

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 276 (Wolk) – As Amended July 7, 2015

[This bill was double referred to the Assembly Health Committee on and was heard as it relates to issues in its jurisdiction.]

SENATE VOTE: 40-0

SUBJECT: Medi-Cal: local educational agencies

SUMMARY: Requires the Department of Health Care Services (DHCS) to seek federal financial participation (FFP) for covered services that are provided by a local education agency (LEA) to a Medi-Cal eligible child regardless of whether the child has an individualized education plan (IEP) or an individualized family service plan (IFSP), or whether those same services are provided at no charge to the child or to the community at large. Specifically, **this bill:**

1. Requires DHCS to seek FFP for covered services that are provided by a LEA to a child who is an eligible Medi-Cal beneficiary, regardless of whether 1) the child has an IEP or an IFSP, and 2) whether those same services are provided at no charge to the beneficiary or to the community at large.
2. Requires LEAs to take all reasonable measures to ascertain and pursue claims for payment of covered services against legally liable third parties pursuant to federal law.
3. Requires, if a legally liable third party receives a claim submitted by an LEA, requires that party to either reimburse the claim or issue a notice of denial of coverage of services.
4. States that there is no response to a claim within 45 days, the LEA may bill the Medi-Cal program.
5. Requires the LEA to retain a copy of the claim for a period of three years.
6. States that these provisions shall not be implemented until any necessary federal approvals have been obtained by DCHS.

EXISTING LAW:

1. Establishes the Medi-Cal program, administered by the Department of Health Care Services (DHCS), under which qualified low-income persons receive health care benefits.
2. Requires that specified services provided by a LEA are covered Medi-Cal benefits, to the extent federal financial participation (FFP) is available, are subject to utilization controls and standards adopted by DHCS, and are consistent with Medi-Cal requirements for physician prescription, order, and supervision.

3. Defines the scope of covered services that an LEA may provide, which include targeted case management services (TCM) for children with an individualized education plan (IEP) or an individualized family service plan (IFSP).
4. Defines local educational agency, for the purpose of this option, to include school districts, county offices of education, state special schools, and California State University and a University of California campuses.

FISCAL EFFECT: According to the Senate Appropriations Committee, one-time administrative costs of about \$250,000 to develop a state plan amendment and make system changes by DHCS, and unknown additional federal funding to LEAs to pay for services to Medi-Cal beneficiaries.

COMMENTS:

Need for the bill. The author's office states, "SB 276 will allow Local Educational Agencies (LEA) to receive reimbursement for services provided to Medi-Cal eligible students regardless of whether the student has an Individual Education Plan (IEP) or Individualized Family Service Plan (IFSP) or whether similar services are provided to regular education students at no cost. This increased funding would enable schools to be more active in managing the conditions affecting all students, may increase the services they provide and may result in the hiring of more school nurses and other qualified health care providers. With school districts and county offices of education having the ability to be reimbursed for all covered services to Medi-cal eligible students, federal financial participation will increase."

California historically poor at drawing down Medicaid funding through LEA billing. For many years California drawn down a low share of Medicaid funding through the LEA billing option relative to the number of eligible students in the state. A 2000 report by the U.S. General Accounting Office found that California ranked in the bottom quartile of states by funding received through this option. The amount claimed has been increasing in recent years: a 2012 report from the DHCS on the LEA billing option found that statewide reimbursement increased from \$60 million in 2000-01 and to \$130 million in 2009-10.

But while California receives the largest total share of federal funds, the amount the state receives per eligible student is low relative to other states. In 2009-10, California served 240,000 of its 3.3 million eligible students, resulting in an average of \$159 per eligible student. The average among the 32 states surveyed was \$544 per eligible student. Nebraska (with 103,000 eligible students) received \$796 per eligible student, Vermont received \$694 per eligible student, and Rhode Island received \$635 per eligible student (all figures include Medicaid administrative funds).

Recent change in federal policy will expand services to many more students. The LEA Medi-Cal Billing Option Program was established in 1993 and has provided Medicaid funds to LEAs for health-related services provided to students who have IEPs or IFSPs. Reimbursement is based upon a fee-for-service model, and school expenditures for qualified services rendered are reimbursed at 50% of cost using federal Medicaid matching funds. Under the program, LEAs bill Medi-Cal for the direct medical services they provide to Medi-Cal eligible students. LEAs pay for the services and are reimbursed the FFP rate relative to the cost of each individual service from federal funds.

In December, 2014, the Centers for Medicare and Medicaid Services (CMS) issued new guidance which will allow LEAs to serve all Medical-eligible students, whether or not they have an IEP or an IFSP. It is anticipated that this will result in higher levels of claiming for services including:

- Health and mental health evaluations
- Health and mental health education
- Medical transportation
- Nursing services
- Occupational therapy
- Physical therapy
- Physician services
- Mental health and counseling services
- School health aide services
- Speech pathology services
- Audiology services
- Targeted case management services for children with an IEP or an IFSP

“Free Care Rule” eliminated. Under long-standing policy known as the “free care rule,” LEAs could not receive payment for services which they made available without charge to Medi-Cal eligible students or to the community at large unless all students were billed for the service.

For example, if all children in a school received hearing evaluations, Medi-Cal could not be billed for the hearing evaluations provided to Medi-Cal recipients unless *all students*, regardless of insurance status, were billed for the services as well. This meant that before being able to bill, schools had to bill a variety of private insurers as well as Medi-Cal. This was an administrative burden that many LEAs found prohibitive.

In 2004 the state of Oklahoma won a legal challenge to the rule, but the CMS continued to apply the rule to all other states. A subsequent challenge to the rule by San Francisco Unified School District in 2013 was also successful, but the policy did not change until December of 2014.

Under the new December 2014 guidance, Medicaid reimbursement is available for covered services under the approved state plan that are provided to Medicaid beneficiaries, regardless of whether there is any charge for the service to the beneficiary or the community at large. As a result, funding is available for Medicaid payments for care provided through providers that do not charge individuals for the service, as long as all other Medicaid requirements are met.

Denial by default after 45 days. Under current law, LEAs may bill the Medi-Cal program for services on behalf of a student who has other coverage only if that student’s insurance company has denied the claim. According to the author, LEAs have had difficulty obtaining “denial of coverage” letters from insurance companies. In order to prevent LEAs from being unable to bill Medi-Cal due to a circumstance beyond their control, this bill authorizes an LEA to bill the Medi-Cal program if there is no response to a claim for payment of covered services submitted to a legally liable third party within 45 days. After 45 days the claim is considered denied, and billing may proceed.

Charter schools and LEA billing option. The current law definition of LEA used for purposes of the LEA billing option includes the governing boards of school districts, county offices of education, state special schools, and CSU and UC campuses. It does not mention charter schools. According to DCHS, some charter schools bill through school districts. It is unclear if any charter schools currently bill independently, though this does occur in other states. With changes in federal guidance expected to result in significant expansion of eligibility and elimination of administrative barriers to LEA billing, and in recognition of the growing number of public school students attending charter schools, ***staff recommends*** that this bill be amended to add “a charter school” to the definition of LEA.

Related legislation. SB 123 (Liu) of this Session requires the Legislative Analyst, in consultation with CDE and DHCS, to make recommendations relative to the administration and oversight of the School Medi-Cal Administrative Activities program.

AB 1133 (Achadjian) of this Session would have established a 4-year pilot program, the School-Based Early Mental Health Intervention and Prevention Services Support Program, to provide outreach, free regional training, and technical assistance for local educational agencies in providing mental health services at schoolsites. AB 1133 was approved by this Committee and held in the Assembly Appropriations Committee.

AB 1018 (Cooper) of this Session requires DHCS and CDE to convene a joint task force to examine the delivery of mental health services to children eligible for ESPDT services and for services required by the federal Individuals with Disabilities Education Act. AB 1018 is pending in the Senate Education Committee.

Prior legislation. AB 2608 (Bonilla), Chapter 755, Statutes of 2012, made permanent and expanded provisions relating to program improvement activities in the Medi-Cal Local Billing Option (LBO) program, through which LEAs can draw down federal funding for health care services provided to Medi-Cal-eligible students. AB 2608 also expanded the scope of transportation services for which Medicaid reimbursements can receive reimbursement.

SB 870 (Ducheny), Chapter 712, Statutes of 2010, (the 2010-11 Budget Bill) required DHCS to withhold one percent of LEA reimbursements, not to exceed \$650,000, for the purpose of funding the work and related administrative costs associated with the audit resources approved in a specified budget change proposal to ensure fiscal accountability of the LEA Medi-Cal LBO and to comply with the Medi-Cal State Plan.

The Budget Act of 1998 provided \$3 million in one-time Proposition 98 funding to support technical assistance to school districts in LEA billing through a consortium of county offices of education. Related supplemental report language required the consortium to report to the JLBC and the appropriate fiscal and policy committees of the Legislature on the amount of Medi-Cal LEA billing generated by this program in each fiscal year of the program and on barriers to LEA billing and recommendations on improving rates of LEA billing in the future.

REGISTERED SUPPORT / OPPOSITION:

Support

California School Nurses Organization (sponsor)

American Federation of State, County, and Municipal Employees
American Nurses Association/California
Anaheim City School District
Association of California School Administrators
California Federation of Teachers
California School Boards Association
California School Employees Association
California School-Based Health Alliance
Children Now
Emery Unified School District
Lawndale Elementary School District
Magnolia School District
National Association of Social Workers – California Chapter
Nevada Joint Union High School District
Special Education Local Plan Area Administrators of California
Sulphur Springs Union School District
Several individuals

Opposition

None on file

Analysis Prepared by: Tanya Lieberman / ED. / (916) 319-2087