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1. California Welfare and Institutions Code (W&I) [Section 14132.06](#)
2. U.S. Social Security Act, Title XIX [Section 1902\(a\)](#)
3. [Department Appeals Board, Docket No. 1924](#), Oklahoma Health Care Authority. June 14, 2004.
4. CMS, [Medicaid and School Health: A Technical Assistance Guide](#), 1997, p. 42
5. U.S. Social Security Act, Title XIX [Section 1903\(c\)](#)
6. DHCS LEA Billing Provider Manual
7. San Francisco Unified School District v. State of California (2009), Superior Court of California, Case No. CPF-09-509499, [Stipulation and Order to Lift Stay of Action](#), p. 1
8. *Ibid.* [Judgment](#) p. 1
9. DHCS, [LEA Medi-Cal Billing Option Program Ad Hoc Workgroup Meeting Minutes, June 5, 2013](#), p 5

California's Free Care Challenge

Funding School Health Services to Regular Education Medi-Cal Students

On February 11, 2013 the San Francisco Superior Court issued a final judgment in favor of San Francisco Unified School District (SFUSD) in a lawsuit brought against the California Department of Health Care Services (DHCS) for reimbursement of non-IEP/non-IFSP and Early Periodic Screening, Diagnosis, and Treatment (EPSDT) services provided to Medi-Cal (California's Medicaid program) beneficiaries.

This judgment came on the heels of negotiations which allowed DHCS to obtain federal financial participation (FFP) on behalf of SFUSD from the Centers for Medicare and Medicaid Services (CMS) for school-based Medicaid-covered services that do not meet free care rule requirements, but are otherwise reimbursable under state and federal law.^{1,2}

Despite a 2004 federal Department Appeals Board (DAB) decision which found that the, "free care principle is not an interpretation of any provision of the [Social Security] Act..." and that there is, "no corollary requirement in the Act that in order to receive funding for EPSDT services... the state must also seek reimbursement for services provided to the remaining, ineligible students...", this policy continues to be applied to Local Educational Agencies (LEAs) billing Medicaid nationwide.³

Defining 'Free Care'

The free care rule is a CMS payment practice that limits reimbursement to LEAs for Medicaid-covered health services provided to beneficiaries when those same services are also available to others without charge.⁴

In an educational setting, the application of this rule has left LEAs saddled with the cost of providing medically necessary health services to Medicaid beneficiaries without the ability to be reimbursed; an exemption to the free care rule exists for Medicaid-covered services provided under the Individuals with Disabilities Education Act which allows LEAs to bill for eligible services that are included in a special education student's individualized education plan (IEP) or individualized family services plan (IFSP).⁵

The Compliance Barrier

Although federal guidelines were developed for LEAs to provide assurances that Medicaid-covered services are not considered 'free care', the requirements put in place to allow billing under these circumstances are so financially and administratively burdensome that they essentially prevent billing for non-IEP/non-IFSP and EPSDT services. This is the case even

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for states, such as California, that include reimbursement for non-IEP and non-IFSP services in their Medicaid state plan.

Of the current free care policy requirements, the most restrictive include:

- Requiring LEAs to request and obtain health insurance information for all students served, with a 100% response rate. If any parent refuses to allow their other health coverage (OHC) to be billed, and the service is still provided, it is considered free care and the LEA is precluded from billing Medicaid for that type of service for any student.
- Requiring LEAs to bill all students' third party health insurance and obtain a 100% response rate. For LEAs, obtaining any response from third party health insurance providers is difficult – if not impossible – because LEAs are overwhelmingly not recognized as providers of health care by third party payers.

California's Challenge

Since 2005, the free care rule and requirements have effectively prohibited California LEAs from obtaining reimbursement for health services provided to Medi-Cal eligible regular education children.⁶

When a state audit of San Francisco Unified School District (SFUSD) in 2006 resulted in a \$300,000 disallowance and withhold on the basis of the free care rule, the District filed suit against the state of California. In the lawsuit, SFUSD sought recovery of these funds and the right to bill for Medi-Cal covered non-IEP/non-IFSP and EPSDT services provided to beneficiaries without the restriction of free care requirements.

Prompted by the lawsuit, California subsequently challenged CMS on their application of the free care rule and obtained FFP from CMS on behalf of SFUSD for "LEA claims submitted by the District [SFUSD], otherwise reimbursable under federal law, that do not meet the requirements of the 'Free Care Principle.'"⁷

The final judgment, issued in February 2013, ordered DHCS to reimburse SFUSD for claims moving forward "that do not meet the requirements of the 'free care' principle but are otherwise reimbursable in accordance with state and federal law."⁸

Looking Ahead

In June of 2013, the California DHCS Legal Office began reviewing the recent ruling in regards to both free care and OHC requirements. Following their review, the Department is expected to issue detailed guidance for LEAs on the issue.⁹

LEAs throughout California wait in anticipation for state-issued guidance that might allow them to seize this opportunity and begin billing for the full breadth of eligible Medicaid services they provide.