

# OHIO ETHICS COMMISSION

Santiago Feliciano, Jr.  
*Commission Chair*

David E. Freel  
*Executive Director*



8 East Long Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-7090  
Fax: (614) 466-8368  
Website: <http://www.ethics.state.oh.us>

December 27, 1999

Informal Opinion 1999-INF-1227

James Conrad  
Administrator/CEO  
Bureau of Workers' Compensation

Dear Mr. Conrad:

In a letter received by the Ohio Ethics Commission on April 28, 1999, you asked whether the officers or directors of certain entities that have contracted with the Bureau of Workers' Compensation ("BWC") to provide medical management and cost containment services for BWC's Health Partnership Program are required to file financial disclosure statements pursuant to Chapter 102. of the Ohio Revised Code.

As explained more fully below, officers or directors of private corporations that have contracted with BWC to provide medical management and cost containment services for BWC's Health Partnership Program are not required to file financial disclosure statements pursuant to R.C. Chapter 102. by reason of their officer or director positions with these entities.

## Facts

You have indicated that BWC administers a managed care program entitled the Health Partnership Program ("HPP"). In order to implement this program, BWC certifies "one or more external vendors to provide medical management and cost containment services in the health partnership program for a period of two years beginning on the date of certification, consistent with the standards established under [R.C. 4121.44]." R.C. 4121.44(B)(1). R.C. 4121.441 provides the Administrator of BWC, with the advice and consent of the Workers' Compensation Oversight Commission, with the authority to adopt rules governing the certification of these vendors and the services they provide. These rules can be found in Ohio Administrative Code Chapter 4123-6.

You have explained that BWC has certified and contracted with a number of Managed Care Organizations ("MCOs") to medically manage the injured worker claims of those employers who were selected by or assigned to the MCOs. You have further explained that the primary duties of the MCOs include: reviewing requests for treatment reimbursement and either authorizing or denying said requests; providing a level of alternative dispute resolution for treatment reimbursement disputes; processing provider bills; and receiving and gathering information on First Reports of Injury. You have stated that the MCOs perform these functions at the individual claim level; the determination of overall policy as to the implementation of the HPP remains with BWC.

You have explained that BWC has contracted with two additional vendors in the course of implementing the HPP. BWC has contracted with RxNet to process prescription drug bills as BWC's Pharmacy Benefits Management vendor. BWC has contracted with Cambridge Integrated Services Group ("Cambridge") to provide a computerized bill payment system to receive provider bills from the MCOs and to provide the MCOs with the funds to pay providers.

You have stated that some or all of the functions described above were performed by BWC prior to March 1, 1997 (the effective date of the HPP) or would be performed by BWC absent the HPP. Therefore, you ask whether the officers or directors of the MCOs, RxNet, and Cambridge are required to file financial disclosure statements pursuant to R.C. Chapter 102.

**Ohio's Financial Disclosure Law—R.C. 102.02**

Ohio's financial disclosure law can be found in R.C. 102.02. The financial disclosure law requires certain public officials and employees to complete annual financial disclosure statements on which they report sources of income, investments, real estate holdings, and other financial interests. The purpose of the financial disclosure law is to remind public officials of those financial interests that might impair their judgment on behalf of the public, inform the public of the financial interests of the officials who serve them, and assist in instilling confidence in the actions of public officials.

**Public Servants Required to File by Statute—R.C. 102.02(A)**

R.C. 102.02(A) lists categories of persons who are subject to the requirements of the financial disclosure law. For example, R.C. 102.02(A) requires persons who are elected to state, county, and city office, and candidates and appointees for these elective offices, to file a financial disclosure statement with the appropriate ethics commission. R.C. 102.02(A) also requires the director, assistant directors, deputy directors, and division chiefs, or persons of equivalent rank, of any state administrative department to file a financial disclosure statement. State employees who are paid according to Schedule C of R.C. 124.15 or Schedule E-2 of R.C. 124.152, as well as many other categories of persons, are also required to file a financial disclosure statement under R.C. 102.02(A). However, officers or directors of the MCOs, RxNet, and Cambridge, do not fall within any of the categories of listed persons required to file a financial disclosure statement under R.C. 102.02(A).

