U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

September 20, 1995 **FMLA-72**

Dear ***Name****,

This is in reply to your letter of April 3, 1995, with which you enclosed a copy of your letter of June 15, 1994, addressed to ***Name****, about the definition of health care providers under the Family and Medical Leave Act of 1993 (FMLA). You express concern that the physician assistant was not among the recognized health care providers included in FMLA's definition.

The FMLA entitles eligible employees to take leave for a serious health condition of either the employee or an immediate family member. "Serious health condition" is defined to include an injury, illness, impairment, or physical or mental condition involving either inpatient care or "continuing treatment by a health care provider." In addition, FMLA's medical certification provisions allow an employer to request that leave for serious health condition "...be supported by a certification issued by the health care provider..." of the employee or family member. Section 101(6) of FMLA defines "health care provider" as a doctor of medicine or osteopathy authorized in the State to practice medicine or surgery (as appropriate) or "any other person determined by the Secretary of Labor to be capable of providing health care services."

An Interim Final Rule, Regulations 29 CFR Part 825, implementing FMLA was published in the Federal Register on June 4, 1993, and became effective on August 5, 1993, the date on which the law became effective for most employees. This rule contained a list of those persons "determined by the Secretary to be capable of providing health care services." As you note in your letter of June 15, 1994, this list did not include physician assistants. The definition of "serious health condition" (29 CFR 825.114), however, specifically recognized that "continuing treatment by a health care provider" under FMLA could include visits to physician assistants for treatment of serious health conditions under the supervision of a health care provider as defined.

The final regulations (29 CFR Part 825.118, published in the Federal Register on January 6, 1995) reflect changes to the definition of health care providers following careful consideration of numerous suggestions from the public. The interim final rule generated many comments, from employers that felt the definition of health care provider should be more limited, and from providers of various health care services who objected to be excluded. Advocacy groups suggested expanding the definition to include any providers of health care services recognized by the employer's health insurance plan, as the U.S. Office of Personnel Management's FMLA regulations provide Federal employees. The final FMLA rule recognizes any health care provider accepted by the employer's group health (or equivalent) plan, and adds clinical social workers to the extent authorized under State law to independently diagnose and treat serious health conditions without supervision. Physician assistants are not specifically included, as they are ordinarily limited to practicing under a doctor's supervision, but any services or treatments they furnish under the supervision of a doctor, and any services recognized by the employer's health plan furnished on referral and under continuing supervision of a health care provider as defined, would qualify as medical treatment for purposes of FMLA.

Accordingly, failure to list physician assistants as health care provider does not preclude such individuals from being health care providers for FMLA leave purposes under certain circumstances. To the extent employers or their group health plans recognize physician assistants for certification of the existence of a serious health condition to substantiate a claim for health care and related services provided, they would be accepted as "health care providers" under FMLA. For example, physician assistants would be considered health care providers under FMLA if an employer's group health plan or program recognized physician assistants as "primary care givers" for dispensing medical treatment and paid claims for such services. Any medical services recognized by an employer's group health plan or equivalent program which are furnished by a physician assistant as a result of a referral while under the continuing supervision of a health care provider would also qualify as medical treatment under FMLA. In addition, FMLA would recognize medical treatment by a physician assistant where an employee receives treatment

by a physician assistant under the supervision of a health care provider without first seeing the health care provider and obtaining a referral.

We appreciate your concerns and interest in FMLA, and trust that this letter has been responsive. We regret any inconvenience that the delay in our response to your letters may have cause.

Sincerely,

Daniel F. Sweeney
Deputy Assistant Administrator

***** *Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*