

Adopt He-W 589 cited and to read as follows:

CHAPTER He-W 500 MEDICAL ASSISTANCE

PART He-W 589 MEDICAL ASSISTANCE SERVICES PROVIDED BY EDUCATION AGENCIES

He-W 589.01 Purpose. The purpose of these rules is to describe the services provided by school districts and school administrative units that are reimbursable under NH medicaid for which federal financial participation (FFP) can be claimed and to describe the required qualifications ~~of clinicians, of healthcare board licensed clinicians~~ licensed by a board under the office of professional licensure and certification for healthcare professionals, delivering reimbursable services in schools and preschools. Reimbursable services include both the NH medicaid state plan services, and other optional services that are not covered under the NH medicaid state plan, but covered pursuant to 1905(a) of the Social Security Act through the EPSDT benefit. Requesting FFP for Medicaid services is optional for school districts and school administrative units. -These rules are not intended to impose upon school districts and school administrative units the responsibility to provide any services that they are not otherwise legally responsible to provide under RSA 186-C or other law.

He-W 589.02 Definitions.

(a) “Activities of Daily Living (ADL)” means ~~the ability to perform daily activities including~~ grooming, eating, dressing, transferring, mobility, and toileting.

(b) “Applied behavior~~a~~ analysis (ABA)” means a treatment modality that employs the process of systematically applying interventions based on the principles of learning theory to improve socially significant behaviors, and covered through the EPSDT benefit pursuant to -He-W 546.

(c) “Augmentative and alternative communication (AAC) aids” means electronic or non-electronic aids, devices, or systems ordered by a licensed speech pathologist that assists a student to overcome or ameliorate the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities, such as communication boards or books, speech amplifiers, electronic devices that produce speech and/or written output.

(d) “Care plan” means a written health care plan, including, but not limited to, an Individualized Education Program or a 504 plan, which is maintained in the student’s file and documents and supports the medical necessity of all claims submitted to NH medicaid for FFP.

(e) “Durable medical equipment (DME)” means a type of item pursuant to He-W 571 that is:

- (1) Non-disposable and able to withstand repeated use;
- (2) Primarily used to serve a medical purpose for the treatment of an acute or chronic medically diagnosed health condition, illness, or injury; and
- (3) Not useful to an individual in the absence of an acute or chronic medically diagnosed health condition, illness, or injury.

(f) “Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) services” means a benefit pursuant to 42 CFR 440.40 and He-W 546, designed to provide preventative health care, diagnostic services, and early detection and treatment of disease or abnormalities to medicaid enrolled individuals under age 21.

(g) “Enrolled school provider” means a NH local education agency (LEA) or school administrative unit (SAU) that has agreed to participate in NH medicaid pursuant to these rules and enrolled with NH medicaid.

(h) “Federal financial participation (FFP)” means the federal share of costs for services.-

(i) “Group” means 2 or more persons.

(j) “Individualized education program (IEP)” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR 300.320 through 300.324, and the applicable NH department of education administrative rules.

(k) “Instrumental Activities of Daily Living” (IADL) means personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.

~~(l)~~ “Local education agency (LEA)” means a local school district.

~~(m)~~ “Medical assistance” means the federally financed medical assistance program established pursuant to Title XIX of the Social Security Act also known as the medicaid program.

~~(n)~~ “Medically necessary” means reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, cause pain, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and no other equally effective course of treatment is available or suitable for the student requesting the medically necessary service.

~~(o)~~ “Order” means a written authorization for the provision of services issued by an advance practice registered nurse (APRN), physician assistant, physician or other licensed clinician with ordering privileges as authorized by the appropriate NH clinical healthcare board.

~~(p)~~ “Other licensed clinician” means any person licensed under state law to provide clinical healthcare services and practicing within the scope of his or her licensure pursuant to the applicable state law for his or her licensure.

~~(q)~~ “Performing-only provider” means a health care provider that the medicaid program does not allow to independently enroll with medicaid and must be affiliated with an enrolled school provider.

~~(r)~~ “Personal care services” means medically necessary services related to assistance with ADLs or IADLs due to a student’s illness, injury, or disability which are furnished to a student who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for people with developmental disabilities, or institution for mental disease, and covered through the EPSDT benefit pursuant to ~~He-W 546~~.

~~(s)~~ “Physician” means a person licensed to practice medicine in NH or the state in which he or she practices.

~~(t)~~ “Private duty nursing” means the provision of skilled nursing services for students who require more individual and continual skilled nursing observation, judgment, assessment, or interventions than are available from a visiting nurse, in contrast to part-time or intermittent care, such as wound care.

