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George E. Farley, Chairman
West Virginia Health Care
Planning Commission
1007 Division Street
Parkersburg, WV 26101

Dear Mr. Farley:

This is in response to your request for clarification of certain issues concerning House Bill 2461. This Bill, passed on March 9, 1991, established the West Virginia Health Care Planning Commission (the "Commission") as set forth in West Virginia Code Chapter 16, Article 1A. Specifically, you wish this office to address the following issues:

1. Under what circumstances Commission members are entitled to the fifty dollar (\$50.00) per day compensation provided for in West Virginia Code § 16-1A-3;

2. If it is necessary for members of the Commission to present receipts for miscellaneous expenses totalling less than thirty dollars (\$30.00) in order to be reimbursed for such expenses; and

3. Whether the Commission has the authority to reimburse consumer members of task forces created by the Commission for their mileage and meals incurred in attending task force meetings.

Concerning the issue of compensation for members of the Commission, West Virginia Code § 16-1A-3 (Supp. 1991) states, in part, that "[e]ach appointed member of the commission may be paid fifty dollars for each day of performing services as a member and reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties, in the same manner as are members of the Legislature." The key to your question concerns the intent of the Legislature when it used the phrase "for each day of performing services." A review of the Legislative history of Chapter 16, Article 1A proves no assistance in solving the compensation question.

West Virginia Code § 12-3-7 (1991) addresses compensation and payment of expenses to members of state boards and commissions. This Code section provides, in part, that "[t]he members of all state boards and commissions, unless a different rate of compensation is provided by law, shall be allowed four dollars per day for each day necessarily employed as such." This section would not apply to members of the Health Care Planning Commission, as their compensation is provided for under West Virginia Code § 16-1A-3. Neither does this section provide any guidance in interpreting the compensation language in West Virginia Code § 16-1A-3.

It is unreasonable to read West Virginia Code § 16-1A-3 to provide that members of the Health Care Planning Commission be compensated "in the same manner as are members of the Legislature." W. Va. Code § 16-1A-3 (Supp. 1991). West Virginia Legislators are paid a salary rather than a per diem. See W. Va. Code § 4-2A-2 (1990). While members of the Legislature can receive an additional \$50.00 per day during an extension of a regular session or an extraordinary session, the Code places conditions on this additional compensation which have no meaning if applied to the Commission. See W. Va. Code § 4-2A-3 (1990). The method of compensation for members of the Legislature is thus clearly distinct from that of members of the Health Care Planning Commission, and we therefore construe the quoted phrase as applying only to the reimbursement of miscellaneous expenses.

In order to shed light on the intent of the Legislature concerning compensation provided for under West Virginia Code § 16-1A-3, we have surveyed other West Virginia statutes addressing compensation for members of state boards and commissions. West Virginia Code § 30-27-1(d) (1986) provides that members of the Board of Barbers and Beauticians be compensated "a per diem of fifty dollars for each day of attendance at board sessions, but such compensation for each member shall not exceed the sum of two thousand dollars in any calendar year." Each member of the Oil and Gas Conservation Commission is paid "thirty-five dollars per diem not to exceed one hundred days per calendar year while actually engaged in the performance of his duties." W. Va. Code § 22-8-4(d) (Supp. 1991). Members of public service district boards are paid, depending on the number of customers served, up to "one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed three thousand dollars per annum." W. Va. Code § 16-13A-4 (1991). Members of the West Virginia Water Development Authority Board are paid an annual salary without a provision for per diem compensation. See W. Va. Code § 20-5C-4 (1989). There is no provision for compensation of members of the Compensation Programs Advisory Board established by W. Va. Code § 23-1-18 (Supp. 1991), thus members are paid four dollars per day pursuant to

W. Va. Code § 12-3-7. And finally, members of the West Virginia Ethics Commission are paid "one hundred dollars for each day actually devoted to the business of the Commission." W. Va. Code § 6B-2-1(g) (1990). It is clear from this survey that the Legislature, when establishing compensation for members of state boards and commissions, has been specific in the amount and, in most cases, the circumstances under which members are paid.

Had the Legislature wished to further limit the circumstances under which members of the West Virginia Health Care Planning Commission are to be compensated, it could have clearly done so in the Code section authorizing compensation. The Legislature has been specific in authorizing compensation for other board and commission members. It therefore must be concluded that the Legislature did not intend to further define the circumstances under which the per diem is paid to Commission members, and that the Commission may, if it chooses, develop its own guidelines as to what constitutes "performing services as a member." However, we would note that only those services which further the statutory mission of the Commission should be compensated. Thus, attendance at subcommittee meetings is compensable. Commission members may have opportunities (to speak, for instance) which would not exist but for their membership; however, such "services" are not compensable unless they are in direct furtherance of the Commission's statutory duties.

