

Syllabus:

2011-040

1. For purposes of 42 C.F.R. § 440.110(c)(2)(ii), a speech-language pathologist licensed in Ohio pursuant to R.C. 4753.07 has satisfied requirements equivalent to the 2005 Standards for the Certificate of Clinical Competence in Speech-Language Pathology issued by the American Speech-Language-Hearing Association (ASHA) if the licensee completes her graduate course work and the student clinical experience through a degree program accredited by ASHA's Council on Academic Accreditation in Audiology and Speech-Language Pathology.
2. For purposes of 42 C.F.R. § 440.110(c)(2)(iii), a speech-language pathologist conditionally licensed in Ohio pursuant to R.C. 4753.07 and R.C. 4753.071 has satisfied requirements equivalent to those of an individual who has completed the academic program necessary for the Certificate of Clinical Competence in Speech-Language Pathology issued by the American Speech-Language-Hearing Association (ASHA) and is acquiring the supervised work experience to qualify for ASHA certification if the conditional licensee completes her graduate course work and student clinical experience through a degree program accredited by ASHA's Council on Academic Accreditation in Audiology and Speech-Language Pathology.

To: Helene Levenfus, Au.D., Board Chairperson, Board of Speech-Language Pathology and Audiology, Columbus, Ohio

By: Michael DeWine, Ohio Attorney General, October 26, 2011

I am in receipt of your request for an opinion whether Ohio's licensure stan-

dards for speech-language pathologists, including those who are conditional licensees, are equivalent to the certification standards established by the American Speech-Language-Hearing Association (ASHA) for purposes of certain federal Medicaid regulations. *See* 42 C.F.R. § 440.110(c)(2) (2010).

The federal Medicaid program was enacted by Title XIX of the Social Security Act, 42 U.S.C.A. §§ 1396-1396w-5 (West 2003 & Supp. 2011). Under the program, participating states receive federal funding for reimbursement of certain medical treatment costs for low-income individuals who meet the eligibility criteria for Medicaid benefits. *See, e.g., Wood v. Tompkins*, 33 F.3d 600, 602 (6th Cir. 1994); *Pfautz v. Ohio Dep't of Job & Family Servs.*, Marion County No. 9-06-62, 2007-Ohio-6424, 2007 Ohio App. LEXIS 5624, at ¶17 (Dec. 3, 2007); *Martin v. Ohio Dep't of Human Servs.*, 130 Ohio App. 3d 512, 515-16, 720 N.E.2d 576 (Champaign County 1998); 2006 Op. Att'y Gen. No. 2006-019, at 2-165. Among the many services that may be offered, states have the option of offering "physical therapy and related services" under Medicaid. 42 U.S.C.A. § 1396d(a)(11) (Supp. 2011). "Related services" includes services for "individuals with speech, hearing, and language disorders." 42 C.F.R. § 440.110(c) (2010); *see also Meyers v. Reagan*, 776 F.2d 241, 243 (8th Cir. 1985). Services for individuals with speech, hearing, and language disorders include "diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech pathologist or audiologist." 42 C.F.R. § 440.110(c) (2010).

Under Medicaid, states have the flexibility to provide speech pathology services pursuant to a variety of benefits. *See* 69 Fed. Reg. 30553, 30580 (May 28, 2004). Regardless of the benefit used, however, Medicaid will pay only for services provided by or under the direction of a Medicaid-qualified speech pathologist. *Id.*; *see also* 42 C.F.R. § 440.110(c) (2010). Federal rule defines a "speech pathologist" as an individual who meets one of the following conditions:

- (i) Has a certificate of clinical competence from the American Speech and Hearing Association.
- (ii) Has completed the equivalent educational requirements and work experience necessary for the certificate.
- (iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

42 C.F.R. § 440.110(c)(2) (2010).¹ Thus, an individual is a Medicaid-qualified speech pathologist, and the services provided by or under her direction are entitled to Medicaid reimbursement, in one of three situations.

¹ The definition of speech pathologist in 42 C.F.R. § 440.110(c)(2)(i)-(iii) has remained unchanged since its enactment in 1978. *See* 43 Fed. Reg. 45013, 45227 (Sept. 29, 1978). While ASHA has since changed its name from the American Speech and Hearing Association to the American Speech-Language-Hearing Association, *see* <http://www.asha.org/about/history.htm> (last visited Oct. 14, 2011), the federal rules have not been revised to reflect this name change.

