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ADVISORY OPINION NUMBER 79-1

"Administrative Action" in Public Act Number 77-605

A firm which manufactures and sells health care products, including prescription drugs, has "professional medical representatives" who visit health professionals in the private sector to provide information on the firm's pharmaceutical product line and periodically visit persons in the Department of Social Services who administer State medical care programs for those eligible for public assistance. The purpose of these visits is to provide information regarding the characteristics, availability, and prices of the firm's drug products. The firm's representatives hope that their explanation of the medical benefits of their drug products will induce the health professionals to prescribe the drugs and the administrators to have the State reimburse vendors for providing the firm's products to persons receiving medical assistance from the State. The firm has asked the State Ethics Commission whether the periodic visits by its professional medical representatives in Connecticut, which might result in approval or disapproval of State reimbursement for drug products, constitute lobbying under Public Act Number 77-605.

That Act, in section 1(k), defines lobbying (for present purposes) as "communicating with any official or his staff in the ... executive branch of government for the purpose of influencing any ... administrative action". "'Administrative action' means any action or non-action of any executive agency of the state with respect to the amendment, adoption or repeal of any rule, regulation, ... or guideline." Section 1(a), Public Act Number 77-605. The answer to the firm's question depends in part upon the State's procedures for determining what drug products, supplied under the medical assistance program to persons eligible for public assistance, will be paid for by the State.

In addition to Federal statutes and regulations, the medical assistance program administered by the Department of Social Services is governed by Chapter 302 of the Connecticut General Statutes, particularly Part IV of that Chapter, and Department regulations, particularly sections 17-134d-1 through 17-134d-6. The specific Department of Social Services policy on State reimbursement for drug products supplied to eligible patients currently is in its

Health Services Bulletin No. 159, "Policies and Procedures Governing the Billing and Payment for Prescription Drugs", effective September 16, 1978. The Bulletin provides policy for establishing lists of drug products eligible for State reimbursement and policies for State reimbursement for drugs not on an approved list but prescribed for an eligible patient. When new drug products are introduced by a manufacturer, or new uses are proposed for existing drug products, the question of whether reimbursement by the State will be allowed, and the procedures to be followed to obtain reimbursement from the State, are decided under the policy set forth in Health Services Bulletin No. 159.

When the professional medical representatives of the health care product firm visit administrators of the State's medical assistance program, their purpose is to convince the administrators that the firm's drug products should be considered reimbursable under current policy. It is not to change the policy now expressed in Health Service Bulletin No. 159, which provides what could be considered rules or guidelines for determining whether the State will reimburse vendors for drug products provided to those eligible for State medical assistance. (The Bulletin is not a set of regulations, for the procedures of the Uniform Administrative Procedure Act, Chapter 54, Connecticut General Statutes, have not been utilized in its promulgation.)

Since the professional medical representatives are not attempting to influence "administrative action"--the rules, regulations, or guidelines of the Department of Social Services--they are not "lobbying", as those terms are defined in Public Act Number 77-605.

By order of the Commission,


Rev. Thomas J. Lynch
Chairman

Dated January 4, 1979