

IN THE SENATE

SENATE BILL NO. 1095

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO SPECIAL EDUCATION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDI-
2 TION OF A NEW CHAPTER 61, TITLE 33, IDAHO CODE, TO PROVIDE LEGISLATIVE
3 FINDINGS, TO DEFINE TERMS, TO PROVIDE FOR THE MEDICAL NECESSITY OF SER-
4 VICES, TO ESTABLISH THE INTERAGENCY STUDENT SERVICES SUPPORT COMMIT-
5 TEE, TO AUTHORIZE A MEDICAID ADMINISTRATIVE CLAIMING PLAN, TO PROVIDE
6 FOR A PROFESSIONAL DEVELOPMENT PROGRAM AND TO REQUIRE ACCOUNTABILITY;
7 AND DECLARING AN EMERGENCY.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
11 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
12 ter 61, Title 33, Idaho Code, and to read as follows:

13 CHAPTER 61

14 SPECIAL EDUCATION REIMBURSEMENT ACT

15 33-6101. LEGISLATIVE FINDINGS. (1) The availability of medicaid
16 school-based services in Idaho public schools is a critical component for
17 Idaho public school students who receive health-related and rehabilitative
18 services under the federal individuals with disabilities education act
19 (IDEA).

20 (2) The legislature finds that Idaho educational public policy is
21 served by establishing and jointly supporting a school-based medicaid ser-
22 vices program, through interagency collaboration between the department
23 of education and the department of health and welfare, along with the newly
24 created interagency student services support committee, establishing and
25 operating an effective, transparent and accountable system to optimize
26 available federal medicaid funds to deliver school-based medicaid programs
27 pursuant to this chapter and as provided by federal law.

28 (3) School-based medicaid differs from community-based medicaid.
29 Public schools may choose to be medicaid providers and, as such, seek reim-
30 bursement for certain school-based medicaid services provided to a student
31 through his or her individualized education plan.

32 (4) All provisions addressed herein shall be interpreted to the broad-
33 est extent allowable by federal law and not precluded by federal law, regula-
34 tion, rule or requirement. Further, such provisions shall be interpreted to
35 place the least amount of burden upon Idaho's public schools.

36 33-6102. DEFINITIONS. Solely for the interpretation of this chapter:

37 (1) "Audit" means an examination of public school provider records by
38 the department of health and welfare to ensure compliance with school-based
39 medicaid law, rule and regulation, after which an opinion is issued repre-
40 senting the findings.

1 (2) "Committee" means the school-based medicaid student services sup-
2 port committee created in section 33-6104, Idaho Code.

3 (3) "IEP" or "individualized education plan" is a document that is de-
4 veloped for each public school student who needs special education. The IEP
5 is created through a team effort and is reviewed on at least an annual basis.
6 An IEP defines the individualized objectives of a student who has been de-
7 termined to have a disability and is individually personalized to assist the
8 student in reaching educational goals.

9 (4) "IEP team" means the group of individuals who develops a student's
10 IEP. Members of the team commonly include the student's parents or legal
11 guardian, at least one (1) of the student's general education teachers, at
12 least one (1) of the student's special education teachers or other special
13 education provider, a public school representative knowledgeable about both
14 general education and special education who has authority to make decisions
15 that involve school resources, and a counselor or other special education
16 personnel who can interpret the student's evaluation and testing results.
17 Additional individuals may be part of the team, including but not necessar-
18 ily limited to: the student; a professional hired by a parent of the student
19 who has knowledge or expertise about the student; a translator or service
20 provider to accommodate needs of the parents to participate in the team
21 process; and an advocate of the parent.

22 (5) "Individual family services plan" (IFSP) means a plan for special
23 services for young children with developmental delays, from birth to three
24 (3) years of age. Once a child reaches the age of three (3) years, an IEP is
25 put into place.

26 (6) "Medicaid administrative claiming" (MAC claiming) means reim-
27 bursement to a public school for school-based medicaid administrative
28 activities performed in the school setting that support eligible students.

29 (7) "Practitioner of the healing arts" in the school setting includes,
30 but is not limited to:

- 31 (a) Licensed medical or osteopathic doctor;
- 32 (b) Licensed nurse practitioner;
- 33 (c) Licensed physician assistant;
- 34 (d) Licensed physical therapist;
- 35 (e) Licensed speech language pathologist;
- 36 (f) Licensed occupational therapist;
- 37 (g) Licensed psychologist or school psychologist;
- 38 (h) Any other licensed professional who meets federal medicaid regula-
39 tions.

40 (8) "Public school" means any Idaho public school district, Idaho pub-
41 lic charter district or Idaho public charter school.

