

TESTIMONY to the Office of State Ethics
May 21, 2015
Re: Draft Declaratory Ruling No. 2015-B
Ellen Andrews, PhD
Executive Director

Thank you for the opportunity to share my thoughts on this important issue. We at the Connecticut Health Policy Project have worked for fifteen years to expand access to quality, affordable health care for every state resident. No one supports effective health care reform more than consumer advocates and strong ethics are key to successful reform.

Connecticut's State Innovation Model (SIM) is meant to create a profound transformation of our health care system, to touch every life in the state with substantial implications for our economy and taxpayers. SIM is far more ambitious and will have a greater impact on Connecticut residents than any past health reform plan. SIM is distributing millions in federal and state tax dollars based on explicit decisions made by SIM committees with members representing organizations that could benefit from those decisions. It is critical that all SIM decisions be unimpeachable and only motivated by the best interests of the entire state. Unfortunately SIM's processes have not been transparent, with no legislative input, no public hearings, and have excluded many stakeholders from the beginning, including consumers and advocates. For example, the meetings to decide how all health care in the state will be paid for in the future were held by a small, insular group on a few summer evenings in a conference room in Rocky Hill. This problem has prompted a transparency complaint over non-disclosure of documents and secret meetings now pending before Connecticut's Freedom of Information commission.¹

The SIM steering committee developed the \$48 million SIM budget at a very granular level. For example, in my request for this opinion I referenced minutes from a steering committee meeting where members argued strongly to fund projects that would benefit their organizations and against funding to others. Even more lucrative for many members than grant funds, SIM committee members are also setting very concrete standards and accountability systems for Connecticut's entire \$30 billion health care sector, standards that their organizations will have to meet. SIM's Consumer Advisory Board (CAB) is sharing in over \$1 million of SIM funds. The use of those funds was decided in very specific detail by CAB chairs and members, and CAB will be hiring staff to support their committee from SIM funds. CAB also chooses representatives to all the other SIM

¹ Ironically, SIM has already stipulated that committee members are public officials for purposes of Freedom of Information to avoid transparency. But they are simultaneously arguing that they are not public officials for purposes of ethics to avoid accountability. I've had attorneys explain this to me several times, but it still doesn't make sense.

committees making lots of critical decisions about SIM funding and Connecticut's health care system. Unfortunately decisions about those appointments occur in secret meetings.

The potential for conflicted interests in SIM is clear and obvious to independent advocates (and anyone else we talked to) as described in your draft opinion. It is hard to argue with. As a former member of HITE-CT, a quasi-public, I understand and take seriously the conflict of interest provisions and Code of Ethics. I had to disclose my personal financial information, and rightly so. Like my colleagues on the Board, I fully understood when I agreed to serve, that I could not financially benefit from any of HITE-CT's decisions or funding.

To protect the integrity of health care reform, the independent consumer advocates wanted to be proactive by preventing problems and ensure, from the start, that decisions are made with only the best interests of Connecticut in mind. There should be no misunderstandings about member roles and priorities in serving the public on these committees. Advocates introduced a proposal to CAB last November to comply with Code of Ethics for Public Officials and adopt a revolving door prohibition. Unfortunately CAB has taken no action or vote on the matter in six months. In February independent advocates also sent a sign-on letter (attached to this testimony) asking SIM to comply with the Code of Ethics. We have received no answer. In January I appealed to your Commission for an opinion, trying to avoid the "gotcha" of a complaint after there is a problem, which would be counter-productive.

Unfortunately, in the meantime, exactly what we were trying to avoid has happened. This spring SIM issued a \$650,000 Request for Proposals (RFP) to provide assistance to CT practices to achieve patient-centered medical home (PCMH) certification. PCMH certified practices are paid more by most payers. As an example for just one payer, Medicaid PCMHs received \$150,000 each in extra reimbursements in the first year of the program. Most practices have to hire costly consultants to guide them through the PCMH transformation process to become certified. SIM is offering that assistance to practices, for free, in a competitive RFP with very narrowly defined qualifications.

The standards for SIM's PCMH certification were developed after long, contentious meetings of the SIM Practice Transformation Task Force (PTTF) over the winter including independent consumer advocates and providers. On February 5th two PTTF members delivered their very detailed recommendations to the steering committee, where it was rejected by SIM staff and sent back to the PTTF committee for unspecified revisions. Reportedly later that month, representatives of the steering committee, including two provider members, then met with the PTTF committee to resolve the concerns. One steering committee provider member argued that practices in his organization could not qualify under one of the PCMH standards adopted by the PTTF committee because data requirements for that standard are not supported by the electronic health record version his organization has already purchased. The PTTF committee agreed to his changes at the meeting. (Minutes of the meeting are unavailable, but I have confirmed the facts above with four people who attended the meeting.) The SIM steering

committee, including the provider members who attended the PTF committee meeting, then adopted the new, lower PCMH standards at their March 12th meeting. Subsequently, it is my understanding that the same steering committee provider member's practices have applied for the SIM grant.

I'd like to address a few arguments made by SIM staff in opposition to compliance with the Public Officials' Code of Ethics, expanding on the issues in the independent advocates' letter to SIM. It has been suggested that to conduct their difficult, expansive task, SIM needs the input of providers, payers and community groups that might be conflicted under the Code of Ethics. The independent advocates' letter provides a longer answer to this concern, but there are numerous successful models to collect input from interested parties, without including them on voting committees. In fact, to be successful, SIM needs the input of far more voices than could ever be accommodated by any committees' membership. Every day, state and federal agencies successfully manage to actively solicit and incorporate real-world input into policies while maintaining ethics. SIM also asserts that they have adopted a weaker policy that limits conflicts of interest by having the RFP drafted by a group of state employees, based on standards, budgets and qualifications decided by SIM committees. This is clearly insufficient, given the situation that has already arisen in the grant application for PCMH support.

I admit that I am disappointed by the draft opinion you are considering today. But I now understand the law has a giant loophole. I can't imagine that past legislatures intended to exempt appointees of the Lieutenant Governor from the same ethical standards that apply to legislative and gubernatorial appointees. I also understand that SIM is very unusual in Connecticut state government; this is not how our state has conducted the public's business in the past. But, regrettably, I also understand that the Commission does not have jurisdiction. However, I wholeheartedly support your draft recommendation that SIM adopt strong conflict of interest policies immediately, and further that SIM halt any currently pending activities that do not comply with the Public Officials' Code of Ethics. I also urge the General Assembly and Governor to close this unintended loophole in the law.

Thank you for your time and your commitment to ensuring the highest ethical standards for Connecticut government.