

September 4, 2015

Lt. Governor Nancy Wyman
Chair
Healthcare Innovation Model Steering Committee

Re: Conflict of Interest Policy to Govern Healthcare Innovation Steering Committee and Its Councils

Dear Lt. Governor Wyman:

All of us are members of at least one of the committees or councils responsible for overseeing the development of the State Innovation Model (SIM) plan under a grant from CMS. We write to you as such members to express our concern with the weak conflict of interest policy which the SIM Project Management Office (PMO) has asked that all such members sign. We cannot sign it as is, and will not be doing so, because, as explained below, the policy is not consistent with the state Code of Ethics governing all similar such committees in Connecticut, will not ensure avoidance of conflicts of interests, and will significantly compromise the transparency in government processes promised by SIM leaders. However, we will sign onto the conflict of interest policy contained in the state Code of Ethics for Public Officials.

We acknowledge that, through a loophole in state law, the members of the Healthcare Innovation Model Steering Committee and its committees are not directly subject to the state Code of Ethics for Public Officials and its conflict of interest policy. This is because members are appointed by the Lieutenant Governor; the law is silent on SIM's unique appointment structure. Although SIM has argued that the Code would not be applicable even if members were appointed by the Governor and General Assembly in Connecticut's usual way, because the councils are "advisory boards," the Office of State Ethics seems to have disagreed with that position in its Declaratory Ruling No. 2015-B, issued on May 21, 2015¹ ("based on the facts presented, it appears that members of the Steering Committee, its subcommittees and the CAB exercise considerable authority in approving the design and development of various programs as they relate to healthcare reform and innovation in Connecticut, including funding."). In any event, although SIM has represented that its weak conflict of interest policy is "consistent" with the Code of Ethics, the SIM policy significantly conflicts with the Code of Ethics, as set forth below.

While SIM's policy is vaguely consistent with the Code of Ethics for "*substantial* conflicts of interest," the Code of Ethics goes beyond this to address "*potential* conflicts of interest." This is critically important because "*substantial* conflicts of interest," whereby recusal is mandated by the Code, are very rare, such that avoiding them does little to address the kinds of problematic conflicts which routinely arise. Under both page 10 of the Code and SIM's weak

policy, a “**substantial** conflict of interest” occurs only when the person who is on the council, committee or board would be the **only person** to benefit from the specific decision-making involved; it specifically is deemed not to be present where “any benefit or detriment accrues to any such person as a member of a profession, occupation or group to no greater extent than any other member of such profession, occupation or group.” As a practical matter, very few members of any decision-making board would ever be in a position to vote on something which will benefit **only** them, such as an earmark, versus the specific small or large group of which he or she is a member.

Accordingly, the Code of Ethics also addresses the far more common, and thus far more problematic, situation of individuals voting on matters that they **and** members of their group will particularly benefit from. The Code of Ethics defines a “**potential** conflict of interest” as follows:

A “**potential**” conflict of interest exists if a public official or state employee, in the discharge of his or her official state duties, would be required to take an action that would affect his or her financial interest, or the financial interest of his or her spouse, parent, brother, sister, child, spouse of the child, or a business with which the official or employee is associated. **Unlike a “substantial” conflict of interest, there is no requirement that the financial impact be direct or that it affect the individual differently from other members of his or her profession, occupation, or group.** However, there still must be a reasonable expectation on the part of the state employee or public official that there will be some financial impact based on his or her actions. A ‘potential’ conflict of interest does not exist if the financial interest is ‘de minimus’ (under \$100) or if the interest is not distinct from that of a substantial segment of the general public (e.g., all taxpayers). Conn. Gen. Stat. §1-86. (emphasis added).

For these far more common conflict situations, decision-making is not absolutely prohibited, but there nevertheless are strong protective requirements:

A public official or state employee who is a member of a regulatory board, commission, council or authority **must** abstain from taking official action on the matter **or** prepare a written statement explaining the conflict and why despite the conflict they are able to act fairly, objectively and in the public interest. Such statement must be submitted to the Office of State Ethics and entered in the agency’s journal or minutes. (page 11)(emphasis in original).

This second definition of “conflict of interest” and the requirements attached to it are ignored entirely in SIM’s weak conflict of interest policy we have been asked to sign. Rather, that policy specifically **exempts** from any duty of identification, justification or recusal a situation where the “actual, perceived or potential financial benefit (or detriment) to the member or the member’s organization ... *is no greater than that of the member’s or the member’s organization’s profession, occupation or group.*” (emphasis added). In the context of SIM, this essentially means that there are no restrictions on conflicts of any kind, since, for example, there are no providers which are **uniquely** able to take on shared savings under an insurance contract,

though they clearly have a conflict of interest in voting for something that will substantially benefit their organization, as well as a few other provider organizations in the same situation. Indeed, regrettably, this has already occurred with the Steering Committee, where two members have lobbied to change, and voted favorably to weaken, standards pertaining to their organizations, thus allowing their organizations to successfully gain taxpayer-funded contracts with the SIM PMO.

SIM's weak ethics policy would require us not only to affirm, inaccurately, that the policy we are signing is "consistent with Section 1-85 of the State Code of Ethics," but also that "the State Code of Ethics does not treat SIM participants as public officials but as members of an advisory board to whom the State Code of Ethics and associated conflict of interest provisions do not apply" -- when the Office of State Ethics disagrees. We do not think it is appropriate to sign such a misleading document, nor do we think that the PMO should be asking anyone else to sign it, especially without fully explaining the commitment they are agreeing to.

In addition, regardless of the technicality of appointment, we see no reason why all members of the Steering Committee and its councils should not be asked to **voluntarily** sign onto the exact conflict of interest policy set forth in the Code of Ethics for Public Officials, including the restrictions where there are "*potential* conflicts of interest" as defined in that Code. This will ensure that these kinds of common conflicts of interest, which have already compromised the SIM governing structure, can be put to an end and integrity can be restored.

The arguments against doing so set forth by SIM are not persuasive. SIM argues that it is important to get broad stakeholder input and suggests that this is somehow not possible if individuals with a conflict of interest are not allowed to vote on matters which benefit them and a few others in the same situation. We could not agree more with SIM's assertion that broad stakeholder engagement is crucial to successful health care reform. However, Connecticut state government has a long history of accessing critical information from stakeholders in policymaking without risking conflicted interests. In almost all other situations where broad stakeholder engagement is essential, councils in our state have been able to receive broad and robust input while still complying with the state Code of Ethics, by ensuring that those members with "potential conflicts of interest," while freely expressing their views, abstain from actually voting on any matter that will benefit the individual or his or her organization along with other similarly-situated individuals or organizations. In fact, it is hard to imagine how SIM will access all the wisdom necessary for success in this monumental task without soliciting input beyond a limited number of voting committee members. There is nothing so special about SIM that it should be exempt from these basic good government rules.

We also understand that the director of the PMO has asserted that CMS/CMMI has approved its weak ethics policy. Apart from the fact that it would be inappropriate for CMS to

pass judgment on Connecticut-specific state ethics rules, we have checked with officials at CMS and confirmed that no such approval was ever granted, or even requested.

In sum, we cannot in good faith sign the weak ethics policy being pursued by SIM, and urge that all members of all such councils refrain from signing it and instead be asked to sign the actual conflict of interest policy set forth in the state Code of Ethics for Public Officials.

Thank you for your attention to our concerns.

Respectfully,

Ellen Andrews
CT Health Policy Project
Member: SIM Equity & Access Council

Kevin Galvin
Small Business for a Healthy CT
Member: SIM Consumer Advisory Board

Gaye Hyre
ArtBra New Haven
Member: SIM Equity & Access Council

Shirley Girouard
Member: SIM Practice Transformation Task Force

Daniela Giordano
NAMI Connecticut
Member: SIM Quality Council

Michaela I. Fissel
Member: SIM Consumer Advisory Board

Steve Karp
National Association of Social Workers, CT Chapter
Member: SIM Consumer Advisory Board

Bonita Grubbs
Christian Community Action
Member: SIM Consumer Advisory Board

Lesley Bennett
Member: SIM Practice Transformation Task Force

cc: Members, Healthcare Innovation Model Steering Committee
and SIM Councils

¹ Available at http://www.ct.gov/ethics/lib/ethics/declaratory_rulings/2015/declaratory_ruling_2015-b_signed.pdf