Advocates' Guide to the Change In The Medicaid Free Care Rule

Background: Health, Education and Inequity

Children's health and well-being are impacted by a patchwork of policies at the local, state and federal levels. These policy decisions create a fragmented system of health care for children that can, at times, impede children's access to high-quality care and good health. Low-income children and children of color are disproportionately impacted by misaligned policies[1] — policies that result in prevention coming too late and chronic care services that are disparate and uncoordinated. Medicaid, a public health insurance program for low-income people, can play an important role in improving children's access to coordinated care.

Research shows that a neighborhood where a child lives is a dominant indicator of his or her health trajectory—simply put, poverty in this country is highly concentrated and highly correlated with poor child health.[2] Notably, children of color face a higher incidence of chronic illness including asthma and obesity—concurrently associated with neighborhood segregation, poverty and limited access to a range of services needed to support healthy living.[3] Simultaneously, mounting evidence recognizes early brain development as key to long-term health outcomes; the weight of this research demands an emphasis on needed health interventions for children in their earliest years.[4] Children's health advocates are key players in driving a health equity agenda. Working toward a seamless system of pediatric services where multiple entry points are connected makes access to a full continuum of care possible for children. This vision supports connecting children to services wherever they are in their community—and *local schools* are the central hub for children.

Over 52 million children attend public schools in this country and over a quarter of them face a health challenge[5]; 27 percent of children under the age 19 face one or more chronic health condition ranging from asthma to disorders of the jaw or teeth.[6] Schools play a big role in children's lives; children spend most of their time in school, from classroom learning to after school and enrichment activities. Because of this, schools can also play a leading role in children's health. According to the National Association of School Nurses (NASN), only half of

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[1] Julia Paradise, "The Impact of the Children's Health Insurance Program (CHIP): What Does the Research Tell Us?" *Kaiser Commission on Medicaid and the Uninsured*, July 14, 2014, accessed, April 15, 2016.
[2] Sara Rosenbaum and Robert Blum, "How Healthy are Our Children?" *The Future of Children*, vol. 25, no.1 (2015):11-34.
[3] James H. Price, Jagdish Khubchandani, Molly McKinney, and Robert Braun, "Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States," *BioMed Research International*, vol. 2013, Article ID 787616, 12 pages, 2013. doi:10.1155/2013/787616.
[4] See "The Science of Early Childhood Development" and the Working Papers from the National Scientific Council on the Developing Child: www.developingchild.harvard.edu/library/ accessed, April 22, 2016.
[5] Erin Maughan, "Building Strong Children: Why We Need Nurses in Schools," *American Educator* Spring (2016):19-25.
[6] Gerard Anderson, et al. *Chronic Care: Making the Case for Ongoing Care* (Robert Wood Johnson Foundation and Johns Hopkins Blumberg School of Public Health 2010) p. 11-13, accessed April 15, 2016.

the schools in this country have access to a full-time nurse (30 hours per week); 18 percent have no nurse at all.[7] This means many schools are under-resourced when it comes to addressing student health.[8] Schools offer us a unique opportunity to blend health and education, resulting in improved outcomes for both. With this in mind, **one emerging opportunity is to better leverage Medicaid programs and funding to enhance health services inside schools**.

Thanks to a clarification by the Centers for Medicare and Medicaid Services (CMS) regarding the "free care" rule in December 2014, schools can be reimbursed for services provided to Medicaid-eligible students.[9] This provides an opportunity for schools to expand their support of school-based health services, and provide better integration within the health care system while advancing health equity. The following document provides a brief history of the Medicaid "free care" rule and its implications on school-based health services.

A Brief History

Prior to 1997, public schools in the United States were able to receive Medicaid payments for health services provided to Medicaid-enrolled students. However, because of the status of the Medicaid program as the payer of last resort, schools had to comply with third-party liability requirements.[10] In other words, schools were obliged to collect payments from all other sources—such as private health insurance and employer-sponsored insurance—if applicable, before billing Medicaid.

