

MICHAEL C. BURGESS, M.D.
26TH DISTRICT, TEXAS



WASHINGTON, DC OFFICE:
2241 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7772

www.house.gov/burgess

ENERGY AND COMMERCE

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DISTRICT OFFICES:

1660 SOUTH STEMMONS FREEWAY
SUITE 230
LEWISVILLE, TX 75067
(972) 434-9700

1100 CIRCLE DRIVE
SUITE 200
FORT WORTH, TX 76119
(817) 531-8454

Secretary Kathleen Sebelius
Room 120F
Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius,

I write to seek more information regarding actions by a Medicare Administrative Carrier that relate to the reimbursement of Medicare services and the state regulation of the practice of optometry. It has been brought to my attention that Wisconsin Physician Services (WPS), a Medicare contractor servicing Jurisdiction 5, has instituted a policy (optometry services LCD for Jurisdiction 5, L30157) that could be viewed as impacting what constitutes the appropriate scope of practice of an optometrist. I am interested in learning more about this case and the Centers for Medicare and Medicaid Services' (CMS) opinion of how it relates to applicable state law.

Medicare beneficiaries have the "basic freedom of choice" to obtain health services from any qualified health care provider (Section 1802(a) of the Social Security Act). Medicare beneficiaries also have the right to have such services judged by objective clinical standards to determine if they are "reasonable and necessary" for coverage purposes (Section 1862(a)(1)(A) of the Social Security Act). The role of the Medicare Administrative Contractor is to responsibly make those types of clinical coverage assessments after consultation with the respective health care provider groups (Section 1874A of the Social Security Act). However, I think you would agree that under statute it is not the role of the Medicare Administrative Contractor to determine what is or not within the state authorized scope of professional practice under the guise of establishing what services are clinically reasonable and necessary. That legal function is squarely and exclusively the responsibility of the states, usually delegated to the purview of the state licensing board. If a state board determines that a particular service is not within the legal scope of professional practice of a particular provider group, then the Medicare Administrative Contractor has every right and ability to exclude those services from coverage. As you are aware, Medicare statute covers services provided by an optometrist (Section 1861(s) of the Social Security Act), but only "...with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them..." (Section 1861(r)(4)).

It has been asserted that WPS has implemented a local coverage determination (LCD) for the profession of optometry (L30157) which omits a number of Medicare-covered services within the current scope of practice of licensed optometrists. I write to seek information on this

matter from CMS and the Agency's interpretation of Title XVIII in this matter and to ensure statute is being adhered to in Jurisdiction 5.

There is no doubt that Medicare carriers have an important role to play in the Medicare program; however I am always concerned when it is alleged that Medicare Administrative Contractors have exercised authority outside their jurisdiction, expertise, statutorily defined requirements or common medical practice. Medicare beneficiaries are impacted when Medicare Administrative Contractors issue LCDs in these instances and thus my interest is raised when such issues are brought to my attention and I feel it is only reasonable to obtain as much information as possible.

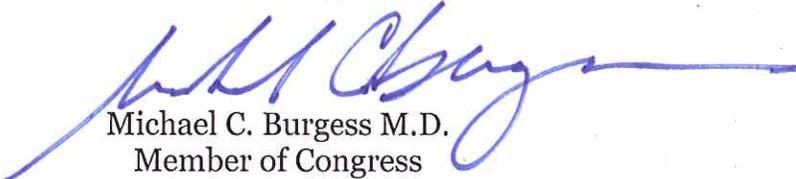
I hope that the information you can provide me will address any concerns that have been raised that Medicare beneficiaries may be denied access to medically necessary, covered physician services when they choose to obtain those services from optometrists in this particular jurisdiction and that CMS has reviewed this LCD to ensure compliance with federal statute and the proper recognition of state scope of practice laws.

State boards of medicine, and in regard to the issue at hand, state boards of optometry, established by state legislatures, are official agencies of the state entrusted to utilize their knowledge of state law and health regulation as well as medical practice and patient safety to ensure the protection of the public and state law. The authority of state boards is undeniably not a subject of CMS jurisdiction. As it clearly states in statute, Medicare covers optometric services within each state as defined by the appropriate legal authority. State legislatures; ultimately retain the right to oversee the policies, actions, and composition of state licensing boards.

I ask that you provide me with more information on the optometry services LCD for Jurisdiction 5, (L30157), the agency's review of this LCD and further detail on how it fulfills the applicable statutory requirements as well as respects the role of state medical boards. It is my hope that should any deficiencies be found by the agency, we can work to ensure that other Medicare carriers are aware of them so as to not adopt such policies and that any impact on proper beneficiary access in this particular jurisdiction is addressed. Conversely, should CMS find that this LCD does not violate statute, define state law with regard to scope of practice, or risk beneficiary access; I hope to work with you to allay any such concerns with interested stakeholders.

I look forward to your prompt reply. Should you have any questions regarding this letter do not hesitate to contact myself or my Deputy Chief of Staff, James "J.P." Paluskiewicz at (202) [225-7772](tel:202-777-225) or at James.Paluskiewicz@mail.house.gov.

Sincerely,



Michael C. Burgess M.D.
Member of Congress