



State of New Hampshire

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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JEFFREY A. MEYERS
COMMISSIONER

September 24, 2019

Dear Superintendents:

We are writing to provide further information to you regarding changes in the Medicaid to School Program that were presented to the New Hampshire School Administrators Association during their statewide meeting with the Department of Education on September 6, 2019. As discussed below, the Department of Health and Human Services (Department) adopted Emergency Rules on August 27, 2019 in order to assure that services provided by the school districts comply with the New Hampshire State Medicaid Plan and are therefore eligible for federal reimbursement and to prevent recouplement of impermissible billing of services. This letter is intended to update you on the status of the Emergency Rule and how it currently impacts the Medicaid to School Program; the Department's initiative to begin a stakeholder group to work collaboratively on a permanent rule, and our efforts with the Centers for Medicare and Medicaid Services (CMS) to ensure a successful and compliant program.

The Department will issue a notice for the scheduling of the stakeholder process by early next week.

I would also like to take this opportunity to emphasize that the emergency rule continues coverage for Medicaid eligible students, and allows the school districts to continue to seek reimbursement for services that are ordered and provided by qualified treatment providers and are otherwise consistent with the state plan requirements.

Background

The Medical Assistance Services Provided by Education Agencies ("Medicaid to Schools") (MTS) is a voluntary Medicaid reimbursement mechanism allowed by RSA 186-C:25. Schools that choose to participate in the program can be reimbursed by Medicaid for coverable Medicaid services provided in schools to eligible children. As you know, schools pay for the service in its entirety, and if certain criteria are met, the school may seek reimbursement for 50% of the cost of the service.

In August of 2017, RSA 167:3-k was amended by SB 235 to require the Department to adopt rules to expand Medicaid coverage to all Medicaid eligible students beyond just children with an IEP. To meet these requirements, on August 20, 2018, the Department submitted an emergency rule to expand the MTS reimbursement to children with written care plans other than an IEP.

In Spring 2019, during the rulemaking process, the Department received CMS guidance on a number of issues. CMS clarified that schools are simply a setting in which Medicaid coverable services may be delivered. Thus, all Medicaid requirements must be met in order for the services to be reimbursed through Medicaid – including the requirement that a provider is a qualified treatment provider under the New Hampshire’s Medicaid State Plan as well as the requirement that the service is consistent with the State Plan or coverable under Early Periodic Screening Diagnostic and Treatment. In May 2019, following receipt of this guidance, the Department withdrew its regular rulemaking proposal to allow the Department to review and address inconsistencies between the guidance and the proposed rules.

On July 1, 2019, CMS and Substance Abuse and Mental Health Services Administration (SAMHSA) provided additional guidance on expanding access to behavioral health and substance use disorder treatment services in the school-based setting. Importantly, while CMS is encouraging states to expand access to these services, it also expects states to ensure compliance with the Act and their state plans in regards to coverable services and qualified providers delivering those services.

Emergency Rule

As is described above, MTS billings must be consistent with state and federal law and the New Hampshire’s Medicaid State Plan. If billings are not in compliance, the State could be subject to a number of financial liabilities. CMS has broad authority to recoup past payments from the State and to assess penalties, among other regulatory powers. When the Department became aware that at least some schools were billing for services where the service and/or provider was not covered by the State Plan, it had to take immediate action. This is a serious issue that could threaten the State’s participation in the Medicaid program. In August 2019, the Department met with the Department of Education to confer on the draft emergency rule and a plan moving forward.

On August 27, 2019, the Department filed the emergency rule currently in place, identifying some of the changes necessary to put the Department in compliance with CMS requirements. The emergency rulemaking proposal is the first step in the Department’s work to bringing MTS into alignment with the New Hampshire Medicaid State Plan.

Recognizing the impact an emergency rule would have on the schools and the state, the Department met with as many stakeholders as it could on an expedited basis in late August and early September to provide information and assistance. As a result of those meetings, the Department provided additional guidance, SFY 2020-01 which is attached to this letter. The Department will continue to provide technical assistance as it moves into the regular rulemaking process.