In 1997, CMS established the "free care" rule clarifying that Medicaid would not pay for health services that were available at no cost to the general public even if these services were provided to Medicaid beneficiaries.[11] With an exception for health services in a child's special education plan, schools were no longer allowed to bill Medicaid for health services provided to Medicaid-enrolled students.[12] The narrowing of Medicaid reimbursement shifted emphasis to children enrolled in special education. To qualify for Medicaid reimbursement, school health services had to meet three requirements: 1) the child is Medicaid eligible; 2) the child is enrolled in an Individualized Education Plan (IEP); and 3) health services provided are related to the IEP. Without designated Medicaid funds, schools faced significant barriers to funding school health services. This not only created a financial burden for schools attempting to provide much-needed

[7] Erin Maughan, "Building Strong Children: Why We Need Nurses in Schools," *American Educator* Spring (2016):19-25.
[8] National Association of School Nurses, "Position Statement: School Nurse Workload: Staffing for Safe Care" (January 2015), accessed April 12, 2016.
[9] HHS, CMS (December 2014). Letter to State Medicaid Director regarding Medicaid payment for services provided without charge.
[10] Social Security Act §1902(a)(25) defines third parties to include health insurers, self-insured plans, group health plans, service benefit plans, managed care plans, pharmacy benefit managers, and other third parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a healthcare item or service.
[11] The Free Care rule was highlighted in a number of federal guidance documents, including the 1997 "Medicaid and School Health: A Technical Assistance Guide," and the 2003 "Medicaid School-Based Administrative Claiming Guide."
[12] Exceptions include services provided under the Maternal and Child Health Services Block Grant program, covered under the Special Supplemental Nutrition Program for Women, Infants and Children, and provided as part of an Individualized Education Program (IEP).

health services to low-income children, but it also created a disincentive to grow and enhance school nurse programs as the health demands of communities shifted over time.

The free care rule continued to be debated between state and federal agencies; Oklahoma successfully appealed the prohibition of billing Medicaid to the Department of Health and Human Services Departmental Appeals Board (DAB) in 2004.[13] While the rule was effectively struck down, there was no subsequent guidance that provided clarity to states regarding their implementation of the free care rule and its interaction with third party liability. At the very end of 2014, CMS issued a state Medicaid director letter providing long-needed clarification. The letter informed states that the free care rule was reversed and that schools were able to bill Medicaid for health services for Medicaid-eligible children, opening up the door to improving the health of millions of low-income children across all states.

The Opportunity

Since CMS' clarification of the free care rule in 2014, a handful of states have either changed their billing practices for schools or are in the process of determining how to alter their billing practices to enable school systems to access Medicaid funding for school health services. The opportunity requires some due diligence on the part of state governments and their respective agencies that interact with health and education. In many states this will include a state plan amendment (SPA). States pursuing full implementation of the clarification have an opportunity to enhance their current health services in schools, as well as an opportunity to broaden the scope of services provided in schools and better integrate school health services into larger health delivery system reform efforts. The adoption of the rule also offers potential improvements in health care access and chronic care management for millions of low-income children across the country. The impact is immeasurable. Consumer advocates, especially those focusing on children's health, can play a key role in advancing a "healthy schools" agenda that strengthens the connection between education and health, ensuring our most vulnerable children access to high quality health services.

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[13] Susannah Vance Gopalan and Elizabeth Karan, "A Change in Federal Policy Allows for More Access to Preventive and Primary Health Care Services," *The Network for Public Health Law blog*, June 8, 2015, accessed, April 17, 2016.

