

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-26

August 31, 1999

RE: May employee serve as a consultant for individuals regarding Medicaid issues?

DECISION: Yes, within limitations.

This opinion is in response to your June 1, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 8 and August 31, 1999, meetings of the Commission and the following opinion is issued.

You state the relevant facts as follows. You have been employed by the Department for Medicaid Services in the Division for Provider and Member Services, Program Integrity and Utilization Review Branch since April of 1998. Prior to that, you were employed by the Department for Medicaid Services and the Department for Social Insurance in various positions involving Medicaid eligibility and Medicaid policy. In your current position, you no longer deal with Medicaid eligibility or policy.

On your own time and with your own supplies, you have been working on a book with non-state employees. Your area of responsibility in this venture is to explain, in a progressive manner with easily understood terms, the process by which an individual is, or is not, determined to be eligible for Medicaid. The information that you plan to put in your book currently is available, mostly free of charge, from various public sources including libraries, the internet, and state-issued informational handouts and brochures. Additionally, the Medicaid eligibility and policy manual, as used by caseworkers in the field, is available for purchase. Your personal attorney has purchased the manual and you have unlimited access to it through him.

You plan to include in the book some basic information about the authors. You ask whether this information may include the fact that you have fifteen years of experience of working in various capacities with the Kentucky Medicaid Program.

Additionally, on numerous occasions you have been offered compensation in exchange for answering questions and talking about Medicaid eligibility issues, usually at a seminar or gathering of individuals with a common goal (insurance sales groups, etc.). You always decline such offers as you believe them to be unethical, and possibly illegal.

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Recently, a different type of situation has come up. Your mother has been in a nursing home for several years. She is a private-pay resident as all the residents of the facility are; the facility does not participate in Medicaid. During your visits with your mother, you have been involved in discussions with family members of other residents concerning Medicaid eligibility. You have been able to dispel a number of myths about the Medicaid program and have provided good information to those who have had a difficult time getting straight answers. Several individuals have indicated to you that they would like more detailed information, specific to their particular circumstances, and also more privacy than that afforded at the nursing home. Several individuals have offered to pay you for your private time. You ask whether you may accept compensation for consulting under the following conditions. All consulting would be on your own time, evenings or weekends, and would be in private or over the telephone. All consulting would be strictly on a referral basis and there would be no advertising or business cards. All consulting is for informational purposes only, explanation of policy and the potential consequences of exercising certain options with regard to Medicaid rules. You do not plan to give legal advice or advise someone which course of action to take.

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;
 - (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.

The Commission believes that you are not prohibited from including in the book's credits that you have fifteen years of experience working with the Medicaid program, but the Commission believes that you should not specifically identify that you are employed by the Department for Medicaid Services. You do not want to give the appearance that you are using your state position to benefit yourself financially. Advisory Opinion 95-45 (a copy of which is enclosed) cautions state employees not to use their state jobs to benefit their private business, and specifically directs state employees not to identify their state positions on private business cards

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or advertisements. Once you are no longer employed by the Department for Medicaid Services, you may include such information in your book.

The Commission believes that general knowledge gained in the Medicaid area while a state employee does not prohibit you from acting as a consultant for compensation to individuals regarding Medicaid issues. However, it appears that you have been asked to provide such consultation because of your position in state government. Although it does not appear that it is part of your current state position to educate the public about Medicaid policy, it does appear to the Commission that educating the public about Medicaid policy is a part of the official duties of the Department for Medicaid Services. Thus, if the subject matter on which you will consult is the same as that which you handle regularly in your state job, then the Commission disapproves of your receiving outside compensation for such consultation.

You should take great care not to use your state job to benefit your private business. Specifically, you should not identify your state position on private business cards or advertisements, as you have indicated, and you should not use state time, resources or confidential information to conduct private business matters.

Additionally, a potential conflict of interest may exist if you provide consulting services to individuals who may seek Medicaid eligibility from the Department for Medicaid Services. If such a potential exists you should ascertain that, as a part of your official duty, neither you, nor anyone under your supervision, is in a position to influence decisions concerning the individuals you serve privately.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR:

Enclosure: Advisory Opinion 95-45