



EC 2 4 1992

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Ms. Lourdes A. **Rivera**
Ms. Carol Regan
Children's Defense Fund
122 C. Street, N.W.
Washington, D.C. 20001

Dear Ms. **Rivera** and Ms. Regan:

This is in reply to your memorandum regarding payment for Medicaid services included in an individualized education program (IEP) or individualized family service plan (IFSP). The issues raised in your memorandum and accompanying letters from United Cerebral Palsy of Huntsville and Tennessee Valley, Inc., the Alabama Medicaid Agency, and Region IV of the Health Care Financing Administration relate to two separate Medicaid principles which are often confused. These are (1) that Medicaid does not reimburse for free care and (2) before Medicaid can make payment for a covered service, payment must be sought from any third parties liable for the Medicaid recipient's care.

In applying the free care principle to determine whether services are provided free of charge and, thus, there is no payment liability to Medicaid, a determination must be made whether both Medicaid and non-Medicaid clients are generally charged for the service. It is not necessary to find, however, that clients are billed directly in every case. Providers may employ a reasonable sliding fee schedule. Providers may also bill a client's liable third party rather than billing the client directly. If only Medicaid recipients or their third parties are charged for the service, then the care is free and Medicaid will not reimburse for the service.

There are, however, exceptions to the principle that Medicaid does not reimburse for services provided without charge. As you point out, as provided in section 1903(c) of the Social Security Act (the Act), Medicaid payment may be made for Medicaid covered services included in a child's IEP or in a child's IFSP. Services provided by a title V agency pursuant to an agreement with the Medicaid agency are also exempt from the free care exclusion. It should be noted, though, that the exception in 1903(c) of the Act only applies to Medicaid

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covered services specifically cited in the child's IEP or IFSP and does not apply to any other Medicaid services the child may need.

Once it is clear that a service is coverable under Medicaid, then the second principle mentioned above must be applied, i.e., third party liability must be sought before Medicaid may make payment. There are limited situations known as "pay and chase" under which Medicaid claims are paid first and third party reimbursement is pursued later. However, there is no exemption in title XIX for seeking payment from liable third parties on behalf of Medicaid recipients for Medicaid coverable services included in an IEP or IFSP. Thus, if a State chooses not to pursue liable third parties on behalf of Medicaid recipients for services included in an IEP or IFSP because it believes that the child's parents will incur a financial loss as a result of that action, no Medicaid payment would be available for the service.

We are aware that the Department of Education's (DOE) policy is that, if use of private insurance proceeds will result in a decrease in available lifetime coverage under an insurance policy, an increase in premiums, or out-of-pocket expenses for payment of deductibles, then a State is prohibited from requiring parents to incur such costs under any private insurance policy. The disparity between this DOE policy and Medicaid's third party liability policy stems from differing program responsibilities and funding. Thus, to the extent pursuit of third party liability would create additional costs to a child's parent, States could assume the liability of the parent's insurer with respect to Medicaid.

I hope that this explanation clears up any misunderstanding. If you have any questions concerning this letter or require further clarification, you should contact Mary Jean Duckett of my staff at (410) 966-5640.

Sincerely yours,



Christine Nye

Director

Medicaid Bureau

cc:
Atlanta Regional Office
Attn: Andriette Johnson