Your opinion request relates to the second and third categories—an individual who has “completed the equivalent educational requirements and work experience necessary for the certificate” or has “completed the academic program and is acquiring supervised work experience to qualify for the certificate.” 42 C.F.R. § 440.110(c)(2)(ii)-(iii). The Board of Speech-Language Pathology and Audiology (the “Board”) asserts that, if Ohio’s licensing standards for speech-language pathologists are the equivalent of the ASHA certification standards, then speech-language pathologists licensed by the Board are Medicaid-qualified speech pathologists pursuant to 42 C.F.R. § 440.110(c)(2)(ii) and that conditional licensees are Medicaid-qualified speech pathologists pursuant to 42 C.F.R. § 440.110(c)(2)(iii). It is beyond the scope of the formal opinion process to render authoritative interpretations of federal law. *See, e.g.*, 2011 Op. Att’y Gen. No. 2011-012, slip op. at 8 n.7; 1999 Op. Att’y Gen. No. 99-007, at 2-55; 1997 Op. Att’y Gen. No. 97-025, at 2-146. However, the Board’s assertion that 42 C.F.R. § 440.110(c)(2) requires equivalency between the Ohio licensure and ASHA certification standards appears consistent with pronouncements from other jurisdictions. *See* 89 Ops. Cal. Att’y Gen. 266, 267 (Nov. 30, 2006) (“[42 C.F.R. §] 440.110(c)(2) adopts, as the benchmark, the certificate of clinical competence granted by [ASHA]”); 89 Ops. Cal. Att’y Gen. 63, 64 (Apr. 24, 2006) (the “issue to be resolved is whether the requirements for issuance of a state credential constitute ‘the equivalent educational requirements and work experience necessary’ for issuance of ‘a certificate of clinical competence from [ASHA]’”); Op. Att’y Gen. Fla. 2005-035, 2005 Fla. AG LEXIS 39, at *4 (June 1, 2005) (“the federal provisions in 42 C.F.R. [§] 440.110(c)(2) use requirements for a certificate from [ASHA] as a benchmark”).

In this context, you have asked us to examine the ASHA certification standards and the Ohio licensure standards, including those for conditional licensees, and advise whether the standards are equivalent. We first examine the ASHA certification standards. Next, we examine the licensing scheme established by Ohio law for speech-language pathologists, including conditionally licensed speech-language pathologists. Finally, we compare the two sets of standards.

ASHA Certification Standards

ASHA was founded in 1925 and professes to be “the nation’s leading professional, credentialing, and scientific organization for speech-language pathologists, audiologists, and speech/language/hearing scientists.” <http://www.asha.org/about/history.htm> (last visited on Oct. 18, 2011). As indicated above, the relevant credential for Medicaid purposes is ASHA’s certificate of clinical competence in speech-language pathology (a “CCC-SLP”). *See* 42 C.F.R. § 440.110(c)(2). The current requirements for a CCC-SLP are set forth in the 2005 Standards for the Certificate of Clinical Competence in Speech-Language Pathology (the “2005 Standards”). *See* http://www.asha.org/certification/slp_standards.htm (last visited Oct. 14, 2011).²

The 2005 Standards address the following topics:

² The 2005 Standards were developed by ASHA’s Council for Clinical Certification, which is charged, in part, with defining “the standards for clinical certification

Standard I: Degree

Standard II: Institution of Higher Learning

Standard III: Program of Study—Knowledge Outcomes

Standard IV: Program of Study—Skills Outcomes

Standard V: Assessment

Standard VI: Speech-Language Pathology Clinical Fellowship

Standard VII: Maintenance of Certification.

http://www.asha.org/certification/slp_standards.htm (last visited Oct. 14, 2011). The 2005 Standards are quite detailed and consist of four main components—an educational component, an examination component, a work experience component, and a continuing education component.³

The educational component of the 2005 Standards consists of both a course

and apply[ing] those standards in the certification of individuals.” <http://www.asha.org/About/governance/committees/Council-for-Clinical-Certification-in-Audiology-and-Speech-Language-Pathology/> (last visited Oct. 14, 2011). The Council for Clinical Certification is also responsible for adopting implementation procedures for the 2005 Standards. http://www.asha.org/certification/slp_standards.htm (last visited Oct. 14, 2011). This opinion, however, is limited to the 2005 Standards and does not include any discussion of the implementation procedures adopted by the Council for Clinical Certification.

³ The 2005 Standards provide, in relevant part, as follows:

Standard I: Degree

Effective January 1, 2005, the applicant for certification must have a master’s or doctoral or other recognized post-baccalaureate degree. A minimum of 75 semester credit hours must be completed in a course of study addressing the knowledge and skills pertinent to the field of speech-language pathology.

.....

All graduate course work and graduate clinical practicum required in the professional area for which the Certificate is sought must have been initiated and completed at an institution whose program was accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology (CAA) of the American Speech-Language-Hearing Association in the area for which the Certificate is sought.

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Standard II: Institution of Higher Education

The graduate degree must be granted by a regionally accredited institution of higher education.

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work portion and a clinical education portion. The course work portion of the 2005 Standards requires a master's, doctoral, or other comparable post-baccalaureate degree and the completion of 75 semester credit hours (36 of which must be at the

Standard III: Program of Study—Knowledge Outcomes

The applicant for certification must complete a program of study (a minimum of 75 semester credit hours overall, including at least 36 at the graduate level) that includes academic course work sufficient in depth and breadth to achieve the specified knowledge outcomes.

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Standard III-A: The applicant must have prerequisite knowledge of the biological sciences, physical sciences, mathematics, and the social/behavioral sciences.

. . . .

Standard III-B: The applicant must demonstrate knowledge of basic human communication and swallowing processes, including their biological, neurological, acoustic, psychological, developmental, and linguistic and cultural bases.

. . . .

