

School based health services, contingency fee

Number: INFORMAL

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Mr. Gary Crayton
Medicaid Director
Agency for Health Care Administration
2727 Mahan Drive
Tallahassee, Florida 32308

Dear Mr. Crayton:

You ask whether reimbursement for school-based health services under Medicaid involving a contingent fee arrangement with billing agent consultants is permissible under state law.

In 1995 the Legislature created the Medicaid certified school match program to access federal Medicaid funds for occupational, physical, and speech therapies provided by, or through, school districts. The certified school match program was implemented January 1, 1996. The program was amended in 1997 "to increase the school districts' participation and earning potential" under the program.[1]

Some school districts have entered into contracts with consultants who advise the district on the best way to maximize participation in the Medicaid program. These consultants are often paid a percentage of the money the school district receives in reimbursement from the federal government. It appears that the practice of payments to consultants has been an issue for several years.[2]

Section 409.9071(1), Florida Statutes, provides:

"The [Agency for Health Care Administration][3] shall submit a state plan amendment by September 1, 1997, for the purpose of obtaining federal authorization to reimburse school-based services as provided in s. 236.0812 pursuant to the rehabilitative services option provided under 42 U.S.C. s. 1396d(a)(13). *For purposes of this section, billing agent consulting services shall be considered billing agent services, as that term is used in s. 409.913(9), and, as such, payments to such persons shall not be based on amounts for which they bill nor based on the amount a provider receives from the Medicaid program. This provision shall not restrict privatization of Medicaid school-based services.* Subject to any limitations provided for in the General Appropriations Act, the agency, in compliance with appropriate federal authorization, shall develop policies and procedures and shall allow for certification of state and local education funds which have been provided for school-based services as specified in s. 236.0812 and authorized by a physician's order where required by federal Medicaid law. Any state or local funds certified pursuant to this section shall be for children with specified disabilities who are eligible for both Medicaid and part B or part H of the Individuals with Disabilities Education Act (IDEA), or the exceptional student education program, or who have an individualized educational plan." (e.s.)

Similarly, section 409.913(9), Florida Statutes, states that "[p]ayments for the services of billing agents or persons participating in the preparation of a Medicaid claim shall not be based on amounts for which they bill nor based on the amount a provider receives from the Medicaid program."

The above provisions would, on their face, appear to prohibit contingency fee contracts. However, as part of the 1997 amendment to the statute, language was added which stated that the provision relating to fee based payments "shall not restrict privatization of Medicaid school-based services." In a letter to the Governor's Office of Planning and Budgeting, the President of the Senate and the Speaker of the House of Representatives stated that it was not the intent of the Legislature to prohibit the payment of Medicaid funds to school districts using billing consultants on a contingency fee basis.[4] The Speaker and President also indicated that if federal Medicaid reimbursement were in question, clarifying language could be adopted during the 1999 session.

During the 1999 regular session, the Legislature enacted section 18 of Chapter 99-228, Laws of Florida, an act implementing the 1999-2000 appropriations act. Section 18 provides:

"(1) Notwithstanding the provisions of subsection (1) of section 409.9071, Florida Statutes, billing agent consulting services shall not be considered billing agent services. This subsection expires February 14, 2000."

Thus, it appears that the Legislature, as the letter of the Speaker of the House of Representatives and President of the Senate indicated, adopted clarifying legislation on this issue.

It is a fundamental rule of statutory construction that the intent of the Legislature controls the interpretation of a statute.[5] In light of the expressed intent of the Legislature noted above, this office must defer to such an interpretation of the statute until and unless a court of competent jurisdiction rules otherwise.

Accordingly, it is the opinion of this office that the intent of the Legislature, as expressed in the letter of the Speaker of the House of Representatives and the President of the Senate as well as the clarifying language of Chapter 99-228, Laws of Florida, must be given great deference. Therefore, in accordance with such expressed intent, the provisions of sections 409.9071(1) and 409.913(9), Florida Statutes, should be construed to allow reimbursement for school-based health services under Medicaid involving a contingent fee arrangement with billing agent consultants.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] See House of Representatives Committee on Health Care Services Bill Research & Economic Impact Statement on HB 1853 (enacted as Ch. 97-168, Laws of Florida), dated April 17, 1997.

[2] *Id.* And see 42 C.F.R. 447.10(f), stating that payment may be made to a business agent, such as a billing service or an accounting firm, that furnishes statements and receives payments in the name of the provider, if the agent's compensation for this service is:

"(1) Related to the cost of processing the billing;
(2) Not related on a percentage or other basis to the amount that is billed or collected; and
(3) Not dependent upon the collection of the payment."

[3] See 409.901(2), Fla. Stat., defining "Agency" for purposes of ss. 409.901-409.920, Fla. Stat., to mean the Agency for Health Care Administration.

[4] Letter to Ms. Donna Arduin, Director, Governor's Office of Planning and Budgeting from the Honorable Toni Jennings, President of the Senate, and the Honorable John Thrasher, Speaker of the House of Representatives, dated March 29, 1999.

[5] See *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998) (when construing statutory provision, legislative intent is polestar that guides court's inquiry); *Florida Birth-Related Neurological Injury Compensation Association v. Florida Division of Administrative Hearings*, 686 So. 2d 1349 (Fla. 1997); *City of St. Petersburg v. Siebold*, 48 So. 2d 291 (Fla. 1950) (in construing the meaning of a statute, the primary purpose is to give effect to the intention of the Legislature).