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TO: Senator Brian L. Langley, Chair
Representative Richard R. Farnsworth, Chair
Members of the Task Force to Identify Special Education Cost Drivers and Innovative Approaches to Services

FROM: The Department of Health and Human Services

SUBJECT: DHHS Responses to Questions from the Task Force

Question: What are the current state laws and rules enacted following the April 30, 2012 report from the Department of Education (DOE) and the DHHS report to the Legislature in response to LD 1003, "Resolve, To Assist Maines Schools to Obtain Federal Funds for Medically Necessary Services?"

Response: DHHS would like to note that we do not have the authority to enact state laws. We do, however, have regulatory authority. MaineCare covers a full compendium of school-based Medicaid services, including, but not limited to, speech therapy, physical and occupational therapies, day treatment (for children with serious mental health conditions), center-based rehabilitative service (for children with autism and intellectual disabilities), and nursing services.

LD 1003 required a number of things of DHHS. First, the bill required DOE and DHHS to "refine existing policies, develop new policies or prepare nonregulatory guidance on billing procedures, as appropriate, to ensure the provision of medically necessary services to students in school-based settings." The bill required DHHS to take into account the recommendations of a stakeholder group. A stakeholder group was convened and met on numerous occasions until Fall of 2016. The group agreed to cease meeting, as DHHS had gotten the information necessary to proceed with our work. The significant amount of information provided to DHHS has been thoughtfully considered. The extensive work completed by this group is reflected in the current draft of our new school-based policy which is now in the process of internal review.

We would like to respond specifically to the State Plan Amendment (SPA) referred in LD 1003. The LD directs the Department to "propose changes to the state plan for Medicaid services provided pursuant to the Maine Revised Statutes, Title 22, chapter 855 to permit reimbursement for school-based services by July 1, 2012." This requirement is redundant, as current Medicaid rules (and indeed rules in effect at the time of the passage of LD 1003) do permit MaineCare reimbursement for school-based services. As a result, the DHHS has not submitted a new SPA, as the intent of the LD appears to have

already been met. Any future SPA submitted will only change the format of the information in the MaineCare Benefits Manual (MBM), not impact any services being provided.

As stated above, MaineCare has drafted a new school-based policy, which compiles all school-based services into one “section” of policy. MaineCare intends to propose this rule in January of 2018.

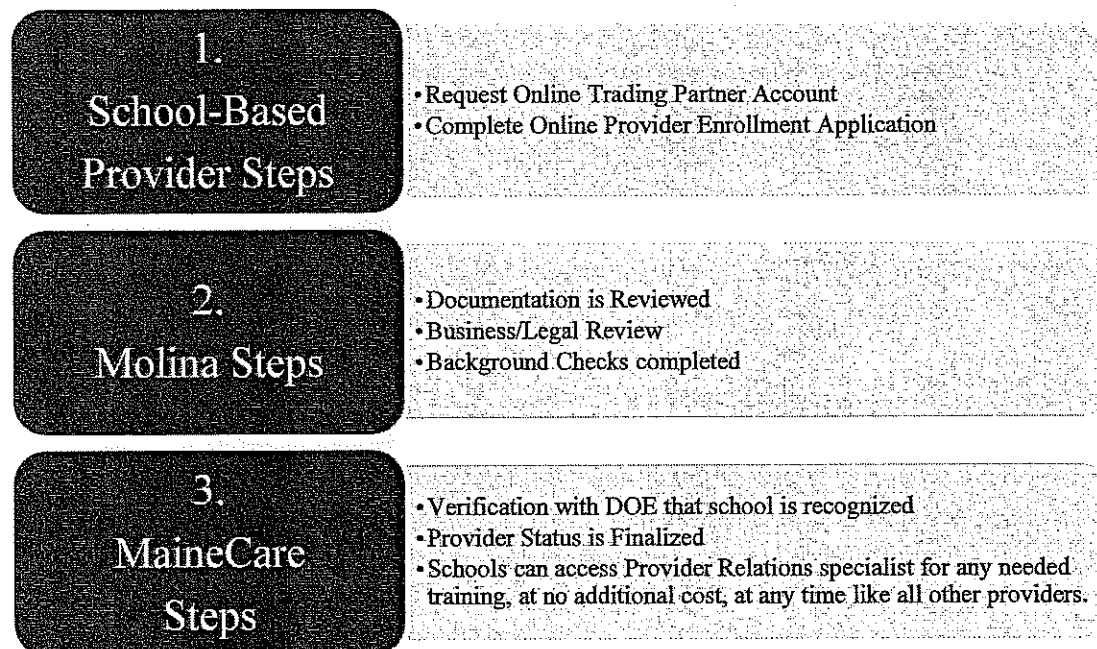
Question: Is it possible for the DOE and DHHS to present briefings and discuss the authority to package together expenses with MaineCare (Medicaid) funds to provide medically necessary services for public school students.

Response: DHHS is unsure what is meant by “package together expenses.” Medicaid reimbursement is dictated by strict federal rules that require reimbursement on a per person, per service basis. As stated above, MaineCare currently covers a full array of school-based services. MaineCare staff have completed a draft of the new school-based policy which will allow our office to identify and account for all school-based services. The draft was created with input provided by the stakeholder group, along with information obtained over the past seventeen months from site visits and discussions with our school-based providers in addition to DOE and Child Development Services feedback.

Question: Can you provide a diagram that shows the steps that must be followed by a school district in order to gain access to MaineCare funded services for children in public schools.

