

THIS INFORMATION IS LEGAL ADVICE PROVIDED IN ACCORDANCE WITH AN ATTORNEY-CLIENT RELATIONSHIP AND IS PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED FOR DISCLOSURE ONLY TO THE DESIGNATED RECIPIENT. YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION BY ANYONE OTHER THAN THE DESIGNATED RECIPIENT IS STRICTLY PROHIBITED.

**EASTMAN & SMITH LTD. MEMORANDUM**

**TO:** Jason Orcena, Health Commissioner, Union County Combined General Health District

**FROM:** Joseph R. Durham

**DATE:** March 14, 2013

**RE:** Local Government Innovation Fund; Feasibility of shared services for client billing and reimbursement and contracting/credentialing with private insurance companies

We have analyzed the preferred "vehicle" to accomplish the above-referenced shared services. We considered five options including: a regional council of governments; one local health department providing services; a consortium of contracting local health departments; contracting with the Association of Ohio Health Commissioners (AOHC) or Ohio Association of Boards of Health (OABH); and contracting with a non-profit, limited liability company, organized by the AOHC.

A. Pursuant to R.C. §167.01, the governing bodies of any two or more political subdivisions may enter into an agreement with each other for establishment of a regional council (COG) consisting of such political subdivisions. A COG is authorized to: study such area governmental problems common to two or more members of the council as it deems appropriate, including but not limited to matters affecting health and economic conditions; promote cooperative arrangements and coordinate action among its members; and promote cooperative agreements and contracts among its members or other governmental agencies and private persons, corporations, or agencies. While

a COG may perform joint purchasing on behalf of its members (Ohio Attorney General Opinion 69-013), there are many opinions of the Ohio Attorney General limiting the powers of COGs. *See, for example, OAG Opinion 2012-013* (regional council of county boards of developmental disabilities lacks statutory authority to invest its moneys in the publicly-traded stocks and bonds of for-profit corporations).

B. Pursuant to R.C. §9.48(B)(1), a local health department (coordinating LHD) could allow other local health departments to participate in contracts into which it has entered for the acquisition of equipment, materials, supplies, or services, and may charge a reasonable fee to cover any additional costs incurred as a result of their participation. If a local health department competitively bid out its medical billing functions, other local health departments could “opt-in” for use of the services. However, it is unclear if contracting and credentialing with private insurance companies qualifies as an “acquisition of equipment, materials, supplies, or services” for purposes of R.C. §9.48. There may also be issues of liability for the coordinating LHD. Further, its statutory legal counsel, custodian of funds, and auditors may object to the imposition of additional responsibilities.

C. Local health departments may contract with each other (R.C. §3709.08, §3709.282) and could agree to cooperatively contract for billing services and other joint efforts. However, in this model, any “organization” created by contract is not a recognized legal entity and could not obtain a separate tax identification number. Additionally, the individual statutory legal counsel, custodian of funds, and auditors, with only responsibility to the LHD in its jurisdiction, would have no obligations to the group of LHDs or any “organization” created by the contract.

D. LHDs could contract with the AOHC or OABH. Pursuant to R.C. §9.48(B)(2), a LHD may “participate in a joint purchasing program operated by or through a ... state association of political subdivisions in which the purchasing political subdivision is eligible for membership.” We are not aware of any joint purchasing program currently being operated by the AOHC or the OABH. Additionally, it is difficult to define contracting/credentialing with private insurance companies as joint purchasing. We believe the most workable option involves the formation of a limited liability company, as outlined below, for the purposes of facilitating shared services between LHDs for client billing and reimbursement and contracting/credentialing with private insurance companies.

1. Pursuant to Ohio Revised Code § 1705.04(A), the Association of Ohio Health Commissioners (AOHC), as a non-profit Ohio Corporation, may file articles of organization and form a limited liability company (LLC).
2. AOHC is the single member of the LLC and the LLC will be a non-profit entity for tax purposes.
3. As the single member, the AOHC shall establish a declaration of sole member (or operating agreement) for the LLC. The operating agreement shall establish that the operation or control of the LLC shall initially be placed in the managers consisting of (insert #) Health Commissioners (as AOHC members) of the original participating local health districts.
4. Pursuant to Ohio Revised Code § 3709.282<sup>1</sup>, a contract between the (insert #) original participating local health districts and the LLC shall establish the services provided by LLC, the role/duties of the original participants, and requirements for other local health districts to participate. The contract shall address funding, insurance, and indemnification.

---

<sup>1</sup> “The board of health of any city or general health district may participate in, receive or give financial and other assistance, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted prior to or after November 6, 1969, by the congress of the United States.” The federal programs will include: Medicare; Medicaid; Vaccines for Children; HIPAA; Health Information Technology for Economic and Clinical Health Act (EHR, EMR); the Affordable Care Act; etc.

5. The LLC shall manage credentialing services and billing services for each local health district and establish that the LLC may sub-contract any services provided by the LLC (example: private billing company).
6. The LLC (or its subcontractor) shall negotiate provider agreements with private insurers allowing the original participating local health districts to bill for reimbursement (a menu of services) and establish procedure for other local health districts to participate.