

---

# North Carolina Department of Public Instruction

Exceptional Children Division

---

## Ethical Considerations in Medicaid Cost Recovery

Question: Does recovering costs from Medicaid for school services violate FAPE?

Answer: IDEA 2004 Title I B 612a12A(i)

(i) Agency financial responsibility.--An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

Centers for Medicare & Medicaid Services 2003 Administrative Claiming guide:

*IDEA-related health services. The Individuals with Disabilities Education Act (IDEA) was passed to "assure that all children with disabilities have available to them... a free appropriate public education which emphasizes special education and related services designed to meet their individual needs." The IDEA authorizes federal funding to states for medical services provided to children through a child's Individualized Education Program (IEP), including children that are covered under Medicaid. In 1988, section 1903(c) of the Act was amended to permit Medicaid payment for medical services provided to Medicaid eligible children under IDEA and included in the child's IEP.*

Question: Are there ethical issues with school-based therapists participating in recovering costs from Medicaid?

Answer - NO:

- IDEA makes provision for schools to recover their costs from public and/or private insurance
- In most cases in North Carolina, the LEA is the Medicaid provider, not the individual practitioner (may not be true in some contract arrangements)
- LEAs cannot 'make' money on Medicaid reimbursement. LEAs recover cost of extremely expensive, but mandated, services and personnel. Medicaid now requires each LEA to submit a cost report which specifies how much the LEA spent on services for students and how much they received from Medicaid. If they received more than they spent, they must return the difference; Medicaid eventually returns the difference if the LEA spent more than they received.
- Services are determined prospectively through the IEP process and costs are recovered after the fact.

Answer – THERE CAN BE:

- If service decisions are ever, in any way influenced by cost recovery, such as...
  - Performing evaluations only when service seems likely
  - Increasing service frequency or duration when the student has Medicaid
  - Students with Medicaid getting priority in receiving services (e.g., during staffing shortage)
- If the position of the service provider is funded from federal sources, billing Medicaid for the services would be considered 'double-dipping'
- If serving a student at school, NC policy 16 NCAC 6C .0601 and 16 NCAC 6C .0602 stipulates that educators and service providers may not also solicit to serve that student in other settings, and need superintendent approval to do so:

*“Proper remunerative conduct. The educator shall not solicit current students or parents of students to purchase equipment, supplies, or services from the educator in a private remunerative capacity. An educator shall not tutor for remuneration students currently assigned to the educator’s classes, unless approved by the local superintendent.”*

- If a contract stipulates the individual provider, not the LEA, will bill Medicaid (including Extended School Year services), it is recommended safeguards include:
  - LEA employees oversee eligibility determination, least restrictive environment/service location, and service delivery decisions
  - All providers, including contracted providers, serve a representative caseload of students, not Medicaid-eligible students only
  - All providers, including contracted providers, are familiar with IDEA and NC Policies for Exceptional Children, and participate in continuing education relevant to school-based practice
  - All providers, including contracted providers, use the resources of the DPI Consultant in their practice area (e.g. school-based therapy web sites, listservs, and direct contact with the consultant)
- If the service provider is the only pediatric therapist in the area and must serve students in multiple settings, safeguards should be taken to ensure all decisions are based on data, well-supported and documented, and that other settings/procedures/relationships/income sources do not influence decisions for school services