

8114 *Literary*



HENRY McMASTER
ATTORNEY GENERAL

April 19, 2006

Robert Kerr, Director
South Carolina Department of
Health and Human Services
P. O. Box 8206
Columbia, SC 29202-8206

Dear Mr. Kerr:

We issue this opinion in response to a letter submitted by Deirdra Singleton, Deputy Director and General Counsel of the South Carolina Department of Health and Human Services. Ms. Singleton requested we review the South Carolina licensure statutes for speech-language pathologist and audiologist and opine on its compliance with federal regulations allowing state Medicaid programs to receive federal appropriations for providing medical and rehabilitative services.

Based on our review of the State licensure statutes and the federal regulations stating the qualifications for speech-language pathologists and audiologist, we believe an individual licensed as a speech-language pathologist under the South Carolina licensure statutes also complies with the qualifications of a speech pathologist under the federal regulations. However, an individual licensed as an audiologist in South Carolina may or may not satisfy the qualifications for audiologist under the federal regulations depending upon which provision in the State licensure statute the individual is licensed under.

Law/Analysis

The Medicaid Act allows states to receive federal appropriations for rendering medical and rehabilitative services to patients meeting certain criteria. 42 U.S.C.A. § 1396, *et seq.* The Secretary of the United States Department of Health and Human Services (HHS) promulgated regulations under the Medicaid Act that set forth criteria for states wishing to receive these appropriations. Section 440.110 of Title 42 of the federal regulations describes services a patient may receive related to speech, hearing, and language disorders. This regulation specifies these types of services are to be provided by a speech pathologist or audiologist. 42 C.F.R. § 440.110(c)(1). In addition, this regulation identifies who is qualified to render services as speech pathologist and an audiologist for purposes of rendering those services. 42 C.F.R. § 440.110(c)(2) & (3). Ms. Singleton asked us to determine whether an individual licensed under the South Carolina licensure

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statute presumptively meets the qualifications of a speech pathologist or audiologist under the federal regulations.

The South Carolina Code combines licensure of speech-language pathologists and audiologist into one set of requirements. S.C. Code Ann. § 40-67-220 (2001). Section 40-67-220(B) provides:

(B) To be licensed by the board as a speech-language pathologist or audiologist an individual must:

(1)(a) have earned a post-graduate degree in speech language pathology or audiology from a school or program determined by the board to be equivalent to those accredited by the Council on Professional Standards of the American Speech-Language Hearing Association (ASHA);

(b) passed an exam approved by the board; and

(c) completed supervised professional employment which is a minimum of thirty hours a week of professional employment in speech-language pathology or audiology for at least nine months whether or not for wages or other compensation under the supervision of a speech-language pathologist or audiologist licensed under this chapter; or

(2) meet ASHA's Standards for Certificate of Clinical Competence, or its equivalent as approved by the board, in speech-language pathology or audiology in effect at the time of application; or

(3) have a current ASHA Certificate of Clinical Competence or its equivalent as approved by the board.

As indicated above, section 40-67-220 provides three separate methods by which both a speech pathologist and an audiologist may become licensed by the South Carolina State Board of Examiners in Speech-Language Pathology and Audiology. Section 440.110(c) of the federal regulations, however, provides separate qualifications for speech pathologist and audiologists. In addition, section 440.110(c) provides for various ways in which each profession may qualify as speech pathologist or audiologist. Thus, we separately address all methods by which a speech pathologist and audiologist may qualify under the federal regulations by meeting the South Carolina licensure requirements.

Speech Pathologists

Taking the three methods of licensure for speech-language pathologists under section 40-67-220 above in reverse order, we begin by concluding if a speech-language pathologist is licensed under section 40-67-220(B)(3), he or she meets the qualifications under the federal regulations. Section 440.110(c)(2) states a "speech pathologist" is an individual that meets one of three conditions. The first method by which an individual is considered a speech pathologist is by obtaining "a certificate of clinical competence from the American Speech and Hearing Association [(ASHA)]." 42 C.F.R. § 440.110(c)(2)(I). Section 40-67-220(B)(3) mirrors this requirement. Therefore, if a speech pathologist is licensed under section 40-67-220(B)(3), he or she is a speech pathologist for purposes of section 440.110(c)(2).

Next, we examine whether a speech-language pathologist licensed under section 40-67-220(B)(2) meets the federal qualifications. Section 440.110(c)(2)(iii) of the federal regulations also considers an individual to be a speech pathologist if he or she completes "the equivalent educational requirements and work experience necessary for [an ASHA] certificate." 42 C.F.R. § 440.110(c)(2)(iii). Section 40-67-220(B)(2) is consistent with this condition. Thus, if an individual is licensed in South Carolina under section 40-67-220(B)(2), he or she meets the federal regulation requirements.

