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Dr. Charlie Silva  
Special Education Director  
Idaho State Department of Education  
P.O. Box 83720  
Boise, ID 83720-0027

**RE: Position Paper: Medicaid School-Based Services – 34 CFR §300.154 Requirements**

Dear Dr. Silva:

You have asked me to conduct research regarding the compliance requirement of 34 CFR §300.154 as this section of the Code of Federal Regulations relates to the Department of Health and Welfare Medicaid Provider Agreement (MPA) with individual school districts. Further, you have asked me to provide you with a Position Paper that includes an analysis and clarification as to whether 34 CFR §300.154 meets the federal requirement for an Interagency Agreement. This Position Paper is a follow-up to the Amended Position Paper: Medicaid School-Based Services provided to Dr. Bonnie Gallant, Interim Special Education Director, dated December 23, 2014.

**I. Analysis of 34 CFR §300.154**

In responding to this request, it is necessary to analyze the requirements set forth 34 CFR §300.154. This section provides that the chief executive officer (*i.e.*, Idaho’s governor) or his designee must ensure that “an interagency agreement or other mechanism for interagency coordination” is in effect between each noneducational public agency (DHW) and the State Education Agency (SEA). In Idaho, the SEA is the Idaho State Department of Education (SDE).<sup>1</sup> The interagency agreement or other mechanism for interagency coordination is required to ensure that all special education services or related services needed for the provision a free appropriate public education (FAPE) are provided.

The interagency agreement or other mechanism for interagency coordination must include the following information:

<sup>1</sup> The SEA is the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools. 34 CFR §300.41.

1. An identification of or a method for defining the financial responsibility of each agency for providing special education or related services necessary for FAPE. The financial responsibility of each noneducational public agency, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the Local Education Agency (LEA).<sup>2</sup>
2. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies;
3. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.
4. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of special education or related services necessary for FAPE.<sup>3</sup>

A special rule<sup>4</sup> provides that the requirements for an interagency agreement or other mechanism for interagency coordination can be met through the following:

1. State statute or regulation; or
2. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services;<sup>5</sup> or
3. Other appropriate written methods determined by the Governor or his designee, and approved by the Secretary of the U.S. Department of Education.<sup>6</sup>

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<sup>2</sup> In Idaho, Local Education Agencies are school districts or charter schools that operate independently of any district and report to the Idaho Public Charter School Commission. IDAPA 08.02.03.117.01.c.

<sup>3</sup> 34 CFR §300.154(a).

<sup>4</sup> 34 CFR §300.154(c).

<sup>5</sup> “Respective agency officials” is not defined in the federal regulations. The regulations do not appear to limit the definition of agencies to only the DHW and the SDE. Agency officials could also be officials of LEAs. 34 CFR §300.28.

<sup>6</sup> The mechanism of other appropriate written methods determined by the Governor or designee, and approved the Secretary of the U.S. Department of Education will not be discussed further in this Position Paper, as no request for approval has been submitted.

## **II. Analysis of Existing Interagency Agreements**

As stated above, one means by which to meet the requirements for an interagency agreement or other mechanism for interagency coordination is through signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services. The term “respective agency officials” is not defined in the federal regulations. The regulations do not appear to limit the definition of agencies to only the DHW and the SDE; “respective agency officials” could also be officials of LEAs.<sup>7</sup>

Currently, two different agreements exist that pertain to the payment of special education or related services with Medicaid funding. One of these agreements is between a school district or charter school as a provider of Medicaid reimbursable school-based services, and the other agreement is between the DHW and the SDE. Each of these two agreements is discussed below.

### **A. Idaho Department of Health and Welfare Medicaid Provider Agreement (MPA)**

Idaho school districts and charter schools wishing to access Medicaid funding for school-based services are required to meet the provider requirements and sign a Medicaid Provider Agreement (MPA) with the DHW.<sup>8</sup> The MPA is the same for all qualified providers, including Idaho school districts and charter schools. The SDE is not a party to the MPA, as the SDE is not providing services to students. The MPA is solely between the identified school district or charter school and the DHW.

The MPA between each Medicaid provider and the DHW specifically states that the provider is agreeing to provide services in accordance with all applicable federal laws and provisions of statutes, state rules and federal regulations governing reimbursement, as well as the current Medicaid Provider Handbook, any additional terms set forth in the Agreement, and any instructions set forth in provider information releases or other program notices.

