



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
May 28, 2009

Health Department Executive Misused Cell Phone

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that New York State Department of Health (DOH) Associate Commissioner Sheila Kee used her DOH-issued cell phone for personal use, and permitted her husband to use the phone during an out-of-town personal trip, in violation of agency policy. The Inspector General recommended that DOH review Kee's conduct and take action as appropriate.

The Inspector General further found that DOH lacks procedures to address employee reimbursement for personal use of state cell phones, and has implemented inconsistent procedures to address incidents of personal use on a case-by-case basis. The Inspector General recommended that DOH establish formal policies for reimbursement for personal use of state cell phones, and ensure that those policies comply with applicable federal guidelines on taxable income.

In response to the Inspector General's recommendations, DOH advised that it will counsel Kee about her cell phone misuse and will revise its cell phone usage policy.

ALLEGATIONS

On September 12, 2008, the Inspector General received a complaint alleging that DOH Associate Commissioner Sheila Kee used her state-assigned cell phone for personal use and also made it available to family members for their use. At the time, the Inspector General was investigating an earlier complaint that Kee directed a subordinate to act as her driver outside the duties specified in his job title.

SUMMARY OF INVESTIGATION

Associate Commissioner Sheila Kee heads the DOH Western Regional Office. The office is responsible for administering various programs within the region's 17 counties, including oversight of nursing homes, home health care, and disease prevention. It has offices throughout the region with headquarters in Buffalo.

Department of Health's Phone Use Policies

Section 31.2 of the DOH Administrative Policy and Procedures Manual regulates employee cellular telephone use as follows:

Cellular phone calling is more expensive than any other service. It should be used when other phone services are inappropriate, unavailable or impractical and immediate communication is required for the conduct of official State business, in an emergency situation or in those instances where employee safety or productivity will be enhanced through use of a cellular phone (emphasis added).

Kee's Misuse of her State Cell Phone

Kee was issued an agency cell phone purchased pursuant to a state contract with Verizon Wireless. When questioned by the Inspector General, Kee acknowledged she is aware of agency policy restricting cell phone use to official business and prohibiting personal use.

The Inspector General reviewed Verizon call records for Kee's state cell phone for the period January 1, 2008, to September 30, 2008. While the majority of calls made on Kee's state cell phone were for official business, the Inspector General's review did reveal personal use of the cell phone by Kee. During that period, Kee received 29 calls from her daughter and 16 other calls from relatives in the Delaware County and New York City areas. The records also show that Kee made 19 calls to relatives during this same period. Kee provided the Inspector General with her billing records from January 1, 2008 to October 25, 2008 (excluding August) in which she identified 19 incoming and 49 outgoing personal calls. Despite this somewhat regular use of the state-issued cell phone for personal use, Kee stated that she does not own a personal cell phone because she does not use one often enough to justify it.

When the Inspector General asked Kee if she had ever loaned her state cell to another person, Kee initially answered, "No." She then added that her husband may have used it once. She said that she was in Albany at a meeting and her husband was in Albany visiting his aunt who was in the hospital. She recalled that something was wrong with his cell phone, and he used her state cell phone. When asked if his using the cell phone was a violation of department policy, she said, "I guess so, and I . . . probably . . . but his aunt was critically ill. . . ." She also said, "I'm very frustrated because I pride myself on not using that phone. So, I'm guilty if I'm guilty."

In a subsequent interview, Kee revised her account and advised the Inspector General that, upon review of her bill and her calendar, she realized that she was not in the Albany area at that time. She stated that her husband was in the Albany area, specifically Clifton Park, without her. She said that his cell phone was broken and she "in a lapse of judgment" let him take her state cell phone with him. A review of the billing records showed that the cell phone was located in the Albany area from August 20-22, 2008, during which time 22 calls were made from it and 19 calls were received, including calls from Kee's Buffalo office number.

Kee's Reimbursement for Personal Use of Cell Phone

After her interview with the Inspector General, Kee surrendered her state cell phone. She also contacted Robert W. Reed, DOH Deputy Commissioner for Administration, about making reimbursement for her personal use of the phone and subsequently reimbursed the state \$168.06. This included \$56.91 for the entire August 2008 bill and \$111.15 for her personal usage of the cell phone for January through October 2008 exclusive of August. For the months other than August, Kee stated that she paid \$12.35 per month, the difference between the monthly amount she would have been billed by Verizon for the same plan as a personal subscriber and the amount the agency actually pays after a discount available only to the State.

Kee also advised the Inspector General that she instituted a new policy for cell phone usage in the Western Regional Office. Previously, Kee said, no one in the office, including herself, reviewed cell phone bills. The new policy requires employees and their supervisors to review cell phone bills on a monthly basis.

The Inspector General noted that the plan for the cell phone assigned to Kee included 900 monthly general allowance minutes of usage. The monthly cost for this plan was \$52.64 (exclusive of taxes) as of January 2008. The monthly charge was constant regardless of the number of calls and whether the calls are local or long distance providing that the cap of 900 minutes was not exceeded. The state's contract with Verizon Wireless also provided for less expensive plans, generally for various lower allocations of minutes. The Inspector General noted that for the period reviewed, Kee never exceeded, nor came close to exceeding, the 900-minute cap of her plan. In fact, Kee never exceeded 150 minutes per month, and during several months she used fewer than 100 minutes.

