

## **ADVISORY OPINION 98-19**

April 8, 1998

RE:           May university employee assume position as  
              Commissioner of the Department for Medicaid Services?

DECISION:   Yes, within limitations.

This opinion is in response to your March 20, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 8, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. The Department for Medicaid Services (the "Department") desires to enter into a Memorandum of Agreement with the University of Louisville (the "University") to allow an employee of the University to assume the position of Commissioner of the Department. The employee has been working for the University as the Director of Administration, Planning and Development in the Department of Psychiatry since 1993. Prior to that, he was employed as the Commissioner for the Department for Mental Health and Mental Retardation Services and was employed in that department for more than 25 years.

Within his work for the University, he also handles government relations for the University Medical School, the Dean's Office and for the Medical School Practice Association ("MSPA"). The MSPA is a nonprofit corporation, separate and distinct from the University. Until eight months ago, the employee performed services two days a week for the Dean's Office and for the MSPA. The Department of Psychiatry was reimbursed 25% of the employee's salary by both the Dean's Office and the MSPA. In July 1997, MSPA's share of the employee's salary was picked up by University Health Care Inc. ("UHC"), a separate for-profit corporation that is a Medicaid Regional Provider, and of which MSPA owns 52%. The remaining shareholders of UHC are Alliant Health Systems, Jewish Hospital and the University Medical Center. Within his duties for which the University is reimbursed, the employee also works for UHC as a consultant and a registered lobbyist.

The Dean of the Medical School serves on the Board of Directors of MSPA. An agreement between MSPA and the University requires MSPA to identify, negotiate, and executive school-wide medical and other risk contracts for faculty practice groups. MSPA does not obligate the University in patient care contracts (Medicaid or other) without concurrence of the Vice President for Health Affairs.

Additionally, UHC owns 40% of Behavioral Health Care, Inc. ("BHI"), a non-profit entity formed to apply as a Medicaid behavioral health provider. Seven Counties Services, Inc. and Communicate, Inc., state recognized community health centers, own the remaining 60% of BHI. UHC named four faculty members of the School of Medicine, along with four non-faculty members to the 25 person board of BHI.

The employee also serves on the Board of Directors of Wellspring, a non-profit

corporation that provides housing and treatment for persons with severe mental illness. Wellspring is a subcontractor of Seven County Services, Inc., a comprehensive care center in Jefferson County. Wellspring receives funds each year from the Department for Medicaid Services through Seven County Services.

Because of his background, knowledge and experience, you believe that the employee would be a tremendous asset to the Department. Prior to his assuming the position as Commissioner of the Department, the employee would sever all business and financial arrangements with UHC, BHI, and MSPA. When such arrangements are severed, the University would no longer receive reimbursement for the employee's salary. The employee would also resign his registration as a lobbyist prior to assuming his management duties for the Department. However, the employee would still be considered an employee of the University and would still remain on the Board of Directors for Wellspring.

You recognize that as the Commissioner for the Department, the employee would normally be involved in matters concerning Wellspring and the University of Louisville. Thus, the employee plans to recuse himself from decisions regarding Wellspring and the University. The employee, as Commissioner, also will have direct involvement in decisions relative to the entire managed care program, including UHC and BHI. You ask for guidance as to whether any actual or potential conflicts of interest will exist if the employee assumes the position as Commissioner for the Department.

KRS 11A.020(1) through (3) provides:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

(b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

(3) When a public servant abstains from action on an official decision in which he has or may have a personal or private interest, he shall disclose that fact in writing to his superior, who shall cause the decision on these matters to be made by an impartial third party.

The Commission believes that the University employee may assume the position of Commissioner of the Department provided the employee remove himself from all matters which may pose a conflict of interest for him. Specifically, the employee should recuse himself, as he has indicated, from all matters within the Department involving the University and Wellspring. He should disclose in writing his intention to refrain from involvement in these matters, and all decisions, actions and recommendations regarding the University and Wellspring should be made by someone not under the authority of the Commissioner.

Additionally, if the employee receives compensation from Wellspring for his service, he should refrain from any involvement in decisions or recommendations concerning for-profit businesses that compete with Wellspring. Involvement in such matters may present a conflict for the employee.

The Commission notes that by terminating all working arrangements with MSPS, UHC and BHI, the employee no longer will be receiving a financial benefit from these organizations. Thus, no actual conflict will exist if the employee, as Commissioner, is involved in matters concerning these three organizations. However, the Commission envisions that because of the employee's former relationship with these companies, an appearance of a conflict may exist if he immediately, upon employment, becomes involved in matters regarding these companies. Although not specifically required by the Executive Branch Code of Ethics, the Commission encourages the employee, as Commissioner, to refrain from involvement with MSPA, UHC and BHI for a limited period of time as determined reasonable by the Department. Such abstention will help to uphold the public confidence in the independence of government.