

JAN 13 1989

TO :All Medicaid Fraud Control Units

SUBJECT :State Fraud Policy Transmittal No. 89-1 --
Clarification of the Hiring of Full-time and Part-time
Employees

This policy transmittal is intended to clarify the authority of the State Medicaid Fraud Control Units (Units) to hire part-time employees and to also clarify the requirements applicable to full-time employees. Moreover, this transmittal specifies the conditions which must be met in order for a Unit to qualify for Federal financial participation (FFP) for salary costs attributable to full-time and part-time employees. This clarification is necessary given the questions raised by Units concerning part-time versus full-time employment and given the problems uncovered in conducting recertification reviews.

1. Full-time Employees

The regulations governing the State Medicaid Fraud Control (MFC) program require that the professional staff of a Unit -- i.e., attorneys, auditors, investigators and managers -- be full-time Unit employees in order for the Unit to receive FFP for the personnel costs attributable to such employees. (See 42 CFR 1002.319(e) (4) and .301). Moreover, the regulations require that a full-time employee be hired to perform "full-time duty intended to last at least a year." (See 42 CFR 1002.301).

This "full-time employee" rule reflects Congress' intent that Units bring together specialized expertise in Medicaid fraud by developing a team of attorneys, investigators and auditors. Hiring temporary or part-time professional staff does not contribute to developing a team with such specialized expertise. The Department has concluded that this congressional intent can only be achieved if the Unit hires full-time, long-term professional staff. (See 43 F.R. 320789, July 24, 1978).

Accordingly, we interpret the full-time employee rule to require that a covered employee (1) work exclusively on MFC matters and (2) work under the supervision and direction of the Unit. Thus, for example, where a professional employee of a Unit, such as an investigator, participates in a non-Medicaid related investigation or performs duties under the direction of another State office, such an employee would not be considered a "full-time" employee under the program regulations. Therefore, in accordance with 42 CFR 1002.319(e) (4), the personnel costs attributable to such an employee would not qualify for FFP.

Also, note that professional staff from other State offices cannot perform professional functions for a Unit on a reimbursable basis. The full-time employee rule would prohibit such reimbursement since it provides that FFP is not available for personnel costs relating to the performance of a professional Unit function unless performed by a full-time Unit employee. Accordingly, no FFP can be paid for professional services performed for a Unit by a non-Unit employee, unless the employee has been detailed to a Unit for at least 1 year and works under the supervision of the Unit as provided in 42 CFR 1002.301.

Thus, for example, the full-time employee rule would prohibit a Unit from using Federal grant funds to reimburse a local district attorney for costs incurred in prosecuting Medicaid fraud cases for the Unit. Such professional legal functions must be performed by a full-time Unit employee to qualify for FFP.

2. Part-time Employees

The full-time employee requirement applies only to the professional staff of the Unit -- i.e., attorneys, auditors, investigators and managers. Accordingly, support staff persons, such as clericals, interns, paralegals, computer personnel, etc., can be employed on a part-time or short-term basis and salary costs attributable to their Medicaid fraud responsibilities would normally be subject to FFP. Note, however, that several caveats apply where a Unit employee also performs part-time duties for another State office.

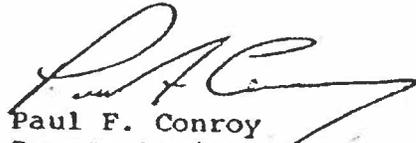
First, arrangements where a Unit employee performs part-time or periodic duties for another component of State government must be approved beforehand by this office. This is to assure that the MFC program is not charged for personnel costs relating to non-Medicaid duties performed for other offices of the State. Such prior approval can be secured either by specifying such joint employment in the Unit budget request submitted at the time of reapplication (see 42 CFR 1002.315 (c)(2)) or by written correspondence requesting such prior approval.

Secondly, note that where an employee performs reimbursable Medicaid related services for a Unit and non-reimbursable, non-Medicaid related services for another State office, OMB Circular A-87 (Cost Principles for State and Local Governments) at Attachment B, section B.10.b. would require the Unit to maintain "appropriate time distribution records" to assure that the

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Federal grant is not charged for non-grant related activity. According to this section, any personnel charges to the grant relating to services performed by such a jointly employed employee are unallowable if appropriate time distribution records are not maintained.

If you have any questions regarding this transmittal, please contact Jim Shields, Director, State Fraud Branch. He can be reached at (202) 475-6520.



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