July 1, 1994

OPINION NO. 94-042

Arnold R. Tompkins, Director
Department of Human Services
30 East Broad Street
Columbus, Ohio 43266-0423

Dear Director Tompkins:

You have requested an opinion regarding the scope of practice of nurse practitioners in Ohio. Specifically, you ask whether nurse practitioners in Ohio may practice advanced practice nursing outside the three pilot programs established in R.C. 4723.51-.59. You have explained that this question arises because federal law requires state Medicaid plans to include the following as services eligible for Medicaid reimbursement:

> 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....

42 U.S.C. §1396d(a)(21) (Supp. IV 1992) (as amended by the Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, §6405(a), 103 Stat. 2106, 2265); *see also* 42 U.S.C. §1396a(a)(10)(A) (Supp. IV 1992) (making coverage of the above services mandatory for certain classes of Medicaid recipients).

Ohio law currently authorizes Medicaid reimbursement for services of "advanced practice nurses" that are provided under pilot programs established by R.C. 4723.52.[1] *See* R.C. 4723.53; *see*

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[1] R.C. 4723.52(A) provides, in pertinent part, as follows:

> The school of nursing of case western reserve university, the school of nursing of wright state university, and the university of Cincinnati college of nursing and health

also R.C. 5111.02(B); 16 Ohio Admin. Code 5101:3-8-21. Registered nurses who have been certified as nurse practitioners by a national certifying organization recognized by the Board of Nursing are among the types of nurses who can be approved as advanced practice nurses for purposes of the pilot programs. R.C. 4723.55(B). The federal Health Care Financing Administration (HCFA) has inquired whether certified pediatric nurse practitioners (CPNPs) or certified family nurse practitioners (CFNPs) are legally authorized to provide services in Ohio outside of the pilot programs for advanced practice nurses. If so, such services would be eligible for reimbursement under the provisions of 42 U.S.C. §1396d(a)(21). The issue thus presented by your request is whether CFNPs and CPNPs are legally authorized to furnish services as nurse practitioners in Ohio.

Federal Requirements for Medicaid Reimbursement for the Services of Nurse Practitioners

42 U.S.C. §1396d(a)(21), as interpreted by HCFA,

requires that CPNP and CFNP services be covered to the extent that the CPNPs and CFNPs are authorized to practice under state law or regulations regardless of whether they are supervised by or associated with a physician or other health care provider. States are also required to offer direct payment to CPNPs and CFNPs as one of their payment options.

CCH Medicare and Medicaid Guide ¶14,604E.27 (quoting the State Medicaid Manual, HCFA-pub.

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shall each establish a pilot program to provide access to health care in underserved areas through the use of advanced practice nurses. Each pilot program shall be operated by the nursing faculty of the university at which it is established.

R.C. 4723.52 further provides for the establishment of an advisory committee for each pilot program, R.C. 4723.52(A), and the advisory committee of each pilot program is directed to develop a standard care arrangement in accordance with rules adopted by the Board of Nursing under R.C. 4723.54, R.C. 4723.52(B). *See also* R.C. 4723.55 (approval of registered nurses as advanced practice nurses for purposes of the pilot programs established by R.C. 4723.52); R.C. 4723.56 (approval of an advanced practice nurse to prescribe drugs and therapeutic devices); R.C. 4723.57 (formulary committee for advanced practice nurses); R.C. 4723.59 (advanced practice nurse required to follow standard care arrangement and drug protocol). The pilot programs terminate on January 1, 1996. *See* Am. Sub. H.B. 478, 119th Gen. A. (1992) (eff. Jan. 14, 1993) (uncodified §3), at 1992 Ohio Legis. Bull. 889, 994 (Anderson).

The term "advanced practice nurse" is defined in the Revised Code for purposes of the above described pilot programs. R.C. 4723.51 states that "[a]s used in sections 4723.52 to 4723.59 of the Revised Code: (1) _Advanced practice nurse_ means a registered nurse who is approved by the board of nursing under section 4723.55 of the Revised Code to practice as an advanced practice nurse."

45-4, §4415, Transmittal No. 48 (Aug. 1990)). HCFA has defined CPNPs and CFNPs as registered nurses who (1) are currently licensed as registered nurses in the state where the services are furnished, (2) satisfy the applicable state requirements (if any) for qualification of pediatric or family nurse practitioners, or nurse practitioners generally in the state in which the services are furnished, and (3) are certified as a pediatric nurse practitioner by the American Nurses' Association or the National Board of Pediatric Nurse Practitioners and Associates, or as a family nurse practitioner by the American Nurses' Association.[2] *See* CCH Medicare and Medicaid Guide ¶14,604E.27 (quoting the State Medicaid Manual, HCFA-pub. 45-4, §4415, Transmittal No. 48 (Aug. 1990)). Accordingly, if it is legally permissible, regardless of participation in one of the pilot programs for advanced practice nurses established by R.C. 4723.52, for a registered nurse who is licensed to practice in Ohio and who is a professionally certified pediatric or family nurse practitioner, to be qualified as a pediatric or family nurse practitioner or nurse practitioner generally in Ohio, that registered nurse is a CPNP or CFNP as defined by HCFA. If the service provided is one that the CPNP or CFNP is legally authorized to provide under Ohio law, therefore, it is a service included in the scope of paragraph (21) of 42 U.S.C. §1396d(a).[3]

