



ROLAND W. BURRIS  
ATTORNEY GENERAL  
STATE OF ILLINOIS

December 22, 1993

FILE NO. 93-022

PUBLIC HEALTH:  
Medicaid Reimbursement of  
Nurse Practitioners

Honorable David D. Phelps  
Chairman, House Health Care and  
Human Services Committee  
900 Dewey Street  
Post Office Box 248  
Eldorado, Illinois 62930

Dear Representative Phelps:

I have your letter wherein you inquire whether, under Federal law, the State Medicaid plan must provide for reimbursement of certified pediatric nurse practitioners (sometimes referred to hereinafter as CPNPs) and certified family nurse practitioners (CFNPs) who are practicing within the parameters of the Illinois Nursing Act (Ill. Rev. Stat. 1991, ch. 111, par. 3501 et seq.; 225 ILCS 65/1 et seq. (West 1992)). For the reasons hereinafter stated, it is my opinion that the pertinent Federal statutes and regulations do require that the State provide for direct Medicaid reimbursement to CPNP's and CFPF's who practice in Illinois and who are licensed under the Illinois Nursing Act.

Honorable David D. Phelps - 2.

Initially, I note that I have solicited and received comments relating to this issue from several interested State agencies and professional organizations. Most of those comments have addressed the extent to which nurse practitioners are authorized to practice independently of licensed physicians, an issue which is not directly related to Medicaid reimbursement, and which it is not necessary to address to resolve the question you have raised. Consequently, the scope of this opinion will be limited to your question.

As amended by section 6405 of the Omnibus Budget Reconciliation Act of 1989 (Pub. Law 101-239), sections 1902(a)(10)(A) and 1905(a)(21) of the Social Security Act (42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a)(21)) provide, in pertinent part:

**"§ 1396a. State plans for medical assistance**

**(a) Contents**

A State plan for medical assistance must --

\* \* \*

**(10) provide--**

**(A)** for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17) and (21) of section 1396d(a) of this title, to--[individuals who meet qualifications]

\* \* \*

"

"§1396d.

**(a) Medical assistance**

The term 'medical assistance' means payment of part or all of the cost of the following care and services \* \* \*.

\* \* \*

(21) 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; and

\* \* \*

"

These amendments became effective July 1, 1990, and the Health Care Financing Administration, Department of Health and Human Services, implemented them by publishing instructions in the State Medicaid Manual, Part 4, Services, in August, 1990 (Transmittal Number 48). Section 4415 of the State Medicaid Manual provides:

"4415. NURSE PRACTITIONER SERVICES

A. Background.--Section 6405 of OBRA of 1989 (P. L. 101-239) provides for the availability and accessibility of services furnished by a certified pediatric nurse practitioner (CPNP) or a certified family nurse practitioner (CFNP) to recipients eligible for or receiving Medicaid. Section 6405

amended §1905(a) of the Act. This provision 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. You are also required to offer direct payment to CPNPs and CFNPs as one of your payment options.

B. CPNP and CFNP Certification Requirements.--A CPNP is a registered professional nurse who must:

- Be currently licensed to practice as a registered professional nurse in the State in which the services are furnished;

- Satisfy the applicable State requirements (if any) for qualification of pediatric nurse practitioners, or nurse practitioners generally in the State in which the services are furnished; and

- Be currently certified as a pediatric nurse practitioner by the American Nurses' Association or by the National Board of Pediatric Nurse Practitioners and Associates.

A CFNP is a registered professional nurse who must:

- Be currently licensed to practice as a registered professional nurse in the State in which the services are furnished;

- Satisfy the applicable State requirements (if any) for qualification of family nurse practitioners, or nurse practitioners generally in the State in which the services are furnished; and

- Be currently certified as a family nurse practitioner by the American Nurses' Association.

C. Coverage of Services for Categori-  
cally Needy.--Furnish CPNP or CFNP services  
to the categorically needy, to the extent  
CPNPs or CFNPs are legally authorized to  
practice under State law or regulations. You  
may also choose to provide for these services  
for the medically needy in your State Medi-  
caid plan."

The Health Care Financing Administration has also  
published proposed regulations related to these amendments (56  
Fed. Reg. 66, 302 (1991) (to be codified at 42 C.F.R., pt. 440,  
pt. 441) (proposed Dec. 23, 1991), but has not scheduled final  
action thereon (58 Fed. Reg. 56,383 (1993))).

Section 6405 of Public Law 101-239 was added by the  
conference agreement on the legislation. (H. Conf. Rep. No. 386,  
101st Cong., 1st Sess. 449 (1989), reprinted in 1989 U.S.C.C.A.N.  
3018, 3052.) The legislative history concerning this bill  
provides no further explanatory or clarifying information regard-  
ing Medicaid coverage of nurse practitioner services.

The plain language of the Federal statute and the State  
Medicaid Manual require the State Medicaid plan to provide for  
payment for the services of licensed registered nurses in Illi-  
nois who are certified as either pediatric or family nurses by  
the American Nurses' Association or the National Board of Pediat-  
ric Nurse Practitioners and Associates, to the extent that such  
nurses are authorized to practice those specialties in this  
State. The only issue to be considered, therefore, is whether  
Illinois law authorizes CPNPs and CFNPs to provide services.

Honorable David D. Phelps - 6.

The Illinois Nursing Act provides for the licensure of registered nurses, but does not specifically provide for certification of nursing specialties. Subsection 3(1) of the Act (Ill. Rev. Stat. 1991, ch. 111, par. 3503(1); 225 ILCS 65/3(1) (West 1992)) provides:

" \* \* \*

(1) 'Professional nursing' includes all its specialties, and means the performance for compensation of any nursing act, (1) in the nursing evaluation, observation, care, and counsel of the ill, injured, or infirmed; (2) in the maintenance of health or prevention of illness of others; (3) the administration of medications and treatments as prescribed by a licensed physician, dentist, or podiatrist; or (4) any act in the supervision or teaching of nursing, which requires substantial, specialized judgment and skill the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science acquired by means of a completed course in an approved school of professional nursing. The foregoing shall not be deemed to include those acts of medical diagnosis or prescription of therapeutic or corrective measures which are properly performed only by physicians licensed in the State of Illinois; and

\* \* \* "

(Emphasis added.)

The plain language of the definition recognizes the existence of nursing specialties, and includes them within the scope of the Act.

The phrase "includes all its specialties" was added to the definition by Public Act 83-1414, effective Sept. 13, 1984.

Honorable David D. Phelps - 7.

The Senate sponsor of House Bill 2438, which became Public Act 83-1414, explained the purpose of the amendment as follows:

" \* \* \*

\* \* \* House Bill 2438 amends the definition of professional nursing in the Illinois Nursing Act to clarify the practice of nurses who function in expanded roles. It is designed to provide a statutory basis for nursing specialties. It can be compared to the Medical Practice Act which refers to medicine and all its branches. As you're aware, physicians in this State are not licensed in their specialties. Physicians in this State are not licensed but...as surgeons or pediatrics [sic] but rather by the Department of Registration and Education, they license them as doctors and they receive additional training and schooling and become certified by a national accrediting body. This bill would hold true for registered nurses under this Act. House Bill 2438...which has received the unanimous support of all interested professional health groups in Illinois and has the support of the State agencies involved is necessary because of the enormous development of professional nursing in recent decades, since this Legislature adopted the current definition of professional nursing. Essentially by adding the words, 'in all its specialties,' the bill recognizes the development and existence of invaluable, professional nursing specialties among the practitioners of professional nursing, such as, psychiatric-surgical, certified midwifery nursing, emergency family practitioners, public health and other professional nursing specialties. The bill simply aligns the statutory definition with professional nursing practice as it exists today. \* \* \*

\* \* \*

"

(Remarks of Sen. Zito, June 21, 1984, Senate Debate on House Bill No. 2438, at 51-52.)

The legislative history thus supports the plain language of the statute in recognizing that those who practice nursing specialties practice within the scope of, and under authority of, the Act.

The Department of Professional Regulation's Committee on Nursing is empowered to "recommend the adoption and, from time to time, the revision of such rules and regulations which may be necessary to carry out the provisions of" the Illinois Nursing Act. (Ill. Rev. Stat. 1991, ch. 111, par. 3507(b)(1); 225 ILCS 65/7(b)(1) (West 1992).) Further, it is authorized to "conduct hearings and disciplinary conferences upon charges calling for discipline of a licensee \* \* \*". (Ill. Rev. Stat. 1991, ch. 111, par. 3507(b)(2); 225 ILCS 65/7(b)(2) (West 1992).) In order to carry out these duties, the committee must determine whether a particular practice falls within the scope of nursing practice as defined by the Illinois Nursing Act.

At its May 3, 1991, meeting, the Committee on Nursing responded to the concern of registered nurses who were also certified by professional certifying bodies and approved the following statement:

"Certified Registered Nurse Specialty Practice falls within the definition of 'professional nursing' as outlined in the Illinois Nursing Act of 1987 and in accordance with the legislative intent." (Minutes of the Committee on Nursing, May 3, 1991, as approved by the Director, November 20, 1991.)



Honorable David D. Phelps - 9.

While courts are not bound by an administrative agency's interpretation of a statute, substantial weight and deference is to be given to an interpretation of a statute by an agency which is charged with the administration and enforcement of the statute. Reed v. Kusper (1992), 154 Ill. 2d 77, 86.

Subsequently, on May 7, 1992, Director Nikki Zollar of the Department of Professional Regulation, in a letter to Director Phil Bradley of the Department of Public Aid, observed, correctly, that there is no statutory delineation with respect to nurse specialists, and that:

"[O]ur department does not have separate licensure categories for nurse specialists (just as there is only a single licensure category for physicians whether or not physicians may be board certified in specialty areas). The qualifications for claiming 'specialty status' are generally set by private professional organizations."

The Director's comments do not conflict with the 1991 statement that nurse specialty practice falls within the scope of the Illinois Nursing Act. The balance of Director Zollar's May 7 letter addresses the extent to which such nurse specialists may practice independently of physicians, an issue which need not be addressed here in view of the language of the Federal statute.

For the foregoing reasons, it is my opinion that Illinois law recognizes pediatric nurse practitioners and family nurse practitioners, and authorizes them to render services within their specialties and the parameters of the Illinois

Honorable David D. Phelps - 10.

Nursing Act. Therefore, it is my opinion that the State is required to offer direct Medicaid reimbursement to registered nurses who are certified as pediatric nurse practitioners or family nurse practitioners by the professional organizations specified in section 4415(B) of the State Medicaid Manual.

Respectfully yours,

A handwritten signature in black ink, reading "Roland W. Burris". The signature is written in a cursive style with a large, prominent initial "R".

ROLAND W. BURRIS  
ATTORNEY GENERAL