



## Medicaid's "Free Care Policy:" Results from Review of State Medicaid Plans

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This issue brief reports findings from the National Health Law Program's review of state Medicaid plans (SMPs) for provisions that may impact states' ability to implement the federal government's recent reversal of the "free care policy." Specifically, we reviewed SMPs for provisions related to Medicaid reimbursement for services provided in schools that are available free of charge to beneficiaries and others in the community. This includes SMP provisions that directly prohibit coverage of such services as well as those that might indirectly prevent coverage.<sup>1</sup>

### Background

For many years, the federal Centers for Medicare & Medicaid Services (CMS) had taken the position that services that are available without charge to Medicaid beneficiaries (including services available without charge to others in the community) could not be covered by Medicaid. This was sometimes known as the "free care policy." In 2005, however, the U.S. Department of Health and Human Services' Department Appeals Board (DAB) held that application of this policy in Oklahoma was not supported by the Medicaid Act or regulations.<sup>2</sup> Finally, in December 2014, CMS sent out an official letter to State Medicaid Directors, withdrawing its previous guidance on free care.

*CMS says that Medicaid funds can pay for covered services provided to Medicaid beneficiaries - even if the service provider would not have billed for services.<sup>2</sup>*

<sup>1</sup> This issue brief was prepared by the National Health Law Program as part of a partnership with the Healthy Schools Campaign to support states, schools, and others seeking to expand Medicaid coverage of services provided in schools.

<sup>2</sup> U.S. Dep't of Health & Human Servs., DAB Decision No. 1924 (2005), on recon. Ruling 2005-1 (2005).

<sup>3</sup> CMS, *Dear State Medicaid Director* (SMD# 14-006), (Dec. 15, 2014).

The letter further sets forth conditions that must be met in order for services to qualify for reimbursement, including that the provider must be an approved Medicaid provider and the service must be a covered Medicaid service.<sup>4</sup>

*CMS made this clarification to “facilitate and improve access to quality healthcare services and improve the health of communities.”<sup>4</sup>*

Indeed, many state and local policymakers and officials, providers, and child and public health advocates are eager for their states to take advantage of this opportunity to expand the resources available to pay for child health services. In particular, stakeholders welcome the opportunity to increase Medicaid coverage for services provided in schools.

Because the free care policy has been a long-standing Medicaid policy, an early question arose as to whether states would need to amend the state plans to come into compliance with CMS’ 2014 instructions. This report summarizes our findings with respect to how, if at all, the free care policy is impacted by current SMPs.

It is important to note, however, that this is just one factor that may pose an obstacle to covering services for children. For example, states may also have laws or policies that prevent reimbursement. Accordingly, policy makers and other stakeholders will need to conduct a thorough investigation of these and other variables, as well as consulting with CMS, to determine how to obtain Medicaid reimbursement for services provided free of charge.

**Summary of our findings:**

- **Three SMPs that expressly excluded coverage of services otherwise provided free of charge (“free care exclusion”).**
- **Twenty-two SMPs that did not expressly exclude coverage of free care, but had other provisions that could present a barrier preventing coverage.**
- **Six SMPs included coverage provisions related to EPSDT services that could present a barrier to coverage.**
- **Thirteen SMPs included no free care exclusion and no provisions related to coverage of services in schools that would present a barrier to coverage.**
- **Seven SMPs have not been reviewed.**

<sup>4</sup> *Id.* For a more in-depth discussion of the free care rule and reversal, see Sarah Somers, *Medicaid’s Early and Periodic Screening, Diagnosis and Treatment and Schools and the Free Care Rule*, HEALTH ADVOCATE, Feb. 2016.

<sup>5</sup> SMC #14-006, p. 1.

**Methodology:**

Between April and July 2016, Project staff collected SMPs from states and DC via three methods: (1) searching official state websites, (2) contacting the state Medicaid agency by telephone and email, and (3) mailing a written public records request to the appropriate state agency. We were not able to obtain current SMPs for Connecticut, Idaho, Montana, New Hampshire, North Dakota, Rhode Island, or Virginia.

When we found a SMP on a state's official website, we assumed that it was the most current SMP available, unless the website indicated otherwise or there were clear indications that it was not up to date. We made the same assumption when we received a SMP from a state's agency. In addition, we searched the list of approved State Plan Amendments (SPAs) on the Centers for Medicare and Medicaid Services (CMS) website for SPAs that related to coverage of services in schools. The website collects SPAs dating back to 2001, although the collection of SPAs dating before about 2005 is does not appear to be complete.

We are therefore reasonably confident that we have the most up to date versions of these SMPs. We cannot verify, however, whether there are SPAs pending that relate to the free care rule, because there is no centralized location where pending SPAs are collected.

Most SMPs were not available in one document but instead organized into separate files, one for each subsection and attachment. In some cases, this amounted to more than 50 separate documents. To review SMPs that were available in multiple separate documents, we searched only those sections might include the free care exclusion or provisions generally related to coverage of services in schools. We identified seven possible sections.

We collected state Medicaid managed care contracts or requests for proposals (RFPs, which contain the same terms as the contracts) using the same methods. We have obtained the managed care contracts or RFPs from 44 states and DC.

With both SMPs and contracts, we searched for terms related to the free care policy: "free care," "free of charge," "without charge," "no cost." When those terms yielded no responses, we searched more broadly for "EPSDT" and "school" and read the accompanying text to determine whether there was a relevant policy. When the document was not searchable, we reviewed the relevant sections page by page. We searched the Medicaid managed care contracts or RFPs using the same terms and methods.

**Results**

Of the 43 SMPs we have searched, we found three that explicitly excluded coverage of services provided free of charge: Florida, Georgia, and Maryland. These states are indicated in Column A of the attached chart.

The remaining 40 SMPs we divided into three categories – (1) provisions related to EPSDT services that could present a barrier to reimbursement for coverage (Column B); (2) provisions related to EPSDT services that likely would not impede reimbursement (Column C); and (3) SMPs with no provisions that would negatively affect coverage of EPSDT services provided in schools. (Column D).

**Category (1) states: AL, CO, DC, HI, IN, KS, KY, LA, MA, MI, MN, NV,NJ, NY, NC, OH, OK, PA, VT, WA, WV, WI.**

**Category (2) states: ME, MO, NM, OR, TX, UT**

**Category (3): AK, AZ, AR, CA, DE, IL, IA, MS, NE, SC, SD, TN, WY**

Nearly all policies found in Columns A and B related to coverage of services for children with disabilities through an Individual Education Plan (IEP) authorized by the Individuals with Disabilities Education Act (IDEA). In a typical example, the SMP from Kentucky (a Category 1 state) provides that, for EPSDT services to be covered in schools, they must be included in an IEP.<sup>6</sup> This policy presents a barrier to coverage of services otherwise provided free of charge, because such services are generally not included in IEPs. An example of a provision falling into Category (2) comes from Maine's SMP.<sup>7</sup> It provides that school-based rehabilitative services must be included in an IEP to be covered, but the SMP does not refer to any other services in schools. States in Category (3) either had no provisions related to coverage of services in schools or had provisions indicating that services other than special education services could be covered in school. For example, Mississippi provides for coverage of EPST screening services in schools, without reference to IDEA or an IEP.<sup>8</sup>

## Conclusion

While only three SMPs explicitly prohibit coverage of services provided free of charge to others in the community, 23 SMPs have provisions that present a barrier to coverage. Six SMPs should not present a barrier to coverage, but may indicate other laws or policies preventing coverage. We did not find provisions in the remaining 13 SMPs that would present a barrier to coverage. It is important to note, however, that there are a number of factors unrelated to the SMP that will affect whether your state can obtain Medicaid reimbursement for services provided in schools. Future materials will discuss these issues.

**For further information or details of your state's Medicaid plan, please contact Sarah Somers at [somers@healthlaw.org](mailto:somers@healthlaw.org).**

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<sup>6</sup> Kentucky, State Medicaid Plan, Att. 3-1A; see also Sec. 4.19-B.

<sup>7</sup> Maine, State Medicaid Plan, Att. 3.1-A, pp. 5, 6.

<sup>8</sup> Mississippi, State Medicaid Plan, 3.1-A Exh. 4b, pg. 1.01

Chart: SMP Provisions impacting coverage of services in schools					
STATE	A Explicit prohibition of services provided free of charge	B Likely barrier to coverage of services provided free of charge	C Related to EPSDT services in schools but likely not a barrier to coverage	D No relevant reference/no negative impact	Other information
AL		X			
AK				X	
AZ				X	Contract solicitation implies that services provided in schools that are not covered by IDEA will not be reimbursed.
AR				X	
CA**				X	Policy manual contains free care rule restriction
CO		X			Physician services for the purpose of diagnosis are covered without reference to an IEP.
CT*					
DC		X			
DE				X	
FL	X				
GA	X				
HI		X			
ID*					
IL				X	Policy manual contains free care rule restriction

IN		X			
IA				X	School psychologist services covered without reference to IEP.
KS		X			
KY		X			
LA**		X			School nursing services are covered per SPA from October 2015 and LA has applied for a State Plan Amendment.
ME			X		The only school-based services referenced in the SMP are rehabilitative services, which must be covered in an IEP.
MD	X				
MA		X			
MI		X			
MN		X			
MS				X	Provides for reimbursement for schools and other agencies that provide EPSDT screenings.
MO			X		
MT*					
NE				X	SMP says: "School-based services are covered under Medicaid in Public Schools." Did not find other reference to school-based services in SMP.
NV		X			
NH*					
NJ		X			
NM			X		SPA addresses reimbursement to local education agencies for direct medical services, but does not expressly limit to IEP services. Reimbursement for transportation services is expressly limited to required

					services under an IEP.
NY		X			
NC		X			
ND*					
OH		X			
OK		X			
OR			X		Covers school-based rehabilitative services if covered under IEP, no reference to other school based services
PA		X			
RI*					
SC**				X	SC has announced that they are making changes to comply with the change in the free care policy and is applying for a State Plan Amendment
SD				X	
TN				X	
TX			X		Many references to school health services being covered, without reference to IDEA, but description of reimbursement methodology indicates that Medicaid pays only for children with IEPs. Not a barrier itself, but indicates policy that is a barrier.
UT			X		
VT		X			
VA*					
WA		X			
WV		X			
WI		X			

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WY				X	
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\*Do not have SMP.

\*\*SPA in process.