

CHAPTER 6

THE QUEST FOR MEDICAID PARITY FOR OPTOMETRISTS IN ALABAMA

INTRODUCTION

Title XIX of the Social Security Act, popularly known as Medicaid, was signed into Federal law by President Lyndon Johnson on July 30, 1965. This law was enacted as part of the federal-state welfare structure to aid America's poor population. Prior to 1965, there was no federal health care assistance for the poor. The responsibility for this care had fallen on states, charitable organizations, or individuals. Due to diversity in state budgeting for health care, the types and quality of care provided to the poor varied greatly from state to state. Racial discrimination also posed a problem to the equity of health care access for the poor (1).

The Medicaid program was designed to provide assistance to those individuals who met certain eligibility criteria to receive health care. The Medicaid program was structured to receive funds from the federal government with some percentage of matching funds to be provided by the state government. The Medicaid program is financed by the Health Care Financing Administration (HCFA) which is a Federal agency that provides the federal matching money to assist the state in funding the program. The program did not become official in Alabama until June 30, 1967 when Governor Lurleen B. Wallace signed Executive Order Number 8 authorizing the formation of the Alabama Medicaid program (1).

On June 1, 1968 Dr. Thomas H. Alphin was appointed director of the new Medicaid program by Governor Albert Brewer. Alabama's resulting State Plan for Medical Assistance became effective January 1, 1970 (1). It is difficult to assess from this vantage point how optometrists perceived this program. Nationally there may have been some optometrists who chose not to participate in the Medicaid program, at least initially. This program was strongly opposed by the American Medical Association as being the first step towards socialized medicine in America. The issue of health care delivery and reimbursement has become increasingly complex and confusing over the past four and one-half decades since the beginning of the Medicaid program. Health care will likely become even more socialized as time passes and people struggle to be able to afford health care.

STATE OF ALABAMA

The Department of Pensions and Security was originally designated to administer the Medicaid program in Alabama. Action was sought, however, to have this authority transferred to the State Board of Health by legislative action. The matter was resolved when Governor George Wallace issued an Executive Order designating the Medical Services Administration (MSA) in the Department of Public Health as the administering agency for the Medicaid program. At this time the MSA was under the direct control of the State Health Officer, Dr. Ira Myers, who served at the pleasure of the state Committee of Public Health.

Under the direction of the Governor, the State Board of Health held the ultimate authority over the Committee of Public Health (1). This administrative change was made with the agreement of the MSA that two optional services, which were permitted by Federal regulation, would be included in the program. The two services that were to be included were optometric services to include corrective eyeglasses and prescription drugs when the Medicaid program was initiated in Alabama. This information was reported in the newsletter of the Medical Association of the State of Alabama (MASA), *The Alabama M.D.* June 30, 1967 (2).

New Medicaid Plan Begun in Alabama

The Medicaid program was initiated in Alabama on January 1, 1970 (1). Optometric services and corrective eyeglasses were included in the program in accordance with the previously mentioned agreement. It was the ALOA's belief that the program was operated in an acceptable manner at that time and participation by optometrists was good. Even though some optometrists chose not to participate in the program there was not broad resistance. In fact, the ALOA had been advised by the administrator and fiscal intermediary that the cost for the optometric part of the program was below their projected estimates (2).

Projected Shortage of Medicaid Funds

In January 1971, the MSA forecasted a deficit in funds for the program. An additional \$7.5 million was necessary beyond the \$106.6 million estimated for the program. As a result of this forecast, a Joint Interim Health Committee of the Alabama State Legislature was appointed to study the program and make recommendations to avert any possible termination of the program, or to seek a solution thereto. The legislative sub-committee investigating the fiscal aspects of the program ascertained the shortage of funds was not nearly as great as originally forecast. In addition, the optometric costs were below the anticipated expenditures. Even so, representatives of the State Board of Health recommended to the Joint Interim Health Committee of the legislature that optometric services and corrective eyeglasses be eliminated from the program. The Joint Interim Health Committee voted to retain optometric services and eyeglasses in the Medicaid program. Contrary to this legislative action, the State Board of Health eliminated corrective eye glasses from the program effective June 1, 1971. Dr. Paul J. Robinson who was appointed by Governor George Wallace as assistant to Dr. Alphin and became director of the MSA in September 1971, after Dr. Alphin's resignation. Eye care and corrective eyeglasses provided by optometrists were not available through the Medicaid program in Alabama from June 1, 1971 to July 1, 1972 (2). An equitable fee schedule was not restored until the beginning of fiscal year 1975 (October 1, 1974) as a result of the settlement of the law suit.

Perhaps nothing in optometry's long history in Alabama demonstrates discrimination against the profession like this sad tale. It highlights the efforts of organizations controlled by medicine to deprive the profession of its right to equality in delivering care to patients enrolled in such federal entitlement programs.

Optometry's Efforts to Restore Funding

In spite of several legislators advising the State Health Officer and the program administrator that it was not the intent of the legislature to eliminate eyeglasses, with the Joint Interim Health Committee voting the same, these efforts were to no avail. When the legislature considered the general appropriation bill these legislators assured the ALOA the intent of the legislative committee was implemented - -or so they thought- - by passing an amendment to the appropriations bill which stated the appropriation must include optometric services (which included corrective eyeglasses). Neither of these services was restored to the program as promised (2).

Governor Wallace Issues an Executive Order

In February 1972, Governor George Wallace issued an Executive Order which stated optometric services including the prescribing, procuring, providing, and dispensing of corrective eyeglasses were to be restored to the program immediately and paid for on a reasonable basis. In June 1972, a program to include corrective eyeglasses was implemented but it was not in accordance with the Governor's Executive Order. Under this type of Medicaid program, optometrists could not procure or provide corrective eyeglasses. In addition, reasonable fees were not provided as defined under Federal guidelines, as fees based on the 75th percentile of the fees charged by the providing group.

Physicians and dentists who participated in the program were paid their usual, customary, reasonable fees, whereas, optometrists were paid less than one-half of his or her usual, reasonable, customary fees. Federal regulations stated that fee structures would be established which were designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive medical care and services included in the plan at least to the extent these are available to the general population (2).

Ironically some physicians soon discovered that they had the ability to submit a claim for a medical diagnosis, if one existed. This resulted in physicians gradually embracing the program in a manner optometrists were unable to. Optometrists could only submit a claim for a comprehensive eye examination and dispensing fee. It gradually became obvious that even though the comprehensive eye examination provided by optometrists and ophthalmologist were the same, the ophthalmologists were reimbursed at a higher rate than optometrists.

Additionally, because optometrists could not treat eye disease they could not submit a medical diagnosis claim.

The Issues Important to Optometry in Alabama

As optometrists began to discover that physicians were accepting Medicaid patients, the optometrists were losing not only patients but family members they had previously examined. The consensus prior to this time, was one in which optometrists were of the collective opinion that many physicians would not participate in this program because of the AMA's vehement opposition. Knowing of the AMA's opposition it is likely some optometrists held this same view. However, that attitude gradually changed as the impact of issues related to the Medicaid program became more widely understood in the optometric community.

As a result of continuing issues, and lack of representation within the State of Alabama administrative organization that oversaw the Medicaid program, the optometrists decided to take action. The primary issue was to seek parity for optometric services versus reimbursement paid to ophthalmologists for the same services. This issue had existed for over a year and all attempts by the ALOA to resolve this and other matters had thus far failed.

On May 9, 1972 Dr. Don Snellgrove, Past President of the ALOA, and Dr. Elbert A. "Bert" Coshatt met with Dr. Paul Robinson, Administrator of the Alabama Medicaid program. Dr. Coshatt was of the opinion that Medicaid had delayed complying with the legislative intent and Governor Wallace's Executive order, and would continue to attempt to circumvent the intent and order, as long as possible. It was at this meeting that Dr. Robinson outlined the reduced fee for examination and no fee for frame selection, ordering, verification, dispensing and subsequent frame adjustments (3). Dr. Robinson was advised at this time the plan he proposed would not be acceptable to the members of the ALOA and most members would not participate in the program.