### **B. Existing Memorandum of Understanding between the SDE and the DHW**

A Memorandum of Understanding Related to School-Based Medicaid between the Idaho State Department of Education and the Idaho Department of Health and Welfare (MOU), dated November 3, 2014, is currently in place. The purpose of the MOU “is to define and clarify the responsibilities of each agency to ensure a coordinated, comprehensive service delivery system focused on students, age 3-21, who meet qualifications for IDEA and Medicaid School-Based services.” The SDE is identified in the MOU as the lead state agency for the provision of FAPE to students ages 3-21 who are eligible for special education services. The DHW is identified as the lead state agency for the provision of School-Based Medicaid policy development and fiscal reimbursement of eligible school-based Medicaid services.

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<sup>7</sup> 34 CFR §300.28; IDAPA 08.02.03.109.01.d.

<sup>8</sup> 42 CFR 431.107.

The MOU addresses the agencies' commitment to the Medicaid Advisory Committee and their commitment to collaboratively develop a quality assurance and desk review process. Additionally, the MOU addresses professional development for LEA personnel regarding school-based Medicaid rules, policies, and implementation practices.

The MOU also sets forth a procedural protocol. The SDE and the DHW have agreed to collaboratively address implementation concerns to provide cohesive guidance. If the two agencies are unable to reach agreement, the Medicaid Advisory Committee will be consulted for additional guidance. Any questions regarding implementation "shall be resolved in accordance with the rules and written policy of IDAPA regulations governing school-based Medicaid."

### **III. Analysis of Relevant Statutes and Regulations**

As stated above, one means by which to meet the requirements for an interagency agreement or other mechanism for interagency coordination is through State statutes or regulations.<sup>9</sup>

#### **A. Federal Law**

In 1988, Congress amended the Social Security Act to allow school districts to access Medicaid federal funds for certain "health related services," which are medically necessary and which are included in the child's IEP. The language specifically states:

Nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for **medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program** established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act.<sup>10</sup> (Emphasis added).

#### **B. State Statutes**

Idaho Code 33-2002 specifically provides that "[e]ach public school district is responsible for and shall provide for the special education and related services of children with disabilities enrolled therein."<sup>11</sup>

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<sup>9</sup> A more in-depth overview of Medicaid provisions is set forth in the December 23, 2014 Amended Position Paper: Medicaid School-Based Services.

<sup>10</sup> Section 1903(c) of the Medicare Catastrophic Coverage Act of 1988.

<sup>11</sup> The accompanying State rules can be found at IDAPA 08.02.03.109.

### **C. State Administrative Rules**

As set forth in the DHW's rules, IDAPA 16.03.09.850 – 857, school districts may choose to be Medicaid providers and bill for certain Medicaid services provided to students through their IEP, so long as each school district has a signed MPA. The administrative rules address topics relating to school-based services, including participant eligibility, coverage and limitations, procedural requirements, provider qualifications and duties, provider reimbursement, and quality assurance.

### **IV. Legal Analysis of Mandated Requirements Pursuant to 34 CFR §300.154**

The accompanying chart, entitled “Chart Identifying the Criteria for Interagency Agreement or Other Mechanism for Interagency Coordination Pursuant to 34 CFR §300.154,” identifies the federal regulatory requirements, as well as the provisions in the Idaho agreements and Idaho rules, that meet the federal regulatory requirements. The special rule, set forth in 34 CFR §300.154(c), specifically allows the requirements of an “interagency agreement or other mechanism for interagency coordination”<sup>12</sup> to be met through State statute or regulation or by signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services. The chart identifies that all of the requirements are met through existing Idaho agreements and Idaho statutes and rules.

### **V. Conclusion**

The analysis set forth in this letter, along with the accompanying chart, reveals that the requirements for an “interagency agreement or other mechanism for interagency coordination” is met through the Medicaid Provider Agreement. The Idaho statutes and rules, not all of which were specifically identified in the chart, also meet the federal mandate as “other mechanism for interagency coordination.” Further, the Memorandum of Understanding between the DHW and the SDE also addresses portions of the requirements.

Based on my review, I am of the opinion that the provisions of 34 CFR §300.154 have been fully met. No further agreements or other mechanisms are necessary to meet the federal requirements for establishing the responsibility for services under the IDEA and to secure reimbursement for school-based Medicaid services. Please do not hesitate to contact me if you have further questions regarding this matter.

Sincerely,



Elaine Eberharter-Maki  
Attorney at Law

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<sup>12</sup> 34 CFR §300.154(a).

