

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 82 (Delegates Charkoudian and Cullison)
 Health and Government Operations

**Maryland Medical Assistance and Children's Health Insurance Programs -
 School-Based Behavioral Health Services - Reimbursement**

This bill requires the Maryland Department of Health (MDH), by December 1, 2023, to apply for a Medicaid State Plan Amendment (SPA) that authorizes the State to provide for (1) reimbursement for medically necessary behavioral health services provided in a school setting to all individuals enrolled in Medicaid or the Maryland Children’s Health Program (MCHP) regardless of whether services are provided under an Individualized Educational Program (IEP) or Individualized Family Service Plan (IFSP) and (2) Medicaid and MCHP administrative claiming. MDH must provide regular training and technical assistance to local educational agencies (LEAs) and mental health professionals working in a school setting on Medicaid enrollment, billing, documentation, and other topics.

Fiscal Summary

State Effect: MDH expenditures (50% general funds, 50% federal funds) increase by \$81,500 in FY 2024 for personnel to provide training and technical assistance only. Federal fund revenues increase accordingly. Future years reflect annualization and elimination of one-time costs. MDH general/federal fund expenditures (and federal fund revenues) increase by an additional indeterminate amount beginning as early as FY 2024 for services provided under the waiver (not shown below), as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
FF Revenue	\$40,700	\$48,700	\$50,900	\$53,100	\$55,900
GF/FF Exp.	\$81,500	\$97,400	\$101,700	\$106,200	\$111,800
Net Effect	(\$40,700)	(\$48,700)	(\$50,900)	(\$53,100)	(\$55,900)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Federal fund revenues increase from additional behavioral health services provided. Expenditures are not materially affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: To the maximum extent permitted under law, services reimbursed under the SPA must be reimbursable when provided in a school setting by a mental health provider working within their scope of practice, including specified providers. On obtaining federal approval, MDH must update its regulations, provider manuals, and other subregulatory guidance to reflect programmatic changes.

Current Law: School districts, nonpublic schools, and local lead agencies presently bill and receive payments (with federal matching funds) for Medicaid reimbursable services. Medicaid pays for health care services, case management, and coordination on a fee-for-service basis for services rendered to Medicaid-eligible participants as part of an IEP or IFSP, pursuant to the federal Individuals with Disabilities Education Act. The Maryland State Department of Education (MSDE) is responsible for providing the State share of these costs via an intergovernmental transfer to MDH, which are budgeted as reimbursable funds. Reimbursable service coordination activities include an initial IEP/IFSP team meeting and assessment, periodic review meetings, and ongoing monthly service coordination. Maryland Medicaid does not currently employ administrative claiming.

Per regulations (COMAR [10.09.50.04](#)), Maryland Medicaid covers services (1) necessary to identify the need for a health-related service or health-related early intervention service that may be furnished as part of an IEP or IFSP; (2) necessary to prevent disease, disability, and other health conditions or their progression and promote physical and mental health and efficiency; (3) necessary for the maximum reduction of physical or mental disability and restoration of a participant to the participant's best possible functional level; (4) rendered in accordance with accepted professional standards; and (5) delivered in accordance with an IEP or an IFSP, which is developed at the time of referral for health-related services or health-related early intervention services. The following school-based health services are covered: audiology; nursing; nutrition; occupational therapy; physical therapy; psychological; speech-language pathology; and therapeutic behavior.

Covered behavioral health services include (1) psychological services delivered in accordance with an IEP or an IFSP, which include the evaluation, diagnosis, and treatment of emotional or behavioral problems in order for a participant to benefit from an educational or early intervention program, including the counseling of parents and parent training when the participant is present and (2) one-to-one services by a trained therapeutic behavior aide delivered in accordance with the IEP or IFSP that is supervised by a licensed physician or authorized practitioner.

State Fiscal Effect: Under the bill, MDH must apply for an SPA to authorize Medicaid to provide reimbursement for specified behavioral health services provided to *all* individuals enrolled in Medicaid or MCHP regardless of whether the services are provided under an IEP or IFSP. The SPA must also authorize MDH to provide for Medicaid and MCHP administrative claiming. MDH must provide regular training and technical assistance to LEAs and mental health professionals working in a school setting on Medicaid enrollment, billing, documentation, and other topics.

MDH can apply for an SPA with existing budgeted resources. However, while the bill requires MDH to apply for the SPA by December 31, 2023, MDH advises that it would not submit an application until the federal Centers for Medicare and Medicaid Services (CMS) issues anticipated guidance on administrative claiming (discussed further below).

Reimbursement for Behavioral Health Services Provided in a School Setting

The bill requires that, to the maximum extent permitted under federal and State law, services be reimbursed under the SPA when provided in a school setting by a mental health provider working within their scope of practice, including specified providers. MDH advises that certain provider types included in the bill language would not be eligible for Medicaid reimbursement. Specifically, school psychologists and certain paraprofessionals are not eligible for reimbursement through Medicaid.

Impact on Medicaid from Additional Enrolled Providers: Additional providers are anticipated to enroll as Medicaid providers under the bill in order to receive reimbursement. Thus, MDH expenditures (75% federal funds, 25% general funds) increase by \$6.85 per additional provider per month for maintenance and oversight through Medicaid's ePREP system. As the number of additional providers that will enroll is unknown, actual expenditures cannot be reliably estimated. *For illustrative purposes*, for every 100 additional providers that enroll, MDH expenditures increase by \$8,220 on an annual basis.

Impact on Medicaid from Service Costs: As the bill expands the provision of behavioral health services provided in a school setting, service utilization increases beginning as early as fiscal 2024. As reimbursement under the SPA is for services regardless of whether an individual has an IEP or IFSP, this analysis assumes that Medicaid rather than MSDE is responsible for the State share of the costs of services under the SPA (and MSDE continues to pay the State share for existing school-based services provided to individuals with IEPs and IFSPs). Thus, Medicaid general fund expenditures increase by an indeterminate amount beginning as early as fiscal 2024. MDH federal fund revenues (received by MDH and passed on to locals) also increase beginning as early as fiscal 2024 due to increased utilization of services.

Administrative Claiming

Through administrative claiming, administrative costs incurred for the administration of a Medicaid State Plan are eligible for federal matching funds. In December 2018, the U.S. Department of Health and Human Services’ Office of Inspector General (OIG) issued a broad audit report regarding Medicaid school-based administrative claiming. The report recommended that CMS issue new guidance to states on school-based administrative claiming (the most recent guidance was issued in 2003). CMS concurred and, in August 2022, indicated that updates to the Medicaid School-Based Administrative Claiming Guide and the Medicaid and Schools Technical Assistance Guide were forthcoming. MDH advises that, until this guidance is released, MDH cannot assess the feasibility, cost/savings, or a timeline for implementing an administrative claiming program for school-based services in Maryland. Furthermore, any planning based on standing federal guidance would be noncompliant according to the federal OIG and could expose the State to major audit risk.

Training and Technical Assistance

MDH expenditures (50% general funds, 50% federal funds) increase by \$81,473 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one social work program administrator to provide training and technical assistance to LEAs and mental health professionals working in a school setting. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$74,064
Operating Expenses	<u>7,409</u>
FY 2024 Personnel Expenditures	\$81,473

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Local Revenues: Revenues to LEAs from federal matching funds increase beginning as early as fiscal 2024 due to increased service utilization of services.

Additional Comments: While the bill refers to school nurses certified by MSDE, in Maryland, a school nurse is licensed and certified by the Maryland Board of Nursing per Title 8 of the Health Occupations Article.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 201 (Senators Hester and Augustine) - Finance.

Information Source(s): Maryland Association of County Health Officers; Maryland State Department of Education; Maryland School for the Deaf; Maryland Department of Health; Baltimore City Public Schools; Baltimore County Public Schools; Montgomery County Public Schools; Department of Legislative Services

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