Assurances of Inclusion by Health Study Committee

In the April 1972 issue of *Rare Foci*, the ALOA's newsletter, Dr. Coshatt reported having met recently with Senator Copper, Chairman of the newly created Health Study Committee. Senator Copper advised Dr. Coshatt he would utilize members of the optometry profession on the task forces where most of the work would be done. Hearings had already been scheduled around the state throughout the month of May. The morning sessions of the hearings were for the health providers to express their health concerns and the afternoon sessions were for the hearing of the general public report to a panel of local health providers and Commission members (4).

ALOA Board of Director's Meetings

The June 1972 meeting of the ALOA was aboard the ship *The SS Ariadne*. On June 9, 1972 the Board approved a resolution to be sent to Governor Wallace recommending the present structure of the Alabama State Board of Health be altered such that it would be composed of representatives of the major providers of health care licensed by the State of Alabama. This would include: six physicians, one of whom must be a physician-educator, one doctor of optometry, one doctor of dental surgery, one pharmacist, one registered nurse, one hospital administrator, and one member of the public at large (5).

On June 11, 1972 the ALOA Board of Directors met again on board the ship. During this meeting the Board of Directors adopted the three resolutions from the Resolutions "A" Committee report presented on June 9. The first two resolutions were in regard to deceased members of the ALOA and the third was related to the restructure of the Alabama State Board of Health. Another resolution from the Resolutions "B" Committee thanked Governor Wallace for his assistance in the Medicaid program and deplored the lack of cooperation of the State Board of Health (6).

In a June 30, 1972 memorandum to the members of the ALOA, Dr. Coshatt again informed members the present Medicaid plan for optometric services did not comply with the legislative action, or the Governor's Executive Order. Since July 1, 1972 the ALOA had been actively working to effect change whereby the optometrists would be paid a reasonable fee on the same basis other providers were being paid (7).

Members of the ALOA Advised to Not Participate in Medicaid Program

In the July 25, 1972 issue of *Rare Foci* it was announced that the Southeast Zone of the ALOA had voted unanimously to not accept Medicaid patients under the present circumstances. It appeared the other zones had indicated that the overwhelming majority of optometrists in Alabama were not going to participate in the program as it was presently constituted (8).

The ALOA Board of Directors was scheduled to next meet at the Guest House Motel in Birmingham on July 30, 1972 (9). On July 30, 1972 Dr. Jim Day, President of the ALOA, presented the Board of Directors a draft of a memorandum regarding Medicaid. He recommended that a statement passed by the ALOA Board of Directors be sent to the members advising them to refrain from participating in the Medicaid program. This memorandum also contained a six-point statement providing the rationale for this action. In the upper margin of the page is the notation "hold-off" (10). There is no mention in the files of this memorandum being sent. During this meeting a motion was also made and passed instructing the Legal/Legislative Committee to draw up a Model Practices Act for Optometry in Alabama and to proceed with planning for legislation to be introduced during the 1973 Legislative Session (11).

There was a significant amount of correspondence during the month of August related to the matter of making the newly named districts or “zones” of the ALOA geographically match with the zones established by the Health Study Commission. This was necessary for health planning that was being undertaken by the State of Alabama Comprehensive Health Planning (CHP) process. This matter had been discussed in the preceding months by the Board of Directors but Dr. Henry Peters, in a letter dated August 1, 1972, called to the attention of the Board that the districts did not exactly match the CHP districts and, while the differences were small, they were significant (12).

Plans for Legislation/Medicaid Issue Unresolved

In the August 25, 1972 issue of *Rare Foci* Dr. Coshatt informs the members of the ALOA that the Medicaid program was under study by a state agency and he expected a response in the near future (13).

On September 19, 1972 in a memorandum marked “confidential”, Dr. Coshatt apprised the Officers of the ALOA Board of Directors of the status of the Medicaid investigation and the plans for legislation in the upcoming legislative session in 1973. In this same memorandum, Dr. Coshatt also informed the board that on September 18, 1972 he talked to one of the assistants to the Attorney General. A “man was working on the investigation” presumably a staff lawyer was conducting the investigation, and once it was completed he would receive a call from the Attorney General’s office. It had been over a month since the ALOA had made the request to the Attorney General’s office. He thought more information should be available by the November Board meeting (14).

On October 4, 1972 Dr. Coshatt wrote Drs. Bingham, E. E. Ashbee, Day, and the Board requesting that Drs. Bingham, Ashbee and Day each write a letter encouraging members to attend the fall seminar. He also mentioned in this memorandum that 26 states had a continuing education requirement but Alabama only had voluntary attendance. There was, however, great interest in a pharmacology course being taught by UAB faculty in the Department of Pharmacology of the School of Medicine (15).

As of October 12, 1972 Dr. Coshatt, mentioned in a letter to Dr. Day, he had not heard from the State Agency investigating the Medicaid matter. The ALOA had been informed it may take a little longer because this agency felt it was an important matter, but Dr. Coshatt did expect to hear soon (16).

LETTER TO THE ATTORNEY GENERAL OF ALABAMA REQUESTING AN OPINION

In an undated confidential memorandum Dr. Coshatt informed the Officers of the ALOA Board of Directors, the Attorney General had approved the opinion rendered by the Opinion

Committee. The Opinion Committee was composed of nine members, eight of whom voted in favor of optometry participating in the Medicaid program on a parity basis. This opinion would be mailed to ALOA members and studied by Dr. Coshatt and the ALOA attorney. He would also apprise the Medicaid administrator of the opinion and request immediate compliance (17). It seems likely this memorandum was sent sometime in mid- October 1972.

Dr. Ashbee's Letter Requesting AG Opinion

In mid to late September 1972 Dr. E. E. Ashbee, President of the Alabama State Board of Optometry, had written a letter to Attorney General William J. Baxley. In this letter Dr. Ashbee asked for the Attorney General's opinion regarding three questions relative to the optometric services provided by the Alabama Medicaid Program. These questions were as follows:

- 1). Is a State Agency required to comply with an Executive Order and an Act of the Legislature?
- 2). Is the Alabama Medicaid Plan in compliance with Executive Order No. 31, and the Act of the Legislature with respect to optometric services?
- 3). May a State agency pay one provider of services on a different fee basis from another rendering the same services under the Medicaid Plan?

It seems very likely that Dr. Ashbee sought input from the attorney representing the Alabama State Board of Optometry as well as the Officers of the ALOA, before sending this letter to Mr. Baxley's office. **A copy of Dr. Ashbee's letter and enclosed supporting documents (exhibits) were not available in the file of materials utilized for writing this chapter.**

In a memorandum dated October 27, 1972 Dr. Coshatt informed the Officers of the ALOA he had received a call from an Assistant Attorney General on October 26, 1972 who advised him the opinion would be forthcoming sometime that week (18).

In a letter dated October 27, 1972 Dr. Ashbee received an answer from the Attorney General relative to the three questions he had posed. The date when this letter was received by Dr. Ashbee is not known but was clearly after October 27, 1972. The Attorney General's response was as follows:

My answer to question **one** is in the affirmative.

The Governor of the State of Alabama must, under the Social Security law, designate the single State agency to administer the medical assistance plan under Title XIX.

This was done by Executive Order. Title 55, Section 180 (2), Code of Alabama 1940, as Recompiled 1958, authorizes the Governor to give State agencies the necessary powers and duties to implement any law, order, rule, regulation, program, or plan promulgated by the

Federal Government. The State agency must then comply with the legislative enactment and the Governor's Executive Order.

In answer to question **three** it is the opinion of this office that a State agency may not discriminate between approved providers of a service if the same service is provided by each. Specifically, if under the Alabama Medicaid program, medical doctors and optometrists are approved to perform the same service and they perform the same service, then one may not be paid on a higher fee schedule than the other.

Title 49, Section 32 (8), Code of Alabama 1940, Recompiled 1958, specifically provides that beneficiaries may freely choose professional assistance for eye examinations. "... examinations made by licensed optometrists, and physicians skilled in the treatment of diseases of the eye shall be accepted, *paid for* and treated alike." (Italics supplied by the author).

