



## Doctors of Optometry as Physicians in Medicare—in Law

Broadly, a physician is a person “trained in the art of healing.”<sup>1</sup> Healing is both art and science. Doctors of optometry, like medical doctors, are trained in healing based on conventional, evidence-based, therapeutic measures (such as drugs or surgery) known as allopathic medicine.<sup>2</sup> Physicians, including doctors of optometry, have clinical, doctorate-level training, authority and responsibility to independently make autonomous decisions related to diagnostic and therapeutic health care protocols.

While the definition of a physician is perhaps best considered in terms of what the person is trained to do, state and federal laws may designate a specific meaning to the term “physician.” For Medicare, the term “physician” is used both for coverage and reimbursement purposes.

For 35 years, Medicare has defined a doctor of optometry as a “physician” with respect to all services within the doctor’s scope of practice. This definition in law means that all uses of the term “physician” in Title XVIII of the Social Security Act (SSA), the Medicare statute, include a doctor of optometry unless specifically stated otherwise.

In Section 9336 of the Omnibus Budget Reconciliation Act of 1986, enacted as Public Law 99-509 (Oct. 21, 1986), Congress added optometry to the Medicare definition of “physician” at Section 1861(r) of the Social Security Act.<sup>3</sup> The legislative language read:

### SEC. 9336. VISION CARE.

(a) DEFINING SERVICES AN OPTOMETRIST CAN PROVIDE.—Clause (4) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended to read as follows: “(4) a doctor of optometry, 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, or”. [Pub. Law 99-509.]

The reference to subsection (s) is a reference to Section 1861(s) of the SSA, which defines “Medical And Other Health Services” to include “physician services.”<sup>4</sup> The term “physician services” is defined as “professional services performed by physicians.”<sup>5</sup> For doctors of optometry, “physician services” would include medical and surgical eye care within the scope of practice of the doctor.

In 1999, Congress included a technical amendment to Section 1861(r)(4) described on page 800 of the conference report for H.R. 3194,<sup>6</sup> adding five words. This addition makes clear that doctors of optometry may order therapy services for a Medicare patient as long as the therapy services themselves are within the scope of practice for the doctor. Section 1861(p)(1)<sup>7</sup> has matching language

acknowledging that doctors of optometry are among the types of physicians who may order outpatient therapy services. The 1999 technical amendment read:

(b) TECHNICAL AMENDMENT RELATING TO BEING UNDER THE CARE OF A PHYSICIAN.—

(1) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended—

(A) in subsection (p)(1), by striking “or (3)” and inserting “, (3), or (4)”;

(B) in subsection (r)(4), by inserting “for purposes of subsection (p)(1) and” after “but only”. [House conference report for H.R. 3194 filed Nov. 18, 1999.]

The congressional acts are codified in the U.S. Code,<sup>8</sup> which twice adds another three words “of this section”—after “subsection (p)(1)” and “subsection (s)” —to further clarify the statutory references are to Section 1861 of the SSA, and reads:

The term “physician”, when used in connection with the performance of any function or action, means ... (4) a doctor of optometry, but only for purposes of subsection (p)(1) of this section and with respect to the provision of items or services described in subsection (s) of this section which he is legally authorized to perform as a doctor of optometry by the State in which he performs them ... [42 USC 1395(x)(r).]

The U.S. Code is probably the preferred citation of the language of the law. The Social Security Administration also maintains a compilation of the SSA that mostly matches the U.S. Code except does not include the “of this section” wording after “subsection (s).”<sup>9</sup>

(4) a doctor of optometry, but only for purposes of subsection (p)(1) of this section and 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 [Compilation of the Social Security Act.]

The Centers for Medicare & Medicaid Services (CMS) has issued a regulation<sup>10</sup> that reiterates the physician definition. CMS also defines “physician services” in the Code of Federal Regulations<sup>11</sup> to further explain that physician services are services by physicians that are covered by Medicare.

Physician means a doctor of medicine; doctor of osteopathy; doctor of dental surgery or of dental medicine; doctor of podiatric medicine; or doctor of optometry who is legally authorized to practice medicine, osteopathy, dental surgery, dental medicine, podiatric medicine, or optometry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions. [42 CFR 405.500.]

By regulation in 1999,<sup>12</sup> CMS explained the limits on services by doctors of optometry: “Medicare Part B pays for the services of a doctor of optometry, which he or she is legally authorized to perform in the State in which he or she performs them, if the services are among those described in section 1861(s) of the Act and § 410.10 of this part.”<sup>13</sup> The reference to 42 CFR 410.10 is to the definition of covered medical and health services in Medicare, including physician services.<sup>14</sup>

This is all spelled out for doctors of optometry in more detail in the Internet-only CMS Benefit Policy Manual.<sup>15</sup> This language has been in place since 2003 and carried over from the previous paper-based versions of the manual.

