Journey clients while carrying out her DCS duties. The Commission requested that Ms. Tucker work with DCS to set up a screen that would prevent her from working on any cases for DCS that would intersect with her clients at Journey. The Commission further requested that Ms. Tucker provide additional

information regarding how Journey handles its cases and whether it would be possible for Ms. Tucker to work on only non-DCS cases.

On March 8, 2018, Ms. Tucker and Rachel Russell, DCS' Ethics Officer, appeared before the Commission again. Ms. Russell provided that she had contacted Ms. Tucker's supervisor, who advised that it was not feasible to screen Ms. Tucker from cases that might involve Journey clients. Consequently, Ms. Russell was not able to establish or implement a screen that would meet the requirements under IC 4-2-6-9(b)(1)(A). Further, Ms. Tucker did not have additional information regarding the manner in which Journey handled DCS cases.

Without a proposed screen and without additional information regarding Journey's methods of handling DCS cases and whether or not Journey could be financially impacted by any of Ms. Tucker's actions in her role with DCS, the Commission cannot approve a screening mechanism that would prevent Ms. Tucker from having a potential conflict of interests under the rule.

H. 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 any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between a state agency and a third party. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met. The term "official responsibility" has been interpreted by the Commission as contracting responsibilities.

Ms. Tucker provides that she will be serving as an "employee sub-contractor" of Journey. If she is a sub-contractor on the contract that Journey has with DCS, she would have a financial interest in a state contract. Further, if she is not officially a sub-contractor, but her salary is derived from or is tied to Journey's contract with DCS, or any state agency, she would have a financial interest in a state contract under this rule.

It does not appear that Ms. Tucker has contracting responsibilities for DCS so she is not prohibited from having a financial interest in Journey's contract with DCS so long as she follows the guidelines in IC 4-2-6-10.5(b) and files the written disclosure statement with the Office of Inspector General. If Ms. Tucker does not have contracting responsibilities for DCS and meets all of the disclosure requirements under IC 4-2-6-10.5(b), she would not have a conflict of interests under this rule.

At its January 11, 2018 meeting, the Commission requested that Ms. Tucker return to a future meeting and provide additional information regarding whether her

salary/compensation for the Journey position would be derived from Journey's contract with DCS. Ms. Tucker attended the March 8, 2018 Commission meeting, but she was not able to provide the additional information requested. Consequently, the Commission was unable to determine whether Ms. Tucker's salary for her position with Journey would be derived from Journey's contract with DCS.

Commissioner Finnerty moved to not approve Ms. Tucker's request for outside employment, and Commissioner Noel seconded the motion which passed (4-0). The Commission is unable to approve Ms. Tucker's outside employment position with Journey. Journey's contract with DCS creates potential conflicts of interests for Ms. Tucker under the Code of Ethics from which DCS was not able to screen her. Further, outside employment with a DCS contractor is prohibited by DCS policy.

VII. Director's Report

Ethics Director, Jennifer Cooper, stated that the Office of Inspector General had received and processed 2,072 financial disclosure statements, but that two individuals who were required to file, had not yet filed. Ms. Cooper stated that the names of those individuals would be provided at the next State Ethics Commission meeting and that a discussion regarding next steps could occur if those individuals did not file their financial disclosure statement between now and the next State Ethics Commission meeting. Chairman Clevenger and Ms. Cooper also shared the requirements and importance of filing financial disclosure statements with the three most recent commissioners. Ms. Cooper further discussed a prior matter that came before the Commission last year, and the resulting consequences an state employee faced after refusing to file his financial disclosure statement.

Ms. Cooper then discussed informal advisory opinions, stating that there had been twenty-seven informal advisory opinions issued since the last State Ethics Commission meeting, which covered the topics of outside employment, conflicts of interests, gifts, and post-employment restrictions.

Lastly, Ms. Cooper announced that the Office of Inspector General launched its twitter feed, @INInspectorGen earlier this month.

VIII. Adjournment

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

The public meeting adjourned at 10:52 a.m.