

1981 WL 157894 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 4, 1981

***1 RE: Medical Reimbursement for Oral Surgeons for 'Physicians' Services'**

Mr. Virgil L. Conrad
Commissioner
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202

Dear Mr. Conrad:

In your letter of July 7, 1981, you requested the opinion of this office concerning whether or not oral surgeons¹ are eligible for reimbursement under the medicaid program for performing procedures that are equivalent to those provided by physicians and defined as 'physicians' services'. Our research discloses that they are not.

The medical program was established pursuant to Title XIX of the Social Security Act, [42 U.S.C. § 1396 et seq.](#), which provides a comprehensive scheme for federal financial assistance to enable states to furnish medical services to persons deemed eligible. 81 C.J.S. Social Security § 132. In order for a state's medical assistance program to qualify for federal assistance the plan must comport with federal requirements in [42 U.S.C. § 1396a](#).

Pursuant to requirements of [42 U.S.C. § 1396a\(a\)\(13\)\(B\)](#) and [42 U.S.C. § 1396d\(a\)\(5\)](#), a state's plan must include as part of its medicaid program reimbursement for ' . . . physicians' services furnished by a physician (as defined in section 8161(r)(1) [[42 USCS § 1395\(x\)\(r\)\(1\)](#)]), whether furnished in the office, the patient's home or a hospital, or a skilled nursing facility, or elsewhere.' [42 U.S.C. § 1396d\(a\)\(5\)](#); see also, [Rowe v. Norton, 522 F.2d 928 \(1975\)](#). The term 'physician' is defined therein by reference to [42 U.S.C. § 1395\(x\)\(r\)\(1\)](#) as ' . . . a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state in which he performs such functions or actions' [Emphasis added].

Further, the Secretary of Health and Human Services is authorized to promulgate regulations to assist in administration of the medicaid program. [42 U.S.C. § 1302](#). At [42 C.F.R. § 440.50](#) is the following:

'Physicians' services,' whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services provided—

- (a) Within the scope of practice of medicine or osteopathy as defined by State law; and
- (b) By or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.

Thus, it becomes clear that reimbursement for 'physicians' services' as that phrase is used in the medicaid act and regulations by its very definition includes only those services rendered by licensed doctors of medicine or osteopathy or performed under their personal supervision.²

In addition, the definition of a physician adopted by the Department of Social Services is substantially similar to that used in the federal statutes [[42 U.S.C. § 1395\(x\)\(r\)\(1\)](#)] and the federal regulations [[42 C.F.R. 440.50](#)] and leaves no room for the

inclusion of oral surgeons therein. R114-615.8a, Rules and Regulations of the South Carolina Department of Social Services, reads as follows:

*2 [t]he term physician means doctors of medicine and of osteopathy, licensed to practice by (or in) the State of South Carolina.

In conclusion, the term physician as used in both the federal statutes and regulations and the state regulations does not include oral surgeons and, thus, they may not be reimbursed for the performance of 'physicians' services' since these services by definition must be performed by a physician as defined therein.

Very truly yours,

Edwin E. Evans
Assistant Attorney General

Footnotes

- 1 Oral surgeons are licensed dentists in this state. [§ 40-15-10 et seq.](#), Code of Laws of South Carolina, 1976, as amended. They are not licensed to practice medicine or osteopathy.
- 2 In contrast, Congress and the Secretary have provided for reimbursement under the program for 'physicians' services' rendered by a licensed optometrist within the lawful scope of his practice. [42 U.S.C. § 1396d\(e\)](#); 42 C.F.R. § 44130.

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