Your **second** question asks if the program, as presently established, is in compliance with the Act and Executive Order. It would be impossible to state that sufficient compliance has been reached without a full hearing of all the facts. However, it appears from the exhibits presented that there is discrimination against the optometrists in the program.

I must appoint out that Title 49, Section 32 (8), supra, provides a remedy for this situation. "The provisions of this Section may be enforced by injunction issued by a court of competent jurisdiction on complaint of any party aggrieved by a violation thereof." The signatures on this letter listed the titles of William J. Baxley, Attorney General, By- and Walter S. Turner, Chief Assistant Attorney General. It is presumed this letter was written by Mr. Walter Turner with the approval of Mr. Baxley. The letter was dictated by Mr. Turner (19).

Attorney General's Opinion Sent to Governor's Office

Clearly this response from the Attorney General moved the Medicaid discussion forward based on the correspondence in the file. This discrimination had become a source of great frustration to the optometric organizations and the individual optometrists.

At some date, in either late December 1972 or early January 1973, Dr. E. A. Coshatt, Chairman of the Legal/Legislative Committee of the ALOA, had sent the Attorney General's opinions to Harry L. Pennington, Executive Secretary, to the Governor's Office. **A copy of this letter from Dr. Coshatt is not available either.**

On January 24, 1973 Dr. Coshatt received a reply from Mr. Pennington. In his response, Mr. Pennington acknowledged receipt of Dr. Coshatt's recent letter regarding the payment for optometric services under the Alabama Medicaid Program together with a copy of the opinion of the Attorney General of Alabama relating to this matter. As requested, the matter had been

called to the attention of the proper officials of the State Health Department and he was hopeful that the problem will be resolved within the near future. The letter ends by stating if the office could be of further assistance in any way, please do not hesitate to let them know. The letter was signed by Harry L. Pennington, Executive Secretary, Governor's Office, State of Alabama (20).

Dr. Coshatt sent the Officers of the ALOA a memorandum, dated January 30, 1973, related to Medicaid. In this memorandum Dr. Coshatt informed the Officers that since his last memorandum, several developments had taken place relative to Medicaid. He had written the Governor's Executive Secretary, Mr. Harry Pennington, advising him of the Attorney General's opinion and requesting him to contact the State Board of Health and again request them to comply with the Governor's Executive Order. He also requested a meeting with Pennington to discuss this matter, if deemed necessary. Mr. Pennington had recently married and had been out of the office for several weeks. Dr. Coshatt sent the response he had received from Pennington the prior week advising him (Dr. Coshatt) he had called the matter to the attention of the State Health Department. Dr. Coshatt enclosed a copy of the letter for some of the officers of the ALOA. Dr. Coshatt was now of the opinion the optometrists may obtain compliance through Federal intervention (21).

A VERY FRUSTRATING YEAR

Dr. Coshatt had also been in touch with the AOA Washington office and one of their staff had met on several occasions with representatives of the HEW in Washington. He reported the ALOA had support lined up there. Dr. Coshatt had appraised the Washington office of his contacts with the Atlanta regional office and that it had been without results thus far. It was the Washington office's desire that the regional office would require compliance...if they do not then the Washington office would intervene. It was their opinion the ALOA data and evidence that Dr. Coshatt had submitted would be sufficient. The administering agency must comply with Federal regulations. The program must be designed to enlist participation of a sufficient number of providers of service, so that eligible persons can receive the care and services included in the plan, to the same extent these are available to the general population (21).

Delaying Tactic

Dr. Coshatt had known this for some time, however, the regional office had advised the ALOA they should wait until the ALOA could ascertain the number of participants after the program had been in operation for a reasonable period of time. Dr. Coshatt believed the results of the ALOA survey and the additional data easily confirmed the present program was not in compliance. On January 26, 1973, Mr. Davis, the HEW Regional Associate Commissioner in Atlanta called Dr. Coshatt and they had a lengthy discussion relative to this (compliance). Mr.

Davis was sending a representative to Alabama that day to begin their investigation. Dr. Coshatt was to send him additional data. Mr. Davis assured Dr. Coshatt they will act on this immediately. Mr. Davis may want to meet with Dr. Coshatt later. Dr. Coshatt agreed to meet Mr. Davis or his representative in Atlanta or Alabama. If the ALOA does not obtain the desired results from the regional office they were to notify the AOA Washington office. Needless to say, some pressure had been applied (21). The question remained as to whether this pressure was sufficient

Keeping the ALOA Members Informed

In a memorandum dated January 30, 1973, Dr. Coshatt strongly recommended the ALOA Board officers talk to ALOA members attending the upcoming SECO meeting in Atlanta and advise them an investigation into Alabama Medicaid was underway. The officers were to advise members not to participate in the Medicaid program until the ALOA had a program satisfactory to them—one that provides the optometrists the same treatment as other providers. Usual, customary, reasonable fees, complete optometric services, examinations as needed in the opinion of the doctor...physicians may examine at any time, etc. The law is on the books...the ALOA has gone this far...we should make them comply, if at all possible (21).

As a foot note at the bottom of the page was a hand written message to Dr. Crosby letting him know that Dr. Coshatt had called Dr. Denny to apprise him of the situation, as their practice had indicated they may begin participating in Medicaid on February 1, 1973. (Dr. Denny advised Dr. Coshatt they would not do so at the present time (21).

This was the beginning of what would prove to be a frustrating year for the ALOA relative to Medicaid. As with all such legal/legislative matters as regards the profession of optometry in Alabama, nothing came easy, or without a great deal of voluntary effort on the part of its members. It appeared that medicine had blocked optometry's ability to gain parity, at least for the present time. However, persistence would be rewarded in time.

During this year the ALOA had also held discussions relative to the introduction of legislation regarding the definition of optometry, joining a coalition of other non-physician health care providers, and the formation of a political action committee, among other topics. From this vantage point it seemed unlikely the ALOA would be able to pass legislation related to its scope of practice. However, the decision was made to move forward.

LEGISLATION TO CHANGE THE OPTOMETRY PRACTICE ACT

The ALOA Board of Directors had ambitious plans for the association. Not only were they battling the state's Medical Service Administration for parity on Medicaid participation, but the Board wanted to change the optometry practice act. During the 1970's the Alabama Legislature

met on the biennium. Thus legislation could only be passed every other year. There can be little doubt that the success of other states in passing legislation that allowed the use of drugs for diagnostic purposes had not escaped the attention or consideration by the ALOA.

Proposed Legislation of the ALOA

In an undated memorandum to the Executive Committee on Legislation, Dr. Jim Day, President of the ALOA during the 1972-73 year, called a meeting of the Executive Committee for 4:00 pm Saturday, February 3, 1973 at the Marriott Motor Hotel, Atlanta Georgia. The purpose of the meeting was to approve a final draft of proposed legislation for presentation to the ALOA Board of Directors (22). Dr. Day also called a meeting at the same location for the ALOA Board of Directors at 2:00 pm on Sunday, February 4, 1973 (23). The purpose of this meeting was: 1). To receive and act upon the report of the Executive Committee on Legislation, 2). Act upon the resolution from the Zone III Optometric Society requesting that the ALOA enter into litigation on Medicaid, and 3). Transact various administrative functions of the Board. These meetings were held in Atlanta in conjunction with the Southeastern Congress of Optometry (SECO) meeting. The primary purpose of these meetings was to discuss the proposed legislation the ALOA was considering for introduction during the Legislative Session of 1973. The goal of the bill was to more broadly define optometry than the existing optometry practice act. **There was not a copy of the proposed legislation in the file.**

Opposition to Optometric Bill

In the June 14, 1973 issue (Vol. 9, No. 2) of *The Alabama M.D.* was an article entitled “Eye Foundation Joins MASA in Opposing Optometric Bill” (24). Although no dates were provided in this article as to when this legislation was introduced or taken up by a committee, it was available in information provided by the Legislative Reference Service (25, 26). This legislation was introduced in the House of Representatives on Thursday, May 24, 1973 as H. 633. This legislation is discussed in greater detail in Chapter 6. The Eye Foundation Committee urged MASA to offer two amendments to the proposed legislation and, if not accepted, then work to defeat the legislation.