**CHART IDENTIFYING THE CRITERIA FOR  
INTERAGENCY AGREEMENT OR OTHER MECHANISM FOR INTERAGENCY COORDINATION  
PURSUANT TO 34 CFR §300.154(c)**

| 34 CFR §300.154 Requirements   | Special Rule: Idaho Agreements  | Special Rule: Idaho Statutes & Rules <sup>1</sup>  |
|--|---|--|
| <p>1. An identification of or a method for defining the financial responsibility of each agency for providing special education or related services necessary for FAPE.</p>  | <p>MPA: This agreement identifies the financial responsibility of each agency for providing special education or related services necessary for FAPE by referring to the State rules applicable to school-based services provided under the IDEA.</p> <p>MOU: SDE identified as lead State agency for special education and related services and the provision of FAPE.</p> <p>MOU: DHW identified as lead State agency for fiscal reimbursement of eligible school-based Medicaid services</p> | <p>Idaho Code §33-2002 – Responsibility of school districts for education of children with disabilities.</p> <p>IDAPA 08.02.03.109 – Special Education</p> <p>Idaho Special Education Manual 2015</p> <p>IDAPA 16.03.09.850-857 – School-based service</p> <p>IDAPA 16.03.09.880-883 – Early periodic screening, diagnosis, and treatment (EPSDT) services</p> |
| <p>1. (Continued) The financial responsibility of each noneducational public agency, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the Local Education Agency (LEA).</p> | <p>MPA: This agreement identifies the financial responsibility of the State Medicaid agency by referring to the State rules applicable to school-based services provided by Idaho public school districts and charter schools under the IDEA.</p>   | <p>IDAPA 16.03.09.853 – Reimbursable Services</p> <p>16.03.09.856 – School-based service: provider reimbursement</p>   |
| <p>2. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.</p>   | <p>MPA: This agreement identifies the conditions, terms and procedures under which an LEA must be reimbursed</p>  | <p>16.03.09.856 – School-based service: provider reimbursement</p>   |

<sup>1</sup> The identified Idaho statutes and rules are only intended to serve as examples; other statutes or rules that are not identified in the chart may also apply.

**CHART IDENTIFYING THE CRITERIA FOR  
INTERAGENCY AGREEMENT OR OTHER MECHANISM FOR INTERAGENCY COORDINATION  
PURSUANT TO 34 CFR §300.154(c)**

|   |  |   |
|---|--|---|
|   | <p>by the State Medicaid agency by referring to the State rules applicable to school-based services provided under the IDEA.</p> <p>MOU: IDAPA 16.03.09.850-857 is referred to, which sets forth the conditions, terms and procedures under which an LEA will be reimbursed by the DHW.</p>  |   |
| <p>3. Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.</p> | <p>MPA: This agreement identifies the procedures for resolving interagency disputes by referring to the State rules applicable to contested case proceedings and declaratory rulings.</p> <p>MOU: In the event the SDE and the DHW are unable to reach agreement on cohesive guidance addressing district Medicaid implementation concerns, the Medicaid Advisory Committee will be consulted for additional guidance.</p> <p>MOU: IDAPA 16.05.07 is referred to, which addresses provider notification and an LEA’s right to a hearing pertaining to investigation and enforcement of fraud, abuse, and misconduct.</p> | <p>Rule: IDAPA 16.03.09.205.03 – Provider agreement enforcement actions and terminations</p> <p>Rule: IDAPA 16.05.07.280 – Provider notification</p> <p>16.05.03 – Rules Governing Contested Case Proceedings and Declaratory Rulings</p> |

**CHART IDENTIFYING THE CRITERIA FOR  
INTERAGENCY AGREEMENT OR OTHER MECHANISM FOR INTERAGENCY COORDINATION  
PURSUANT TO 34 CFR §300.154(c)**

|  |  |  |
|--|--|--|
| <p>4. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of special education or related services necessary for FAPE.</p> | <p>MPA: This agreement identifies the procedures to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of special education or related services necessary for the provision of FAPE by referring to the State rules applicable school-based services and the provision of health-related and rehabilitative services provided under the IDEA.</p> <p>MOU: Identifies the SDE is the lead agency at the state level for the provision of FAPE and provides oversight to agencies and programs that provide special education under the IDEA.</p> <p>MOU: Identifies the DHW as the lead agency at the state level for the provision of School-Based Medicaid policy development and the fiscal reimbursement of eligible school-based Medicaid services.</p> | <p>Idaho Code §33-2002 – Responsibility of school districts for education of children with disabilities.</p> <p>IDAPA 08.02.03.109 – Special Education</p> <p>Idaho Special Education Manual 2015</p> <p>IDAPA 16.03.09.850-857 – School-based service</p> <p>IDAPA 16.03.09.880-883 – Early periodic screening, diagnosis, and treatment (EPSDT) services</p> |
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