



AGENDA ITEM (3) AN UPDATE ON EXPANSION OF MEDICAID REIMBURSEMENT SYSTEM AND FUNDING

Aloha Chair and Members of the Board,

I am unable to attend today's Board of Education meeting, as I am needed to attend an IEP meeting for a family friend. Therefore, I am sending in this letter to be included in the public comments on BOE agenda item 3) AN UPDATE ON EXPANSION OF MEDICAID REIMBURSEMENT SYSTEM AND FUNDING.

I have attended several meetings at the State Capitol related to school-based claiming (Senate Committee Resolution [SCR] 81). These meetings have been held on July 27, 2018 and August 28, 2018. There was no meeting scheduled for September 2018. The meeting scheduled for October 30, 2018 was canceled and rescheduled for November 27, 2018. Each meeting has been scheduled from 1:30-4:00 pm. I have attended 5 hours of public discussion about this topic (SCR81). In my role as Legislative Chair for the Hawaii Association for Behavior Analysis, Secretary for Hawaii Disability Rights Center (HDRC) Board, President for the Together for Our Keiki Foundation, Autism Speaks Volunteer Advocacy Ambassador, a formerly Licensed Elementary Education Teacher, and currently a PhD-Level Licensed Behavior Analyst with two decades of experience, I have developed extensive knowledge and expertise related to school-based Medicaid Claiming. I appreciate the opportunity to share my thoughts and experiences with you.

My understanding is that the Department of Education is to offer and explain the Medicaid consent process to all families. The school is to remain blind to which families qualify and are supposed to explain the process and offer the consent forms to everyone equally. No Medicaid consents have ever been provided to families at any meetings I have attended, which is approximately 100 IEPs in Hawaii over the past 5 years.

There appears to be a lack of transparency in regards to the implementation of Medicaid school-based claiming. On August 28, 2018, it was stated that consent forms disseminated by the DOE from March 2018 until now were not valid, according to statements made by Dr. Judy Peterson, Director, Department of Human Services (DHS), as well as Malia Espinda, DOE Government Affairs Specialist at an SCR81 meeting. It was communicated to legislators, DOE officials, and members of the public that newly revised consent forms are "on the desk of the Attorney General" awaiting approval. It was stated by Assistant Superintendent Heidi Armstrong that consents would be rolled out "within one month," which was repeated by Representative Della Belatti, and confirmed by AS Armstrong.

I have attended approximately 10 IEP meetings between September 1, 2018 and November 9, 2018, across Oahu and the Big Island. At each meeting, Applied Behavior Analysis (ABA) services have been discussed. However, neither Medicaid nor Medicaid consents were discussed at any of these meetings.

On November 6, 2018, I discovered information about school-based Medicaid claiming on the DOE's website through a Google search using keywords: "Medicaid" "Reimbursement" "Hawaii" and "Department of Education." Although I have been following this matter closely, I was not alerted that this information had been posted, nor were any families whom I support. Upon reviewing the information, it seems perplexing that "ABA" "Licensed Behavior Analyst" and "Registered Behavior Technician" are not mentioned on the website, in any document, brochure, handout, or link—despite Medicaid school-based claiming being mandated in the Behavior Analyst Licensure law (ACT 205; effective July 10, 2018).

<http://www.hawaiipublicschools.org/TeachingAndLearning/SpecializedPrograms/SpecialEducation/Pages/home.aspx>

It is accurate to note that the majority of the funds the state of Hawai'i is missing out on are related to ABA services. This is related to confusion over where to reflect services on an IEP, the lack of licensed professionals employed by the DOE, and the blatant refusal of school teams to accept valid diagnoses from credible medical professionals. To clarify what is done in Massachusetts, a state touted as a model in Medicaid school-based claiming, I contacted officials at the Executive Office of Health and Human Services | Office of Medicaid in Massachusetts and copied Dr. Judy Peterson, Director, Hawai'i Department of Human Services (DHS). When asked, "Where ABA services are reflected on the IEP," Caitlin Feuer, Cross Agency and School-Based Medicaid Program Manager, noted, "It is included in the service grid because that's where health services belong. That said, since the IEP is an education document and we're the Medicaid agency we tend to stay away from instructing schools how to fill out their IEP." Their office responded with some very useful links which I have attached as an addendum to this letter.

