

Contract Exemption 2025-04

Issued on November 6, 2025, by The

West Virginia Ethics Commission

Opinion Sought

The **Wyoming County Health Department** requests a renewal of Contract Exemption 2022-04, allowing it to continue contracting with Family Healthcare Associates Inc.

Facts Relied Upon by the Commission

The Wyoming County Health Department (“Health Department”) has been contracting with Family Healthcare Associates Inc. (“Family Healthcare”) for many years to provide family planning, breast and cervical cancer screenings, and other medical services to patients through the Health Department’s Women’s Health Program clinics.¹ The Health Department holds clinics approximately twice a month, and Family Healthcare staffs the clinics.

The Health Department needs a Contract Exemption to contract with Family Healthcare because the Health Department’s part-time Health Officer, Samuel Muscari Jr., D.O., and a Board Member’s spouse, Loetta Carol Morgan, each have an ownership interest in Family Healthcare. These circumstances have existed for years, and the Ethics Commission has granted contract exemptions to the Health Department since 2014. In 2014, the Commission granted [Contract Exemption 2014-02](#), which authorized the Health Department to contract with Family Healthcare at a rate of \$45 per hour for medical services, which included malpractice insurance coverage through Family Healthcare’s insurance policy. The Commission found that undue hardship would result if the exemption was denied because no other medical provider responded to its ads for services.

The Health Department requested five extensions of the initial Contract Exemption to authorize it to continue contracting with Family Healthcare under the same rate and terms as the 2014 Exemption. The Ethics Commission granted all of the exemption requests in [Contract Exemption 2016-02](#), [Contract Exemption 2018-04](#), [Contract Exemption 2019-01](#), [Contract Exemption 2022-01](#), and [Contract Exemption 2022-04](#). The most recent Contract Exemption, 2022-04, was issued on August 4, 2022, and expired on June 20, 2025. In it, the Commission stated:

¹ The formal name of the program is Title X Family Planning, Breast and Cervical Cancer Program. The Health Department bills the patient’s insurer or seeks reimbursement from state or federal funds for the services it provides through Family Healthcare at the Women’s Health Clinic. If a patient does not have insurance coverage or is ineligible to have the services paid for with state or federal funds, then the Health Department does not charge the patient.

If the Health Department wants to continue contracting with Family Healthcare Inc. after June 30, 2025, it must seek and receive another Contract Exemption. The Health Department must demonstrate in its Contract Exemption request that it took meaningful efforts to obtain quotes or bids from other qualified medical providers that are willing and able to provide the needed services.

The Health Department Health Officer and Board Member with financial interests in Family Healthcare Inc. may not be involved in 1) deciding if the Health Department will renew its contract with Family Healthcare Inc. or select another provider, 2) deciding other matters relating to advertising for bids or quotes for medical services for the Women's Healthcare Program, or 3) approving payments to Family Healthcare Inc.²

In order to satisfy the Commission's directive above, the Health Department spent \$835 posting public advertisements for the medical services at a rate of \$45 per hour. The standard rate for a medical technician is \$65 per hour. The Health Department Administrator submitted documentation showing that it advertised for medical providers to provide services to the Women's Health Program in the print editions of the following newspapers for the stated periods: Bluefield Daily - five Saturdays; Register Herald - three Saturdays; Charleston Gazette - ten days. The Health Department also advertised online on Monster.com for 30 days. The Health Department did not receive any communications or quotes from any persons or businesses in response to the advertisements for a medical provider for the health care clinics.³

The Board Member and the Health Officer who have financial interests in the contract have not been involved in making any decisions that affect the Health Department's contract with Family Healthcare.

The Health Department Administrator states that it will cause hardship to the citizens who receive medical services at the clinics if the Health Department cannot contract with Family Healthcare to continue having the clinics because the patients will have to travel to Beckley, in Raleigh County, or to other counties to receive comparable services. Beckley is approximately a 60-mile round trip from the Wyoming County Health Department.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-2-5(d)(1) states, in relevant part:

² The same requirement exists in the other Contract Exemptions, and the Health Department satisfied this condition in each prior year.

