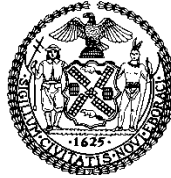


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**Oversight: Medicaid Claims for Special Education-Related Services by the Department of
Education**

March 1, 2012

On March 1, 2012, the Committee on Education, chaired by Council Member Robert Jackson, and the Committee on Finance, chaired by Council Member Domenic M. Recchia, Jr. will hold a joint oversight hearing on Medicaid Claims for Special Education-Related Services by the Department of

Education. Those invited to testify include representatives from the Department of Education (DOE), New York State Education Department (NYSED), New York State Department of Health (NYSDOH), union representatives, advocates, parents and students.

Introduction

In a December 28, 2011 article, the *New York Times* revealed that the New York City Department of Education (DOE) had failed to recover tens of millions of dollars in Medicaid reimbursements for services it provided to special-needs students in recent years.¹ According to the article, State Health Department data from 2006 to 2010 show that the \$33 million in school-based Medicaid reimbursements received by the City last year were 60 percent lower than they were five years ago. Despite the fact that more than two-thirds of New York City's special-needs students qualify for Medicaid, the City has lagged far behind the state's other large school districts in filing claims. Between 2006 and 2010, the DOE filed no Medicaid claims for nursing services, occupational and physical therapy, psychological counseling, audiological evaluations or transportation; while the other Big Five cities of Buffalo, Rochester, Syracuse and Yonkers — where the combined special education populations are less than 10 percent of New York City's — were reimbursed \$77 million for such services.²

The DOE's failure to seek Medicaid reimbursements has been attributed to an inability to comply with stricter policy enforcement and new rules that were imposed after a 2005 federal audit found irregularities in City and State Medicaid claims from previous years. The new rules, many of which took effect in September 2009 with the approval of a new State Plan Amendment, are part of a settlement in which New York City agreed to repay the Federal government \$100 million. According to

¹ Santos, Fernanda, "City Schools Missing Out on Aid for Special Needs," *The New York Times*, December 28, 2011.

² *Id.*

a spokesperson, the DOE did not file Medicaid claims after the new rules were announced because the reimbursement process had become more cumbersome and “the department lacked the staff and the training to handle the more demanding requirements.”³ The new regulations require more documentation, including doctor’s orders for each individual claim. Additionally, therapists must now hold higher levels of certification — levels which half of New York City’s speech teachers lack — and districts are required to provide annual training, and hire compliance officers.

In a time of fiscal austerity, when most school districts are suffering the effects of severe budget cuts, Medicaid reimbursements can be a significant source of revenue - especially important since districts must provide the services to students whether or not they are reimbursed. Thus, most districts have made efforts to comply with these new requirements, by hiring compliance officers and consultants or private vendors to process claims, for example.

However, New York City has been much slower and less successful in complying with the new regulations. After an April 2011 state audit found that many of the City’s 2009 claims were missing documentation or had incorrect dates for services, the DOE was forced to return more than \$82,000.⁴ As recently as September 2011, a letter was sent by the State Health Department (NYSDOH) stating that DOE officials were still submitting some claims using forms that are no longer accepted.⁵ Although the Department has not filed has taken steps to address the problems and estimates that Medicaid reimbursements will total \$167 million in each of the next three fiscal years.⁶

³ *Id.*

⁴ New York State Department of Health (NYSDOH), Office of the Medicaid Inspector General (OMIG), Final Audit Report, “Review of New York City Department of Education Claims for School Supportive Health Services Program Services Paid from January 1, 2009 – December 31, 2009,” April 6, 2011, accessed at http://www.omig.ny.gov/data/images/stories/audit_reports/April2011/10-1632.pdf.

⁵ Santos, Fernanda, “City Schools Missing Out on Aid for Special Needs,” *The New York Times*, December 28, 2011.

⁶ New York City Office of Management and budget (NYC OMB), *Department of Education FY 2013 January Plan Monitors’ Briefing Package*, February 8, 2012.

Today's hearing will provide the Committees with an opportunity to examine changes to the DOE's system for collecting Medicaid reimbursements and whether sufficient improvements have been made to overcome past errors. As the Council begins its review of the Mayor's Preliminary Budget for Fiscal Year 2013, the Committees are particularly interested in reviewing projected increases in Medicaid reimbursements, how the DOE arrived at the new estimates, and what they are doing to achieve these estimates.

Special Education Budget

The Department of Education now spends more than \$3 billion per year on special education services, not including funding for Special Education Instruction and School Leadership that is allocated to school budgets. As presented in Table 1, these services include special education instructional supports, citywide special education services, special education pre-kindergarten, contract schools, and transportation for special education students. Special education instructional supports include services such as physical therapy and nursing that are eligible for Medicaid reimbursement. Citywide special education, or District 75, includes personal and other than personal services funding for educational instruction and support for severely disabled students in self-contained classrooms, home and hospital support, and related services. Special education pre-kindergarten consists of tuition and transportation. Contract schools, some of which are out of state, provide education for students with severe disabilities requiring special instruction and related services. Special transportation services are available for students with disabilities to travel to and from school.

The DOE must provide these special education services to students with disabilities under federal law, the Individuals with Disabilities Act (IDEA). Under IDEA, schools must provide a free appropriate public education to eligible students, in both public and private schools, by providing early

intervention, special education, and related services that help prepare students for further education, employment, and independent living.⁷

Because the services are mandated, the Department has found it very difficult to control spending growth, especially given the increasing special education population. Since the 2006-2007 school year this population has grown by 12.7 percent to nearly 160,000 students.⁸ Spending has increased by 50 percent or nearly \$1.2 billion since Fiscal 2007 and constitutes 19.5 percent of the Department's \$19.1 billion budget in Fiscal 2012.⁹ Such growth puts pressure on the DOE's budget as a whole and restricts the Department to making cuts to non-mandated, "flexible" spending categories, such as school budgets. Maximizing federal Medicaid revenue is a feasible way the Department can take some pressure off the squeeze that school budgets and other non-flexible spending categories are facing.

