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**OPTOMETRY: Board of:
OPHTHALMOLOGISTS:**
Optometric Services
Public Social Agencies
Insurance
Fee Schedules

Acts 349 and 350, P.A. 1965, do not prohibit different fee schedules by insurance carriers and public agencies between ophthalmologists and optometrists where similar services are performed.

No. 4497

March 19, 1968.

Department of Licensing and Regulation
State Board of Examiners in Optometry
Lansing, Michigan

Attention: C. J. Howe, O.D.
Secretary-Treasurer

You advise me:

"It is our understanding that P.A. 349 allows any person covered under group health and accident insurance to have a free choice of either a physician or an optometrist for optometric services; and that P.A. 350 requires agencies administering relief, social security, health insurance or health service to accept the services of optometrists on the same basis as any other person licensed to render a similar service."

You specifically ask my opinion on the following questions:

"1. Do the above amendments prohibit fee discrimination by insurance carriers and public agencies in the payments for refractions or eye examinations performed by physicians and by optometrists?"

"2. Do the above amendments prohibit different fee schedules being established for optometrists and for physicians involving the same or similar eye examinations or refractions?"

"3. If payment of different fees is permissible under either of the amended statutes for the same or similar services, what is the basis for such discretionary determination?"

Act 349, P.A. 1965, amends the insurance code of 1956 (Act 218, P.A. 1956, as amended; C.L.S. 1961 § 500.100 et seq.; M.S.A. 1957 Rev. Vol. § 24.1100, et seq.), by adding Section 2243 which reads:

"(1) Notwithstanding any provision of a policy or contract of group accident, group health or group accident and health insurance, executed subsequently to the effective date of this provision, whenever such policy or contract provides for reimbursement for any optometric service which is within the lawful scope of practice of a duly licensed optometrist, a subscriber to such group accident, group health or group accident and group health insurance policy or contract shall be entitled to reimbursement for such service, whether the said service is performed by a physician or a duly licensed optometrist. Unless such

policy or contract of group accident, or group health or group accident and health insurance shall otherwise provide, there shall be no reimbursement for ophthalmic materials, lenses, spectacles, eye glasses or appurtenances.

“(2) Whenever a subscriber contract shall provide for and offer optometric services, the subscriber shall have freedom of choice to select either a physician or an optometrist to render such services. Unless such subscriber contract shall otherwise provide, there shall be no reimbursement for ophthalmic materials, lenses, spectacles, eye glasses or appurtenances.”

Section 1 of Act 350, P.A. 1965 (M.S.A. 1968 Cum. Supp. § 16.601), provides:

“Any agency of the state or county or municipality, or any commission, clinic, or board administering relief, social security, health insurance or health service under the laws of the state of Michigan shall accept the services of optometrists registered in the state in accordance with law for the purposes of rendering services defined under the optometric law to any person under the jurisdiction of said agency, clinic, commission or board administering such relief, social security, health insurance or health service, on the same basis and on a parity with any other person authorized by law to render similar professional service, when such services are needed, and shall pay for such services in the same way as other professions may be for similar services.”

No response to your questions would be valid without a preliminary determination and appreciation of the difference between an ophthalmologist (referred to in your questions as a “physician”) and an optometrist. In this regard I direct your attention to the following statement from 22 A.L.R. 2d 941 which was quoted in O.A.G. 1955-1956, Volume II, page 654 (Opinion No. 2775), at page 655:

“Distinguishing between ‘optometrists,’ ‘oculists,’ and ‘ophthalmologists,’ the court, in *New Jersey State Board of Optometrists v. S. S. Kresge Co.* (1934) 113 N.J.L. 287, 174 A 353, mod 115 N.J.L. 495, 181 A 152, said: “The term “optometry” is defined thus: “1. Measurement of the range of vision, especially by means of the optometer. 2. As defined (with minor variations) in the statutes of various States of the United States: (a) The employment of subjective and objective mechanical means to determine the accommodative and refractive states of the eye and the scope of its functions in general; (b) The employment of any means, other than the use of drugs, for the measurement of the powers of vision, and adaptation of lenses for the aid thereof.” Webster’s New International Dictionary. *Oculists and ophthalmologists pursue a calling quite distinct from that of optometrists. The first has relation to the practice of medicine and surgery in the treatment of diseases of the eye, and the second to the measurement of the powers of vision, and the adaptation of lenses for the aid thereof. . . .* It is the primary function of the optometrists to employ means to determine the need of lenses for the correction of defects of eyesight, and the increase of the power and range of vision. He forms a judgment as to the need, and then provides the corrective lens. The practice

of optometry, therefore, does not include the mere sale, without more, of spectacles, glasses or lenses designed to aid human vision.'” (Emphasis added)

And in *Mac Q. Williamson, Attorney General of the State of Oklahoma, et al., v. Lee Optical of Oklahoma, Inc., et al.*, 348 U.S. 483, 486 (1955) the court pointed out:

“An ophthalmologist is a duly licensed physician who specializes in the care of eyes. An optometrist examines eyes for refractive error, recognizes (but does not treat) diseases of the eye, and fills prescriptions for eyeglasses. * * *.”

I have been advised by the Director of the Department of Social Services, for example, that it is necessary for the Department, in determining eligibility for Aid to the Blind Assistance and for Rehabilitation Services for the Blind, to obtain evidence of blindness. This evidence is obtained through an examination by a licensed optometrist or by a licensed ophthalmologist. Whenever the individual is an applicant for Rehabilitation Services, the examination is limited to an ophthalmologist since the program of Rehabilitation Services for the Blind is concerned with the treatment of the eye both medically and surgically.

In completing the report of an eye examination, the optometrist is requested to provide information within his area of competence and limited to measuring visual acuity, and he fills out only certain items on the report form; whereas, the ophthalmologist fills out the entire form which deals with the condition of the eye and whether or not medical or surgical treatment can improve the person's vision. The optometrist is paid \$4.00 for his part of the examination and the ophthalmologist is paid \$15.00 for a complete examination. The basis for payment of a different fee lies in the fact that a great deal more information is requested from the ophthalmologist than from the optometrist.

Consequently there can be no direct answer to your questions since they contain an assumption that the services of ophthalmologists and optometrists may be identical when, in actual fact, each of these professionally trained persons are engaged in performing different services. Differences arise not only from procedures employed, which may or may not be identical, but also from differences in knowledge, skill, training, approach and professional responsibility. It is therefore my opinion that, by virtue of the distinctions between the practice of ophthalmology and optometry, different fee schedules for similar services are permissible.

The statutory requirement that these professions be treated on a parity relates to the employment of the services of members of the profession, not to the payment of fees. Thus, public agencies cannot indicate preference by directing a patient to one class of practitioner when another is authorized by law to render a similar professional service and health and accident insurance companies cannot deny reimbursement for services performed by a duly licensed optometrist whenever a policy or contract provides for such reimbursements for any optometric service within the scope of practice of a duly licensed optometrist.

FRANK J. KELLEY,
Attorney General.