~~(u)~~ “Psychologist” means a person licensed to practice psychotherapy in NH pursuant to RSA 329-B or an equivalent licensing board in the state in which she or he practices.

(~~v#~~) “Psychotherapist or mental health practitioner” means a licensed clinical social worker, pastoral psychotherapist, clinical mental health counselor, or marriage and family therapist licensed under RSA 330-A who provides mental health services. This definition shall include psychiatrists licensed as physicians under RSA 329, ~~and~~ advanced registered nurse practitioners licensed under RSA 326-B:18 as psychiatric nurse practitioners, and psychologists, school psychologists, or associate school psychologists licensed by the board of psychology under RSA 329-B.

(~~w#~~) “Psychotherapy” means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(~~x#~~) “Rehabilitative assistance services” means medical or remedial services covered through the EPSDT benefit and ordered by a physician or other licensed ~~practitioner~~clinician, acting within the scope of his or licensure, for maximum reduction of a physical or mental disability and restoration of a student to his or her best possible functional level.

(~~y#~~) “School administrative unit (SAU)” means a legally organized administrative body responsible for one or more school districts pursuant to RSA 194-C:1.

(~~z#~~) “Section 504 plan (504 plan)” means a plan for services for a student in accordance with Section 504 of the Rehabilitation Act of 1973 as amended.

(~~aa#~~) “Signature” means:

- (1) A person’s name handwritten by that person, excluding any photocopy, stamp, or other facsimile of such name; or
- (2) An electronic signature that complies with RSA 294-E.

(~~ab#~~) “Student” means a person who is eligible for and receiving medical assistance under the medicaid program pursuant to He-W 589.03.

(~~ac#~~) “Under the direction” means that, except as prohibited by state law, the licensed healthcare clinician, whether or not he or she is physically present at the time that services are provided:

- (1) Assumes professional responsibility for the services provided;
- (2) Assures that the services are medically appropriate and performed safely; and
- (3) Assures compliance with the supervision requirements established by the applicable licensure law for his or her clinical practice.

He-W 589.03 Student Eligibility. To be eligible for medicaid reimbursement for covered services, a student shall:

- (a) Have a care plan;
- (b) Be less than 21 years of age;
- (c) Be eligible for and enrolled in medicaid; and
- (d) Be served by an LEA or SAU that is an enrolled school provider.

He-W 589.04 Covered Services and Provider Qualifications.

- (a) All enrolled school providers shall:

- (1) Be enrolled with NH medicaid for the purposes of administration and billing;
 - (2) Verify the qualifications, licensure, and certifications, as applicable, of all performing-only providers upon hire and at time of any licensure or certification renewal and maintain proof of verification;
 - (3) Screen all performing-only providers of Medicaid services for exclusions against the US Office of Inspector General (OIG) exclusion and sanction database pursuant to section 1866(j)(2) of the Social Security Act, section 1903(i) of the Social Security Act, and 42 CFR 1001.1901. The OIG exclusion and sanction database is located at <https://exclusions.oig.hhs.gov>; and
 - (4) Screen all performing-only providers upon hire, prior to executing a contract, and on a monthly basis thereafter as long as the performing-only provider is providing Medicaid services for which the enrolled school provider is seeking FFP.
- (b) All covered services shall be:
- (1) Provided through a student's LEA or SAU;
 - (2) Medically necessary; ~~due to a medical condition or injury and not solely needed for education~~;
 - (3) Included in the student's care plan;
 - (4) Documented in the student's care plan in accordance with this part;
 - (5) Provided in a variety of locations and settings as specified in a student's care plan and may occur outside the hours of the usual school day;:-
 - (6) Provided by qualified ~~treatment~~ clinicians pursuant to this part and who comply with the scope of his or her board licensure for his or her clinical practice including all supervision and ordering requirements ~~of the clinicians' licensing board~~; and
 - (7) Prior authorized if required.:-
- (c) Covered services may be provided by staff employed or subcontracted by the enrolled school provider and who are:
- (1) Either licensed by the applicable clinical healthcare boards to provide the services provided or otherwise under the direction of the appropriate licensed clinician to provide the services as permitted by applicable licensure law ~~or administrative rules~~; or
 - (2) ~~A~~ Board Certified Behavior Analysts ~~delivering ABA services~~, appropriately certified by the national Behavior Analyst Certification Board, and if supervising others, have a supervisory certification issued by the national board and be acting within the scope of that certification.
- (d) Covered supplies and equipment described under He-W 589.04 shall:
- (1) Be acquired for the use of a specific student;
 - (2) When purchased, be the property of the student and his or her family; and

(3) When rented or acquired through a used equipment exchange program, be the property of the student and his or her family during the period used.

