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Summary of the Department of Health and Human Services Office of Inspector General's (OIG) Findings of the Delivery of Medicaid Speech-Language Pathology Services in the Schools¹

May 2006

Lack of documentation and school administration's failure to utilize qualified providers continues to plague the appropriate delivery of Medicaid school-based speech-language pathology services, according to the Department of Health and Human Services Office of Inspector General (OIG). In recent years, the states' administration of Medicaid school-based health services has fallen under the scrutiny of both the Centers for Medicare and Medicaid Services (CMS) and the OIG. From November 2001 through June 2005, 18 states' Medicaid school-based programs have been audited to ensure compliance with federal rules and regulations. While these reports did not look at speech-language pathology services specifically, the investigations did find in some cases that speech-language pathology services were not being provided in accordance with federal regulations and guidelines. Each of the audits concluded with a recommendation for refund of federal payment for uncovered services. The OIG has announced that it will continue its evaluation of Medicaid school-based services.

The Medicaid program recognizes the importance of school-based health services in the delivery of essential medical care to eligible children, and allows states to use their Medicaid programs to help pay for certain health services delivered to children in the schools. These services include speech-language pathology and audiology.

Section 1903 (c) of the Social Security Act was amended in 1988 to allow Medicaid coverage of health-related services provided to children under the Individuals with Disabilities Education Act (IDEA). Part B of IDEA allows children with disabilities to receive special education and related services, such as speech-language pathology, when they are recommended in the child's Individualized Education Program (IEP). CMS authorizes Medicaid reimbursement for some or all of the costs of health-related services provided under IDEA when the services are (1) provided to Medicaid-eligible children, 2) medically necessary, 3) delivered and claimed in accordance with all other Federal and State regulations, and 4) included in the state plan.

States are permitted great flexibility in administering the Medicaid program, but are required to adhere to all federal requirements which include provider qualifications. In some states, it has been reported to ASHA that speech-language pathologists are being placed in an ethical dilemma over having non-qualified providers working under their direction, and what the school administration is requiring to document service delivery. In absence of clear directives from CMS, the states have developed their own standards and policies which, as the OIG reports are finding, may or may not stand up to federal scrutiny.

¹ This report was prepared by ASHA's Health Care Economics and Advocacy Team, as part of the 2003 and 2006 Focused Initiative on Health Care Reimbursement. Last updated February 2009.

Summary of OIG Findings

The objective of the audits are to determine whether the state programs claimed medical assistance costs are allowable and supported, and met all federal and state requirements. This report includes summaries of six of the OIG documents where the states failed to comply with two areas of concern related to speech-language pathology. The conclusion of the OIG is that there is a need for better vigilance related to provider qualifications and documentation. Specific OIG advice is provided on these two areas. Links to the specific OIG reports are provided below. Copies of all OIG audits can be found on the OIG website at: <http://www.oig.hhs.gov/oas/reading/cms0100.html>

Speech-language pathologists can better understand and defend their obligations under the Medicaid program by being aware of the OIG's interpretation of federal guidelines. In addition to the guidance provided in this document, ASHA developed other Medicaid specific documents that can be found at:

<http://www.asha.org/members/issues/reimbursement/medicaid/>. Medicaid providers should familiarize themselves with these documents as well.

State-Specific Audit Summaries

Below are speech-language pathology services related finding from Oklahoma, Washington, Florida, Maryland and Massachusetts.

Audit of Medicaid School-Based Services in Oklahoma, April 2003, A-06-01-00083
<http://oig.hhs.gov/oas/reports/region6/60100083.htm>

Among the findings were three issues of importance, specifically for speech-language pathology issues:

1. referral for services,
2. provider qualifications, and
3. lack of appropriate documentation.

1. The audit found that some school districts did not obtain a referral for the delivery of speech-language pathology services. As part of the report, the OIG conceded that the treatment plan can be considered a referral for speech-language pathology services if an individual on the team of medical professionals signing the treatment plan or referral has the authority to prescribe or refer under state law.