Standard III-C: The applicant must demonstrate knowledge of the nature of speech, language, hearing, and communication disorders and differences and swallowing disorders, including the etiologies, characteristics, anatomical/physiological, acoustic, psychological, developmental, and linguistic and cultural correlates. Specific knowledge must be demonstrated in the following areas:

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Standard III-D: The applicant must possess knowledge of the principles and methods of prevention, assessment, and intervention for people with communication and swallowing disorders, including consideration of anatomical/physiological, psychological, developmental, and linguistic and cultural correlates of the disorders.

. . . .

Standard III-E: The applicant must demonstrate knowledge of standards of ethical conduct.

. . . .

Standard III-F: The applicant must demonstrate knowledge of processes used in research and the integration of research principles into evidence-based clinical practice.

graduate level) in areas deemed relevant to the practice of speech-language

Standard III-G: The applicant must demonstrate knowledge of contemporary professional issues.

. . . .

Standard III-H: The applicant must demonstrate knowledge about certification, specialty recognition, licensure, and other relevant professional credentials.

. . . .

Standard IV: Program of Study—Skills Outcomes

Standard IV-A: The applicant must complete a curriculum of academic and clinical education that follows an appropriate sequence of learning sufficient to achieve the skills outcomes in Standard IV-G.

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Standard IV-B: The applicant must possess skill in oral and written or other forms of communication sufficient for entry into professional practice.

. . . .

Standard IV-C: The applicant for certification in speech-language pathology must complete a minimum of 400 clock hours of supervised clinical experience in the practice of speech-language pathology. Twenty-five hours must be spent in clinical observation, and 375 hours must be spent in direct client/patient contact.

. . . .

Standard IV-D: At least 325 of the 400 clock hours must be completed while the applicant is engaged in graduate study in a program accredited in speech-language pathology by the Council on Academic Accreditation in Audiology and Speech-Language Pathology.

. . . .

Standard IV-E: Supervision must be provided by individuals who hold the Certificate of Clinical Competence in the appropriate area of practice. The amount of supervision must be appropriate to the student's level of knowledge, experience, and competence. Supervision must be sufficient to ensure the welfare of the client/patient.

. . . .

Standard IV-F: Supervised practicum must include experience with client/patient populations across the life span and from culturally/linguistically diverse backgrounds. Practicum must include experience

with client/patient populations with various types and severities of communication and/or related disorders, differences, and disabilities.

. . . .

Standard IV-G: The applicant for certification must complete a program of study that includes supervised clinical experiences sufficient in breadth and depth to achieve the following skills outcomes:

. . . .

Standard V: Assessment

The applicant for certification must demonstrate successful achievement of the knowledge and skills delineated in Standard III and Standard IV by means of both formative and summative assessment.

Standard V-A: Formative Assessment

The applicant must meet the education program's requirements for demonstrating satisfactory performance through on-going formative assessment of knowledge and skills.

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Standard V-B: Summative Assessment

The applicant must pass the national examination adopted by ASHA for purposes of certification in speech-language pathology.

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Standard VI: Speech-Language Pathology Clinical Fellowship

After completion of academic course work and practicum (Standard IV), the applicant then must successfully complete a Speech-Language Pathology Clinical Fellowship (SLPCF).

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Standard VI-A: The mentoring speech-language pathologist and Speech-Language Pathology Clinical Fellow will establish outcomes and performance levels to be achieved during the Speech-Language Pathology Fellowship (SLPCF), based on the Clinical Fellow's academic experiences, setting-specific requirements, and professional interests/goals.

. . . .

Standard VI-B: The Clinical Fellow and mentoring SLP must engage in periodic assessment of the Clinical Fellow's performance, evaluating the Clinical Fellow's progress toward meeting the established goals and achievement of the clinical skills necessary for independent practice.

pathology. 2005 Standard I; 2005 Standard III. The graduate degree must have been granted by a regionally accredited institution of higher education, 2005 Standard II, and the specific degree program must be accredited by ASHA's Council on Academic Accreditation in Audiology and Speech-Language Pathology (a "CAA-accredited program"), 2005 Standard I. Through the completion of the graduate degree course work, an applicant is required to demonstrate a satisfactory level of knowledge on a number of topics related to speech-language pathology. *See* 2005 Standard III-A to 2005 Standard III-H.

The clinical education portion of the 2005 Standards requires the completion of the graduate clinical practicum at a CAA-accredited program. 2005 Standard I. Through the completion of the graduate clinical practicum, an applicant is required to demonstrate a satisfactory skill level for entry into the profession. *See* 2005 Standard IV-A to 2005 Standard IV-G. The clinical practicum must consist of a minimum of 400 clock hours of supervised clinical experience, with at least 25 hours spent in clinical observation and 375 hours in direct client/patient contact. 2005 Standard IV-C. At least 325 of the required 400 clock hours must be completed while the applicant is engaged in graduate study at a CAA-accredited program. 2005 Standard IV-D.⁴

The examination component of the 2005 Standards requires the applicant to

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Standard VI-C: The Speech-Language Pathology Clinical Fellowship (SLPCF) will consist of the equivalent of 36 weeks of full-time clinical practice.

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Standard VI-D: The Clinical Fellow must submit evidence of successful completion of the Speech-Language Pathology Clinical Fellowship (SLPCF) to the Council For Clinical Certification.

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Standard VII: Maintenance of Certification

Demonstration of continued professional development is mandated for maintenance of the Certificate of Clinical Competence in Speech-Language Pathology. The renewal period will be three years. This standard will apply to all certificate holders, regardless of the date of initial certification.

http://www.asha.org/certification/slp_standards.htm (last visited Oct. 14, 2011).

⁴ Ultimately, applicants demonstrate compliance with both 2005 Standard III and 2005 Standard IV by having the director of their graduate program complete a one-page verification form. *See* Application for the Certificate of Clinical Competence in Speech-Language Pathology 2005 Standards at 3, *available at* <http://www.asha.org/certification/SLPCertification.htm> (last visited Oct. 14, 2011).

pass a national examination adopted by ASHA. 2005 Standard V-B. Although not specifically identified in the 2005 Standards, the national examination ASHA requires is the Praxis examination in speech-language pathology, administered by the Educational Testing Service. <http://www.asha.org/certification/praxis/overview.htm> (last visited Oct. 14, 2011).

The work experience component of the 2005 Standards requires completion of a Speech-Language Pathology Clinical Fellowship. An applicant for a CCC-SLP may begin her fellowship after successful completion of academic course work and the graduate clinical practicum. 2005 Standard VI. The fellowship must be completed under the tutelage of a mentoring speech-language pathologist. *See* 2005 Standard VI-A to 2005 Standard VI-B. The fellowship must also consist of the equivalent of 36 weeks of full-time clinical practice. 2005 Standard VI-C. An applicant for a CCC-SLP must submit evidence of successful completion of the fellowship to ASHA's Council for Clinical Certification. 2005 Standard VI-D.

Finally, the continuing education component of the 2005 Standards requires continuing professional development in order to maintain certification. The renewal period is three years. 2005 Standard VII.

Ohio Licensure Standards

R.C. 4753.02 states that no person may “practice, offer to practice, or aid and abet the practice of the profession of speech-language pathology . . . unless the person is licensed” by the Board of Speech-Language Pathology and Audiology.⁵ The Board shall issue a license “to every applicant who has passed the appropriate examinations designated by the board and who otherwise complies with the licensure requirements” of R.C. Chapter 4753. R.C. 4753.07; *see also* R.C. 4753.05(C) (“[t]he board shall publish and make available . . . the licensure and permit standards prescribed by this chapter and rules adopted pursuant thereto”). Similar to the 2005 Standards, the Ohio licensure requirements contain an educational component, an examination component, a work experience component, and a continuing education component.

⁵ R.C. 4753.01(B) defines speech-language pathology as follows:

“Speech-language pathology” means the application of principles, methods, or procedures related to the development and disorders of human communication. Disorders include any and all conditions, whether of organic or nonorganic origin, that impede the normal process of human communication including disorders and related disorders of speech, articulation, fluency, voice, oral and written language; auditory comprehension and processing; oral, pharyngeal or laryngeal sensorimotor competencies; mastication or deglutition following a medical examination by a physician licensed pursuant to [R.C. Chapter 4731]; auditory or visual processing; auditory or visual memory and cognition; communication; and assisted augmentative communication treatment and devices.

The basic educational requirements for licensure as a speech-language pathologist are set forth in R.C. 4753.06. To be licensed, an applicant must have obtained “a broad general education to serve as a background” for her specialized training, R.C. 4753.06(A), “at least a master’s degree in speech-language pathology or the equivalent” at a college or university accredited by a regional or national accrediting organization, R.C. 4753.06(B), and “supervised clinical experience” at, or in cooperation with, an accredited college or university. R.C. 4753.06(D). R.C. 4753.06(B) further provides that an applicant’s “academic credit must include course work accumulated in the completion of a well-integrated course of study approved by the [Board] and delineated by rule,” and R.C. 4753.06(D) provides that the “appropriateness of the [supervised clinical experience] shall be determined under rules of the [B]oard.”

Ohio’s specific course work requirements are set forth in 11B Ohio Admin. Code 4753-3-04. Rule 4753-3-04(D) states that the “[c]ourse work requirements for licensure shall be deemed to be met when the applicant was awarded a master’s degree or higher . . . from a college or university program accredited by a regional or national specialized accrediting organization in speech-language pathology . . . recognized by the ‘United States Department of Education’ and the ‘Council for Higher Education Accreditation.’” ASHA’s Council on Academic Accreditation in Audiology and Speech-Language Pathology is such a recognized accrediting organization. *See* http://chea.org/pdf/CHEA_USDE_AllAccred.pdf at 2 (last visited Oct. 14, 2011). Thus, the course work requirements in rule 4753-3-04 are satisfied if an applicant obtains her graduate degree from a CAA-accredited graduate program.⁶ In the alternative, an applicant who obtains a graduate degree from a non-CAA-accredited program must complete coursework that satisfies the requirements in rule 4753-3-04(A)(1), (3), and (4).