The first amendment was related to - objects and purposes of the act – the practice of optometry is hereby declared to affect the public health, safety and welfare: optometry is to be subject to regulation and control in the public interest and be limited to qualified persons admitted to practice optometry in the State of Alabama pursuant to the provisions of this act. The second recommended amendment – the practice of optometry is defined to be any of the following: it then sets forth four aspects that define the practice of optometry. The Board of the Eye Foundation Hospital was opposed to the new definition because it was too broad, goes beyond the scope of optometric training, and infringes upon the practice of medicine. In

addition, the effect of these bills would reinforce existing legislation that severely curtails the ophthalmologist's utilization of physician assistants and orthoptists who work under the supervision of the physician.

There was also a hand written note in the file referencing Representative Flippo and an amendment to H.B. 633 that states "nothing in this act shall prohibit the practice of optometry in a leased department of a commercial establishment presently under lease by a qualified optometrist". This amendment was passed by the House of Representatives July 19, 1973, yeas 96, nays 2. There was also a copy of two more amendments attributed to Representative Flippo. The first amendment described offering a standard of continuing education regardless of membership status (ALOA member or not) and deemed a requisite to the renewal of license of applicants who are otherwise qualified to practice optometry in the State of Alabama. The second amendment states that a license is not required to sell eyeglasses or spectacles in a retail optical dispensary or from a store, shop, or other permanently established place of business now with an optical department on prescription of a duly license physician skilled in diseases of the eyes or a duly licensed optometrist authorized to practice under the laws of this state (27).

Bill Not Passed by the Committee

In an undated memorandum Dr. Coshatt requested each member of the ALOA to contact their legislator with regards to legislation introduced by optometry to change the definition of the practice of optometry. This bill could possibly change how eye care was delivered in Alabama. The bill SB 297 was voted out of committee intact and was now on the Senate calendar. HB 633 was voted out of committee on Tuesday, June 5, 1973 and was on the House calendar. Medicine had offered two amendments in committee. Amendment (1) to strike the statement "learned profession" from the bill was defeated in committee. Amendment (2) deleted the bill's definition and substituted one written by ophthalmology. This amendment would relegate the practice of optometry to a technician's role in that it would exclude opticians or orthoptists, ophthalmic assistants, or any person who works under the direct supervision of a licensed physician or osteopath. This, in effect, would allow unlicensed lay people to examine eyes and practice optometry since there is no law regulating them and they would be excluded from the optometry law. In addition, the opposition was expected to offer another amendment that would authorize discrimination against optometry.

Dr. Coshatt emphasized the importance of defeating these amendments. The bill would come up for a vote next on June 12, 1973 (28). There was no information in the file regarding the passage of this legislation. This bill did not get out of committee based on entries in the Journals of the House and Senate for 1973 (25, 26).

INVOLVEMENT WITH THE REGIONAL HEW OFFICE

In a July 30, 1973 letter from Virginia Smyth to Dr. Coshatt, Commissioner Smyth references a letter from Mr. Davis, dated March 30, 1973, in which each issue raised by Dr. Coshatt in his letter to Mr. Henry Pennington, the Governor's Executive Secretary, was investigated. Unfortunately, there is not a copy of Mr. Davis' letter in the Medicaid file of Dr. Crosby. Commissioner Smyth reiterates that each issue raised by Dr. Coshatt was investigated by a staff member sent to Alabama. Furthermore Mr. Davis' letter of March 30, 1973 not only stated the regional HEW's position on each issue but informed the ALOA that the issue pertaining to orthoptics and optometrists participation warranted further consideration.

Commissioner Smyth also informed Dr. Coshatt that Region IV of HEW had now received and approved a planned amendment from the State agency (Alabama Department of Health) responsible for the Alabama Medicaid program. This plan authorized orthoptic treatment on a prior approval basis. Prior approval would be based on medical necessity.

Optometric Participation in Alabama Medicaid

Region IV had continued their review of optometrist participation in the Medicaid program. The latest review consisted of a review of billings submitted and paid during the months of February, March, April, May, and June 1973. The regional HEW office was disappointed that the latest review indicated a decrease in the number of optometrists submitting bills during this period in comparison with the three-month period immediately preceding February 1973. The regional administrators were not prepared, however, to conclude that this decrease in participation was due to the fee schedule established by the State of Alabama. The several other areas of objection by Alabama optometrists raised by Dr. Coshatt, which had been corrected, could have contributed to the decrease in participation. Commissioner Smyth stated her office would continue to observe Alabama optometrist's participation in this program, but did not feel at the current time, that the available evidence would support a compliance issue (29).

In a letter dated September 20, 1973 Commissioner Smyth acknowledged Dr. Coshatt's letter of September 4, 1973, concerning participation by optometrists in the Medicaid Assistance Program under Title XIX in Alabama (30). **There was not a copy of Dr. Coshatt's letter to Commissioner Smyth available in the file.**

Smyth stated her office had reviewed the file on this matter and must reiterate the position stated in the letters of July 30, 1973 and August 30, 1973, that current available evidence did not, in the regional HEW office's opinion, support a compliance issue on this matter. Smyth did acknowledge there was evidence that some optometrists are not participating in the program due to dissatisfaction with the established fee schedule. The number of optometrists accepting

the fee and continuing participation in the program is such that the office cannot, at this point in time, arrive at a conclusion of the fact that the fee schedule is inadequate. She suggested that the appropriate method for resolution of Dr. Coshatt's complaint would be through State channels (30).

Medicaid Discrimination Continues in Alabama

At this point in time it seemed that even though the Attorney General's ruling stated that a State agency cannot discriminate between approved providers of a service, if the same service is provided by each, did not seem important. Whether the regional HEW office could not ascertain the weight of the Attorney General's ruling, or the medical community wanted to block optometric participation from being on an equal basis, or the lack of optometric representation on the committee controlling such decisions was persuasive enough to convince the others there was not a compliance issue, or some committee members wanted the discrimination to continue because of a lack of honesty or integrity, is difficult to know. However, it seemed some individuals or groups did not want optometry to have the option to participate in the Medicaid in the manner described by the Attorney General.

Health Coalition Formed

In a memorandum dated November 13, 1973 to the ALOA Officers Dr. Coshatt addressed the topics of forming a health coalition, forming a political action committee, and Medicaid (31). On the evening of November 7, 1973 Drs. Crosby and Coshatt had met with representatives of the Alabama Dental Association, Alabama Veterinary Association, the Alabama Pharmaceutical Association, and the Alabama Nursing Association.

The topics discussed by these associations were: 1). The State Board of Health and possible litigation, 2). Formation of permanent allied health coalition, and 3). Other matters of common interest. None of the groups represented supported direct litigation to further restructure the Alabama State Board of Health. The dentists and veterinarians suggested giving the new board an opportunity to function and ascertain if any changes can be made in policy. They believed it would be easier to make changes in the legislature in the future. A coalition could be most helpful in this regard. The other two groups were possibly interested in joining with the ALOA on specific issues such as Medicaid.

Each group represented favored a permanent coalition organization and would seek approval of their respective organizations to proceed. A representative and one alternate would be appointed by each group. After this is accomplished, those individuals so appointed were to meet in Montgomery in February to form a permanent organization. It was agreed that each group would make an initial contribution of \$500.00. It was thought this amount of funding would be more than adequate for housekeeping expenses, etc. Drs. Crosby and Coshatt

assured the other organizations the ALOA would participate as this was approved at a previous ALOA Board of Directors meeting. Dr. Coshatt stated he would keep the officers advised (31). The amount of Dr. Coshatt's correspondence indicates he kept his word.

ALOA Begins Considering a Political Action Committee (PAC)

Dr. Coshatt had obtained information related to Political Action Committees formed by other organizations. The next step would be to call a meeting of interested Alabama optometrists to formally organize such a PAC. The formation of the organization would require complete support from each ALOA member (31). This was the first step in the development of a PAC specifically for Alabama optometry.

