

CA POLICY BRIEF December 2010

Free Care Challenge

The Department of Health Care Services (DHCS) is building a case to challenge the federal Centers for Medicaid and Medicare Services (CMS) on a principle known as the “free care rule.” A reversal of CMS’s free care rule would bring additional federal funds into public schools.

Free Care Rule

The CMS free care rule, unsupported by legal statute, prohibits LEAs from receiving federal reimbursement through the LEA Billing program for regular education health services otherwise provided for “free” to the general student population.

The **LEA Billing Option Program** allows school districts to receive Medicaid reimbursement for the direct medical services delivered by school-based health providers. This program is federally regulated by CMS, while DHCS oversees it at the state level in California.



San Francisco Unified v. State of California

In 2005, DHCS withheld \$305,000 from San Francisco Unified School District (SFUSD) on the basis of the free care rule. SFUSD filed a lawsuit against the State of California to protest DHCS’s enforcement of CMS’s misapplied rule.

A San Francisco Superior Court judge ruled in favor of SFUSD in 2009 and determined that the State of California must either reimburse SFUSD for regular education claims *using state funds* or it must challenge CMS and obtain federal money to reimburse SFUSD.

Legal Action Summary: SFUSD v. State of California

Ruling. On August 20, 2009, San Francisco Superior Court Judge Peter Busch sided with SFUSD in its petition against the State to be reimbursed for regular education health services.

Implication. Judge Busch found the State responsible for reimbursing SFUSD for regular education health services *unless* the State challenges the federal government on free care.

Current Status. DHCS is moving forward with the challenge. On December 14, 2010, DHCS submitted claims for regular education health services on behalf of SFUSD to CMS for approval or denial

March 15, 2011. DHCS and CMS are scheduled to discuss their progress in resolving the free care issue.

Potential Outcomes

At this point in the free care challenge, CMS must decide to approve or reject the regular education health services claims submitted by DHCS on behalf of SFUSD.

- **Approval** would set a new precedent on free care, one with the potential to drastically increase federal reimbursements to schools nation-wide for the direct medical services delivered by school-based health providers.
- **Rejection.** If CMS refuses to allow federal reimbursement of eligible regular education services, the argument will proceed to the Departmental Appeals Board (DAB) for final resolution. *This bodes well for DHCS, since there is DAB precedent for supporting California's claim.*

In 2002, the State of Oklahoma challenged CMS on a disallowance of \$1.9 million in federal financial participation for regular education services. This case went to the DAB, which ruled in favor of Oklahoma. Upon appeal by CMS in 2004, the DAB again ruled in favor of Oklahoma citing a lack of regulatory or statutory basis for the free care principle.¹

Working towards a Resolution

We hope that state officials will work with DHCS to cease enforcement of the free care rule within California and to obtain a policy reversal at CMS. In the meantime, Paradigm will continue to monitor these efforts and meet with policy makers throughout the state to provide valuable information and garner support.

¹ The Department of Appeals Board (DAB) ruled in favor of The Oklahoma Health Care Authority in both 2002 and 2004 when they appealed CMS's decision to disallow \$1,902,390 in federal financial participation (FFP), web: <http://www.hhs.gov/dab/decisions/dab1924.htm>