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[2] Generally speaking, certified nurse practitioners have completed educational and clinical training, typically at the graduate level, *see, e.g.*, American Nurses Credentialing Center Catalog (1992), that prepares them to provide "a wide range of professional nursing functions as well as functions that traditionally have been performed only by physicians." Barbara J. Safriet, *Health Care Dollars and Regulatory Sense: The Role of Advanced Practice Nursing*, 9 Yale J. on Reg. 417, 424 (1992). This additional training may be focused in specific areas, such as pediatrics, geriatrics, or family practice. Professional certification as a nurse practitioner or as a specific type of nurse practitioner can be obtained from various national professional organizations such as the American Nurses' Association and the National Board of Pediatric Nurse Practitioners and Associates. These national organizations also have defined scopes of practice associated with their certifications. Thus, certification indicates that a nurse practitioner is qualified professionally to perform services within the scope of practice associated with that certification.

Certification by a professional nurses' organization, however, does not control either the licensure status accorded a nurse with additional training or the legal limits of the scope of practice permitted such a nurse. Licensure and the legal scope of practice are matters controlled by state law.

[3] The provisions of federal law discussed above may also raise issues about which specific services provided by nurse practitioners are reimbursable under Medicaid. Any such issues would arise under federal law and are not addressed in this opinion.

Qualification as a CPNP or CFNP in Ohio

HCFA's definition of a CPNP or CFNP requires such nurse practitioner to satisfy the applicable state requirements for qualification of pediatric or family nurse practitioners, or nurse practitioners generally, in the state in which the services are furnished. *See* CCH Medicare and Medicaid Guide ¶14,604E.27. Pursuant to R.C. 4723.07(K), the Board of Nursing is required to adopt rules "[e]stablishing criteria for specialty certification of registered nurses[4] with advanced education and experience." Thus, the General Assembly has recognized the existence of specialty certifications resulting from advanced training and has delegated to the Board of Nursing the power to establish the criteria for recognizing such certifications.

The Board of Nursing has provided for specialty certification as follows:

> (A) A registered nurse may use a title or initials denoting specialty certification upon meeting the following requirements:
> (1)Completion of an approved professional nursing education program;
> (2)Current licensure as a registered nurse in Ohio; and
> (3)Current certification from a national certifying organization that has established standards for:
> (a) Granting authority for conduct of a course of study leading to specialty certification and/or the construction and administration of a psychometrically sound and legally defensible examination for registered nurses applying for certification; and
> (b)Minimum practice qualifications or educational requirements that registered nurses must meet to be eligible for specialty certification which include basic registered nursing preparation and completion of a course of study preparing the registered nurse in the specific area of specialty nursing practice.
> (B) The title to be used shall be the title granted by the national certifying organization. The registered nurse may use such title or initials following the title "Registered Nurse" or the initials "R.N."
> (C) No person who has not been granted a specialty certification title in nursing by a national certifying organization shall use any title or initials implying or representing specialty certification.

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[4] A registered nurse is "an individual who holds a current valid license issued under [R.C. Chapter 4723] which authorizes the practice of nursing as a registered nurse." R.C. 4723.02(A). The "practice of nursing as a registered nurse" is defined in R.C. 4723.02(B), which will be discussed subsequently.

13 Ohio Admin. Code 4723-9-02. A registered nurse whose specialty certification meets the requirements of rule 4723-9-02 may practice in Ohio using the title accorded by the national certifying organization. Certification by the American Nurses' Association or the National Board of Pediatric Nurse Practitioners and Associates, as required by the third prong of the HCFA definition of a CPNP or CFNP, appears to meet the requirements of rule 4723-9-02(A)(3). *See generally* American Nurses Credentialing Center Catalog (1992); National Association of Pediatric Nurse Associates and Practitioners, "Scope of Practice: Pediatric Nurse Practitioners" (May 1990).[5] A CPNP or CFNP whose certification complies with rule 4723-9-02, therefore, satisfies the state requirements for certification for purposes of the second prong of the HCFA definition. Further, since rule 4723-9-02 includes the requirement that an individual be currently licensed as a registered nurse in Ohio, the first prong of the HCFA definition is also satisfied. Accordingly, a pediatric or family nurse practitioner whose certification accords with the requirements of rule 4723-9-02 is a CPNP or CFNP as those terms are used in 42 U.S.C. §1396d(a)(21).

