



EBERHARTER-MAKI | TAPPEN PA
EXPERIENCED IN EDUCATION LAW

Medicaid School- Based Services

Presented by

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Medicaid School-Based Services



Purpose of Webinar:

This webinar is not intended to provide legal advice but is designed to provide authoritative information about education topics. The information may not be accurate for all situations. The participant is encouraged to contact legal counsel if legal advice is needed. The information provided may not be accurate for states other than Idaho.

Medicaid School-Based Services



First Position Paper – Scope of Work:

- Analysis and clarification of:
 - The obligation of Local Education Agencies (LEAs) to provide a Free Appropriate Public Education (FAPE);
 - The impact that an exception from current Medicaid procedures would have on LEAs' obligations under the IDEA, IDAPA rule and legal obligations in current Idaho Medicaid billing restrictions.

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Second Position Paper – Scope of Work:

- Research compliance requirement of 34 CFR 300.154 as it relates to the DHW and the Medicaid Provider Agreement; and
- Provide analysis and clarification as to whether the federal requirement for an Interagency Agreement have been met.

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First Position Paper:

IDEA – Historical Overview:

- 1970 – Education of the Handicapped Act enacted.
- 1974 – Education of all Handicapped Children Act (P.L. 94-142) enacted with six major components:
 - Free appropriate public education (FAPE)
 - Least restrictive environment (LRE)
 - Individualized Education Program (IEP)
 - Procedural due process
 - Nondiscriminatory assessment
 - Parent participation

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IDEA Eligibility:

3-prong test:

1. The eligibility requirements for a specific disability are met;
2. The disability has an adverse impact on the student's education; and
3. The student needs special education in order to benefit from education.

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Educational Services:

- Once a student has met the 3-prong test, the student is entitled to:
 - An IEP that provides FAPE
 - In the LRE
 - At not cost to parent

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Related Services:

“[T]ransportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services and **medical services for diagnostic or evaluation purposes**. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.” (Emphasis added). 34 C.F.R. 300.34(a).

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Related Services: (continued)

- List of related services is not intended to be exhaustive.
- Related services could include such services as:
 - Psychosocial rehabilitation (PSR)
 - Behavioral intervention
 - Behavioral consultation, and/or
 - Personal care services (PCS)
- It must be determined that such services are necessary in order for the student to benefit from education.

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Related Services: (continued)

- Related Services do not include Medical Services (other than for diagnostic or evaluation purposes):
 - Services that can only be provided by licensed physician;
 - Medical devices that are surgically implanted; or
 - Replacement of medical devices that are surgically implanted.

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Special Education Funding:

- Congress estimated educating children with disabilities would cost approx. 2x as much;
- Congress established maximum federal contribution at 40%;
 - Congress has never appropriated full 40%
 - Example: FY 2014 federal funding covered 16% of estimated costs of educating children with disabilities
- Shortfall of federal funding paid for with state/local funds.

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Maintenance of Effort:

- Requires expenditure of the same amount of state/local funds on special education as was spent in the previous year;
- LEAs may not rely on federal funds to meet maintenance of effort requirements;
- Medicaid funds are not considered state/local funds and are excluded from maintenance of effort calculations;
- LEAs are required to supplement expenditures and prohibited from supplanting funds.

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Use of Public Insurance - Medicaid:

- Title XIX of the Social Security Act of 1965 controls Medicaid reimbursement.
- Use of Medicaid for funding may not result in:
 - Reduction of medical or other assistance programs;
or
 - Alter the eligibility of a child with a disability under the Medicaid program.
- LEAs are not obligated to participate in the Medicaid program.

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Use of Public Insurance – Parent Notification:

- Parental consent is required before using public benefits for the first time;
- Any use of public benefits will be at no cost – no copay or deductible;
- Parents may withdraw consent at any time;
- LEA obligated to provide FAPE even if parent consent is not obtained or withdrawn.

