

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 Consequently, the analysis reflected in the opinion may be outdated.

**IC 4-2-6-9(a) Conflict of interests
40 IAC 2-1-8 Moonlighting**

An FSSA assistant deputy director who oversaw some Medicaid programs sought to contract with a Medicaid provider to provide counseling to families and individuals who received Medicaid benefits. SEC found there would be no conflict of interest or violation of the Moonlighting rule for the assistant deputy director to accept the position provided that he observed certain restrictions.

**94-I-8, Conflict of Interest, Moonlighting
(Decision May 19, 1994)**

FACT SITUATION

An assistant deputy director of the Division of Family and Children, Family and Social Services Administration (FSSA), wanted to know if he could contract with a Medicaid provider to provide counseling to families and individuals who received Medicaid benefits when his job duties involved overseeing some programs with Medicaid providers and programs to families and individuals who might come into contact with this specific Medicaid provider. He reported to a deputy director who reported to the director. The Division of Family and Children administered the Aid to Families with Dependent Children (AFDC) program (Title IV-A), and Medicaid (Title 19), which provided medical coverage for families on AFDC, was also administered under part of FSSA.

The assistant deputy director had responsibilities for supervising an administrative unit for the Bureau of Family Protection and Preservation, a subdivision of the Division of Family and Children. The Bureau administered services in the areas of child protection, adoption, the licensing of residential care facilities, foster homes, and day care homes. His duties included the administration of much of the social service block grant money, including Title 20, a federal social service program. He was also responsible for writing and coordinating a state plan concerning child welfare services. He assisted with the state IV-E plan concerning foster care services, the state IV-EIL plan concerning independent living, and the state IV-A plan concerning emergency assistance.

The assistant deputy director wanted to go to work for a company which provided counseling for families and individuals, some of whom could receive Medicaid benefits. His state duties did not involve this Medicaid provider or any of the families or individuals he would serve in the prospective employment. The company was a corporation owned by a professor at a state university and his wife. The assistant deputy director was a student of the professor in a master's degree program when the professor approached the assistant deputy director about working for him on contract to provide individual, group, or family counseling.

Neither the assistant deputy director nor any employees he supervised referred potential Medicaid recipients to the company. If the Division of Family and Children referred a Medicaid recipient, the referral would occur at the county level. Not all Medicaid recipients would necessarily have a direct relationship with the county level child welfare programs, however.

One possible connection was that IV-B funding administered by the Division of Family and Children through county offices could be used to reimburse the company if it had received a contract or grant. The company did not currently have a grant or provide IV-B services. Providers of IV-B services were normally selected through a competitive process. The assistant deputy director had no involvement in deciding which competitors received these funds as those decisions were made at the county level. No other federal funds with which the assistant deputy director was involved would go to the company. Also, there was no regulatory or contractual relationship between the company and the various arms of the Division of Family and Children or

the Family and Social Services Administration.

The assistant deputy director said he believed the company was working to build a network of care within the state. If the company applied for IV-B money, it could become associated with the Bureau in which the assistant deputy director worked. At that point, the assistant deputy director would not be involved in providing services to people receiving Title IV-B funds.

Another complication that could occur at such a point was that counselors in child abuse and neglect cases were frequently called into court to testify, and that could interfere with the assistant deputy director's ability to perform his state duties. The assistant deputy director said he would not accept work with any family reimbursed by any of the funds that he administered. If there was a decision in which he could participate that would directly affect the company, the assistant deputy director said he would tell his direct supervisor.

He would avoid a situation in which the Division of Family and Children had filed an action concerning a family with which he had worked by not accepting as clients families or individuals referred to the company by DFC. If at any time during the relationship with a client an investigation by DFC was begun, the assistant deputy director would refer that client to another counselor at the company because of the potential conflict of interest. He did not think that through his state job he could create policies that would benefit the company or any like entity.

QUESTION

Is an assistant deputy director of the Division of Family and Children permitted to contract with a Medicaid provider to provide counseling to families and individuals who receive Medicaid benefits when his job duties involve overseeing some programs with Medicaid providers and programs to families and individuals who might come into contact with this specific Medicaid provider?

OPINION

The Commission found it was not a violation of the conflict of interest or moonlighting and other activity restrictions for the assistant deputy director of the Division of Family and Children to do part-time contractual work for a corporation which provided counseling to families and individuals who received Medicaid benefits when his duties involved overseeing programs to families and individuals who might have their counseling funded through Medicaid benefits provided:

- 1) That the corporation did not provide any services under specific programs for which the assistant deputy director had responsibility at the Division of Family and Children; and
- 2) The assistant deputy director did not deal with any clients who had been referred for services by Child Protective Services of the Division of Family and Children.

The relevant statute and rule are as follows:

IC 4-2-6-9(a) on conflict of interest provides, "A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest."

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