



State of Connecticut

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September 14, 2015

The Honorable Nancy Wyman, Lieutenant Governor
Office of the Lieutenant Governor
Chair of the Healthcare Innovation Model Steering Committee
State Capitol, Room 304
210 Capitol Avenue
Hartford, CT 06106

Mr. Mark Schaefer, PhD
Director of Healthcare Innovation
The Office of the Healthcare Advocate
ATTN: Healthcare Innovation
450 Capitol Avenue, 2nd Floor
Hartford, CT 06106

Dear Lieutenant Governor Wyman and Mr. Schaefer:

I am writing to strongly object to the watered down and weak "Conflict of Interest Safeguards for the State Innovation Model (SIM)" that have been proposed as an alternative to our strong and well tested state code of ethics. The proposed safeguards provide merely the illusion of ethical standards and are in fact woefully inadequate. Instead of cherry picking to create a customized code of ethics, the committee should be adopting the formal state code of ethics for public officials.

As you are well aware, the State Innovation Model (SIM) is an executive branch entity that operates with no specific statutory authorization or oversight. However, its power and ambition to overhaul our state's health care system is breathtakingly broad. Its goal is to radically "transform" our health care system through the implementation of new "health care delivery and payment models" that promote "accountable care." To accomplish this, SIM seeks to put everyone in the state, whether a state employee, Medicaid recipient or privately insured citizen, into a "shared savings program" that rewards health care providers for controlling costs.

Behind these opaque but seemingly laudable goals lies the devilish details. How do we measure cost and quality? What benchmarks do we use? What variables do we consider such as health status, and environmental economic and social burdens? How do we guard against underservice, particularly for vulnerable populations? How do we ensure that "savings" aren't achieved at the expense of patient care? Which providers get to participate? How are any "savings" allocated among providers and payers? And how do we ensure that some "savings" is also passed on to consumers?

SIM seeks to remake a \$30 billion health system impacting the health and wellbeing of 3.5 million people and yet operates largely in the shadows of the halls of government. It received \$45 million in federal grant money, i.e. taxpayer money, to promote its initiatives and has started doling this money out to various entities.

SIM is guided by a Steering Committee and a number of subcommittees. Representatives of the most powerful vested interests from the health care industry serve on these committees, including large insurers Cigna, Aetna, Anthem and United Healthcare and large hospitals and providers such as Yale New Haven Hospital, Hartford Healthcare, and the Yale affiliated Northeast Medical Group.

Thus, the very entities most financially invested in our health care system and who will be participating in the new “delivery and payment models” developed by SIM are sitting around the table deciding the eligibility criteria and standards for their own participation and payment. Their failure to adopt the state code of ethics begs the question: why? This is a scary concept that certainly raises some issues in my mind. For example, it has been reported that a representative from St. Vincent’s Health Partners who also serves on the SIM Steering Committee was actively involved in shaping the eligibility criteria for certain grants awarded by SIM. St. Vincent’s was then awarded one of the grants. Another example of this is cited in the Office of State Ethics’ ruling, which explains that the SIM Consumer Advisory Board (CAB) was allocated \$1.4 million and developed their own budget for those funds. This budget includes travel and technology for CAB members and at least \$200,000 in funding for community organizations. Many CAB members work for organizations that are eligible to apply for these funds.

Given the authority vested in the SIM Steering Committee and subcommittees and the influence SIM has over millions of dollars in grant money, billions of dollars of economic activity, and the lives and health of virtually every citizen in Connecticut, one would think that it would be subject to strict transparency and ethics rules. However, because of the unusual decision to give appointing authority to the lieutenant governor, SIM Steering Committee and subcommittee members are not subject to the same state code of ethics that applies to all other “public officials,” including appointees of the governor.

Given the authority exercised by the Steering Committee and subcommittees in approving the design of SIM grants and programs, including eligibility and qualifying criteria and payment standards, there is no question that, if such members were appointed by the governor, they would be considered “public officials,” not advisory board members. In other words, if these members had been appointed by the governor, as is the customary practice for executive branch boards, they would be subject to the full code of ethics. The appropriate course of action in these circumstances would be for the members of the Steering Committee and subcommittees to agree to abide by the same code of ethics applied to all other public officials.