Advocacy Tips for Implementation of the Free care Rule Clarification

The following document provides a set of key advocacy steps to engage a diverse set of advocacy partners in advancing implementation of the Medicaid free care rule change. This work will require health advocates to engage new types of advocates such as those working on economic and education issues. Diverse partners include community-based groups focused on low-income children's wellness and educational success, groups focused on robust health services in schools, local school boards and other school leaders and local businesses that support children's long term success. In many cases, this requires state action in the form of a state plan amendment (SPA). Advocates can play an important role by helping bring together diverse voices that can contribute to the dialogue to improve health services in schools and address the unique needs of children living in low-income communities with a focus on black, Latino and American Indian children.

Below are five key areas where advocates can play a role in advancing and improving the implementation of the free care rule clarification.

#1 Make the Case to Community and State Stakeholders.
Understanding both the educational and health needs of a community can assist advocates in making the case for Medicaid reimbursement for school-based health services. For the education community, leveraging Medicaid dollars for school nurses could lead to other investments in health and wellness in schools. For the Medicaid program, investment in school- based services could yield reduced health care use downstream, increased adherence to medical advice and reduced hospitalization for children and possibly their families as well.

- Analyze local data in order to identify what partners should be engaged. Community-level data such as the County Health Rankings can identify particular populations and regions that face limited health care access. For example, 67 percent of counties in Virginia have more than a third of their children eligible for free and reduced lunch, a measure of poverty.[14]
- Using community and state-specific data, build the case for implementing the change in the free care rule. For example:
  - How many children are likely to be impacted?
  - How are health services currently being delivered in schools?
  - How are schools connecting children to screenings and treatment for behavioral health services?
  - How can schools support an agenda that promotes health equity?
- Key messages to make the case and a backgrounder can be found here.

[14] County Health Rankings reports that 84 of 126 counties have greater than 33 percent of children eligible for Free Lunch. This is the percentage of children enrolled in public schools eligible for free lunch. Retrieved from: http://www.countyhealthrankings.org/app/virginia/2016/measure/factors/65/description

#2 Fact Finding: Understand Your State Medicaid Plan and What School-based Services Are Covered for Reimbursement.

Identify what services Medicaid covers in your state. Do the covered services aligned with health services provided in a school setting? Next, review what types of providers can deliver Medicaid services. Health providers in schools must be eligible Medicaid providers (e.g., nurses with varying state licensures, social workers, counselors, etc.). It may be that states need to reassess what is currently included in Medicaid – both in terms of covered services and eligible providers in order to fully implement school-based health services. Another important aspect of this fact finding work is to understand the current billing relationships with schools; school systems may require a different billing process than hospital and provider office entities.

- Examples of where to find this information may include school Health Services manuals often developed by states. See these examples from Indiana and Colorado. Note that many of these manuals are pre-2014 and allowable services are presented in the context of a child being Medicaid enrolled and having an Individualized Education Plan (IEP).
- An important consideration when reviewing services covered in your state's Medicaid program is whether or not your state relies on managed care or fee-for-service (FFS). For a more in-depth step-by-step review, use this guide developed by the *Technical Assistance Partnership for Child and Family Mental Health*, which provides a primer on Medicaid reimbursement and a directory of state agencies. Though dated, the information is a good roadmap for identifying key agencies.
- Consider launching an advocacy campaign to add new types of providers to the Medicaid-eligible provider list – including but not limited to personal care assistants, speech language assistants, physical therapy assistants and behavioral health providers such as social workers. A recent report by California advocates and stakeholders illustrates (in table form) pre-2015 qualified services and their proposed additional services and practitioners; this can be a helpful exercise.
- Similar to provider types, this is a good advocacy opportunity to include additional health services to the list of Medicaid-eligible services.
    - Advocates and their partners have an opportunity to identify needed services that are not currently supported in schools. For example, expanding access to behavioral health services may be a priority for schools and the communities they serve.
    - National Health Law Program (NHeLP) developed this brief on the free care rule. The issue brief outlines how the rule clarification can impact Early Periodic Screening, Diagnosis and Treatment (EPSDT), a key Medicaid provision.

#3 Reach Out to Key Health and Education Decision Makers.