⁷ New York State Education Department (NYSED), *School Supportive Health Services Program and Preschool Supportive Health Services Program (SSHSP/PSHSP): Questions and Answers*, June 11, 2010, accessed at http://www.oms.nysed.gov/medicaid/q_and_a/SSHSP_Q_A.pdf

⁸ New York City Department of Education (NYCDOE), <http://schools.nyc.gov/AboutUs/data/stats/Register/default.htm>

⁹ New York City Office of Management and Budget (NYC OMB)

TABLE 1							
Department of Education's Special Education Budget							
<i>Figures in thousands</i>							
	FY 07 Close	FY 08 Close	FY 09 Close	FY 10 Close	FY 11 Close	FY 12 Adopted	
New York City	\$61,172,242	\$64,518,200	\$62,848,718	\$66,114,522	\$66,141,822	\$68,760,460	
Department of Education	\$15,884,401	\$16,977,034	\$17,903,053	\$18,498,505	\$18,938,899	\$19,076,654	
Special Ed Instructional Support - PS	\$191,121	\$216,251	\$233,988	\$237,982	\$237,753	\$246,360	
Special Ed Instructional Support - OTPS	\$143,558	\$173,160	\$212,647	\$232,350	\$272,118	\$351,838	
Subtotal	\$334,679	\$389,411	\$446,635	\$470,332	\$509,871	\$598,198	
Transportation of Special Education	\$629,835	\$645,558	\$648,338	\$673,177	\$673,159	\$748,817	
Special Ed Pre-K	\$574,473	\$637,848	\$739,296	\$852,591	\$943,426	\$1,129,313	
Citywide Special Education - PS	\$634,526	\$674,361	\$711,912	\$726,114	\$752,292	\$771,490	
Citywide Special Education - OTPS	\$17,746	\$16,629	\$14,599	\$16,105	\$18,862	\$23,415	
Subtotal	\$652,272	\$690,990	\$726,511	\$742,219	\$771,154	\$794,905	
Contract Schools	In-State	\$261,913	\$212,012	\$247,133	\$260,751	\$285,444	\$408,715
	Out of State	\$28,500	\$28,813	\$26,844	\$32,616	\$30,545	\$43,850
	Subtotal	\$290,413	\$240,825	\$273,977	\$293,367	\$315,989	\$452,565
Total Special Education	\$2,481,672	\$2,604,632	\$2,834,757	\$3,031,686	\$3,213,599	\$3,723,798	
Spec. Ed. as Percent of DOE Budget	15.6%	15.3%	15.8%	16.4%	17.0%	19.5%	
<i>Source: Data from New York City Financial Management System</i>							
Special Education Student Registers							
	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	
New York City Public Schools	93,327	98,432	103,228	109,339	115,016	119,585	
Contract Schools	32,335	34,174	35,124	36,370	37,452	38,751	
Total	125,662	132,606	138,352	145,709	152,468	158,336	
<i>Source: NYC Department of Education, http://schools.nyc.gov/AboutUs/data/stats/Register/default.htm and NYCDOE Division of Financial Operations, "Contracted Schools Cost and Enrollment" updated February 21, 2012</i>							

To be clear, only a portion of the special education budget includes services that are Medicaid reimbursable. The Department can collect reimbursement for related services such as physical therapy and speech therapy, though reimbursement rates do not necessarily cover the full cost of the services provided. A full list of Medicaid-eligible services is available on pages 12-13 and in Appendix I. The DOE employees who deliver these services receive salaries, not a per encounter payment like private providers, so it is difficult to quantify the difference between the cost of services and reimbursement. However, for services provided by contracted vendors and private providers, funding for which is

budgeted in other than personal services, accounting for services provided relative to Medicaid reimbursement is easier to quantify. Furthermore, Medicaid is a program to assist individuals with specific needs; eligibility is dependent upon income or in some cases, the student's disability.¹⁰ The DOE estimates 50 to 60 percent of students with IEPs are Medicaid-eligible, but this estimate could be as high as 69 percent.¹¹

Federal Audit of School-Based Medicaid

Medicaid is a federal-state matching entitlement program to help fund health and medical services for low-income individuals and families. When Medicaid-eligible students with disabilities receive school-based services they are entitled to under IDEA, the school district responsible for administering these services can sometimes bill Medicaid to collect reimbursements. In New York State, the School Supportive Health Services Program and Pre-School Supportive Health Program, collectively referred to as SSHSP, is responsible for assisting school districts, counties, and schools in obtaining federal Medicaid reimbursement for certain services provided to students with disabilities aged 3-21.¹²

Like school districts throughout the nation, the DOE has historically billed Medicaid annually and received federal reimbursement to help fund the education system. Between 2001 and 2006 the Office of Inspector General (OIG) for the Department of Health and Human Services (DOH) conducted numerous audits of school-based Medicaid programs throughout the country.¹³ The audits were triggered by a speech therapist whistle-blower in New York, Hedy Cirrincione, who filed two lawsuits under the federal False Claims Act – *United State ex rel. Cirrincione v. Tingley, et al.*, 98-CV-1929 (N.D.N.Y) in 1998 and *United States ex rel. Cirrincione v. Hamel, et al.*, 99-CV-2082 (N.D.N.Y) in

¹⁰ NYSDOH, http://www.health.ny.gov/health_care/medicaid/excess_income.htm

¹¹ NYCDOE, meeting with New York City (NYC) Council staff, February 9, 2012

¹² NYSDOH and NYSED, *SSHSP/PSHSP Questions and Answers*, June 11, 2010 Do you have link to include?

¹³ American Speech-Language-Hearing Association, Office of Inspector General Reports, http://www.asha.org/practice/reimbursement/medicaid/oig_reports.htm

1999. The lawsuits alleged that certain localities and individuals in New York State violated program requirements governing the provision of speech therapy services under SSHSP.¹⁴ The audits were conducted at the request of the Centers for Medicare and Medicaid Services (CMS), the federal agency that administers Medicare and Medicaid.¹⁵

In 2005 two of the audits were conducted in New York City for Medicaid speech therapy claims and Medicaid transportation claims. The auditor investigated a random sample of claims submitted between 1993 and 2001 to determine if the City was in compliance with state and federal Medicaid claiming guidelines. The OIG determined that the DOE was largely out of compliance for both services. None of the claims for Transportation Services were fully in compliance, and the OIG estimated that \$96 million in federal Medicaid was unallowable during the designated time period.¹⁶ Citing an 86 percent non-compliance rate for speech therapy claims, it estimated approximately \$436 million in federal Medicaid was unallowable.¹⁷

In July 2009 the Federal government, Cirrincione, New York State, and the DOE reached a settlement agreement in which state and the DOE were held financially responsible for noncompliance with Medicaid billing regulations and millions of dollars that had been allocated for the unallowable claims.¹⁸ The State agreed to pay the Federal government \$331.9 million. The Federal government released to the State \$195 million in deferred payments and CMS retained the remaining \$107.9 million in deferred payments for services provided between July 2001 and December 2008. New York City

¹⁴ Education Week, "Settlement Agreement," July 2009 accessed at http://www.edweek.org/media/settlement_agreement_signed.pdf

¹⁵ Martin, Keith, "New York State, City Settle Medicaid Allegations for \$540 Million," *Insurance and Financial Advisor*, July 23, 2009 accessed at <http://ifawebnews.com/2009/07/23/new-york-state-city-settle-medicaid-allegations-for-540-million/>

