

JOINT TESTIMONY
DEPARTMENT OF EDUCATION & DEPARTMENT OF PUBLIC WELFARE
PDE ACTING SECRETARY CAROLYN DUMARESQ
DPW SECRETARY BEV MACKERETH

HOUSE EDUCATION COMMITTEE & HOUSE HEALTH COMMITTEE
PUBLIC HEARING ON SCHOOL-BASED ACCESS PROGRAM

Wednesday, May 7, 2014

Good morning Chairmen Clymer, Baker, Roebuck, and Fabrizio. Thank you for the opportunity to testify today regarding Pennsylvania's "School Based ACCESS Program (SBAP)." My name is Carolyn Dumaresq and I serve as the Acting Secretary of the PA Department of Education (PDE). Testifying with me today is Bev Mackereth, Secretary of the PA Department of Public Welfare (DPW). We also have seated with us Pat Hozella who serves as PDE's Director of Special Education, along with Leesa Allen who is DPW's Executive Director of Medicaid Services.

The SBAP has received significant attention over the last few months from school districts and intermediate units. Several recent issues occurred in the SBAP that resulted in questions and concerns from stakeholders, including; new eligibility rules for federal Medicaid payment, cases of delayed payment, transitional issues with a new vendor, questions on the process used to comply with federal requirements involving Third Party Liability (TPL), and other general concerns with SBAP operations.

PDE and its vendor – Public Consulting Group (PCG) – along with DPW, the PA Insurance Department, and the Governor's Office have dedicated considerable time and resources over the last few months to address the concerns expressed from stakeholders. We are pleased to be here today to provide information to both the House Education Committee and the Health Committee on the SBAP, the status and scope of the issues that have been under review, the efforts of the Commonwealth to address the concerns we've heard, and to provide the committees and the general public with information on how the Commonwealth plans to move forward to address any remaining issues.

First, let me briefly describe what the SBAP is. This program allows Local Education Agencies (LEAs) to enroll as Medicaid providers and receive federal Medicaid payments for certain health-related services provided to Medicaid-eligible students with disabilities in accordance with an individualized education plan (IEP), when provided by qualified personnel. The program relies on federal Medicaid money; therefore, the requirements for the operation and funding of the program come from the federal government, primarily through the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS).

Before we start addressing some of the questions and concerns recently raised about the SBAP, we wanted to make sure the committees were aware of the total payments that have been made to LEAs under SBAP. For FY 2012-13, LEAs have received over \$88 million. For FY 2013-14, the LEAs have already received over \$42 million with additional claim submission and processing underway. As these numbers indicate, a significant portion of available dollars have already been paid to the LEAs under SBAP. We believe it is important to keep this frame of reference in mind when we speak to some of the specific details around recent programmatic changes and federal payments under SBAP. Additionally, it should be noted that both PDE and DPW are committed to ensuring that LEAs receive payment for appropriately billed and delivered SBAP services and are working with PCG to ensure this happens.

Although Pennsylvania's SBAP has been in place since the 1991-1992 school year, the level of interest and inquiry about this program has increased over the last two years for several reasons. First, in January 2012, the federal government through CMS performed a financial management review of the SBAP. Through this review, several issues were identified and we have made considerable efforts to come into compliance in order for us to continue to receive federal Medicaid funds for the program.

In addition to the January 2012 federal review, calendar year 2012 was also the first year of PCG's contract with PDE to serve as the new statewide vendor to assist LEAs with administering the SBAP. As the statewide vendor for the program, PCG was required to immediately implement the changes and action steps required as a result of the federal review. Thus, the transition issues one might expect to encounter when changing vendors were compounded by the fact that the entire SBAP was experiencing significant programmatic changes to ensure compliance with federal requirements and the results of the federal review by CMS.

One of the most significant changes that occurred and had to be managed by the new vendor was a decrease in the categories of services that were previously eligible for reimbursement from the federal government. Thus, as a result of the federal review, certain services were deemed no longer eligible for federal Medicaid payment through the SBAP. The most significant services that were no longer eligible for federal Medicaid payments were the development and revision of the IEPs for students with disabilities and time with parents and teachers not spent delivering services to a student. Another significant change was related to the methodology used to determine rates for SBAP health-related services. The new rate methodology required federal review and approval. Neither the Commonwealth nor its vendor had any control over the federal decrease in services eligible for payment under the SBAP, but we worked collaboratively to implement the required changes to the SBAP rate methodology so that we would remain in compliance. Because these changes may be confusing and do have an impact, the state agencies and PCG have spent over a year educating LEAs about the decrease in services eligible for payments and the new rate methodology requirements. We believe most LEAs now understand that

the changes to the SBAP were the result of the federal review, and are not the fault of the vendor or the Commonwealth.

