

Date of Hearing: June 22, 2016

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 123 (Liu) – As Amended June 16, 2016

[This bill was double referred to the Assembly Health Committee and was heard as it relates to that committee's jurisdiction.]

SENATE VOTE: 39-0

SUBJECT: Medi-Cal: School-Based Administrative Activities

SUMMARY: Revises the administrative claiming process for local educational agencies (LEAs) that conduct school-based administrative activities relating to the Medi-Cal program. Specifically, **this bill:**

- 1) Requires the Department of Health Care Services (DHCS), in consultation with the State Department of Education (CDE), to establish a School-Based Health Program and Policy Workgroup (Workgroup), in order to assist DHCS in formulating the state plan amendments required and for the purpose of advising DHCS on issues related to the delivery of school-based Medi-Cal services to students. Requires the scope of the workgroup to include, but not be limited to, improving the operation of and participation in all of the following school-based health programs:
 - a) The School-Based Administrative Claiming process program.
 - b) The LEA billing option
 - c) The Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program.
 - d) Other school-based health and mental health programs, including school-based health centers which may receive Medi-Cal funding.
- 2) Requires DHCS, beginning the 2017–18 state fiscal year, and annually thereafter, to publish the following reports on a section of its Internet Web site:
 - a) A report that details the costs of operating the School-Based Administrative Claiming process program including the cost of conducting the random moment time survey (RMTS) and any vendor fees, lists each participating LEA, and cost savings realized through the restructuring of the Administrative Claiming process program through implementation of the School-Based Administrative Claiming process program.
 - b) A report that details the costs of operating the LEA Medi-Cal billing option program that lists each participating LEA.
 - c) A report regarding the rate of participation of LEAs in the EPSDT Program.
- 3) Establishes that it is the intent of the Legislature to provide local governmental agencies (LGAs) with the option to participate in the Targeted Case Management (TCM) program and to provide LEAs with the option to participate in the Administrative Claiming process program.

- 4) Authorizes DHCS to contract with a participating LEA to perform administrative activities necessary for the proper and efficient administration of the School-Based Administrative Claiming process.
- 5) Requires each participating LEA, as a condition of participation in the School-Based Administrative Claiming process program for the purpose of claiming federal Medicaid reimbursement, to enter into a contract with DHCS and to certify to DHCS the total amount it expended on the allowable administrative activities.
- 6) Requires DHCS to deny a claim if it determines that the certification is not adequately supported, or otherwise does not comply with federal requirements, for purposes of claiming federal financial participation (FFP). Permits an LEA to request a reconsideration of a denied claim within 30 days after receipt of written notice of the denial and establishes a denial review process, as specified. Permits DHCS to recoup the cost of disallowed claims that have been paid to an LEA with interest.
- 7) Requires each School-Based Administrative Claiming process contract to include a requirement for each participating LEA to submit a claiming plan, as prescribed by DHCS in regulations developed in consultation with LEAs.
- 8) Requires each participating LEA to certify to DHCS that: 1) the LEA expended funds from its general fund or from any other fund allowed under federal law and regulation to pay for 100 percent of the cost of performing School-Based Administrative Claiming process program activities; and, 2) for each fiscal year, that the LEA's expenditures represent costs that are eligible for FFP for that fiscal year.
- 9) Holds the state harmless from any federal audit disallowance and interest resulting from payments made to a participating LEA for a disallowed claim. If a federal audit disallowance results from a claim for a participating LEA that has already received reimbursement, DHCS may recoup the disallowed claim from the LEA, as specified.
- 10) Requires DHCS, in consultation with LEAs, to adopt regulations that prescribe the requirements for the submission and payment of claims for administrative activities performed by each participating LEA.
- 11) Permits LEAs to claim the actual costs of nonemergency, nonmedical transportation of Medi-Cal eligibles to Medi-Cal covered services, through, and only through, the Medi-Cal administrative activities program.
- 12) Requires LEAs participating in the School-Based Administrative Claiming process to pay an annual participation fee through a mechanism agreed to by the state and LEAs to be used to cover the cost of administering the School-Based Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. Requires the amount of the participation fee to be based upon the anticipated salaries, benefits, and operating expenses to administer the School-Based Administrative Claiming process and other costs related to that process.
- 13) Defines LEA as county offices of education, special education local plan areas, Healthy Start programs, any governing body of any school district or community college district, the

county office of education, a charter school, a state special school, a California State University campus, or a University of California campus.

