

**INFORMAL OPINION IO-1994-003
ISSUED JULY 19, 1994**

This letter is in response to your question of whether, as a Legislator, your co-ownership of _____ Inc. [the "Corporation"], would create a conflict of interest when Corporation bills Oklahoma Medicaid for a test performed for a physician client who has a Medicaid patient.

I note that the Commission has a constitutional rule on point [Section 257:20-1-10(b) of the Rules of the Ethics Commission, 74 O.S. Supp.1994, Ch. 62, App.]. It reads as follows:

(b) No state officer or state employee, acting in his or her official capacity, shall enter into any contract in which the state officer or state employee knows or should know that a person who is then or has been a legislator within the previous two years, or a member of such person's immediate family, has a substantial financial interest.

257:20-1-10 (b)

You have offered the following facts:

1. The Corporation is a specialty reference laboratory serving other medical institutions throughout Oklahoma and some surrounding states.
2. The Corporation specializes in testing for viruses and other non-routine infectious agents for hospitals, clinics, private practices, etc.
3. Testing done by the Corporation is specialized and not offered by most hospitals or other laboratories.
4. Physicians ordering tests from the Corporation do not represent or work for the state.
5. Billings to Oklahoma Medicaid comprise less than 1/10th of 1% of The Corporation's billings.
6. To deny performing a medical test to an Oklahoma Medicaid patient who needs the test could possibly deny them a test that cannot be performed elsewhere.
7. Oklahoma Medicaid funds are actually federal funds administered locally.

Oklahoma Medicaid is administered by the Department of Human Services ["DHS"]. DHS is a state governmental entity. Hence, a contract between it and a legislator/provider would be covered by the above cited rule. However, since the contract for services is between the physician/client and the Corporation, and not with DHS, and the amount paid by Department of Human Services is as the insurer of the patient, the Legislator/provider does not benefit from a prohibited contractual relationship with DHS. Therefore, payments made by Oklahoma Medicaid as the insurer of the service would not be prohibited by the rule.

CONCLUSION

The Corporation, in which a Legislator is a co-owner, is not prohibited from billing Oklahoma Medicaid for a test performed for a physician client who has a Medicaid patient.

Please be aware that informal opinions are not official pronouncements of the Commission. Hence, this letter carries no greater weight than the views of any other citizen. The Commission is available to issue interpretations on matters arising from the Ethics Commission Act and the Constitutional Ethics Rules. These are known as Ethics Interpretations. They are official and bind the future action of the Commission.