



STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
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PAUL R. LEPAGE
GOVERNOR

STEPHEN L. BOWEN
COMMISSIONER

April 30, 2012

Senator Brian D. Langley
Representative David E. Richardson
Members of the Joint Standing Committee on Education and Cultural Affairs
#100 State House Station
Augusta, ME 04333-0100

Senator Earle L. McCormick
Representative Meredith N. Strang Burgess
Members of the Joint Standing Committee on Health and Human Services
#100 State House Station
Augusta, ME 04333-0100


Dear Senator Langley, Representative Richardson, Senator McCormick, Representative Strang Burgess and Members of the Joint Standing Committees on Education and Cultural Affairs and Health and Human Services,


Please find attached a report pursuant to LD 1003 - Resolve, To Assist Maine Schools To Obtain Federal Funds for Medically Necessary Services. This report has been prepared by the Departments of Education and Health and Human Services at the request of the committee.

The attached report summarizes the status of the ongoing work of an interagency stakeholders group that was formed to discuss and resolve issues pursuant to the Resolve. These issues include proposed policy changes; a communication plan; a plan to provide the training required to school administrative units and the Child Development Services System and a detailed budget. In addition, the group was charged to present a timeline for preparation, submission and anticipated approval of the amendments to the State Plan for Medicaid services, pursuant to the Maine Revised Statutes, Title 22, chapter 855. This statute relates to providing medically necessary services to eligible children in school-based settings.

We believe that you will find that this report and attachments demonstrate significant progress in addressing the Committees' concerns. We are happy to discuss the report and any questions you may have.

Sincerely


Stephen Bowen
Commissioner
Department of Education


Mary C. Mayhew
Commissioner
Department of Health and Human Services

Report: LD 1003-Resolve, To Assist Maine Schools to Obtain Federal Funds for Medically Necessary Services

Goal as Identified in LD 1003:

The goal is to ensure that eligible children receive the services they need in the most appropriate settings and to ensure those services that qualify as medically necessary are reimbursed.

Understanding the Problems:

There are Public Schools, Special Purpose Private Schools (SPPS) and Child Development Services (CDS) sites and contracted providers that are not currently billing MaineCare for medically necessary services for eligible children.

The Department of Health and Human Services (DHHS) and the Department of Education (DOE) are working collaboratively to facilitate open communications with the Public Schools, SPPS, and CDS site providers and contracted providers to identify the challenges currently facing schools, and to identify changes that may need to be made to the State Plan and MaineCare Benefits Manual to assist providers in compliantly billing for medically necessary services. A stakeholders group has been formed to include DHHS, DOE, CDS, Maine Administrators of Services for Children with Disabilities (MADSEC) and the Maine School Management Association (MSMA). This group is working collaboratively to identify objectives and work on activities that will support providers billing in the short and long-term, including conducting an analysis of the potential benefits of creating a new section of policy specifically designed for school-based providers vs. creating a billing manual to support providers in billing the current sections of policy.

- Meeting dates: 3/9/12, 3/13/12, 3/23/12, 3/30/12, 4/2/12, 4/9/12, 4/19/12, 4/23/12 and 4/30/12
- Future Meeting Dates: 5/7/12, 5/14/12, 5/21/12, 6/4/12, 6/11/12, 6/18/12, 6/25/12, 7/2/12, 7/9/12, 7/16/12, 7/23/12, 7/30/12

Refinement of MaineCare Policies

- **Accomplished:**
 - DHHS received an advisory from the Centers for Medicare and Medicaid Services (CMS) stating that, so long as federal comparability requirements are met, CMS does not have concerns with the State using a separate section of MaineCare policy or a billing manual to explain the existing sections of MaineCare policy. Federal comparability requirements dictate that the service and the qualified providers are the same, regardless of the setting the service is provided in.
- **In Progress:**
 - Review of other state models, including New York, New Hampshire, Texas and Colorado. DHHS has conducted a review of each states model, and the larger interagency stakeholders group is now in the process of reviewing each model.
 - Risk to benefit analysis of utilizing service-based sections of policy (Physical Therapy, Occupational Therapy, etc.) vs. utilizing a setting-based section of policy, i.e. a separate school-based services section of policy.

