

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop 00-00-00
Baltimore, Maryland 21244-1850



Center for Program Integrity

October 23, 2015

John B. McCarthy
Director, Ohio Department of Medicaid
50 West Town Street
Suite 400
Columbus, Ohio 43215

Dear Mr. McCarthy:

Thank you for your inquiry regarding the Ohio Department of Medicaid's (ODM) efforts to comply with the federal regulation at 42 CFR 455.410(b) specifying that State Medicaid agencies must require all ordering or referring providers to be enrolled as participating providers. This and the remainder of the regulations found at 42 CFR 455 Subpart E became effective March 25, 2011.

We understand from your letter dated July 24, 2015 and from our July 31, 2015 telephone conversation with ODM and the Ohio Department of Education (ODE) personnel that the Medicaid Schools Program (MSP) within ODE submits claims to ODM that are not compliant with both 42 CFR 455.410(b) and 42 CFR 440.110.

During our call, we discussed that an individualized education plan (IEP) is formulated by a team. In subsequent review of material published online by the ODE we looked at ODE guidance document "Chapter 7.2: Identification of IEP Team members and Their Roles" at <http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Procedures-and-Guidance/Individualized-Education-Program-IEP/Identification-of-IEP-Team-members-and-Their-Roles>.¹ This document indicates that an IEP team includes individuals who may suggest or recommend services but this guidance does not indicate the required presence of an individual authorized and accountable to order, refer, or prescribe IEP services that are reimbursable by Medicaid. We understood from our discussion that ODE takes the position that the IEP document itself stands as an ordering, referring, or prescribing document. We rejected the notion that this was appropriate during our phone call.

Subsequent to our phone call, we also reviewed Medicaid State Plan Amendments (SPA) for Ohio with effective dates August 1, 2009 and January 1, 2014 to determine whether this practice has been previously addressed.

Ohio's SPA effective August 1, 2009 (approval date September 23, 2011) contained the following language with respect to physical therapy services, occupational therapy services, and speech pathology and audiology services:

¹ Ohio Department of Education. Chapter 7.2 Identification of IEP Team members and Their Roles. Last Modified 7/11/2013. Available at <http://education.ohio.gov/Topics/Special-Education/Federal-and-State-Requirements/Procedures-and-Guidance/Individualized-Education-Program-IEP/Identification-of-IEP-Team-members-and-Their-Roles>. Last accessed August 14, 2015.

“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). All other reimbursement principles detailed below apply to MSP providers in the same manner they apply to community providers.”

The SPA effective January 1, 2014 does not contain the language quoted above. This more recent SPA is silent on the issue of who must authorize physical therapy, occupational therapy, or speech pathology and audiology services in the context of IEP except to say, in each case, that the service is “covered by Ohio Medicaid in accordance with 42 CFR 440.110.”

Under SPAs effective both August 1, 2009 and January 1, 2014, and under 42 CFR 440.110, in order to be covered by Medicaid, physical therapy, occupational therapy, or speech pathology and audiology services must be prescribed, or referred by a physician or other licensed practitioner of the healing arts. An IEP document or team recommendation is not sufficient to fulfill requirements set forth at 42 CFR 440.110 if it does not contain or constitute a prescription or referral compliant with 42 CFR 440.110. Services furnished pursuant to an IEP document formulated by a team, without an express prescription or referral from an appropriate practitioner under 42 CFR 440.110, are not reimbursable by Medicaid.

In addition, under 455.410(b), that prescribing physician or licensed practitioner must be enrolled in Medicaid, and under 455.440, the physician or practitioner’s NPI must appear on the claim. These federal regulations apply regardless of the service delivery model. There is no exception in any of these regulations for services furnished under an IEP.

For both of these reasons, claims lacking an appropriate prescription or referral are not consistent with federal regulations and to the extent ODM is paying such claims, ODM is out of compliance with its State Plan and federal regulations.

We appreciate the State working with us to resolve this issue going forward. It is our hope that the problem can be corrected as soon as possible, but certainly before the start of the 2016-2017 school year. If the State is not in full compliance with 42 CFR 440.110, 42 CFR 455.410 (b), and 42 CFR 455.440 with respect to IEP services, by August 1, 2016, we will have to begin deferring the IEP services claims and ultimately disallowing Federal Financial Participation (FFP).

If you have any questions or concerns regarding this information, please contact Jennifer Bean at 410-786-4827 or by e-mail at jennifer.bean@cms.hhs.gov or alternatively, CMS’s Ohio state lead, Christine Davidson at 312-888-3642 or at christine.davidson@cms.hhs.gov.

Sincerely,

/s/

Zabeen Chong
Director, Provider Enrollment and Oversight Group
Center for Program Integrity

/s/

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Operations

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