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CONFLICT OF INTEREST LAWS
FOR SERVICE AND SUPPORT ADMINISTRATORS

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I. OHIO ETHICS LAWS

A. Applicability

Ohio Ethics laws apply to all public officials or employees, including employees of MR/DD Boards. RC 102.01(B). Violations may result in criminal charges. RC 102.99. While public ethics laws refer to public officials and public employees, this memo will refer primarily to public employees.

B. Prohibition against accepting “anything of value” in official duties

1. General Rule

Ohio Ethics laws broadly prohibit a public official or employee from soliciting or accepting anything of value if doing so results in “a substantial and improper influence upon the public official or employee with respect to that person's duties.” RC 102.03(D), (E).

2. What is “anything of value”?

There is no precise definition of the phrase “anything of value”. See RC 102.01(G) which refers to RC 1.03. In general, courts look at whether the person receiving the gift or favor considers the gift or favor to be meaningful or valuable. Cases and opinions have determined that the following are some examples of goods or services which are “of value”:

- money in any form
- goods, including gifts, gratuities
- discounts
- season tickets to sporting events
- tickets to post-season play-off games
- golf outings
- travel, meals, lodging from a company that is doing business, or seeking to do business, with MR/DD Board
- consulting fees
- honoraria, conference registration fees
- membership dues in organization (e.g. country club)
- board membership in non-profit entity
- any interest in real property (land, house etc.)
- promise of employment
- romantic relationship
- “Every other thing of value” (RC 1.03)

The prohibition does not cover gifts of nominal value, such as tee shirts, promotional items or an occasional meal in an inexpensive restaurant. An insubstantial item can become substantial

through repetition – e.g. a pattern of a vendor always paying for inexpensive meals.

The Ethics Council has ruled that a public employee can attend an open house, meals or reception provided as part of a conference which is generally open to persons attending the conference. (Advisory Opinion No. 2002-02).

3. What Manifests a “Substantial and Improper Influence”?

The Ethics Commission will generally presume improper influence if the public employee accepts anything of value from an individual or entity which does business or seeks to do business with the public employee or public entity which hires the public employee. This principle will most clearly apply if the public employee is in a position to influence decisions involving the individual or entity making a gift. See e.g. RC 102.03.

C. Improper Compensation

An employee of any governmental entity is prohibited from accepting compensation, directly or indirectly, from any subdivision of the entity that hired the employee. RC 102.04(C).

D. “Revolving Door”

During public employment or for twelve months thereafter, no present or former public employee may represent a client or act in a representative capacity for any person on any matter in which the public employee personally participated as a public employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other substantial exercise of administrative discretion. RC 102.03(A)(1).

"Matter" includes any case, proceeding, application, determination, issue, or question, but does not include the proposal, consideration, or enactment of statutes, rules, ordinances, resolutions, or charter or constitutional amendments. RC 102.03(A)(5).

"Represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person. RC 102.03(A)(5).

E. Confidentiality

Public employees cannot disclose confidential information received in the course of their employment. RC 102.03(B).

II. OHIO CRIMINAL LAWS

A. General Rules

A separate section of the Ohio Code prohibits public officials and employees from using the influence of their office to obtain a public contract which benefits the public employee, the public employee's family or the public employee's business associate. RC 2921.42(A)(1).

The section also prohibits the public employee from "occupying a position of profit" in the implementation of a contract which the employee authorized. This prohibition lasts for a year after the employee leaves the public job. RC 2921.42(A)(3).

B. Exception

This section of the code does not apply to a public contract in which a public employee, member of a public employee's family, or one of a public employee's business associates has an interest, when all of the following apply:

(1) The public contract is for necessary supplies or services for the political subdivision involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the political subdivision as part of a continuing course of dealing established prior to the public employee's becoming associated with the political subdivision involved;

(3) The treatment accorded the political subdivision is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision involved, of the interest of the public employee, member of the public employee's family, or business associate, and the public employee takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract. RC 2941.42(C)

III. MR/DD LAWS ON HIRING

Since September 2005, major changes in rules affecting MR/DD Board employees have significantly limited the ability of many MR/DD Board employees to work for other entities serving individuals with MR/DD. The prohibitions extend not only to paid employment with another entity but also to volunteer positions such as board membership or volunteer management assistance. The implications of this legislation are still being explored.

A. Duty to Disclose Outside Employment

The MR/DD Board employee has an affirmative duty to disclose any employment the employee has outside the county board that is with any individual, agency, or other entity that has a contract with the county board. RC 5126.033.

B. Specific Prohibition for SSAs

SSAs are prohibited from being employed by or serving in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with MR or DD. 5126.15(A).

C. General Rule for MR/DD Board Employees

Under RC 5126.0228(B), except as noted below in III.D, an MR/DD Board employee cannot do any of the following:

1. Be an employee of an agency contracting with the MR/DD Board;
2. Have an immediate family member working for an agency contracting with the MR/DD Board, unless:
 - (a) the county board adopts a resolution authorizing the immediate family member's employment with the county board OR
 - (b) the employment is consistent with a policy adopted by the board establishing parameters for such employment and the policy is consistent with the requirements of RC Chapter 102, 2921.42 and 43 (summarized above) are met;

3. Have an immediate family member who is a commissioner of a county served by the MR/DD Board;
4. Have “an ownership interest in, perform or provide administrative duties for, or [be] a member of the governing board of an entity that provides specialized services, regardless of whether the entity contracts with the county board to provide specialized services.”

“Immediate Family Member” means parents, grandparents, brothers, sisters, spouses, sons, daughters, aunts, uncles, mothers-in-law, fathers-in-law, brothers-in-law, sisters-in-law, sons-in-law, and daughters-in-law. RC 5126.01(K).

“Specialized Services” means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the department of mental retardation and developmental disabilities. RC 5126.281(A)(3).

D. Exceptions to General Rule

Under RC 5126.0228 and 5126.033, an employee is exempt from the prohibitions summarized above at III.C if all of the following conditions are met. Note that several of these conditions assume there is a contract between the MR/DD Board which hires the employee in question and the entity which the employee was to work for (either for pay or as a volunteer).

- (1) The employee is not in a capacity to influence the award of any contract with the outside entity.
- (2) The employee has not attempted in any manner to secure any contract on behalf of the individual, agency, or other entity.
- (3) The employee is not employed in management level two or three according to rules adopted by the director of mental retardation and developmental disabilities.
- (4) The employee does not provide service and support administration.
- (5) The employee is not employed by the board during the period when the contract is developed as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and agrees not to take such a position while the

contract is in effect, regardless of whether the position is related to the services provided under the contract.

- (6) The employee has not taken any actions that create the need for the services to be provided under the contract.
- (7) The individual, agency, or other entity seeks the services of the employee because of the employee's expertise and familiarity with the care and condition of one or more eligible persons and other individuals with such expertise and familiarity are unavailable, or an eligible person has requested to have the services provided by that employee.

E. Exception for Board Member of a Political Subdivision

Notwithstanding any of the previous sections of Ohio law, an employee of an MR/DD Board may be a member of the governing board of a political subdivision, including the board of education of a school district, or an agency *that does not provide specialized services*. The county board may contract with such a governing board even though the governing board includes an individual who is an employee of the county board. That member of the governing board may not vote on any matter before the governing board concerning a contract with the county board or participate in any discussion or debate regarding such a contract. RC 5126.0229.

IV. DIRECT SERVICES CONTRACTS

Ohio law allows for MR/DD Board members and MR/DD Board employees to obtain benefits which would ordinarily be available to them or to their family members but which might be precluded because of the laws summarized above. RC 5126.03 – 034. Such an arrangement is called a Direct Services Contract.

