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October 13, 2017

**VIA E-MAIL**

Carol Quinn, Esq.  
Director of Lobbying  
New York State Joint Commission on Public Ethics  
540 Broadway  
Albany, NY 12207  
carol.quinn@jcope.ny.gov

Re: Comment on JCOPE Proposed Comprehensive Lobbying  
Regulations -- I.D. No. JPE-34-17-00003-P

Dear Ms. Quinn:

The New York Health Plan Association (“HPA”) is the largest trade association representing health insurers and HMOs in New York. HPA is comprised of 29 health plans that provide comprehensive health care services to more than eight million New Yorkers. Many HPA members participate in the Medicaid managed care program – including managed long term care and the Child Health Plus program – and/or contract with the State to provide coverage to State employees through the New York State Health Insurance Program. Our members also regularly interact with counties and local governments throughout the state in order to provide similar products for the benefit of municipal employees. As a result, our members have made it a priority to comply with the New York State Lobbying Act. In doing so, however, the member companies have long understood that certain employees who interact with State or local governments for the sole purpose of obtaining government contracts were exempt from being identified as lobbyists on the relevant company’s Statement of Registration, pursuant to the statutory exemption for commission salespersons. HPA submits this letter to specifically highlight a concern regarding the provision of the New York State Joint Commission on Public Ethics (“JCOPE” or “the Commission”) proposed regulations pertaining to commission salespersons.

OFFICERS:

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Paul F. Macielak, Esq.

The New York Legislative Law has long afforded an exception to the provisions of the Lobbying Act for those individuals considered “commission salespersons with respect to governmental procurements.” N.Y. Legis. Law § 1-c(c)(O). The law defines “commission salesperson” as an individual whose scope of work is focused on influencing governmental procurements and is:

1. an employee of the entity selling to government or, if an independent contractor, has a “written contract for a term of not less than six months or for an indefinite term” from the state vendor;
2. “compensated, **in whole or in part**, by the payment of a percentage amount of all or a substantial part of the sales which such person has caused, promoted, influenced or induced;”
3. not paid a commission rate that is higher for government sales than for non-government sales; and
4. not engaging in other activities that amount to lobbying, as such term is defined in the Lobbying Act.

*See*, N.Y. Legis. Law § 1-c(u) (emphasis added). As highlighted above, the statute only places two compensation related restrictions on an individual seeking to be treated as a commission salesperson: (a) the individual’s compensation must at least *partially* be in the form of a commission, and (b) the commission rate set for successful government sales cannot be higher than the rate that the vendor set for sales made to non-government clients. Despite the statutory frame work, the proposed regulation would add a third caveat and require that the salesperson’s “[c]ommissions . . . constitute, or is intended to constitute at least 50% of the person’s total annual compensation.” Proposed 19 NYCRR 943.8(c)(2)(i)(d).

Respectfully, JCOPE lacks authority to create this new prong of the commission salesperson exemption test. The Agency cannot mandate a minimum level of the compensation based on commissions – 50% or more – through regulation, when the statute merely requires that the salesperson’s compensation be based “in whole or in part” on commissions. Provided that the individual’s job is primarily related to influencing procurements, the individual is employed or an independent contractor for a period of six months or more pursuant to a written contract, receives some level of compensation that is based as a percentage of sales and that percentage is not higher when calculating government sales versus non-government sales, the individual must be exempt from registration as a lobbyist under the Lobbying Act, unless he or she engages in other non-procurement related lobbying.

Finally, even if JCOPE had authority to set a base level requirement of the amount of compensation that is based on commissions, it is unclear where 50% comes from. In discussing this proposal with our members, it has become clear that this is inconsistent with the industry standards and that sales persons who are truly compensated by commissions, will not necessarily receive less than half of their overall compensation in base salary.

Based on the foregoing, we believe JCOPE's proposed regulation 19 NYCRR 943.8(c)(2)(i)(d) needs to be revised to delete any reference to the 50% standard. HPA is available to address any questions that JCOPE may have about this concern.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul F. Macielak". The signature is written in a cursive style with a large, sweeping initial "P".

Paul F. Macielak  
President & CEO