Response:

MaineCare Provider Enrollment Process



The average time it takes to enroll as a MaineCare provider is less than 45 days.

Provider Enrollment information can be accessed at: <http://www.maine.gov/dhhs/oms/enrollment.shtml>

Question: Can you inform us what supports are being deployed to help school districts navigate this issue; and what support is available to school districts to insure that the steps taken will lead to an effective billing process?

Response: DHHS is unclear what specific issue is being referenced in this question. However, MaineCare provides the following resources to school-based providers:

- A School-based Billing Guide was created in October of 2016, revised most recently in November 2017. This was posted on our newly-updated school-based service website. DOE was also notified the resource was available.
- MaineCare staff, through work on the stakeholder group, conversations with individual districts, and a thorough review of our data, have drafted a new policy to address the many provider and systemic challenges to school-based Medicaid services in Maine.

Through collaborative work with staff at DOE, additional challenges have been identified which include:

- Implementing a process when Seed report corrections need to be made to ensure timely correction.
- Consistent messaging in Provider Notices and DOE's Priority Notices and Dispatches in response to school-based challenges.
- Both MaineCare and DOE have updated website information relating to MaineCare school-based services, adding contact information to ensure providers know who to call for assistance.
- School-based inquiries are very often reviewed by both MaineCare and DOE staff prior to a response being given in order to maintain consistency.
- Although at this time not all school districts bill MaineCare for services, there has been an increase of five additional districts from last year who are now billing for MaineCare services. Presentations have also been made specifically for District Business Managers, and Charter School administrators to provide them with information regarding reimbursement through MaineCare for school-based services.

Question: Since we've been informed that one out of eight babies were recently born in the state from mothers battling medical addiction, is it possible for DHHS to have a discussion with the task force to preview what medical service needs they consider are coming to us in the future based on their services being provided to families and children around the state; and what services they might be able to assist schools with in trying to address those needs?

Response: While research regarding the long term sequelae of in utero exposure to opioids is still ongoing, studies have suggested that the following issues may develop in some of these children:

- Behavioral issues;
- Developmental delays;

- Cognitive impairments;
- Learning disabilities;
- Vision problems;
- Hearing problems;
- Impulsivity;
- Hyperactivity;
- Memory issues; and/or
- Risk of future drug use.

Researchers have encountered difficulty in distinguishing between issues caused by exposure to the opioid itself versus those caused by environmental factors (including family instability, avoidance of healthcare providers, inconsistent caregiving, chronic stress, and foster care involvement) affecting the families of many opioid-exposed infants. It is likely that direct effects of opioid exposure are made more severe by these social factors.

Additional Information

Federal Background for Reimbursement of School-Based Services through Medicaid

The Individuals with Disabilities Education Act (IDEA) authorized Federal funding to states for two programs that impact Medicaid payment for services provided in schools. Section 411(k)(12) of the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) amended section 1903(c) of the Act to permit Medicaid payment for medical services provided to children under IDEA through a child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). This amendment was enacted to ensure that Medicaid would cover the health-related services under the IDEA.

Part B of IDEA was designed to ensure that children with special education needs receive a free appropriate public education. Part H of IDEA provided for financial assistance to the states to develop and implement comprehensive, interagency early intervention programs for infants and toddlers with disabilities. Implementation of Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 has resulted in the expansion of many state Medicaid programs to include payment for services provided in accordance with an IEP or IFSP of a Medicaid-eligible child.

As schools and districts are aware, under Part B of IDEA, school districts must prepare an IEP for each child which specified all special education and "related services" needed by the child. The Medicaid program can pay for some of the "health related services" required by Part B of IDEA in an IEP, if they are among the services specified in Medicaid law. In addition, services must be included in the state's Medicaid plan or available through the EPSDT benefit. Examples of such services include physical therapy, speech pathology services, occupational therapy, psychological services and medical screening and assessment services. Within Federal and state Medicaid program requirements regarding allowable services and providers, the Medicaid program can pay for some or all of the cost of these health-related services when provided to children eligible for Medicaid. The 1997 authorization of IDEA strengthened the expectation that schools work closely with the state Medicaid Agency to coordinate provision of services to disabled children in schools.

Part H of IDEA provides for early intervention programs that include all of the available developmental services needed by the infant or toddler with special health needs and development of an IFSP. Many of the health services included in IFSPs can be covered by Medicaid as well.

In addition, if medical evaluations or assessments are conducted to determine a child's health-related needs for purposes of the IEP/IFSP, payment for some or all of the costs may be available under Medicaid. However, if the evaluations or assessments are for educational purposes, Medicaid reimbursement is not available. Medicaid payment is only available for the part of the assessment that is medical in nature and provided by qualified Medicaid providers. In addition, reimbursement for non-medical services, such as special instruction, is not covered.

In summary, HCFA policy is that health-related services included in a child's IEP or IFSP can be covered under Medicaid if all relevant statutory and regulatory requirements are met. A state may cover services often included in an IEP or IFSP as long as: 1) the services are medically necessary and coverable under a Medicaid coverage category (speech therapy, physical therapy, etc.); 2) all other Federal and state regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions; and 3) the services are included in the state's plan or available under EPSDT.

We hope this information will be helpful as you continue to examine fiscal issues relating to the provision of Special Education services for students in our state. Our goal is to continue to address the challenges faced by our school-based providers to ensure that MaineCare members are able to receive medically necessary services needed to access their education.

