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Taunja Willis Miller, Secretary
Department of Health and Human Resources
Building 3, Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Miller:

You have requested an Attorney General's opinion regarding Medicaid reimbursement for certified nurse practitioners. More specifically, you have asked if the regulations promulgated by the West Virginia Board of Examiners for Registered Professional Nurses would permit the State's Medicaid program to reimburse certified pediatric nurse practitioners and certified family nurse practitioners as independent Medicaid providers, in light of both federal and state law.

By way of background, United States Code, Chapter 42, Section 1396a(a)(10)(A), requires that a State Medicaid plan provide "for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17) and (21) of [42 U.S.C. § 1396d(a)]," to eligible individuals. Pursuant to 42 U.S.C. § 1396d(a), the "medical assistance" reimbursable under Medicaid includes part or all of the cost of the following:

(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider. (Emphasis added).

We have found no definition by the United States Secretary of Health and Human Services of the terms "certified pediatric nurse practitioner or certified family nurse practitioner" expressly

applicable to § 1396d(a)(21), and have been advised that the Secretary has not yet undertaken to promulgate a definition pursuant to § 1396d(a)(21). However, "rural health clinic services" reimbursable by Medicaid under 42 U.S.C. § 1396d(a)(2), are defined by Title 42 of the Code of Federal Regulations (C.F.R.), Chapter IV, § 440.20(b), as follows:

If nurse practitioners or physician assistants (as defined in § 491.1 of this chapter) are not prohibited by State law from furnishing primary health care, "rural health clinic services" means the following services when furnished by a rural health clinic that has been certified in accordance with Part 491 of this chapter.

. . . .

(2) Services furnished by a physician assistant, nurse practitioner, nurse midwife or other specialized nurse practitioner (as defined in §§ 405.2401 and 491.2 of this chapter) if the services are furnished in accordance with the requirements specified in § 405.2414(a) of this chapter.

As referenced above, 42 C.F.R. § 405.2401(b)(11) provides:

"Nurse practitioner" and "physician assistant" means individuals who meet the applicable education, training experience and other requirements of § 491.2 of this chapter.

In 42 C.F.R. § 491.2(b), the term "nurse practitioner" in the context of rural health clinic certification¹ is defined (in pertinent part) as follows:

"Nurse practitioner" means a registered professional nurse who is currently licensed to practice in the State, who meets the State's requirements governing the qualifications of nurse practitioners, and who meets one of the following conditions:

(1) Is currently certified as a primary care nurse practitioner by the American Nurse's Association or by the National Board of Pediatric Nurse Practitioners and Associates

¹We are confident that nurse practitioners who meet the quoted definition will also satisfy any definition which may be applied under 42 U.S.C. § 1396d(a)(21).

The foregoing Medicaid regulations therefore contemplate reimbursement for services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner who is legally authorized to practice as such under State law or regulations.

West Virginia Code § 30-7-1(b) defines the practice of nursing as follows:

(b) The practice of "registered professional nursing" shall mean the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of acts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician or a licensed dentist, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others.

The West Virginia Board of Examiners for Registered Professional Nurses (hereinafter "Board") is empowered, by W. Va. Code § 30-7-2, to regulate the practice of professional nursing through State licensure. Pursuant to this authority, the Board can, inter alia, set standards for nursing licensure, provide for testing, and accredit educational nursing programs. West Virginia Code § 30-7-4(a) authorizes the Board to:

(a) Adopt and, from time to time, amend such rules and regulations, not inconsistent with this article, as may be necessary to enable it to carry into effect the provisions of this article.

In 1990, the Board amended its legislative rules² to provide for Board recognition of advanced nursing practice. These rules define the practice as follows:

2.1. Advanced nursing practice is the practice of nursing at a level which requires substantial theoretical

²Title 19, Legislative Rules, West Virginia Board of Examiners for Registered Professional Nurses, Series 7, approved by Senate Bill No. 637, W. Va. Code § 64-9-18 (March 9, 1991).

knowledge in a specialized area of nursing practice and proficient clinical utilization of the knowledge implementing the nursing process. The competencies of specialists include but are not limited to the ability to assess, conceptualize, diagnose, analyze, plan, implement, and evaluate complex problems related to health.

In order to "announce" advanced practice an individual must meet the following requirements:³

1. Be licensed as a registered nurse in West Virginia;
2. Possess current national certification in an area recognized by the West Virginia Board of Examiners for Registered Professional Nurses (19 CSR 7 § 3.1).

By motion adopted during its meeting of June 11-13, 1991, the Board of Examiners approved the American Nurses Credentialing Center (for the American Nurses' Association) and the National Certification Board of Pediatric Nurse Practitioners and Nurses (formerly the National Board of Pediatric Nurse Practitioners and Associates), among others, as appropriate certifying bodies for recognizing advanced practice by primary health care nurse practitioners, including certified family nurse practitioners and certified pediatric nurse practitioners. These are the same certifying bodies recognized by the U.S. Secretary of Health and Human Services in 42 C.F.R. § 491.2(b)(1) for "nurse practitioners" under Medicaid.

It is therefore our opinion⁴ that the regulations promulgated by the Board are sufficient to permit reimbursement under the State's Medicaid plan for those services authorized by State law which are performed by certified pediatric nurse practitioners and certified family nurse practitioners who are licensed in the State of West Virginia.

We have not undertaken to determine the scope of services which certified nurse practitioners may provide under State law, nor have we been asked to do so. The West Virginia Board of

³After December 31, 1998, in addition to the above prerequisites, a licensee must also possess a masters degree in nursing (19 CSR 7 §§ 3.1.2 and 3.2.2).

⁴Our opinion is not binding on the U.S. Department of Health and Human Services, nor on any federal auditor examining expenditures under the State Medicaid plan.

Examiners for Registered Professional Nurses is authorized, and possesses the expertise, to make such determinations within the confines of their statutory authority. Only services authorized under State law are reimbursable, and the federal regulations do not expand a nurse practitioner's scope of practice beyond that already authorized by State law.


SUMMARY

Certified pediatric nurse practitioners or family nurse practitioners, who are licensed to practice registered nursing in West Virginia and who fulfill the criteria established by the West Virginia Board of Examiners for Registered Professional Nurses for announcement of advanced practice, may seek Medicaid reimbursement for those services which are consistent with both their certification and with State law, and which are approved for reimbursement under the State Medicaid plan.

Very truly yours,

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By


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