(e) DME shall be provided by a qualified DME provider, and in accordance with the requirements pursuant to He-W 571.

(f) ~~AAC~~ aids shall be provided by a qualified DME provider, and in accordance with the requirements of He-W 575.

(g) Medical evaluation shall include the following:

(1) Those services rendered by a physician, APRN, or physician assistant whose opinion or advice is requested regarding the evaluation or treatment of a student's condition;

(2) The course of treatment or therapy ordered by the physician, APRN, or physician assistant which is overseen by the referring physician, APRN or physician assistant; and

(3) An initial evaluation shall be covered; however, if the physician, APRN or physician assistant assumes the continuing care of the student, any service(s) provided subsequent to the initial evaluation by such physician, APRN, or physician assistant shall not be considered an evaluation but may be coverable as another service pursuant to this part.

(h) The following medical evaluation services shall be billable under the category of medical evaluation:

(1) Examination of a single organ system, including:

- a. Documentation of complaint(s);
- b. Physical examination and diagnosis of current illness; and
- c. Establishment of a plan of management relating to a specific problem; and

(2) In-depth evaluation with development and documentation of medical data, including:

- a. Chief complaint;
- b. Present illness;
- c. Family history;
- d. Medical history;
- e. Personal history;
- f. System review; and
- g. Physical examination.

(i) Nursing services shall be medically necessary to meet the health needs of a student and shall include:

(1) Any assessments, treatments, or evaluations performed by a licensed registered nurse, licensed practical nurse (LPN), or APRN for a student that are medically necessary ; and

(2) Supplies and equipment necessary for the provision of the covered nursing services as determined by the licensed registered nurse, LPN, or APRN.

(j) Nursing services shall be performed by the following:

(1) An APRN licensed to practice in NH by the NH board of nursing in accordance with RSA 326-B:18 or the state in which he or she practices as a registered nurse in an advance practice role; or

(2) A registered nurse or LPN who is:

a. Licensed to practice in NH or the state in which he or she practices; and

b. Acting under the direction of a physician, APRN, or physician assistant for those activities that require an order.

(k) Nursing services shall include the following:

(1) Administration of medication(s);

(2) Positioning or repositioning;

(3) Assistance with specialized feeding programs;

(4) Management and care of specialized medical equipment such as:

a. Colostomy bags;

b. Nasogastric tubes;

c. Tracheostomy tubes; and

d. Related medical devices;

(5) Observation of students with chronic medical illnesses in order to assure that medical needs are being appropriately identified, addressed, and monitored; and

(6) Other services determined by a registered nurse, LPN, or APRN to be medically necessary and appropriate.

(l) Billable categories of nursing services shall include the following:

(1) Nursing assessment;

(2) Nursing treatment; and

~~(3) Nursing evaluations; and~~

~~(34)~~ Supplies and equipment necessary to provide covered nursing services.

(m) Private duty nursing services shall be:

(1) A covered service when it is part of the student's medical regimen and rendered under the order and under the direction of the student's physician; and

(2) Covered and delivered by the clinicians pursuant to He-W 540 and in accordance with the requirements of He-W 540.

(n) Occupational therapy services shall be covered if the services are medically necessary to implement a program of activities to develop or maintain adaptive skills necessary to achieve adequate and appropriate physical and mental functioning of a student including:

(1) Any evaluations, treatment, or assessments performed by an occupational therapist of students whose abilities to carry out age appropriate tasks are threatened or impaired by physical illness or injury, mental illness, emotional disorder, or congenital or developmental disability;

(2) Supplies and equipment necessary to provide the covered occupational therapy services as recommended by an occupational therapist; and

(3) Occupational therapy services performed by an occupational therapy assistant carrying out a therapy plan developed by the occupational therapist.

(o) Occupational therapy services shall be provided by:

(1) An occupational therapist who is licensed to practice in ~~New Hampshire~~ or the state in which he or she practices, and is either:

a. Registered by the National Board for Certification in Occupational Therapy Inc.; or

b. A graduate of a program in occupational therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and engaged in the supplemental clinical experience required before registration by the National Board for Certification in Occupational Therapy, Inc.; or

(2) An occupational therapy assistant as defined in RSA 326-C:1, IV working under the direction of a licensed occupational therapist.

(p) Occupational therapy services shall require an order.

