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ADVISORY OPINION NO. 2001-39

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Revolving Door/Former Associate Director
Of The Managed Care Division Of The
Alabama Medicaid Agency Entering Into
Consulting Arrangement With Entity
Contracting With Nursing Facilities And
Hospitals To Provide Technical Assistance
Affecting Medicaid Reimbursement.

The former Associate Director of the
Managed Care Division of the Alabama
Medicaid Agency may enter into a consulting
arrangement with an entity that contracts
with nursing facilities and hospitals to
provide technical assistance affecting
Medicaid reimbursement when that entity
does not contract with Medicaid.

The former Associate Director of the
Managed Care Division of the Alabama
Medicaid Agency may not represent clients,
including the entity for which he provides
consulting services, or otherwise interact
with the Alabama Medicaid Agency for two
years after leaving that agency's
employment.

Dear Mr. Heard:

The Alabama Ethics Commission is in receipt of your request for an Advisory Opinion of this Commission, and this opinion is issued pursuant to that request.

QUESTION PRESENTED

May the Associate Director of the Managed Care Division of the Alabama Medicaid Agency, upon retirement, accept employment with an entity that contracts with nursing facilities and hospitals to provide technical assistance affecting Medicaid reimbursement?

FACTS AND ANALYSIS

The facts as have been provided to this Commission are as follows:

James H. Wright has recently retired from state employment. Prior to his retirement, he was an Associate Director of Managed Care with the Alabama Medicaid Agency. His primary duties during his last three years with Medicaid related to data analysis. In that capacity, Mr. Wright was not responsible for the regulation of any organization or entity. He performed his duties as a "fourth-tier" employee, being subject to supervision by three tiers of supervisory personnel, those being a Director, a Deputy Commissioner, and the Commissioner. In his position, Mr. Wright had neither the authority nor the responsibility of approving Medicaid contracts.

Now that Mr. Wright is retired from state employment, he is contemplating a consulting relationship with an entity that contracts with nursing facilities and hospitals to provide technical assistance affecting Medicaid reimbursement. His activities would include financial and medical policy determinations, advising as to efficient claims processing and procedures, and consultation as to claim filing software.

His employment would not involve representing this entity as an advocate, but rather advising them as to interpretation of existing Medicaid policies and procedures.

During his employment with the Alabama Medicaid Agency, Mr. Wright had several occasions when he furnished information to employees of the company he now desires to contract with as a consultant. At the time, that company was acting under a contractual relationship with the Alabama Hospital Association. The information Mr. Wright provided included explanations of Medicaid policies and procedures with respect to reimbursement for inpatient hospital claims,

and, during the last six months of his employment with the Alabama Medicaid Agency, he furnished data on inpatient hospital claims submitted to Medicaid. This information was provided under either standard operating procedures of the Alabama Medicaid Agency or directives of Mr. Wright's supervisor, a Director. The contact Mr. Wright had with this company was similar to contact other Medicaid employees at his merit system classification routinely have with Medicaid providers or their representatives.

Mr. Wright has been informed by representatives of the company with which he now wishes to contract, that the firm does not currently have a contract with Medicaid and has never had a contract with Medicaid.

The Alabama Ethics Law, Code of Alabama, 1975, Section 36-25-1(23) defines a public employee as:

"(23) PUBLIC EMPLOYEE. Any person employed at the state, county, or municipal level of government or their instrumentalities, including governmental corporations and authorities, but excluding employees of hospitals or other health care corporations including contract employees of those hospitals or other health care corporations, who is paid in whole or in part from state, county or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

Section 36-25-1(8) defines a conflict of interest as:

"(8) CONFLICT OF INTEREST. A conflict on the part of a public official or public employee between his or her private interests and the official responsibilities inherent in an office of public trust. A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-13(b) states:

"(b) No public employee shall serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the board, agency, commission, or department, of which he or she is a former employee for a period of two years

after he or she leaves such employment. For the purposes of this subsection, such prohibition shall not include a former employee of the Alabama judiciary who as an attorney represents a client in a legal, non-lobbying capacity.”

Section 36-25-13(c) states:

“(c) No public official, director, assistant director, department or division chief, purchasing or procurement agent having the authority to make purchases, or any person who participates in the negotiation or approval of contracts, grants, or awards or any person who negotiates or approves contracts, grants, or awards shall enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which the person was a member or employee for a period of two years after he or she leaves the membership or employment of such governmental agency.”

Section 36-25-13(d) states:

“(d) No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment solicit or accept employment with such private business, corporation, partnership, or individual.”

Based on the facts as provided and the above law, the former Associate Director of Managed Care with the Alabama Medicaid Agency may enter into a consulting arrangement with an entity that contracts with nursing facilities and hospitals to provide technical assistance affecting Medicaid reimbursement, as the entity has not had in the past, nor at present, have a contract with Medicaid; provided that, for a period of two years after leaving Medicaid, Mr. Wright not represent this entity before Medicaid or otherwise interact with the agency.

CONCLUSION

The former Associate Director of the Managed Care Division of the Alabama Medicaid Agency may enter into a consulting arrangement with an entity that contracts with nursing facilities and hospitals to provide technical assistance affecting Medicaid reimbursement when that entity does not contract with Medicaid.

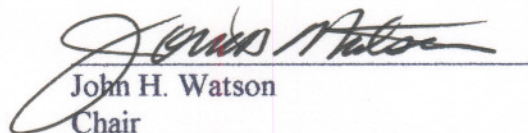
The former Associate Director of the Managed Care Division of the Alabama Medicaid Agency may not represent clients, including the entity for which he provides consulting services,

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or otherwise interact with the Alabama Medicaid Agency for two years after leaving that agency's employment.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on July 11, 2001.


John H. Watson
Chair
Alabama Ethics Commission