Medicaid Advisory Committee Meeting

The Medical Advisory Committee to the Medicaid Administration met in Montgomery on November 8, 1973. Dr. Coshatt had provided the ALOA representative Dr. Allen Rooks with Federal regulations and other data and asked that he advise the committee of the lack of compliance of the Medicaid agency with the Governor's Executive Order and Federal regulations. Dr. Rooks advise Dr. Coshatt this issue was addressed at the meeting. The committee requested that representatives from the ALOA meet with Dr. Robinson in an effort to resolve the matter and to report the results at the next meeting on the Medical Advisory Committee meeting after the first of the year.

Dr. Coshatt stated he had his doubts of any success in attending a meeting with Dr. Paul Robinson, however, the ALOA can do so, if necessary. In the meantime, the HEW Office in Atlanta called Dr. Coshatt on November 12, 1973 to advise that Mr. Davis, the Associate Commissioner, was in Alabama and would meet with Dr. Robinson yesterday or today to discuss our problem. The HEW office advised they had received 15 to 20 letters from optometrists regarding this issue and they seemed to be quite impressed. Dr. Coshatt requested that officers who had not written to please do so immediately. Dr. Coshatt was advised by the regional HEW office they would be back in touch with him on this matter within the next week. Dr. Coshatt stated he would advise as necessary (31).

Dr. Crosby sent a letter to Mrs. Smyth dated November 14, 1973 complaining of the inadequate Medicaid fees. Furthermore, he stated he was the only eye care practitioner in Dale County, Alabama and he did not participate in the Medicaid program because of the discrimination in the fee schedule. Fees to optometrists have been cut while fees to other provider groups had not (32).

Dr. Coshatt sent a letter to Dr. Tom Bingham on November 19, 1973 informing him of the need to contact the Alabama Dental Association and letting them know the ALOA would participate

in the formation of an allied or independent health coalition. Drs. Crosby and Coshatt assured the ADA the ALOA would participate and informed Mrs. Joyce Rogers of the ADA they would advise her who the appointed representative and alternate would be. Dr. Coshatt advised Dr. Bingham he might like to discuss these appointees with Dr. Crosby, then advise Mrs. Rogers accordingly (33).

Continued Dissatisfaction of the ALOA with the Medicaid Program

A letter from Commissioner Virginia M. Smyth to Dr. G. Robert Crosby dated November 24, 1973 acknowledging his recent letter expressing dissatisfaction with that part of the Alabama Medicaid program pertaining to eye care. First, Mrs. Smyth referenced correspondence she had with Dr. Coshatt, an official of the ALOA, about the same concerns expressed by Dr. Crosby. Several questions raised by Dr. Coshatt had been resolved.

Mrs. Smyth stated that Medical Assistance Programs (Medicaid) are State-administered. Within broad provision of Federal law and regulations, a State may decide upon the amount, duration, and scope of its Medicaid program. Implementing policies and procedures, as well as methods of reimbursement, are responsibilities of the single State Agency. Because the Medicaid program is State-administered, Mrs. Smyth suggested to Dr. Crosby that the appropriate method for resolution of his complaint would be through State channels.

Mrs. Smyth furthermore states the regional HEW does not take any complaint from either a provider or recipient of Medicaid services lightly. Further contact was being made with the State Agency to determine if there was any way the regional HEW can help with the resolution of Dr. Crosby's complaint (34).

On November 27, 1973 Dr. C. D. Denney wrote Dr. Coshatt to inform him that their practice was losing patients and their family members to ophthalmologists in significant numbers. Dr. Denney acknowledged all of Dr. Coshatt's efforts and his desire to cooperate with the ALOA but feared the situation was not going to be resolved in favor of the optometrists. With great reluctance their practice planned to begin taking Medicaid patients January 1, 1974 (35).

Dr. Coshatt wrote a memorandum to the ALOA Officers on November 29, 1973 informing them he had received the enclosed letter the day before (36). Dr. Coshatt was presumably referring to a letter sent from Commissioner Smyth advising the Medicaid matter needed to be resolved at the State level. **Unfortunately, there was not a copy of any letter from Commissioner Smyth to Dr. Coshatt with a November date included in the file.** In this memorandum Dr. Coshatt states this matter must be resolved as quickly as possible. The following action was being taken:

1). HEW, Atlanta, had again been requested to require compliance with Federal regulations. Individual optometrists have written the regional office requesting compliance or advising why they are not participating in the Alabama Medicaid program.

2). The matter was presented to the Medical Advisory Committee of Medicaid at their meeting on November 8, 1973. It was the opinion of the group that the ALOA should arrange a meeting with Dr. Robinson, the administrator of the program, to again attempt to reach a compromise on an acceptable program. Dr. Coshatt commented that the ALOA had met with Dr. Robinson without success. Dr. Robinson was at the meeting Dr. Rooks attended since he served as the Chairman. Dr. Rooks, the ALOA representative on the Committee, advised Dr. Coshatt he spoke with Dr. Robinson after the meeting. Dr. Robinson advised him he did not believe any change could be made in the present program. In any event, a meeting would be requested by the President of the ALOA, Dr. Bob Crosby, with Dr. Robinson in accordance with the advisory committee's request. It was hoped the ALOA can meet with Dr. Robinson within the next week.

3). The President of the State Board of Optometry, Dr. E.E. Ashbee, had been requested to contact the Attorney General's office to ascertain if the Attorney General's office would file suit against the administering agency to require compliance.

Optometrists Consider Litigation

If none of the above develops and/or the optometrists are unable to amicably resolve the matter, Dr. Coshatt is of the opinion the ALOA should retain an attorney for purposes of direct litigation. The ALOA cannot and should not, in his opinion, permit a precedent of this nature to be established without challenging it. Dr. Coshatt asks for everyone's opinion and to discuss this issue with members in their area. He was of the belief the ALOA should take some action by or prior to January 1, 1974 (36).

In a letter dated December 10, 1973 Dr. Bingham, President of the ALOA wrote to Dr. Paul J. Robinson, Director of the Medical Service Administration (37). Dr. Bingham apologized that he missed Dr. Robinson when he called his office the prior Friday. The purpose of his call was to make sure Dr. Robinson had received the letter sent earlier in the month and had not heard a response from Dr. Robinson. The letter was requesting a hearing with Dr. Robinson's committee and representatives of the ALOA.

It concerned a number of specific areas involving optometry's participation in the Alabama Medicaid program. The specific points mentioned for discussion in Dr. Bingham's letter were: (1) the fee structure concerning optometry, (2) the prescription materials, both lenses and frames (3) quality of materials being used presently, especially strong plus and minus lenses (4) the Central Supply laboratory (5) contact lenses (6) visual training (7) developmental vision (8)

authorization requirements of the optometrist (9) communication between the Medicaid Committee and optometry and the ALOA (10) the matter of committee discrimination against optometry (11) committee's failure to follow the Governor's Executive Order concerning optometry's participation in Medicaid (12) discuss compliance with Federal regulations as they relate to the Medicaid program. No less than 75 optometrists have taken the time to inform Dr. Bingham they are dissatisfied with the present Medicaid program concerning optometry, and refuse to participate until something is done to rectify some of the aforementioned points.

Dr. Bingham states that as President of the ALOA he cannot ignore these pleas, and would appreciate Dr. Robinson's understanding his concern and interest in this matter. Dr. Bingham feels this is a very, very urgent matter and should merit Dr. Robinson calling a meeting before the end of the year, and I respectfully request within 10 days, if possible (37).

Moving forward towards Medicaid Parity

On January 11, 1974 Dr. Bingham wrote Dr. Robinson to thank him for the December 27, 1973 meeting between representatives of the ALOA and Dr. Robinson and the cordial manner in which they were received (38). In his letter Dr. Bingham reiterates the important points of the meeting. Clearly the members of the ALOA want to participate in the Medicaid program. The members feel a strong social responsibility to do so. However, at present only a few members of the ALOA participate in the program and they are doing so on a limited basis. The members were presently being prevented from participation in the Medicaid program by the Medicaid Board in Alabama because the members do not feel they should do so at an economic loss. The members felt they were justified in receiving the same reasonable and customary 75 percentile fee for their services as do other health care professions participating in the Medicaid program. Similarly, the members desired to receive, as do other participants, a fee that enables the members to devote proper time to the examination. Members feel they cannot and should not be asked by Medicaid to compromise on the quality or standards of the professional service to their Medicaid patients. Furthermore, members cannot be asked by Medicaid to reduce the services rendered the patient in order to justify being paid a reduced fee, and certainly do not expect to profit on the materials involved. Concerning your request for a stated amount which would be acceptable – Dr. Bingham believes the members of the ALOA will accept for the sake of their Medicaid patients, the old 1970, 75th percentile which was \$25.00 for the year of 1974, even though costs have increased since that time.

