

Medicaid and the “Free Care” Rule

January 21, 2016

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Medicaid and the “Free Care” Rule

January 21, 2016

Moderator



Jane Perkins, Legal Director, National Health Law Program and Senior Attorney, Network for Public Health Law - Southeastern Region

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- Research interest/area of expertise:
 - Medicaid/Medicare
 - Disability and civil rights
 - Access to health and vulnerable populations

Presenter Introduction



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 - Medicaid/Medicare
 - Coverage options under the Affordable Care Act
 - Health care litigation
 - Regulatory counseling

Presenter Introduction



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- Areas of expertise:
 - Health services access
 - Education and health
 - Advocacy and organization for health outcomes



The Medicaid Free Care Rule: New Policies Affect Schools & Local Health Departments

Medicaid Basics & Free Care History

Jane Perkins, JD, MPH
January 21, 2016

Medicaid: Publicly funded health insurance for people with lower incomes

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Medicaid: What's covered?

- **For adults:**
 - Mandatory services, e.g., physician, hospital, FQHC
 - Optional services, e.g., dental, drugs, rehabilitative
- **For children (under age 21):**
 - **Early & Periodic, Screening, Diagnostic & Treatment (EPSDT)**



EPSDT

- **Periodic assessment**
 - Medical, including developmental
 - Vision
 - Hearing
 - Dental
- **Interperiodic assessment**



EPSDT

- **All Medicaid-covered services necessary to “correct or ameliorate physical and mental illnesses and conditions,” e.g.**
 - Eyeglasses
 - Hearing aids
 - Sealants
 - Physical, speech and related therapies
 - Behavioral health services
 - Case management
 - Transportation

Medicaid Administration

- **Federal Financial Participation (FFP)**
 - Medical assistance (e.g., EPSDT)
 - Medicaid-participating provider
- **Payer of last resort**
- **Legally liable third party**
 - Individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance

Medicaid Administration

Free Care Rule

No FFP for services that are free to the community at large and, thus, free to Medicaid beneficiaries.



Medicaid Administration - CMS Free Care Guidance

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7300 Security Boulevard, Mail Stop 52-20-12
Baltimore, Maryland 21244-1850



SMD# 14-006

Re: Medicaid Payment for Services
Provided without Charge (Free Care)

December 15, 2014

Dear State Medicaid Director:

This letter addresses Medicaid payment for services covered under a state's Medicaid plan to an eligible Medicaid beneficiary that are available without charge to the beneficiary (including services that are available without charge to the community at large, or "free care"). We are issuing this guidance to ensure that Medicaid payment is allowed for any covered services for Medicaid-eligible beneficiaries when delivered by Medicaid-qualified providers. In particular, we intend to remove any ambiguity about the application of a "free care" policy.

Historically, the Centers for Medicare & Medicaid Services (CMS) guidance on "free care" was that Medicaid payment was generally not allowable for services that were available without charge to the beneficiary, with some statutory and some policy exceptions.¹ This policy was expressed in a number of guidance documents, including the prior CMS guidance "1997 Medicaid and School Health: A Technical Assistance Guide, and the 2003 Medicaid School-Based Administrative Claiming Guide (School-Based Administrative Claiming Guide)." The free care policy was challenged and the Departmental Appeals Board (DAB), in Decision No. 1924 (2004), reconsidered in Ruling 2005-1 (2005), concluded that this policy was not an interpretation of either the Medicaid statute or existing regulations.

In light of the DAB ruling, CMS is withdrawing its prior guidance on the "free care" policy as expressed in the School-Based Administrative Claiming Guide and other CMS guidance. As indicated by the DAB, the free care policy as previously applied effectively prevented the use of Medicaid funds to pay for covered services furnished to Medicaid eligible beneficiaries when the provider did not bill the beneficiary or any other individuals for the services. The goal of this new guidance is to facilitate and improve access to quality healthcare services and improve the health of communities.

¹ Exceptions included services provided under the Maternal and Child Health Services Block Grant program under Title V of the Social Security Act, covered under the Special Supplemental Nutrition Program for Women, Infants and Children, and provided as part of an Individualized Education Program or Individualized Family Service Plan under the Individuals with Disabilities Education Act.

<https://www.medicaid.gov/federal-policy-guidance/downloads/smd-medicaid-payment-for-services-provided-without-charge-free-care.pdf>

Medicaid Administration— The New Free Care Rule Policy (Dec. 15, 2014)

- Goal:** Increase access to quality care
Improve health of communities
- Rule:** Public agencies or programs carrying out general responsibilities to ensure access to needed health care are *not* legally liable 3d parties, *e.g.* schools, PHDs.
- Effect:** FFP for Medicaid services provided through providers that do not charge individuals for the service

Thank you!

