

Office of Medicaid Inspector General

School Reimbursements Interim Report

**Office of Kansas Attorney General
Kris W. Kobach**



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Letter from the Inspector General

October 31, 2023

To: Attorney General Kris W. Kobach

Kansas Department of Health and Environment, Janet Stanek, Secretary
Kansas State Department of Education, Dr. Randy Watson, Commissioner

Members of the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight:

Representative Brenda Landwehr, Vice-Chair	Senator Beverly Gossage, Chair
Representative Barbara Ballard	Senator Michael Fagg
Representative Will Carpenter	Senator Molly Baumgardner
Representative Susan Concannon	Senator Pat Pettey
Representative Emil Bergquist	Senator Mark Steffen
Representative Susan Ruiz	

This interim report contains information developed during our performance audit of the Kansas Department of Health and Environment's (KDHE) management of School-Based Fee-For-Service (FFS) Medicaid Reimbursements for the State of Kansas. This audit is being conducted in accordance with the Association of Inspectors General Principles and Standards for Offices of Inspector General: Quality Standards for Inspections, Evaluations, and Reviews, May 2014 Revision.

We greatly appreciate the cooperation of KDHE and Kansas State Department of Education (KSDE) staff. We welcome any comments or questions you may have regarding this interim report.

Respectfully submitted,



Steven D. Anderson
Medicaid Inspector General

Executive Summary

Our objectives were to obtain sufficient evidence to answer the following questions:

1. **Does KDHE have an effective system for processing and tracking school-based Medicaid FFS claim reimbursements?** Still under review.
2. **Does KDHE have adequate policies and procedures that promote effective and efficient school-based Medicaid programs?** Still under review.
3. **Does KDHE/KSDE have sufficient oversight processes in place to ensure Individual Education Plans (IEP's) are complete, and support medical necessity when services are billed to Medicaid?** Still under review.

The scope of our audit included all Medicaid enrolled students who had services billed on their behalf from a Local Education Agency (LEA) provider within a school-based program from January 1, 2021 through January 31, 2023. Approximately, \$23.5 million in Medicaid funds are dispersed via Fee-For-Service (FFS) to Kansas school districts each year to reimburse them for providing services to students that are on Medicaid. Only covered medically necessary services identified on the student's Individual Education Plan (IEP) are eligible for Medicaid reimbursement. Covered services include the following:

- **Audiology Services:** Sensory and hearing therapy
- **Nursing Care:** Attendant Care (activities of daily living assistance)
- **Social Work Services:** Individual/group therapy
- **Therapy Services:** Occupational, Physical, Speech Language and Psychology based therapies

The services listed above are delivered by various providers who are employees of the school districts or are contractors. We discovered that of the 231 providers reviewed as part of our audit sample, 72 or 31% did not have proof the background checks were completed at the time of our request for records. Also, five schools completed background checks on 14 providers after receiving our request for records.

Our sample of providers was taken from 17 of the 287 public schools across Kansas. We added one additional school-based program for a total of 18, due to an associated school cooperative (Co-Op). Schools were picked at random, providing a cross representation in total enrollment and geographical location across the state. It is estimated there is an average of 13 providers per school district in Kansas. Accordingly, there is an estimated total of 3,731 providers working directly with children in Kansas public schools. Our sample testing indicates that 31% or 1,157 of those providers may be working without a background check.

We also found that teachers are only required to have a single background check. Unless a teacher has a break in service and allows their license to lapse, they are not required to undergo any additional background checks during their careers. There were three teachers in our sample

group that last had background checks completed in 1997 and 1998. It is reasonable to assume there are teachers in daily contact with students that have not had any type of background check done in 10-20 years.

