



Texas Department of Health

FILE # ML-38727-96
I.D. # 38727

David R. Smith, M.D.
Commissioner

1100 West 49th Street
Austin, Texas 78756-3199
(512) 458-7111

MEMBERS OF THE BOARD

Walter D. Wilkerson, Jr., M.D., Chairman
Mary E. Ceverha, M.P.A., Vice-Chair
Ramiro R. Casso, M.D.
David L. Collins, P.E.
Ruth F. Stewart, M.S., R.N.C.
Betsy Triplett-Hurt

Carol S. Daniels
Deputy Commissioner for Programs

Roy L. Hogan
Deputy Commissioner for Administration

RECEIVED
APR 02 1996
Opinion Committee

RQ-884

March 26, 1996

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Attn: Opinion Committee

Dear General Morales:

Amendments to rules relating to reimbursement to Medicaid providers for optometrist services have recently been adopted. The rules are found at 25 Texas Administrative Code, §29.105 and state that optometrist services are covered if the services are within the optometrist's scope of practice, as defined by state law, and meet other specified criteria. An issue has arisen as to the scope of practice of therapeutic optometrists under the Texas Optometry Act, Article 4552-1.01, et. seq.

The "practice of optometry" is defined in Article 4552-1.02(1). The definition of the "practice of therapeutic optometry" is defined in subsection (7). Article 4552-1.03 further describes the practice of therapeutic optometrists. In 1991, according to the Executive Director of the Texas Optometry Board, that board approved certain procedures as being within the scope of practice of therapeutic optometrists. It is the understanding of the TDH that the following list (except for laser surgery) is the list of procedures approved by that board in 1991. The Texas Ophthalmologist Association has argued that a number of the procedures approved by the Texas Optometry Board are exclusively within the "practice of medicine" and "surgery" as defined in the Medical Practice Act, Vernon's Texas Civil Statutes, Article 4495(b), §1.03 and may not be performed by a therapeutic optometrist.

The procedures in question (along with the applicable CPT code from the American Medical Association's Physicians' Current Procedural Terminology (1995)) are as follows:

- 65210 Removal of foreign body, external eye; conjunctival embedded (includes concretions), subconjunctival, or scleral nonperforating
- 65220 Removal of foreign body, external; corneal, without slit lamp
- 65222 Removal of foreign body, external eye; corneal, with slit lamp
- 65286 Repair of laceration, application of tissue glue, wounds or cornea and/or sclera
- 65430 Scraping of cornea, diagnostic, for smear and/or culture
- 67938 Removal of embedded foreign body, eyelid
- 68760 Closure of lacrimal punctum; by thermocauterization, ligation, or laser surgery (the Texas Optometry Board has acknowledged that laser surgery is not within the scope of practice for therapeutic optometrists. The Texas Ophthalmologist Association agrees with that finding).
- 68761 Closure of the lacrimal punctum; by plug, each
- 68800 Dilation of lacrimal punctum, with or without irrigation, unilateral or bilateral
- 68820 Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral
- 68840 Probing of lacrimal calculi, with or without irrigation

The issue is whether therapeutic optometrists may perform these procedures. The CPT codes are provided because the Medicaid program uses the codes to identify reimbursable services. The Texas Ophthalmologist Association has indicated that it wishes to file a brief with its arguments as to why these procedures are the practice of medicine. The TDH is also notifying the Texas Optometry Board so that it may file a brief. If you have any questions, please contact Linda Wiegman, an attorney with TDH at (512) 458-7236.

Sincerely,



David R. Smith, M.D.
Commissioner of Health

cc: Lois Ewald
Texas Optometry Board

Sam Stone, Attorney
Brown, McCarroll and Oaks Hartline
(Attorney for Texas Ophthalmologist Association)