Stakeholder Process

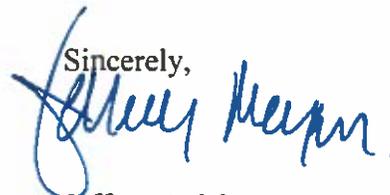
It is important to note that the promulgation of the emergency rule is only one step in the Department’s plan to resolve the discord between past practice of school districts and the CMS approved State Plan. In order to address all relevant concerns, the Department will create a public workgroup with representatives from all stakeholder groups. This workgroup will begin to meet

in public by mid-October and will continue to meet regularly to address the issues. Over the next 155 days, the Department, with the assistance of the workgroup, will continue to develop proposed rules through the regular rulemaking process, and will work with CMS to close the gaps between qualified treatment providers and school professionals who have the qualifications to provide medical services under the Medicaid program. This work may include amending the State Plan, seeking legislative changes, and working with New Hampshire licensing boards.

The Department is committed to working with CMS, as well as all stakeholders, to create as much flexibility as is allowed under the law. In addition, the Department is working with other states to determine where the State is able to expand reimbursement opportunities, in order to further strengthen Medicaid services provided in the school setting.

Again, absent immediate action by the Department, the State and school districts would face increasing liability that may result in recoupment of millions of dollars and harsh penalties for the State. Nevertheless, we recognize the challenges this presents, and we look forward to working collaboratively with all involved to remove any barriers to ensuring children in the program receive the medical services they need.

Please contact the Department should you need any assistance or have any questions or concerns related to the information contained in this letter or the administrative rule currently in place.

Sincerely,


Jeffrey A. Meyers
Commissioner



**NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES
MEDICAID TO SCHOOLS POLICY GUIDANCE**

Reference Number	SFY 2020- 01
Authorized by	Henry Lipman Medicaid Director
Division/Office/Bureau	Division of Medicaid Services
Issue Date	September 2019
Effective Date	Immediately
Subject	Policy guidance
Description	Medicaid to Schools Emergency Rule 2019

OVERVIEW

On August 27, 2019, the Department of Health and Human Services (the Department) adopted an emergency rule for the Medicaid to Schools (MTS) benefit that continues coverage for services to Medicaid eligible students beyond those with Individualized Education Plans (IEP) and clarifies when schools can seek Medicaid reimbursement. This guidance is being issued to provide information regarding the changes to MTS, and provides background information and clarification to explain these changes. The emergency rule will be effective until 2/24/2020, and the Department plans to propose regular rulemaking prior to the emergency rule's expiration. The emergency rule can be found at <https://www.dhhs.nh.gov/oos/aru/documents/erhem1301noticeandrule.pdf>

BACKGROUND

The Department has expanded the MTS benefit to include reimbursement for coverable Medicaid services delivered by qualified treatment providers to any Medicaid eligible student with a written care plan beyond those students with an IEP. Reimbursement for coverable Medicaid services provided pursuant to an IEP will continue under this expansion. The Department has also expanded coverage for services schools may seek Medicaid reimbursement for to include wrap care coordination and case management services.

During the course of previous administrative rulemaking to implement the expansion, the Centers for Medicare & Medicaid Services (CMS) provided the Department with clarification that the MTS benefit is simply another setting where all coverable Medicaid services can be delivered. Additionally, CMS issued guidance on how states can expand access to behavioral health and substance use disorder treatment services in the school setting. While CMS is encouraging states to expand access to these services, it also expects states to ensure compliance with the Social Security Act and their Medicaid programs with regards to coverable services and qualified treatment providers delivering those services. In response, the Department is moving MTS to the Division of Medicaid Services, and making changes to the MTS benefit as a first step in several rulemakings to fully align MTS with the NH Medicaid program.

1. Schools continue to be fully eligible to seek Medicaid reimbursement for services delivered by qualified treatment providers as defined under the Social Security Act and state law.