The Kansas State Department of Education (KSDE) requires a fingerprint-based criminal history check for licensed staff. There are no State of Kansas statutes that require these checks. We did not find any state level requirements for other school employees to have background checks. This includes other employees, such as, therapists, coaches, paraprofessionals, bus drivers, cooks, and janitorial workers. K.A.R. 91-1-214, State Department of Education; Criminal history records check. *(a) Each person submitting any of the following shall also submit, at the time of the application, a complete set of legible fingerprints of the person taken by a qualified law enforcement agency or properly trained school personnel: (1) An initial application for a Kansas certificate or license; (2) an application for renewal of an expired Kansas certificate or license; or (3) an application for renewal of a valid Kansas certificate or license, if the person has never submitted fingerprints as part of any previous application for a Kansas certificate or license issued by the state board. Fingerprints submitted pursuant to this regulation shall be released by the Kansas state department of education to the Kansas bureau of investigation for the purpose of conducting criminal history records checks, utilizing the files and records of the Kansas bureau of investigation and the federal bureau of investigation. A list of those applicants who are required to submit fingerprints at the time of license or certificate renewal shall be maintained by the Kansas state department of education. (b) Each applicant shall pay the appropriate fee for the criminal history records check, to be determined on an annual basis. (c) In addition to any other requirements established by regulation for the issuance of any certificate or license specified in subsection (a), the submittal of fingerprints shall be a prerequisite to the issuance of any certificate or license by the state board. A person submitting an application who does not comply with this regulation shall not be issued a certificate or license.*

We reviewed Kansas statutes that required fingerprint-based criminal history background checks and found the following:

K.S.A. 65-516 requires a fingerprint-based criminal history background check for any individual residing, working, or regularly volunteering in a licensed child care facility.

K.S.A. 39-970 requires a fingerprint-based criminal history background check for any individual working in an adult care home. This includes any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disability, assisted living facility, residential health care facility, home plus, boarding care home or adult day care facility.

K.S.A. 65-5117 requires a fingerprint-based criminal history background check for any individual working for a home health agency.

K.S.A. 39-2009 requires a fingerprint-based criminal history background for any individual who applies for employment with a center, facility, hospital or a provider of services or applies to work for an employment agency or as an independent contractor that provides staff to a center, facility, hospital or a provider of services.

The Kansas Department for Aging and Disability Services Policy E2019-010, Home and Community Based Services (HCBS) Background Check Policy requires that individuals who work as direct support workers providing HCBS for Medicaid waiver beneficiaries, must have a background check every two years.

Our research found an attempt to make fingerprint-based checks a statutory requirement. Senate Bill 70 was introduced January 26, 2015. The bill would have required every teacher to have a fingerprint-based background check at the time they apply for their initial teaching license and every time they renew their license (every 5 years). It would also have required teachers convicted of any crimes listed in K.S.A. 72-1397 9(a) or (b), or who entered into a diversion after having been charged with a crime listed in (b), to notify the Kansas State Board of Education and their license would have been revoked. It passed the Senate. On March 23, 2015, it was recommended that the Committee of Education pass the bill as amended. On March 25, 2015, it was stricken from the calendar because of timeliness rule #1507.

We made the following recommendations:

1. All school districts immediately confirm that all employees, regardless of role, have current background investigations on file.
2. All school district employees have fingerprint-based criminal history background investigation performed on a regular, documented cycle of every five years.
3. Fingerprint-based criminal history background investigations on a five-year cycle be a statutory requirement for all school employees.

Background Information

The Office of the Medicaid Inspector General (OMIG) is conducting a review on school-based Medicaid Fee-For-Service (FFS) claim reimbursements to Kansas Unified School Districts (USD) to determine if the school-based Medicaid programs are running effectively and efficiently. Failure to properly reimburse schools for Medicaid services to eligible Medicaid children with an established Individual Education Plan (IEP), can lead to state and federal funds being used to cover school-based services.

School-based Medicaid programs provide a variety of medical services in addition to traditional educational services to ensure students are able to fully participate in the school environment. Direct medical services form the basis for the Medicaid FFS program.

School providers and licensed paraprofessionals work with students daily and are positioned to assist in the Medicaid enrollment of eligible students to assist them in receiving medical services and supporting administrative services required to care for each student. Services include medically necessary services required for each student to fully participate in the school environment.

The State Medicaid Agency (SMA) reimburses Local Education Agencies (LEAs) for medically necessary services for the Medicaid eligible student to receive a free and appropriate public education, as documented on the student's IEP. LEA provider FFS reimbursements are approved by the Kansas Department of Health and Environment, Division of Healthcare Finance (KDHE-DHCF), the SMA, for services provided through the Kansas Medical Assistance Program (KMAP).