¹⁶ US Department of Health and Human Services (US DOHHS), Office of Inspector General (OIG), "Review of Medicaid Transportation Claims Made by the New York City Department of Education," September 2005 accessed at <http://oig.hhs.gov/oas/reports/region2/20301023.pdf>

¹⁷ US DOHHS, OIG, "Review of Medicaid Speech Claims Made by the New York City Department of Education," June 2005 accessed at <http://oig.hhs.gov/oas/reports/region2/20201029.pdf>

¹⁸ Education Week, "Settlement Agreement," July 2009

agreed to pay \$100 million to the Federal government, in ten installments of \$10 million each.¹⁹ The City has three payments remaining.²⁰

Medicaid Policy in New York State

The audit findings spurred a plethora of modifications to school-based Medicaid policies and practices in an attempt to correct the problems that led to high noncompliance rates. In addition to the adjustments outlined below, there were several temporary changes that do not impact school-based Medicaid claiming today, but could have affected claiming during the transition period between the audit findings and the adoption of the current State Plan Amendment (SPA), which describes the nature and the scope of New York's Medicaid program, including the laws and regulations pertaining to SSHSP.

- In September 2006, CMS announced a new requirement that all SSHSP providers must obtain a National Provider Identification (NPI) number by May 23, 2007 in order to qualify for Medicaid reimbursement.²¹
- In October 2006, the U.S. Department of Education added a requirement that local school districts must obtain parental consent prior to each time they access Medicaid.²²
- As a result of the audits, in February 2007 CMS released guidance specifying requirements necessary for claiming Medicaid.²³ The guidance clarified that speech services must be provided by a Speech Language Pathologist (SLP) or provided under the direction of a SLP; transportation may not be billed without clear documentation of student's daily attendance; and counseling services must be provided by a professional whose credentials allow that same service outside of the school. The U.S. Department of Justice stated it would potentially charge federal False Claims Act violations against out of compliance school districts.²⁴

¹⁹ *Id.*

²⁰ NYC OMB, meeting with NYC Council staff, February 9, 2012

²¹ NYS Office of the Medicaid Inspector General(NYS OMIG) SSHSP/PSHSP Medicaid in Education Unit, *Alert #06-2*, September 22, 2006 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2006/home.html

²² NYSED, *Parental Consent*, http://www.oms.nysed.gov/medicaid/resources/parental_consent.html

²³ New York State Education Department, *CMS Guidance Letter*, February 6, 2007 accessed at http://www.oms.nysed.gov/medicaid/cms_directives/guidance_letter_02_06_07.pdf

²⁴ *Id.*

- In May 2009, federal legislation temporarily increased the federal share of Medicaid through December 31, 2010.²⁵
- In July 2009, the New York State Education Department temporarily suspended school districts' ability to submit Medicaid claims with a service date of July 1, 2009 or later until the amendment of the State Medicaid Plan.²⁶
- In December 2009 the DOE made effective its Medicaid Compliance Plan, as required by an addendum to the settlement agreement. The plan outlines procedures and policies for all staff and vendors providing services eligible for Medicaid reimbursement and requires annual compliance training for relevant employees, administrators, and board members. It also establishes a Medicaid compliance committee within the DOE and the designation of a Medicaid Compliance Officer.²⁷
- In April 2010 the New York State Plan Amendment, as required by an addendum to the settlement agreement, was approved by the US Department of Health and Human Services.²⁸
- In April 2011, school districts were notified that the temporary suspension of new claims was lifted. This allowed them to begin submitting claims for targeted case management services for school-age children provided prior to July 2010²⁹ and claims for the ten eligible services included in the amended State Plan, delivered on or after September 1, 2009.³⁰
- On January 1, 2012 the federal requirement that Medicaid claims must contain the attending provider's National Provider Identifier (NPI) became effective.³¹

The current New York State Medicaid Plan, State Plan Amendment (SPA) #09-61, was amended in April 2010 and made effective retroactively to September 1, 2009. Targeted case management³²

²⁵ NYS OMIG SSHSP/PSHSP Medicaid in Education Unit, *Alert #09-2*, May 5, 2009 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2009/home.html

²⁶ NYSED Medicaid in Education Unit, *Alert #09-3*, July 29, 2009 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2009/home.html

²⁷ NYCDOE, *Medicaid Compliance Plan*, Updated December 2011 accessed at <http://schools.nyc.gov/NR/rdonlyres/2DF468A7-569B-4F5D-B38A-AB18455B8981/119873/MedicaidCompliancePlanNYCDOE1.pdf>

²⁸ New York State Office of Health Insurance Programs (NYS OHIP) and NYSED SSHSP/PSHSP Medicaid in Education Unit, *Alert #10-1*, May 17, 2010 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2010/home.html

²⁹ NYS OHIP and NYSED Medicaid in Education Units, *Medicaid Alert #11-01*, April 22, 2011 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2011/home.html

³⁰ NYS OHIP and NYSED Medicaid in Education Units, *Medicaid Alert #11-02*, April 22, 2011 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2011/home.html

³¹ NYS OHIP and NYSED Medicaid in Education Units, *Medicaid Alert #11-03*, September 12, 2011 accessed at http://www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2011/home.html

continues to be ineligible for Medicaid reimbursement. However, the DOE can still submit retroactive claims for targeted case management services delivered before June 30, 2010 within a two year retroactive window. Importantly, SPA #09-61 clarified provider requirements for the ten SSHSP services, some of which have become more rigorous (See Appendix I for a complete list of license requirements for all services). For example, the City previously received Medicaid reimbursement for speech therapy delivered by a speech teacher. Now the service must be delivered by a Speech-Language Pathologist (SLP) to be billed to Medicaid. Physical therapists must have accreditation from the Commission on Accreditation in Physical Therapy Education (CAPTE) program. Occupational therapy must be provided by a licensed and registered occupational therapist or a certified occupational therapy assistant (COTA) under the direction of a licensed and registered occupational therapist. A psychology or psychologist license or Licensed Clinical Social Worker (LCSW) is required to bill Medicaid for counseling.³³ In public schools counseling is ordinarily provided by guidance counselors, school psychologists, and other staff that generally do not have the necessary license.

In addition to clarifying service provider requirements, the SPA included major changes in payment methodology. Claiming is now encounter-based and each service encounter must be documented with session notes to make it eligible for reimbursement.³⁴ Details of the SSHSP under the SPA as it is today, including eligible services, documentation requirements, and service provider requirements, are discussed below.

³² Targeted Case Management is a comprehensive service that includes coordinating medical and non-medical procedures for the student. It includes five procedures: initial review, requested/amended review, annual review, triennial review, and Ongoing Service Coordination. For more information, refer to the New York State Education Department at http://www.oms.nysed.gov/medicaid/handbook/handbook_6/targeted_case_management_guidebook_6.pdf.