Currently, the DOE does not employ Licensed Behavior Analysts (2018-2019 DOE Directory). There have been some increased communications with contracted ABA providers, however, it appears to fluctuate greatly across the islands, between districts, within schools, and even for our keiki in the same classroom, with similar challenges. Despite availability of resources, licensed providers, and federal funds, our keiki still are not accessing the services they need in our public schools. On September 24, 2018 in communications with an ABA provider agency, a District Education Specialist (DES) noted, "In West Hawai'i, we are in desperate need of BCBAs and RBTs."

I have witnessed months (and years) of avoidance techniques on behalf of the DOE Special Education administration. Moving forward, the DOE would be better poised to assist school teams and families by partnering with a) the Hawai'i Association for Behavior Analysis (HABA), b) local community members, and c) individuals and providers who possess specific expertise in this area. Instead of fighting change, embrace it. Help our teachers and come together for our keiki.

Our legislators, news reporters, and Gubernatorial candidates have made it very clear that the state is missing out on millions of dollars of federal funds in regard to Medicaid school-based claiming. On August 19, 2018, this very topic made the front page of the Honolulu Star Advertiser with the headline, "State forgoing millions in federal reimbursements."

The U.S. government reimbursed the state \$259,946 for school-based Medicaid health services in fiscal year 2016 — a fraction of what most other states received, a Honolulu Star-Advertiser analysis of the federal Centers for Medicare & Medicaid Services data shows. In 2016, the latest year in which state-by-state statistics are available, states on average received \$48 million, according to the CMS data. Hawaii didn't get even 1 percent of that amount.

On September 28, 2018 at the HABA convention, Senator Michelle Kidani spoke on this matter.

"I challenged the DOE years ago, and we have met resistance even trying to recoup some of our Medicaid dollars...there has not been an effort by the Department of Education to go after this money...those are dollars that we need. Right now I feel like we are pitting our kupuna against our keiki." <https://www.youtube.com/watch?v=23t37BRZMLQ>

I have experienced families being persuaded, coerced, and in some instances blatantly bullied when they advocate for ABA services for their keiki at school. Families are requesting formalized assessments by Licensed Behavior Analysts (LBAs) and school teams are saying "Let's wait and see," "We think (s)he is doing great," "We have to take our own data first," and other such nonsense. Particularly in the cases where keiki have a medical diagnosis of autism and insurance-funded access to behavior analysis, they should be evaluated for needs and supports in the school setting. Keiki who have autism, are Medicaid eligible, and who have their assessments conducted by licensed providers, who are also credentialed with Medicaid, can have their reports

and Occupational Therapy (OT), Physical Therapy (PT), Speech and Language (SLP), and ABA services reimbursed \$0.50 cents on every dollar by the federal government (e.g., SCR81; July 2018 & August 2018, Honolulu Star Advertiser; August 2018).

What the community is asking for is 1) participation from the public, 2) transparency from the Department, and 3) a streamlined process that will be clearly explained to families of students in need. We are also asking for 4) public school staff –special education, as well as general education teachers and specialists –to be educated on the process and on related state and federal law. The ultimate measure of change will be the number of students who receive the services they need, and the number of dollars the state is able to successfully recoup in federal funds for these services.

Mahalo for your interest and attention on this matter. Please feel free to reach out to me directly if I can offer any additional information or insight in regards to ABA services, special education law, or Medicaid School-Based claiming.

Malama our keiki,

A handwritten signature in black ink, appearing to read 'Amanda N. Kelly'.

Amanda N. Kelly, PhD, BCBA-D, LBA
Legislative Chair, Hawai'i Association for Behavior Analysis
Secretary, Hawai'i Disability Rights Center
President, Together For Our Keiki
Volunteer Advocacy Ambassador, Autism Speaks

Addendum

[SMD# 14-006 Medicaid Payment for Services Provided without Charge \(Free Care\) | https://www.medicaid.gov/federal-policy-guidance/downloads/smd-medicaid-payment-for-services-provided-without-charge-free-care.pdf](https://www.medicaid.gov/federal-policy-guidance/downloads/smd-medicaid-payment-for-services-provided-without-charge-free-care.pdf)

[EPSDT benefit | https://www.medicaid.gov/medicaid/benefits/epsdt/index.html](https://www.medicaid.gov/medicaid/benefits/epsdt/index.html)

[Resources for Families – Autism https://www.mass.gov/service-details/resources-for-families-autism](https://www.mass.gov/service-details/resources-for-families-autism)

For School-based Medicaid Program, please review the materials posted on [the School-based Medicaid](#) site, specifically the [SBMP Publications](#) and [SBMP Provider Bulletins](#) pages.

<https://www.mass.gov/masshealth-school-based-medicaid-program>
<https://www.mass.gov/lists/sbmp-program-bulletins>

[School-based Medicaid program user guide \(PDF 482.94 KB\) https://www.mass.gov/files/documents/2017/10/26/masshealth-school-based-medicaid-program-user-guide.pdf](https://www.mass.gov/files/documents/2017/10/26/masshealth-school-based-medicaid-program-user-guide.pdf)

[Statewide random moment time study \(RMTS\) instruction guide \(PDF 2.5 MB\) https://www.mass.gov/files/documents/2017/10/26/sbmp-rmts_0.pdf](https://www.mass.gov/files/documents/2017/10/26/sbmp-rmts_0.pdf)

[Instruction guide for school-based Medicaid administrative claims \(PDF 2.22 MB\) https://www.mass.gov/files/documents/2017/10/26/sbmp-igac.pdf](https://www.mass.gov/files/documents/2017/10/26/sbmp-igac.pdf)

[MassHealth School-Based Medicaid Provider Bulletin 29: Expansion of School-Based Medicaid Program to Include Autism Services | https://www.mass.gov/files/documents/2016/09/xs/sbm-29.pdf](https://www.mass.gov/files/documents/2016/09/xs/sbm-29.pdf)

[School-Based Medicaid Bulletin 25: Parental Authorization to Share Information with MassHealth \(PDF 59.29 KB\) Please note that MA Department of Elementary and Secondary Education \(DESE\) will be publishing a revised Parental Consent form due to Free Care expansion. | https://www.mass.gov/files/documents/2016/07/pq/sbm-25.pdf](https://www.mass.gov/files/documents/2016/07/pq/sbm-25.pdf)

[School-Based Medicaid Program Bulletin 30: Replacements for Certain Physical and Occupational Therapy Service Codes \(PDF 64.36 KB\) | https://www.mass.gov/files/documents/2017/10/11/sbmp-30.pdf](https://www.mass.gov/files/documents/2017/10/11/sbmp-30.pdf)

[School-Based Medicaid Bulletin 27: School-Based Medicaid Program Interim Rates \(State Fiscal Year 2014\) \(PDF 160.05 KB\) | https://www.mass.gov/files/documents/2016/07/tp/sbm-27.pdf](https://www.mass.gov/files/documents/2016/07/tp/sbm-27.pdf)

OFFICIAL
State Plan under Title XIX of the Social Security Act
State: Massachusetts
Limitations to Services Provided to the Categorically Needy

Supplement to Attachment 3.1-A
Page 10

G. School-Based Services:

School-Based Services (SBS) are services that are listed in a recipient student's Individualized Education Plan (IEP), a section 504 accommodation plan pursuant to 34 C.F.R. § 104.36, an Individualized Health Care Plan, an Individualized Family Service Plan, or are otherwise medically necessary, that are coverable under one or more of the service categories described in Section 1905(a) of the Social Security Act, and that are necessary to correct or ameliorate defects or physical or mental illnesses or conditions discovered by an EPSDT screen.

Service providers shall be licensed or otherwise qualified under the applicable State practice act or comparable licensing criteria by the State Department of Public Health, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them is done by practitioners qualified to make those determinations within their licensed scope of practice.

Covered services include: physical therapy, occupational therapy and other services, including services provided by audiologists and services for individuals with speech, hearing and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR § 440.110; physician services under 42 CFR § 440.50(a); optometry services provided by a qualified professional under 42 CFR § 440.60; respiratory therapy provided by a qualified professional under 42 CFR § 440.60; nursing services coverable under 42 CFR § 440.80 and 42 CFR § 440.60 ordered by a licensed physician and performed by a registered nurse or licensed practical nurse; nursing services provided on a restorative basis under 42 CFR § 440.130(d), including services delegated to individuals who receive appropriate teaching, direction, and supervision from a Registered Nurse or Practical Nurse; fluoride varnish performed by a dental hygienist under 130 CMR § 420.424(b) in accordance with 42 CFR § 440.100; personal care services coverable and performed by individuals qualified under 42 CFR § 440.167; services performed by licensed practitioners within the scope of their practice for individuals with behavioral health (mental health and substance abuse) disorders, as defined under state law, and coverable as medical or other remedial care under 42 CFR § 440.60; diagnostic, screening, preventive, and rehabilitative services covered under 42 CFR § 440.130; medical nutritional services provided by a qualified professional under 42 CFR § 440.60; and sports related or other injury assessment and therapy provided by a qualified professional under 42 CFR § 440.60. Assessments and independent evaluations are covered as necessary to assess or reassess the need for medical services in a child's treatment plan and must be performed by any of the above licensed practitioners within the scope of practice.

Item 5: Physician's Services

See Supplement to Attachment 3.1-A, P.1, Item 1, #1.

State Plan under Title XIX of the Social Security Act
State: Massachusetts
Limitations to Services Provided to the Medically Needy

G. School-Based Services:

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State Plan under Title XIX of the Social Security Act

State: Massachusetts

Methods and Standards for Establishing Payment Rates – Other Types of Care

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School-Based Services

School-Based Services (SBS) are provided by School-Based Service Providers, which are school districts and other educational entities that are enrolled with the MassHealth program as providers of School-Based Services. School-Based Services are provided pursuant to an Individualized Service Plan (IEP), a section 504 accommodation plan pursuant to 34 C.F.R. § 104.36, an Individualized Health Care Plan, an Individualized Family Service Plan, or are otherwise medically necessary, and include medical services as described under Item 4.b. EPSDT in Supplement to Attachment 3.1-A/B. School-Based Services include physical therapy, occupational therapy and other services, including services provided by audiologists and services for individuals with speech, hearing and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR § 440.110; physician services under 42 CFR § 440.50(a); optometry services provided by a qualified professional under 42 CFR § 440.60; respiratory therapy provided by a qualified professional under 42 CFR § 440.60; nursing services coverable under 42 CFR § 440.80 and 42 CFR § 440.60 ordered by a licensed physician and performed by a registered nurse or licensed practical nurse; nursing services provided on a restorative basis under 42 CFR § 440.130(d), including services delegated to individuals who receive appropriate teaching, direction, and supervision from a Registered Nurse or Practical Nurse; fluoride varnish performed by a dental hygienist under 130 CMR § 420.424(b) in accordance with 42 CFR § 440.100; personal care services coverable and performed by individuals qualified under 42 CFR § 440.167; services performed by licensed practitioners within the scope of their practice for individuals with behavioral health (mental health and substance abuse) disorders, as defined under state law, and coverable as medical or other remedial care under 42 CFR § 440.60; diagnostic, screening, preventive, and rehabilitative services covered under 42 CFR § 440.130; medical nutritional services provided by a qualified professional under 42 CFR § 440.60; and sports related or other injury assessment and therapy provided by a qualified professional under 42 CFR § 440.60. Assessments and independent evaluations are covered as necessary to assess or reassess the need for medical services in a child's treatment plan and must be performed by any of the above licensed practitioners within the scope of practice.

A. Cost Reimbursement Methodology for School-Based Services

Final reimbursement is based on the certified reports that are submitted using the methodology allowed under the Massachusetts School-Based Cost Report approved by the Centers for Medicare and Medicaid Services (CMS).

To determine the Medicaid-allowable costs of providing School-Based Services to MassHealth members, the following steps are performed:

- (1) Direct costs of providing School-Based Services include payroll costs and other costs that can be directly charged to School-Based Services, including costs that are integral to School-Based Services. Direct costs are recorded on a modified accrual basis consistent with the Massachusetts Department of Education chart of accounts, and the

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State: Massachusetts

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source data is the School-Based Service Providers' accounting and payroll systems. Direct payroll costs include total compensation (i.e., salaries and benefits and contract compensation) of direct services personnel listed in the descriptions of the covered Medicaid services delivered by School-Based Services providers under Item 4.b. EPSDT in Supplement to Attachment 3.1-A/B. Direct costs do not include salaries for staff who do not meet the qualifications required under item 4.b.EPSDT in Supplement to Attachment 3.1-A/B.

Other direct costs include costs directly attributed to activities performed by the personnel who are approved to deliver School-Based Services, such as, travel, materials and supplies. Additional direct costs include purchased services. These direct costs are accumulated on the annual CMS-approved Massachusetts School-Based Cost Report.

Direct costs do not include room and board.

- (2) Direct costs for School-Based Services from Item 1 above are reduced by any federal payments for those costs, resulting in adjusted direct costs for School-Based Services.
- (3) Adjusted direct costs from Item 2 above are then allocated to identify Medicaid-reimbursable costs for School-Based Services according to the Random Moment Time Study (RMTS) results that are identified according to the process described in the Massachusetts RMTS Implementation Plan, approved by CMS.
- (4) Indirect costs are calculated using the unrestricted indirect cost rate set by the Massachusetts Department of Education as the cognizant agency or other allowable rates per OMB 2 CFR Part 225: Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87). Indirect costs are equal to adjusted direct costs multiplied by the unrestricted indirect costs rate. These indirect costs are added to the adjusted direct costs to determine the total direct costs.
- (5) Medicaid-allowable costs are identified by applying the applicable Medicaid penetration rate to the total direct costs. For those costs allocated by the RMTS as being covered services pursuant to an IEP, the Medicaid penetration rate is the number of Medicaid-enrolled students with an IEP divided by the total number of students with an IEP on the same day. For covered services not related to an IEP, the Medicaid penetration rate is the number of Medicaid-enrolled students divided by the total number of students on the same day.

B. Interim Rates

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The School-Based Services Providers' specific interim rate is the rate for a specific service that is provisional in nature, pending the completion of a cost reconciliation and a cost settlement for that period. This rate is for direct medical services, per unit of service, on a per visit basis. Claims filed by School-Based Services Providers to Medicaid Management Information System (MMIS) as part of this process are to be used for interim rates and cost settlement purposes only.

C. Certification of Funds Process

Each School-Based Services Provider certifies on an annual basis through its completed School-Based Cost Report its total actual, incurred Medicaid-allowable costs, including the federal share and the nonfederal share. These costs do not include any indirect costs that are not included in the unrestricted indirect cost rate set by the Massachusetts Department of Education as the cognizant agency.

D. Annual Cost Report Process

Each School-Based Services Provider annually will complete a School-Based Cost Report for all services delivered during the previous state fiscal year covering July 1 through June 30. Cost reports are due to the State no later than June 30th of the year following the close of the year during which the costs included in the Cost Report were accrued. The annual cost report includes the certification of funds, as described in Section C above. Submitted cost reports are subject to desk review by the single state agency or its designee.