Dr. Bingham assures Dr. Robinson that the ALOA can and will provide a workable and realistic peer review committee that will structured according to the plan set forth in the Federal program. The UAB School of Optometry has indicated a willingness to assist in this area. He requests that during 1974 information be gathered by representatives of the ALOA, Medicaid staff, and UAB School of Optometry to eliminate existing conflicts, concerning optometric

services and fees, and that these services and fees be re-negotiated annually. The ALOA feels strongly that any prior authorization required of the optometrists should be given by a committee consisting of peers. The ALOA also feels that where exceptional conditions exist the optometrist should be allowed to request authorization for the necessary quality of lenses, and in some rare cases, frames that would have marked effect on the patient's vision and comfort.

Dr. Bingham again ensured Dr. Robinson the ALOA was only interested in the visual welfare of the Medicaid recipients. The organization wished to settle the matter quickly and by amicable negotiations and not resort to legal action. However, the ALOA had waited a very long time and was prepared to protect the recipients of Medicaid of Alabama as to the quality and scope of eye care service and materials provided under this program. In closing, Dr. Bingham comments that the optometric community appreciates the apparent dedication of Dr. Robinson and his staff for this program and the many hours of hard work put into it. The next regular board meeting of the ALOA will be January 20, 1974 at which time the ALOA would like to report to its members the committee's reply to this letter (38).

In a memorandum dated January 24, 1974 Dr. Coshatt sent to the members of the Alabama State Board of Health, a statement prepared for presentation to them on January 16, 1974 (39). In light of their busy agenda he was sending a printed copy so the members might consider it at a more convenient time. This "Statement of the Alabama Optometric Association" was five and one-half pages in length and provided some of the historical aspects of the program as it related to optometry.

To compound matters, in 40 rural counties the optometrist was the only provider of eye care, and the services were not available to the Medicaid recipient due to the design of the program. The optometrists wanted only fair and equitable treatment so people entitled to eye care services may receive the same. It was the goal of the ALOA to resolve this matter without litigation but they were prepared to take whatever action was necessary in this regard (2).

ALOA Political Action Committee

Dr. Coshatt had obtained information such as a constitution and by-laws from other states that had formed PAC's. He had also been in touch with Dr. Judd Chapman regarding the AOA PAC. The next step was to call a meeting of interested optometrists to formally organize and elect officers. He also solicited a suggested meeting time and complete support from each officer in this endeavor.

On February 14, 1974 Dr. Coshatt announced to his colleagues that the Alabama Political Action Committee (AL-O-PAC) had been formed. This letter was an appeal for optometrists to send in their membership check as soon as possible. Since reapportionment had been declared the composition of the legislature would be dramatically altered in the forthcoming election (39).

PREPARING FOR LITIGATION

Dr. Coshatt received a letter from Mr. Robert D. Segall of the law firm Hobbs, Copeland, Franco & Screws, related to the Medicaid program. Mr. Segall wanted to reiterate a point Mr. Hobbs and he had discussed with Dr. Coshatt on Saturday, February 23, 1974 (40). Both attorneys felt it would strengthen the ALOA's case if Medicaid eligible patients were included as plaintiffs. The reason for this was that the Medicaid program must be administered in such a way that does not interfere with freedom of choice in the selection of professional assistance. Certainly when the administration of the program freezes out optometrists, eligible persons are denied freedom of choice. In addition, the Federal regulations provided that state plans must establish a fee structure which will ensure that eligible persons "can receive the medical care and services included in the plan at least to the extent these are available to the general population". It is apparent that the required services are not being provided, and eligible persons who are being deprived of treatment have a right to complain (40).

Dr. Coshatt received a letter dated March 11, 1974 in response to his letter of March 4, 1974. Elizabeth Barker, Executive Director, of the Alabama State Nurses' Association (ASNA) was writing to inform Dr. Coshatt that the Board of Directors of the ASNA had voted to support the litigation of the ALOA to get the ABH to comply with the Governor's Executive Order issued February 14, 1974. The ASNA was concerned that these services provided by optometrists were not available in many counties in Alabama and supported the ALOA's efforts to improve this situation (41).

On April 3, 1974 Dr. Paul Roten, Secretary-Treasurer, of the AL-O-PAC, wrote a letter to all members thanking them for joining the organization and to remind colleagues to do the same. He enclosed a list of all members to date so members would know who had joined thus far (42).

THE ANTI-TRUST SUIT IS FILED

Drs. Bingham, Crosby, and Himburg File Personal Suit

An anti-trust lawsuit was filed in Montgomery Federal Court by three Alabama optometrists; Drs. Bingham, Crosby and Himburg, acting for themselves and other optometrists "similarly situated" against the Medical Association of the State of Alabama (MASA) and the State Board of Health on April 8, 1974. The suit was also file on behalf of those Medicaid recipients who were alleged to have been denied eye care by the "conspiratory actions of the medical doctors". This suit was seeking \$1,250,000 in actual and punitive damages. The lawsuit was not only against the two organizations but individual members of the State Committee of Public Health. The lawsuit not only named those acting in their capacity as members of the Board of Health and Board of Censors but 12 individuals as well. Dr. Paul I. Robinson was also sued

individually and in his capacity as director of the Medical Services Administration (Medicaid) (43). **A copy of this law suit was not available in the file.**

Dr. Coshatt Appointed to OPAC National Advisory Committee

On April 29, 1974 Dr. Judd Chapman, a former AOA President sent a letter to Dr. Coshatt advising him that he had been appointed a member of the Optometric Political Action Committee (OPAC) National Advisory Council. The OPAC Board had held its first meeting in January 1974 to adopt its constitution and by-laws. Dr. Chapman wanted Dr. Coshatt to solicit ALOA members to join OPAC. He also informed Dr. Coshatt this organization was also in the process of setting up state political action committees (44).

Dr. Coshatt responded to Dr. Chapman on May 4, 1974 to acknowledge his letter. He advised Dr. Chapman that Alabama was conducting an important primary election the following week and much of his time was devoted to these local elections. Following these elections and any run-offs, Dr. Coshatt agreed to devote time to OPAC in Alabama. In a handwritten note at the bottom of the letter Dr. Coshatt informed Dr. Bob Crosby that all defendants in the ALOA's lawsuit had requested the case be dismissed. A hearing was set for June 5, 1974 (45).

Hearing on Lawsuit

On June 26, 1974 Mr. Segall wrote to Dr. Coshatt notify him that a hearing on the ALOA's members suit against the Alabama State Board of Health had been set for Friday, June 28, 1974, on the sole issue of notice to the class plaintiffs (46).

Desire to Settle Lawsuit

In a memorandum dated July 13, 1974 Dr. Coshatt sent an announcement concerning the Medicaid lawsuit to all members of the ALOA. The defendant attorneys had contacted the ALOA attorneys the prior week in an effort to settle this issue out of court. Dr. Coshatt informed the ALOA members he had met with the ALOA attorneys twice and the ALOA lawyers and Dr. Coshatt had met with the defense attorneys once. He stated that it seemed likely a compromise that will solve the ALOA's problems and assure fair and equitable treatment will be agreed on. As soon as a settlement was reached the membership would be advised. It would probably require another three weeks to work out the details and effect the necessary changes (47).