³³ NYSDOH and NYSED, *Provider Qualifications and Documentation Requirements*, August 2011 accessed at http://www.oms.nysed.gov/medicaid/billing_claiming_guidance/prov_doc_requirements_aug2011.pdf

³⁴ NYSDOH and NYSED, *Training on Compliance Agreement, Written Compliance Policies and Program Update*, September 2010 accessed at http://www.oms.nysed.gov/medicaid/billing_claiming_guidance/

SSHSP Medicaid-Eligible Services under the State Plan Amendment

In accordance with the Individuals with Disabilities Education Act (IDEA), students with disabilities are entitled to the instructional and related services necessary for them to receive a free and public education.³⁵ An Individualized Education Program (IEP) is a written statement describing the special education and related services specifically designed for a student to receive a free and public education (FAPE). Federal and State laws and regulations specify which information must be documented in an IEP.³⁶ Some services that may be documented in an IEP include those that are covered under the SSHSP, which qualify for Medicaid reimbursement. They include the following ten services:

1. Speech Therapy

“The evaluation and application of principles, methods and procedures of measurement, prediction, non-medical diagnosis, testing, counseling, consultation, rehabilitation and instruction, related to the development of disorders of speech, voice, and/or language for the purpose of preventing, ameliorating or modifying such disorder conditions in children and/or groups of children. Speech services shall be limited to speech-language pathology services” and does not include “non-diagnostic, non-therapeutic, routine, repetitive and reinforced procedures or services for the student’s general good and welfare (practicing word drills)” within SSHSP.³⁷

2. Physical Therapy

“The evaluation, diagnosis and treatment of physical disability, injury or disease using physical and mechanical means, including but not limited to, heat, cold, light, air, water, sound, electricity, massage, mobilization and therapeutic exercise with or without assistive devices. This includes the performance and interpretation of tests and measurements to assess pathopsychological, pathomechanical and developmental deficits of human systems to determine treatment and assist in diagnosis and prognosis.”³⁸

3. Occupational Therapy

“The functional evaluation of the student and the planning and utilization of a program of purposeful activities to develop or maintain adaptive skills designed to achieve maximal physical and mental functioning of the student in daily life tasks.”³⁹

4. Psychological Counseling

“Treatment services involving an individual student or groups of children using a variety of techniques to assist the student in overcoming behavioral and emotional difficulties. Counseling

³⁵ NYSDOH and NYSED, *SSHSP/PSHSP Questions and Answers*, June 11, 2010

³⁶ *Id.*

³⁷ NYSED, *Speech Therapy*, http://www.oms.nysed.gov/medicaid/services/speech_therapy/home.html

³⁸ NYSED, *Physical Therapy*, http://www.oms.nysed.gov/medicaid/services/physical_therapy/home.html

³⁹ NYSED, *Occupational Therapy*, http://www.oms.nysed.gov/medicaid/services/occupational_therapy/home.html

shall be limited to services provided to children whose severe behavioral or emotional problems require ongoing therapeutic counseling intervention.”⁴⁰

5. Skilled Nursing

“Health assessments and evaluations; medical treatments and procedures; administering and/or monitoring medication needed by the student during school hours; and consultation with licensed physicians, parents and staff regarding the effects of the medication. Skilled nursing services eligible for Medicaid reimbursement only includes those services the student requires to remain in school in order to benefit from special education services. This does not include first aid that is not related to the student's disability. Skilled nursing services should not appear on the IEP unless there is a specific need or a suspected need based on a medical condition of the child.”⁴¹

6. Psychological Evaluation

“A psychological evaluation is a set of assessment procedures administered by a licensed psychologist or credentialed school psychologist to obtain information about a student's learning, behavior, or mental health...School psychologists most often conduct evaluations as part of the special education team's evaluation to determine eligibility for services.”⁴² Psychologists use different procedures for evaluating students, such as standardized tests, rating scales and self-report scales to assess certain behaviors or skills, observations, and interviews.⁴³

7. Medical Evaluation

“The recording of chief complaints; present illness; family history; past medical history; personal history; social history; a system review; a complete physical evaluation; the ordering of appropriate diagnostic tests and procedures; and a recommended plan of treatment.”⁴⁴

8. Medical Specialist Evaluation

“An examination of the affected bodily area or organ system and other symptomatic or related organ systems, the ordering of appropriate diagnostic tests and procedures and the reviewing of the results and reporting on the tests and procedures.”⁴⁵

9. Audiological Evaluation

“The determination of the range, nature and degree of hearing loss including measuring hearing acuity, tests relating to air and bone conduction, speech reception threshold and speech discrimination and other hearing evaluation tests as appropriate including conformity evaluations and pure tone audiometry.”⁴⁶

⁴⁰ NYSED, *Psychological Counseling*, <http://www.oms.nysed.gov/medicaid/services/counseling/home.html>

⁴¹ NYSED, *Skilled Nursing*, <http://www.oms.nysed.gov/medicaid/services/nursing/home.html>

⁴² Cantor, Andrea, “Psychological Evaluations: What Every Principal Should Know,” *Principal Leadership Magazine*, Vol. 4, No. 3, November 2003, accessed at http://www.nasponline.org/resources/principals/nassp_evaluation.aspx

⁴³ *Id.*

⁴⁴ NYSED, *Medical Evaluation*, http://www.oms.nysed.gov/medicaid/services/med_eval/home.html

⁴⁵ NYSED, *Medical Specialist Evaluation*, http://www.oms.nysed.gov/medicaid/services/spec_med_eval/home.html

⁴⁶ NYSED, *Audiological Evaluation*, http://www.oms.nysed.gov/medicaid/services/audio_eval/home.html

10. Special Transportation

“All special transportation arrangements recommended by the Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) and identified on the students' Individualized Education Program (IEP) are eligible for Medicaid funding.”⁴⁷

In addition to being documented on an IEP, services must be documented as medically necessary by a physician's prescription or referral in order to be eligible for Medicaid. In addition, services must be signed, dated, and delivered by an approved Medicaid provider acting within his or her scope of practice, and every time a service is provided the encounter must be documented to support Medicaid Claims.⁴⁸ A school district can retroactively claim Medicaid for services provided up to two years prior.

Prescription or referral requirements for Medicaid reimbursement vary by service provided. For example, speech therapy requires that either a prescription (written order) or a referral is included in a student's record, while physical therapy must have a prescription to be Medicaid-eligible.⁴⁹

Similarly, there are requirements for Medicaid service providers for each category of service. An evaluation must be completed by a currently licensed service provider, while therapy, counseling, and skilled nursing services can be carried out by individuals with lesser qualifications operating under the supervision or direction of a licensed provider.⁵⁰ Finally, the documentation required for services to be Medicaid-eligible also varies by service. For instance, occupational therapy claims require a report for the initial evaluation and contemporaneous session notes for ongoing therapy, and special transportation services require that transportation logs be maintained for each one-way trip.⁵¹ Refer to Appendix I for a complete list of ordering/referring requirements for Medicaid reimbursement and qualifications for approved Medicaid service providers by service.

⁴⁷ NYSED, *Special Transportation*, <http://www.oms.nysed.gov/medicaid/services/transportation/home.html>

⁴⁸ NYSDOH and NYSED, *Provider Qualifications and Documentation Requirements*, August 2011 link?

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The Department has cited the onerous credentialing requirements as a significant barrier to increasing the number of Medicaid claims. The medical model of service and payment used by Medicaid is not aligned with the education model of service delivery used in schools. For example, the education model allows speech teachers to provide speech therapy services in schools, but the medical model does not allow their services to be billed for Medicaid. Because every student requiring speech therapy is entitled by law to receive these services, the DOE must provide the services regardless of its ability to claim Medicaid for them. There is, according to the DOE, a persistent shortage of SLPs, so it must continue to use speech teachers to meet service needs. The Department estimates roughly 50-60 percent of speech teachers are Speech-Language Pathologists.⁵² Changes in credentialing requirements for physical therapists, occupational therapists, and counselors as previously discussed have resulted in similar impediments to maximizing Medicaid revenue.

Documentation Requirements

In order to claim Medicaid reimbursement for services rendered, the Department must keep on file certain documentation for each service. Documentation of provider information includes the certification and/or licensure for all service providers, “Under the Direction of” (UDO) documentation, and the Provider Agreement and Statement of Reassignment, which is completed by outside contractors.⁵³ UDO documentation is necessary when the individual providing services must operate under the direction of a more qualified provider, as discussed earlier.

The Provider Agreement and Statement of Reassignment are used for private providers. The DOE uses private contracted service providers to meet students’ needs for related services. The providers cannot bill Medicaid directly, but the Department can claim Medicaid for eligible students

⁵² NYCDOE, meeting with NYC Council staff, February 9, 2012

⁵³ NYSED, *SSHSP Billing/Claiming Guidance*, September 2010, accessed at http://www.oms.nysed.gov/medicaid/billing_claiming_guidance/BILLING_Claiming_guidelines_sept_2010.PDF

with proper documentation. The Provider Agreement aims to ensure that all service providers under contract with the school district comply with rules and regulations so the Department can receive Medicaid reimbursement for those services.⁵⁴ The Statement of Reassignment reassigns Medicaid reimbursements to the school district so that providers cannot legally bill Medicaid directly.⁵⁵

Student information that must be kept on file includes the referral to the Committee on Special Education (CSE) or Committee on Preschool Special Education (CSPE), the IEP, consent for release of information, referrals or orders for services as required, and special transportation with medical need documented in the IEP, when applicable.

Parental Consent Form

The parental consent for release of information is required under the 1974 Family Educational Rights and Privacy Act (FERPA), which requires that local education agencies (LEAs) obtain written and signed “parental consent prior to disclosing personally identifiable student information maintained in a student’s education records.”⁵⁶ When the U.S. DOE reauthorized the Individuals with Disabilities Education Act (IDEA) in 2004 it required that, effective in 2006, “LEAs must obtain parental consent ‘each time’ access to a student’s Medicaid benefits is sought.”⁵⁷ “Each time” means that parental consent must be obtained at least annually, as well as any time during the year that the student’s services increase.

The DOE seeks parental consent from families of all students receiving services listed on their IEP so as to not disclose Medicaid eligibility to school teachers, service providers, and others. The DOE discussed several opportunities to obtain parental consent to bill Medicaid. The first point is at the

⁵⁴ NYSED, *Provider Agreement*, accessed at http://www.oms.nysed.gov/medicaid/billing_claiming_guidance/

⁵⁵ NYSED, *Statement of Reassignment*, accessed at <http://www.oms.nysed.gov/medicaid/resources/>

⁵⁶ NYSED, *Parental Consent* link?

⁵⁷ *Id.*

student's evaluation for an IEP. Parents must sign a consent form for their child to undergo an evaluation to determine whether he or she needs an IEP, and the DOE simultaneously seeks parental consent for Medicaid billing. The Department is also initiating a pilot in which it will attempt to collect consent forms before the school begins providing services to an IEP student, when parents are informed of the results of the IEP evaluation, the implications, and the forthcoming process. Lastly, the DOE sends the consent form and letter of explanation home to parents at some point prior to billing Medicaid.⁵⁸

The U.S. DOE has since proposed a revision to the parent consent requirements. Parental consent to bill Medicaid would still be required under the proposed revision, but the frequency of obtaining parental consent would not be dictated, which is consistent with FERPA. Therefore, LEAs would only have to obtain parental consent one time instead of annually. LEAs would, however, have to provide parents with a one-time written notification prior to filing for Medicaid. In addition, the proposed revision specifies certain information that must be provided to parents for "informed" consent to ensure parents are fully aware of their rights and all protections regarding access to public benefits or insurance.⁵⁹

Because the Medicaid claim form does not meet the IDEA parental consent requirements, the DOE must independently obtain parental consent to file for Medicaid reimbursement for students receiving Medicaid reimbursable services. The Department must provide services documented on a student's IEP regardless of whether the parent or guardian signs a consent form that would enable the Department to submit a claim for reimbursement. The DOE claims a 64 percent response rate⁶⁰ for parental consent forms, which leaves services for a third of otherwise Medicaid-eligible students out of the pot of potential revenue.

⁵⁸ NYCDOE, meeting with NYC Council, February 9, 2012

⁵⁹ NYSED, *Parental Consent* link?

⁶⁰ NYCDOE, meeting with NYC Council Staff, February 9, 2012

Advocates have suggested several reasons why parents do not consent to the Department billing Medicaid for their child's related services. First, some children do not get the services documented on their IEP.⁶¹ An audit conducted by the Office of the New York City Comptroller concluded that 24 percent of students are not receiving related services as indicated on their IEP.⁶² Advocates say that parents feel there is no reason to give their personal information to the DOE without any assurance that service provision will improve, and the Department has not given them any such reassurance.⁶³

In addition, advocates and parents say there is little guidance, explanation, or assurance for parents when they receive the letter and form, leading to confusion and suspicion, even for well-educated parents. There is also a concern that allowing the DOE to collect Medicaid for services provided to a student may prevent a child from receiving services outside of the school setting, or may make services received outside of the school setting ineligible for Medicaid reimbursement. In addition, some parents worry that a cap on services or costs could be implemented at any time, especially given the current Medicaid redesign efforts in New York State that aim to reduce state spending on Medicaid.⁶⁴ If the DOE can bill Medicaid for a student when there is a cap on services or costs, it is more likely that cap will be reached and the parents would then have to pay out of pocket for any additional, non-SSHSP Medicaid expenses. Parent groups and coalitions find themselves unable to offer guidance and advice to parents because of the confusion and lack of reassurance for such concerns, so parents might decide to err on the side of caution and not to return the consent form.⁶⁵