Fact finding can often lead to additional questions that only key decision makers can answer. Reaching out to contacts in your state's Medicaid agency and Education agency can help gauge

support and identify any efforts currently underway to implement the change in the free care rule.

- Ask your state Medicaid agency about their efforts to change reimbursement strategy for schools**.** In some cases, states are in the process of performing feasibility studies to determine if a state plan amendment is needed or whether the state can simply implement a change in policy. Either way, reaching out is a good way to show support for a change in practice and offer to partner with the agency.
    - Offer to meet with key Medicaid staff to share information about the inter-connectedness between educational achievement and child health and well-being. See key messages here and background document here.
- Engage local school boards and education stakeholders. Local school boards may need support in understanding Medicaid and the role it could play in sustaining needed health services for their students. Involving critical decision makers is important. This includes the superintendent, school leadership, school counselors, financial officers as well as nurse supervisors (if applicable in the state) and local school board membership.
    - Advocates can play a key convener role in educating school stakeholders and facilitating communication with the Medicaid agency.
    - Schools may have no or limited experience with Medicaid billing. Adding a billing component to their work may require training and additional resources. This can be complex work that requires deep coordination between education and support of education stakeholders. California offers a robust example of using ongoing relationship building and negotiation to overcome the billing challenges.
    - For many schools, there is a cost-benefit analysis to determine how the free care clarification could impact their school. New York offers a framework for thinking about this determination. A key take away from New York is the importance of schools developing robust business processes to fully leverage the free care opportunity.

#4 Identify Advocacy Partners.

Success for this initiative will likely occur only by engaging in extensive collaboration with partners. Tapping into existing efforts or convening a diverse set of partners is an important part of the process.

- Don't reinvent the wheel. There are a number of national, state and local campaigns that have worked tirelessly for a change in the free care rule. In addition, groups working on expanded substance use screening, expanded social and emotional screening and chronic care management are important partners. You can learn more about substance use screening here and learn about their free care strategies here. Reach out to these partners to harness their existing relationships while offering your own expertise in Medicaid and

health care advocacy. *Reach out to your school nurse professional associations*. School nurses are a key stakeholder in implementing a change in the free care rule. They play a pivotal role in providing care and are a barometer of community health needs. States may want to leverage school nurses to manage chronic diseases for children within the school setting such as asthma or diabetes. However, states may have to revise laws and policies governing the responsibilities of school nurses in order to achieve this goal.

- Some states already have coalitions in place that consumer health advocates can join. In others, advocates may create a new coalition table or integrate the free care issue into their own work. Of note, the Healthy Schools Campaign and other school-based health campaign initiatives are active in this area and can be helpful partners. For example, in Illinois the Healthy Schools Campaign actively supports both advocates and decision makers in implementing the rule change.

- Connect with billing companies that are already immersed in Medicaid billing for school systems. Billing companies already interact with school systems by supporting Medicaid reimbursements for children enrolled in IEPs; they are most knowledgeable about any challenges to expanding Medicaid billing for schools. In most cases, billing companies are supportive partners; increased billing leads to business growth.
- Reach out to children with special needs partners such as Family Voices. Family Voices chapters are well connected to the educational system and well-versed in special education-Medicaid billing. Expanding access to Medicaid billing can strengthen existing billing systems and perhaps, address existing concerns in the special education space that can inform how local entities develop and grow Medicaid billing coverage.

#5 Nurture Consumer Engagement and Develop a Shared Strategy

A consensus agenda for all partners is important to advancing the free care work swiftly; the required changes in states may take time and advocates will need to be vocal and supportive in helping state and local decision makers reach the finish line. In doing so, children and their families must be a part of policy development.

