



FAIR POLITICAL PRACTICES COMMISSION

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May 22, 2001

Steven L. Dorsey, Special Counsel
Los Angeles Care Health Plan
c/o Richards, Watson & Gershon
333 South Hope Street, 38th Floor
Los Angeles, CA 90071-1469

**Re: Your Request for Informal Assistance
Our File No. I-01-102**

Dear Mr. Dorsey:

This letter is in response to your request for informal assistance regarding the duties of the “stakeholder members” of the L.A. Care Health Plan under the provisions of the Political Reform Act (the “Act”).¹ You have specifically requested informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTIONS

1. Does Welfare and Institutions Code section 14087.969 satisfy the requirement of Regulation 18707.4(a)(1) and (b) that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest?

2. Do the “stakeholder” members satisfy the requirement in Regulation 18707.4(a)(2) that they be “required to have the economic interest the member represents”?

3. In determining whether the stakeholder members’ decisions will financially affect the member’s economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent, do you consider all persons in that

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

category in L.A. County, or only the persons in this category whose financial interests L.A. Care can affect?

CONCLUSIONS

1. Welfare and Institutions Code section 14087.969 satisfies the requirement of Regulation 18707.4(a)(1) and (b). Implicit in the language of the statute is a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.

2. The "stakeholder" members satisfy Regulation 18707.4(a)(2) where they have an economic interest in the group they represent. This section has been construed to mean that the member is from the represented group, and that the potentially disqualifying economic interest is a result of his or her membership in that group.

3. In determining whether the stakeholder members' decisions will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent, you consider all persons in that category in L.A. County.

FACTS

L.A. Care Health Plan ("L.A. Care") is a local agency established pursuant to Welfare Institutions Code Section 14087.96 for the purpose of improving health care services for Medi-Cal recipients and other under-served communities by offering them managed health care services. To this end, L.A. Care has contracted with seven health care organizations ("Plan Partners") to offer managed care to the Medi-Cal population. Currently, the Plan Partners are providing health care through L.A. Care to over 660,000 persons in Los Angeles County.

Welfare and Institutions Code Section 14087.961 provides that a thirteen member board of governors appointed by the Los Angeles County Board of Supervisors governs L.A. Care. Seven of the board members ("stakeholder Board Members") are nominated by various organizations such as the Hospital Council of Southern California and the Los Angeles County Medical Association as "representatives of" the interests of members of those organizations. None of these board members are required by statute to have the economic interest the member represents. However, most of them do have such interests because it has been extremely difficult to find knowledgeable persons who do not have such interests.

The Los Angeles County Board of Supervisors nominates four of the remaining six members of the board. These four members have traditionally consisted of one member of the board of supervisors and three other county officers and employees working in or with the County Department of Health Services.

One of the remaining two members of the board of governors is required to be a health care consumer and the other is required to be a health care consumer advocate. The health care consumer members of L.A. Care's Community Advisory Committee nominate these two board members.

Most of the decisions the L.A. Care Board is required to make will directly affect the financial interests of these stakeholder Board Members. The result is that L.A. Care's most important decisions are being made without the participation of those very board members who have the greatest knowledge about these matters.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Commission has adopted a standard, eight-step analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision as follows:

“(1) Determine whether the individual is a public official, within the meaning of the Act....

“(2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision....

“(3) Identify the public official's economic interests....

“(4) For each of the public official's economic interests, determine whether that interest is directly or indirectly involved in the governmental decision....

“(5) Determine the applicable materiality standard for each economic interest....

“(6) Determine whether it is reasonably foreseeable that the governmental decision will have a material financial effect ... on each economic interest identified....

“(7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally....

“(8) Determine if the public official’s participation is legally required despite the conflict of interest....”
(Regulation 18700(b).)

Your question concerns only the seventh step in the standard conflict-of-interest analysis. You ask whether the “public generally” exception in Regulation 18707.4 applies to the “stakeholder” members of L.A. Care. In 1976, the Commission adopted regulation 18703, the predecessor of current regulation 18707.4 (previously numbered 18703.3), in order to harmoniously interpret the Political Reform Act with the numerous state statutes providing for industry representation on regulatory boards. Regulation 18707.4 creates a narrow exception from disqualification under the Act’s conflict of interest laws for members of boards or commissions who, by law, are required to have a particular economic interest to be on the board. Regulation 18707.4 provides:

“(a) For the purposes of Government Code section 87103, the ‘public generally’ exception applies to appointed members of boards and commissions who are appointed to represent a specific economic interest, as specified in section 87103(a) through (d), if all of the following apply:

“(1) The statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains a finding and declaration that the persons appointed to the board or commission are appointed to represent and further the interests of the specific economic interest.