In addition to the changes required as a result of the federal financial management review, the Commonwealth identified a need to obtain additional information from third party insurance companies regarding the coverage of some SBAP services. Under federal Medicaid law, Medicaid is to be the “payer of last resort” and states must first determine if private third party insurance companies cover health-related services listed on a student’s IEP and delivered on-site at the school before Medicaid payment is made for that service. This has always been a federal requirement for SBAP. After the federal review, the Commonwealth required a completed TPL form/letter from all insurance companies that were identified as serving SBAP-eligible families.

The Commonwealth believes the process to collect TPL information is needed to ensure compliance with federal regulations and to provide the Commonwealth with the necessary documentation to support federal payment for SBAP claims. We recognize that the collection of these forms from some insurers, especially those operating outside of Pennsylvania, has been difficult and has resulted in some delays in payment of federal funds to LEAs. Many of the recent inquiries our two departments have received, along with inquiries sent to the General Assembly during the last few months, were in regards to the issues surrounding the collection of TPL forms and the status of payments where TPL forms had not yet been received.

Both PDE and DPW recognized this concern and have worked collaboratively over the past several months with the Governor's Office, the PA Department of Insurance and PCG to secure as many TPL forms as possible from insurers. This process has included multiple forms of communication being sent to the insurance industry both within Pennsylvania and externally to other states. These communications have taken place over several months and repeated attempts were made on multiple occasions to those companies where no TPL coverage information was received.

We are pleased to report significant progress was made from these efforts. We have subsequently received TPL information from all of the major Pennsylvania-domiciled insurers as well as many TPL forms from out-of-state insurers. As of the end of April 2014, we have received completed TPL information from insurance carriers that represent over 68% of the total claims that require TPL. Furthermore, it is important to note that most of the remaining carriers that have not yet submitted TPL information are generally smaller carriers and/or out-of-state companies that cover a very small share of the Pennsylvania market. Although we recognize some LEAs and members of the General Assembly located near border communities with other states still may have a larger percentage of federal payments outstanding due to TPL issues, it is important to note that the efforts of the Commonwealth over the last few months have resulted in a large reduction in the amount of federal payments outstanding – we believe that most districts should not currently have significant outstanding federal payments due to lack of the necessary TPL information.

We would be remiss not to use this opportunity to not only thank the staff of our two departments, the Governor's Office and the PA Department of Insurance for their efforts to get us to this point, but we

would also like to publically thank the Pennsylvania insurance industry for responding accordingly to our calls and letters to them on this issue and for their cooperation in securing TPL coverage information about SBAP services. We recognize there still is a gap regarding the remaining small-carriers and out-of-state carriers. Closing this gap as soon as possible is our top priority and is where our immediate efforts are now focused.

Most of the recent communication we have seen to the General Assembly over the last few weeks is in regards to several questions on the remaining gap. The three primary questions we have seen are:

- 1) What will the Commonwealth do to ensure federal payments are made to schools where TPL information has not yet been received from an insurance carrier?
- 2) Is there a deadline for the remaining TPL information to be received and claims processed for school years 2012-13 and 2013-14?
- 3) What will the Commonwealth do to avoid this problem next year and in future years?

We are pleased to report solutions have been developed in response to all of these questions.

- First, for school years 2012-13 and 2013-14, we have started the process to send a final written communication to all insurers for whom we have not yet received confirmation of TPL coverage information. This final written communication will request insurers to confirm our understanding that they do not provide coverage for the identified SBAP services when provided by LEAs. The letter also states that their non-response to this final request will serve as their official response to the Commonwealth that they do not provide coverage for these services. Once this notification process is complete, all remaining eligible claims will be processed.

- Second, although some deadlines were initially given by the contractor for the submission of 2012-13 claims in order for the vendor to proceed with the rate setting methodology, we have subsequently instructed the contractor to continue to process claims as we finalize the issues with remaining TPL information. Thus, no current deadline exists.
- Finally, the Commonwealth will resolve this issue in the future by sending letters to the identified commercial carriers for next school year to confirm that the submissions of TPL coverage information for the previous year remains the same for the coming school year.

We believe these solutions will put the Commonwealth on a clear path to solve the current concerns regarding TPL and SBAP. We would again like to thank the chairmen and members of these two legislative committees for the opportunity to testify today and give this update to the General Assembly, schools and the general public on this important issue. We look forward to your question.