



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 571

February 25, 2022

ISSUE

Whether Chapter 572 of the Government Code prohibits a former employee of a regulatory agency from accepting certain employment pertaining to Medicaid applications. (AOR-657)

SUMMARY

None of the revolving door provisions in Chapter 572 of the Government Code prohibit the requestor from accepting the prospective employment. The requestor is not a member of the governing body or the executive head of a regulatory agency, so section 572.054(a) does not apply. Section 572.054(b) would prohibit the requestor from working on any specific Medicaid application on which she participated during her state service, but would not prohibit her from working on all Medicaid applications generally. And section 572.069 does not prohibit the requestor from accepting the employment because Medicaid applications are not procurements or contract negotiations.

FACTS

The requestor asks whether any of the revolving door provisions in Chapter 572 of the Texas Government Code would prohibit her from accepting prospective employment. She is currently an employee of the Texas Health and Human Services Commission (“HHSC”) who supervises a team that processes and makes approval or rejection decisions on Medicaid applications from uninsured patients that show up for care at a particular hospital operated by a healthcare system with multiple locations. The requestor asks the Commission whether she may seek employment from a different hospital location of the same healthcare system as a “patient access director” that has as one of its job responsibilities overseeing hospital employees who facilitate uninsured patients’ Medicaid applications.

ANALYSIS

Chapter 572 of the Texas Government Code contains three different “revolving door” provisions. *See* Tex. Gov’t Code §§ 572.054(a), 572.054(b), and 572.069. The first of these provisions, section 572.054(a), applies only to “[a] former member of the governing body or a former executive head of a regulatory agency.” Tex. Gov’t Code § 572.054(a). Because the requestor is

neither a member of HHSC's governing body nor the agency's executive head, this provision does not prohibit her from accepting any potential employment.

The second revolving door provision, section 572.054(b), prohibits *all* former state officers and employees of regulatory agencies from receiving any compensation for services rendered on behalf of any person "regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility." Tex. Gov't Code § 572.054(b). In short, this law prohibits a former state employee from working on a "matter" the former state employee "participated" in as an employee of the state agency.

The statutory definition of "particular matter" is a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding. Tex. Gov't Code § 572.054(h)(2). The Commission has previously opined that the "term 'particular matter' refers to a particular proceeding rather than to a particular subject matter" Tex. Ethics Comm'n Op. No. 496 (2011). Similarly, it has opined that former state employees are not prohibited from working in subject areas or for employers with which they became familiar in the course of their state employment. *Id.* (citing Tex. Ethics Comm'n Op. No. 364 (1997)). Furthermore, in Ethics Advisory Opinion No. ("EAO") 397, the Commission determined that "[s]eparate contracts are separate 'matters' for purposes of the revolving door provision in Government Code section 572.054(b)." Tex. Ethics Comm'n Op. No. 397 (1998).

Based on these prior holdings, we conclude that separate Medicaid applications are separate "particular matters" for purposes of section 572.054(b). So, while this provision would prohibit the requestor from working on any specific Medicaid application on which she participated during her state service, she would not be prohibited from working on all Medicaid applications generally.

The third revolving door provision, section 572.069, also applies to all former state officers and employees. It prohibits all former state officers and employees who "participated on behalf of a state agency in a procurement or contract negotiation" from accepting employment from "a person" involved in that procurement or contract negotiation for two years after ceasing their state service. Unlike section 572.054(b), this provision does not merely prohibit former state agency employees from working on particular matters in their new employment. Instead, it prohibits former state agency employees from accepting *any* employment from certain persons for two years, even if the private employment is unrelated to anything they worked on during their state service.

This request raises several questions about the application of section 572.069. The first is whether the two locations of the same healthcare system are the same "person." Tex. Gov't Code § 572.069. Chapter 572 of the Government Code defines "person" as "an individual or business entity" and defines "business entity" as "any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust." Tex. Gov't Code §§ 572.002(2), 572.002(7). Information available from the healthcare system's website and the Texas Secretary

of State appears to confirm that the hospitals are not distinct legal entities, but merely two locations of the same organization. Therefore, it appears that the two hospitals are the same “person” for purposes of section 572.069.

Nevertheless, we conclude that the requestor is not prohibited from accepting the prospective employment because a patient’s Medicaid application is not a “procurement or contract negotiation.” The Government Code does not define procurement or contract negotiation. However, the State of Texas Procurement and Contract Management Guide, published by the Texas Comptroller of Public Accounts, identifies several “common characteristics between all procurements,” including “defin[ing] the business need,” “select[ing] the vendor that provides best value to the State,” and “ensur[ing] that the awarded contract complies with applicable procurement law and contains provisions that achieve the procurement objectives.”¹

None of those steps are present in connection with an HHSC employee processing a Medicaid application. The decision to approve or deny an application for Medicaid coverage does not involve consideration of business needs, or the selection of a vendor, or the negotiation of contractual terms. It is a ministerial determination of whether to provide government assistance. In short, a Medicaid application involves an agency’s delivery of services. A procurement, on the other hand, involves an agency’s acquisition of goods or services.

Section 572.069’s legislative history confirms our understanding. The stated purpose of Senate Bill 20 in the 84th Regular Legislative Session was “to reform state agency contracting by clarifying accountability, increasing transparency, and ensuring a fair competitive process.”² It sought to accomplish this purpose by making “comprehensive changes to state agency contracting, purchasing, and accounting procedures.”³

Section 572.069 was just one small piece of these comprehensive changes. Among other provisions, the bill required: (1) the state auditor to audit the performance of HHSC contracts in excess of \$100 million in annual value, (2) the comptroller of public accounts to conduct, in cooperation with the governor’s budget and policy staff, a study examining the feasibility and practicality of consolidating state purchasing functions into fewer state agencies or one state agency, (3) the Texas Department of Information Resources to post all contract solicitation documents to the centralized statewide accounting and payroll system, (4) state agencies to review vendor performance after certain contracts are completed or terminated, and (5) training, continuing education, and certification of state agency purchasing personnel. *Id.*

Put in this context, it becomes clear that section 572.069 was intended and designed to prohibit public servants from seeking to personally benefit from influencing an agency’s decision to use taxpayer money to purchase goods or services from the private sector on behalf of a state agency. Because a Medicaid application is not a “procurement or contract negotiation,” section 572.069 of the Government Code does not prohibit the requestor from accepting the prospective employment.

¹ <https://comptroller.texas.gov/purchasing/docs/96-1809.pdf>

² <https://capitol.texas.gov/tlodocs/84R/analysis/pdf/SB00020F.pdf#navpanes=0>

³ <https://capitol.texas.gov/BillLookup/BillSummary.aspx?LegSess=84R&Bill=SB20>