Note: *The OIG, in an audit of 2006 Kansas school-based services, appears to have reversed its earlier determination in the 2003 Oklahoma audit report. In the 2006 Kansas report, the OIG wrote that a treatment plan signed by a medical professional (with authority to prescribe or refer under state law) was a valid referral. The Kansas OIG audit (No. A-07-04-00155) ruled that an IEP was not an acceptable substitute for a medical referral.*

2. The report showed that two school districts employed speech-language pathologists that possessed only a bachelor's degree. Since the bachelor's level speech-language pathologists did not possess the federally required qualifications, their services were disallowed. The OIG recommended that the school administration enact better oversight related to school-based Medicaid program and inform the school districts regarding federal and state requirements related to providing Medicaid services, and federal and state regulations related to service provider qualifications.
3. The audit found that several schools lacked appropriate documentation or had incomplete supporting documentation to warrant Medicaid reimbursement. For example, one school district did not maintain original service documents, but instead

provided computer generated notes. This school system was unable to secure signatures of providers that the school no longer employed or contracted that had provided the computer generated notes.

Review of Washington State's Medical Assistance Costs Claimed for School-Based Health Services Provided in State Fiscal Year 2000, July 2003, A-10-02- 00008

<http://oig.hhs.gov/oas/reports/region10/100200008.htm>

Among the findings were three issues of importance, specifically for speech-language pathology issues:

1. Services could not be supported by service logs or by medical evaluations.
2. Services were provided to children that were not Medicaid eligible.
3. States incorrectly claimed services that were either referred by or provided by unqualified speech-language pathologists.

In responding to the OIG audit the State disagreed with OIG's finding that they had used unqualified providers in the provision of Medicaid services. The state argued that CMS had failed to provide appropriate guidance, and therefore had applied its own interpretation of "educational equivalency" for speech-language pathologists. The state interpretation was that an individual with only the education portion of the qualifications could perform covered services without a review and sign off from an individual with a Certification of Clinical Competence (CCC).

The OIG disagreed with the State's interpretation of "educational equivalency", stating the federal criteria require that an individual's education should be combined with qualified work experience. In addition, the OIG stated that the first year of work experience was to be supervised by an individual holding a valid CCC or equivalent.

Review of the Administrative Costs Claimed by Florida Medicaid Agency, March 2001, A-04-00-02160

<http://oig.hhs.gov/oas/reports/region4/40002160.pdf>

Among the findings were two issues of importance, specifically for speech-language pathology issues:

1. Cost claims submitted by the school districts were provided to the State agency with minimal supporting documentation.
2. Program for claiming administrative costs has been placed in the hands of outside consultants. In some districts, the school district administrators were relatively unaware of the procedures for determining and reporting administrative costs. The districts relied almost entirely on consultants for determining the cost and reporting to the state agency. Although school districts were under contract with the state agency and ultimately responsible for the administrative claiming program, the OIG found that the consultants controlled the program. The OIG stated that the school districts should have shown more responsibility in ensuring the program was properly administered.

Medicaid Payments for School-Based Health Services - Massachusetts Division of Medical Assistance - July 1999 Through June 2000, July 2003, A-01-02-00009

<http://oig.hhs.gov/oas/reports/region1/10200009.pdf>

The audit found that sufficient documentation was not always maintained to ensure that services prescribed in the student's individualized education plans is delivered, and that school-based health services were rendered by health care providers that did not have the qualifications required by Medicaid regulations

Medicaid Payments for School-Based Health Services, New Bedford, Massachusetts July 1999-2000, May 2002, A-01-01-00005

<http://oig.hhs.gov/oas/reports/region1/10100005.pdf>

The audit found that for several students, the school could not locate any documentation to demonstrate that services prescribed in the IEP were delivered.

Review of Medicaid School-Based Services Claimed During State Fiscal Year 2000 By Maryland's Medicaid Program, March 2003, A-03-01-00224

<http://oig.hhs.gov/oas/reports/region3/30100224.pdf>

Among the findings were two issues of importance, specifically for speech-language pathology issues:

1. Providers were not qualified to render the speech-language pathology service. They were
 - not licensed or ASHA-certified, and
 - there was insufficient documentation to show that the provider was under the supervision of a qualified speech provider.

