



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 14, 2022

Gary S. Winuk
Kaufman Legal Group
621 Capitol Mall, Suite 1900
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-22-073

Dear Mr. Winuk:

This letter responds to your request for advice regarding the Political Reform Act (the “Act”) or Government Code Section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest. Also, because your question seeks general guidance and is not limited to a specific governmental decision, we are treating your request as one for informal assistance.²

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General’s Office and the Sacramento County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

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 18104 through 18998 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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTION

Does either the Act or Section 1090 prohibit Jessica Altman, the Executive Director of Covered California, from taking part in any decisions made by Covered California regarding either her spouse's employer, Aledade, or Anthem Blue Cross Blue Shield ("Anthem"), a client of Aledade?

CONCLUSION

While there are no specific governmental decisions at issue regarding Anthem or Aledade, Executive Director Altman will generally be disqualified from taking part in any decisions if it is reasonably foreseeable that the decision will have a material financial effect on Aledade, including any decision in which Aledade is a named party in or subject of the decision. In addition, Section 1090 would generally prohibit Executive Director Altman from taking part in decisions involving contracts between Covered California and Aledade and may also prohibit her from taking part in decisions involving a contract between Covered California and Anthem.³

FACTS AS PRESENTED BY REQUESTER

You seek advice on behalf of Jessica Altman, the Executive Director of Covered California. Ms. Altman was appointed as Executive Director by the Covered California Board of Directors in February 2022. Covered California is a California governmental entity that is responsible for operating a health benefit exchange to provide health insurance to individuals and small businesses who wish to participate. Covered California contracts with certain health plan insurance carriers, including Anthem, to offer health plans through its exchange.

Ms. Altman's spouse is Jared Shinabery. Mr. Shinabery accepted an offer of employment from Aledade in May 2022. Aledade is a private sector, for profit company. The company partners with primary care physicians to build and lead Accountable Care Organizations ("ACOs"). An ACO is a network of doctors and hospitals that shares financial and medical responsibility for providing coordinated care to patients to try to limit unnecessary spending. In his role as Vice President of Network Success, Mr. Shinabery generally oversees services related to helping provider practices succeed in the ACO model. Mr. Shinabery is an employee of Aledade and has unvested stock options in the company that would comprise less than five percent of the total stock value of the company.

Currently, Aledade helps build and lead ACOs across 38 states in partnership with approximately 800 primary care practices, including over 100 federally-qualified health centers. Aledade provides a web-based population health management platform and support to primary care practices to equip them with data and tools they need to manage the health of their patients. Aledade does not own or operate any of the primary care practices or health centers. A significant portion of the practices in the ACOs participate in the federal Pathways to Success Medicare Shared Savings Program, but some also have shared savings contracts with Medicaid, Medicare Advantage,

³ We note that absent information regarding a specific contract, we are unable to evaluate Executive Director Altman's involvement in any particular decision under Section 1090, including a decision related to a contract with Anthem. If you need additional assistance, we recommend you seek further advice once information about a specific contract is available.

and commercial health plans. Aledade's presence in the California health care market consists of its ACOs, first formed in 2019.

Covered California does not have any contracts with Aledade or similar entities, nor has Covered California made any decisions directly involving Aledade. It does not anticipate having any contracts with or making any decisions directly affecting Aledade or similar entities in the future.

While Covered California also does not make any direct decisions regarding ACOs, its contracts with qualified health plan carriers such as Anthem requires the carrier to work with Covered California to both increase enrollment in these ACO systems and measure their performance. To do so, the carrier must report information relating to their ACO systems, including: its characteristics, such as the risk sharing structure, leadership structure, quality incentive programs, data exchange processes, and the number and type of partner organizations; number of enrollees cared for within an ACO; percent of spending under ACO contract compared to overall spending; and performance measure data. Covered California seeks to use this information to inform future contracting requirements, improvement efforts, and best practices.

Aledade has a contract with Anthem to provide services related to ACOs. In particular, Aledade provides certain management and operations services including: (1) management of ACO business operations, such as bookkeeping, contracting, board management, and compliance support and training; (2) case management services, such as care coordination and workflow optimization, identification of quality and risk gaps, and data management; and (3) the provision of an integrated technology platform.

Aledade does not have any contracts with any other health plans that participate in Covered California. However, Aledade does partner with the California Medical Association and California Health Information Partnership and Services Organization (CalHIPSO) to recruit physicians to join the ACOs and provide additional support services. These organizations have engaged with Covered California in the past as stakeholders and have also partnered with Covered California to promote open enrollment and participate in general outreach efforts, though not through any contractual relationship.