42 (9) "School-based medicaid" means medicaid-qualifying school-based
43 services that are health-related or rehabilitative services provided to
44 students with disabilities who receive services under the individuals with
45 disabilities education act (IDEA) that are medically necessary for students
46 to participate in their individualized education plan.

47 (10) "School setting" means on school property or at school-sponsored
48 events or activities.

49 (11) "State medicaid plan" means the contract between the state and the
50 federal government under 42 U.S.C. 1396a(a).

1 33-6103. MEDICAL NECESSITY OF SERVICES. (1) If a medicaid-eligible
2 student needs additional services in order to access or benefit from special
3 education, public schools are required to provide the related services that
4 are identified in the student's IEP and may include, but not be limited to:

- 5 (a) Speech therapy;
- 6 (b) Occupational therapy;
- 7 (c) Physical therapy;
- 8 (d) Interpreters;
- 9 (e) Medical services, such as nursing services to perform procedures to
10 meet the student's needs during the day. An example is catheterization;
- 11 (f) Rehabilitation;
- 12 (g) Behavioral interventions;
- 13 (h) Social work services and transportation; and
- 14 (i) Supplementary aids and services such as assistive technology and
15 teacher's aides in the classroom to provide additional support.

16 (2) Public schools that enroll as school-based medicaid providers can
17 receive reimbursement for school-based services, provided that:

- 18 (a) The student is eligible for medicaid;
- 19 (b) Each service is specifically identified on the student's IEP or
20 IFSP;
- 21 (c) Services are medically necessary for a student to benefit from his
22 or her educational program; and
- 23 (d) All other medicaid requirements are met.

24 (3) With the exception of nursing services, which shall be determined
25 by a licensed medical or osteopathic doctor, the medical necessity, time and
26 duration of services shall be determined annually by the professionals on
27 the student's IEP team.

28 (4) Within ninety (90) days of the finalization of the IEP, a practi-
29 tioner of the healing arts, as defined in section 33-6102, Idaho Code, shall
30 approve the medical necessity provision of the student's IEP.

31 (5) Entitlement to reimbursement for school-based medicaid services
32 shall be effective as of the date of commencement of services as determined
33 by the IEP and shall be signed and dated by the referring practitioner of the
34 healing arts.

35 (6) This chapter shall govern reimbursement for school-based medicaid
36 services and shall preempt any other state laws purporting to limit such re-
37 imbursement.

38 33-6104. INTERAGENCY STUDENT SERVICES SUPPORT COMMITTEE. By no later
39 than August 1, 2017, the department of education and the department of health
40 and welfare shall create and jointly operate a school-based medicaid student
41 services support committee. The committee shall replace the school-based
42 medicaid advisory committee and any prior or existing interagency committee
43 organized for the purpose of school-based medicaid.

44 (1) Committee membership. The committee shall be comprised of the
45 following standing members:

- 46 (a) The state superintendent of public instruction or designee;
- 47 (b) The director of the department of health and welfare or designee;
- 48 (c) The executive director of the state board of education or designee;

1 (d) One (1) member of the house of representatives education committee
2 or designee;

3 (e) One (1) member of the senate education committee or designee;

4 (f) One (1) member from the division of medicaid for school-based ser-
5 vices within the department of health and welfare;

6 (g) One (1) member from the division of special education or school-
7 based medicaid within the department of education;

8 (h) The executive director of the Idaho school boards association or
9 designee;

10 (i) The executive director of the Idaho association of school adminis-
11 trators or designee;

12 (j) Six (6) special education directors or designees, as follows:

13 (i) Two (2) special education directors representing the area of
14 north Idaho (regions 1 and 2);

15 (ii) Two (2) special education directors representing the area of
16 eastern Idaho (regions 4, 5 and 6); and

17 (iii) Two (2) special education directors representing the area of
18 southwestern Idaho (region 3).

19 The special education director members shall be selected by the Idaho
20 association of school administrators. In the first year of the commit-
21 tee, one (1) special education director member from each area identi-
22 fied in this paragraph shall serve a two (2) year term and one (1) spe-
23 cial education director member from each area shall serve a three (3)
24 year term. Thereafter, each special education director member shall
25 serve a three (3) year term.

26 (k) Two (2) parent advocate members to be chosen by a majority vote of
27 the special education directors identified in paragraph (j) of this
28 subsection.

29 (i) Individuals who wish to be considered for parent advocate
30 member positions shall submit a letter of interest to the special
31 education director members who will take into consideration the
32 size and geographical location of the parent advocate's home pub-
33 lic school.

34 (ii) In the first year of the committee, one (1) parent advocate
35 member shall serve a two (2) year term and one (1) parent advocate
36 member shall serve a three (3) year term. Thereafter, each parent
37 advocate member shall serve a three (3) year term.

