

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 Consequently, the analysis reflected in the opinion may be outdated.

Conflict of Interest, Moonlighting

An FSSA service coordinator wanted to know if he could rent a home to a mentally retarded or developmentally delayed person who was on a Medicaid waiver. SEC determined it was permissible for the coordinator to do so as long as the person was not a client of the bureau from the counties where the coordinator was employed and the advertising and administration of the rental property was taken care of outside of state time and without the use of state resources.

95-I-3 Conflict of Interest, Moonlighting
(Decision April 20, 1995)

The Service Coordinator in a branch office of the Bureau of Developmental Disabilities, Family and Social Services Administration, wanted to know if he could rent a home to a mentally retarded or developmentally delayed person who was on a Medicaid waiver.

The Bureau for which he worked served the mentally retarded (MR) and developmentally delayed (DD) population. His duties included locating appropriate residential services for MR and DD persons in four counties. A home that he was interested in renting to MR and DD people was in a separate county located next door to his residence. The only involvement he had with persons on Medicaid waivers was that he performed diagnostic tests for persons from the four counties to which he was assigned. Persons coming from the county where he lived would be evaluated by a different employee in a different office. Persons on a waiver have an independent case manager who manages their budgeting and helps look after them.

His involvement with Medicaid waiver clients in the four counties where he had responsibilities was to order a diagnostic evaluation and to send the diagnostic report to the state Medicaid office for a determination of whether the client met the requirements to receive a Medicaid waiver. If the client received a Medicaid waiver, then he or she was placed with an independent case manager through a process that involved an application from the Bureau of Development and for which local area Councils on Aging were ultimately responsible. The independent case manager could be a qualified individual or provided through a private company.

In deciding when a diagnostic evaluation was to take place, the service coordinator would initially be contacted about a potential candidate for Medicaid waiver by a Council on Aging. He would then prepare an application for that person to be sent to Professional Assessment of Indiana (PAI). PAI would perform the diagnostic evaluation and send it back to the service coordinator who would then send it to the Medicaid office. The Medicaid office would determine whether the person met the level of care necessary to receive the waiver. A Council on Aging would become the case manager for most clients. The diagnostic report is a case analysis, including background information, medical history, and a developmental assessment. The service coordinator did about three of these a year.

While part of his duties was to locate residential services such as group homes and semi-independent living programs for MR and DD clients in general, he did not have responsibility for locating services for MR and DD clients who were on a Medicaid waiver. An independent case manager assisted them. The means by which residential services were located for a client on a Medicaid waiver were left up to the discretion of the independent case manager. Sometimes case managers would contact the branch office to see if any of the workers there knew of available housing. The service coordinator said he would be able to inform independent case managers, either by contacting them himself or when they contacted his office, that he had rental property available. He was only interested in whether he could rent to clients on Medicaid waivers and not disabled clients in general, because only clients on Medicaid waivers would be eligible to live in rental housing; the rest would require assisted living arrangements such as group homes.

With the Medicaid waiver, Medicaid agreed to keep persons who met certain qualifications from going into an institution. If the person shows a great delay in self-direction, independent learning, communication, or mobility, he or she would be eligible for a waiver. Persons with these deficiencies live independently and are generally also in a day program such as a sheltered workshop and have someone stay with them in the evenings.

Each year the Bureau receives a number of waivers for each region. The service coordinator felt that the office would probably pick up three for the year. This was not a big population from which to draw because there are not many people on waivers.

Once individuals are put on a Medicaid waiver, they are very unlikely to go off of it. A person on a Medicaid waiver living in the service coordinator's rental property who went off of the waiver would go back to the county where the rental property was for services. The service coordinator would not be regulated in terms of what he could charge to the person on a waiver. The service coordinator planned to advertise the rental property by word of mouth and through the newspaper.

The service coordinator said he would like to rent his house to three or four individuals. Although he might not be able to get three renters from the county where the rental property was, he wanted all renters to be on waivers.

Independent case managers from the county where the rental property was could contact him if they knew he had a house to rent. Any of the independent case managers with whom he had contact in the four counties he served could also serve the county where the rental county was and contact him. Finding homes for clients was very difficult. Sometimes case managers utilized homes available through the Department of Housing and Urban Development, homes advertised in newspapers, and homes owned by nursing homes. Finding a home was similar to the process anyone would go through in trying to find a home to rent. Most of the MR and DD clients were on short-term rental contracts and leases.

The service coordinator said that he would not do any business connected with the rental property while working on his state job and would give out his home number to anyone interested in renting.

As long as the person to whom he rented was not from one of the counties in which he worked, there would be no way in which he would deal with that person as both the landlord and in his official state capacity. The client's case manager would be responsible for moving a client, if there was a problem.

Question

Is a service coordinator for a branch office of the Bureau of Developmental Disabilities permitted to rent a home to mentally retarded or developmentally delayed persons who are on Medicaid waivers?

Opinion

The Commission found that a Service Coordinator in the Bureau of Developmental Disabilities was permitted to rent property to mentally retarded and developmentally disabled individuals on Immediate Care Facility for the Mentally Retarded (ICFMR) waivers as long as the individual was not a client of the Bureau from the counties where the Service Coordinator was employed and that the advertising and administration of the rental property was taken care of outside of state time and without the use of state resources.