**Public Servants Required to File by Administrative Rule—R.C. 102.02(B)**

R.C. 102.02(B) provides as follows:

The Ohio ethics commission, the joint legislative ethics committee, and the board of commissioners on grievances and discipline of the supreme court, using the rule-making procedures of Chapter 119. of the Revised Code, may require any class of public officials or employees under its jurisdiction and not specifically excluded by this section whose positions involve a substantial and material exercise of administrative discretion in the formulation of public policy,

expenditure of public funds, enforcement of laws and rules of the state or a county or city, or the execution of other public trusts, to file an annual statement on or before the fifteenth day of April under division (A) of this section. (Emphasis added).

The question is whether the officers or directors of the MCOs, RxNet, and Cambridge are "public officials or employees" for purposes of R.C. 102.02(B). R.C. 102.01(B) defines the term "public official or employee," for purposes of Chapter 102. of the Revised Code, as "any person who is elected or appointed to an office or is an employee of any public agency." R.C. 102.01(C) defines the term "public agency" as:

[T]he general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, township, and the five state retirement systems, or any other governmental entity. "Public agency" does not include a department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated.

Thus, the question becomes whether the MCOs, RxNet, and Cambridge are "public agencies" such that their officers or directors are "public officials or employees" subject to the provisions of R.C. Chapter 102. In Advisory Opinion No. 75-013, the Ethics Commission held:

The provisions of Chapter 102 of the Revised Code apply to "public officials or employees" and "persons elected or appointed to an office of or employed by" an agency of the state, county, township, municipal corporation or other governmental entity. The governmental or public agencies referred to in Chapter 102 of the Revised Code are entities created by the Constitution or legislative bodies of the state, county, township, or municipal corporation.

The MCOs, RxNet, and Cambridge are private corporations. These corporations are not entities created by the Constitution or legislative bodies of the state, county, township, or municipal corporation. The MCOs, RxNet, and Cambridge are not instrumentalities of the state, a county, a city, village, township, and the five state retirement systems, or any other governmental entity. Therefore, these entities are not "public agencies" under the statutory definition in R.C. 102.01(C), and their officers and directors are not "public officials or employees" for purposes of R.C. Chapter 102. and are therefore not subject to the Ethics Commission's rule-making authority described in R.C. 102.02(B). (It must be noted, however, that officers or directors of the MCOs, RxNet, and Cambridge, who are otherwise "public officials or employees" and subject to the requirements of R.C. 102.02 because of some other public position held, would be required to file financial disclosure statements with the appropriate ethics commission regardless of this decision.)

**Other Provisions of the Ethics Law**

You have not asked whether other provisions of the Ethics Law apply to the officers and directors of the corporations. It must be noted that some provisions of the Ethics Law can apply to private parties who are performing government functions. For example, certain prohibitions in R.C. 2921.42 and 2921.43 apply to "public officials," which include "agents" of the state, as well as officers and employees. See R.C. 2921.01(A). A person is an agent of the state when the state has delegated to the person or his public agency authority to act on the state's behalf, and bind the state. See Adv. Ops. No. 85-005 and 92-001.

R.C. 2921.42 contains prohibitions against a public official authorizing public contracts, or public investments, if the official, or a family member of business associate, has an interest in the contract or investment. R.C. 2921.42(A)(1) and (A)(2). R.C. 2921.42 also imposes limits on a public official with respect to having an interest, or occupying a position of profit, in a public contract with his own public agency. R.C. 2921.42(A)(3) and (A)(4). R.C. 2921.43 prohibits a public servant from accepting compensation, other than as allowed by law, to perform his official duties. In addition, R.C. 102.03(F) and 2921.43(A) prohibit any entity that does business with BWC from promising or giving anything of value, or supplemental compensation, to any BWC official or employee. This prohibition would apply to the vendor corporations in your question, and all officers, directors, and employees of the corporations.

If you need specific guidance with respect to the application of these statutes to the corporations in your question, please do not hesitate to contact this office.

**Conclusion**

As more fully explained above, officers or directors of private corporations that have contracted with BWC to provide medical management and cost containment services for BWC's Health Partnership Program are not required to file financial disclosure statements pursuant to R.C. Chapter 102. by reason of their officer or director positions with these entities.

This informal advisory opinion was approved by the Commission at its meeting on September 17, 1999. It represents the views of the undersigned, based on the precedent of the Commission and the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42, 2921.421, and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. If you have any other questions, please do not hesitate to contact this office again.

Sincerely,



Laura Evans Nolan  
Staff Attorney