- Establish a consumer engagement process. Through listening sessions and community meetings, education and health stakeholders should listen to the needs community members. Advocates and their partners can jointly develop a shared set of principles in delivering vital health and prevention services to Medicaid enrolled children. Parent advocate groups are key partners in this process and can be instrumental in helping move forward any school-related policies. A set of principles is a good starting point for more complex negotiations around full implementation of changes to the free care rule.
  - Some states agencies may be tempted to overlook this step of the process. Advocates can play an important role in elevating the consumer voice and facilitating inclusion of the community in decision making.

- Together, plan for the future. An important part of this change in policy will be documenting its success in impacting access to health services at the individual, community and state levels. One important role for all stakeholders is to think about how to monitor the success of this change in policy. Documenting health outcomes and savings over time will be important to the sustainability of the health-education partnership.

Additional Community Catalyst Resources:

- Advocates Guide to the Change in the Medicaid Free care Rule
- Funding Screening, Brief Intervention, and Referral to Treatment (SBIRT) in Public Schools
- Medicaid Is Growing Up: It's Time to Go to School

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Talking Points for Key Stakeholders and Decision Makers

Below are talking points to encourage state to implement the change in the free care rule. We included sub-points to incorporate if appropriate. Advocates should use their own words to best express these sentiments and ensure that conversations flow as naturally as possible. The talking points are separated by key stakeholders and decision makers—all with the goal of gaining support for implementation of the rule change to broaden access to services for children.

The Ask: Support robust access to health services in schools by leveraging the change in the free care rule, enabling schools to bill Medicaid for eligible services:

- Medicaid provides high-quality, cost-effective, and accessible health care for millions of children. It is an important program for our children's long-term health and their families' financial security.
- However, access to Medicaid providers and services remain challenging for working families—these challenges range from taking time off work and finding transportation to speaking the same language as their provider.
- But thanks to a change in the "free care rule," school systems can now leverage Medicaid dollars to expand and support a robust set of health services inside school walls.
- Fully implementing the change in the free care rule enables schools to meet kids where they are and provide needed health services such as preventive screenings and chronic care management for asthma or diabetes.
- A healthy child is ready and able to learn.

Health stakeholders can be important voices in spurring state action needed to fully implement the change in the free care rule. In many cases, a state plan amendment is needed and health advocates are experienced in advancing SPA work; their partnership can be helpful. When talking to health stakeholders such as children's health advocates, behavioral health advocates and other health service providers and supporters:

- Thanks to the change in the "free care rule," school systems can now leverage Medicaid dollars to expand and support a robust set of health services inside school walls.
- Providing health services in schools is a smart way to match local investment in school health with federal dollars.
- Fully implementing the change in the free care rule enables schools to meet kids where they are and provide needed health services such as preventive screenings and chronic care management for asthma or diabetes.
- School-based health services can be an integral piece of addressing health disparities; children eligible for Medicaid are disproportionately children of color.
    - Schools are uniquely positioned to address health disparities by ensuring children can gain needed access to both health and human services. This allows kids to reach their full health and educational potential.
- A healthy child is ready and able to learn.

Education stakeholders can be important to implementing a change in the free care rule because they see the day to day experience of children who lack robust access to health services. Education partners can add strength to a coalition by bringing new voices from the school level into the conversation. When talking to education partners such as local school boards, school nurses, school counselors and principals:

- Children who face health issues cannot succeed in school—poor health impacts both a child's long-term economic and health outcomes.
- School health services are a great opportunity to support both a child's wellness and educational goals by providing continuity of care for health needs, reducing absenteeism due to health issues and increasing their ability to advocate for their own health.
- Medicaid reimbursement for Medicaid services provided in schools frees up dollars to invest back in the school health service workforce and needed health care services for kids.
- A healthy child is ready and able to learn.