Concerning the need for members of the Commission to present receipts to be reimbursed for miscellaneous expenses, West Virginia Code § 16-1A-3 (Supp. 1991) provides, in part, that "[e]ach appointed member of the commission may be . . . reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties, in the same manner as are members of the Legislature." In this instance, the statute is clear that the guidelines for reimbursement of expenses used by the Legislature should also apply to members of the West Virginia Health Care Planning Commission. West Virginia Code § 4-2A-7 (1990) limits meal and miscellaneous expenses for members of the Legislature to thirty dollars (\$30.00) per day, and provides that "a receipt shall not be required to be submitted with any such expense voucher for meal and miscellaneous expenses." Therefore, in our opinion it is not necessary for members of the Commission to submit receipts in order to be reimbursed for their miscellaneous expenses under thirty dollars (\$30.00) per day.

Finally, you ask whether the West Virginia Health Care Planning Commission has the authority to reimburse consumer members of task forces created by the Commission for their mileage and meals. Chapter 16, Article 1A of the West Virginia Code does not specifically authorize the creation of task forces. We assume that these task forces were created under the "omnibus" language of

W. Va. Code § 16-1A-3 (Supp. 1991), which provides, in part, that "[t]he commission may exercise all powers necessary or appropriate to carry out the health planning purposes of this article, said powers being related to developing a comprehensive state health plan." However, the Commission is authorized elsewhere in Article 1A to employ staff, to "contract[] as necessary with consultants and experts," and to receive reports from regional health advisory councils. W. Va. Code § 16-1A-4 (Supp. 1991).

It is a well-established rule of statutory construction that "[a] specific section of a statute controls over a general section of the statute." Syl. pt. 2, State ex rel Myers v. Wood, 154 W. Va. 431, 175 S.E.2d 637 (1970); accord, syl. pt. 1, Dalton v. Spieler, ___ W. Va. ___, 401 S.E.2d 216 (1990); syl. pt. 2, Matter of Vandelinde, ___ W. Va. ___, 366 S.E.2d 631 (1988). Inasmuch as the Commission has been provided by W. Va. Code § 16-1A-4 with specific authority to hire staff, experts, and consultants to perform tasks related to its mission, we cannot construe the general language of W. Va. Code § 16-1A-3 as authorizing the Commission to contract with citizen task forces to achieve the same purposes.

Furthermore, "[i]n the interpretation of statutory provisions the familiar maxim expressio unius est exclusio alterius, the express mention of one thing implies the exclusion of another, applies." Syl. pt. 3, Manchin v. Dunfee, ___ W. Va. ___, 327 S.E.2d 710 (1984); accord, Concerned Loved Ones v. Pence, ___ W. Va. ___, 383 S.E.2d 831 (1989). Because the Legislature has expressly provided certain mechanisms for accomplishing the Commission's goals, including the creation of regional health advisory councils to hold public hearings and make recommendations to the Commission, it may be implied that no other methods were contemplated or authorized.

We again turn for guidance to West Virginia Code § 12-3-7, where there is general statutory authority for reimbursement of expenses to members of state boards and commissions. This Code section does not address reimbursement for members of task forces not specifically created by the Legislature. We would further note that even members of state boards and commissions are not entitled to reimbursement for mileage, except where otherwise specially provided by statute. See W. Va. Code § 12-3-7 (1991).

Consequently, we are of the opinion that there is no statutory authority for the reimbursement of members of the Commission's citizen task forces for their meals and mileage when attending task force meetings. Without specific statutory authorization, it must be concluded that the Commission lacks the authority to make such reimbursements.

SUMMARY

Pursuant to West Virginia Code § 16-1A-3 (Supp. 1991), members of the West Virginia Health Care Planning Commission are entitled to compensation at the rate of fifty dollars (\$50.00) for each day of performing services in direct furtherance of the statutory duties of the Commission. Members of the Commission are not required to present receipts for miscellaneous expenses totalling less than thirty dollars (\$30.00) per day in order to be reimbursed for such expenses. The Commission lacks the authority to reimburse consumer members of task forces created by the Commission for their mileage and meals for attending task force meetings.

Very truly yours,

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