

**DEPARTMENT OF HUMAN RESOURCES
311 West Saratoga Street
Baltimore, MD 21201**

DATE: December 15, 2011

POLICY DIRECTIVE SSA # 12-18

TO: Directors, Assistant Directors
Staff, Local Departments of Social Services

FROM: Carnitra D. White, Executive Director
Social Services Administration

SUBJECT: Implementing the State Ethics
Commission's ruling regarding employees
as providers of foster care and adult care.
This policy directive replaces and supersedes
Circular letter SSA# 00-4

PROGRAMS AFFECTED: Foster Care and Adult Services

ORIGINATING ADMINISTRATION: Social Services Administration

ACTION REQUIRED OF: Local Departments of Social Services
Directors

EFFECTIVE: Immediately

CONTACT PERSONS: Anita Wilkins
Program Manager, Resource Development,
Placement and Support Services
Social Services Administration
410-767-7119

April Seitz
Office Director, Adult Services
Social Services Administration
410-767-7569

BACKGROUND:

The Public Ethics Law, Section 15-101 et seq. of the State Government Article of the Maryland Annotated Code, establishes standards of conduct for employees of the State of Maryland. The State Ethics Commission (SEC) interprets the ethics law and provides guidance on the application of the law. The Ethics Law prohibits state employees from engaging in secondary employment that presents an actual or apparent conflict of interest or the appearance of unfairness. More specifically, the Public Ethics Law generally prohibits State employees from being employed by, or having an interest in, an entity that:

- (1) is subject to the authority of his or her agency; or
- (2) is negotiating a contract with his or her agency, unless the SEC grants an exception to this prohibition.

The SEC has issued guidance to the Department of Human Resources (DHR) regarding employees who are, or want to be providers for children or adults. The role of provider may result in a situation in which the employee has both an employment and an individual interest relationship. The SEC advises that DHR's approval of an individual as a provider creates an entity that has a regulatory and contractual relationship with DHR and therefore, such employment would be prohibited by the Ethics Law unless an exception is granted by the SEC. In cases where the employee's duties for the State agency can be shown to be sufficiently remote from the oversight or administration of the foster care or adult services programs, the SEC may grant an exception and approve the secondary employment.

PURPOSE:

The purpose of this policy is to assist local departments of social services in avoiding actual or perceived conflicts of interest when approving DHR staff or members of their immediate families to serve as providers in the Foster Care or Adult Services Programs. The policy outlines those criteria that the Social Services Administration and the SEC consider when approving or disapproving applications from potential providers.

DEFINITIONS

Foster Care Providers include all individuals trained and approved by a public or licensed private child placement agency to provide care for court-committed children.

Adult Service Providers include all individuals trained and/or approved by the Local Department of Social Services Adult Services programs to provide care to adults.

Kinship Caregivers include those individuals whose relationship to a child who is in the care, custody, or guardianship of a local department is within the fifth degree of consanguinity or affinity and who have been designated by the local department as a temporary 24-hour caregiver of that child as an out-of-home parent as described in Family Law Article, §5-534(d), Annotated Code of Maryland.

APPROVAL PROCESS

When a State employee requests to become a foster parent, kinship caregiver, or adult services provider, the local director or DHR administrator must consider whether the employee meets the general requirements outlined in this policy. If an examination of the employee's job duties indicates that the employee meets the requirements, the local director or DHR administrator shall sign the exception request form attached to this policy and forward it along with the MS22 for the employee to DHR/SSA.

SSA Administrators review the request to ensure that all criteria have been met. An approved request is then submitted to HRDT for forwarding to the Ethics Commission for its review.

The SEC may request additional information from the employee and his or her supervisory unit when considering the ethical correctness of an employee's request to become a provider of care. As a general matter, if the employee's agency employment duties are sufficiently remote from the foster care program, it is less likely that the secondary employment presents a prohibited conflict of interest.

The SEC uses the following criteria to determine whether it is appropriate to grant an exception.

- The State employment duties of the requestor do not significantly impact the outside entity (employer) or any contract between the outside employer and the agency for which the employee works.
- The requestor does not supervise any person and is not supervised by any person whose duties significantly impact on the outside employer or any contract between the State and that employer.
- The requestor is not affiliated with a specific unit in the State agency which exercises any authority over or contracts with the outside employment.
- The requestor has complied with other sections of the Ethics Law.
- The requestor's outside employment or financial interest involves no duties significantly related to the State's authority over the potential outside employer.
- The requestor's outside duties or interests do not involve negotiating or carrying out any contract between agency and the outside employer.
- The specific employment does not create a conflict or appearance of conflict.
- Compensation for the requestor's outside employment is not directly funded by a State contract.

If the SEC denies the request for an exception, the employee may not be approved as a provider.

CRITERIA FOR DETERMINING WHETHER THE SECONDARY EMPLOYMENT PRESENTS A CONFLICT OF INTEREST

The following employees may not be approved as Adult Services providers:

- Adult Services employees
- DHR Central Adult Services Staff
- Employees in programs that have direct contact with Adult Services (i.e. Adult Protective Services, Transportation Aides, In-Home Aides, Local Department Administration, etc.)