(q) Occupational therapy services shall include:

(1) ~~Task-oriented~~ activities to correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the student;

(2) Evaluations of:

a. Sensorimotor abilities;

b. Self-care activities;

c. Capacity for independence;

d. Physical capacity for prevocational and work tasks; and

e. Play and leisure performance;

(3) Specific occupational therapy techniques involving:

a. Improving skills for activities of daily living;

- b. The fabrication and application of splinting devices;
 - c. Sensorimotor activities;
 - d. The use of specifically designed manual and creative activities;
 - e. Guidance in the selection and use of adaptive equipment; and
 - f. Specific exercises to enhance functional performance and physical capabilities needed for work activities; and
- (4) Other services determined by an occupational therapist to be medically necessary and appropriate.
- (r) Billable categories of occupational therapy services shall include the following:
- (1) Occupational therapy evaluation;
 - (2) Occupational therapy, individual;
 - (3) Occupational therapy, group; and
 - (4) Supplies and equipment which are medically necessary for the provision of occupational therapy services.
- (s) Physical therapy services shall include:
- (1) Any evaluations to determine a student's level of physical functioning, including performance tests to measure strengths, balance, endurance, and range of motion;
 - (2) Any treatment services, evaluations, or assessments which might utilize therapeutic exercises or the modalities of heat, cold, water, and electricity, for the purpose of preventing, restoring, or alleviating a lost or impaired physical function;
 - (3) Other services, including supplies and equipment, determined by a physical therapist to be medically necessary and appropriate for a student's physical therapy; and
 - (4) Physical therapy services performed by a physical therapy assistant carrying out a therapy plan developed by the physical therapist.
- (t) Physical therapy services shall be provided by:
- (1) A physical therapist who is a graduate of a program of physical therapy approved by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Physical Therapy Association or its equivalent and licensed to practice in the state of NH or the state in which he or she practices; or
 - (2) A physical therapy assistant as defined in RSA 328-A:2, VIII who is under the direction of a licensed physical therapist pursuant to (1) above.
- (u) Physical therapy services shall be medically necessary.
- (v) Billable categories of physical therapy services shall include the following:
- (1) Physical therapy, evaluation;

- (2) Physical therapy, individual;
- (3) Physical therapy, group; and
- (4) Supplies and equipment medically necessary for the provision of covered physical therapy services.

(w) Psychiatric services shall be medically necessary for the evaluation, assessment, diagnosis, and treatment of mental or emotional conditions.

(x) Psychiatric services shall be provided by:

- (1) A psychiatrist who is a physician licensed to practice in NH or the state in which he or she practices and is either board certified or board eligible according to the most recent regulations of the American Board of Psychiatry and Neurology, Inc. or its successor organization pursuant to RSA 135-C:2; or
- (2) An APRN with a psychiatric specialty pursuant to RSA 326-B:18.

(y) Billable categories of psychiatric services shall include the following:

- (1) Psychiatric evaluation and diagnosis; and
- (2) Psychiatric treatment.

(z) Psychological services shall require an order and be medically necessary for the evaluation, diagnosis, treatment, and counseling of mental or emotional illnesses, symptoms, or conditions.

(aa) Psychological services shall be provided by:

- (1) A psychologist who is a school psychologist or associate school psychologist certified by the state board of education in NH or in the state in which he or she practices and licensed by the NH board of psychologists or another state's board of psychology;
- (2) A psychologist or associate psychologist licensed by the NH board of psychologists or licensed by another state's board of psychology;
- (3) A physician;
- (4) APRNs with a psychiatric specialty pursuant to RSA 326-B:18;
- (5) Psychotherapists acting within the scope of his or her licensure; or
- (6) An MLADC for co-occurring mental health and substance use disorders.

(ab) Billable categories of psychological services shall include the following:

- (1) Psychological testing and evaluation;
- (2) Psychodiagnostic testing;
- (3) Psychological counseling, individual treatment;
- (4) Psychological counseling, group treatment; and

(5) Family counseling, during which the student shall be present at 51% of the counseling session.

(ac) Mental health services, other than psychiatric and psychological services, shall be covered if they are medically necessary, ordered, and shall include, but be not limited to:

(1) Behavior management;

(2) Individual counseling,

(3) Group counseling,

(4) Family counseling; during which the student shall be present at 51% of the counseling session; and

~~(5)~~ Crisis intervention.

~~(ad)~~ Persons providing mental health services shall be:

~~(1) A psychologist who is a school psychologist or associate school psychologist certified by the state board of education in NH or in the state in which he or she practices and licensed by the NH board of psychologists or another state's board of psychology;~~

~~(2)~~ Psychotherapists; and

~~(3)~~ Psychologists licensed by the board of psychology pursuant to RSA 329-B; or

~~(4)~~ An APRN with a psychiatric specialty pursuant to RSA 326-B:18.