38 (iii) Parent advocate members shall be compensated as provided by
39 section 59-509(n), Idaho Code.

40 (2) Committee governance. In even-numbered years, the director of the
41 department of health and welfare or designee shall serve as the chair and the
42 state superintendent of public instruction or designee shall serve as vice
43 chair of the committee. In odd-numbered years, the state superintendent of
44 public instruction or designee shall serve as chair and the director of the
45 department of health and welfare or designee shall serve as vice chair of the
46 committee.

47 (a) Meetings shall be held no less than once each quarter during the
48 calendar year. Additional meetings may be held by written request.
49 Meetings shall comply with chapter 2, title 74, Idaho Code.

1 (b) The committee may form advisory subcommittees, as necessary, which
2 must report back to the committee prior to any final action.

3 (c) The committee may seek out technical or professional assistance, as
4 deemed necessary and appropriate.

5 (3) Committee voting rights. Each member of the committee shall have
6 full and equal voting rights. A simple majority of members voting shall be
7 sufficient to decide any matter pending before the committee. The chairman
8 shall vote only when necessary to break a tie.

9 (4) Committee mission. The committee's responsibilities shall in-
10 clude, but not be limited to:

11 (a) Identifying and recommending elimination of state regulatory re-
12 quirements, practices, interpretations and barriers that exceed fed-
13 eral requirements when the committee believes such regulatory require-
14 ments are not necessary.

15 (b) Assuring that state medicaid plans and related agreements support
16 public schools seeking reimbursement for school-based medicaid-eligi-
17 ble services and provide that public schools are expected to optimize
18 available federal medicaid funds. If existing state medicaid plans and
19 related agreements impede the ability for public schools to be reim-
20 bursed for school-based medicaid-eligible services that they provide,
21 the committee shall recommend amendments to the plans and agreements.
22 Thereafter, the committee shall annually review the school-based med-
23 icaid services portions of the state medicaid plan and any related
24 agreements for best practices and shall take necessary steps to recom-
25 mend amendment.

26 (c) Developing an interagency agreement between the department of
27 health and welfare and the department of education with the goal of
28 ensuring that schools shall be reimbursed for eligible school-based
29 services that they provide and to ensure that schools can optimize
30 available federal school-based medicaid funds to deliver school-based
31 programs. The interagency agreement shall define and clarify the re-
32 sponsibilities of each agency to ensure a coordinated, comprehensive
33 delivery system focusing on students ages three (3) years to twenty-one
34 (21) years, who meet qualifications for IDEA and medicaid school-based
35 services pursuant to the minimum standard required by federal law and
36 regulation.

37 (i) The newly created interagency agreement shall be finalized
38 and put into effect on or before December 1, 2017, and shall su-
39 persede any prior or existing agreements or memorandums of under-
40 standing.

41 (ii) The committee shall annually identify any areas that may re-
42 quire amendment to the interagency agreement in order to remain
43 current with student needs, public school needs and the expansion
44 of opportunities for reimbursement available to school-based pro-
45 grams.

46 (iii) Any amendments to the plan shall be approved by the committee
47 on or before December 31 of each year.

48 (d) Assisting the department of health and welfare in the preparation
49 of required cost-avoidance waivers or other such mechanisms utilized to

1 meet any possible requirements associated with third-party liability
2 issues, without increasing liability or burdens to public schools.

3 (e) Eliminating administrative burdens on public schools through
4 researching, identifying and recommending implementation of method-
5 ologies that simplify claims processing for billing, auditing, tech-
6 nical assistance and reimbursement activities associated with the
7 school-based program.

8 (f) Reviewing and approving department of health and welfare and de-
9 partment of education forms utilized in the school-based medicaid pro-
10 gram including, but not limited to: medicaid provider agreements, an-
11 nual certifications, audit forms and the annual committee report as ad-
12 dressed in this subsection.

13 (g) Recommending regulatory and practice changes to ensure that public
14 schools optimize available federal medicaid funds to deliver school-
15 based programs.

16 (h) Ensuring that public schools are optimizing available federal
17 medicaid funds through MAC claiming, aiding in the development and im-
18 plementation of the MAC claiming plan as defined in section 33-6102,
19 Idaho Code, and recommending changes to rules, practices and interpre-
20 tations, to deliver a MAC claiming program that performs to the broadest
21 extent permitted by federal law.

22 (i) Recommending content for the department of health and welfare and
23 the department of education school-based medicaid website and for the
24 professional development program providing public schools with re-
25 sources to assist in program implementation.

26 (5) Committee reporting. No later than January 30 of each year, the
27 committee, through its chair, shall be responsible for providing a report to
28 the legislature and the governor of the state of Idaho, which report shall be
29 made available to public schools. The report may include, but shall not be
30 limited to:

31 (a) The number of public schools utilizing school-based medicaid fund-
32 ing within the last school year;

33 (b) Public school utilization of the MAC claiming plan provided for in
34 section 33-6105, Idaho Code;

35 (c) The professional development opportunities provided pursuant to
36 section 33-6106, Idaho Code, within the past school year; and

37 (d) A comparison of Idaho's school-based medicaid program in relation
38 to national and regional trends.

39 33-6105. MEDICAID ADMINISTRATIVE CLAIMING. The legislature finds
40 that reimbursement for the administrative costs associated with identifying
41 and enrolling populations in need of medicaid services, linking individ-
42 uals and families to service providers and coordinating and monitoring
43 health-related services is an integral part of support to public schools and
44 public school students.

45 (1) On or before December 1, 2017, the committee shall make recommen-
46 dations to the department of health and welfare and the department of educa-
47 tion for the creation and implementation of a school-based medicaid admin-
48 istrative claiming (MAC claiming) plan to allow public schools to seek re-
49 imbursement for provided eligible administrative services. The department

1 of health and welfare shall submit the proposed MAC claiming plan to the ap-
2 propriate federal agencies for approval. Should the submitted MAC claiming
3 plan be denied, it shall be returned to the committee for amendment.

4 (2) The MAC claiming plan shall not contain any state-based rule limit-
5 ing public schools from obtaining maximum MAC claiming reimbursement allow-
6 able under federal law.

7 (3) The committee shall make recommendations as to professional de-
8 velopment activities for public schools to ensure program integrity and to
9 avoid adverse audit findings in relation to the MAC claiming plan.

10 33-6106. PROFESSIONAL DEVELOPMENT PROGRAM. (1) The department of
11 health and welfare and the department of education, in consultation with
12 the committee, shall collaborate to provide professional development and
13 technical assistance opportunities targeted specifically to the issues
14 relating to school-based medicaid programs for public school personnel.
15 These activities shall include, but not be limited to, school-based medicaid
16 regulations, policies, implementation practices, administrative claiming,
17 quality-improvement strategies and auditing practices.

18 (2) Professional development activities shall include, but are not
19 limited to:

20 (a) Implementation concerns raised by public schools;

21 (b) Implementation concerns identified by the department of health and
22 welfare, as discovered through auditing activities; and

23 (c) State or federal regulatory or legislative changes to the school-
24 based medicaid program.

25 33-6107. ACCOUNTABILITY. (1) The department of health and welfare
26 shall conduct audits and desk reviews of public schools participating in the
27 school-based medicaid program to ensure that proper documentation exists to
28 justify the receipt of school-based medicaid reimbursement. From such au-
29 dits, the department of health and welfare shall also identify areas in which
30 professional development is needed to correct errors and educate public
31 schools in areas where underbilling for school-based medicaid is occurring.

32 (a) The audit shall be limited to the twelve (12) months immediately
33 preceding the date of written notice of an audit.

34 (b) Department of health and welfare audits of public schools partic-
35 ipating in the school-based medicaid program shall be consistent with
36 the minimum auditing guidelines required by federal law and regulation
37 and shall not require or include any additional state-specific provi-
38 sions or documentation unless the additional state-mandated audit re-
39 quirements are deemed necessary and approved, in advance, by the com-
40 mittee.

41 (c) A public school subject to an audit may make a formal written re-
42 quest to the department of education to participate in the auditing
43 process. Within thirty (30) days of the public school's request, the
44 department of education shall participate in the audit as an advocate
45 for the public school, including aiding in identification of areas in
46 which underbilling has occurred.

47 (d) In the instance of a finding of error in reimbursement submission,
48 the public school shall be permitted to resubmit the reimbursement re-

1 quest with correction, without a negative audit finding. Should it not
2 be possible to correct the error and medicaid funds are owed from the
3 public school, the public school will negotiate an appropriate repay-
4 ment schedule with the department of health and welfare.

5 (2) The department of education and the department of health and wel-
6 fare, in consultation with the committee, shall collaboratively develop a
7 quality-assurance and desk-review process to be conducted through random
8 sampling.

9 (3) The findings of audits and desk reviews shall be considered in the
10 development of professional development activities for the school-based
11 medicaid program.

12 (4) A public school shall not be subject to civil penalties, monetary
13 or otherwise, associated with any audit finding, unless intent to defraud is
14 proven during the course of the audit process, in which case the penalty may
15 not exceed the amount of the claim itself.

16 SECTION 2. An emergency existing therefor, which emergency is hereby
17 declared to exist, this act shall be in full force and effect on and after its
18 passage and approval.