The OIG recommended that the state develop policies to ensure that school-based service providers adhere to federal and state Medicaid requirements for provider qualifications, and develop and implement written policies and procedures requiring school-based service providers to document services delivered to Medicaid recipients.

2. The OIG found insufficient documentation to support the services being provided such as:
 - missing IEPs, and
 - a failure to provide progress reports, case notes or trip logs to describe the nature or extent of the services being provided.

Federal guidance pertaining to documentation requires providers to maintain and retain information about all specific services and supporting documentation. This documentation must be available when a Medicaid claim is filed. According to the CMS State Medicaid Manual, supporting documentation includes, as a minimum the following: date of service, name of recipient, Medicaid number, name of provider agency and person providing the service, nature, extent or units of service and place of service.

In the report the OIG stated: "In documenting speech-language pathology services specifically, the OIG recommended that speech-language pathologists should adhere to guidelines established by their professional association. Specifically members of ASHA and speech-language pathologists who have an ASHA certification should follow ASHA's clinical record keeping guidelines..."

In addition, the OIG stated that the benefit category of a particular service may affect the documentation required. For example, for physical therapy provided under 42 Code of Federal Regulations (CFR)440.110, these regulations require the service to be prescribed by a physician or other licensed practitioner of the healing arts within the scope of practice under state law. Thus complete documentation for therapist claims provided under 42 CFR 440.111 would include the prescription referral by the physician or licensed provider. In the case of speech-language pathology services, the referral should be part of documentation.

Audit of Houston Administrative Costs Claimed for Medicaid School-Based Health Services, FY 2000, January 2004, A-06-02-00037

<http://oig.hhs.gov/oas/reports/region6/60200037.pdf>

School districts perform Medicaid-reimbursable administrative functions such as outreach, eligibility intake, information and referral, health service coordination and monitoring, and interagency coordination. The Houston Independent School District

1. used invalid time studies,
2. included unallowable travel and training costs, and
3. included salaries for unqualified skilled professional medical personnel (SPMP) and unallowable activities that did not require SPMP medical knowledge.

Recommendation:

- Financial adjustment of \$2.8 million through the Medicaid State agency for the Federal share of costs not in compliance with Federal and State requirements.

Review of Maine's Medicaid Retroactive Claims for School-Based Health Services - January 2001 Through June 2003, January 2005, A-01-04-00004

<http://oig.hhs.gov/oas/reports/region1/10400004.pdf>

The review yielded one major finding that impacts speech-language pathologists:

- The State agency deposited the Federal funds in the State's general fund instead of to the schools. This resulted in an overpayment of more than \$8,000,000. Federal regulations stipulate that it is the State's responsibility to pay providers that furnish Medicaid services.

Medicaid School-Based Administrative Activities in Kansas, FY 2002, April 2005, A-07-03-00154

<http://oig.hhs.gov/oas/reports/region7/70300154.pdf>

School districts perform Medicaid-reimbursable administrative functions such as outreach, eligibility intake, information and referral, health service coordination and monitoring, and interagency coordination. Kansas did not ensure that completed time study forms represented actual activities performed and school districts submitted inaccurate cost reports. Many time study forms did not contain written comments on the performed activity.

Recommendations:

- Refund of \$347,000 in Federal funds that did not qualify for Medicaid reimbursement.
- Review time studies completed by 152 school districts that were not audited for FY 2002.

Review of Medicaid Speech Claims Made by the New York City Department of Education - September 1993 Through June 2001, June 2005, A-02-02-01029

<http://oig.hhs.gov/oas/reports/region2/20201029.pdf>

In 100 speech-language pathology claims, a "statistically valid sample," the following deficiencies were among those identified:

1. For 42 claims, one could not verify that the services billed were rendered.
2. For 47 claims one could not verify that a minimum of 2 speech-language pathology services were rendered during the month billed.
3. For 43 claims there was no referral by an appropriate medical professional.
4. For 76 claims, the services were not provided by or under the direction of an ASHA-certified individual or an individual with similar qualifications.

