COMMONWEALTH OF KENTUCKY

EXECUTIVE BRANCH ETHICS COMMISSION

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Executive Branch Ethics Commission
ADVISORY OPINION 09-24
September 18, 2009

RE: Is it a conflict of interest for an Administrative Branch Manager within the Provider Services Branch of Program Integrity with the Department for Medicaid Services to offer credentialing/consulting services to assist health care professionals in completing enrollment applications for private insurance health plans?

DECISION: Yes, with some exceptions.

This opinion is issued in response to your August 14, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 18, 2009 meeting of the Commission and the following opinion is issued.

You provide the relevant facts as follows:

You are the Administrative Branch Manager within the Provider Services Branch of the Division of Program Integrity with the Department for Medicaid Services. The Provider Services Branch is responsible for processing and credentialing applications from medical providers seeking to participate in the Medicaid program. Your branch is also responsible for obtaining updated information from medical providers previously approved to participate in the Medicaid program.

You seek approval from the Commission to embark on a private business venture in which you would assist medical providers in completing enrollment applications in various private carrier insurance plans; however, you would not assist medical providers in completing Medicaid applications or advise medical providers in any aspect of Medicaid-related subjects. The medical providers would either already be approved as Medicaid providers or could potentially enroll in Medicaid. You would not advertise your current position in Medicaid to potential customers of your proposed private business.

KRS 11A.020(1) 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;
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> (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.

KRS 11A.020(3) provides:

> 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.

KRS 11A.030 provides:

> In determining whether to abstain from action on an official decision because of a possible conflict of interest, a public servant should consider the following guidelines:
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> (1) Whether a substantial threat to his independence of judgment has been created by his personal or private interest;
>
> (2) The effect of his participation on public confidence in the integrity of the executive branch;
>
> (3) Whether his participation is likely to have any significant effect on the disposition of the matter;

> (4) The need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the executive branch; or
>
> (5) Whether the official decision will affect him in a manner differently from the public or will affect him as a member of a business, profession, occupation, or group to no greater extent generally than other members of such business, profession, occupation, or group. A public servant may request an advisory opinion from the Executive Branch Ethics Commission in accordance with the commission's rules of procedure.

In determining whether a conflict of interest exists, as explained in Advisory Opinion 08-32, the Commission reviews the degree to which the proposed outside activities intersect and conflict with the employee's official duties.

You propose to provide services in your private business venture to health professionals in two categories: 1) those who have been previously approved as medical providers in the Medicaid program, from whom your branch is responsible for obtaining updated information; and 2) those who may seek approval from your branch to participate in the Medicaid program in the future.

The Commission previously advised in Advisory Opinion 03-43 that an employee whose job duties include investigating Medicaid eligibility matters should not be compensated for providing information to Medicaid recipients or those seeking eligibility as Medicaid recipients, because those individuals may ultimately come under the review of the employee or others supervised by the employee. Similarly, in Advisory Opinion 99-26 the Commission advised that a potential conflict of interest may exist for an employee in the Department of Medicaid Services in the Division for Provider and Member Services, Program Integrity and Utilization Review Branch, to provide consulting services regarding Medicaid matters to individuals who may seek Medicaid eligibility from the Department of Medicaid Services.

Even though the services that you plan to offer in your outside activities are related to private insurance, a potential conflict of interest exists because the customers in your private business venture and the medical providers that you credential and maintain updated applications for in your official position could be the same people. You could therefore not offer your credentialing/consulting services to any medical providers who are participating in the Medicaid program. While you could offer such services to non-Medicaid providers, a potential conflict of interest would be created should those providers enroll in Medicaid. In addition to not assisting those providers in the Medicaid enrollment process, it is the Commission's opinion that you could no longer provide your consulting services to those providers at the point in time that they begin the Medicaid enrollment process. Further, it is the Commission's opinion that you would

need to abstain for a reasonable period of time from any matters directly involving those former clients in your official position. For such abstention, you should follow the guidance laid out in KRS 11A.030 and the requirements set forth in KRS 11A.020(3). Based on the advice given in previous opinions, the Commission believes that six months may be a reasonable period of time for you to abstain from any matter directly involving those former clients.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

Gwen R. Pinson

By Chair: Gwen R. Pinson