

Healthy Students, Promising Futures

Policy Brief: Third Party Liability and School-Based Medicaid Services

March 22, 2022

School Medicaid programs must comply with federal, state and local school district requirements. This brief includes information on how third party liability (TPL) applies to school-based health services and offers resources for additional reading.

Third Party Liability Overview

Third Party Liability (TPL), as defined by the [Centers for Medicare & Medicaid Services](#), refers to “the legal obligation of third parties (for example, certain individuals, entities, insurers or programs) to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.” More detailed information is available in the [2020 Coordination of Benefits/Third Party Liability Handbook](#).

With regard to student health services, the purpose of TPL is to ensure that other applicable health insurers meet their legal obligations to pay for the physical and behavioral health services a student receives before Medicaid is billed for reimbursement.

The federal regulation that authorizes TPL is [42 CFR 433 Subpart D](#). The federal definition of third parties, which can be found at [1902 \(a\)\(25\) of the Social Security Act](#), includes health insurers, self-insured plans, group health plans, managed care plans, and other third parties that are legally responsible for payment of a claim for a health care item or service.

Common TPL Types

A student who qualifies for Medicaid may also be covered by a parent’s health plan or managed care plan. Third parties could also include Medicare, TRICARE and workers’ compensation. The claim for the child’s physical or behavioral health services will need to be submitted to the third-party plan first before submitting the claim to Medicaid. Some students have [dual eligibility](#) – meaning eligibility to enroll in both Medicaid and Medicare programs – though the number of students under the age of 18 who are dually eligible is relatively small.

Children become eligible based on a disability or by receiving Supplemental Security Income (SSI) benefits. As it relates to TPL, schools need to remember that Medicare always takes precedent over Medicaid, if the service is covered by Medicare. Medicaid provides varying levels of assistance with Medicare premiums and cost sharing and, for many students, covers services not included in the Medicare benefit.

Full-benefit dually eligible students receive the full range of Medicaid benefits offered in a given state. For partial-benefit dually eligible students, Medicaid pays Medicare premiums and may also pay the cost sharing for Medicare services.

Medicaid State Plans and Coordination of Benefits

Medicaid is generally the payer of last resort. By law, all other sources of coverage must pay claims under their policies before Medicaid will pay for care.

State Medicaid plans are required to include specific information and assurances regarding TPL and coordination of benefits with third parties. Medicaid enrollees also must cooperate with state efforts to pursue other sources of coverage.

To ensure that Medicaid does not pay more than required, and to help recover Medicaid payments, third parties are required to pay the maximum of their legal liability. When two or more health insurance plans are responsible for the same medical claim, they are expected to work together to determine which insurance has the primary payment responsibility and the extent to which the other plans must pay any remaining balance. This process is known as coordination of benefits.

When Medicaid identifies probable TPL claims, one of two methods is utilized to ensure that Medicaid is the payer of last resort: Cost Avoidance or Pay and Chase. The box below includes more detail on each method of payment.

Cost Avoidance allows Medicaid to avoid payment when other insurance is available. When Medicaid recognizes a claim belonging to a student who has other insurance, payment will be denied and the claim returned to the provider. The provider will then bill the student's other insurance before billing Medicaid for any remaining amount (up to the maximum Medicaid payment amount). If the state Medicaid agency follows cost avoidance in managing TPL, the school district is responsible for submitting claims to third parties.

An exception to this rule is the Bipartisan Budget Act of 2018 amended section 1902(a)(25)(E), which requires states "to make payments without regard to third party liability for pediatric preventive services unless the state has made a determination related to cost-effectiveness and access to care that warrants cost avoidance for 90 days."

Pay and Chase is when Medicaid covers submitted claims and then attempts to recover payments from liable third parties, either because Medicaid didn't identify the third party until post-payment, or because there are Social Security Act exceptions to cost avoidance.

For example, state Medicaid agencies are required to implement pay-and-chase procedures for preventive pediatric services including EPSDT (Early and Periodic Screening, Diagnostic and Treatment) services.

TPL Billing

The steps required for TPL billing begin with identifying potentially liable third parties. The state Medicaid agency will gather this information during the eligibility determination and redetermination process; information is available in the state's Medicaid management information system (MMIS) or in a hard copy file.

The provider – which could be the school, school district or regional school district – would then submit the claim to the third party, or request submission through the contracted billing company. If the liable third party is an insurance provider, the claim may have to be submitted within a certain number of days to avoid risk of being denied.

The school district provider or billing company would then wait for a response from the insurance company as to the payable amount, if any. The claim may have to be refiled if no response is received. If a balance remains after the claim is paid by the third party, the claim would be submitted to the state Medicaid agency or other contracted entity. The state Medicaid agency would then reimburse the school district for the remaining balance (up to the maximum amount allowable in the state plan).

TPL and School-Based Services

TPL and Individual with Disabilities Education Act

Medicaid statutes cover payment for health-related services under the [Individual with Disabilities Education Act \(IDEA\)](#). Medicaid pays the state education department or school district *after* any liable third party is billed; therefore, schools that seek to bill Medicaid for health services under IDEA must meet federal and state Medicaid requirements as it relates to billing third parties.

TPL and Individualized Education Programs

Because the TPL rule requires Medicaid to pay after private insurance, claims for students with or without an Individualized Education Program (IEP) would be subject to TPL policies.

In December 2014, [CMS clarified](#) that payment may be made for student health services included in the state Medicaid plan, even if the service is offered without charge to the community at large. This is known as a reversal of the [“free care” rule](#). Previously, Medicaid only covered services included in a student’s IEP or Individualized Family Service Plan (IFSP).

In the case of non-IEP student health services, state departments of education and state Medicaid agencies need to negotiate the methodology applied to meet the TPL requirement. This could include either pay and chase, cost avoidance or a hybrid model, in which case IEP services are pay and chase and all other services are cost avoidance.

TPL and Medicaid Managed Care Programs

The contract language between the state Medicaid agency and the managed care organization (MCO) dictates the terms and conditions under which the MCO assumes TPL responsibility.

If a state has a Medicaid managed care program, it has several options for complying with federal TPL rules. Many states have chosen to exclude students with other insurance coverage from enrolling in a Medicaid managed care plan. States that opt to enroll students with other insurance coverage either retain responsibility for administering TPL or delegate that responsibility to the managed care plan.

The Medicaid agency is responsible for taking TPL recoveries into account when setting the monthly rate-per-member that is paid to the MCO.

Services Excluded From TPL

There are some exceptions to the rule that Medicaid is the payer of last resort. These exceptions generally relate to federally administered programs that cover payment of the claim not covered by Medicaid, or cover the health service or health item cost. Examples include the Crime Victims Compensation Fund and items paid for by the Federal Emergency Management Agency (FEMA).

Additionally, states may exempt certain items or services from TPL requirements because the general insurance industry does not cover them. Examples include school transportation and school-based nursing services.

School Medicaid Expansion and TPL Requirements

As states move to expand both IEP and non-IEP physical and behavioral health services covered by Medicaid, questions have been raised regarding TPL and the application of Medicaid requirements. In some states, services provided to students eligible for Medicaid have not been expanded, and states have not considered any changes regarding TPL. Claims for eligible services are submitted for reimbursement, and those with a TPL are reimbursed or handled with cost avoidance or pay and chase, depending on the state Medicaid agency’s policy. In these states, TPL often has not been given much consideration.

In other states, as school-based health services were expanded or in a separate notice, state Medicaid agencies have informed the school district that health services would be subject to TPL. If the state Medicaid agency determines that a third party is liable for the claim, the agency would reject the claim through cost avoidance, and the school district would be responsible for submitting the claim to the responsible third party.

It may be possible to work with the state Medicaid agency to request some relaxation of requirements for school-based services that typically are not reimbursed by third-party insurers, such as transportation or nursing services. Other state Medicaid agencies might consider Medicaid-covered school health services to be exempt from TPL requirements. Reasons for this may vary; it may be that the state Medicaid agency has determined that the state's largest insurers will not pay for services provided in a school, or that the services fall under the EPSDT benefit (Early and Periodic Screening, Diagnostic and Treatment).

In these states, claims for Medicaid-covered school health services would not need to be submitted first to the legally liable third party. These states follow pay-and-chase procedures, meaning that they pay the claim submitted by the school district and then seek to recoup the payment from the legally liable third party.

Federal Regulations and TPL Waivers

Federal law 42 CFR § 433.139(e) allows state Medicaid agencies to request a waiver of the requirement to cost avoid claims, meaning the state Medicaid agency would seek TPL reimbursement rather than the schools. The state Medicaid agency would need to prove that its collecting TPL (pay and chase) method would be as effective as the schools collecting TPL (cost avoidance). While a cost-avoidance waiver has its foundation in federal law, it is important to note that there have been no approved waivers of this type since 2014.

Further Reading

Each state has a Medicaid state plan that specifically describes how it will implement TPL regulations as outlined in federal regulations. School districts with questions concerning TPL administration should contact their state Medicaid agency for policy guides and training. In addition, CMS issued a TPL handbook, "[Coordination of Benefits and Third Party Liability \(COB/TPL\) In Medicaid](#)," in 2020 that provides a comprehensive description of TPL policies, procedures, laws and regulations.

Several recent federal bulletins have provided updates. A [Center for Medicaid and Children's Health Insurance Program \(CHIP\) Services bulletin](#) (August 2021) advises states to ensure that their Medicaid state plan aligns with current TPL requirements. States were expected to review current guidance and bring their state plans into compliance by Dec. 31, 2021. A separate [Center for Medicaid and CHIP Services bulletin](#) (June 2018) extends TPL requirements to children receiving Medicaid through CHIP.

Healthy Schools Campaign

Healthy Schools Campaign Healthy Schools Campaign (HSC) engages stakeholders and advocates for policy changes at local, state, and national levels to ensure that all students have access to healthy school environments, including nutritious food, physical activity, and essential health services, so they can learn and thrive. HSC's Healthy Students, Promising Futures initiative supports states and school districts in expanding access to Medicaid-funded school health services. To learn more, visit healthyschoolscampaign.org and healthystudentspromisingfutures.org.

Acknowledgements

A special thanks to Shelley McGeorge and Valeria Williams from The Child Health Readiness Group for their strategic leadership and editorial support.

This work is licensed under Creative Commons ([CC BY-NC 4.0](https://creativecommons.org/licenses/by-nc/4.0/))