Audit of Medicaid School-Based Services in Texas - FY2000, December 2005, A06-02-00047

<http://oig.hhs.gov/oas/reports/region6/60200047.pdf>

Of 2,175 claims sampled, the following results are relevant to speech-language pathologists:

1. Prescription/referral requirements (by a physician or another licensed practitioner of the healing arts) were absent in 357 of the claims.
2. Speech-language pathology services were rendered by unlicensed providers in 8 percent of the claims.

Federal Rules and Requirements

The OIG reports make it clear that there are two main areas of concern related to the profession of speech-language pathology:

1. Provider Qualifications
2. Documentation

The following are federal guidelines on provider qualifications and documentation.

Provider Qualifications

Medicaid will reimburse for Medicaid speech-language pathology services if they are delivered by or under the direction of a qualified speech-language pathologist. Medicaid regulations [42 CFR 440.110 (c)] define a qualified speech-language pathologist as:

- (2) A speech pathologist is an individual who:
 - (i) Has a certificate of clinical competence from the American Speech and Hearing Association (sic);
 - (ii) Has completed the equivalent educational requirements and work experience necessary for the certificate; or
 - (iii) Has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

Under the Direction of a Qualified Speech-Language Pathologist

CMS has provided little guidance to states on what constitutes "under the direction of" a qualified provider, and this has led to various state interpretations. In February 2004, CMS provided interpretive language on this issue, as part of a final rule on Medicaid provider qualifications for audiologists. (see Appendix A)

CMS states that the qualified person must supervise each beneficiary's care. In supervising the care, CMS indicated that the audiologist must

- see the beneficiary at the beginning of and periodically during treatment,
- have continued involvement in the care provided,
- review the need for continued services throughout treatment, and
- work under terms of employment that ensure that the audiologist is adequately supervising any individual providing audiology services.

While this is only interpretative guidance and is not part of the regulations governing Medicaid speech-language pathology and audiology services, ASHA is working with CMS to ensure that state agencies, to the extent feasible under Medicaid laws, adhere to the guidance provided by CMS. In working with administrators, speech-language pathologists and audiologists should use this guidance as a basis for discussions on their supervisory role.

In addition to the CMS February 2004 guidance, in August 2001, a then-Health Care Financing Administration (HCFA) Regional Office provided their interpretation of "under the direction of" in Program Issuance MCD-22-95 to its regional carriers and intermediaries. This issuance indicated that a speech-language pathologist or audiologist is ultimately responsible for the actions of the personnel that he or she agrees to direct. "Therefore, it would be clearly in the pathologist's own interest to maintain close oversight of any services for which he or she agrees to assume direction." (See Appendix B)

Documentation

Documentation is essential in ensuring that medically necessary services are being provided to Medicaid beneficiaries. CMS guidance states that a school, as a provider, must keep organized and confidential records that detail client specific information regarding all specific services provided for each individual recipient of services and retain those records for review. In addition, all of the screening elements of an EPSDT screening must be documented as it is not sufficient to indicate just one of the elements. Relevant documentation includes the dates of service, who provided the service, where the service was provided, any required medical documentation related to the diagnosis or medical condition of the recipient, length of time required for service if relevant, and third party billing information. This information will be necessary in the event of an audit and will also be helpful in the event it is necessary to adjust the rates in the future. (CMS Medicaid and School Health Technical Assistance Guide, 1997)

Conclusion

As Medicaid funding becomes more strained, CMS and the OIG will continue to focus on services provided in the schools to ensure that funds are appropriately used. Reviewing OIG findings and recommendations clearly show that policies and procedures directly relating to provider qualifications and documentation need to be strengthened. By understanding the federal laws, and interpretive guidance, a speech-language pathologist can be a great advocate in the provision of Medicaid school-based services.

Appendix A

**The Centers for Medicare and Medicaid Services Discussion on
"Under the Direction of"
published in the
February 28, 2004 *Federal Register*, page 30585
Final Rule on Medicaid Audiology Qualifications**

Audiology services provided under Sec. 440.1 10(c)(1) require that the "services be provided by or under the direction of an audiologist for which a patient is referred by a physician or other licensed practitioner of the healing arts within the scope of his or her practice under State law."