Scope of Practice for CPNPs and CFNPs in Ohio

The next issue to consider is which services a CPNP or CFNP is authorized to perform in Ohio. Although there are statutes that define in general terms the scope of practice for certain statutorily recognized categories of nurses, *see* R.C. 4723.02(B) (registered nurse); R.C. 4723.02(F) (licensed practical nurse); R.C. 4723.41-.45 (nurse midwife); R.C. 4731.35 (nurse anaesthetist); R.C. 4723.51-.60 (advanced practice nurse in pilot programs), there are no Ohio statutes that identify particular nursing procedures that CPNPs or CFNPs are legally authorized to perform by virtue of their specialty certifications. Rather, the scope of practice for a CPNP or CFNP in Ohio is determined on the basis of which statutorily recognized categories of nurses are applicable to any individual CPNP or CFNP. Since an individual who is a CPNP or CFNP as defined by HCFA must be a registered nurse, that individual will be governed by the more general scope of practice applicable to all registered nurses in Ohio. It is possible for such a CPNP or CFNP to be additionally qualified as an advanced practice nurse, because, as previously noted, R.C. 4723.55 permits certified nurse practitioners to be approved as advanced practice nurses in the pilot programs established by R.C. 4723.52. Thus, in Ohio, a registered nurse who is also a CPNP or CFNP for purposes of 42 U.S.C. §1396d(a)(21) will be governed by the statutory scope of practice applicable to registered nurses. Such a nurse may additionally be governed by the statutory scope of practice applicable to advanced practice nurses in the pilot programs, as set forth in R.C. 4723.51-.59.

The scope of practice for all registered nurses in Ohio, including those with specialty certifications recognized under rule 4723-9-02, is set out in R.C. 4723.02. R.C. 4723.02(B) provides:

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[5] The Board of Nursing determines what certifications qualify under rule 4723-9-02.

> "Practice of nursing as a registered nurse" means providing to individuals and groups nursing care requiring specialized knowledge, judgment, and skill derived from the principles of biological, physical, behavioral, social, and nursing sciences. Such nursing care includes:
> (1) Identifying patterns of human responses to actual or potential health problems amenable to a nursing regimen;
> (2) Executing a nursing regimen through the selection, performance, management and evaluation of nursing actions;
> (3) Assessing health status for the purpose of providing nursing care;
> (4) Providing health counseling and health teaching;
> (5) Administering medications, treatments, and executing regimens prescribed by licensed physicians, dentists, and podiatrists;
> (6) Teaching, administering, supervising, delegating, and evaluating nursing practice.

R.C. 4723.02(B) defines the scope of practice for registered nurses. The statute lists categories of activities that a registered nurse is authorized to perform, but provides that this list is not exhaustive. In addition, the statute generally authorizes "nursing care requiring specialized knowledge, judgment, and skill, derived from the principles of ... nursing sciences." Thus, the statute provides for some flexibility in a nurse's scope of practice based on the professional development of the nursing sciences. *See* 1980 Op. Att'y Gen. No. 80-023 at 2-95. This flexibility is expressly limited by other provisions of the Revised Code that prohibit registered nurses from engaging in activities that constitute the practice of medicine or pharmacy. *Id.* Pursuant to R.C. 4723.151, "[m]edical diagnosis, prescription of medical measures, and the practice of medicine or surgery or any of its branches by a nurse are prohibited." Further, pursuant to R.C. 4729.28, "[n]o person who is not a registered pharmacist or a pharmacy intern under the personal supervision of a registered pharmacist shall compound, dispense, or sell drugs, dangerous drugs, and poisons." An exception to R.C. 4729.28 is provided for dentists, optometrists, physicians, or veterinarians, but the exception does not extend to registered nurses. *See* R.C. 4729.29; R.C. 4729.02(H).

As discussed previously, Ohio law does recognize specialty certifications pursuant to R.C. 4723.07(K) and rule 4723-9-02, and CPNPs and CFNPs whose certifications comport with the requirements of those provisions may practice as such. Thus, a CPNP or CFNP whose certification is recognized pursuant to rule 4723-9-02 may practice in that capacity and provide any services associated with that certification to the extent that such services are permitted by R.C. 4723.02(B) and not prohibited by R.C. 4723.151 and 4729.28. *Accord* 1979 Op. Att'y Gen. No. 79-080.[6]

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[6] Acts that would otherwise violate the prohibition that a nurse may not practice medicine or pharmacy are authorized, under R.C. 4723.02(B)(5), when such acts are performed by a nurse pursuant to a physician's orders, which may include broad standing orders. *See* 1980 Op. Att'y Gen. No. 80-023 at 2-97 to 2-98 ("so long as a nurse has the proper specialized skills and appropriate standing orders have been issued, a nurse may perform any act that is consistent with the orders"). With respect to the scope of standing orders, see generally *Barry v. State Medical Bd.*, No. 89AP-689, 1990 Ohio App. LEXIS 3874 (Ct. App. Franklin County Aug. 30, 1990) (an order of a physician allowing a registered nurse to order tests based on information gained from the nurse's

The ability of a CFNP or CPNP to practice in Ohio pursuant to R.C. 4723.07(K) and rule 4723-9-02 has not been restricted by the enactment of R.C. 4723.51-.60 governing "advanced practice nurses." *See* Am. Sub. H.B. 478, 119th Gen. A. (1992) (eff. Jan. 14, 1993), at 1992 Ohio Legis. Bull. 889, 927-29 (Anderson). These statutes have established three-year pilot programs operated through three specified universities "to provide access to health care in underserved areas through the use of advanced practice nurses." R.C. 4723.52(A). The term "advanced practice nurse" is defined, for purposes of R.C. 4723.52-.59 only, as "a registered nurse who is approved by the board of nursing under section 4723.55 of the Revised Code to practice as an advanced practice nurse." R.C. 4723.51(1). Pursuant to R.C. 4723.55, the Board of Nursing may approve applicants as advanced practice nurses for purposes of the pilot programs if the applicants are registered nurses, have three years of experience meeting certain criteria, and are either nurse-midwives certified under R.C. 4723.42 or certified clinical nurse specialists or nurse practitioners. Registered nurses approved as advanced practice nurses are authorized to practice under standard care arrangements governing the referral of patients to physicians and quality assurance reviews, R.C. 4723.52(C), and protocols that can authorize the nurse to prescribe drugs and therapeutic devices, R.C. 4723.56-.58. *See generally* R.C. 4723.59 (requiring advanced practice nurses approved for the pilot projects to practice and prescribe drugs and therapeutic devices as provided in the applicable standard care arrangement and protocol).

The effect of these statutes is to expand the scope of practice for nurse practitioners participating in the pilot programs to include prescriptive authority. The pilot programs are also intended to ensure the proper availability of physician services and quality control of services for patients in the targeted underserved areas by specifically defining the relationship between the nurses and collaborating physicians by way of the standard care arrangements and protocols. Registered nurses, including nurse practitioners, who are approved to practice in the pilot programs are recognized as advanced practice nurses and may practice as such only within the pilot programs. R.C. 4723.55; R.C. 4723.59. There is nothing in R.C. 4723.51-.59, however, that prevents a CFNP or CPNP who is not a participant in the pilot programs from practicing as a CFNP or CPNP pursuant to R.C. 4723.02(B) and rule 4723-9-02.

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physical examination of a patient did not aid and abet the practice of medicine without a license because the nurse was not diagnosing by carrying out prior approved orders). Certain services that a CPNP or CFNP is professionally qualified to perform may be legally authorized in Ohio only if performed pursuant to a physician's orders as required by R.C. 4723.02(B)(5). Such services, as long as they are performed pursuant to physician's orders, are nonetheless reimbursable under Medicaid, because 42 U.S.C. §1396d(a)(21) applies to services furnished by a CPNP or CFNP "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." While federal law recognizes and honors the authority of a state to require such physician supervision or association with CFNPs or CPNPs as the state deems necessary, federal law does not permit a state to deny reimbursement for supervised services because the involvement of a physician is required.

It is therefore my opinion, and you are hereby advised that a certified family or pediatric nurse practitioner whose certification complies with the provisions of 13 Ohio Admin. Code 4723-9-02, promulgated by the Board of Nursing pursuant to R.C. 4723.07(K), may practice as a family or pediatric nurse practitioner in Ohio and is legally authorized to perform any services identified in the professional scope of practice associated with those certifications that are permitted by R.C. 4723.02(B) and not prohibited by R.C. 4723.151 or 4729.28 as constituting the practice of medicine or pharmacy.

Respectfully,

LEE FISHER
Attorney General

July 1, 1994

Arnold R. Tompkins, Director
Department of Human Services
30 East Broad Street
Columbus, Ohio 43266-0423

SYLLABUS: 94-042

A certified family or pediatric nurse practitioner whose certification complies with the provisions of 13 Ohio Admin. Code 4723-9-02, promulgated by the Board of Nursing pursuant to R.C. 4723.07(K), may practice as a family or pediatric nurse practitioner in Ohio and is legally authorized to perform any services identified in the professional scope of practice associated with those certifications that are permitted by R.C. 4723.02(B) and not prohibited by R.C. 4723.151 or 4729.28 as constituting the practice of medicine or pharmacy.