The requirements for the supervised clinical experience, referred to in the rules as the “student clinical experience,” are set forth in 11B Ohio Admin. Code 4753-3-05. Rule 4753-3-05(E) states the “student clinical experience requirements set forth in paragraphs (B) and (C) of this rule shall be deemed to be met” if the applicant was awarded a “master’s degree or higher . . . from a college or university program . . . accredited by a regional or national specialized accrediting organization in speech-language pathology . . . recognized by the ‘United States Department of Education’ and the ‘Council for Higher Education Accreditation.’” *See also* 11B Ohio Admin. Code 4753-3-05(B) (the requirements of division (B) apply only to applicants “who have received their graduate degree from a college or university not accredited by the ‘American Speech-Language-Hearing Association’”). Thus, like the course work requirements in rule 4753-3-04, the student clinical experience requirements in rule 4753-3-05 are satisfied if an applicant obtains her graduate degree from a CAA-accredited program. In the alternative, applicants who received their graduate degrees from non-CAA-accredited programs must satisfy the individual criteria in rule 4753-3-05(B)-(C).

⁶ As discussed previously, CAA-accreditation of a graduate program in speech-language pathology is separate and distinct from a college or university, as an institution, being accredited by a regional or national accrediting organization.

In addition to the educational requirements, R.C. 4753.06(F)(1) requires all applicants for licensure as speech-language pathologists to obtain “professional experience.” An applicant cannot begin obtaining professional experience until after she successfully completes the required course work and student clinical experience and obtains a score of 600 or above on the Praxis examination. *See* R.C. 4753.06(F)(2); 11B Ohio Admin. Code 4753-3-06; 11B Ohio Admin. Code 4753-3-07(B)(4).

R.C. 4753.06(F)(2) states the professional experience shall be “appropriately supervised” as determined by Board rule and shall consist of “bona fide clinical work” in an amount determined by the Board. In turn, the Ohio Administrative Code specifies the “[r]equirements for professional experience,” 11B Ohio Admin. Code 4753-3-07(C), the “[s]upervisor qualifications and responsibilities,” *id.* at 4753-3-07(D), and the “[s]upervision of professional experience” requirements, *id.* at 4753-3-07(F). The professional experience requirement consists of a minimum of thirty-six weeks of full-time experience or seventy-two weeks of part-time experience. *Id.* at 4753-3-07(C)(1)(b).

In addition, before commencing the professional experience, an applicant must submit and obtain Board approval of a professional experience plan. *See* R.C. 4753.071; 11B Ohio Admin. Code 4753-3-07(E). The purpose of the professional experience plan is to ensure that the proposed supervisor, employment, and work experiences are consistent with the requirements in rule 4753-3-07.⁷ Any changes to the professional experience plan, or deviations from the plan, must be reported within thirty days, and a revised professional experience plan must be submitted to and approved by the Board. *See* 11B Ohio Admin. Code 4753-3-07(E)(4)(c); <http://slpaud.ohio.gov/apps/Plan%20Amendment.pdf> (last visited Oct. 14, 2011). Compliance with the professional experience plan and the requirements of rule 4753-3-07 is demonstrated through the submission of a “Supervised Professional Experience Report” and a “Supervision Contacts Log.” *See* 11B Ohio Admin. Code 4753-3-07(G). A “Professional Experience Report” and a “Supervision Contacts Log” must be filed with the Board within thirty days of completion of the professional experience or, if there is a change in the professional experience plan, within thirty days of the change. *Id.* at 4753-3-07(G)(1).

Finally, Ohio law requires licensees to renew their licenses every two years and obtain twenty continuing education hours during that two year period. *See* R.C. 4753.09; 11B Ohio Admin. Code 4753-4-01(A).

Conditional Licensure in Ohio

As noted above, R.C. 4753.06(F)(1) requires all applicants for licensure in speech-language pathology to obtain professional experience. Every person who is “required to meet the supervised professional experience requirement of [R.C.

⁷ The professional experience plan must be submitted on a form prescribed by the Board. R.C. 4753.071; 11B Ohio Admin. Code 4753-3-07(E)(3). A copy of the form can be found at <http://slpaud.ohio.gov/apps/spePlan.pdf> (last visited Oct. 14, 2011).

4753.06(F)]” shall apply for a “conditional license.” R.C. 4753.071; *see also* 11B Ohio Admin. Code 4753-3-07(B)(2) (a “person performing speech-language pathology . . . in pursuit of the required supervised professional experience . . . must hold conditional licensure”). To be entitled to a conditional license in speech-language pathology in Ohio, an applicant must (1) meet all of the statutory and administrative requirements for licensure—*i.e.*, the course work requirement, the student clinical experience requirement, and a passing score on the Praxis examination—other than the supervised professional experience requirement; (2) submit an application to the Board that includes a plan for the content of the supervised professional experience; and (3) obtain appropriate signatures and pay the appropriate application and licensure fees. *See* R.C. 4753.071; 11B Ohio Admin. Code 4753-3-07(B)(4).