We interpret the authority to provide services "under the direction of" an audiologist to mean that a federally qualified audiologist who is directing audiology services must supervise each beneficiary's care. To meet this requirement, the qualified audiologist must see the beneficiary at the beginning of and periodically during treatment, be familiar with the treatment plan as recommended by the referring physician or other licensed practitioner of the healing arts practicing under State law, have continued involvement in the care provided, and review the need for continued services throughout treatment. The supervising audiologist must assume professional responsibility for the services provided under his or her direction and monitor the need for continued services. The concept of professional responsibility implicitly supports face-to-face contact by the qualified audiologist at least at the beginning of treatment and periodically thereafter. Thus, audiologists must spend as much time as necessary directly supervising services to ensure beneficiaries are receiving services in a safe and efficient manner in accordance with accepted standards of practice. To ensure the availability of adequate supervisory direction, supervising audiologists must ensure that individuals working under their direction have contact information to permit them direct contact with the supervising audiologist as necessary during the course of treatment.

In many cases, qualified audiologists are employed by entities such as a Medicaid agency, clinic, or school. In such instances, the terms of the audiologist's employment must ensure that the audiologist is adequately supervising any individual providing audiology services. In addition to the supervisory requirements described above, employment terms should provide for supervisory ratios that are reasonable and ethical and in keeping with professional practice acts in order to permit the supervising audiologist to adequately fulfill his or her supervisory obligations and ensure quality care.

In all cases, documentation must be kept supporting the qualified audiologist's supervision of services and ongoing involvement in the treatment services. Because Medicaid law requires that documentation be kept supporting the provision and proper claiming of services, appropriate documentation of services provided by supervising audiologists, as well as services performed by individuals working under the direction of a qualified audiologist, are necessary. Absent appropriate service documentation, Medicaid payment for services may be denied providers.

Where appropriate, audiology services must adhere to all State requirements and State practice acts governing the provision of services under the direction of a qualified audiologist. As with all Medicaid benefits that permit services furnished under direction, both Federal and State requirements must be met at the time services are furnished for the Medicaid program to appropriately provide Federal financial participation for services furnished on behalf of Medicaid eligible individuals.

Appendix B

HCFA PROGRAM ISSUANCE
Transmittal Notice
REGION IV

Date: August 2001

From: Ms. Pat Daley, CMS (HCFA) Reg IX SF 415/744-3592

PROGRAM IDENTIFIER: MCD-22-95

TO: All Title XIX Agencies and Welfare Agencies in AL, GA, KY, MS, SC, TN
SUBJECT: Guidance Regarding the term "Under the Direction of " in Regard to Speech Pathology and Audiology Services

The purpose of this notice is to provide you with guidance on the term "under the direction of" for the purposes of speech pathology services, *especially when provided as school health and early intervention services* furnished under the Individuals with Disabilities Education Act (IDEA).

Some states have developed programs that provides services to children under idea which permit "teachers of speech and hearing impaired" to provide services "under the direction of a speech pathologist" who is qualified to provide these services under the Medicaid regulations at 42 CFR 440.110(c).

The above regulation provides that services for individuals with speech, hearing, and language disorders be provided by or under the direction of a speech pathologist or audiologist, for which a patient is referred by a physician. A speech pathologist or audiologist is defined as an individual who has a certificate of clinical competence from the American Speech and Hearing Association, the equivalent educational requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certification.

The Health Care Financing Administration's *interpretation of the term "under the direction of a speech pathologist"* is that the speech pathologist is individually involved with patient under his or her direction and accepts ultimate responsibility for the actions of the personnel that he or she agrees to direct. We advise states that the speech pathologist must see the patient after treatment has begun. The speech pathologist would also need to assume the legal responsibility for the services provided. Therefore, it would be clearly in the pathologist's own interest to maintain close oversight of any services for which he or she agrees to assume direction.

If there are any questions, please contact one of the members on the non-institutional coverage team (Andriette Johnson at (404) 331-5888, Mal Williams at (404) 331-5889).