- 14) Requires each LEA to notify DHCS of its intent to participate in the School-Based Administrative Claiming process program 90 days prior to the initial participation.
- 15) Requires each participating LEA to prepare and submit claims directly to DHCS.
- 16) Specifies that county offices of education or local government agencies are not prohibited from providing services to LEAs to facilitate participation in school-based health programs on a fee-for-service basis.
- 17) Specifies that county office of education or a local educational consortium providing services to a local educational agency are not prohibited from contracting with private or public entities to assist with the performance of administrative activities necessary for the proper and efficient administration of the Medi-Cal program.
- 18) Requires DHCS, by July 1, 2017, to enter into an interagency agreement or memorandum of understanding (MOU) with CDE to coordinate the efforts of both departments with respect to the School-Based Administrative Claiming process program and the LEA billing option. The agreement or MOU shall focus on the following:
 - a) Maximizing DHCS's Medicaid Program expertise;
 - b) Coordinating functions and resources between DHCS and CDE, and building personnel capacity at CDE, to assist LEAs in implementing and meeting the requirements of the School-Based Administrative Claiming process and the LEA billing option at the local level, including an agreement of the use of funds provided for the administration of these programs; and,
 - c) Developing a process by which a LEA may appeal an action of DHCS or CDE with respect to the School-Based Administrative Claiming process program or the LEA billing option. Requires the appeals process to utilize the Office of Administrative Hearings, or another neutral third party acceptable to the department and the State Department of Education, as the appeals authority.
- 19) Requires DHCS to do the following in developing the interagency agreement or MOU with CDE:
 - a) Estimate the cost savings resulting from the restructuring of the Administrative Claiming process program through implementation of the new School-Based Administrative Claiming process program. Requires DHCS to provide the estimate of cost savings, data used to support the estimate, and a description of the methodology used to calculate the estimate to CDE.
 - b) Consult with relevant nonprofit organizations involved in facilitating information sharing among state Medicaid and education agencies involved in the administration of Medicaid claiming for school-based services to identify, and implement if feasible, best practices that accomplish the coordination of efforts required.

- c) Consult with the School-Based Health Program and Policy Workgroup regarding the impact of the implementation of the School-Based Administrative Claiming process program on operations at the local level.

20) Requires any savings resulting from the restructuring of the Administrative Claiming process program through implementation of the School-Based Administrative Claiming process program and available to DHCS to be directed toward implementation of the interagency agreement or MOU.

EXISTING LAW:

- 1) Authorizes DHCS to contract with each participating local governmental agency (LGA) or each local educational consortium (LEC) to assist with the performance of administrative activities.
- 2) Authorizes each participating LGA or LEC to subcontract with private or public entities to assist with the performance of administrative activities. (Welfare and Institutions Code 14132.47)
- 3) Requires each LEA that elects to participate in School-Based Medi-Cal Administrative Activities (MAA) to submit claims through its local educational consortium or LGA, but not both.
- 4) Defines a LEA for purposes of MAA as the governing body of any school district or community college district, the county office of education, a state special school, a California State University campus, or a University of California campus that participates in the Administrative Claiming process as a subcontractor to the local educational consortium in its service region.
- 5) Permits a LGA or local educational consortium to charge an administrative fee to any entity claiming Administrative Claiming through that agency.

FISCAL EFFECT: Unknown

COMMENTS: *Background:* The School-Based Medi-Cal Administrative Activities (MAA) program provides federal reimbursements to local educational agencies for the federal share of certain costs for administering the Medi-Cal program. Those activities include: outreach and referral, facilitating the Medi-Cal application, arranging non-emergency/non-medical transportation, program planning and policy development, and Medi-Cal administrative activities claims coordination. The federal Centers for Medicare and Medicaid Services administers the MAA program at the federal level, and the DHCS administers the MAA program for the State.

In 2012-13, 825 LEAs were involved in the MAA program, a decrease from 836 in FY 2010-11. LEAs that elect to participate in MAA must submit claims through a LEC or LGA. As a condition of participation in MAA, each participating LGA and LEC is required to pay an annual fee to DHCS. The participation fee is used to cover the DHCS' cost of administering the MAA claiming process, including claims processing, technical assistance, and monitoring. Due to concerns regarding a lack of compliance and oversight, CMS has deferred reimbursements for

claims through the MAA program since 2012. Approximately \$0.5 billion in reimbursable funds has not been paid to California school districts in the last five years.

According to the author, the MAA program typically supports school nurses, psychologists, health aides, family resource centers and other activities ensuring that California's neediest students are accessing and receiving health and mental health services. The LEA Billing Option Program currently supports health services for special education students. These programs have been fraught with issues including the federal deferral of funds for the MAA program that resulted in hundreds of millions of dollars being owed to California schools going back to 2010. This bill builds on the recommendations of the State Audit of MAA programs issued last year which Senator Liu requested via the Joint Legislative Audit Committee (JLAC). This bill provides more options and local control for school districts, charters and other LEAs to utilize technical support providers they feel meet their needs rather than require them to use the intermediary structure currently mandated in statute by allowing local education agencies to contract directly with DHCS in a more streamlined, accountable, and cost effective structure as recommended by the state auditor.

Improving school-based health services requires effective coordination between California's health and education systems. This bill requires development of an interagency agreement between DHCS and CDE to help ensure that collaboration is institutionalized and represents the best practices outlined in the recent federal guidance regarding high impact opportunities to support healthy students through inter-agency collaboration at the federal, state, and local level. Federal requirements call for an interagency agreement between the health and education agencies in states to operate these programs. California currently does not have that interagency agreement.

The author concludes that improving school-based health services is a critical strategy to address the achievement gap in our schools and health and education equity issues in California. These vital programs must be operated at a level that meets the benchmark of national best practices in order to meet the needs of California's most vulnerable children.

Definitions. A LEA is any school district or community college district, a county office of education, a state special school, a California State University campus, or a University of California campus. A LEC is a group of LEAs that are all in one same region out of the 11 service regions established by the California County Superintendent Educational Services Association. A LGA is a county, county agency, chartered city, Native American Indian tribe, tribal organization, or subgroup of a Native American Indian tribe or tribal organization. DHCS currently contracts with LGAs and LECs that consolidate claims provided by LEAs for a fee.

2015 State Auditor's Report. In July 2014, Senator Liu requested the Joint Legislative Audit Committee approve an audit of MAA and the LEA Billing Option, the effectiveness of the LECs and LGAs associated with administering the program, the extent to which the necessary administrative controls and structures are in place to ensure schools receive the allowed Medicaid funding. The State Auditor concluded that while the reasonableness test criteria process DHCS used to review reimbursement claims for the MAA program from October 2013 through October 2014 was reasonable and not inconsistent with federal requirements, DHCS approved fewer than 10% of the claims submitted under this process. The entities with which DHCS contracts to review reimbursement claims—LECs and LGAs—added little value during this review process; they approved and forwarded to DHCS claims that did not comply with the

reasonableness test criteria benchmarks and other limits. The Audit noted that at the time, DHCS was behind in its required reviews of LECs and LGAs, which the Auditor noted increased the risk that these entities are not performing the administrative tasks for which they are responsible. DHCS also does not effectively oversee the contracts between the LECs or LGAs and the claiming units.

The Auditor also found that DHCS missed an opportunity to cut costs through the implementation of a single statewide quarterly time survey when it implemented the RMTS methodology. The Audit estimated that the administrative activities program could save as much as \$1.3 million annually in coding costs alone if DHCS conducted a single statewide quarterly time survey. However, if DHCS implemented its own single statewide quarterly survey and took over responsibility for overseeing the administrative activities program, thus eliminating the need to use the LECs and LGAs for these purposes, it would result in significant savings to the administrative activities program.

The Auditor found that DHCS could increase federal funding by an estimated \$10.2 million annually if more claiming units participated in the program and could have increased federal reimbursements by about \$4.6 million from February 2009 through June 2015 if it increased the reimbursement rate for translation activities to the rate allowed by federal law. Additionally, DHCS has not complied with state law requiring the adoption of regulations for its administrative activities program and has failed to issue a required annual report for its billing option program.

Federal financial report on MAA. The Centers for Medicare & Medicaid Services (CMS) performed a Financial Management Report of MAA for the period July 2010 through June 2011, during which time California claimed \$188.9 million in federal Medicaid matching funds. The purpose of the review was to determine if California properly claimed federal Medicaid reimbursement for administrative costs in accordance with federal regulations and California's approved School-Based Administrative Claiming Guide. CMS' review found serious deficiencies within the program.

The CMS review included visiting Turlock Unified School District (Turlock), Tulare County Office of Education – Special Services Division (Tulare) and Santa Barbara County Education Office – Special Education (Santa Barbara). The review found two (Turlock and Tulare) of the three entities did not comply with federal regulations or the federal OMB Circular A-87. The review was critical of DHCS for its lack of oversight and monitoring of invoices submitted, and inconsistency across school districts over the oversight that each individual LEC/LGA performs in a review over the amounts claimed. CMS found a lack of internal controls, operating procedures and financial oversight to ensure compliance with federal regulation and the OMB circular, and the approved claiming plan did not comply with federal regulation and the OMB circular.

Committee Amendments:

- 1) Specify additional members of the workgroup described in Section 14005.272 and clarify the scope of the workgroup.
- 2) Specify that DHCS shall provide one annual report on all three topics specified, not separate annual reports.
- 3) Clarify that DHCS shall contract with LEAs, at the LEA's choosing, to perform administrative activities.

- 4) Clarify that LEAs shall only pay for services they contract for from LECs and LGAs.
- 5) Make clarifying changes regarding CDE's role in the workgroup and the MOU.
- 6) Make technical and conforming changes.

Previous Legislation: AB 1955 (Pan) from 2014, which was held on the Assembly Appropriations Committee's suspense file, among other things, required DHCS and the California Department of Education (CDE) to cooperate and coordinate efforts in order to maximize receipt of federal financial participation under the Administrative Claiming process, and required DHCS, through an interagency agreement with the CDE, to provide technical advice and consultation to local educational agencies participating in a demonstration project established by the bill, in order to meet requirements to certify and bill valid claims for allowable activities under the Administrative Claiming process.

SB 231 (Ortiz), Chapter 655, Statutes of 2001, requires the State Department of Health Services (DHS) to amend the Medicaid state plan with respect to the billing option for services by Local Education Agencies (LEAs) to ensure that schools are reimbursed for all eligible services they provide that are not precluded by federal requirements. Requires DHS to regularly consult with specified entities to assist in the formulating of the state plan amendments. Permits DHS to enter into a sole source contract to comply with the requirements of this bill. Authorizes DHS to undertake all necessary activities to recoup matching funds from the federal government for reimbursable services that have already been provided in the State's public schools.

REGISTERED SUPPORT / OPPOSITION:

Support

California School-Based Health Alliance
California Teachers Association
Teachers for Healthy Kids

Opposition

Orange County Department of Education

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