Key government officials are important to engage because they will drive the change in policy; they will be the target of advocacy for coalitions working on the free care rule change. When talking to key governmental decision makers such as Medicaid agency leaders and staff, Department of Education staff, Governors and key legislators:

- Children who face health issues cannot succeed in school—poor health impacts both a child's long-term economic and health outcomes.
- Providing health services in schools is a smart way to match local investment in school health with federal dollars.
    - Increasing billing capabilities for local education agencies (LEAs) will translate into greater efficiency and direct federal dollars into school health.
    - Implementing the change in the free care rule can include additional administrative dollars for state-level Medicaid capacity.
- Medicaid reimbursement for Medicaid services provided in schools frees up dollars to invest back in the school health service workforce and needed health care services for kids.
- A healthy child is ready and able to learn.

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Identifying State Partners to Support the Medicaid Free Care Rule Clarification

Strengthen your school-based health services advocacy by partnering with other organizations, stakeholders, and government officials who have influence over decision makers in your state and in your communities. This guide is meant to help you think about new organizations and individuals to engage in your work to advance a free care rule agenda. By clicking on the links, you will be directed to a website where you can search for your state's affiliate for these organizations. The list is not exhaustive – rather, it offers a roadmap as you work to build support for health services in schools in your state and in your community.

Schools that benefit from the free care rule clarification disproportionately serve children of color; identifying advocacy voices from these communities is fundamental to success. A collection of some strategies to engage communities of color may be found here.

Organizations Representing Medicaid Beneficiaries:
Organizations that represent low-income children and families, children with disabilities, communities of color, and people with chronic illnesses all have a stake in strengthening Medicaid.

- Child/family advocates such as Children's Defense Fund state chapters and Voices for America's Children state chapters
- Consumer health advocacy organizations
- Legal services organizations such as the National Health Law Program and local legal aid programs
- Children with Special Health Care Needs advocates such as Family Voices chapters
- State budget/fiscal advocates
- Faith-based groups like your local PICO affiliate or your local Gamaliel affiliate
- Center for Community Change affiliates
- Organizations representing low-income people
- Substance Use Disorder consumer advocacy groups such as state chapters of Faces and Voices of Recovery
- State chapters of national voluntary health organizations, like the American Cancer Society
- Organizations supporting communities of color, such as local affiliates of the National Urban League and local units of the NAACP as well as faith institutions
- LGBTQ advocacy groups such as state chapters of the Equality Federation

Education Allies: Organizations working to strengthen educational outcomes for low-income children and protect and enhance resources for low-income schools. These advocates are central to supporting a health in schools partnerships that supports robust access to a spectrum of health services for children.

- School nurses professional organizations and National Association of School Nurses (NASN)

- School-based health centers (these centers already bill Medicaid but their support bolsters their own efforts to strengthen SBHCs)
- National Healthy Schools Campaign
- Education advocacy organizations focused on low-income student success

Stakeholder Groups: Organizations representing providers that care for children, as well as Medicaid managed care organizations and business associations all have an interest in strengthening Medicaid's role in schools.

- American Academy of Pediatrics (AAP) chapters
- State Medical Societies and other health professions associations
- Emergency room providers, minority physician organizations, and other physician groups such as a local network of the National Physicians Alliance
- Safety–net providers, such as community health centers, public/DSH hospitals, community affiliated health plans, other Medicaid plans and insurers
- State Associations for Community Behavioral Health Care
- Substance Use Disorder provider groups such as state affiliates of the National Council on Alcoholism and Drug Dependence
- State Nurses Associations
- State Dental Organizations
- State Associations of Addiction Services
- Business associations, such as your state's Main Street Alliance or Small Business Majority
- Medicaid managed care organizations in your state
- Health plans/insurers
- Pharmacists

State and Local Government Officials: State Government officials also have an interest in advocating for adequate federal funding of the program. Local government may run safety-net services. Big city mayors and city councilors may have concerns about constituents and about providers that would lead them to be supportive

- Governor's office
- State Medicaid Director
- State Department of Education
- Departments of Children and Families or Agencies responsible for Foster Youth
- Supportive state legislators
- Health care and budget/finance committee chairs
- Mayors and county officials
- Local School Boards

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