Only covered medically necessary services identified on the student's IEP are eligible for Medicaid reimbursement. Covered services include the following:

- **Audiology Services:** Sensory and hearing therapy
- **Nursing Care:** Attendant Care (activities of daily living assistance)
- **Social Work Services:** Individual/group therapy
- **Therapy Services:** Occupational, Physical, Speech Language and Psychology based therapies

We constructed a 6% sample or a 17-school sample of the 287 USD Schools across Kansas. Schools were picked at random, providing a cross representation in total enrollment and geographical location across the state. We added one additional school-based program for a total of 18, due to an associated school cooperative (Co-Op).

Applicable Laws and Policies

School-Based Services (SBS)

School-based services (SBS), which are Medicaid-coverable services provided to children and adolescents in a school setting, play an important role in the health and well-being of children and adolescents, particularly for those enrolled in the Medicaid program. The Early and Periodic Screening, Diagnostic and Treatment (EPSDT) is a Medicaid benefit that mandates coverage of services described in section 1905(r) of the Social Security Act (the Act), which include a range of services including medical, dental, personal care, and long-term services and supports, regardless of whether the particular services are covered under the state plan.

Medicaid covers many services provided through schools to students enrolled in Medicaid. This includes services provided by school-based health centers, which can significantly improve key health and educational outcomes among students. State Medicaid agencies and LEAs work together to explore opportunities to obtain payment for Medicaid-covered services for Medicaid-enrolled students. Federal law allows states to set payment rates for Medicaid-covered services in a manner that is consistent with section 1902(a)(30)(A) of the Act and its implementing regulations in 42 C.F.R. §447. Below, we provide a basic overview of the parameters for Medicaid coverage and payment of services furnished in schools:

- There is no benefit category in Medicaid called “school-based services.” SBS are Medicaid-covered services that are provided in school settings by qualified Medicaid providers enrolled in the Medicaid program.
- To receive payment for providing Medicaid covered services, SBS providers must be enrolled in the Medicaid program and must meet specific federal and state requirements regarding provider qualifications for participation in the Medicaid program.
- To be eligible for payment by Medicaid, services must be included among those listed in Title XIX of the Act, such as those described in section 1905(a) of the Act, and coverable under the State plan (or waiver of such plan).
- Like services furnished elsewhere, Medicaid-covered services provided in schools must meet applicable statutory and regulatory requirements.
- Generally, the Medicaid statute requires Medicaid to be the payer of last resort.
- Section 1903(c) of the Act provides that Medicaid may cover services in an IEP or IFSP under the IDEA. IDEA requires special education be delivered at no cost to the child’s family. Families must not be subject to copays or other fees.

Individuals with Disabilities Education Act (IDEA)

The IDEA is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children. The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7.5 million (as of school year 2020-21) eligible infants, toddlers, children, and youth with disabilities. Section 1414 of IDEA outlines evaluations, eligibility determinations, IEP’s and educational placement rules and regulations.

Medicaid pays for health and related services provided in schools when covered services are provided to Medicaid-enrolled children and adolescents, or when services are provided to a child

through his or her individualized education plan (IEP) under the Individuals with Disabilities Education Act (IDEA, P.L. 101476). As part of the activities necessary to administer the Medicaid state plan, states may also provide Medicaid payments to schools for Medicaid outreach. To receive Medicaid payment for health and related services, schools, providers in schools, or school-based health centers must meet federal and state requirements for Medicaid providers (42 CFR 455.400455.470, CMS 1997).

Since 1988, states have been able to draw down federal funds under Medicaid to pay for school-based health and related services required by IDEA, when provided to Medicaid-eligible children with disabilities. Under IDEA, children with disabilities are eligible to receive educational and related services that will help them achieve their educational goals, as documented in each child's IEP, or for infants and toddlers (children under age three), in the individualized family service plan (IFSP). These services must be provided in the school, although children may also receive similar services outside the school setting.

The IEP is a written plan developed by the school's IEP team that describes a plan for the child's education. Every IEP is tailored to a child's specific circumstances and needs. Required components of an IEP include:

- The assessment of a child's academic and functional performance level;
- Annual educational goals;
- Educational and related services that a school will provide to help a child reach his or her goals;
- Program modifications or accommodations for school personnel to help support the child's participation or make progress in their education;
- Established plan to measure a child's progress toward annual goals (34 CFR 300.320).