- Development of an inventory of what services are being offered in schools, to include both MaineCare services and education-based services. This inventory will also include a list of which qualified providers are currently providing services in educational settings.
 - Review of the process for administrative claiming. The stakeholder group will make a recommendation to the Commissioners of the Departments of Education and Health and Human Services regarding the costs and benefits of the State pursuing administrative claiming.
- **Problem Solving Going Forward:**
 - Through the interagency stakeholders group DOE, and DHHS will coordinate to write either a separate section of MaineCare policy or a school-based services guide. Both agencies, along with Maine Administrators of Services for Children with Disabilities (MADSEC) and Maine School Management Association (MSMA) will have meaningful input in the development of whichever document is determined to be appropriate and effective.
 - Through the interagency stakeholders group, DOE and DHHS will coordinate to write a billing guide based on either the existing sections of MaineCare policy or based on the new section of MaineCare policy that may be developed.
 - DOE and DHHS will coordinate to develop and provide training to staff in educational settings regarding policy and billing.

State Plan Amendment (SPA)

- **Accomplished:**
 - Received clarification from CMS that comparability cannot be waived automatically if school-based services are listed in the Early, Periodic, Screening, Treatment and Diagnostic (EPSDT) section of the State Plan.
 - Confirmed with CMS that their primary concern surrounding federal comparability is services provided in one setting cannot be so different from services provided in another setting, as concerns regarding service quality may arise.
 - Confirmed with CMS that documentation is required in all settings in which the service is provided. DHHS and DOE also received the federal guidance regarding what is required to be in progress notes/clinical documentation.
- **In Progress:**
 - Identification of whether any State Plan Amendments will be necessary.
 - Review of other State Plans, including those of, New York, New Hampshire, Texas and Colorado.
 - Identification of medically necessary services that are currently being provided in schools, including nursing services etc.
 - Identification of State Plan changes that may be necessary if DHHS establishes a process that will allow billing for administrative services.
- **Problem Solving Going Forward:**
 - Decide if the school-based services model should be included in the State Plan in its entirety, and therefore be approved by CMS prior to implementation.
 - If appropriate, include school-based services in the EPSDT section of the State Plan.

- If appropriate, revise the qualified provider section as currently written in the Maine State Plan.
- If appropriate, include billing for administrative services in the State Plan.

Collaboration:

Inter-Departmental Collaboration

DOE and DHHS continue to hold weekly meetings with a collaborative group of inter-departmental representatives to discuss and resolve specific billing issues and other provider concerns. Participants include representatives from DHHS (Office of Child and Family Services, Children's Behavioral Health Services and Office of MaineCare Services), CDS, DOE and other parties as needed.

Interagency Stakeholders Group

- DOE, DHHS, CDS, MADSEC and MSMA have worked together to develop a list of schools that are currently providing but not billing for medically necessary services for MaineCare eligible children.

Communication

- DHHS has identified a single contact within provider relations and the policy division who is able to address and make changes to all of the policies/services that are provided within a school setting.
- DHHS is developing a listserv message that will be sent to school-based providers, CDS sites and providers and SPPS which will include the contact information for the designated representatives as well as Molina customer service.
- DHHS and DOE plan to modify existing DHHS and DOE websites to provide providers with the contact information they need to resolve billing issues and clarify policy questions.
- The interagency stakeholders group will meet with several districts that are currently not billing MaineCare in order to assess and identify the barriers that have led School Administrative Units to not bill for medically necessary services for MaineCare eligible children.
- DHHS has created a targeted listserv that will only include educational-based providers and will be utilized to inform those groups when changes are made that will affect services provided in an educational setting. All messages will be written with and reviewed by the interagency stakeholders group to assure ease of access and readability.

Issues Identified To Date:

- Need to ensure comparability of the training requirements for school-based and community based Behavioral Health Professionals. This issue was raised by CMS.
- Need to clarify billing for third party liability claims.
- Need to clearly define what is meant when a service is provided "under the direction of."
- Need to address concerns regarding rates paid versus the usual and customary charge, i.e. the cost of what is being paid to the servicing provider.
- Need to clarify that the definition of medical necessity has been recognized as an issue and will be reviewed further.

Resolve, To Assist Maine Schools To Obtain Federal Funds for Medically Necessary Services

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this resolve is intended to provide guidance regarding those portions of the Department of Health and Human Services' MaineCare rules that relate to implementation of special education and related services provided through the Child Development Services System and school administrative units to eligible children served in these settings; and

Whereas, it is critical that the Department of Education and the Department of Health and Human Services work together with key stakeholders to develop refinements to existing MaineCare policies or develop new policies and guidance on billing procedures as soon as possible to ensure the provision of medically necessary services to students in school-based settings; and

Whereas, the Department of Education and the Department of Health and Human Services must begin the process of refining current MaineCare policies, developing guidance on billing procedures and preparing any necessary revisions to the state plan to submit to the Federal Government for review and approval prior to the adoption of rules governing Medicaid payment for medically necessary services to eligible children in school-based settings that qualify for reimbursement; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Refinement of MaineCare policies. Resolved: That the Department of Education and the Department of Health and Human Services, referred to in this section as "the departments," shall work together to refine existing policies, develop new policies or prepare nonregulatory guidance on billing procedures, as appropriate, to ensure the provision of medically necessary services to students in school-based settings. The refinements to MaineCare policies must:

1. Be in compliance with federal law;
2. Provide local school districts with options and give them the authority to choose the best option with regard to local needs and capacities;
3. Take into consideration the input of stakeholders, including representatives of the Department of Education, the Department of Health and Human Services, the Child Development Services System, the Maine School Management Association, the Maine Administrators of Services for Children with Disabilities and special purpose private schools and agencies that are approved to provide early intervention or special education programs pursuant to the Maine Revised Statutes, Title 20-A, section 7252-B. In order to gather input from stakeholders, the departments shall establish work groups to explore problems with current Medicaid policies and to consider possible solutions to both policies and billing processes. The work groups must include stakeholders and representatives of the following groups, who participate as nonvoting members:

A. Two representatives of parents of children with developmental delays or disabilities, one who is appointed by the Disability Rights Center and one who is appointed by the Maine

Developmental Disabilities Council; and

B. Two representatives of directly affected local school administrative units with expertise in this area, one who is appointed by the President of the Senate and one who is appointed by the Speaker of the House;

4. Include provisions for training and support for school staff, including the development of policy and billing manuals and other resources written with school-based providers in mind; and

5. Set up an interagency stakeholder body, including representatives of the Department of Education, the Department of Health and Human Services, the Child Development Services System, the Maine School Management Association, the Maine Administrators of Services for Children with Disabilities and special purpose private schools and agencies that are approved to provide early intervention or special education programs pursuant to the Maine Revised Statutes, Title 20-A, section 7252-B, to coordinate the implementation of the program refinements. The interagency stakeholder body must also include representatives of the following groups, who participate as nonvoting members:

A. Two representatives of parents of children with developmental delays or disabilities, one who is appointed by the Disability Rights Center and one who is appointed by the Maine Developmental Disabilities Council; and

B. Two representatives of directly affected local school administrative units with expertise in this area, one who is appointed by the President of the Senate and one who is appointed by the Speaker of the House; and be it further

Sec. 2 State plan amendment. Resolved: That, after due consideration of the input of the stakeholders and relevant work groups established pursuant to section 1, if determined to be appropriate by the Department of Education and the Department of Health and Human Services, the Department of Health and Human Services shall propose changes to the state plan for Medicaid services provided pursuant to the Maine Revised Statutes, Title 22, chapter 855 to permit reimbursement for school-based services by July 1, 2012; and be it further

Sec. 3 Report to Legislature. Resolved: That the Department of Education and the Department of Health and Human Services shall report to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters on March 30, 2012 on the status of the work undertaken to that date pursuant to this resolve. The report must include, but is not limited to, a timeline that establishes specific dates for each of the following initiatives:

1. Proposed policy changes, including refinements to existing policies, new policies to be developed or the preparation of nonregulatory guidance on billing procedures;

2. A communication plan to provide details on the implementation of proposed policy changes to the field;

3. A plan to provide the training required to school administrative units and the Child Development Services System;

4. A detailed budget, including the amount and sources of funding and other resources needed to implement proposed policy changes;

5. If determined to be appropriate by the Department of Education and the Department of Health

and Human Services, a plan to make any necessary changes to rules; and

6. If determined to be appropriate by the Department of Education and the Department of Health and Human Services, a timeline for the preparation, submission and anticipated approval of amendments to the state plan for Medicaid services provided pursuant to the Maine Revised Statutes, Title 22, chapter 855 related to the provision of medically necessary services to eligible children in school-based settings.

In addition, the Department of Education and the Department of Health and Human Services shall jointly submit a status report on a monthly basis through June 2012 on the work completed by the Department of Education and the Department of Health and Human Services and the interagency stakeholder body pursuant to this resolve; and be it further

Sec. 4 Goal. Resolved: That the goal of this resolve is to make sure eligible children get the services they need in the settings they need them in and to ensure those services that qualify as medically necessary services are reimbursed.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