A Direct Services Contract is defined as “any legally enforceable agreement with an individual, agency, or other entity that, pursuant to its terms or operation, may result in a payment from a county board of mental retardation and developmental disabilities to an eligible person or to a member of the immediate family of an eligible person for services rendered to the eligible person.” RC 5126.03(A).

A. Procedure for Review

Unless a MR/DD Board decides never to award benefits to a family member of Board members or employees, each MR/DD Board must appoint an Ethics Council, comprised of three MR/DD Board members who are not going to be receiving benefits from any Direct Services Contract. RC 5126.031.

This Ethics Council must review all Direct Services Contracts and assess whether there is any conflict of interest and either recommend approval or disapproval of the contract. The MR/DD Board makes the final decision. The Ethics Council may obtain a prosecutor's opinion. RC 5126.032.

B. General Standards for Review

In order for the Ethics Council to approve a Direct Services Contract, the Ethics Council must determine that:

1. The contract must be limited to the actual amount of the expenses or to a reasonable and allowable amount projected by the MR/DD Board. RC 5126.033(A).
2. The MR/DD Board member, MR/DD Board employee or family member has not received any preferential treatment or unfair advantage in the award or amount of the Direct Services Contract. RC 5126.033(B).

C. Standards for Family Support and Supported Living Contracts

The Ethics Council must make additional findings if the contract is for Family Support or Supported Living Services and the contract will result in an outside individual, agency, or other entity hiring the MR/DD Board employee. RC 5126.033(C). Under these circumstances, the Ethics Council must find that all of the following conditions (set forth in RC 5126.033(C)) are met:

1. The employee is not in a capacity to influence the award of the contract.
2. The employee has not attempted in any manner to secure the contract on behalf of the individual, agency, or other entity.

3. The employee is not employed in management level two or three according to rules adopted by the director of mental retardation and developmental disabilities.
4. The employee does not provide service and support administration.
5. The employee is not employed by the board during the period when the contract is developed as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and agrees not to take such a position while the contract is in effect, regardless of whether the position is related to the services provided under the contract.
6. The employee has not taken any actions that create the need for the services to be provided under the contract.
7. The individual, agency, or other entity seeks the services of the employee because of the employee's expertise and familiarity with the care and condition of one or more eligible persons and other individuals with such expertise and familiarity are unavailable, or an eligible person has requested to have the services provided by that employee.

V. SERVICE AND SUPPORT ADMINISTRATION REQUIREMENTS

A. General Requirements

SSAs shall not be assigned responsibilities for implementing other services for individuals served by the MR/DD Board. RC 5126.15(A).

SSAs are prohibited from being employed by or serving in a decision-making or policy-making capacity for any other entity that provides programs or services to individuals with MR or DD. RC 5126.15(A).

SSAs shall not be in the same collective bargaining unit as employees who perform non-administrative duties. OAC 5123:2-1-11(E)(3).

B. Duties Involving Individuals

SSAs oversee a wide range of functions on behalf of individuals, including, for example, eligibility determinations, assessments, development of ISPs, selection and monitoring providers, establishing budgets, quality assurance reviews and working with individuals to determine whether their individual needs are being met. OAC 5123:2-1-11.

C. Duties Involving a Service Provider

SSAs, as part of their basic duties, must assist individuals in choosing a service provider and monitor the services from that provider. RC 5126.15(B). Rules specifically required that the SSA be “objective” in assisting the individual in this process. OAC 5123:2-1-11(L). The SSA must “ensure that individuals are given the opportunity to select service providers from all willing and qualified providers” and, in doing so, follow all Federal and Ohio mandates. OAC 5123:2-1-11(L)(1).

SSAs must also assist individuals in resolving problems and disputes with providers. OAC 5123:2-1-11(L)(2).

In referring individuals to a provider, SSAs must be able to demonstrate that they are not influencing individuals to make choices which are not dictated by the individual’s needs.