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Medicaid – Historical Overview:

- Federal-state program providing health insurance to qualifying low income Americans;
- Jointly financed by the federal government and individual states. States decide:
 - Who is eligible for Medicaid coverage;
 - Type, amount, duration and scope of covered services;
 - Which providers can obtain Medicaid reimbursement; and
 - How much providers will be paid for services.

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Medicaid – Historical Overview: (continued)

- 1988 – Social Security Act amended to allow LEAs to access Medicaid federal funds for:
 - Certain “health related services”;
 - That are medically necessary; and
 - Included on the child’s IEP.

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Medicaid School-Based Services:

- 1993: Idaho school districts allowed to be providers and bill for certain Medicaid services:
 - Provided to students on IEPs;
 - LEAs required to sign a Medicaid Provider Agreement

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Medicaid School-Based Services in Idaho:

- Students with an IEP:
 - Under the age of 22;
 - Meet eligibility requirements for services provided; and
 - Enrolled in an Idaho school district or charter school.
- Qualify for Medicaid, regardless of family income.

Educational Determination vs. Medical Diagnosis



- An educational determination for services is based a comprehensive evaluation and determination by an IEP team that the 3-prong test has been met, establishing a need for special education.
- A medical diagnosis is based on the criteria in the DSM-V. The DSM-V is the standard reference that healthcare providers use to diagnose mental and behavioral conditions and is published by the American Psychiatric Association.

Medical Diagnosis vs. Educational Determination



	Educational	DSM - V
Guided by	Individuals with Disabilities Education Act (IDEA)	Diagnostic and Statistical Manual of Mental Disorders (DSM-V)
Symptoms are adversely impacting	Educational Functioning (Ages 3 and above)	Adaptive Functioning
Performed by	Team Membership defined in rule	Professional Diagnostic training
Age	3 – 21	Children and Adults
Process and Method	Specific evaluation process and procedures are required and methods are identified.	Not Specified: Process and procedures determined by referral concerns. Developmental or Cognitive testing for rule out of developmental delay
Included	<ul style="list-style-type: none"> •Observation •Testing •Interview 	<ul style="list-style-type: none"> •Observation •Testing •Interview
Evaluation of	Child in all areas of suspected disability.	Child, Family Concerns, Stressors.

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Allowable Medicaid Reimbursements:

- Rehabilitation and health-related services:
 - Medical; or
 - Remedial services
- Provided under the IDEA

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Non-allowable Medicaid Reimbursements:

- Educational services (other than health-related services);
- Vocational services; and
- Recreational services.

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Medical Services:

- Must be medically necessary;
- Recommended by a physician or practitioner of the healing arts; and
- Medical services reimbursed after a signed and dated recommendation or referral is received from a medical professional.
- Additional requirements exist for psychosocial rehabilitation, behavioral intervention, behavioral consultation, and personal care services.

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Medicaid definition: "Developmental Disability":

Chronic disability, attributable to an impairment such as an intellectual disability, cerebral palsy, epilepsy, autism, or another condition closely related to those listed which requires similar treatment or services, **OR is attributable to dyslexia resulting from such impairments AND results in substantial functional limitations in three or more major life activities**, including self-care, receptive and expressive language, learning, mobility, self-direction capacity for independent living, or economic self-sufficiency, **AND reflects the need for services that are life-long or extended duration, and are individually planned and coordinated.**

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Medicaid Provider Agreement:

All providers of Medicaid billable services, including LEAs, must sign a Medicaid Provider Agreement with DHW. Provider agrees to:

- Provide services in accordance with all applicable laws;
- The terms in current Medicaid Provider Agreement;
- Any additional terms in Provider Agreement;
- Any instructions in provider information releases or other program notices.

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Medicaid Provider Agreement: (continued)

- Identifies required record keeping for reimbursement;
- Provider solely responsible to submit accurate claims;
- Provider required to repay DHW if claim not properly provided, documented or claimed.

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Memorandum of Understanding (MOU):

- Between SDE and DHW;
- Defines and clarifies responsibilities for coordinated, comprehensive delivery services for Medicaid School-Based Services:
 - SDE is lead agency for FAPE;
 - DHW lead agency for School-Based Medicaid policy development and fiscal reimbursement.