⁶¹ Advocates, conversations with NYC Council staff, February 17, 2012

⁶² Office of the New York City Comptroller, "Audit Report on the Procurement of Direct Student Services by the Department of Education," January 24, 2012 accessed at http://www.comptroller.nyc.gov/bureaus/audit/PDF_FILES_2012/FK10_147A.pdf

⁶³ Advocates, conversations with NYC Council staff, February 17, 2012

⁶⁴ NYS DOH, *Redesigning New York's Medicaid Program*, http://www.health.ny.gov/health_care/medicaid/redesign/

⁶⁵ Advocates, conversations with NYC Council staff, February 17, 2012

In many cases parents refuse to sign parental consent forms because based on past experiences, they simply do not trust the Department in general. Also, some parents, largely immigrants, may be weary of sharing an identifying government-issued identification number with the DOE.⁶⁶

Contemporaneous Session Notes

Finally, because the claiming process is now encounter-based, each encounter in which a student receives Medicaid-eligible services must have the following documentation in order for the Department to file a claim: student's name; whether the service was provided individually or in a group; the setting in which the service was rendered; date and time the service was rendered; a brief description of the student's progress made by receiving the service during the session; and the name, title, signature, and credentials of the person furnishing the services and signature/credentials of the supervising clinician as appropriate.⁶⁷

Session notes have also proven to be a cumbersome task for service providers, according to the United Federation of Teachers whose union members include psychologists and speech, occupational, and physical therapists, among others. Completing session notes is very time-consuming, yet service providers are not allowed to complete them during student sessions and the DOE lacks clerical staff to provide assistance. Nor does the DOE provide specific time during the workday or pay for extended time for providers to complete the notes.

SEGIS

The Special Education Student Information System, or SEGIS, is a web-based electronic record-keeping system that was developed for the DOE to track compliance with IEP mandates. SEGIS includes

⁶⁶ *Id.*

⁶⁷ NYSED, *SSHSP Billing/Claiming Guidance*, September 2010 link?

elements to capture data that is necessary for billing Medicaid. It includes an electronic version of the State IEP as well as features to record information pertaining to service encounters with students, such as setting, service type, start and end time, group size, service location, and session notes, all of which must be kept on file to claim Medicaid.⁶⁸ SESIS rolled out citywide during the 2010-2011 school year. It is also used by private providers who have contracts with the DOE to provide services.

Though SESIS was created to improve data collection, numerous users have reported technical issues that have not yet been resolved. Many users have reported that the “session notes” application simply does not work. Users are unable to write session notes in and store them in SESIS. This is problematic for obvious reasons, since session notes are required for billing Medicaid. In addition, the system often fails to operate properly when too many users log in at one time. Because the system tracks students, appointments, and service encounters, service providers must access the system throughout the day. Their inability to access student information when they need it continues to be problematic.

Medicaid Revenue

Prior to the 2005 federal audit, New York City’s Medicaid claims for public school students totaled approximately \$100 million annually, as illustrated in Table 2.⁶⁹ The City was able to claim for the ten services eligible under the State Medicaid Plan today, in addition to targeted case management. The DOE has stated that approximately \$35 million of the revenue was reimbursement for targeted case management claims. Medicaid claims dropped significantly in Fiscal 2006. During this transition period between the federal audit and the SPA, the City only submitted claims for targeted case management. The City collected no revenue from Medicaid in Fiscal 2009. As previously stated, improper

⁶⁸ NYCDOE, *Special Education Student Information System Project: SESIS Encounter Attendance*, November 2011, accessed at http://schools.nyc.gov/NR/rdonlyres/EA68478F-896E-4384-A979-1561D112FD83/0/SESISEncounterAttendance_Nov2011.pdf

⁶⁹ NYCDOE, *Financial Status Report*, October 2002-2012, some accessed at <http://schools.nyc.gov/Offices/DBOR/FSR/default.htm>

documentation forced the DOE to return \$82,000 in claims for that fiscal year.⁷⁰ In Fiscal 2010 the DOE was reimbursed \$8.5 million from Medicaid, about half of what it had received two years prior. As previously indicated, the federal share of Medicaid temporarily increased during this time. According to the Department, the City saw only about 25 percent of the total revenue from Medicaid claims as a stipulation of the compliance agreement – usually the City receives half of the total revenue.

TABLE 2											
Medicaid Revenue FY 2002 - FY 2012											
<i>Dollars in thousands</i>											
	Fiscal Year										
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Revenue*	\$102,874	\$120,874	\$102,874	\$98,394	\$17,000	\$17,000	\$13,297	-	\$8,500	\$17,000	\$25,164
* Revenue in FY 2002 - FY 2011 is year-end close. Revenue in FY 2012 is the actual amount as of 11/30.11.											
Source: Department of Education, Financial Status Reports, October Year-End Close FY 2002 - FY 2012 and December 2011											

As noted at the outset, the City failed to recover tens of millions of dollars in Medicaid reimbursements between 2006 and 2010. A spokesperson for the DOE stated that the Department did not have the staff or training to manage the more demanding requirements at that time, and it lacked proper documentation that was necessary to make additional claims.⁷¹ The DOE has also suggested that during the transition period between the 2005 audits and SPA in 2010, there was little guidance from the State regarding the numerous, frequent changes to policies and procedures.

Beginning this fiscal year the DOE aims to increase its much-needed Medicaid revenue. Because of the State’s decision in April 2011 to allow districts to again begin submitting claims for currently eligible SSHSP services and retroactive target case management, the City’s Fiscal 2012 Budget includes an additional \$100 million in Medicaid revenue for Fiscal 2012 and the out-years. The additional \$100

⁷⁰ NYSDOH OMIG, Final Audit Report, “Review of New York City Department of Education Claims for School Supportive Health Services Program Services Paid from January 1, 2009 – December 31, 2009,” April 6, 2011

⁷¹ Santos, Fernanda, “City Schools Missing Out on Aid for Special Needs,” *The New York Times*, December 28, 2011

million in revenue increased the baseline projection to \$117 million, which had included only \$17 million in the Fiscal 2012 Preliminary Budget.⁷² The DOE's projection includes revenue from targeted case management claims for services prior to June 30, 2010; prior year claims for speech between September 2009 and June 2001; and speech therapy, occupational therapy, physical therapy, and nursing services on or after September 1, 2009.⁷³

The Department's revenue estimate is largely based on its revenue prior to the federal audits, which was between roughly \$100 million and \$120 million from 2002 to 2004, as seen in Table 2. Because the DOE had limited data available to make a strong projection, the estimate is very susceptible to deviation and it is difficult to know at this time how accurate the Medicaid revenue projections are. The DOE, however, did provide some detail on how it used the available data to loosely demonstrate revenue estimates for various related services.

According to the DOE, in order to project revenue from the latter group of services (speech therapy, occupational therapy, physical therapy, and nursing services), the DOE used several estimates such as the number of students receiving services, the percent of these students that are Medicaid-eligible, percent of service providers holding credentials necessary for claiming, percent of required medical prescriptions or orders, the rate of IDEA parent consent form collection, the number of service sessions per student per year, and session fees.⁷⁴ For each of these services the DOE estimated 55 percent of students receiving services would be Medicaid-eligible, and 60 percent of these qualifying students would have on record parent consent forms. The DOE also estimates that approximately one-third of speech therapy services would be delivered by speech language pathologists because there are still many unlicensed speech teachers in the school system. Further, the Department approximated that

⁷² NYC OMB, *FY 2012 Executive Plan Monitors' Briefing Package*, May 25, 2011

⁷³ NYCDOE, Office of Financial Planning and Management, July 2011

⁷⁴ *Id.*

half of occupational therapy and physical therapy services would be accompanied by the required medical prescriptions or orders for filing a Medicaid claim.⁷⁵

As of November 30, 2011, the City has collected \$25.2 million in Medicaid revenue in Fiscal 2012, all of which is from retroactive targeted case management claims.⁷⁶ The City is only now preparing to submit its first new claim for nursing services – approximately 17,000 “units”; each unit is 15 minutes of service. It is unclear how the Department intends to meet its \$117 million revenue estimate in Fiscal Years 2012 and 2013.

The Department has not adjusted its Medicaid revenue projections for public school students since first presented in the Fiscal 2012 Executive Budget despite being eight months into the fiscal year. However, the Department is currently working to adjust the estimates and has suggested, for example, that economic trends indicate there will likely be a greater number of Medicaid-eligible students than originally projected. However, it will be difficult to know the accuracy of the projections and correct them for future years until the DOE receives reimbursements.

The DOE indicated its intention to collect Medicaid for students enrolled in contract schools with the release of the November 2011 Financial Plan. The Fiscal 2013 Budget includes an additional \$50 million in Fiscal 2013 and the out-years for Medicaid revenue for students enrolled in non-public schools.⁷⁷ For the first time, the DOE will attempt to claim Medicaid for qualifying students in contract schools. As illustrated in Table 1 on page 6, in Fiscal 2011 the City spent \$321 million to send nearly 37,500 students with severe disabilities to in-state and out of state contract schools.⁷⁸ Contract schools are very costly, as they often provide services such as 24-hour nursing, 24-hour on-call physicians, and administration of prescription medication, in addition to extensive counseling and therapy services. The

⁷⁵ *Id.*

⁷⁶ NYC Independent Budget Office, *Medicaid Revenue Trends*, January 5, 2012 link?

⁷⁷ NYC OMB, *November 2011 Plan*, “Agency Gap Closing Programs,” November 18, 2011

⁷⁸ NYC DOE, *Data About Schools: Register*, <http://schools.nyc.gov/AboutUs/data/stats/Register/default.htm>

cost also includes instructional supports, in some cases residential services, and other service areas⁷⁹ separate and apart from related services that qualify for Medicaid reimbursement.

The Department has not tried to claim Medicaid for these students and has not demonstrated how it arrived at the \$50 million projection. Since contract schools are designed for students with disabilities, the DOE has suggested that compared to public schools' providers, a higher percentage of service providers at contract schools likely have adequate credentials that meet Medicaid requirements. Likewise, the availability of licensed medical providers might result in a higher rate of Medicaid compliance for medical prescriptions and referrals.

DOE's Efforts to Increase Medicaid Revenue

In addition to its efforts to bill Medicaid for contract school students, the Department has taken several steps to increase its Medicaid revenue, which it discussed in a meeting with New York City Council staff. As previously stated, the Department's new data management system called SESIS is specifically designed to electronically capture and maintain much of the documentation required for claiming Medicaid reimbursement. The DOE has hired additional staff to work on submitting claims and partnered with the Human Resource Administration (HRA) for assistance billing Medicaid and maximizing the potential revenue pool. HRA assists the DOE with quality assurance for submitting claims, identifies students that are Medicaid-eligible, and identifies service providers that are on the provider exclusion list whose services are not eligible for Medicaid.⁸⁰

The DOE has also worked toward attaining more service providers that have the credentials necessary under SSHSP. District 75 operates a speech clinical fellowship that enables speech teachers to become licensed SLPs. However, it does not have data regarding the number of occupational and

⁷⁹ NYCDOE, *Local Law 68 of 2009 – Billy's Law Reporting*, February 1, 2012

⁸⁰ NYCDOE, meeting with NYC Council staff, February 9, 2012

physical therapists meeting Medicaid requirements, so it is building an internal data system to collect this type of information. The Department has also increased its efforts to recruit more licensed service providers, including contracted providers who typically have the license and/or certification required for Medicaid.⁸¹

As previously mentioned, the DOE projected Medicaid revenue based on 50 percent prescription compliance. A few months ago a pilot program was implemented by the DOE and Department of Health and Mental Hygiene (DOHMH) with the goal of increasing the number of prescriptions and orders that must be kept on file to claim Medicaid. The pilot entails 25 doctors working through DOHMH part-time in schools to write prescriptions, which includes providing diagnosis, for IEP students. Though the DOE has not provided a list of schools in the pilot, Department staff said they chose schools that have large numbers of Medicaid-eligible students requiring Occupational and Physical Therapy services.⁸²

Another planned pilot, which has not yet been implemented, involves the DOE reimbursing parents for independently obtaining prescriptions or referrals from doctors.⁸³ This would potentially broaden the pool of eligible service encounters while minimizing the additional burden on the Department.

Conclusion

Despite its efforts to increase its federal revenue from Medicaid, additional steps must be taken for the Department to fully capitalize on this funding source. The Department plans to submit new claims for speech therapy, occupational therapy, and physical therapy, but there are other services it can collect reimbursement for: psychological evaluation, psychological counseling, medical evaluation, specialist medical evaluation, audiological therapy, and special transportation. It is unclear what the

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

potential Medicaid revenue from these services is or when, if ever, the DOE intends to submit claims for them. The DOE has explained the change in credentialing requirements as a difficulty impeding Medicaid claiming for psychological services, but it has not discussed issues pertaining to the other services.

In addition, it is unclear what the Department has done to address concerns of parents and service providers. Until the DOE improves its service delivery to special education students and builds trust with parents, it will have difficulty increasing its rate of parental consent and will continue to forego potential Medicaid revenue. Likewise, service providers have the most in-depth knowledge of the successes and failures of the DOE's strategies to improve Medicaid claiming. The Department must incorporate their feedback to adjust its efforts as unforeseen problems arise to maximize the effectiveness and efficiency of its Medicaid claiming plan.

Though the Department can take additional steps to work within the current federal and state Medicaid guidelines, the design of Medicaid in education as a medical model is inherently problematic and will likely continue to encumber districts' abilities to maximize federal Medicaid revenue. The DOE and the Administration have not developed a federal or state legislative agenda to address its concerns regarding contemporaneous session notes, credentialing requirements, parental consent, and other policies it finds problematic to the Medicaid claiming process.

The DOE is still adapting to the numerous policy modifications made over the past several years that affect the Medicaid claiming process. As it does, it is important to understand what the Department is doing to adjust to these changes and the impacts of these adjustments on the students, service providers, parents and schools, as well as the much-needed federal Medicaid revenue.

**Preschool/School Supportive Health Services Program (SSHSP)
Provider Qualifications and Documentation Requirements**

NOTE: To be Medicaid reimbursable services must be: signed, dated and delivered by an approved Medicaid service provider¹ acting within his/her scope of practice; the encounter must be documented to support Medicaid claims; and it must be included in the IEP. Supporting documentation must be retained for a minimum of six (6) years from the date the service was furnished or billed, whichever is later.

SERVICES ²	ORDERING/REFERRING REQUIREMENTS FOR MEDICAID REIMBURSEMENT	APPROVED MEDICAID SERVICE PROVIDER	DOCUMENTATION REQUIRED FOR EACH ENCOUNTER FOR MEDICAID BILLING PURPOSES
Speech Therapy	Signed/dated written order or referral from a physician, physician assistant, nurse practitioner or speech-language pathologist (SLP) who is currently licensed, registered and/or certified as required Written order/written referral included in student's record	Currently licensed and registered SLP or a certified teacher of the speech and hearing handicapped (TSHH)/certified teacher of students with speech and language disabilities (TSSLD) operating under the direction of a licensed and registered SLP	Evaluation: Reports ³ Ongoing Therapy: Contemporaneous Session Notes ⁴
			Evaluation: Reports ³
Physical Therapy	Signed/dated written order or referral from a physician, physician assistant, or nurse practitioner who is currently licensed, registered and/or certified as required Written order included in student's record	Currently licensed and registered physical therapists ⁵ or a certified physical therapy assistant (PTA) operating under the direction of a licensed and registered physical therapists ⁵	Ongoing Therapy: Contemporaneous Session Notes ⁴
Occupational Therapy	Signed/dated written order or referral from a physician, physician assistant, or nurse practitioner who is currently licensed, registered and/or certified as required Written order included in student's record	Currently licensed and registered occupational therapist or a certified occupational therapy assistant (OTA) operating under the direction of a licensed and registered occupational therapist	Evaluation: Reports ³ Ongoing Therapy: Contemporaneous Session Notes ⁴
Psychological Counseling	Referral by an appropriate school official, such as a school administrator or the chairperson of the CSE/CPSE or other licensed practitioner acting within his/her scope of practice Referral included in the student's record	Currently licensed and registered psychiatrist, psychologist, licensed clinical social worker (LCSW) or licensed master social worker (LMSW) operating under the supervision of a licensed and registered psychiatrist, psychologist or LCSW	Ongoing Therapy: Contemporaneous Session Notes ⁴
Skilled Nursing	Signed/dated written order or referral from a physician, physician assistant, or nurse practitioner who is currently licensed, registered and/or certified as required Written order included in student's record	Currently licensed and registered professional nurse (RN) or currently licensed and registered practical nurse (LPN) supervised by an RN, a physician, or other licensed and registered health care provider in accordance with the Nurse Practice Act	Medication Administration: Medication Administration Record (MAR)
			Other Services: Contemporaneous Session Notes ⁴

Appendix I

Appendix I (continued)

NOTE: To be Medicaid reimbursable services must be: signed, dated and delivered by an approved Medicaid service provider¹ acting within his/her scope of practice; the encounter must be documented to support Medicaid claims; and it must be included in the IEP. Supporting documentation must be retained for a minimum of six (6) years from the date the service was furnished or billed, whichever is later.

SERVICES ²	ORDERING/REFERRING REQUIREMENT'S FOR MEDICAID REIMBURSEMENT	APPROVED MEDICAID SERVICE PROVIDER	DOCUMENTATION REQUIRED FOR EACH ENCOUNTER FOR MEDICAID BILLING PURPOSES
Psychological Evaluation	Referral by an appropriate school official, other official, or other licensed practitioner acting within his/her scope of practice Referral included in the student's record	Currently licensed and registered psychiatrist or psychologist	Evaluation: Report ³
Medical Evaluation	Referral by CSE/CPSE documented as part of the IEP process	Physician, physician assistant or a nurse practitioner who is currently licensed, registered and/or certified as required	Evaluation: Report ³
Medical Specialist Evaluation	Signed/dated written order from a physician, physician assistant or nurse practitioner who is currently licensed, registered, and/or certified as required Written order included in student's record	Physician, physician assistant or a nurse practitioner who is currently licensed, registered and/or certified as required	Evaluation: Report ³
Audiological Evaluation	Signed/dated written order from a physician, physician assistant or nurse practitioner who is currently licensed, registered, and/or certified as required Written order included in student's record	Currently licensed and registered audiologist having a certificate of clinical competence (CCC) from the American Speech-Language-Hearing Association (ASHA)	Evaluation: Report ³
Special Transportation	CSE or CPSE must identify special transportation needs; must be indicated on the IEP; and billed only on a day that a Medicaid reimbursable service (other than transportation) was delivered, at the rate for each one-way trip	A vendor lawfully authorized to provide transportation services on the date the services are rendered	Transportation logs must be maintained for each one-way trip

- ¹ Provider licenses, registrations and certifications must be on file prior to submitting claims for Medicaid reimbursement.
- ² "Services" include evaluations, therapy sessions, medication administration and other skilled nursing services, and special transportation.
- ³ If the evaluation is used to identify a student's health related needs, it must be reflected in the IEP in order to be Medicaid reimbursable.
- ⁴ Contemporaneous Session Notes: Providers must prepare and maintain contemporaneous records that demonstrate the provider's right to receive payment under the Medicaid program [Social Services Law 18 NYCRR Section 504.3(a)]. "Contemporaneous" means as close to the conclusion of the session as practicable.
- ⁵ Having graduated from a Commission on Accreditation in Physical Therapy Education (CAPTE) approved program.

Source: New York State Education Department, August 2011, accessed at http://www.oms.nysed.gov/medicaid/billing_claiming_guidance/prov_doc_requirements_aug2011.pdf