



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: May 30, 2023

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Mr. Benjamin Shrader, Chairperson 
State Council for Persons with Disabilities

RE: HB 5 (Act to Amend Title 31 of the Delaware Code Relating to
Reimbursement of School-Based Behavioral Health Services)

The State Council for Persons with Disabilities (SCPD) has reviewed HB 5 which seeks to amend Chapter 5, Title 31 of the Delaware Code relating to public assistance. Specifically, the bill seeks to add new § 532 which relates to Medicaid Reimbursement for School-Based Services. The bill was introduced in the Delaware House of Representatives on April 25, 2023, sponsored by Reps. Longhurst (primary sponsor), Heffernan, Minor-Brown, and Michael Smith and Sen. Poore.¹

SCPD has the following observations:

- This bill does the following: 1) Charges the Department of Health and Social Services (“DHSS”) to apply to the Centers for Medicare & Medicaid Services (“CMS”) by January 1, 2024 for a State Plan Amendment which would allow for reimbursement of medically necessary behavioral health services without Individualized Education Program (“IEP”) or Individualized Family Service

¹ HB 5 is co-sponsored by Reps. Chukwuocha, Dukes, Hensley, S. Moore, Morrison, and Osienki and Sens. Gay, Hansen, Hoffner, Huxtable, and Sturgeon.

Plan documentation (“IFSP”); 2) Once the State Plan Amendment is approved, requires that services by a mental health provider be reimbursed to the maximum extent permitted (proposed § 532(b)); 3) Requires Local Education Agencies (“LEAs”) to reinvest reimbursed funds to support school-based behavioral health programs and services (proposed § 532(b)²); and 4) Requires DHSS to update regulations and provider manuals to comport with the approved changes (proposed § 532(c)).

- In the preamble, the bill’s authors state that CMS reimburses Delaware approximately \$65 for every \$100 billed for allowable services provided to Medicaid-enrolled students³, but notes that the current Delaware Medicaid State Plan limits the reimbursement of Medicaid-covered school based behavioral health services to only those provided for in a student’s IEP or IFSP.⁴
- Prior to 2014, CMS’s “free care” policy and guidance was that Medicaid payment “was generally not allowable for services that were available without charge to the beneficiary” with a few exceptions.⁵ Essentially, this free care policy “prevented the use of Medicaid funds to pay for covered services furnished to Medicaid eligible beneficiaries when the provider did not bill the beneficiary or any other individuals for the services.”
- In 2014, CMS withdrew this prior guidance on free care in an effort to “improve access to quality healthcare services and improve the health of communities.” Essentially, schools can now seek reimbursement for Medicaid-covered services provided to students enrolled in Medicaid regardless of whether the student is eligible under an IEP or IFSP. For example, a qualified and Medicaid-enrolled audiologist that comes into the school and provides hearing assessments for the entire student body can now bill Medicaid for those services whether or not other third-party payers are also billed for the hearing assessment.⁶

² The current draft bill has two proposed § 532(b)s. This is a drafting error and Councils may wish to point out the error.

³ This number was \$44 in 2018. <https://www.childtrends.org/publications/early-evidence-medicaid-role-school-based-health-services>.

⁴ Referencing Delaware’s State Plan, Attachment 3.1-A, Page 2b-2c Addendum, found at https://dhss.delaware.gov/dmma/files/sp_attachment_3_1_a_to_3_1_i_rev_20230427.pdf.

⁵ See State Medicaid Director Letter #14-006, “Medicaid Payment for Services Provided without Charge (Free Care)” (Dec. 15, 2014), <https://www.medicaid.gov/federal-policy-guidance/downloads/smd-medicaid-payment-for-services-provided-without-charge-free-care.pdf>.

⁶ CMS’s Center for Medicaid & Chip Services Informational Bulletin, “Information on School-Based Services in Medicaid: Funding, Documentation and Expanding Services” (Aug. 18, 2022), <https://www.medicaid.gov/federal-policy-guidance/downloads/sbcsib08182022.pdf>.

- The focus of HB 5 is specifically on expanding access to behavioral health services. However, the current State Plan restricts Medicaid reimbursement for all services unless it is an EPSDT screening service or documented within a student’s IEP or IFSP.⁷ Besides EPSDT screening services and behavioral health services, the Delaware State Plan also includes nursing services, physical therapy, occupational therapy, speech therapy, language and hearing services, and specialized transportation.⁸

SCPD endorses this bill, but has the following recommendations:

1. The bill should apply to all school-based services allowable under Medicaid and not just behavioral health services;
2. Consider whether additional provisions should be added related to outreaching for enrollment purposes within schools;
3. Consider whether any directives need to be given to the Delaware Department of Education in assisting DHSS with this expansion; and
4. Revise the current § 501 which describes the legislative intent of the State Public Assistance Code and includes the following concerning and troublesome language: “It is further declared to be the legislative intent that public assistance be administered, to the extent practicable, in such a way that . . . both parents are held responsible for supporting and parenting their children; recipients are not encouraged to have additional children while receiving public assistance; and the formation and maintenance of two-parent families is encouraged and teenage pregnancy is discouraged.”

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position or observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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⁷ Delaware’s State Plan, Attachment 3.1-A, Page 2c Addendum.

⁸ Delaware’s State Plan, Attachment 3.1-A, Page 2b Addendum.