The following employees may not be approved as foster care providers unless they are requesting approval as a relative placement:

- DHR Central Child Welfare Program staff
- Employees in programs that have direct contact with the Foster Care services (i.e. Child Protective Services, Foster Care, Adoption, Kinship Care, Parent Aides, Transportation Aides, Local Department Administration, etc.)

Relative Placements:

- An exception may be requested in situations where the employee is found to be the only appropriate relative caregiver after all other available relatives are assessed.
- The child welfare employee providing care to a relative must be referred to another local department of social services for approval as a foster/adoptive provider.

Employees other than those noted above, may have, or may be perceived to have, a conflict of interest if applying to become a foster care or adult services provider if any one of the following is true:

- The employee's position allows the employee to have some impact on the decision-making process for foster care and/or adult services;
- The employee's position gives the employees access to information on foster care or adult services clients the employee would not otherwise have; or
- The employee's position may lead others to confer special treatment or consideration to the employee as a provider.
- The same considerations are equally applicable if an employee's spouse, adult child, parent, or adult sibling seeks to become a provider.
- Non-child welfare employees who are approved as foster care providers may not accept children who are committed to the local department of social services for whom they work.

If an employee's request for secondary employment as a provider is approved by the SEC, non-child welfare employees who want to be approved as foster care providers must apply to a local department of social services other than the local department of social services for whom they work. Similarly, if the SEC approves a request from a non-adult services employee who wants to be approved as an adult services provider, the employee must apply to a local department of social services other than the local department of social services for which the employee works.

DHR PROCEDURES:

1. Prior to processing an employee's application to become an unrestricted resource parent or an adult services provider, the local department must have received from SEC an approval of the request for the exception.
2. The local department director or his or her designee must approve and sign all applications for employee providers to signify that the director believes the employee qualifies under the provisions of this policy.
3. The county that recruits the non-child welfare or adult services employee will be responsible for the approval, supervision, record maintenance, and reporting relating to that employee. No child from the department where the employee works shall be placed in an employees' home.

Example: If a non-child welfare or adult services employee works for Baltimore City DSS, that employee may submit an application in another county. That county then assumes case management responsibility for the home and any child placed therein.

4. In the case of a relative of foster care and adult service employees who seeks approval as a provider, a unit in a county other than that of the local department of social services that employs the employee must provide supervision of the home and of the child.
5. Special privileges shall not be granted to employee providers. For example, an employee cannot use administrative leave to attend to the responsibilities of the provider position.

Within 30 days of the local director's or DHR administrator's determination that an employee's agency duties are sufficiently remote from the child welfare or adult services programs as to present no ethics concerns, the Social Services Administration must receive the following information:

- The employee's name, home address, and phone number;
- The employee's work address and phone number;
- The department in which the employee works and his or her position;
- Whether the employee is approved as a foster care or adult services provider;

- Proof that notification of the application process has been sent to the local department of social services that employs the employee.
6. The local department which employs the employee must be notified within 30 days of SEC's approval of the request for an exception.

The Social Services Administration must be notified promptly in the event of any problem involving an employee provider.

DHR ETHICS REGISTRY AND REPORTING PROCEDURES:

1. In order to ensure implementation of the Ethics Commission's ruling, each local department of social services must devise a system to identify and track employee providers by documenting the:
 - Total number of employee caregivers (foster care)
 - Total number of employee caregivers (adult services)
2. The local departments must submit an Employee Provider Bi-Annual Report that reports on the use of employee provider placements of non-relatives and relatives. (See Attachment B Form 1297 – DHR/SSA – Employee Provider Bi-Annual Report).
3. The local department must provide immediate notification to SSA on any problems related to employee provider placements.
4. An ethics registry will be maintained by the Social Services Administrator for foster care and for adult services employees who become providers of foster care or adult care. Please contact Anita Wilkins at 410-767-7119.

REQUEST FOR EXCEPTION TO BECOME AN EMPLOYEE PROVIDER

Date: _____

To: Ethics Commission

From: _____

SUBJECT: Request for Exception to become an Employee Provider:

_____ Foster Parent _____ Kinship Caregiver _____ Adult Services Provider

Relationship to child involved (if any) _____

1. Identifying information:

Name of Employee (Spouse, if applicable)

Employee's Position and Grade

Home Address (City, State, and Zip Code)

Employee's Home Phone

Employee's Local Department of Social Services Employee's Work Phone

Local Department which will supervise the placement, if approved: _____

2. Brief description of duties and responsibilities in State position: _____

3. DHR Administrator/Local Director Approval:

As DHR Administrator or Director of _____ Department of Social Services, I have reviewed the employee's job duties and determined the employee's duties are sufficiently removed from the oversight or administration of the Foster Care or Adult Services programs.

_____ Approved _____ Disapproved

Signature

Printed Name & Title

Date

4. Social Services/DHR Central Approval:

As Executive Director of the Social Services Administration, I have reviewed the Request for Exception to become an Employee Provider to ensure the request meets the criteria in Circular Letter SSA # _____.

_____ Approved _____ Disapproved

Signature

Printed Name & Title

Date

Note: The Ethics Commission may request additional information from the employee and his/her supervisory unit when considering the ethical correctness of an employee's request to become a provider of care.

**REQUEST WILL NOT BE CONSIDERED UNLESS CURRENT
POSITION DESCRIPTION IS ATTACHED**