

## **Contract Exemption 2022-01**

**Issued on August 4, 2022, by**

**The West Virginia Ethics Commission**

### **Opinion Sought**

The **Wyoming County Health Department** requests a short-term extension of Contract Exemption 2019-01 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. 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 new Administrator.

The Ethics Commission initially granted a Contract Exemption to the Health Department in [Contract Exemption 2014-02](#) to allow it to contract with Family Healthcare. The Health Department sought a Contract Exemption because of the following financial relationships: The Health Department’s part-time Health Officer had (and still has) an ownership interest in Family Healthcare, and a Board Member resided with another one of its owners.<sup>1</sup>

In [Contract Exemption 2014-02](#), the Ethics Commission 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 extensions of the Contract Exemption in Contract Exemptions [2016-02](#), [2018-04](#), and [2019-01](#).

The 2019 Contract Exemption expired in March 2022. The new Health Department Administrator states that she failed to timely request a new Contract Exemption and apologizes for her omission. She states that she failed to request a new Contract Exemption because she became the new Administrator in January 2021 and it has been a challenge to learn all her new duties and responsibilities, particularly with the ongoing COVID pandemic. The Health Administrator states that she only recently discovered that Contract Exemption 2019-01 had expired.

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<sup>1</sup> The Board Member is now married to that person.

The Health Department requests a short-term Contract Exemption to comply with W. Va. Code § 61-10-15 to give the Department time to solicit bids or quotes from other businesses for the services currently provided by Family Healthcare. These steps are per requirements in Contract Exemption 2019-01 which states that: **“If the Requester submits another Contract Exemption request [to contract with Family Healthcare Associates], it must 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>

The Health Department states that it paid Family Healthcare the following amounts for each listed fiscal year:

- FY 2019 -- \$3,622.50
- FY 2020 -- \$2,452.50
- FY 2021 -- \$1,845
- FY 2022 -- \$2,520

The Health Department anticipates paying Family Healthcare \$1,350 from July 1, 2022, until December 31, 2022, to cover the costs of Family Healthcare conducting one to two clinics per month at the Health Department. The hourly rate of pay remains \$45, and Family Healthcare still provides malpractice insurance coverage. 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 through 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.

The Health Department Administrator states that it will cause hardship to the citizens who receive medical services at the clinics if the Health Department does not have 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

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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.

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 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 relationship of a Board Member<sup>3</sup> and its Health Officer with 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 results 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 without a short-term exemption, the Health Department will be unable to provide medical services to patients who receive medical care through the Women's Health Program. The Health Department states that if it discontinues the clinic, patients will have to travel to Beckley, in Raleigh County, or to other counties, for comparable services which would result in additional costs and undue hardship to the patients. For example, patients would incur additional travel costs.

**The Ethics Commission finds that denial of a short-term Contract Exemption would result in undue hardship to citizens in Wyoming County who receive healthcare through the Women's Health Program.<sup>5</sup> If the Health Department must suspend its health clinics while it solicits bids or proposals for healthcare services, 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.**

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

<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, either they, their spouses, or businesses with which they or their spouses 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 the Ethics Act exception does not relieve them from complying with the stricter restrictions in W. Va. Code § 61-10-15 because § 61-10-15 does not contain the same or a comparable exception for *part-time* [emphasis added] officials. Hence, to comply with § 61-10-15, it is necessary for the Health Department to obtain a Contract Exemption in order for the Health Department to contract with the business in question.

<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.

**The Ethics Commission hereby grants the Wyoming County Health Department a Contract Exemption to allow it to continue contracting with Family Healthcare at a rate of \$45 per hour, which includes Family Healthcare providing liability insurance for the services it provides, through November 15, 2022. If the Health Department wants to continue contracting with Family Healthcare after November 15, 2022, 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 may not be involved in 1) deciding if the Health Department will renew its contract with Family Healthcare or select another provider, 2) 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.**

*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