

Executive Branch Ethics Commission
ADVISORY OPINION 09-30
November 13, 2009

- RE:**
1. Does engaging in health and wellness ventures in partnership with First Onsite clinics or not-for-profit organizations present any question of “endorsement” by the Department of Employee Insurance and other health and wellness activities?
 2. In the alternative, if permitted by the contractual terms of a contract, may First Onsite on their own initiative facilitate a mobile mammography unit, health screening services and other health and wellness ventures?
- DECISION:**
1. No, if pursued as described herein.
 2. Yes.

This opinion is issued in response to your October 29, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the “Commission”). The matter was reviewed by the Commission on November 13, 2009 and the following opinion is issued.

Kentucky Employee Health Insurance Program, commonly known as the Kentucky Employees Health Plan (KEHP), is a self-insured program providing health insurance benefits to approximately 264,000 state employees, retirees, local school boards, local health departments and other quasi-governmental agencies. Humana, Inc. is the Third Party Administrator and administers all medical claims. KEHP is sponsored and administered by the Personnel Cabinet, Department of Employee Insurance (DEI). Oversight for KEHP is provided by two advisory bodies: the Kentucky Group Health Insurance Board and the Advisory Committee of State Health Insurance Subscribers.

DEI has wellness programs available to state employees, and DEI employs two full-time wellness staff members. DEI envisions the building of a culture that supports wellness and one

that encourages employees to use work as a place to engage in wellness. To that end, DEI currently has a personal service contract with First Onsite, LLC (First Onsite) to provide onsite health services to state employees at four Frankfort locations. The clinics opened on October 1, 2009 and are staffed full-time by board certified Nurse Practitioners and medical assistants. A board certified, state licensed Family Practice and/or Internal Medicine physician serves as Medical Director of the clinics.

Pursuant to the terms of the contract, First Onsite shall distribute KEHP and wellness literature including but not limited to smoking cessation, weight management, disease management, and other wellness programs determined by DEI. Further, the contract specifies that First Onsite shall work with the State Wellness Coordinator in DEI to promote, market, and assist with coordinating Commonwealth of Kentucky wellness initiatives including but not limited to programs and activities for Journey to Wellness such as “Know Your Numbers” Summit Screenings, fitness challenges, weight management programs, prevention awareness activities, and smoking cessation services.

You state that DEI has the opportunity to partner with not-for-profit health associations such as the American Cancer Society, American Heart Association, and American Lung Association. These organizations and DEI have similar missions – health risk awareness and prevention. Such organizations have established products and programs available at little or no cost, and making use of these resources would save DEI staff from having to create similar programs on their own.

You ask whether engaging in health and wellness ventures in partnership with First Onsite clinics and not-for-profit organizations present any question of “endorsement” of these services by DEI and other health and wellness activities. You give examples of proposed health and wellness ventures with First Onsite including mobile mammography van services onsite; dispensing coupons for a non-nicotine prescription medicines offered through a particular drug company; providing or facilitating other health screening services such as bone density, skin cancer, and prostate screenings; and use of material and programs containing organization logos and potentially co-branding with DEI logos through not-for-profit organizations. In the alternative, you ask whether First Onsite on its own initiative may engage in these types of activities if permitted by the terms of the contract. You ask how these programs should be administered with First Onsite or not-for-profit organizations in order to comply with KRS Chapter 11A.

KRS 11A.005(1) provides:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

- (a) A public servant be independent and impartial;
- (b) Government policy and decisions be made through the established processes of government;
- (c) A public servant not use public office to obtain private benefits; and
- (d) The public has confidence in the integrity of its government and public servants.

KRS 11A.020(1)(d) provides:

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

DEI and First Onsite entered into a personal service contract following a RFP process, and therefore the relationship is not considered a “partnership” for purposes of KRS Chapter 11A. Offering the proposed health screening sponsored by DEI and First Onsite will not violate KRS Chapter 11A, since the contract specifically provides for health screenings. Likewise, if permitted by the contractual terms of the contract, First Onsite could, on their own initiative, facilitate a mobile mammography unit, health screening services and other health and wellness ventures.

In order to determine whether DEI and not-for-profit health organizations may enter into a partnership to promote DEI’s health and wellness initiatives, the Commission must review the proposed programs to determine if the implementation of the programs would amount to DEI impermissibly endorsing a private entity. The Commission has previously distinguished “partnering” from “endorsing”. Following the Commission’s review, an agency may enter into an agreement with a private entity in a program that will benefit the entire Commonwealth, or will promote economic development or tourism in the state. An agency may not “endorse” a private company by publicly and actively promoting one private company over another.

The proposed agreements between DEI and not-for-profit health organizations such as the American Cancer Society, the American Heart Association, and the American Lung Association to promote wellness of state employees are permissible partnerships, because the entire Commonwealth will benefit from a healthier workforce. However, if one or more other not-for-profit health organizations express an interest in a similar partnership arrangement, those organizations should be afforded the same opportunity to enter into a similar partnership with DEI.

In response to your question of whether DEI and not-for-profit health organizations may take advantage of “co-branding” opportunities, the Commission has consistently stated that a state agency should not publicly and actively recognize a private product or company, or acknowledge a corporate donor, in a public manner such as in the newspaper or on television. See Advisory Opinions 02-21 and 07-27. However, the Commission has previously stated that the placement of a plaque or marker to identify a public/private partnership does not rise to the level of an active or public endorsement by a state agency. See Advisory Opinion 02-33. See also Advisory Opinion 07-27, wherein the Commission concluded that an agency would not be prohibited from allowing the name of an event co-sponsor to be printed on the back of t-shirts given to participants in the event as such acknowledgment would not rise to the level of being a “public endorsement”. The Commission also allowed the placement of a reasonably sized poster and the distribution of information sheets describing a public/private partnership in Advisory Opinion 09-20.

DEI and the not-for-profit health organizations mentioned above have common goals and missions. In light of previous opinions, the co-branding proposed by DEI would not amount to a public and active endorsement of the not-for-profit health organizations. A DEI logo may appear with a not-for-profit health organization logo on printed materials, posters, and brochures to promote health and wellness issues and programs. Also, DEI may provide links to the not-for-profit health organizations with the organizations’ logos on the DEI and Personnel Cabinet websites if the purpose of providing the links is to promote health and wellness to individuals covered by KEHP. Should DEI wish to enter directly into similar arrangements with for-profit organizations, however, these should be reviewed on a case-by-case basis.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

By Chair: Gwen R. Pinson

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