“(2) The member is required to have the economic interest the member represents.

“(3) The board’s or commission’s decision does not have a material financial effect on any other economic interest held by the member, other than the economic interest the member was appointed to represent.

“(4) The decision of the board or commission will financially affect the member’s economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent.

“(b) In the absence of an express finding and declaration of the type described in Title 2, California Code of Regulations, section 18707.4(b)(1), the ‘public generally’ exception only applies if such a finding and declaration is implicit, taking into account the language of the statute, ordinance, or other provision

of law creating or authorizing the creation of the board or commission, the nature and purposes of the program, any applicable legislative history, and any other relevant circumstance.”

The Commission discussed the history of the exception for industry representatives on regulatory boards in the *Callanan* Opinion:

“The subsections were adopted in an effort to reconcile the conflict of interest provisions of the Political Reform Act with other statutes which require certain boards to include as members persons who represent the industry, trade or profession which the board oversees. The Commission was persuaded that when the legislative body which creates a regulatory board determines that industry views and expertise should be represented on the board, the Political Reform Act should not be interpreted to prevent industry members from participating in board decisions affecting the industry.” (*In re Callanan*, 4 FPPC Ops. 33 (1978), p. 4.)

When this rule is applied to the stakeholder members of L.A. Care, the first two criterion are satisfied. Welfare and Institutions Code section 14087.961 provides:

“Governance of the commission shall be vested in a governing body consisting of 13 members, each of whom shall have a fiduciary duty to act in the best interest of the commission and the local initiative, nominated by the following entities, and appointed by the board of supervisors:

“(a)

“(b) One member shall be a representative of private hospitals that have Medi-Cal disproportionate share status, or if that status no longer exists, that serve an equivalent patient population, who shall be nominated by the Hospital Council of Southern California.

“(c) One member shall be a representative of private hospitals that do not have Medi-Cal disproportionate share status, who shall be nominated by the Hospital Council of Southern California.

“(d) One member shall be a representative of free and community clinics, who shall be nominated by an entity or group recognized by the board of supervisors as representing free and community clinics.

“(e) One member shall be a representative of federally qualified health centers, who shall be nominated by an entity or group recognized by the board of supervisors as representing federally qualified health centers, or if that status no longer exists, an equivalent group of health centers.

“(f) One member shall be a physician representative, who shall be nominated by the Los Angeles County Medical Association, in consultation with other physician associations within the county.

“(g) One member shall be a representative of Knox-Keene licensed prepaid health plans, who shall be nominated by the California Association of Health Maintenance Organizations.

“(h)

“(i)

“(j) One member shall be a children's health care provider representative, who shall be nominated by the Children's Planning Council as the coordinating entity for organizations and agencies providing direct services to, or advocacy for, children and families within the county.”

The “stakeholder” members satisfy Regulation 18707.4(a)(1). Implicit in the language of the statute is a finding and declaration that the persons appointed to the board are appointed to represent and further the interests of the specific economic interest. (See, Regulation 18707.4(b).)

With respect to subdivision (a)(2), we conclude that where the members have an economic interest in a person or entity in the group they represent, by virtue of his or her membership or connection to that group, this section is satisfied. (See, *Bennett* Advice Letter, No. A-98-239; *Bennett* Advice Letter, No. A-98-258; *Rankin* Advice Letter, No. A-94-310 and A-94-315.)²

You also ask whether, in determining if the stakeholder members' decisions will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect *a significant segment of the persons the member was appointed to represent*, you must consider all

² The *Bennett* Advice Letter (No. A-98-258) concerned a local health commission created under Welfare and Institutions Code section 14087.51 which has language similar to that you have provided. We have enclosed a copy of this letter for your information.

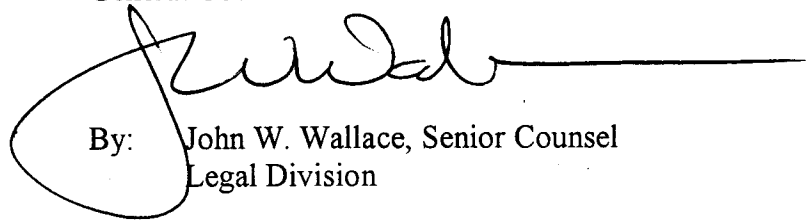
persons in that category in L.A. County. This is correct, based on the regulatory language.

Assuming that criteria (3) and (4) are met (this will, of course, depend on the specific facts of the decision in question), the exception in the regulation will apply to the members of L.A. Care.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace", with a long horizontal line extending to the right. The signature is written over the typed name and title of John W. Wallace.

By: John W. Wallace, Senior Counsel
Legal Division

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Enclosure