~~(ae)~~ Substance use disorder (SUD) treatment and recovery support services shall be provided by the licensed qualified providers described in He-W 513, and in accordance with the requirements in He-W 513.

~~(af)~~ Rehabilitative assistance services shall include the following:

(1) Mobility assistance ~~to include~~ such as positioning, transfers, correct application of ankle-foot orthosis, range of motion, fall prevention, and safety risk precautions;

(2) Communication assistance ~~to include~~ such as assistance with sign language, prompting to facilitate expressive and receptive language, and assistance with AAC devices and other such devices that ameliorate communication limitations;

(3) ~~Implementation of behavioral management plans to increase adaptive behavioral functioning~~ include;

(4) Nutrition ~~to include~~ such as assistance with eating, cutting food, and food preparation;

(5) Cueing, prompting, and guiding, when provided as part of the assistance with ADLs, communication, or behavior management;

(6) ~~Assistance with adaptive or assistive devices when linked to the student's medical condition;~~

(7) Assistance with the use of DME when linked to the student's medical condition;

~~(85)~~ Medication administration by oral method to the extent allowable under RSA 326-B when the rehabilitative assistant has been trained by a nurse in medication administration, and the nurse has delegated the task of medication administration to the rehabilitative assistant;

(98) Personal care services such assistance with ADLs and IADLs; and

~~(105)~~ Any other remedial services, ~~excluding educational and social activities such as classroom instruction and academic tutoring~~, that are included in the student's care plan as medically necessary for the maximum reduction of a student's physical or mental disabilities excluding educational and social activities such as classroom instruction and academic tutoring.

(agf) Rehabilitation assistants shall:

(1) Be certified pursuant to Ed 504.05 or Ed 504.06, requirements and certification for paraeducators;

(2) Have qualifications equivalent to the requirements for certification under Ed 504.05 or 504.06; or

(3) Be other licensed ~~clinicianspractitioners;~~ and

(4) If applicable for the tasks delegated to the rehabilitative assistant or if required by law ~~h~~Have knowledge in the following areas:

a. Personal care and nutrition, ~~if performing these tasks~~;

b. Infection control and universal precautions designed to prevent the transmission of infectious diseases;

c. Safety and emergency procedures, including basic first aid and 911 protocols; and

d. Proper lifting techniques; and

e. ~~Medicaid recipient rights, and the reporting of abuse and neglect; and~~

~~f. Record-keeping and documentation, including the penalties associated with improper recordkeeping and documentation.~~

(5) Have knowledge in the following areas:

a. Medicaid recipient rights, and the reporting of abuse and neglect; and

b. Record-keeping and documentation pursuant to this part, including the penalties associated with improper recordkeeping and documentation.

(ahg) ~~Rehabilitativeon~~ assistants shall provide rehabilitation assistance services in accordance with Ed 1113.12.

(aih) Covered rehabilitative assistance shall be medically necessary shall require an order, ~~and be prior authorized in accordance with He W 546.~~

(ajj) Provision of rehabilitative assistance services shall be reviewed by an other licensed clinician designated by the care plan team every 30 days. Such review shall include review of the activities

performed by the rehabilitative assistant and the effectiveness of the activities as observed by the rehabilitative assistant. As part of the review, the ~~other care plan team designated~~ licensed clinician shall sign the documentation of the service transaction logs to attest that the service was actually provided. ~~Each~~ The health care clinician who has been designated as the clinician responsible for the implementation of the ~~care plan~~ the rehabilitative assistant is carrying out shall provide review and signature that the activities have been conducted in accordance with the health care clinician's treatment plan.

(ak) Speech, language, and hearing services shall be covered services if they are services, supplies, ~~and or~~ equipment ordered by a licensed audiologist or licensed speech pathologist to be medically necessary for the evaluation, diagnosis, ~~and or~~ treatment of speech, language, and hearing disorders which result in communication disabilities.

(al) Speech language services shall include services performed by speech language assistants listed in (am) below carrying out a therapy plan developed by the speech language pathologist.

(am) Speech, language, and hearing services shall be provided by:

(1) An audiologist who is licensed to practice in NH by the board of hearing care providers or the state in which he or she practices;

(2) A speech pathologist who is either:

a. Licensed pursuant to RSA 326-F to practice in NH, which shall be considered equivalent to having met the requirements for the American Speech-Language-Hearing Association (ASHA) Certificate of Clinical Competence in Speech-Language Pathology; or

b. Licensed in the state in which he or she practices and have one of the following:

(i) A Certificate of Clinical Competence from the American Speech and Hearing Association; or

(ii) Completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) Completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(3) A speech-language assistant as defined in RSA 326-F:1, II-a working under the direction of a qualified licensed speech pathologist; or

(4) A speech-language assistant as allowed in RSA 326-F:2, I(c), working under the direction of a licensed speech pathologist~~-.~~

~~(anp)~~ Billable categories of speech, language, and hearing services shall include the following:

(1) Individual speech, language, or hearing evaluation;

(2) Speech, language, or hearing therapy, individual treatment;

(3) Speech, language, or hearing therapy, group treatment; and

(4) Supplies and equipment medically necessary for the provision of covered speech language and hearing services.

(~~aoe~~) Vision services shall require an order and be medically necessary for the prevention or rehabilitation of visual impairment or restoration of a student with a visual impairment to his or her best possible functional level.

(~~apf~~) Vision services other than those provided by an optometrist and ophthalmologist shall be provided in accordance with the order and be provided in accordance with He-W 565 and He-W 546.

(~~aqg~~) EPSDT comprehensive and age-appropriate medical assessments and screenings of a student's physical and mental status, including vision and hearing screenings in accordance with the requirements pursuant to He-W 546.05.

(~~art~~) Services that are not covered or have coverage limits under the NH medicaid state plan shall be covered through the EPSDT benefit ~~whenif they are~~ medically necessary, coverable under Section 1905(a) of the Social Security Act, and requested in accordance with the requirements of He-W 546.

(~~asu~~) The following are examples of services described in (at) subject to the requirements of He-W 546:

- (1) Rehabilitative assistan~~ce~~t services;
- (2) Applied behavioral analysis;
- (3) Personal care services for individuals under the age of 21;
- (4) Wrap around services;
- (5) Case management services; and

(6) Other optional services listed in 1905(a) of the Social Security Act and not included in the NH medicaid state plan or included as a covered service under this part.

(at) The following are not subject to the prior authorization requirements of He-W 546:

- (1) Rehabilitative assistance services
- (2) Applied behavioral analysis; and
- (3) Personal care services for individuals under the age of 21.

~~(auv)~~ Any services not listed as covered under the NH medicaid state plan or services with coverage limits shall be given independent review by the department for coverage based on medical necessity in accordance with EPSDT pursuant to He-W 546.

(~~ayw~~) Specialized transportation shall be a billable service as follows:

- (1) Transportation shall be listed in the student's IEP as a required service and the student shall be physically in the vehicle for the transportation to be billable to medicaid;
- (2) Transportation shall be considered a required service if:
 - a. The student requires transportation in a vehicle specially adapted to serve the needs of the disabled student, including a specially adapted school bus; or

b. The student resides in an area that does not have school bus transportation, such as those areas in close proximity to a school, but has a medical need for transportation that is noted in the IEP;

(3) The following transportation may be billed as a medicaid service:

a. Transportation to and from school only on a day when the student receives a medicaid coverable service at school during the school day; and

b. Transportation to and from a medicaid coverable service in the community during the school day;

(4) The medicaid coverable service in (3)a. and (3)b. above shall be listed in the student's IEP as a required service; and

(5) In addition to the documentation required by He-W 589.06, transportation providers shall maintain a daily transportation log to include:

a. Student's name;

b. Date of service;

c. Clear indication that the student is being transported either one-way or round-trip;

d. The total number of students on the bus, both in the morning and the afternoon;

e. The total miles the bus traveled, both in the morning and the afternoon;

f. Driver's name; and

g. Driver's signature.

He-W 589.05 Non-Covered Services. The following shall be non-covered services and shall not be eligible for reimbursement:

(a) Services not listed in a student's care plan;

(b) Services that are not coverable under the Social Security Act and for which no FFP is available for said service;

(c) Services performed by unqualified individuals pursuant to the Social Security Act, or services delivered by provider types not approvable under the Social Security Act to provide Medicaid services;

(d) Consultations, visits, trainings, meetings, or discussions between healthcare providers or individuals in which the student was not physically present for at least 51% of the time;

(e) Services which are non-covered pursuant to the He-W 500's 6 through He-W 589 and are not covered under EPSDT;

(f) Supported employment such as vocation goals and job tasks;

(g) Services which are solely eEeducational, remedial education, academic, vocational instruction and tutoring and do not have a medical purpose;

(h) Services performed by educators or individuals who are not healthcare clinicians such as teachers of the visually impaired or deaf;

(i) Leisure and social activities that do not have a medical purpose;

(j) General supervision of a student as required for any student based on the student's development and for non-medical reasons;

(k) Services that are solely personal care services delivered by a legally responsible family member pursuant to 42 CFR 440.167;

(l) Performance of tasks for the sole purpose of assistance with completion of educational assignments;:-

(m) Services provided under an ~~an approved~~ CMS NH medicaid waiver or a NH 1915(i) hybrid;

(n) Day care;

(o) Teaching parenting skills ~~or life skills~~;

(p) Review of records, documentation development, or report writing;

(q) ~~Attending~~ meetings, including individualize education program meetings and IEP team meetings;

(r) Parent consultations, contacts, or trainings;

(s) School guidance counselor services;

(t) Services by individuals not having a current active license for the practice specialty area for the service area being provided; and

(v) Services requiring the technical or professional skill that a state statute or regulation mandates must be performed by a health care clinician licensed or certified by the state.

