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Department of Health Care Services



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GOVERNOR

**PPL NO. 16-012**

DATE: July 1, 2016

TO: Local Educational Agencies (LEAs)

**SUBJECT: NOTIFICATION OF THIRD-PARTY LIABILITY RECOUPMENT REQUIREMENTS**

This Policy and Procedure Letter (PPL) notifies LEAs participating in the Local Educational Agency Medi-Cal Billing Option Program (LEA BOP) of the Third-Party Liability (TPL) recoupment requirements.

Federal statutes and regulations require the Department of Health Care Services (DHCS), and providers, to take all reasonable measures to ascertain and to pursue (TPL) for services provided to Medi-Cal beneficiaries. In general, Medi-Cal beneficiaries are required to cooperate to identify available third party resources and assign their rights to third party payments. [See 42 United States Code (USC) 1396a(25); 42 Code of Federal Regulations (CFR) 433; and Letter to State Medicaid Director (SMD) 14-006]. The guidance issued by the Centers for Medicare & Medicaid Services (CMS) in SMD 14-006 regarding the application of a “free care” policy did not create any exception to the requirements to pursue TPL, which includes services to students who are Medi-Cal eligible, and have third-party commercial insurance or other responsible payor, also known as Other Health Coverage (OHC). DHCS is providing this PPL to assist in clarifying the requirements of pursuing TPL since SMD 14-006 was issued.

Before billing Medi-Cal, LEA providers should determine if a Medi-Cal beneficiary has OHC. Often, reimbursement obtained from OHC will be greater than the reimbursement rate of Medi-Cal. LEA’s must then determine if the student has an Individualized Education Plan (IEP) or an Individualized Family Services Plan (IFSP) in order to determine the necessary steps to bill Medi-Cal.

- Medi-Cal eligible students **WITH** an IEP/IFSP are subject to the requirements of Individuals with Disabilities Education Act (IDEA) [34 CFR 300]. Prior guidance on the application of IDEA should be reviewed for a more complete explanation of the requirements. It should be noted that under IDEA, LEAs must obtain written permission from the parent/guardian every time they seek to bill a student’s OHC, and they must obtain annual written permission to bill Medi-Cal. Once a LEA provider has obtained written permission, the LEA may bill OHC or Medi-Cal for the services provided.
- Permission is not required to bill Medi-Cal when services are provided to Medi-Cal eligible students **WITHOUT** an IEP/IFSP. However, LEAs may only bill Medi-Cal, once any OHC has been billed and denied, or if the OHC has not responded to the claim within the required time frame. [WIC 14132.06 (k)(B)(3)].

If, during its reimbursement review process, DHCS detects a Medi-Cal beneficiary who received services for which Medi-Cal reimbursed, and who has OHC that the LEA could not identify and bill, DHCS, through its recovery vendor, will request that the OHC carrier submit payment to DHCS. The OHC carrier will then either provide DHCS with a reason for denial of its coverage or issue payment to DHCS. The permission requirements of IDEA do not apply to DHCS; thus, parents/guardians should not anticipate advance notice if DHCS identifies and bills OHC for a Medi-Cal payment made to LEA providers. [See 34 CFR 300.154(h)].

If the OHC carrier issues payment to DHCS, the OHC carrier may produce an Explanation of Benefits (EOB) statement to the parent/guardian of the Medi-Cal beneficiary. EOBs are generated as part of the OHC's obligation to inform its policy holders of claims processed on their behalf. The EOB is not a DHCS claim or bill, and parents/guardians, or Medi-Cal beneficiaries typically will not be billed by DHCS or its contracted recovery vendor. In addition, services rendered by LEAs and Medi-Cal payments to LEAs will not be impacted by the OHC carrier's EOB process.

As part of DHCS' recovery process, the LEA provider should not receive payment intended for DHCS from the OHC carrier. If this happens, such payment was issued in error. If a check intended for DHCS is issued payable to the LEA provider in error, please return the check to the issuing insurance carrier or other entity, along with any supporting documents that were received with the check, with a statement that the check was issued in error and to forward it to DHCS. However, if the LEA provider receives a check that is payable to DHCS or to Health Management Services (HMS), please forward to:

DHCS  
P.O. Box 742635  
Los Angeles, CA 90074-2635

If you have questions concerning this PPL, please contact Rick Record, Chief, LEA Medi-Cal Billing Option Program, by phone at (916) 552-9222 or by e-mail at [Rick.Record@dhcs.ca.gov](mailto:Rick.Record@dhcs.ca.gov).

Sincerely,

**ORIGINAL SIGNED BY MICHELLE KRISTOFF**

Michelle Kristoff, Chief  
Medi-Cal Administrative Claiming Section