

STATE OF NEW YORK: COUNTY OF SUFFOLK
SUFFOLK COUNTY BOARD OF ETHICS

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In the Matter of the Inquiry of
[REDACTED] in Capacity of a
Supervisory Official of Suffolk County
Department of Social Services

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STATE OF NEW YORK: COUNTY SUFFOLK
COUNTY BOARD OF ETHICS
Advisory Opinion 2021-16
June 2, 2021

NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL

Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules. Unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.

Summary: The Requestor, a County of Suffolk Department Supervisory Official, The Department of Social Services, submitted an advisory opinion request to the Suffolk County Board of Ethics as part of their approval process in determining their employee's outside employment disclosure and request. The employee, in the job title of "Medicaid Examiner I", is seeking department outside employment approval as a personal caregiver to a grandchild and is enrolled in the CDPAP program¹. The employee's job duties are to "recertify client's Medicaid eligibility, evaluate applicant's financial eligibility for assistance, prepare and computes budget for the applicant", the employee maintains no interaction with the CDPAP Company who administers the employee's grandchild's benefits. The employee's job duties do not include financial responsibility in vouchering or invoicing the County vendor, and recusals are possible as the title "Medicaid Examiner I" is a title held by numerous employees.

The Board finds that the stated prospective outside employment does not create for the employee an impermissible business dealing and is not engaging in a business transaction with the County. In furtherance, the employee's job duties do not require her to resolve ongoing billing issues, oversee services provided by the CDPAP Company, and is characterized as an exempted permissible public benefit under §77-5(B), thus the Board finds no conflict of interest.

Analyzed Laws and Rules: The Laws of Suffolk County; Suffolk County Administrative Code XXX, Advisory Opinions; and Suffolk County Code Chapter 77 Sections 77-3(B), 77-3(C)², 77-5(B).

¹ The CDPAP Company is "Attentive Care" with offices in Hicksville and Babylon. The requestor through fact-finding has described the CDPAP program as, "the Consumer Directed Personal Assistance Program which is a Medicaid program that provides services to chronically ill or physically disabled individuals who have a medical need for help with activities of daily living. The purpose of the CDPAP program is to allow the consumer to hire a person they know and trust to provide care for them. Chosen assistants can be siblings, children, friends, relatives, previously hired aides, or trusted neighbors".

² § 77-3. PROHIBITED CONDUCT.

B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.

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Procedural History: Fact-finding concluded on 05/28/2021 and the Board vote occurred within the 45 days under Suffolk County Code occurring on 6/2/2021. The Board determined by majority vote that there is not a conflict under the facts presented.

Opinion: The Requestor, a County of Suffolk Department Supervisory Official, The Department of Social Services, submitted an advisory opinion request to the Suffolk County Board of Ethics as part of their approval process in determining their employee's outside employment disclosure and request. The employee, in the job title of "Medicaid Examiner I", is seeking department outside employment approval as a personal caregiver to a grandchild and is enrolled in the CDPAP program³. The employee's job duties are to "recertify client's Medicaid eligibility, evaluate applicant's financial eligibility for assistance, prepare and computes budget for the applicant", the employee maintains no interaction with the CDPAP Company who administers the employee's grandchild's benefits. The employee's job duties do not include financial responsibility in vouchering or invoicing the County vendor, and recusals are possible as the title "Medicaid Examiner I" is a title held by numerous employees.

Previously, the Suffolk County Board of Ethics opined there is no conflict when relatives of employees in the Department of Social Services receive county funding for caretaking. In Suffolk County Board of Ethics Advisory Opinion #2015-19 the Board determined that, "The spouse of a Suffolk County Department of Social Services employee is not prohibited from receiving funds for their grandchild's legally exempt in home provider. The employee must recuse herself from the application and approval process of her spouse".

Additionally, the Suffolk County Local Laws provide exemptions to the prohibitions under 77-3 inclusive of a public servant being permitted to accept or receive, "Any County benefit which is provided for or made available to residents general". § 77-5 states,

"§ 77-5. EXEMPTIONS.
This article shall not prohibit:

B. A public servant from accepting or receiving any County benefit which is provided for or made available to residents generally, or a substantial class of residents to which the public servant belongs".

C. No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.

³ The CDPAP Company is "Attentive Care" with offices in Hicksville and Babylon. The requestor through fact-finding has described the CDPAP program as, "the Consumer Directed Personal Assistance Program which is a Medicaid program that provides services to chronically ill or physically disabled individuals who have a medical need for help with activities of daily living. The purpose of the CDPAP program is to allow the consumer to hire a person they know and trust to provide care for them. Chosen assistants can be siblings, children, friends, relatives, previously hired aides, or trusted neighbors".

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The Board views this current request similarly and finds that the employee's job duties do not require resolving ongoing billing issues or overseeing services provided by the CDPAP Company thus the Board find no conflict of interest.

As the employee's County job duties do not require her to interact with the CDPAP who administers the Requestor's grandchild's benefits, and, this public benefit is characterized as an exempted permissible public benefit under §77-5(B), the Board finds no conflict of interest.

CONCLUSION

The Board finds that the stated prospective outside employment does not create for the employee a business dealing and is not engaging in a business transaction with the County. In furtherance, the benefit is one that is available to the residents generally pursuant to exemption under §77-5 (B), and the employee's job duties do not require ongoing billing issues or oversight services provided by the CDPAP Company thus the Board find no conflict of interest.

Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the requester shall have 15 business days from the time this Advisory Opinion has been rendered (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

The forgoing is the opinion of the Board.

Dated: Hauppauge, New York
June 2, 2021


Eric A. Kopp - Chair