

DATE:	December 6, 2018
SUBJECT:	Update to HHSC 'Third Party Liability for SHARS Interim Claims'
CATEGORY:	Issue Update
NEXT STEPS:	Action Required of LEA; Share with Appropriate Staff

The Texas Education Agency (TEA) is providing information that is posted on the Health and Human Services Commission (HHSC) webpage regarding School Health and Related Services (SHARS); http://www.tmhp.com/News_Items/2018/08-Aug/8-29-18

Medicaid services provided by school districts in Texas to Medicaid-eligible students are known as SHARS. The oversight of SHARS is a cooperative effort between the TEA and HHSC. SHARS allow local school districts, including open-enrollment charter schools, to obtain Medicaid reimbursement for certain health-related services documented in a student's Individualized Education Program (IEP). HHSC with Texas Medicaid Health Partnership (TMHP) has modified SHARS billing practices. A notice was posted on HHSC webpage on May 21, 2018 and another update was posted on August 28, 2018 to provide notification of the changes to billing practices. The responsibility of school districts and open-enrollment charter schools regarding the modified billing policy is described below.

District and Charter School Responsibility

The Texas Medicaid Healthcare Partnership (TMHP) posted a provider notice regarding Third Party Liability (TPL) for SHARS interim claims. Using the pay and recover TPL process for SHARS, Medicaid pays the school district for services before third party reimbursement is sought (e.g., private insurance held by the parents of a student with a disability). If a third-party insurance carrier denies a claim for an acceptable reason, no further action is taken.

- Additional Parent Consent is Not Required
- Share the above information with parents/adult students. Ensure that parents/adult students understand that they have the right to refuse to participate in SHARS.
- Public schools are responsible for ensuring that students with disabilities receive a free and appropriate public education (FAPE). Parents/adult students cannot, therefore, be charged by a public school for special education services provided to students with disabilities. If parents produce a document they believe is an insurance bill:
 - verify whether the document is a bill; some documents may include an Explanation of Benefits (EOB) that may or may not indicate that money is owed; and
 - if it is an insurance bill, contact the TMHP Contact Center at 1-800-925-9126.

Third Party Liability Information (Provided by HHSC)

The Social Security Act generally requires the State Medicaid Agency (SMA) to seek reimbursement for covered services from legally liable third parties before paying for Medicaid-covered services (See [Social Security Act §1902\(a\)\(25\)](#) and [42 Code of Federal Regulations \[CFR\] Part 433 Subpart D - Third Party Liability](#)). "Third parties" are entities or individuals who are legally responsible for paying the medical claims of Medicaid recipients, such as private insurance ([42 CFR §433.136](#)). Medicaid pays only after the third party has met its legal obligation to pay ([42 CFR §433.139](#)). State law reiterates this requirement in [Texas Human Resources Code §32.04242](#). If an SMA fails to take all reasonable measures to ascertain and

pursue claims for payment of covered services against legally liable third parties, federal financial participation (FFP) is not available and/or subject to recoupment ([42 CFR §433.140](#)).

Medicaid Recipients

As a condition of Medicaid eligibility, each applicant or recipient is required to assign to the SMA his or her rights to payment for medical care from any third party (See [42 CFR §433.145](#) and [Texas Human Resources Code § 32.033](#)). The Texas Medicaid application contains the following statement: *I am giving to HHSC the rights to pursue and get any money from other health insurance, legal settlements, or other third parties.*

Methods for Recovery of Third Party Liability

SMA's use the "pay and recover later" method or the "cost avoidance" method depending on the type of claims subject to third party liability (TPL). Using the "pay and recover later" method, the state pays the claim submitted by the provider and then seeks reimbursement from liable third parties. Cost avoidance means the claim is denied by Medicaid and third-party reimbursement is sought by the provider.

School Health and Related Services (SHARS) Interim Claims

Texas Medicaid instituted TPL policy requirements using the "pay and recover later" method for SHARS providers on October 1, 2017. Using the pay and recover TPL process for SHARS means that Medicaid pays the school district for services before third party reimbursement is sought. The state is permitted a three-year lookback period to seek recovery claims after the effective date of this policy. If the third-party insurance denies a claim for an acceptable reason, no further action is taken. *Texas Health and Human Services Commission has decided to postpone the three-year lookback period on SHARS TPL claims until the policy has been in effect for three years, which will occur on October 1, 2020.*

The liable third party will continue to be pursued for current claims submitted by SHARS providers.

School districts enrolled as SHARS providers do not need to change their current billing practices as a result of this notice and should continue to bill Medicaid using their current processes. Parents of students enrolled in Medicaid should be reminded that this notice does not change current Medicaid policy regarding TPL. Parents or guardians will not incur out-of-pocket costs as a result of this notice, because Texas Medicaid pays co-payments and deductibles associated with private insurance. Lifetime benefits of private insurance could be affected depending on the policy or agreement parents or guardians have with the insurance company. However, as of the distribution date of this notice, Texas Health and Human Services (HHSC) has no evidence that this has occurred.

Because the Individuals with Disabilities Education Act (IDEA) entitles children to a free and appropriate public education, parents or guardians should consult with their school districts if they anticipate a financial impact due to this notice.

For more information, call the TMHP Contact Center at 1-800-925-9126.