Finally, we consider whether an individual licensed under section 40-67-220(B)(1) meets the qualifications of a speech pathologist under the federal regulations. Section 440.110(c)(2)(iii) provides the final method by which an individual is qualified as a speech pathologist. This section states an individual is a speech pathologist if he or she "[h]as completed the academic program and is acquiring supervised work experience to qualify for [an ASHA] certificate." 42 C.F.R. § 440.110(c)(2)(iii). We must examine ASHA's academic and work experience requirements for certification to determine whether a provision in the South Carolina licensure statutes meets these requirements. Throughout this opinion, when expressing the requirements espoused by ASHA, we will refer to those posted on its web site. See www.asha.org.

Based on our review of the academic and work experience required by ASHA, we believe section 40-67-220(B)(1) of the South Carolina licensure statute more than meets these requirements. ASHA mandates speech pathologist must earn a master's or doctoral degree and complete a specified listing of courses. Id. Section 40-67-220(B)(1)(a) conforms to this requirement by requiring a master's or doctoral degree from a school or program accredited by the Council on Professional Standards of the ASHA. Section 40-37-220(B)(1)(c) requires supervised professional employment of a minimum of thirty hours per week for at least nine months. Presuming four weeks in a month, by our calculation, the South Carolina licensure standards require 1,080 hours. ASHA requires 400¹ hours of supervised clinical experience in the practice of speech-language pathology and 36-week

¹According to ASHA's web site, this requirement is imposed on applicants seeking certification in speech-language pathology effective January 1, 2006. Prior to the establishment of this requirement, the standards for certification required a 375-hour practicum.

speech pathology fellowship. Id. However, the federal regulations do not require an individual satisfy the ASHA work experience requirement prior to becoming qualified as a speech pathologist, but simply mandate the individual be in the process of acquiring such experience. Thus, if an individual satisfies the State licensure requirements under section 40-37-220(B)(1), he or she satisfies the academic program requirement and most likely would be considered as in the process of obtaining the work requirements mandated by ASHA, thereby qualifying that individual as a speech pathologist under section 440.110(c)(2)(iii) of the federal regulations. Accordingly, the three methods by which a speech-language pathologist may be licensed in the State of South Carolina are consistent with the three ways in which a speech pathologist is presumed qualified under the section 440.110(c)(2) of the federal regulations.

Audiologists

Next, we compare the South Carolina licensure requirements to the requirements for an audiologist under section 440.110 of the federal regulations. Initially, section 440.110(c)(3) states to be a qualified audiologist, an individual must have a master's or doctoral degree in audiology. The regulation imposes additional requirements based upon whether the individual is furnishing services in a state that licenses audiologists. Because South Carolina has licensure requirements for audiologist, we analyze the licensure statute under that portion of the regulation. Section 440.110(c)(3)(I) states: "The State in which the individual furnishes audiology services meets or exceeds State licensure requirements in paragraph (c)(3)(ii)(A) or (c)(3)(ii)(B) of this section, and the individual is licensed by the State as an audiologist to furnish audiology services."

Section 440.110(c)(3)(ii)(A) requires the audiologist to "[h]ave a Certificate of Clinical Competence in Audiology granted by the American Speech-Language-Hearing Association." In the alternative, section 440.110(c)(3)(ii)(B) requires the audiologist to

[h]ave successfully completed a minimum of 350 clock-hours of supervised clinical practicum (or is in the process of accumulating that supervised clinical experience under the supervision of a qualified master or doctoral-level audiologist); performed at least 9 months of full-time audiology services under the supervision of a qualified master or doctoral-level audiologist after obtaining a master's or doctoral degree in audiology, or a related field; and successfully completed a national examination in audiology approved by the Secretary.

Again, we review the methods of licensure under section 40-67-220 of the South Carolina Code in reverse order to determine whether each method complies with the federal regulations. Based on our comparison of section 40-67-220(B)(3) with the federal regulations, if an individual is licensed under this section due to having obtained an ASHA Certificate of Clinical Competence, such individual must have a master's or doctoral degree as ASHA requires. Therefore, this individual satisfies the education requirement under section 440.110(c)(3). In addition, section 40-

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67-220(B)(3) mirrors section 440.110(c)(3)(ii)(A). Accordingly, an individual licensed under section 40-67-220(B)(3) meets the federal qualification for an audiologist.