A conditional license “authorizes an individual to practice speech-language pathology . . . while completing the supervised professional experience as required by [R.C. 4753.06(F)].” R.C. 4753.071; *see also* 11B Ohio Admin. Code 4753-3-07(B)(3) (a “person holding a conditional license is authorized to practice speech-language pathology . . . while working under an approved professional experience plan and the supervision of a person fully licensed by the [B]oard”). Further, a conditional licensee “may perform services for which reimbursement will be sought under the medicare program . . . or the medicaid program,” so long as requests for reimbursement are “made by the person who supervises” the conditional licensee. R.C. 4753.071. Thus, Ohio law specifically contemplates that conditionally licensed speech-language pathologists will perform speech-language pathology services for which reimbursement will be sought under Medicaid.

Comparison of ASHA and Ohio Standards

Having set forth the ASHA certification standards and the Ohio licensure standards, we next examine whether the Ohio licensure standards are equivalent to the “educational requirements and work experience necessary for” ASHA certification, 42 C.F.R. § 440.110(c)(2)(ii), and whether the conditional licensure requirements are equivalent to those of an individual who has “completed the academic program and is acquiring supervised work experience to qualify” for ASHA certification, 42 C.F.R. § 440.110(c)(2)(iii).

The dictionary definition of “equivalent” is “1 : equal in force, amount, or value . . . 2 a : like in signification or import . . . 3 : corresponding or virtually identical esp. in effect or function.” *Merriam-Webster’s Collegiate Dictionary* 423 (11th ed. 2005); *see also Black’s Law Dictionary* 561 (7th ed. 1999) (“equivalent” means “[c]orresponding in effect or function; nearly equal; virtually identical”); 89 Ops. Cal. Att’y Gen. at 64 (adopting a dictionary definition of equivalent). As noted above, the licensure of speech-language pathologists and the practice of speech-language pathology are governed by R.C. Chapter 4753 and the administrative rules enacted by the Board. It is well established that administrative rules enacted pursuant to statutory authority have the force and effect of law unless unreasonable or in clear conflict with a statutory provision. *See, e.g., State ex rel. Celebrezze v. Nat’l Lime & Stone Co.*, 68 Ohio St. 3d 377, 382, 627 N.E.2d 538 (1994); *Youngstown*

Sheet & Tube Co. v. Lindley, 38 Ohio St. 3d 232, 234, 527 N.E.2d 828 (1988). Therefore, in examining whether the Ohio licensure standards are the equivalent of the ASHA certification standards, we look to both R.C. Chapter 4753 and the rules enacted by the Board.

We begin our equivalency analysis with the continuing education and examination requirements for Ohio licensure and ASHA certification. First, Ohio law requires licensees to renew their licenses every two years and obtain twenty continuing education hours during that two year period. *See* R.C. 4753.09; 11B Ohio Admin. Code 4753-4-01(A). This equals, if not exceeds, the requirements in 2005 Standard VII for continuing professional development and a three-year renewal period. Further, Ohio law requires a passing score of six hundred or above on the Praxis examination in speech-language pathology. *See* R.C. 4753.05(B); 11B Ohio Admin. Code 4753-3-06. While not formally part of the 2005 Standards, ASHA certification also requires a passing score of six hundred or above on the Praxis examination. *See* http://www.asha.org/certification/praxis/praxis_scores.htm (last visited Oct. 14, 2011).

With regard to the work experience requirement in 2005 Standard VI (*i.e.*, the Speech-Language Pathology Clinical Fellowship), Ohio law requires all licensure applicants to obtain supervised professional experience consisting of bona fide clinical work. R.C. 4753.06(F)(2). As in the case of 2005 Standard VI, an Ohio licensure applicant cannot begin obtaining professional experience until she successfully completes the required course work and student clinical experience and passes the Praxis examination. *See id.*; 11B Ohio Admin. Code 4753-3-07(B)(4). Ohio law also contains exacting rules prescribing the content and supervision of the professional experience, which are comparable to 2005 Standard VI-A and 2005 Standard VI-B. *See* 11B Ohio Admin. Code 4753-3-07(C) (requirements for professional experience); *id.* at 4753-3-07(D) (supervisor qualifications and responsibilities); *id.* at 4753-3-07(F) (supervision of professional experience). In addition, the professional experience requirement in Ohio consists of a minimum of thirty-six weeks of full-time experience or seventy-two weeks of part-time experience. 11B Ohio Admin. Code 4753-3-07(C)(1)(b). While 2005 Standard VI-C mentions only thirty-six weeks of full-time experience, the total number of professional experience hours required by rule 4753-3-07(C)(1)(b) are the same, regardless of whether in a full-time or part-time capacity. Further, as with 2005 Standard VI-D, Ohio law requires an applicant for licensure to submit evidence of successful completion of the professional experience requirement. *See* 11B Ohio Admin. Code 4753-3-07(G) (discussing the “Supervised Professional Experience Report” and “Supervision Contacts Log”). Finally, R.C. 4753.071 and rule 4753-3-07 impose requirements beyond those needed for ASHA certification—namely, that an applicant for licensure must submit and obtain Board approval of an individualized professional experience plan *before* commencing her professional experience, and that any deviations from the plan also receive Board approval. For all of the foregoing reasons, the requirements in R.C. 4753.071 and rule 4753-3-07 are equivalent to, and arguably exceed, those in 2005 Standard VI.

