

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**40 IAC 2-1-8 Moonlighting  
40 IAC 2-1-9 Conflict of interest**

A DPW administrator whose responsibilities included rate-setting for Medicaid sought to take a part-time job providing social services for a home health agency which received Medicaid funding. SEC found there was no conflict of interest in such outside employment so long as the administrator did not work with any Children with Special Health Care Needs and Medicaid patients as long as she was involved in Medicaid rate-setting.

**91-I-1: Conflict of Interest, Moonlighting  
Indiana State Ethics Commission  
Official Advisory Opinion  
(Decision February 14, 1991)**

**FACT SITUATION**

In April 1989, an administrator with the division of Public Welfare was put on loan to another division of Welfare to set Medicaid rates for home health agencies, for skilled nursing, LPN's, home health aides, homemakers, and personal attendant care services, but not for social workers. The position was expected to be temporary and terminate originally on September 1, 1991. However, by September 1 the administrator was still working two days a week, because Medicaid added new services called waived services to the rate-setting process. The administrator saw no patients in either her work on loan doing Medicaid rate-setting or in her administrative work for Children With Special Health Care Needs.

At this time, the administrator wanted to take a part-time position with a home health agency that offered services to psychiatric patients. Her duties would be doing clinical work. The work would involve visiting homes of patients and doing evaluations to see whether the home could support the patient, whether the emotional resources and medical resources were there, whether the patient was violent, and whether the patient could be trusted to take medication. Reports by the administrator would recommend whether the patient could be cared for in the home with the assistance of a nurse or a home health aide or other assistance. A report to the agency would develop a treatment plan which would eventually be submitted to Medicare or Medicaid with request for prior approval. If the prior approval was given, the patient could be treated according to that treatment plan by the agency and the services would be reimbursed by Medicaid or Medicare, whichever the prior approval came from. The state administrator had been employed by the State Department of Public Welfare for 18 years, prior to which she did marriage counseling and psychiatric social work. She wanted to go to work for the home health agency seeing psychiatric patients and doing some clinical work.

In her job for the state regarding rate-setting, the administrator said she could not influence or change the rates for the home health care agency with which she was seeking employment.

**QUESTION**

May an administrator with the Department of Public Welfare take a part-time job providing social services for a home health agency which receives Medicaid funding when part of that employee's state duties involve working with rate-setting for Medicaid?

**OPINION**

The Commission rendered the opinion that there was no conflict of interest for the administrator to be employed part-time by a home health care agency that receives Medicaid funds provided the administrator not work with any 1) Children With Special Health Care Needs and 2) Medicaid patients (only private-pay and Medicare patients) so long as the administrator continues to work

with Medicaid rate-setting.

The relevant rules are as follows:

The applicable rule that the Commission must look at would be the conflict of interest prohibition on an employee having an interest which is substantial and material and in conflict with the interest of the people of the State.

40 IAC 2-1-9, on Conflict of interest provides, "(F) No state officer or employee shall participate in any decision or vote of any kind in which he, his spouse, or his unemancipated children have an economic interest."

40 IAC 2-1-8, on Moonlighting provides, "A state employee must not engage in outside employment or other outside activity not compatible with the full and proper discharge of his public duties and responsibilities. This outside employment or other outside activity must not impair his independence of judgment as to his official responsibilities, pose a likelihood of conflict of interest, or require him or persuade to disclose confidential information acquired by him as a result of his official duties."