This means that individuals must be medical or behavioral health practitioners licensed and practicing within the scope of their board licensure. The list below is not an exclusive list of qualified treatment providers under the Social Security Act and NH state law (*see also #5 below*):

- Physicians (medical or osteopathic)
- Nurses (APRN, LPN and RN (RN and LPN must be under the direction of a physician or APRN))
- Psychologists licensed by the NH Board of Psychology
- Occupational therapists and OT assistants
- Physical therapists and PT assistants
- Speech therapist and ST assistants
- Psychiatrists
- Audiologists
- Speech-Language Pathologists and Speech-Language Assistants
- Optometrists and ophthalmologists
- Licensed Clinical Social Workers
- Licensed alcohol and drug counselors (LADC), and a master of licensed alcohol and drug counselors (MLADC)

Statutorily Medicaid reimbursement is only available for qualified treatment practitioners. Some examples of licensed and credentialed individuals who are not Medicaid reimbursable are listed below. If you have questions about whether a specific licensed and credentialed individual is coverable please contact the Department (*See #9 below*).

- Educators, including Special Education Teachers, Teachers of the Deaf or Visually Impaired unless licensed by a NH board as a treatment provider such as the NH Board of Mental Health Practice or Speech-Language Pathology
- Paraeducators, except, at this time, rehabilitative assistants delivering personal care services
- School Psychologists and Associate School Psychologists, unless licensed by the NH Board of Psychology
- School Counseling Directors, School Counselors and Guidance Counselors, unless licensed by the NH Board of Mental Health Practice or by the NH Board of Psychology
- Speech language specialists unless licensed by the NH Board of Speech-Language Pathology

2. Federal law requires screening of all Medicaid treatment providers including those performing services in schools.

This means verifying the qualifications, licensure, and certifications of treatment providers upon hire and at the time of licensure or certification renewal. Schools or their designees must perform monthly screening of treatment providers for exclusions against the Office of Inspector General (OIG) exclusion and sanction database which is located at <https://exclusions.oig.hhs.gov>.

3. Care plans can include IEPs, 504 Plans, and other written health care plans.

This means other written health care plans can be used in support of Medicaid reimbursement such as Behavior Intervention Plans or Individualized Health Care Plans. The Department will be working with

the NH Department of Education on issuing content and format description for other types of care plans and documentation requirements for demonstrating medical necessity in the future.

4. Consultations must include the student.

CMS clarified that reimbursement can be sought for consultations only when the student was present for a portion of the consultation. This is because medical assistance means that services are delivered directly to a Medicaid beneficiary. Schools should only seek reimbursement for consultations that included the student for at least 51% of the consultation time and bill the correct Current Procedural Terminology (CPT) code for this service.

5. Who can order health care services?

The Department is not restricting licensed qualified treatment providers or clinicians from practicing within the scope of their board licensure, including those that can act independently to treat or order services. An order prescribing the Medicaid covered service is generally needed from a Physician, APRN or physician assistant. In its regular rulemaking proposal, the Department will clarify the definition for “order” that it includes those licensed treatment practitioners whose scope of license permits ordering services to be consistent with the Department’s Medicaid fee for service rules (the He-W 500s), federal and state law. The Department deleted the term “other licensed practitioner of the healing arts” because it is an undefined term under federal law and is not used in the NH Medicaid program.

6. The waiver submission process under the administrative rule has not changed.

This means schools needing waivers for Board Certified Behavior Analysts (BCBAs) may still submit them to the Bureau of Developmental Services for the 2019-2020 school year. In the regular rulemaking proposal, the Department will propose elimination of the current waiver process because BCBAs will be permitted to bill as treatment providers via the Early and Periodic Screening, Diagnostic, and Treatment benefit and thus, no waiver process will be needed.

7. Third party liability provisions apply but schools are not responsible for seeking reimbursement from third party payors.

CMS clarified that since Medicaid is the payor of last resort, third party liability provisions apply to Medicaid services delivered in school; however, since schools cannot get National Provider Identification numbers, they cannot bill private insurers prior to billing Medicaid for the covered service.

8. The Department’s program integrity unit requests that schools complete the attached survey with regard to billing agents and return it to the unit by September 23, 2019. Please see attachment.

9. Questions about this notification can be sent to:

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Please cc Henry Lipman, Henry.Lipman@dhhs.nh.gov