Instead, it appears that SIM has decided to take advantage of the loophole in our ethics statute by recommending a watered down ethics provision. This provision would apply a weak “conflicts of interest” provision. Instead of regulating all “potential” conflicts of interests, as does our state code of ethics, it would only prohibit “substantial” conflicts of interest. This is a much narrower standard that is rarely triggered. It requires a showing that the member’s action would result in a direct and unique financial gain to such member or his or her business.

Applying such a narrow conflict of interest standard invites gaming of the system. Criteria can be crafted so that only a small number of businesses are eligible to apply for a grant or program, yet so long as the member’s business is not specifically singled out for a unique benefit, it would not be a “substantial” conflict of interest. This kind of conduct simply breeds public cynicism and contempt.

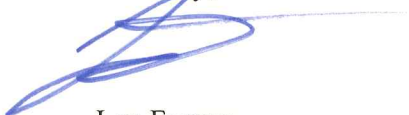
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Moreover, the proposed “safeguards” are limited to this narrow and virtually toothless conflict of interest provision. They do not adopt any of the other important provisions of our code of ethics for public officials. They do not address the “use of office for personal gain,” the receipt of gifts from those who might benefit from SIM grants or programs or their lobbyists, the revolving door ban, or financial interest disclosure. Just as an example, SIM may be involved in the design and procurement of health information technology systems. There is nothing in the proposed “safeguards” to prevent a member of the SIM Health Information Technology Council from accepting gifts from a health information technology vendor, or proposing selection criteria that benefits a particular vendor and then investing in or going to work for that vendor.

For all of the above reasons, I strongly object to the proposed SIM ethical “safeguards” and believe that they are wholly inadequate. There is no legitimate reason for Steering Committee and subcommittee members to not be subject to the same code of ethics applied to all other public officials, including gubernatorial appointees. When the ethics code was adopted, it could not have been envisioned that boards with such significant authority over an entire industry and with the potential to impact the health of every citizen of our state would be created with no legislative input or oversight and appointed by the lieutenant governor. Rather than take advantage of this lack of foresight and loophole in our existing ethics code, SIM should uphold the spirit and intent of our ethics code and protect the public trust by requiring that all Steering Committee and subcommittee members agree to abide by our full code of ethics for public officials.

Ultimately, I believe the legislature must address this issue to ensure not only that SIM committee members are subject to the full code of ethics, but that this does not become dangerous precedent. The ethics code should not be consciously avoided through the use of non-gubernatorial appointments. While I proposed an amendment last session that would have declared SIM Steering Committee members “public officials” subject to the code of ethics, I now see the need to ensure that ANY appointees of the lieutenant governor or other constitutional officers be considered public officials and subject to the same code of ethics.

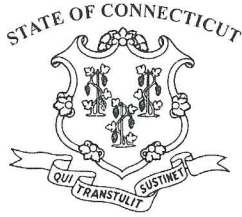
Sincerely,



Len Fasano
Senate Minority Leader

Enclosure:

cc: Healthcare Innovation Steering Committee Members
State of Connecticut Consumer Advisory Board Members
SIM Working Group Members



General Assembly

Amendment

January Session, 2015

LCO No. 8300



Offered by:

SEN. FASANO, 34th Dist.

SEN. WITKOS, 8th Dist.

SEN. MCLACHLAN, 24th Dist.

To: Subst. Senate Bill No. 1025

File No. 271

Cal. No. 194

"AN ACT AUTHORIZING THE CONNECTICUT HEALTH INSURANCE EXCHANGE TO ESTABLISH SUBSIDIARIES."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. (*Effective from passage*) The members of the Healthcare
4 Innovation Steering Committee of the State Innovation Model
5 Initiative program management office, established pursuant to the
6 State Innovation Model Initiative by the Centers for Medicare and
7 Medicaid Services Innovation Center, shall be deemed to be public
8 officials for the purposes of chapter 10 of the general statutes."

This act shall take effect as follows and shall amend the following sections:

Sec. 501	<i>from passage</i>	New section
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