ANALYSIS

The Act

The Act's conflict of interest provisions ensure that public officials will perform their duties in an impartial manner, free from bias caused by their own financial interests. (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on one or more of the public official's interests. (Section 87103; Regulation 18700(a).) Section 87103 defines financial interests to include:

- An interest in a source of income to the official, or promised income, which aggregates to \$500 or more within 12 months prior to the decision (Section 87103(c)) including any community property interest in the income of a spouse and a pro rata share of the income of any business entity or trust in which the official (or his or her spouse) owns directly, indirectly, or beneficially, a 10-percent or greater interest (Section 82030(a)).

Because Executive Director Altman's spouse is an employee of Aledade she has an interest in the company as a source of income.⁴ Therefore, she will have a conflict of interest in any decisions that would have a reasonably foreseeable and material financial effect on Aledade, including decisions involving Anthem if the decision may have a financial effect on Aledade.

Foreseeability

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6)."

Where an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

Materiality

Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Regulation 18702.3 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on an official's source of income interest, and provides, in part, that the decision's effect is material if "[t]he source is a business entity that will be financially affected under the materiality standards in Regulation 18702.1." (Regulation 18702.3(a)(4).) In turn, Regulation 18702.1 provides that the decision's effect is material if:

- The business is a named party in, or the subject of, the decision.
(Regulation 18702.1(a)(1).)

⁴ Note that because her ownership interest in Aledade is less than 10 percent, the clients of the company, including Anthem, are not sources of income to her.

- The decision may result in an increase or decrease of the business's annual gross revenues, or the value of the business's assets or liabilities, in an amount equal to or more than \$1,000,000.00, or five percent of the business's annual gross revenues and the increase or decrease is at least \$10,000.00.

(Regulation 18702.1(a)(2).)

- The decision may cause the business to incur or avoid additional expenses or to reduce or eliminate expenses by equal to or more than \$250,000.00, or one percent of the business's annual gross revenues and the change in expenses is at least \$2,500.00. (Regulation 18702.1(a)(3).)

- The official knows or has reason to know that the business has a real property interest that is explicitly involved in the decision under Regulations 18701(a) and 18702.2(a)(1) through (6), or there is clear and convincing evidence the decision would have a substantial effect on the property.

(Regulation 18702.1(a)(4).)

Additionally, the facts state in his role as Aledade's Vice President of Network Success, Executive Director Altman's spouse generally oversees services related to helping provider practices succeed in the ACO model. Note that under Regulation 18702.3's "nexus test," any reasonably foreseeable financial effect on a source of income to a public official or the official's spouse is material if the decision will achieve, defeat, aid, or hinder a purpose or goal of the source [of income] and the official or the official's spouse receives or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

Under the applicable regulations, Executive Director Altman is generally prohibited from any decision in which Aledade is a named party in or subject of the decision. However, we must caution that Executive Director Altman is also prohibited from taking part in decisions even if Aledade is not a named party in or subject of the decision, if the financial effect of the decision meets any of the criteria under Regulation 18702.1(a)(1)-(4) or 18702.3(b) with respect to Aledade.

Nonetheless, whether the Act prohibits an official from taking part in a governmental decision based on a conflict of interest is a fact-specific inquiry made on a decision-by-decision basis. If you need additional assistance determining if Aledade is a named party in or the subject of any specific decision or whether Executive Director Altman is disqualified from any specific decision, including a decision in which Aledade is not explicitly involved, such as a decision involving Anthem that may affect Aledade, we recommend you seek further advice from the Commission at that time.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) A contract that violates Section 1090 is

void, and the prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646-649.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) Officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 does not specifically define the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 867, fn.5; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 207-208; 85 Ops.Cal.Atty.Gen. 34, 36.:38 (2002); 84 Ops.Cal.Atty.Gen. 158, 161-162 (2001).)

Further, “the certainty of financial gain is not necessary to create a conflict of interest... (t)he government’s right to the absolute, undivided allegiance of a public officer is diminished as effectively where the officer acts with a hope of personal financial gain as where he acts with certainty.” (*People v. Gnass* (2002) 101 Cal.App.4th 1271, 1298 (citations omitted).) Eliminating temptation for public officers and employees, obtaining their undivided loyalty, and avoiding the perception of impropriety are important public policy goals in California. (*Thomson, supra*, at p. 648.)

However, you have not identified any specific contract before Covered California, and we therefore do not have sufficient information regarding a contract to make a determination under Government Code Section 1090. As a general matter, we caution Section 1090 prohibits Executive Director Altman from taking part in decisions involving contracts in which she has a financial interest including not just contracts with Aledade, but potential contacts with Anthem that may result in financial losses, or the possibility of losses, as well as the prospect of pecuniary gain for Aledade.

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

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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