U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

October 3, 2005 **FLSA2005-35**

Dear ***Name****,*

This is in response to your letter of August 27, 2002, requesting an opinion on whether the Wage and Hour Division (WHD) considers at-home Medical Coders as "professional" employees under 29 C.F.R. § 541.300 and therefore exempt from the wage requirements of the Fair Labor Standards Act (FLSA). It is our opinion that the Medical Coders are not exempt from the minimum wage and overtime requirements of the FLSA.

The Medical Coders translate medical diagnoses and procedures into codes used for reimbursement from insurance companies. The Coders analyze the patient's entire medical record to determine the appropriate code. The Coders assign and report codes in accordance with national organizational standards. Coders must maintain knowledge of current medical and pharmaceutical terminology and attend ongoing continuing education courses in order to maintain their credentials and state board certifications. The Coders must possess at least one state board certification. Your letter states that while some Coders possess a B.S. degree in Health Information Management, others possess a two year associate degree and others apparently do not possess any degree.

Please note that the Department of Labor issued revisions to 29 C.F.R. Part 541, effective August 23, 2004 (copy enclosed). The updated Part 541 regulations apply prospectively, beginning on August 23, 2004. Our response is applicable under the updated version of the regulations that clarify and make no substantive changes in the primary duty test requirements for the professional exemption.

Section 13(a)(1) of the FLSA exempts from its minimum wage and overtime provisions an employee employed in a bona fide professional capacity. The exemption is not determined based on occupational title or job classification but is granted or denied on the basis of the duties, salary and other requirements of the job of the individual employee involved. 29 C.F.R. § 541.2. Exemptions under the law are to be narrowly construed since the "exempted" individual is denied the protection of both the minimum wage and overtime pay provisions of the Act. *Arnold v. Ben Kanowsky*, Inc., 361 U.S. 388, 392 (1960).

With respect to the professional exemption, as discussed in 29 C.F.R. § 541.300 of the regulations, the term "employee employed in a bona fide…professional capacity" in section 13(a)(1) of the FLSA means

> any employee: (1) Compensated on a salary or fee basis at a rate of at least $455 per week…; (2) Whose primary duty is the performance of work (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

29 C.F.R. § 541.300(a).

The primary duty test under the learned professional exemption at § 541.301(a) includes three elements: "(1) The employee must perform work requiring advanced knowledge; (2) The advanced knowledge must be in a field of science or learning; and (3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction." The phrase "work requiring advanced knowledge" means "work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work." 29 C.F.R. § 541.301(b).

We are unable to give general recognition to Medical Coding as a "profession" within the contemplation of 29 C.F.R. § 541.300. At the present time it appears, based on the information available, that the field of Medical Coding is not generally recognized by colleges and universities as a bona fide academic discipline. In particular, it is the position of WHD that the primary duty of a Medical Coder does not require "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction." 29 C.F.R. § 541.300(a)(2)(i). "The phrase 'customarily acquired by a prolonged course of specialized intellectual instruction' restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree." 29 C.F.R. § 541.301(d). As the preamble to the Part 541 revised final rule explained, jobs that "require only a four-year degree in any field or a two-year degree as a standard prerequisite for entrance into the field … do not qualify for the learned professional exemption." 69 Fed. Reg. 22150 (April 23, 2004).

As further explained in the preamble to the revised final rule, "[a]ccredited curriculums and certification programs are relevant to determining exempt learned professional status to the extent they provide evidence that a prolonged course of specialized intellectual instruction has become a standard prerequisite for entrance into the occupation as required under section 541.301. Neither the identity of the certifying organization nor the mere fact that certification is required is determinative, if certification does not involve a prolonged course of specialized intellectual instruction." 69 Fed. Reg. 22157 (April 23, 2004).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor. This opinion is issued as an official ruling of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. *See* 29 C.F.R. §§ 790.17(d), 790.19; *Hultgren v. County of Lancaster*, 913 F.2d 498, 507 (8th Cir. 1990).

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosure: 29 C.F.R. Part 541

***** *Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*