State Medicaid programs may cover services included in a child's IEP or IFSP as long as (1) the services are listed in Section 1905(a) of the Social Security Act and are medically necessary; (2) all federal and state regulations are followed, including those specifying provider qualifications; and (3) the services are included in the state plan or available under Early and Periodic, Screening, Diagnostics and Treatment (EPSDT).

Section 1902(a)(27) of the SSA Act, indicates states claiming Federal Medicaid funding must document services provided. Pursuant to 42 CFR 455.1(a)(2), states are required to have a method for verifying whether services reimbursed by Medicaid were actually furnished.

Early and Periodic Screening, Diagnostic, and Treatment (EPSDT)—KAN Be Healthy (KBH)

The Early and Periodic, Screening, Diagnostics and Treatment (EPSDT) Program is Medicaid's provision for providing preventive child health services for individuals under the age of 21. EPSDT's purpose is to discover and treat childhood health conditions before they become serious or disabling. States must inform all Medicaid-eligible families about the benefit, screen children at reasonable intervals, diagnose and treat any health problems found, and report certain data regarding EPSDT participation annually to the Centers for Medicare & Medicaid Services (CMS) in accordance with 42 CFR 441.

EPSDT services are screening and prevention services provided by EPSDT providers. 15 EPSDT service codes overlap with SBS and are allowed to be billed by LEA's when applicable. Screening results and identified findings must be sent to the member's primary medical provider. IEP's are not required in order for the provider to conduct and bill for an annual screening, per child. The following KBH-EPSDT Current Procedural Terminology (CPT) codes represent covered LEA services that are billable to the Kansas Medical Assistance Plan (KMAP):

99173	99385	92551
99213	99203	99394
99384	99215	99205
99202	99393	99383
99214	99204	99395

Medicaid reimburses school-based programs for medically necessary services for the student to receive a free and appropriate public education, as documented in the student's IEP. Payment is made to schools approved by the Kansas Department of Health and Environment, Division of Health Care Finance (KDHE-DHCF) for services provided through the Kansas Medicaid Assistance Plan (KMAP) via a FFS payment model. Only covered, medically necessary, services identified on the child's IEP will be eligible for reimbursement.

Ongoing services can be addressed on the Individualized Healthcare Plan (IHP), Behavior Intervention Plan (BIP), and/or assisted technology plan. These plans must be identified in the IEP as well as attached to it.

LEA providers of Medicaid-reimbursable services in school-based programs must have appropriate credentials as described in the Medicaid State Plan and as required by the Kansas State Department of Education (KSDE). Professionals are expected to supervise the work of same-type paraprofessionals and confine the scope of practice to the usual and customary for their profession/paraprofession.

Findings & Recommendations

FINDINGS:

1. **Medicaid service providers do not have background checks.**
 - a. We discovered that of the 231 providers reviewed as part of our audit sample, 72 or 31% did not have proof that background checks were completed at the time of our request for records.
 - b. Five schools completed the background checks after receiving our request for records on 14 of the providers.
 - c. It is estimated there is an average of 13 providers per school district in Kansas. Accordingly, there is an estimated total of 3,731 providers (13 x 287 school districts = 3,731 providers) working directly with children in Kansas public schools. Our sample testing indicates that 31% or 1,157 of those providers may be working without a background check.

2. **Teachers are only required to have a single background check.**
 - a. Unless a teacher has a break in service and allows their license to lapse, they are not required to undergo any additional background checks during their careers.
 - b. There were three teachers in our sample group who last had background checks completed in 1997 and 1998. It is reasonable to assume there are teachers in daily contact with students who have not had any type of background check done in 10-20 years.
 - c. The Kansas State Department of Education (KSDE) requires a single fingerprint-based criminal history check for licensed staff. There are no State of Kansas statutes that require these checks.
 - d. We did not find any state level requirements for other school employees to have background checks. This includes other employees, such as therapists, coaches, paraprofessionals, bus drivers, cooks, and janitorial workers.

RECOMMENDATIONS:

1. All school districts immediately confirm that all employees, regardless of role, have current background investigations on file.
2. All school district employees have fingerprint-based criminal history background investigations performed on a regular, documented cycle of every five years.

3. Fingerprint-based criminal history background investigations on a five-year cycle be a statutory requirement for all school employees.