

NASP Advocacy Roadmap: School-Based Medicaid Services

State Attorneys General's Opinions Related to School Psychology

Part 440 of the Code of Federal Regulations (CFR), which regulates Medicaid services, define specific provider qualifications for Medicaid providers. The definition for speech pathologists (42 CFR § 440.110(c)(2)) has gained attention because of the flexibility in provider qualifications. Contained within this definition is a provision for certification of "clinical competence" from the American Speech and Hearing Association (ASHA). However, the definition provides for a State Attorney General to rule that the State's provider qualifications (established by its Department of Education) are equivalent to those required to bill Medicaid. This statement of equivalency has been used to justify and enable billing of school-based speech and language services. While similar language related to school psychological services does not exist in the CFR, some states have requested opinions from the State Attorney General regarding various aspects of the role and function of the school psychologist.

Official opinions offered by the State Attorneys General were reviewed for all 50 states. Relevant opinions related to school psychologists are summarized below. These opinions may be helpful in formulating a state advocacy plan (see Oklahoma AG opinion below).

Alabama: <http://www.ago.alabama.gov/opinions//2000-214.DOC>

August 17, 2000

School psychometrists and school psychologists licensed only by the State Board of Education cannot practice outside of the schools without being licensed by the Board of Examiners in Psychology.

The Board of Examiners in Psychology does not have the power to ascertain the qualifications of a school psychometrist or school psychologist licensed by the State Board of Education practicing within the schools.

The Board of Examiners in Psychology has the power to ascertain the qualifications of any person practicing psychology or psychometry elsewhere in the public sector.

Kansas: <http://ksag.washburnlaw.edu/opinions/1994/1994-046.htm>

April 8, 1994

A person not licensed as a psychologist does not violate the prohibition against representing oneself as a psychologist merely by virtue of obtaining a state civil service position within a class designated by the Kansas division of personnel services as a "psychology trainee," "psychologist I," "psychologist II," "psychologist III," or "psychologist IV." Persons employed in specified state agencies and institutions are exempt from the prohibition.

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Mississippi: <http://government.westlaw.com/msag/> (search for Opinion No. 94-0230 May 4, 1994 Senator Amy Tuck 1994 WL 240872 (Miss.A.G.)
May 4, 1994

The certificate issued by the Mississippi State Department of Education is strictly for use in a public school K-12 setting. Such certification authorizes the holder to practice in the public school setting and does not authorize the certificate holder to practice independently outside the public school setting. Likewise, certification by the National Association for School Psychology does not provide authority to practice independently within the context of the laws of the State of Mississippi.

<http://government.westlaw.com/msag/> (search for Opinion No. 2001-0380 July 6, 2001 Timothy M. Carter 2001 WL 880480 (Miss.A.G.)

School districts determine who will conduct evaluation on students with “disruptive behavior.”

Ohio: <http://www.ag.state.oh.us/legal/opinions/2003/2003-001.pdf>.
http://www.ospaonline.org/pdf/AG_opinion_012103.pdf

School psychologist is exempt from licensure requirement if “rendering school psychological services or acting as a school psychologist” in an exempt setting, whether as an employee, consultant, or independent contractor. It is the nature of the work that defines exemption, not the nature of the employment relationship. – January 9, 2003

Oklahoma:
<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=62119>

Scope of practice of a school psychologist is substantially equivalent to that of a licensed psychologist. Allows for Medicaid reimbursement.

Oregon: <http://www.doj.state.or.us/agoffice/agopinions/op2006-1.pdf>
May 17, 2006

Mental health professionals employed by or contracted by “exempt agencies” are not subject to licensure law. Cannot be an “independent contractor.”

Washington - <http://www.atg.wa.gov/opinion.aspx?section=topic&id=15640>
April 16, 1974

An intermediate school district may not contract with local school districts within its boundaries to establish and operate a special education program

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for handicapped children on behalf of those local districts, although it may provide support services to the district in connection with such programs. School psychologists can contract with the ISD to provide services to districts.