With regard to an individual licensed as an audiologist under 40-67-220(B)(2) of the State licensure statutes, we find this individual likely, but not conclusively, complies with section 440.110(c)(3). Again, because ASHA requires a master's or doctoral degree, we believe the academic requirement under section 440.110(c)(3) are satisfied. However, because an individual licensed under the State statute meets the ASHA standards for a Certificate of Clinical Competence, rather than having obtained a certificate, we must look to section 440.110(c)(3)(ii)(B) to determine whether the individual meets the federal requirements. Section 440.110(c)(3)(ii)(B) requires completion of 350-hours of supervised clinical practicum and nine months supervised work experience. ASHA requires a 375-hour practicum² and 36 weeks (or nine months by our calculation) of work experience. In addition, section 440.110(c)(3)(ii)(B) mandates successful completion of "a national examination in audiology approved by the Secretary." ASHA requires each applicant to pass an national examination administered by the Educational Testing Services (ETS). Through our research, we were unable to uncover a list of national audiology examinations approved by the Secretary of HHS. Moreover, in our conversations with your office, your staff did not uncover any documentation from HHS indicating approved examinations. Although we are unable to definitively state whether the exam administered by ETS is an exam approved by the Secretary of HHS, presuming such is the case, an individual licensed under section 40-67-220(B)(2) of the South Carolina Code would meet the qualifications of an audiologist under section 440.110(c)(3) of the federal regulations.

Finally, we examine whether an individual licensed under section 40-67-220(B)(1) of the South Carolina Code qualifies as an audiologist under the federal regulations. Section 40-67-220(B)(1)(a) requires a candidate for licensure to hold a post-graduate degree in audiology. Thus, we presume the academic requirement under section 440.110(c)(3) is met in satisfying this provision. However, with regard to meeting the minimum state requirements under the federal regulations, an individual licensed under this section of the State licensure statute qualifies as an audiologist, if at all, under section 440.110(c)(3)(ii)(B). Section 40-67-220(B)(1)(b) requires a candidate for licensure to pass an examination approved by the South Carolina State Board of Examiners in Speech-Language Pathology and Audiology. Your office informed us that currently, the examination approved by the Board of Examiners is the national examination administered by ETS, the same exam required by ASHA. Thus, again we are unsure whether this exam is approved by the Secretary of HHS, as required by section 440.110(c)(3)(ii)(B). As for the work experience requirement under section 440.110(c)(3)(ii)(B), section 40-67-220(B)(1)(c) requires at least nine months of experience under the supervision of licensed audiologist, thus matching the federal requirement. However, the State licensure statute does not provide for the 350-hours of practicum required under 440.110(c)(3)(ii)(B). By suggestion of your office, we looked to the curriculum requirement of an

²According to ASHA's web site, beginning January 1, 2008, or prior to that dated if the candidate chooses, ASHA certification standards will require applicants for certification in audiology to satisfy a 400-hour practicum requirement, rather than 375 hours.

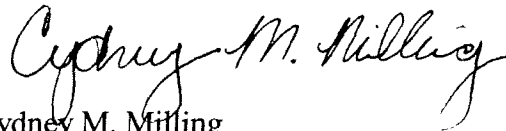
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ASHA accredited post-graduate degree program as referenced in section 40-67-220(B)(1)(a). Based on our review of ASHA's Council on Academic Accreditation in Audiology and Speech-Language Pathology's Accreditation Manual, we found the curriculum requirement for a master's or doctoral degree in audiology for an ASHA accredited program requires a 250-hour practicum. Thus, even though section 40-67-220(B)(1)(a) envisions a practicum requirement, it is 100 hours short of the practicum required by section 440.110(c)(3)(ii)(B). Thus, a individual licensed in audiology under section 40-67-220(B)(1) does not presumptively meet the federal qualifications for audiologist under section 440.110(c)(3).

Conclusion

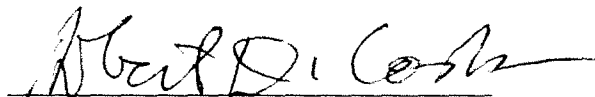
In comparing the requirements for licensure of a speech pathologist under section 40-67-220 of the South Carolina Code with the qualifications of a speech-language pathologist under section 440.100(c)(2) of the federal Medicaid regulations, we believe an individual satisfying the State licensure requirements for speech-language pathology also meets the qualifications for speech pathologists under the federal regulations. In addition, we find an audiologist licensed under section 40-67-220(B)(3) of the South Carolina Code meets the qualifications for audiologist under the federal Medicaid regulations. Furthermore, assuming the Secretary of HHS approved the national exam required by ASHA, an individual licensed under section 40-67-220(B)(2) of the South Carolina Code also qualifies as an audiologist under section 440.110(c)(3) of the federal regulations. However, if an individual is licensed under section 40-67-220(B)(1) of the South Carolina Code, he or she may or may not satisfy the qualifications for an audiologist under section 440.110(c)(3) depending on whether the individual completed a practicum of not less than 350 hours and whether the Secretary of HHS accepts the national examination approved by the South Carolina State Board of Examiners in Speech-Language Pathology and Audiology.

Very truly yours,



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REVIEWED AND APPROVED BY:



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