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Medicaid Advisory Committee:

- Provided for in MOU;
- Meets at least quarterly;
- Reviews and recommends regulatory or legislative changes, policy implementation, application of rule and other applicable subjects/issues.

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Discussion and Analysis:

- Medicaid:
 - Medical model;
 - Provides insurance coverage.
- IDEA:
 - Special education and related services;
 - Students pre-K to 21.

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Discussion and Analysis: (continued)

- Medicaid covers services on an IEP as follows:
 - Services are medically necessary and are included in Medicaid covered category;
 - All Medicaid regulations are followed;
 - Services are included in the DHW state plan or available under EPSDT; and
 - Medical services provided to Medicaid eligible student.

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Discussion and Analysis: (continued)

- IDEA provides no authority for the amendment or modification of Medicaid services to better align with the IDEA.
- LEAs must comply with the terms of the Provider Agreement and meet all Medicaid requirements in order to receive Medicaid reimbursements for services provided.

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Recommendations:

- Continue the Medicaid Advisory Committee;
- Continue with joint training by DHW and SDE for LEA personnel;
- Consider creating user-friendly forms for LEA personnel to assist with Medicaid compliance requirements.

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Second Position Paper – Scope of Work:

- Research compliance requirement of 34 CFR 300.154 as it relates to the DHW and the Medicaid Provider Agreement; and
- Provide analysis and clarification as to whether the federal requirement for an Interagency Agreement have been met.

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34 CFR 300.154:

- Requires “an interagency agreement or other mechanism for interagency coordination”;
 - Between each noneducational public agency (DHW) and the State Education Agency (SDE);
- The interagency agreement or other mechanism is required to ensure that all special education services or related services needed for the provision of FAPE are provided.

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“Interagency agreement or other mechanism for interagency coordination” requirements:

- Identify method for defining financial responsibility for services necessary for FAPE;
- Process for an LEA to be reimbursed by other agencies;
- Procedure for resolving interagency disputes;
- Policies and procedures for agencies to determine/identify interagency coordination responsibilities for the provision of FAPE.

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“Special Rule”:

- An “interagency agreement or other mechanism for interagency coordination” can be met by:
 - State statute or regulation; or
 - Signed agreements between respective agency officials identifying responsibilities relating to provision of services; or
 - Other appropriate written methods approved by U.S. Dept. of Education.

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Medicaid Provider Agreement:

- All LEAs wishing to access Medicaid funding must sign an agreement;
- Provider Agreement is the same for all providers;
- The SDE is not a party to the Provider Agreement;
- Provider agreement is solely between LEA and DHW.

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Analysis – Federal Law:

“Nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for **medical assistance for covered services furnished to a child with a disability because such services are included in the child’s individualized education program** established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child’s individualized family service plan adopted pursuant to part C of such Act.” (Emphasis added).

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Analysis – State Law:

- Idaho Code 33-2002: each public school responsible for providing FAPE;
- DHW rules - allows LEAs to be Medicaid providers:
 - Identifies method for defining financial responsibility for services necessary for FAPE;
 - Includes process for an LEA to be reimbursed by DHW;
 - Includes procedure for resolving interagency disputes;
 - Includes policies and procedures for LEAs and DHW to determine/identify interagency coordination responsibilities for the provision of FAPE.

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- Medicaid Provider Agreement refers extensively to the IDAPA rules:
 - Identifies method for defining financial responsibility for services necessary for FAPE;
 - Includes process for an LEA to be reimbursed by DHW;
 - Includes procedure for resolving interagency disputes;
 - Includes policies and procedures for LEAs and DHW to determine/identify interagency coordination responsibilities for the provision of FAPE

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Legal Analysis:

- All requirements for an “interagency agreement or other mechanism for interagency coordination are met by:
 - Medicaid Provider Agreement; and
 - Idaho statutes and rules.
 - No further agreements or other mechanisms are necessary to meet federal requirements.

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Notes: