

The Medicaid Schools Program (MSP): Where We Are Today

Background Timeline:

- In 2008, when the Medicaid Schools Program (MSP) was created to replace the CAFS program, OTs, PTs, SLPs and Audiologists were defined as “licensed practitioners of the healing arts” in OAC 5160-35-01. This was an important definition, as only “licensed practitioners of the healing arts” are authorized to provide Medicaid services. The OAC definition in 5160-35-01 is still in effect today (2016)
- Ohio’s 2009 Medicaid State Plan Amendment (SPA) contained the following language:

“A prescription by a Medicaid authorized prescriber will not be required as a condition for Medicaid reimbursement for services delivered by a Medicaid School Program (MSP) provider, as defined in Ohio Administrative Code (OAC), if the services are authorized by a licensed practitioner of the healing arts and indicated in an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA).”
- With the passage of the Affordable Care Act at the federal level, federal rules were implemented by CMS in 2012 to require that, in order for any services to be reimbursed by a state Medicaid program, they must be “ordered, referred or prescribed” by an appropriate provider type. This is known as the “ORP” rule. For OT, PT, Audiology and Speech-language Pathology services, the ORP rule is in 42 CFR 440.110 and it provides:

“Services for individuals with speech, hearing and language disorders means diagnostic, screening, preventive or corrective services provided by or under the direction of a speech pathologist or 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.”
- Ohio’s 2014 Medicaid SPA removed the relevant language from the 2009 SPA (as quoted above) and is silent on the issue of who must authorize physical therapy, occupational therapy, audiology or speech-language pathology.
- In February 2016, ODM and ODE announced that they would be requiring a physician prescription for the provision of OT, PT, audiology and SLP services in the schools beginning in August 2016.

Important issues:

- In March 2016, the Ohio Board of Speech-Language Pathology has provided a letter to ODM and ODE outlining that the scope of practice for SLPs and audiologists includes the authority to order or refer for treatment for SLP and audiology services. The statutory scope for both professionals allows them to practice independently and without referral from a physician.

- The February 2016 decision to require a prescription before providing therapy services in schools under the MSP creates significant delay and increases expenses to families with kids on IEPs. The prescription requirement brings no clinical benefit nor does it serve to identify or discourage fraud within the system.
- This issue can be resolved in a way that allows Ohio to follow the ACA's ORP requirements: the state needs to again recognize OTs, PTs, SLPs and audiologists as "licensed practitioners of the healing arts" in their SPA, and can then register OTs PTs, SLPs and audiologist as ORP providers who can order or refer for their own therapy services in the MSP program.
- We are working with ODM on this fix and appear to be heading in the right direction. If ODM decides not to move forward on this fix, we may need the Ohio General Assembly to pass legislation forcing Ohio Medicaid to implement the fix.

History of Advocacy on the Medicaid Schools Issue

Lobbyist Report Content in this Topic:

Full Regularly Posted Lobbyist Reports Can be Read by Members on the OSLHA Website at: <https://www.ohioslha.org/professional/>

Legislative Report February 2016:

"In perhaps the biggest news in the education arena, ODE and Ohio Medicaid recently announced that, under the Medicaid Schools Program, a prescription will be needed prior to the delivery of educational audiology, SLP, OT and PT services required by an IEP. The prescription must come from a physician or advanced practice nurse. Ohio Medicaid claims that this change is necessitated by federal "ordering, referring and prescribing" rules from the Affordable Care Act. GAC is working together with other advocates to determine how to address this very concerning development. "

Legislative Report March 2016:

"Outside of the General Assembly, GAC has been very busy working on several administrative initiatives. In the education arena, ODE and Ohio Medicaid announced in February that, under the Medicaid Schools Program, a prescription will be needed prior to the delivery of educational audiology, SLP, OT and PT services required by an IEP. The prescription must come from a physician or advanced practice nurse. Ohio Medicaid claims that this change is necessitated by federal "ordering, referring and prescribing" rules from the Affordable Care Act. GAC is working together with other advocates to determine how to address this very concerning development. We are considering a legislative fix that would allow the impacted related service providers to qualify as the "ordering referring and prescribing" provider, such that the physician prescription would be unnecessary. Our core allies on this initiative include the statewide associations representing the occupational therapists and the physical therapists. In addition to working with those groups, we are also collaborating with the Medicaid billing companies, as well as the statewide education associations (OASBO, BASA, OAESC, etc.) and the state licensure boards. If we are unsuccessful in changing course on this issue, the prescription requirement will take effect on August 1, 2016."

Legislative Report May 2016:

"Outside of the Legislature, we continue to work with our partners on a resolve for the Medicaid Schools program. After urging from many interested parties, the Ohio Department of Medicaid (ODM) has requested an extension from the Centers for Medicare & Medicaid Services (CMS) regarding the implementation deadline of August 1st. However, in order for this extension to be granted a detailed plan of how ODM plans to bring Ohio into compliance, along with specific timeframes, must be submitted to CMS. Ohio Medicaid Director, John McCarthy, has indicated that this plan should be completed and submitted within the next two months. This means that we most likely will not see clear answers on the direction ODM is pursuing until mid-summer.

GAC, along with other partners, is pursuing a solution that will be agreeable to both Ohio school districts and ODM/CMS within the interim. What we do know is that the requirement of obtaining a referral is not going away – it is just a question of whom will be permitted to give that referral. Best case scenario would result in related service personnel being permitted to be the ORP-only provider of record. This is the most viable and cost-effective plan for Ohio school districts, and the outcome that we are working towards. Stay tuned for more on this important issue."

Legislative Report June 2016:

“Outside of the legislature, we continue to work with ODE and ODM on a solution for the provision of services under the Medicaid Schools Program (MSP). We are still waiting on word back from Ohio Medicaid regarding their request to CMS for a waiver for a delayed implementation date on the MSP changes. As you know the changes are currently set to take effect on August 1, 2016. Given that ODM has agreed to work with us and other interested parties to find a win-win solution, they’ve asked CMS if they can have longer to work through the details. We are still waiting on a decision from CMS. If CMS says yes, things will stay as they are today (no prescription); if CMS says no, the prescription requirement will be in place on August 1st. If CMS doesn’t answer before 8/1/16, the prescription requirement will also still take effect. We are continuing to try to find the win-win with Ohio Medicaid while we wait on CMS. The proposal on the table is to allow the therapist (SLP, AuD, OT, PT) to be the ordering/referring provider. “

Legislative Report October 2016:

“This reduced Senate legislative calendar is important to OSHGAC because of our work on pursuing an amendment to HB 89 in order to solve the current problems with the Medicaid Schools program. The amendment that we are working with our partners on would make it possible for OTs, PTs, SLPs and AuDs to “order, refer and prescribe” their own services for Medicaid students with IEPs. This will eliminate the need for a physician prescription. The goal is to get this amendment in and the bill passed before the end of this year. Thus, far there appears to be support from the necessary legislative leaders to make that happen; however, the expedited session schedule will make our work in securing the amendment a bit more challenging.”

Legislative Report December 2016:

“For GAC lame duck has been busy for several reasons. First is our work on HB 89 where we are hoping to solve the current problems with the Medicaid Schools program. The amendment that we are working with our partners on would make it possible for OTs, PTs, SLPs and AuDs to “order, refer and prescribe (ORP)” their own services for Medicaid students with IEPs. This will eliminate the need for a physician prescription. The amendment went into a substitute version of the bill on November 30th, and the bill is now set for a Senate floor vote and a House concurrence vote. Accordingly, it appears that we have successfully addressed this different issue with a resolution that will keep the process as streamlined as possible for kids on IEPs and the school based practitioners who provide services to them. Stay tuned for more information on how school based speech-language pathologists and audiologists will register with Ohio Medicaid as “ORP providers.”

Legislative Report March 2017:

“Outside of the Legislature, the Ohio Department of Medicaid has announced that billing for services in the schools where the provider is a SLP or audiologist who is registered as an ORP provider will be activated by April 1, 2017. You will recall that GAC, working with its partners, secured an amendment late last year that allows SLPs and AuDs to “order, refer and prescribe (ORP)” their own services for Medicaid students with IEPs. This eliminated the need for a physician prescription. School-based providers must log into the Ohio Medicaid provider enrollment system and register as ORP providers for their services to be appropriately billed by their districts going forward.”

Legislative Report April 2017:

“Outside of the Legislature, the Ohio Department of Medicaid has announced that billing for services in the schools where the provider is a SLP or audiologist who is registered as an ORP provider will be activated by April 1, 2017. You will recall that GAC, working with its partners, secured an amendment late last year that allows SLPs and AuDs to “order, refer and prescribe (ORP)” their own services for Medicaid students with IEPs. This eliminated the need for a physician prescription. School-based providers must log into the Ohio Medicaid provider enrollment system and register as ORP providers for their services to be appropriately billed by their districts going forward.”

Email sent to GAC reps, OTs, PTs, Billing agencies, Supervisory Network, OSLHA School Caucus Rep and ASHA on May 11, 2017:

“Hello all,

Below please find some information from ODM on the Medicaid Schools Program.

Here are the cliff notes:

- 1) School providers are to register as independent providers and not ORP-only providers (this is different than we had been told before but is ODM’s preferred implementation);*
- 2) A school provider who registers as an independent provider can refer for her own services within her scope without a physician prescription;*
- 3) Because ODM has decided to use the independent provider portal, we have to comply with all of the provisions of that portal including the attestations and the submission of a W-9. Despite the fact that this seems to be unnecessary, because they are fitting us in under their existing portal, we have to comply with all of the provisions of that process (w-9, etc.) because legally they can’t require different standards for certain types of independent providers.*

So, all MSP providers in the school should now go onto the MSP website and register as independent providers in order to continue self-referring students on IEPs for their services (thereby eliminating the need for a physician prescription). There are instructions

on the ODM website for how to register.

Let me know if you have questions. Please share this information with all your interested constituencies. Kelly

(and the email attachment to Kelly's 5/11 email from Ohio Medicaid)

"Hey Kelly,

Staff worked on a response below. Please let us know if you have further questions. Thanks!

We apologize for any unintended confusion that came as a result of the cover letter that was attached to the OAC rules clearance package, and ODM is taking great strides to dispel misinterpretations and anxieties that are currently surrounding our MSP providers. We are also aggressively working to establish a forum in which we can communicate with a large number of MSP Providers and Associations and will release an FAQ in the very near future.

*It is important for us to make sure that all parties understand that for the purpose of the MSP program, a PT/OT/SLP or Audiologist **cannot be designated** as an "ORP only" provider, and a prescription from a physician is no longer needed for MSP services. They cannot enroll as an "ORP Only" Provider because they only have the ability to Refer (R), and cannot Order (O) nor Prescribe (P) services. The "ORP Only" provider designation is merely for physicians and other physician types who have the full professional scope to Order (O), Refer (R), and Prescribe (P) services for Medicaid covered individuals. The MSP rule was not intended to alter the scope of these practitioners, nor does it negate the ordering requirement that is needed when services are furnished by these providers outside of the Medicaid School Program.*

In response to your follow-up questions, my responses are in red.

- 1) *Do they register as ORP-only providers? **No***
 - a. *If so, when will the portal have them added to the drop down menu on the portal? **n/a***
 - b. *If not, do they need to register as Medicaid providers to do MSP now? **Yes, they can enroll now. Step-by step instructions, with screenshots, are available on our website.***

- 2) *Can they self-refer for services within their scope or is a physician prescription necessary for services within their scope? **Yes, they can self-refer within their scope of practice (i.e. an OT can refer for OT services; a PT can refer for PT services; etc.), therefore, there is no longer a need to have a prescription from a physician in order to provide MSP services.***
 - a. *If so, what does the highlighted portion of the ERF (attached) mean? **Clarification was stated above, in the body of the email above.***

The Current Result

GAC has worked with our partners (OTs, PTs, School Districts, ESCs, Administrators, Billing Companies) for 15 months on a solution to address the federal law requirement that Medicaid services are only reimbursable when ordered by either: 1) an independent Medicaid provider; or 2) an ORP-only provider (Ordering, Referring, and Prescribing Only Provider). Ohio Medicaid's initial response to this federal requirement was to mandate a physician prescription prior to the provision of any services under an IEP. This was unacceptable to school based providers and we worked on a legislative solution, via an amendment to HB 89 in December 2016.

The final implementation of that solution (as announced by Ohio Medicaid in May 2017) requires school providers are to enroll as independent Medicaid providers. (Originally, Ohio Medicaid had planned to have us register as "ORP-only providers" but this was disallowed because we cannot "prescribe" our own services; we can refer and order, but to be an ORP provider, one must be authorized by her scope of practice to order, refer AND prescribe); Once enrolled as an independent Medicaid provider, a school provider can refer for her own services within her scope without a physician prescription.

Because ODM has decided to use the independent provider portal, school providers have to comply with all of the provisions of that portal including the attestations and the submission of a W-9. Despite the fact that this seems to be unnecessary for school based services, because Ohio Medicaid must enroll school providers through their existing portal, we have to comply with all of the same provisions of that process (w-9, etc.) that ALL other independent Medicaid providers (physicians, dentists, advanced practice nurses, etc.) must also follow.

Provided to you by your OSLHA Governmental Affairs Representatives