We turn next to the educational component of the 2005 Standards. As in the

case of the 2005 Standards, Ohio law requires an applicant for licensure to have a master's degree in speech-language pathology and to have completed all course work at a college or university accredited by a regional or national accrediting organization. R.C. 4753.06(B); 11B Ohio Admin. Code 4753-3-04(A)(3). Ohio law also requires the completion of the equivalent of seventy-five semester credit hours, thirty-six of which must be at the graduate level, in a core group of areas deemed relevant of to the practice of speech-language pathology. 11B Ohio Admin. Code 4753-3-04(A)(4). In addition, an applicant for licensure in speech-language pathology in Ohio must complete a student clinical experience (referred to in the 2005 Standards as the graduate clinical practicum). *See* R.C. 4753.06(D); 11B Ohio Admin. Code 4753-3-05.

As previously explained, Ohio law recognizes two distinct educational paths. The first is for an Ohio licensure applicant to complete her graduate course work and student clinical experience through a CAA-accredited program. *See* 11B Ohio Admin. Code 4753-3-04(D) (course work requirement); 11B Ohio Admin. Code 4753-3-05(B), (E) (student clinical experience). If an applicant for licensure in Ohio completes her graduate course work and student clinical experience through a CAA-accredited program, then the CAA-accreditation requirement in 2005 Standard I is obviously satisfied. In addition, as explained above, an applicant for an ASHA CCC-SLP demonstrates compliance with 2005 Standard III-A to Standard III-H and 2005 Standard IV-A to 2005 Standard IV-G *through the completion of* graduate degree course work and a graduate clinical practicum at a CAA-accredited program. We have already determined that the remaining requirements for licensure under Ohio law are the equivalent of the ASHA certification standards. Thus, for purposes of 42 C.F.R. § 440.110(c)(2)(ii), a speech-language pathologist licensed in Ohio has satisfied requirements equivalent to the ASHA standards for a CCC-SLP if the licensee completes her graduate course work and student clinical experience through a CAA-accredited program.⁸

Finally, we examine whether a conditionally licensed speech-language

⁸ The second path to licensure—for applicants who attended graduate school at a non-CAA-accredited program—requires compliance with the provisions in rule 4753-3-04(A)(1), (3), and (4), as to course work, and rule 4753-3-05(B)(1)-(2) and (C), as to the student clinical experience. For this subset of licensees, the Ohio licensure and ASHA certification standards diverge regarding CAA accreditation. *See* 2005 Standard I (requiring graduate course work and the graduate clinical practicum to be completed through a CAA-accredited graduate program).

For two reasons, we cannot formally advise upon the equivalency, for Medicaid purposes, of Ohio's licensure standards for licensees who obtained their graduate degrees through non-CAA-accredited programs to ASHA's certification standards. First, it is beyond the scope of the formal opinion process to make findings of fact. *See, e.g.*, 2005 Op. Att'y Gen. No. 2005-043, at 2-472; 2005 Op. Att'y Gen. No. 2005-002, at 2-12. We may review the individual requirements for Ohio licensure and ASHA certification in an objective manner and determine whether the requirements are equivalent. In the case of licensees who graduated from a non-

pathologist in Ohio has satisfied requirements that are equivalent to those of an indi-

CAA-accredited program, however, an exclusively objective review is not possible. Determining whether the course work and student clinical experience requirements in rule 4753-3-04(A)(1), (3), and (4) and rule 4753-3-05(B)(1)-(2) and (C), although different from, are the functional equivalent of the requirements in 2005 Standard I, 2005 Standard III-A to Standard III-H, and 2005 Standard IV-A to 2005 Standard IV-G involves comparing the rigors of the Ohio licensure scheme relative to the ASHA certification scheme. Such a comparison entails in large part a subjective review and the resolution of complicated factual issues relating to the merits of facially divergent licensing requirements. Absent a finding by the General Assembly, an administrative body, or a court, the Attorney General is not able to make a conclusive determination on functional equivalency for this subset of licensees.

Second, it is unclear whether a functional equivalency analysis is appropriate under the federal rules. An individual not certified by ASHA is a Medicaid-qualified speech pathologist only if the individual has (1) “completed the equivalent educational requirements and work experience *necessary for the certificate*,” or (2) “completed the academic program and is acquiring supervised work experience *to qualify for the certificate*.” 42 C.F.R. § 440.110(c)(2)(ii)-(iii) (emphasis added). Based on this language, one could assert that a state-licensed speech-language pathologist cannot be Medicaid-qualified, regardless of the functional equivalency of the state and ASHA requirements, unless the individual also qualifies for a CCC-SLP. Such a strict interpretation may not have been the intent of the drafters of 42 C.F.R. § 440.110(c)(2)(ii)-(iii) and may not, in fact, be the interpretation used by the Centers for Medicare & Medicaid Services when administering the rule on a day-to-day basis. We have not, however, found any court case or formal position statement from the Centers for Medicare & Medicaid Services addressing the functional equivalency issue. Thus, while a functional equivalency approach seems entirely appropriate and reasonable, we are reluctant to adopt that interpretation. *See* 1988 Op. Att’y Gen. No. 88-007, at 2-21 to 2-22 (Attorney General opinions are necessarily more limited when addressing questions of federal law on which there is no formal, interpretative guidance).

