

OPINION NO. 79-080**Syllabus:**

Reimbursement for the delivery of primary health services performed by a nurse practitioner or physician's assistant, as described in R.C. 5101.512, is authorized under the Ohio medicaid program if the particular services are lawfully provided under R.C. Chapters 4723, 4730, and 4731 and are in accordance with applicable federal law.

To: Kenneth B. Creasy, Director, Department of Public Welfare, Columbus, Ohio
By: William J. Brown, Attorney General, November 9, 1979

I have before me your request for my opinion, which reads, in pertinent part, as follows:

It has been brought to our attention that language contained in [Section] 5101.512 of the Revised Code, as enacted under Amended Substitute House Bill Number 1152, would allow this department to recognize primary health care provided by nurse practitioners and [physician's] assistants [for purposes of reimbursement under the Ohio medicaid program].

Since Section I of Amended Substitute House Bill Number 1152 takes effect July 1, 1979, we would appreciate your review of pertinent [law] to determine if the department can proceed, subsequent to July 1, 1979, to implement the Rural Health Clinic Act as it would affect applicant clinics in Ohio [with regard to services provided by nurse practitioners and physician's assistants].

Your request requires a review of R.C. 5101.512 as it relates to P.L. 95-210, the Rural Health Clinic Services Act of 1977. In particular, it is necessary to determine whether services performed by a nurse practitioner or a physician's assistant are reimbursable under the Ohio medicaid program established by R.C. 5101.51 et seq.

R.C. 5101.512, effective July 1, 1979, includes "outpatient health facilities" as a "category of medical care provider" for purposes of reimbursement under R.C. 5101.51, Ohio's medical assistance program. R.C. 5101.512(A)(1) defines an "outpatient health facility" as a facility operated by a public or nonprofit private agency "which provides primary health services by or under the direction of a physician to outpatients." R.C. 5101.512(A)(1).

The term "primary health services" is defined as those services which are "preventive, diagnostic, therapeutic, rehabilitative, or palliative" in nature and includes services rendered by "physicians, physician's assistants, and nurse practitioners." R.C. 5101.512(A)(2).

It is clear from R.C. 5101.512(B) that rural health clinics, as defined in 91 Stat. 1486 (1977), 42 U.S.C. § 1395x, are considered to be outpatient health facilities for purposes of medical assistance under R.C. 5101.51. A rural health clinic is defined, in part, as a facility in a non-urbanized area, rendering primarily out-patient medical services under the direction or periodic review of a physician. 42 U.S.C. § 1395x(aa).

R.C. 5101.51 stipulates that certain conditions must be met before reimbursement for health care is made. R.C. 5101.51(A) provides, in pertinent part, as follows:

(A) The department of public welfare may provide medical assistance under Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, . . . as long as federal funds are provided for such assistance, provided that all of the following requirements for reimbursement are instituted:

(1) Reimbursement by the department of public welfare to a medical provider for any medical service rendered under the medicaid program shall not exceed the authorized reimbursement level for the same service under the medicare program established under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301 as amended. . . . (Emphasis added.)

According to the foregoing section, reimbursement is permitted under the Ohio medicaid program only if reimbursement is permissible under the federal law. Your specific inquiry is whether medical care provided by nurse practitioners and physician's assistants may be reimbursed under the Ohio medicaid law. In order to answer your question, it is necessary to refer initially to the Rural Health Clinic Services Act of 1977, P.L. 95-210, to determine whether reimbursement for these services is allowable under federal law. The relevant provisions are codified at 42 U.S.C. § 1395x(aa). The terms "nurse practitioner" and "physician assistant" are defined at 42 U.S.C. § 1395x(aa)(3), as follows:

(3) The term "physician assistant" and the term "nurse practitioner" mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations. (Emphasis added.)

