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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** AB 3192 **Hearing Date:** June 13, 2018  
**Author:** O'Donnell  
**Version:** May 30, 2018  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Lynn Lorber

**Subject:** LEA Medi-Cal billing option: audit guide.

### SUMMARY

This bill requires the Department of Health Care Services (DHCS) to prepare and complete a fiscal and program compliance audit guide for the local educational agency (LEA) Medi-Cal billing option.

### BACKGROUND

Existing law:

- 1) Provides that specified services that are provided by a LEA are covered Medi-Cal benefits, subject to utilization controls and standards adopted by DHCS, and consistent with Medi-Cal requirements for physician prescription, order, and supervision. (Welfare and Institutions Code § 14132.06)
- 2) Authorizes any provider enrolled to provide Medi-Cal eligible services to bill for those services. (WIC § 14132.06)
- 3) Authorizes covered services to include all of the following LEA services:
  - a) Health and mental health evaluations and health and mental health education.
  - b) Medical transportation, as specified.
  - c) Nursing services.
  - d) Occupational therapy.
  - e) Physical therapy.
  - f) Physician services.
  - g) Mental health and counseling services.
  - h) School health aide services.

- i) Speech pathology services provided by a licensed speech pathologist or credentialed speech-language pathologist.
  - j) Audiology services.
  - k) Targeted case management services for children regardless of whether the child has an individualized education plan (IEP) or an individualized family service plan (IFSP). (WIC § 14132.06)
- 4) Requires the Department of Health Care Services (DHCS) to amend the Medicaid state plan with respect to the billing option for services by local educational agencies (LEAs) to ensure that schools are reimbursed for all eligible services that they provide that are not precluded by federal requirements. (WIC § 14115.8)
- 5) Requires amounts paid for services provided to Medi-Cal beneficiaries to be audited by DHCS in the manner and form prescribed by DHCS, and requires DHCS to maintain adequate controls to ensure responsibility and accountability for the expenditure of federal and state funds. (WIC § 14170)

## ANALYSIS

This bill requires DHCS to prepare and complete a fiscal and program compliance audit guide for the local educational agency (LEA) Medi-Cal billing option. Specifically, this bill:

- 1) Requires DHCS, in consultation with the LEA Ad Hoc Workgroup and the California Department of Education and consistent with any applicable federal requirements, to prepare and complete a fiscal and program compliance audit guide for the LEA Medi-Cal billing option.
- 2) Requires the audit guide to include but not be limited to state plan amendments, Frequently Asked Questions for the LEA Medi-Cal billing option as issued by DHCS, and policy and procedure letters issued by DHCS.
- 3) Requires DHCS to distribute the audit guide to LEAs by June 30, 2019.
- 4) Requires DHCS to only adopt a revision of the audit guide after providing 60 days written notification of the revision, including a statement of justification, to the LEA Ad Hoc Workgroup and all other participating LEAs and charter schools. This bill authorizes DHCS to provide written notice by electronic mail.
- 5) Requires the audit to refer to the audit and cost recovery process.
- 6) Requires DHCS to only conduct an audit of a Medi-Cal billing option claim according to the audit guide and any revisions made pursuant to # 4 that are in effect at the time the service was provided.

**STAFF COMMENTS**

- 1) ***Need for the bill.*** According to the author, “the Medi-Cal local educational agency (LEA) billing option program provides funding for school-based health services. Health and mental health conditions, when left untreated, can have devastating effects on students’ school attendance, behavior, and academic success. Historically, California has lagged behind other states in the amount of federal funding it has received through this program. Due to a recent federal change, schools will soon have the opportunity to serve far more students than previously allowed. The Medi-Cal LEA billing option program is complex, and schools require clarity and consistency in its administration to appropriately participate. In recent years, school districts have experienced difficulty receiving clear and consistent guidance from the state on how to bill for services in a compliant manner. In addition, audit standards have been retroactively applied, resulting in significant costs to school districts and leading some districts to end their participation in the program. This bill requires the development of an audit guide for this program, and prohibits the retroactive application of current audit standards to prior year claims. In these ways, AB 3192 will help maintain schools’ participation in the program so that California students can receive services they need to be healthy and succeed in school.”
  
- 2) ***LEA Medi-Cal billing option.*** The LEA Medi-Cal Billing Option Program reimburses LEAs (school districts, county offices of education, charter schools, community college districts, California State Universities, and University of California campuses) the federal share of the maximum allowable rate for approved health-related services provided by qualified health service practitioners to Medi-Cal eligible students.

LEAs pay for health-related outpatient services and are reimbursed for 50% of their costs through Medicaid Federal financial participation. LEA services are delivered either through the LEAs (which employ practitioners who provide the services on site) or through local contracted practitioners.

