

## **Contract Exemption 2022-04**

**Issued on December 1, 2022, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

The **Wyoming County Health Department** requests an extension of Contract Exemption 2022-01 to allow it to continue contracting with Family Healthcare Associates Inc.

### **Facts Relied Upon by the Commission**

The Wyoming County Health Department (“Health Department”) contracts with Family Healthcare Associates Inc. (“Family Healthcare”) 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.<sup>1</sup> The Health Department holds clinics approximately twice a month, and Family Healthcare staffs the clinics. This Contract Exemption request has been submitted by the Health Department through its Administrator to allow it to continue contracting with Family Healthcare Associates.

The Health Department needs a Contract Exemption to contract with Family Healthcare because the Health Department’s part-time Health Officer and a Board Member’s spouse each have an ownership interest in Family Healthcare. The Ethics Commission has granted the following past Contract Exemptions to the Health Department.

[Contract Exemption 2014-02](#) was the initial Contract Exemption granted by the Ethics Commission to the Health Department. The Contract Exemption authorized the Health Department to contract with Family Healthcare at a rate of \$45 per hour for medical services, and the rate included malpractice insurance coverage through Family Healthcare’s insurance policy. The Health Department subsequently requested 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 the Contract Exemption requests in Contract Exemptions [2016-02](#), [2018-04](#), [2019-01](#), and [2022-01](#).

The most recent Contract Exemption, 2022-01, was issued on August 4, 2022, and expired on November 15, 2022. Contract Exemption 2022-01 cited Contract Exemption 2019-01 for the Commission’s prior directive that: “If the Requester submits another Contract Exemption request [to contract with Family Healthcare Associates], it must

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<sup>1</sup> The formal name of the program is Title X Family Planning, Breast and Cervical Cancer Program.

again demonstrate that it took meaningful efforts to obtain quotes or bids from other qualified medical providers which are willing and able to provide the needed services.”<sup>2</sup>

In support of this Contract Exemption request, the Health Department Administrator submitted documentation showing that the Health Department advertised for medical providers to provide services to the Women’s Health Program in the print editions of the listed newspapers for the stated periods:

- Bluefield Daily - three Saturdays
- Register Herald - three Saturdays
- Logan Banner - four days
- Charleston Gazette - seven 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. Hence, the Health Department seeks this Contract Exemption to allow it to continue contracting with Family Healthcare to provide medical services for the Women’s Health Program clinics. The rate charged by Family Healthcare will be the same as the prior rate charged, \$45 per hour, and Family Healthcare will provide the medical malpractice insurance coverage. The Health Department anticipates paying Family Healthcare no more than \$4,860 per fiscal year (“fiscal year” or “FY”) for each of the following fiscal years - FY 2023, 2024, and 2025. The 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

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.

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.

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

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:

[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 § 6B-2-5(d)(4) states, in relevant part:

Where the provisions of subdivisions (1) and (2) of this subsection 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 state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

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**

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 Member<sup>3</sup> and its Health Officer in the business.<sup>4</sup>

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 Ethics Commission finds that the Health Department made a meaningful effort to advertise for medical providers to provide services for the clinics. No other

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<sup>3</sup> The Board Member's financial relationship arises from her spouse being an owner in Family Healthcare.

<sup>4</sup> 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.

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. If the Health Department discontinues the clinics, it will result in additional costs and undue hardship to the patients who will have to 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.

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 citizens in Wyoming County who receive healthcare through the Women's Health Program clinics.<sup>5</sup> If the Wyoming County Health Department cannot hold its health clinics, then the patients who receive medical services through the Women's Health Program clinics will have to bear the cost and inconvenience of traveling to Beckley or other counties to receive comparable medical services. 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.

**The Ethics Commission hereby grants the Wyoming County Health Department a Contract Exemption to allow 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 2023, 2024, and 2025.**

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) other

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<sup>5</sup> 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. The public contract restrictions applied because the tenant received subsidized housing through a program administered by the county housing authority.

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.*



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Terry L. Walker, Acting Chairperson  
West Virginia Ethics Commission