Negotiations for Settlement

On August 7, 1974 Dr. Coshatt responded in a lengthy and detailed letter to Mr. Segall regarding a copy of a letter dated July 29, 1974 sent from Dr. Robinson to Mr. Hamilton, the attorney for the defendants. Dr. Coshatt wanted to address several inaccurate statements

contained in the letter. **There was not a copy of the July 29, 1974 letter from Dr. Robinson to Mr. Segall in the file.**

- The ALOA was well aware the Medical Services Administration had no authority concerning membership on the Comprehensive Health Planning Advisory Councils. The State Board of Health was the designated administering agency for the Medicaid program as well as for comprehensive health planning in the State of Alabama. Dr. Robinson and his office act on behalf of the State Board of Health. Dr. Coshatt expressed the belief that it was the State Board of Health's responsibility to comply with state and Federal regulations. Any change in the Medicaid program must be approved by the State Board of Health. When the Medicaid program was initiated in Alabama, the legislature did not approve the plan for any of the services included therein. The State Board of Health submitted the plan to the Governor's office for approval and then to the Department of Health, Education, and Welfare (HEW) for approval. Dr. Coshatt recalls a conversation with Dr. Robinson in which this process was made abundantly clear. Later, Dr. Coshatt called Dr. Robinson after the Governor's Executive Order to restore optometric services had been issued, to discuss implementation of the program and request a meeting with him. Dr. Robinson advised Dr. Coshatt there would be no use in such a meeting as it would be a waste of time since the program would be conducted according to the wishes of the State Board of Health.
- Dr. Coshatt then stated that if the defendants wish to negotiate and resolve differences relative to Medicaid, they could, at the same time, resolve the comprehensive health planning matter as well as membership on the State Board of Health...or, at least agree, to support legislation in the next session to accomplish this. In regard to the Medicaid program the ALOA representative advises Dr. Coshatt he had no role in determining the contents of the present program as it related to optometric services.
- In the plan submitted by Dr. Robinson dated May 22, 1974 as referred to by Dr. Robinson in his recent letter to Mr. Hamilton, Dr. Robinson had made the statement solicitation of Medicaid patients would not be permitted. Dr. Coshatt explained he had expanded on the statement. If patients are not to be solicited, then anyone who advertises would not be an eligible provider. Certainly advertising is solicitation and furthermore, Dr. Coshatt was of the opinion that solicitation is prohibited by Federal regulations. He would attempt to verify this statement.
- Dr. Coshatt had inserted the date of August 15, 1974 as the date to begin sending all claims to Blue Cross-Blue Shield in an effort to establish a definite date to begin the fee schedule. It is immaterial where claims are sent at that time and optometrists can send them wherever Dr. Robinson wishes until October 1, 1974.

- As regards fees and a maximum being set by the State Board of Health, this amount is the 75th percentile for physicians and dentists and is the schedule recommended by Federal regulations. As Dr. Coshatt recalled a meeting where it was stated no other group had a maximum on their fees, other than the 75th percentile. Dr. Coshatt did recall that in 1971 the legislature voted to reduce the cost of all physician services by 10% and the optometrist's fee for a comprehensive eye examination by 40% for the remainder of that fiscal year only. At this same time, the legislature voted to make no change in the eyeglass program.
- The statement "it was impossible to establish reasonable and customary charges for either group which would be satisfactory" is utterly ridiculous. Dr. Robinson has consistently refused to conduct a survey to determine the usual and customary fees for optometrists in Alabama. No effort has been made to do so. Dr. Robinson has refused to increase fees above \$15.00 every time we have sought to resolve the matter. Many efforts on the part of the ALOA have been made but to no avail. He (Dr. Robinson) has never offered to increase the fee one dime but instead has refused to make any changes in the program. At one point in the past the ALOA requested the Medicaid program be restored as it had been previously. Dr. Robinson stated he would never restore the program as it was unless forced to do so. In 1972, the ALOA offered to accept a fee of \$20.00 until more funds became available. Dr. Robinson refused to consider this proposal explaining the State Board of Health would not approve.
- Dr. Coshatt responded to Mr. Segall on a matter pertaining to ophthalmologist versus optometrist fees. As you know, physician services include the services of ophthalmologists. In other states ophthalmology services are considered separate from optometric services and are listed separately in Federal regulations. The Governor's Executive Order pertains to optometric services only. The ALOA interest is not in physician or ophthalmologist services other than receiving fair and equitable treatment. His concern, so it seemed to Dr. Coshatt, should be with resolving optometric services and complying with regulations. This matter had nothing to do with resolving differences between the two groups.
- Dr. Robinson's statement that the ALOA had agreed to meet with the Medical Services Administration and the ophthalmologists to try to resolve differences was false. Dr. Coshatt had spoken to Dr. Thomas Bingham, the ALOA Immediate Past President, and such a suggestion was not made to him (Dr. Bingham). Nor was it mentioned to Dr. Coshatt. If such a suggestion had been made, Dr. Coshatt would have advised Dr. Robinson the ALOA was interested in the program complying with Federal regulations and the Governor's Executive order and this Medicaid matter had nothing to do with any differences that may exist between optometrists and ophthalmologists.

- In paragraph seven of the letter to Mr. Hamilton reference was made to the present system of providing eyeglasses as a system that provided quality and cost control. Dr. Coshatt stated this was misleading. The ALOA could provide substantial testimony that the quality was extremely poor and the service unacceptable. If every practitioner (optometrist) who participated in the program originally, participated again, it would be impossible for one laboratory to render any kind of reasonable service.
- Dr. Robinson's statement that any increase in the cost of the eyeglasses would have to be approved by the legislature was also not true. The legislature did not recommend a change in the original eyeglass program but specifically voted to retain it as it was at the time. The State Board of Health made the change contrary to the vote of the legislative committee. The fee reductions recommended were for all providers for the balance of the year only. The cuts in the physician's fee have since been restored and increased without being submitted to the legislature for approval. The physicians are currently paid their usual and customary fees based on current charges rather than the 1969 fee schedule. This was done without approval of the legislature.
- According to HEW, any change in a State Plan may be submitted to the Governor for approval and to HEW for approval which is usually forthcoming very quickly. Some changes have been made in the program without the Governor's approval. The Governor did not approve the elimination of corrective eye glasses in June 1971.
- Dr. Coshatt surmised the total cost of the increase in fees for physician services surpasses the entire cost of the optometric program. He based this statement on the fact physician services entailed approximately 19% of the Medicaid budget whereas the complete optometric program entailed less than 1%. He thought it would be interesting to see the data.
- In summary, the ophthalmologists and the State Board of Health sought to have the optometrists eliminated from the program by the legislature. Unable to accomplish this at that time, they had made the program as undesirable as possible to prevent the optometrist's participation. In the meantime, physicians accepted Medicaid recipients and received their usual and customary fees. What they could not accomplish legislatively they have accomplished to a certain degree administratively. Certainly if the Medicaid program had wanted to have optometry's participation, they would have complied with regulations before now. Dr. Coshatt is of the opinion that the present program was designed as a part of a conspiracy to prevent optometry's participation in Medicaid.

Dr. Coshatt looked forward to hearing from Mr. Segall relative to his meeting with Mr. Hamilton (48).

In a letter dated August 15, 1974 Mr. Segall wrote to Dr. Coshatt regarding the Medicaid litigation (49). Mr. Segall stated enclosed please find a copy of the motion to produce file this date in the above styled case. Yesterday, Mr. Segall spent an hour and one-half looking through old *Alabama M.D.'s*, but was turned away this morning by Mr. Patterson when he attempted to complete his research. While at the Medical Association building, Mr. Segall did learn that the *Alabama M.D.* issues for the years 1967 and 1968 were missing. He is not sure if this is a coincidence but feels that these years probably were the most important in terms of this matter. He asks Dr. Coshatt to check his files to determine what issues he had, and also try to determine where he could get other copies. Mr. Segall would be taking Dr. Robinson's testimony on Monday. He continued negotiations with Mr. Herman Hamilton but would not have anything further to report until Thursday of next week. Mr. Segall was still in the process of preparing Dr. Coshatt's affidavit (49).

In a letter dated August 15, 1974 Dr. Coshatt sent Mr. Segall the names of the members of the State Advisory Council for Comprehensive Health Planning. The 29 members of this Council were comprised of five physicians, three Ph. D's, one dentist, one veterinarian, one nurse, two ministers, and the remainder were administrators or citizens of some standing (49). Alas, no optometrist was a member of the Council (50).