A number of state Attorneys General have addressed the equivalency of state and ASHA standards. None, however, have examined the functional equivalency, for Medicaid purposes, of divergent state and ASHA educational requirements. For example, the California Attorney General concluded that the requirements for a state credential in speech-language pathology satisfy the federal standards for Medicaid reimbursement. 89 Ops. Cal. Att’y Gen. 266, 269 (Nov. 30, 2006). The California statute, however, requires a licensee to have graduated from a CAA-accredited graduate program—thereby avoiding the issue. *See* Cal. Ed. Code § 44265.3(a)(1); *id.* at § 44265.3(a)(2)(A). The Appeals and Opinion Bureau within the office of the New York Attorney General has advised informally that the New York licensing standards and the ASHA certification requirements are equivalent. This letter relies on the representation by the New York State Board for Speech-Language Pathology and Audiology that the New York licensing standards are

vidual who has “completed the academic program and is acquiring supervised work experience to qualify” for ASHA certification. 42 C.F.R. § 440.110(c)(2)(iii). By its plain terms, 42 C.F.R. § 440.110(c)(2)(iii) refers to someone who has satisfied the course work, student clinical experience, and examination requirements in the 2005 Standards, but still needs to satisfy the work experience requirements in 2005 Standard VI. Similarly, a conditional licensee in Ohio has satisfied all of the statutory and administrative requirements for licensure—*i.e.*, the course work requirement, the student clinical experience requirement, and a passing score on the Praxis examination—other than the supervised professional experience requirement. *See* R.C. 4753.071; 11B Ohio Admin. Code 4753-3-07(B)(4). A conditional licensee has also satisfied the additional requirement of submitting and obtaining Board approval of a professional experience plan. *See* 11B Ohio Admin. Code 4753-3-07(E)(2) (“[g]ranting of the conditional license shall be based upon approval of the plan for professional experience”).

We have just determined that, so long as an applicant for licensure completes her graduate course work and graduate clinical practicum through a CAA-accredited program, the Ohio licensure standards are the equivalent of the ASHA certification standards for a CCC-SLP. For the same reasons, a speech-language pathologist conditionally licensed in Ohio has satisfied requirements equivalent to those of an individual who has completed the academic program necessary for ASHA certification and is acquiring the supervised work experience to

“substantially equivalent” to the ASHA certification standards and does not purport to examine or interpret the language in 42 C.F.R. § 440.110(c)(2). *See* Letter from K. Sheingold, Ass. Solicitor Gen. in Charge of Opinions, to R. Daines, Department of Health Commissioner (Aug. 5, 2010). The Florida Attorney General has considered whether the requirements for speech therapy providers under Florida statute and rule are the equivalent of the requirements under 42 C.F.R. § 440.110(c)(2). *See* Op. Att’y Gen. Fla. 2005-035, 2005 Fla. AG LEXIS 39, at *7-10 (June 1, 2005). That opinion, however, specifically did not address or evaluate the functional equivalency of Florida’s and ASHA’s educational requirements. *See id.* at *8-9 (“[t]o the extent that the [Florida] educational and work requirements . . . meet the requirements of either the ASHA standards or the alternative provisions of 42 C.F.R. [§] 440.110(c)(2), [the Florida requirements] would be comparable to the federal standards”).

Moreover, the distinction between Ohio licensees that have attended CAA-accredited programs and those that have attended non-CAA-accredited programs appears to be a moot point. The Board informs us that there is only one graduate program in speech-language pathology within the United States that is not currently accredited by ASHA. Further, ASHA’S Council on Academic Accreditation has been a recognized national accrediting agency since the 1960s. *See* http://www.asha.org/academic/accreditation/CAA__overview.htm (last visited Oct. 19, 2011). While no information is currently available to us regarding the number of speech-language pathologists licensed in Ohio who obtained their graduate degrees through non-CAA-accredited programs, we suspect the number is either zero or very close to zero.

qualify for ASHA certification if the conditional licensee completes her graduate course work and student clinical experience through a CAA-accredited program.

Conclusions

In sum, it is my opinion, and you are hereby advised as follows:

1. For purposes of 42 C.F.R. § 440.110(c)(2)(ii), a speech-language pathologist licensed in Ohio pursuant to R.C. 4753.07 has satisfied requirements equivalent to the 2005 Standards for the Certificate of Clinical Competence in Speech-Language Pathology issued by the American Speech-Language-Hearing Association (ASHA) if the licensee completes her graduate course work and the student clinical experience through a degree program accredited by ASHA's Council on Academic Accreditation in Audiology and Speech-Language Pathology.
2. For purposes of 42 C.F.R. § 440.110(c)(2)(iii), a speech-language pathologist conditionally licensed in Ohio pursuant to R.C. 4753.07 and R.C. 4753.071 has satisfied requirements equivalent to those of an individual who has completed the academic program necessary for the Certificate of Clinical Competence in Speech-Language Pathology issued by the American Speech-Language-Hearing Association (ASHA) and is acquiring the supervised work experience to qualify for ASHA certification if the conditional licensee completes her graduate course work and student clinical experience through a degree program accredited by ASHA's Council on Academic Accreditation in Audiology and Speech-Language Pathology.