DOH's Informal Reimbursement Policy for Personal Use of Agency Cell Phones

As set forth above, DOH policy provides that state-issued cell phones are only to be utilized for official state business. Deputy Commissioner Reed confirmed that DOH's general policy forbids personal use of state cell phones, and that DOH has no written or formal policy for reimbursement when such unauthorized use occurs. However, Reed advised the Inspector General that he was aware that some routine personal use occurs, and where a DOH employee wishes to "more routinely" utilize a state-issued cell phone for personal use, DOH had informally developed several options for reimbursement: (1) payment of any excess charges incurred by the agency, over the regular monthly fee, as a result of the personal use; (2) payment of the state's "discount," the difference between the state's monthly bill and Verizon Wireless's regular fee for the same plan; or (3) payment for the itemized personal calls.

The fact that DOH has contemplated and developed various reimbursement options for "more routine" personal users of state-issued cell phones despite its policy against such use demonstrates that DOH employees are using their cell phones for personal use with some frequency. At a minimum, DOH's actual practice should adhere to formal written agency policy, and not an informal policy permitting employees to choose a reimbursement policy that best suits the employee. In particular, the Inspector

General finds no logical rationale in DOH's accepting as reimbursement the amount of a discount received by the state, the option that Kee chose for nine of the 10 months during which she made personal calls on her state cell phone.

Moreover, to the extent that DOH has an informal policy allowing "more routine" personal use and allows various reimbursement options, it should adopt a formal reimbursement mechanism in accordance with applicable federal Internal Revenue Service guidelines regarding documentation for reporting unreimbursed personal cell phone use as a taxable fringe benefit. (See Internal Revenue Code §§ 132, 280F.)

Out-of-Title Work

Henry Joseph is employed in the Western Regional Office as a Research Specialist II. In this title, Joseph's official job description states that he is responsible for various human resource related duties, including employee evaluation and probation reports, training programs, liaison with the building owner, and processing and keeping all licenses, registrations and certifications required for employees in the office. Joseph's position is subject to the terms of the Public Employee Federation contract with the state. Joseph's duties do not include driving or transporting DOH personnel, nor is Kee assigned a driver.

Both Kee and Joseph told the Inspector General that on occasion Joseph drove Kee on official business using a state vehicle. According to Kee, this occurred "less than a dozen times over a six-month period." Kee stated that she suffers from glaucoma, is hesitant to drive on the Thruway, and routinely has a staff member drive her when she needs to travel.

In general, under the state Civil Service Law and applicable collective bargaining agreements, employees in the non-exempt civil service positions cannot be compelled to regularly fulfill duties detached from their official job descriptions. The Inspector General recommended that DOH review Joseph's job duties and Kee's need for a driver, and take appropriate steps to ensure that Kee's subordinates do not regularly act beyond their job duties in order to transport Kee.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that DOH Associate Commissioner Sheila Kee used her state-issued cell phone for personal use, and on one occasion provided it to her husband for use during an out-of-town personal trip, in violation of agency policy. After being interviewed by the Inspector General, Kee made reimbursement for her personal use of the phone. The Inspector General recommended that DOH review Kee's conduct and take appropriate action.

The Inspector General further found that, despite a policy prohibiting routine personal use of a state-issued cell phone, DOH had developed informal reimbursement options for certain employees who "more routinely" utilized state issued cell phone for non-state business. The Inspector General recommended that DOH implement formal policies and procedures requiring employees to regularly review their cell phone bills and enabling employees to reimburse the agency for the cost of personal calls. DOH also

should ensure that it complies with IRS rules requiring that unreimbursed personal cell phone use be reported as taxable income.

The Inspector General also found from a review of Kee's cell phone bills that the Verizon Wireless plan for Kee's phone provided many more general purpose minutes than she needed, and that the Verizon contract includes less expensive plans that would have provided more than sufficient minutes based upon Kee's usage. The Inspector General recommended that DOH review its cell phone usage to determine if less costly plans may be appropriate for the needs of some employees.

The Inspector General also found that Research Specialist II Henry Joseph on occasion drove Kee on official business. While driving is not within Joseph's official job duties, this task is not likely to be within any office employee's duties, as an Associate Commissioner is not entitled to a driver. However, in light of Kee's stated concerns about driving herself, her reliance on a subordinate to drive her to official business functions appears reasonable. The Inspector General recommended that DOH review this situation to determine how best to meet Kee's need for transportation for official state business.

Response of the Department of Health

The Department of Health advised the Inspector General that it will counsel Kee regarding the misuse of her cell phone and advise her that she may not assign a specific staff member to driver her to business meetings.

DOH further advised that it is revising its cell phone usage policy to clarify that, except in cases of emergency, state-issued cell phones may be used for business calls only.