Jane Perkins
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FELDESMAN+TUCKER+LEIFER+FIDELL

CMS' Withdrawal of the "Free Care Rule": Opportunities for Local Health Departments and Other Governmental Providers

**Susannah Vance Gopalan
January 20, 2016**

FREE CARE RULE

- No FFP for services that are free to the community at large and, thus, free to Medicaid beneficiaries
- CMS stated “free care rule” in Medicaid school-based claiming manuals
 - [Medicaid and School Health: A Technical Assistance Guide \(1997\)](#)
 - [Medicaid School-Based Administrative Claiming Guide \(2003\)](#)

FREE CARE RULE

- CMS' Reasoning: public health programs providing services free of charge are liable “third parties” that must pay primary to Medicaid
- Effect: more difficult for states to seek FFP for services such as
 - School-based services
 - Immunizations

2005-2014: STATUS OF FREE CARE RULE UNCLEAR

- CMS relied on free care rule to disallow FFP for school-based services in Oklahoma under EPSDT benefit
- HHS Departmental Appeals Board overturned disallowance in 2004: free care rule had no basis in Medicaid statute or regulations
- Over following decade, CMS continued to rely on free care rule in policy statements
 - Example: [CMS Free Care Rule for 2009 H1N1 Influenza Vaccination](#)

DECEMBER 2014: CMS RESCINDS FREE CARE RULE (SMDL #14-006)

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop 92-20-12
Baltimore, Maryland 21244-1850



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<https://www.medicaid.gov/federal-policy-guidance/downloads/smd-medicaid-payment-for-services-provided-without-charge-free-care.pdf>

CMS SMDL #14-006

- “CMS does not view public agencies or programs that are carrying out general responsibilities to ensure access to needed health care, such as schools, public health agencies, and child protective services agencies, as legally liable third parties . . . for purposes of Medicaid reimbursement. . .”
 - Such programs do not have a specific legal liability to pay for services
- CMS’ stated goal in issuing the guidance was to ensure access to covered services for Medicaid-eligible beneficiaries by qualified providers

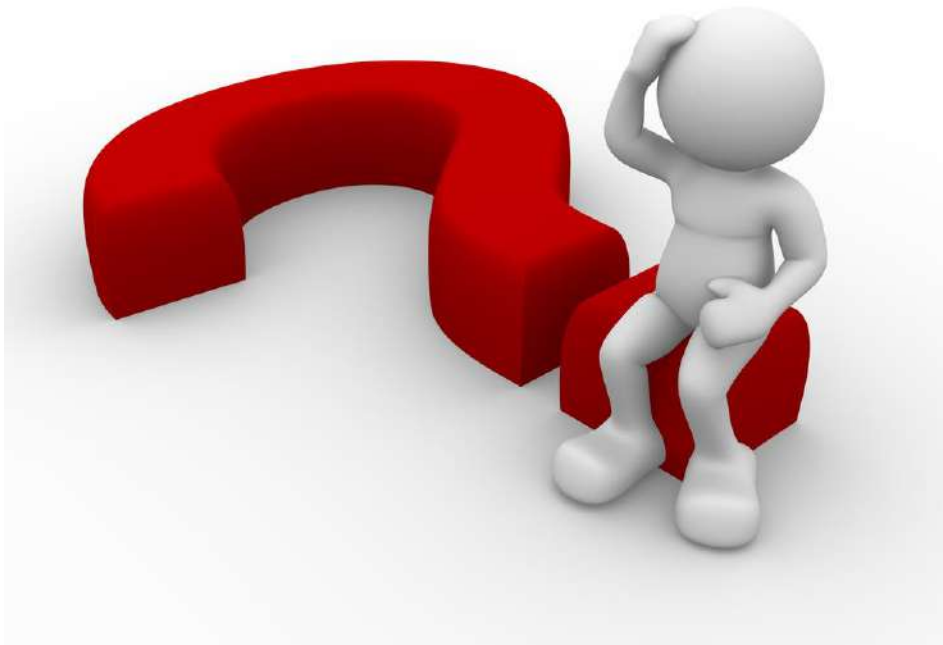
LHDs' CRITICAL AND GROWING ROLE IN MEDICAID

- LHDs as partners to State Medicaid agencies
 - Uniquely authorized to help State agencies carry out Medicaid administration
 - Can bill Medicaid for services using alternative methodologies such as CPEs
- LHDs furnish critical services that may be in shortage through other providers or managed care networks

IMPACT OF NEW CMS GUIDANCE ON LHDs

- LHDs will be sought-after by Medicaid MCOs
 - Coincides with policy push by CMS and CDC to boost LHDs' capacity to bill Medicaid and other payors
<http://www.cdc.gov/vaccines/programs/billables-project/>
- SMDL #14-006 indirectly clarifies Medicaid administrative claiming
 - Dec. 20, 1994 SMDL: “costs related to general public health initiatives” unallowable as administration

QUESTIONS?



Impact of the Change in the Free Care Rule on Schools

Alex Schaible, MHS

Writer + Policy Analyst, Healthy Schools Campaign

October 2013



About Healthy Schools Campaign



Free Care Rule and Schools

Current State of School Health Services

- Less than 50% of schools have access to a full-time school nurse
- 5% of schools have a school-based health center
- Major disparities in access to school health services
- Significant unmet student health needs

The Opportunity

SMDL #14-006:

“The goal of this new guidance is to facilitate and improve access to quality healthcare services and improve the health of communities.”

What does this change mean for schools?

- Medicaid-qualified providers can bill for covered Medicaid services
- Opportunity to promote greater integration of schools within the health care system
- Support the health and learning connection

Next Steps

- Understand how state Medicaid plans address school health services
- Educate key stakeholders about the change and opportunity it presents
- Understand the infrastructure needs

Thank you!

For more information, visit:

<https://healthyschoolscampaign.org/policy/health>

Or contact me at:

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Q&A

Please type your questions in the Q&A panel.

Thank you for attending

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