The federal regulations on the subject of rural health clinics incorporate this limitation on the types of services of a nurse practitioner or a physician's assistant which are reimbursable under Title XVIII of the Social Security Act. 42 C.F.R. §405.2414(a)(4), 43 Fed. Reg. 8263 (1978), states that professional services rendered by a nurse practitioner or physician's assistant are reimbursable if the services are permitted to be performed by such person under the law of the state where the services are rendered. In addition, 42 C.F.R. §440.20(b), 43 Fed. Reg. 45225 (1978), states that a nurse practitioner or physician's assistant may perform services at a rural health clinic if the services are not prohibited by state law. Finally, 42 C.F.R. §481.9(a), 43 Fed. Reg. 30528 (1978), states that a nurse practitioner or physician's assistant may perform health care services which are in accordance with federal, state or local laws. Assuming that all training, education and experience requirements applicable under federal law are met, it is necessary to turn to Ohio law to determine the scope of services of a physician's assistant or nurse practitioner which may be reimbursed.

The nurse practitioner who works in an outpatient clinic must satisfy the qualification requirements of both 42 C.F.R. §481.2(b) and R.C. 5101.512(A) in order to be reimbursed under the Ohio medicaid program; the scope of the services which a nurse practitioner may perform is, however, also governed by state law and limited by R.C. 4723.06.

R.C. 4723.06 defines the practice of professional nursing in Ohio. The pertinent part of this section provides that acts "of medical diagnosis or prescription of medical, therapeutic, or corrective medical measures by a nurse are prohibited." Only those services of a nurse practitioner which are not prohibited by state law are reimbursable under the federal law. Accordingly, services rendered in derogation of R.C. 4723.06 are not reimbursable.

A physician's assistant who works in an outpatient health clinic must satisfy the qualification requirements of 42 C.F.R. §481.2(d) in order to be reimbursed

under the Ohio medicaid program. These requirements do not, however, supersede the restrictions state law places on the scope of authority of a physician's assistant.

R.C. 4730.02 sets forth the allowable scope of duties and functions of a physician's assistant. The physician's assistant must function under the supervision and control of a physician and may "provide services only to patients of the employing physician or physicians." R.C. 4730.02(A). Consequently, before a physician's assistant may perform any service, the requisite physician-patient relationship must be established. Further, the physician's assistant may perform a service only for a person who is an actual patient of the physician's assistant's employing physician. R.C. 4730.02(A). The extent of services which a particular physician's assistant may perform depends upon the terms of the registration of such physician's assistant. R.C. 4730.03(C); R.C. 4730.04; R.C. 4730.05. A physician's assistant may not conduct himself in such a manner as to violate R.C. 4731.34 or R.C. 4731.41, which govern the practice of medicine, surgery, podiatry and midwifery. Accordingly, services performed by a physician's assistant are reimbursable under the Ohio medicaid program if the performance of such services is permitted under R.C. Chapters 4730 and 4731.

An examination of the definition of "primary health services" in R.C. 5101.512 might suggest that a nurse practitioner or physician's assistant may perform any service which a physician may perform. However, this is not the case. R.C. 5101.512 does not specify which practitioner—i.e., physician, physician's assistant or nurse practitioner—is authorized to perform particular primary health services, and, therefore, R.C. 5101.512 in no way nullifies any section of state law which regulates the scope of duties of nurse practitioners or physician's assistants. Consequently, the pertinent parts of R.C. Chapters 4723, 4730, and 4731, which limit the functions which physician's assistants and nurse practitioners may perform, are applicable also to actions taken pursuant to R.C. 5101.512. Furthermore, federal law makes it clear that services performed by a nurse practitioner or physician's assistant are reimbursable only if the services are in accordance with state law. It is clear that Congress, in enacting P.L. 95-210, the Rural Health Clinic Services Act of 1977, did not expand, and did not intend to expand, the scope of allowable duties and functions of a nurse practitioner or physician's assistant under state law. 42 U.S.C. § 1395x(aa)(3).

Therefore, it is my opinion, and you are advised, that reimbursement for the delivery of primary health services performed by a nurse practitioner or physician's assistant, as described in R.C. 5101.512, is authorized under the Ohio medicaid program if the particular services are lawfully provided under R.C. Chapters 4723, 4730, and 4731 and are in accordance with applicable federal law.