In a letter dated August 21, 1974 Dr. Frank Beard brought to the attention of Dr. Ira Myers, State Department of Health, the August 2, 1974 *Federal Register* concerning Title XIX, Early and Periodic Screening Diagnosis and Treatment. This directive set up regulations dealing with the financial penalty that states incur for failure to provide child health screening services. This program for Medicaid eligible children under six years of age had become effective October 1, 1971 (51).

In the August 22, 1974 edition of the *Birmingham News* was an article that warned that the 1975 funds for Medicaid would be short \$5 million. Interestingly it was anticipated that there would be an increase in eye examination fees from \$15.00 to \$20.00 and fittings from \$5.00 to \$7.00. The entire budget for eye care and glasses is estimated to be \$919,140 for fiscal year 1975 (52).

Counter-Offer Made by the ALOA relative to Lawsuit

In a letter dated September 11, 1974 Mr. Segall informed Dr. Coshatt of a meeting he and his law partner Truman Hobbs had on September 9, 1974 with Mr. Hamilton (53). During this meeting the ALOA proposal was presented in a manner that Segall and Coshatt had discussed on the prior Sunday. Mr. Hamilton expressed his view that the counter-offer by the ALOA was very reasonable and he would recommend it strenuously to the Board of Health. Mr. Hamilton planned to contact the necessary individuals by telephone and would

get back to them as soon as possible. The only possible problem he foresaw was Sunoptic's (optical laboratory) reaction. Mr. Segall also informed Dr. Coshatt that on Monday he had submitted the affidavit they had also discussed on Sunday. **He mentioned a copy of the affidavit was enclosed (copy not available) (53).**

Lawsuit Settled Restoring Optometrists Reimbursement

The only reference to this settlement was found in the *Alabama M.D.* dated October 4, 1974. While from the perspective of some optometrists, more than 40 years later, this settlement seemed less than ideal, it did end the matter. However, the optometrists had been denied several million dollars of reimbursement income during the intervening time they were either not in the program or not reimbursed the usual and customary fees. It should be mentioned that according to whose "ox was gored", the MASA attorney knew this was a matter they would likely not win should the lawsuit continue. It was in MASA's best interest to settle this suit.

In the October 17, 1974 issue (Vol. 10, No. 44) of the *Alabama M.D.* was an article entitled "Optometrists Drop Suit Claiming MD Conspiracy". According to this article a final settlement of the anti-trust law suit was achieved on October 10, 1974 (43). In dismissing the action upon motion of attorneys for the Optometric Association, United States District Court Judge Robert D. Vance, decreed that no monetary damages be awarded and that each side should pay their own legal costs. Plaintiffs in the action were optometrists Thomas C. Bingham of Morgan County, George R. Crosby of Dale County, and Fred Himburg of Jackson County, who according to the suit, acted for themselves and on behalf of all other optometrists in the State "similarly situated". The suit was also filed on behalf of all Medicaid recipients who were alleged to have been denied eye care by the "conspiratory actions of the medical doctors".

The Medical Association of the State of Alabama (MASA) was defended in the action by the General Counsel, John T. Mooresmith, and Special Counsel, James J. Carter. The Attorney General appointed three Special Assistant Attorney's General to represent the other defendants. The optometrists were basically alleging that the College of Counsellors and House of Delegates had elected the Board of Censors members, who acted in concert to deprive them of their usual and customary fees and process for eyeglasses. *(It is important to remember that the only reason this law suit was filed was for fair and equitable treatment of optometrists with the ophthalmologists with respect to fees in the Medicaid program).*

According to this article the "deposition by Dr. Robinson revealed that eyeglasses for which optometrists normally charged an average of \$20, are now being purchased from an optical

laboratory in Mobile at an average cost of \$9.75. From July 1972 through March, 1974, Medicaid purchased 34,932 eyeglasses". Also according to this article "the present Medicaid program, optometrists and ophthalmologists are paid the same usual and customary fees for similar services". *(Perhaps the Alabama M.D. was taking some literary license in putting their interpretation on this matter. The fact was that many, if not most optometrists, were not participating in the Medicaid program during the time period from July, 1972 through March, 1974 and the August 22, 1974 article in the Birmingham News clearly stated what the new Medicaid fees for optometrists would be for fiscal year 1975. The fee reimbursement had only been equal since October 1, 1974 and only as a result of the law suit filed. As approved by the Federal Court, the settlement provided:*

- 1) The State Board of Health agreed that all eye care service providers will be paid their usual and customary fees in accordance with Federal regulations for all services rendered, including examinations and the prescribing, procuring, fitting and adjusting of eyeglasses.
- 2) The State Board of Health agreed that eyeglasses may, at the option of the provider, be procured from the central Medicaid source or from any other source, but at a price not to exceed the contract price charged by the central source.
- 3) MASA stated that at such time as optometric services become subject to review by a PRSO, consideration would be given to representation by optometrists on the review committee for optometric services, to the end that optometrists may make recommendations and have input to the program.
- 4) All services provided and all equipment furnished are subject to the general requirements of Federal and State regulations, including audits, utilization review, record inspections, Title VI compliance and the availability of funds.

The legal costs to MASA to rid itself of this legal action were slightly in excess of \$4,100. A curbstome guess by MASA was that the cost to the Optometric Association could go as high as ten times that amount (54). *Dr. Crosby, one of the plaintiffs in the case, has stated it was his recollection the cost to the ALOA was about the same as that for MASA (55).*

Dr. Paul Robinson announced his resignation effective September, 1974 and he was succeeded by Dr. Robert Holzworth in October, 1974 (1). Whether Dr. Robinson's resignation was coincidental or by demand is unknown. It seems likely that the departure of Dr. Robinson was welcomed by all optometrists in the State of Alabama, but especially by the members of the ALOA. The time period from July 1972 to October 1974 had been especially frustrating for the members of the ALOA.

SUMMARY

This effort by the ALOA is just another example of the vigilance optometry must pay to programs, legislation, or other actions that effect the profession. The selfless dedication of those optometrists mentioned in this paper is remarkable by today's standard in which the ALOA has a staff that stays informed of such matters. Deserving of special mention are Drs. Thomas Bingham, G. Robert Crosby, Fred Himburg and E.A. Coshatt. Drs. Bingham, Crosby, and Himburg served as successive Presidents of the ALOA from 1973 to 1976 and Dr. Coshatt served for several years as ALOA Chairman of the Legal/Legislative Committee. The success of this effort was achieved entirely by optometrists who voluntarily gave of their time and resources to correct this action taken by the State Department of Health. The amount of correspondence written by Dr. Coshatt attests to his dedication to the optometric profession in the State of Alabama. This was an example of blatant discrimination by state agencies administering a Federal program whose committee members wanted to eliminate optometry from providing services to the citizens of the state.

Exactly how this effort to discriminate against optometry began and who colluded to continue it over this two-year time period will likely never be known. The leadership of the ALOA was convinced that, at its core, this issue was a matter of medicine, influenced by ophthalmology, working through the existing system to deny optometry its legal right to provide services to those patients who were covered by Medicaid. Clearly the ALOA achieved its goal of being included in the State of Alabama Medicaid program again, but its more than two-year absence, deprived all optometrists in the state who participated in this program of a significant amount of income.

October 30, 2015

April 26, 2017, reviewed and revised

September 12, 2017, reviewed and revised

September 27, 2018, reviewed and revised

ACKNOWLEDGMENTS

I am indebted to Dr. G. Robert Crosby for loaning me his files on the time period during which this Medicaid action occurred. The chronology of events would not have been possible to understand without this correspondence. Much of the correspondence is in the form of copies of letters or memoranda sent to Dr. Crosby in his capacity as an officer or President of the ALOA. It is also important to note the dedication of Dr. E. A. "Bert" Coshatt in his tireless efforts on behalf of the profession he loved. Dr. Coshatt possessed a passion for politics and his many efforts not only helped safeguard the profession but enabled it to become the recognized entity it is today.

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