According to the Senate Health Committee analysis of this bill, the Department of Health Care Services’ (DHCS) May 2018 Medi-Cal Estimate assumes the LEA billing option will draw down \$123.5 million in federal funds in 2018-19, an increase from \$118.2 in 2017-18.

- 3) ***Audits of LEAs.*** This bill is in response to disputes over DHCS audits of LEA Medi-Cal claims, which has resulted in DHCS recovering overpayments for services rendered, including for services billed several years after the services were claimed. Existing regulations require DHCS to recover overpayments to providers for several different reasons, including when services are not documented in the provider's records, or for services where the provider's documentation justifies only a lower level of payment. According to the Senate Health Committee analysis of this bill, DHCS indicates:
  - a) It audits a sample of claims, through random claims reviews, payment error studies that suggest areas of vulnerability, and specific types of providers selected for review, suspicious claiming patterns, outside

information from third parties, and complaints to the Medi-Cal fraud hotline.

- b) Common audit findings are a lack of a physician's prescription for treatments, medical necessity not established, unqualified personnel and/or supervision not documented, no service on date of service claims, lack of documentation, and nature of service not recorded. Providers have 60 days to appeal audit findings and a required administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination.
- 4) ***Existing guidance from the Department of Health Care Services (DHCS).*** The DHCS provides on its website links to several types of information relative to local educational agency (LEA) Medi-Cal billing. Many LEAs have found conflicting information throughout these separate links, find it difficult to find information because there are so many different links, and are not always clear which procedures apply at which points in time (as changes are made over time). <http://www.dhcs.ca.gov/provgovpart/Pages/LEA.aspx>
- 5) ***LEA Ad Hoc Workgroup.*** Participants in the LEA Advisory Workgroup represent large, medium, and small school districts, county offices of education, professional organizations representing LEA services, DHCS, and the California Department of Education. Meetings are held every other month and provide a forum for LEAs to identify relevant issues and make recommendations to improve the LEA Program.
- 6) ***Fiscal impact.*** According to the Assembly Appropriations Committee:
- a) One-time costs to DHCS to compile existing guidance into a comprehensive audit guide, not likely to exceed \$100,000 (General Fund [GF]/federal).
  - b) Costs to the California Department of Education (CDE) to serve in a consultative role are expected to be minor and absorbable.
- 7) ***Heard in the Senate Health Committee.*** This bill was heard in the Senate Health Committee on June 6, 2018, where it passed on a vote of 8-0.
- 8) ***Prior legislation.*** SB 123 (Liu, 2016) would have established a revised process for claiming school-based and non-school-based Medi-Cal administrative activities, authorized DHCS to administer or oversee a single statewide quarterly random moment time survey, requires the DHCS and CDE to enter into an interagency agreement or memorandum of understanding, and to establish a workgroup to provide advice on issues related to the delivery of school-based Medi-Cal services to students. SB 123 was vetoed by the Governor, whose veto message read:

***There is an advisory committee within the Department of Health Care Services whose very purpose is to continuously review and recommend improvements to these programs.***

***Collaboration among the health and education departments and local education groups is very important, but the existing advisory committee is working well and certainly up to the task. Codification in this case is not needed.***

AB 1955 (Pan, 2014), among other things, would have required Department of Health Care Services (DHCS) and California Department of Education (CDE) to cooperate and coordinate efforts in order to maximize receipt of federal financial participation under the Administrative Claiming process, and required DHCS, through an interagency agreement with the CDE, to provide technical advice and consultation to local educational agencies participating in a demonstration project established by the bill, in order to meet requirements to certify and bill valid claims for allowable activities under the Administrative Claiming process. AB 1955 was held on the Assembly Appropriations Committee's suspense file.

AB 834 (O'Donnell) would have established an Office of School-Based Health Programs within the CDE to administer and support school-based health programs operated by public schools. AB 834 was held in the Senate Appropriations Committee.

## **SUPPORT**

California School Boards Association (co-sponsor)  
 Los Angeles County Office of Education (co-sponsor)  
 Association of California School Administrators  
 California Association of Private Special Education Schools  
 California Association of School Business Officials  
 California County Superintendents Educational Services Association  
 California School-Based Health Alliance  
 California School Employees Association  
 California School Nurses Organization  
 California Teachers Association  
 Coalition for Adequate Funding for Special Education  
 Los Angeles Unified School District  
 Orange County Department of Education  
 Riverside County Superintendent of Schools  
 San Diego Unified School District  
 San Francisco Unified School District  
 Teachers for Healthy Kids

## **OPPOSITION**

None received

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