Effective April 1, 1987, a doctor of optometry is considered a physician with respect to all services the optometrist is authorized to perform under State law or regulation. To be covered under Medicare, the services must be medically reasonable and necessary for the diagnosis or treatment of illness or injury, and must meet all applicable coverage requirements. [CMS manual 100-02, Chapter 15, Section 30.4.]

The Internet-only Medicare General Information, Eligibility, and Entitlement Manual<sup>16</sup> describes the limitations on doctors of optometry in Medicare coverage prior to the Omnibus Budget Reconciliation Act of 1986.

#### A. Services Furnished Through March 31, 1987

Prior to April 1, 1987, a doctor of optometry who was legally authorized to practice optometry by the State in which he or she performed such a function was considered a physician under Medicare, but only for the purpose of services related to the condition of aphakia. Aphakia is defined as the absence of the natural crystalline lens of the eye, whether an intraocular lens has been implanted. The services performed by optometrists within this definition were subject to limitations set by the State relating to the scope of practice of optometry.

The following are examples of examination services that were covered when furnished by optometrists if related to the condition of aphakia: case history, external examination, ophthalmoscopy, biomicroscopy, tonometry, visual fields, ocular motility, binocular function, and evaluation for contact lenses, if the optometrist furnishing these services is legally authorized to perform them.

#### B. Services Furnished After March 31, 1987

Effective April 1, 1987, a doctor of optometry is considered a physician with respect to all services the optometrist is authorized to perform under State law or regulation. To be covered under Medicare, the services must be medically reasonable and necessary for the diagnosis or treatment of illness or injury, and must meet all applicable coverage requirements. (See Benefit Policy Manual for information concerning exclusions from coverage that apply to vision care services.) [CMS manual 100-01, Chapter 5, Section 70.]

Chapter 16 of the CMS Internet-only Benefit Policy Manual, Section 90,<sup>17</sup> explains that “eyeglasses, contact lenses, and eye examinations for the purpose of prescribing, fitting, or changing eyeglasses; eye refractions by whatever practitioner and for whatever purpose performed” are excluded from Medicare coverage. These services, often described as vision services rather than medical eye care, are not covered by Original Medicare.

Under Section 1802 of the SSA, Medicare beneficiaries have the statutory right to obtain covered physician services from the physician of their choice.<sup>18</sup> The doctor of optometry must be enrolled as a

physician in Medicare for the physician services to be covered. As of 2020, there were 38,602 doctors of optometry enrolled as physicians in Medicare.<sup>19</sup>

#### Frequently Asked Questions:

Q: What is the federal regulation that defines optometrists as physicians?

A: Optometrists are defined as physicians in Medicare under federal law (Section 1861(r) of the SSA) and under federal regulation (42 CFR 405.500).

Q: Doesn't CMS say optometrists are physicians?

A: Congress says optometrists are physicians in Medicare. [42 USC 1395(x)(r).]

Q: How long have optometrists been defined as physicians?

A: Optometrists have been defined as physicians in Medicare for more than 35 years, since the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509) was enacted on Oct. 21, 1986.

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/physician>

<sup>2</sup> <https://www.merriam-webster.com/dictionary/allopathic%20medicine>

<sup>3</sup> <https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg1874.pdf>

<sup>4</sup> [https://www.ssa.gov/OP\\_Home/ssact/title18/1861.htm](https://www.ssa.gov/OP_Home/ssact/title18/1861.htm)

<sup>5</sup> [https://www.ssa.gov/OP\\_Home/ssact/title18/1861.htm](https://www.ssa.gov/OP_Home/ssact/title18/1861.htm)

<sup>6</sup> <http://www.gpo.gov/fdsys/pkg/CRPT-106hrpt479/pdf/CRPT-106hrpt479.pdf>

<sup>7</sup> [https://www.ssa.gov/OP\\_Home/ssact/title18/1861.htm](https://www.ssa.gov/OP_Home/ssact/title18/1861.htm)

<sup>8</sup> [https://uscode.house.gov/view.xhtml?req=\(title:42%20section:1395X%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:42%20section:1395X%20edition:prelim))

<sup>9</sup> [http://ssa.gov/OP\\_Home/ssact/title18/1861.htm](http://ssa.gov/OP_Home/ssact/title18/1861.htm)

<sup>10</sup> <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-405/subpart-D/section-405.400>

<sup>11</sup> <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-414/subpart-A/section-414.2>

<sup>12</sup> <https://www.govinfo.gov/content/pkg/FR-1999-11-02/pdf/99-28367.pdf>

<sup>13</sup> <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-410/subpart-B/section-410.22>

<sup>14</sup> <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-410/subpart-B/section-410.10>

<sup>15</sup> <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c15.pdf>

<sup>16</sup> <https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/ge101c05.pdf>

<sup>17</sup> <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c16.pdf>

<sup>18</sup> [https://www.ssa.gov/OP\\_Home/ssact/title18/1802.htm](https://www.ssa.gov/OP_Home/ssact/title18/1802.htm)

<sup>19</sup> <https://data.cms.gov/summary-statistics-on-provider-enrollment/medicare-provider-type-reports/cms-program-statistics-medicare-providers>