

November 19, 2012

Lorna Flores
American Health Services
4095 Robin Hill Road
La Canada Flintridge, CA 91011

Re: Your Request for Advice
Our File No. A-12-166

Dear Ms. Flores:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Do the Act’s post-governmental employment provisions prohibit you, a former state employee who audited MediCal payments, from communicating with managed care organizations (“MCOs”)² on behalf of your employer, where MediCal pays the MCOs who then use these funds to pay your employer to provide medical services?

CONCLUSION

The communications you have identified will not violate the Act’s one-year ban because you will not be appearing before or communicating with your former agency. Medi-Cal fraud investigations would be judicial, quasi-judicial, or other proceeding. However, the work you have described does not involve any judicial, quasi-judicial, or other proceeding in which you were involved with your former agency.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Managed care organizations are also called independent practice associations (“IPOS”).

FACTS

In February 2012, you retired from your position as a sworn fraud investigator at the California Department of Health Care Services. You served in the department's Medi-Cal Investigations Branch, Audits and Investigations Division.

In March 2012, you began working with a Los Angeles-based community substance abuse, medical and mental health treatment provider. Your employer contracts with various MCOs to provide these services. Under these programs, the MCO pays your employer, in part, from the state's MediCal funds. Your employer wants you to expand its business with current MCOs and develop new MCO customers. You ask whether the Act's post-governmental employment provisions prohibit you from communicating with the MCOs for this purpose.

ANALYSIS

Public officials who have left state service are subject to two types of post-governmental employment provisions under the Act, colloquially known as the "revolving door" prohibitions.

The One-Year Ban

The "one-year ban" prohibits a former state employee from appearing before or communicating with, for compensation, his or her former agency for the purpose of influencing any administrative or legislative actions or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. (See Section 87406; Regulation 18746.1.) Your facts indicate that you will not be appearing before or communicating with your former agency. Accordingly, the one-year ban does not apply to your proposed work.

The Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402; Regulation 18741.1.)

The permanent ban applies to any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. "Judicial, quasi-judicial or other proceeding" means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency . . ." (Section 87400(c).) Medi-Cal fraud investigations would be judicial, quasi-judicial, or other proceeding. However, the work you have described does not involve any judicial, quasi-judicial, or other proceeding in which you were involved with your former agency. Accordingly, the permanent ban does not prohibit you from performing this work.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl