

Office of Special Education

PROCEDURES FOR

STATE BOARD POLICY 7219

VOLUME II:

Free Appropriate Public Education

Individualized Education Program

Least Restrictive Environment

Extended School Year Services

Public agencies may use whatever State, local, Federal, and private sources of support that are available in Mississippi to meet the FAPE requirements of the IDEA 2004 regulations (e.g., Medicaid's Early Periodic Screening Detection and Treatment [EPSDT] program known as Mississippi Cool Kids or School Health Related Services Program, Community Mental Health, private insurance, etc.). Public agencies may use joint agreements among agencies serving children with disabilities to share the costs of providing appropriate services; however, the public agency must ensure there is no delay in implementing a child's IEP in any case in which the payment source for providing special education and related services has not yet been determined. The public agency may not require the parent to sign up for or enroll in public benefits or insurance programs, require parents to incur out-of-pocket expenses such as the payment of a deductible or co-pay, or use public benefits if it decreases available lifetime coverage. The parent cannot be required to pay for services that are covered by the public benefits or an insurance program and that are required for the child outside of the time the child is in school or would increase the premiums or lead to discontinuation of benefits or loss of eligibility/home and community based waivers. The public agency must obtain written parental consent prior to accessing a parent's or child's public benefits or insurance.

*****NOTE: IDEA regulations do not relieve any insurer or similar third party from their own obligation to provide or to pay for services provided to a child with a disability. For more information, see SBE Policy 7219 §300.154 – Methods of ensuring services.**

The Medicaid-Education Connection in Federal law

Under Medicaid Law (the Social Security Act)

42 U.S.C. § 1396b(c)

- **Medicaid**, not the school system, must pay for covered services to a child,
- **even when these services have been found necessary and included in the child's IEP or IFSP.**
- Medicaid law shall not restrict payment for covered services because such services are included in an IEP or IFSP.

Under the Individuals with Disabilities Education Act (IDEA)

§ 612(a)(12) of the 1997 amendments to IDEA, 20 U.S.C. § 1400 et seq.

- if **any public agency other than the educational agency** is responsible for providing services under federal and state law, such public agency should fulfill that responsibility.

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This summary of Medicaid-Education Connection in Federal Law appears in Policy Analysis Paper #5 from The Bazelon Center for mental Health Law, published in April 1998 called **Defining Medically Necessary Services to Protect Children**. The text above appears as footnote #33 in that document. It is available on-line here:

<http://www.bazelon.org/issues/managedcare/moreresources/PAPER5.PDF>

Three Key Concepts

Each service must be sufficient in **amount, duration and scope** to reasonably achieve the purpose for which it was furnished.

42 CFR Chapter IV Part 438.210

EPSDT services must be provided to disabled children enrolled in Medicaid **whether or not** the services are provided for in any State Plan.

OBRA '89

Medicaid, not the school, must pay for covered services to a child if funding is in dispute. **Medicaid is the “payer of first resort” for services in schools.**

IDEA 1997 and IDEIA 2004

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These three concepts are vital to an understanding of the interface between Medicaid and Education. The first of these was the foundation for the “Kirk T” lawsuit that resulted in a Federal court decision in Pennsylvania that required minimum standards for the training and supervision of service providers and set standards for the prompt delivery of Behavioral Health Rehabilitation Services (BHRS).

SBE Policy 7219 300.154

Methods of Ensuring Services

Section

300.154 Methods of ensuring services

(a) Establishing responsibility for services. The Chief Executive Officer of Mississippi or designee of the officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each non-educational public agency described in paragraph (b) of this section and the MDE, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of

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any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following—

(1) Agency financial responsibility. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. **The financial responsibility of each non-educational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) Conditions, terms, and procedures of reimbursement . The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Procedures for resolution of interagency disputes. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) Coordination of services procedures. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely

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and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) Obligation of non-educational public agencies.

(1) (i) In general. If any public agency other than an educational agency is otherwise obligated under federal or Mississippi law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in § 300.5 relating to assistive technology

devices, § 300.6 relating to assistive technology services, § 300.34 relating to related services, § 300.41 relating to supplementary aids and services, and § 300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within Mississippi, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (c) of this section.

**** (ii) A non-educational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.**

(2) Reimbursement for services by public agency. If a public agency other than an educational agency, fails to provide or pay for the special education and related services described in paragraph (b)(1) above, the LEA (or State agency responsible for developing the child's IEP) must

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provide or pay for these services to the child in a timely manner. The LEA or State agency is authorized to claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency must reimburse the LEA or State agency in accordance with the terms of the interagency agreement or other mechanism described in paragraph (a) above.

(c) Special rule. The requirements for establishing responsibility for services may be met through—

(1) Mississippi statute or regulation;

(2) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(3) Other appropriate written methods as determined by the Chief Executive Officer of Mississippi or designee of that officer and approved by the Secretary of the U.S. Department of Education.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services, as permitted under the public benefits or insurance programs, except as provided in paragraph (d)(2) of this section.

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(2) With regard to services required to provide FAPE to an eligible child, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of IDEA;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the

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child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that--

(A) Meets the requirements of § 99.30 of this title and § 300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with § 300.503(c), to the child's parents, that includes--

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the "no cost" provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the right under 34 C.F.R. part 99 and part 300 to withdraw their consent to

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disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration

of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to the services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with § 300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its

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responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.

(1) If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under the IDEA 2004 regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance.

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 C.F.R. § 80.25.

(2) If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under the IDEA 2004 regulations, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§ 300.163 (Maintenance of State Financial Support) and 300.203 (Maintenance of Effort).

(h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency.