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October 1, 2003

ADVISORY OPINION NO. 2003-46

Ms. Sue Francis
1000 Colonial Lake Drive #1027
Madison, Alabama 35758

Conflict Of Interest/Former Employee Of
Alabama Medicaid Agency Providing
Training To Assist Service Providers In
Properly Documenting Materials To Be
Filed With Medicaid Agency

A former employee of the Alabama
Medicaid Agency may provide training
courses to service providers in assisting
them in the proper way to document
materials to be filed with Medicaid, when
this is not a service provided by Medicaid,
nor will it involve any interaction with
Medicaid.

Dear Ms. Francis:

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 a former employee of the Alabama Medicaid Agency provide training courses to service providers in assisting them in the proper way to document materials to be filed with Medicaid, when this is not a service provided by Medicaid, nor will it involve any interaction with Medicaid?

FACTS AND ANALYSIS

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

Sue Francis retired from the State of Alabama on February 1, 2003, after 11 ½ years of State service. She was employed by the Medicaid Agency from April 29, 1996 until February 1, 2003. The remainder of her time was spent in the Department of Public Health, the Division of Licensure and Certification. Her responsibilities included performing Mental Health reviews, using the rehabilitative service regulations.

Through the review process, using medical records and computer-generated reports, problem areas, including fraud and abuse, were identified. After consulting with other program units and the Agency Medical Director, Ms. Francis supervised the recovery of funds paid in error. She also made policy decisions, change recommendations and other corrective actions.

Ms. Francis states that, although Mental Health Service Providers are furnished with written material detailing the policies and requirements, further education in this field has been deemed necessary. She states that if a Service Provider is selected for the review process, the findings and errors are detailed in an informal conference at the Provider's request. Since the State's funds are limited, this is the only opportunity for one-on-one education.

Ms. Francis states that her proposal consists of educating Mental Health Service Providers on the methods of proper documentation. She states that this process can easily be accomplished by training the staff and reviewing the corresponding records. By simply using the material the Provider already has access to, she states, this goal should be easily met.

Her basic premise for this proposal is, there needs to be face-to-face communication and education.

Ms. Francis further states that this service will benefit the Mental Health Service Providers and the State agency by reducing the number of hours involved (by both parties) in performing comprehensive reviews.

Ms. Francis states that the training of Mental Health Providers on-site concerning the rules and regulations for providing Mental Health Services, is not offered by the Medicaid Agency or Public Health Department. The rules and regulations are available on the Internet for public access. Ms. Francis is offering to go on-site and familiarize the staff with these requirements. This service would be at the provider's expense.

Ms. Francis further states that no interaction with the Medicaid Agency or the Department of Public Health would be necessary or provided through her services. Any communication would be the provider's responsibility.

While working for the State of Alabama as a Medicaid Nurse II, she performed a review of records for facilities providing Mental Health Services. The review was conducted to determine if the facility was providing these services appropriately. When a review was complete, the provider was given the opportunity for an informal conference covering the findings and the reason, if any, for the recoupment of money. (This was referred to in a broad sense as education.)

Ms. Francis did not provide individual training covering all of the rules and regulations to the Mental Health Providers. She reviewed records, recouped money for problems identified and explained the reason for recoupment.

The State Medicaid Agency stated that years ago, when they had sufficient staff to do limited training of Mental Health Providers, either the Director or one of her staff would make visits in response to requests for assistance. They stated that this has not been done for the past nine years. However, but for the lack of funds, Medicaid would provide this service at the request of the Mental Health Providers.

Medicaid further stated that, on a limited basis, Ms. Francis reviewed the Mental Health Providers in her job in Provider Review. Frequently, the provider would ask her for guidance in improving their documentation.

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(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."

While the "Revolving Door" provisions would prevent Ms. Francis from either representing a client before Medicaid or going to work for a Service Provider that she reviewed, for a period of two years, in the facts provided, Ms. Francis will be providing an independent service, and will not be interacting with her former employer.

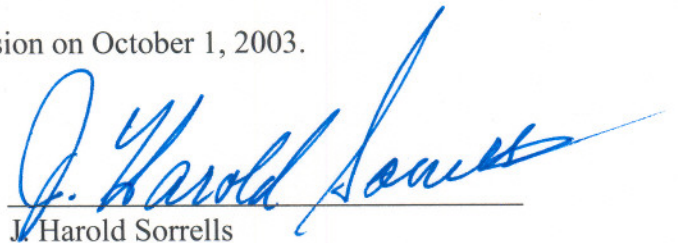
Based on the facts as provided and the above law, a former employee of the Alabama Medicaid Agency may provide training courses to service providers in assisting them in the proper way to document materials to be filed with Medicaid, when this is not a service provided by Medicaid, nor will it involve any interaction with Medicaid.

CONCLUSION

A former employee of the Alabama Medicaid Agency may provide training courses to service providers in assisting them in the proper way to document materials to be filed with Medicaid, when this is not a service provided by Medicaid, nor will it involve any interaction with Medicaid.

AUTHORITY

By 3-0 vote of the Alabama Ethics Commission on October 1, 2003.



J. Harold Sorrells
Chair
Alabama Ethics Commission