³The Health Department's fiscal year runs from July 1 to June 30 of each year. The Health Department states that it paid Family Healthcare the following amounts in prior fiscal years: FY 2019 -- \$3,622.50; FY 2020 -- \$2,452.50; FY 2021 -- \$1,845; FY 2022 -- \$2,520; FY 2023 -- \$2,970, and FY 2024 -- \$3,192.50

[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control Provided, however, That nothing herein shall prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

W. Va. Code § 6B-2-5(d)(3) states, in relevant part:

If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

W. Va. Code § 61-10-15(a) states, in relevant part:

It is unlawful for any . . . county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member..., he or she may have any voice, influence or control

W. Va. Code § 61-10-15(h) states, in relevant part:

Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

Opinion

Prohibited contract

W. Va. Code § 61-10-15 imposes criminal penalties against county officials, including county board of health members and health officers who are pecuniarily interested,

either directly or indirectly, in the proceeds of a contract over which those officials exercise voice, influence, or control unless their governing body seeks, and receives, an exemption to contract with the public official or his or her business. The Health Department needs a contract exemption to continue contracting with Family Healthcare because of the ongoing financial interests of a Board Member⁴ and its Health Officer in the business.⁵

Undue hardship

The Ethics Commission may grant an exemption from the prohibition in W. Va. Code § 61-10-15 if the prohibition would result in excessive cost, undue hardship, or other substantial interference with the operation of a governmental body or agency. W. Va. Code § 61-10-15(h). The Requester states that if it is unable to contract with Family Healthcare Associates, the Health Department will be unable to provide medical services to patients who receive medical care through the Women's Health Program clinics.

The Commission will now determine whether the conditions it set forth above have been satisfied. The Ethics Commission finds that the Health Department made a meaningful effort to advertise for medical providers to provide services for the clinics. No other medical providers, however, submitted a quote or bid or expressed an interest in providing the services in response to the advertisements. Family Healthcare states that it is willing to continue to provide medical services for the clinics at the rate of \$45 and to continue providing medical malpractice insurance coverage for the services it provides.

The Health Department states that if it cannot contract with Family Healthcare, it will have to discontinue the clinics. Family Healthcare Inc. appears to be the only medical provider willing to contract with the Health Department to provide medical services for the Women's Health Program clinics. If the Health Department discontinues the clinics, it will result in additional costs and undue hardship to the patients who will have to forgo the medical treatment or travel to Beckley, West Virginia, which is approximately a 60-mile round trip from the Wyoming County Health Department, or to other counties for comparable services. Further, discontinuing the clinic at the Health Department may result in patients incurring additional travel costs and taking time off from work to obtain the same services elsewhere.

⁴ The Board Member's financial relationship arises from her spouse being an owner in Family Healthcare.

⁵ The Ethics Act also contains restrictions on public officials having an interest in public contracts over which they may exercise control, but there is an exception in the Act for part-time appointed officials who recuse themselves from the consideration and award of the contract. The Board Member and Health Officer are part-time appointed officials, and therefore, may contract with the Board of Health, under the Ethics Act, so long as they remove themselves from the process. W. Va. Code § 6B-2-5(d). But, W. Va. Code § 61-10-15 does not contain the same or a comparable exception for part-time officials so a Contract Exemption is necessary.

The Ethics Commission finds that denying a contract exemption to the Wyoming County Health Department to contract with Family Healthcare Associates Inc. would result in undue hardship to the citizens in Wyoming County who receive healthcare through the Women's Health Program clinics.⁶

The Ethics Commission hereby grants the Wyoming County Health Department a Contract Exemption allowing it to continue contracting with Family Healthcare Inc. at a rate of \$45 per hour, which includes Family Healthcare providing liability insurance for the services it provides. The Exemption is granted in an amount not to exceed \$5,000 per fiscal year for fiscal years 2025, 2026, 2027, 2028, and 2029.

If the Health Department wants to continue contracting with Family Healthcare Inc. after FY 2029, it must seek and receive another contract exemption. The Health Department must again demonstrate that it took meaningful efforts to obtain quotes or bids from other qualified medical providers that are willing and able to provide the needed services. The Health Department Health Officer and Board Member with financial interests in Family Healthcare Inc. may not be involved in 1) deciding if the Health Department will renew its contract with Family Healthcare Inc. or select another provider, 2) deciding other matters relating to advertising for bids or quotes for medical services for the Women's Healthcare Program, or 3) approving payments to Family Healthcare Inc.

The Ethics Commission notes that exemptions must be granted on a case-by-case basis. Therefore, this Contract Exemption is limited to the facts and circumstances of this particular case and may not be relied upon as precedent by other persons or entities.



Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

⁶ The Ethics Commission has held that a hardship may either be to an agency or a citizen adversely impacted by the public contract restrictions. For example, in [Contract Exemption 2007-01](#), the Ethics Commission held that it would create a hardship to a county commissioner's tenant to require the county commissioner to cease renting a residential unit to her.