He-W 589.06 Documentation and Payment for Services.

(a) Reimbursement to enrolled school providers shall be the lesser of the following:

(1) One half of the actual cost, or

(2) The rate established by the department, in accordance with RSA 161:4, VI(a),

(b) Enrolled school providers shall bill by unit of service, using the current procedural code for the service delivered, and submit claims for payment that include the actual cost of the service to the department's fiscal agent.

(c) Enrolled school providers shall submit claims for medicaid covered services delivered by the clinicians and performing providers consistent with this part and with federal medicaid law.

~~(de)~~ Enrolled school providers shall maintain unique documentation in accordance with He-W 520 and this part for the delivered services in each student's individual record, with such documentation to include:

- (1) A copy of the care plan and if an IEP, evidence of implementation of the IEP as required by Ed 1109.04(b);
 - (2) The name of the student, the medical assistance ID number, and documentation demonstrating receipt of each unit of the covered service;
 - (3) The names, qualifications, and credentials of all performing providers for each service delivered for which the school sought FFP ~~for~~;
 - (4) The documentation of the qualifications, names, and signatures of persons directing or supervising the individuals providing the covered services if direction or supervision is required under this part or applicable law, and the date of supervisory approval ~~;~~;
 - (5) Date(s) of each service delivered and the ~~and~~ location where the services were performed;
 - (6) The type of covered service provided and a description of each service provided;
 - ~~(7)~~ The duration of the provision of the each covered service, number of units performed, and the number of minutes for each delivered service;
 - (8) The start and stop times of the delivered services, and whether there was a break in services or time away by the performing provider;
 - (9) Indication whether the services were delivered in a group setting or individually;
 - ~~(10)~~ Indication of whether the student was actually present for the service and indication whether the student was present for at least 51% of time;
 - ~~(11)~~ In the case of group services, documentation of the number of participants in the group who received the covered service regardless of the participants' medicaid eligibility;
 - ~~(12)~~ A copy of a physician's or other licensed clinician's order if required; and
 - ~~(13)~~ Documentation of the qualifications and the handwritten signature of the individual(s) attesting to the medical non-academic nature of the covered rehabilitative assistance services.
- ~~(e)~~ Enrolled school providers shall submit claims for physical, occupational, and speech-language therapy services in accordance with the following:

- (1) Only units of direct treatment performed by a physical therapist, occupational therapist, SLP, a physical therapy assistant, occupational therapy assistant, or speech-language assistant shall be billed, meaning the time the therapist or physical therapy assistant, occupational therapy assistant, or speech-language assistant spends providing direct treatment to one recipient;
- (2) Therapists working as a team to treat one or more students shall not each bill separately for the same or different service provided at the same time to the same student; and

(3) If a student requires co-treatment simultaneously by 2 therapists, the total number of units shall be divided between the clinicians and billed separately by each clinician to equal the total time the student was receiving actual therapy services.

(fe) Enrolled school providers shall only bill covered service time provided simultaneously by more than one ~~qualified-licensed~~ clinician and a rehabilitative assistant as follows:

(1) If rehabilitative assistance is provided simultaneously with another covered service, the rehabilitative assistance shall be billed in addition to the covered service; or

(2) If rehabilitative assistance is provided by more than one rehabilitative assistant simultaneously, each assistant's service shall be billed separately.

(gf) In calculating the cost for transportation, the enrolled school providers may include the following actual costs related to the trip:

(1) Fuel;

(2) Insurance;

(3) Driver's salary and benefits;

(4) Salary and benefits of other persons working on the bus;

(5) Depreciation, and

(6) Maintenance.

(hg) The total cost calculated in (f) above shall then be divided by the total number of miles for the trip both ways, and then divided by the total number of students on the bus, regardless of the students' medicaid eligibility to determine the cost per mile per student.

(ih) In accordance with 34 CFR 300.154 (d)(2)(iv), Ed 1120.08, and 42 CFR 300.154(d)(2)(v), informed parental consent shall be obtained prior to the enrolled school provider billing the student's medicaid.

