

- x Application of a statistic to allocate to cost to specific payers, such as Medicaid. (See previous discussion regarding the MER.)
- f *Certification Statement* – A form on which the portion of the public school's or LEA's cost of furnishing SBS that is properly allocated to Medicaid is certified by the public school or LEA to the state Medicaid agency for use as the non-federal share of Medicaid expenditures.
- x It is **highly** recommended that states which use CPEs or reconciled cost methodologies develop interim payments for Medicaid-covered services provided to beneficiaries in school-based settings. These interim payments can then be reconciled and settled based on actual costs that are identified and allocated via the cost report.

9. Third-Party Liability for Medicaid SBS

Generally, the Medicaid statute requires Medicaid to be the payer of last resort, which means state Medicaid agencies are required to take reasonable measures to identify and recover payments from third parties that are liable to pay for services furnished under the state plan. Section 1903(c) of the Act, however, permits an exception to the Third-Party Liability (TPL) requirements in that, for Medicaid covered services listed on a Medicaid eligible child's IEP/IFSP, Medicaid is primary for IDEA-related services. This means that Medicaid will pay primary to the ED for Medicaid-covered services listed in a child's IEP/IFSP even if a liable third party is likely liable. After the state Medicaid agency makes the primary payment on a claim for an IEP/IFSP service, it will then seek to recoup that payment from any liable third party (this is known as "pay and chase"). This removes the burden of seeking TPL for services from the school provider and places it on the state Medicaid agency.

With respect to services that are not part of a child's IEP/IFSP, the IDEA exception does not provide any exemption from pursuing other liable third-party payers, such as private insurance, before billing Medicaid. This is known as "cost avoidance" and generally occurs when a state Medicaid agency rejects a claim because of a known or suspected TPL. Therefore, for these children, schools or their school-based providers must meet federal and state Medicaid provider requirements, including billing the beneficiary's third-party health insurance first (where applicable), before billing Medicaid, to determine the extent of the insurer's payment liability.

Whether or not an individual has an IEP/IFSP under the IDEA, the state Medicaid agency may suspend or terminate efforts to seek reimbursement from a liable third party if they determine that the recovery would not be cost-effective per the requirements set forth in 42 C.F.R. § 433.139. Additionally, states may exempt certain items or services from TPL requirements when submission of claims for those items or services would always result in denial because they generally are not health care services covered by health insurers. The state must have clear and convincing documentation of non-coverage by insurers. If a state has adequate documentation of non-coverage, there is no need to further verify by submitting claims because there would be no liable third party and Medicaid TPL rules would not come into play. The controlling regulation is found at 42 C.F.R. § 433.139(b)(1), which states that "[t]he establishment of third-party liability takes place when the agency receives confirmation from a provider or a third-party resource indicating the extent of third-party liability."

- States may suspend or terminate efforts to seek reimbursement from a liable third party if they determine that the recovery could not be cost-effective pursuant to 42 C.F.R. § 433.139(f), including for IDEA or 504-plan services. This could ease administrative burden at schools.
 - States may exempt certain items or services from TPL requirements when submission of claims for those items or services would always result in denial.
 - State may elect not to identify or follow up on specific diagnosis and trauma codes, based on experience that the codes are not productive of recovery from third parties.
 - State Medicaid agencies do not need to submit a SPA or TPL Action Plan to change the codes subject to diagnosis and/or trauma code editing. However, CMS still requires that the state plan reflect how frequently the state Medicaid agency completes diagnosis and trauma edits and also outlines a procedure for identifying the trauma codes that yield the highest third-party collections and giving priority to following up on those codes. State Medicaid agencies set threshold amounts for recoveries and may accumulate billings until it would be cost-effective to seek payment.
 - A state may specify in its state plan the threshold amount or other guideline to use in determining whether to seek payment from a liable third party or describe the process it uses to determine whether recovery would be cost-effective. The state must submit documentation to CMS supporting that recovery would not be cost-effective below those thresholds.
 - A state may specify in its state plan a dollar amount or period of time for which the state Medicaid agency will accumulate billing with respect to either an individual Medicaid beneficiary or a particular third party.
- State education agencies can elect to pay a third party's liability using its own funds.
- States may use billing agents or other contractors to assist with billing.

Conclusion

As noted above, the Bipartisan Safer Communities Act directs CMS to provide additional guidance to states in the near future related to Medicaid-covered SBS. For example, CMS in consultation with the US Department of Education and other relevant federal agencies, will issue updates to the Medicaid School-Based Administrative Claiming Guide and the Medicaid and Schools Technical Assistance Guide. In addition, CMS, in consultation with the US Department of Education, is tasked with establishing a Technical Assistance Center for Medicaid-covered SBS. Finally, the BSCA directs CMS to issue \$50 million in discretionary grant funding to states in support of implementing, enhancing, or expanding the provision of medical assistance through school-based entities under Medicaid or CHIP.

CMS is available to provide technical assistance to states to best implement their programs.

States interested in receiving technical assistance should email CMS at:

SchoolBasedServices@cms.hhs.gov.