(ji) Enrolled school providers shall maintain records in support of claims submitted for reimbursement for a period of at least 6 years from the date of service or until the resolution of any legal action(s) commenced in the 6 year period, whichever is longer.

(k) The creation, storage, retention, disclosure, and destruction of documentation required by this part shall comply with all federal and state privacy and security laws and rules including the substance use disorder patient records regulations pursuant to 42 CFR Part 2, Family Educational Rights and Privacy Act, and the Health Insurance Portability and Accountability Act of 1996, as applicable.

He-W 589.07 Utilization Review and Control.

(a) The department's program integrity unit shall monitor utilization of medical services delivered in schools to identify, prevent, and correct potential occurrences of fraud, waste, and abuse in accordance with 42 CFR 455, 42 CFR 456, 42 CFR 1001, and He-W 589.

(b) The department shall recoup state and federal medicaid payments as permitted by 42 CFR 455, 42 CFR 447, and 42 CFR 456 for a provider's failure to comply with these rules and to maintain supporting records in accordance with He-W 520 and He-W 589.

He-W 589.08 Documentation of Expenditure of Non-Federal Funds.

(a) The enrolled school provider shall provide documentation annually regarding all services rendered pursuant to these rules.

(b) Such documentation shall:

(1) Demonstrate that:

a. The percentage of federal medical assistance reimbursed, as required by section 1905(b) of the Social Security Act, does not exceed 50% of the actual cost of covered services claimed under ~~medicaid~~~~the medical assistance program~~; and

b. In no case are services that are reimbursable under ~~medicaid~~~~the medical assistance program~~, but paid by other federal funding, claimed by the enrolled school provider under NH medicaid~~under the medical assistance program~~;

(2) Be reviewed and signed by the enrolled school provider's superintendent; ~~and~~

(3) Be submitted to the department no later than October 30 of each year for the preceding fiscal year period; and

(4) Be accompanied by a completed form "Documentation of Expenditure of Non-Federal Funds" (~~28/2020+6~~) for a specific July 1 through June 30 time period which includes an attestation signed and dated by the superintendent stating,

"I hereby certify that all Medicaid funds paid to the above named districts under He-W 589, Medical Assistance Services Provided by Educational Agencies for the period July 1, xxxx through June 30, xxxx have been supplemented with LEA/SAU and/or non-federal funds to total 100% of the cost of services rendered and that the Medicaid reimbursement does not exceed 50% of the total cost of the services rendered."

(c) Failure to provide the information required pursuant (b) above within 60 days from October 30 shall result in a ten percent penalty based on the enrolled school provider's prior year's distribution of funds and termination of the enrolled school provider's enrolled provider status until the documentation is received by the ~~d~~Department.

He-W 589.09 Waivers.

(a) An enrolled school provider may request a waiver of specific procedures outlined in He-W 589 by writing to the ~~department~~~~administrator of the bureau~~.

(b) A completed waiver request shall be signed by the enrolled school provider's designee.

(c) A waiver request shall be submitted to:

Department of Health and Human Services
Office of ~~Medicaid Medical Services~~~~Client and Legal Services~~
Hugh J. Gallen State Office Park ~~South~~
~~12905~~ Pleasant Street, ~~Main~~-Brown Building
Concord, NH 03301

(d) No federally mandated requirement and no provision or procedure prescribed by state statute shall be waived.

(e) The request for a waiver shall be granted by the commissioner or his or her designee within 30 days if the alternative proposed by the enrolled school provider:

- (1) Meets the objective or intent of the rule;
- (2) Does not negatively impact the health or safety of the student(s); and
- (3) Does not affect the quality of services to students.

(f) Upon receipt of approval of a waiver request, the enrolled school provider's subsequent compliance with the alternative provisions or procedures approved in the waiver shall be considered compliance with the rule for which waiver was sought.

(g) Waivers shall be effective for a maximum of 23 years.

(h) An enrolled school provider may request a renewal of a waiver from the department. Such request shall be made at least 30 days prior to the expiration of a current waiver. A request for renewal of a waiver shall be approved in accordance with the criteria specified in (e) above.

He-W 589.10 State fair hearing.

(a) If the requested service is denied, or denied in part, by the department, the department shall forward a notice of denial to the recipient and the treating provider with the following information:

- (1) The reason for, and the legal basis of, the denial; and
- (2) Instructions that a fair hearing on the denial may be requested by the recipient within 30 calendar days of the date on the notice of the denial, in accordance with He-C 200.

(b) Decisions made by the department in accordance with He-W 546.06(d) and (g) shall not be superseded by the treating or consultative health care clinician's prescription, orders, or recommendations.