



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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**MEMORANDUM**

**DATE:** April 5, 2024

**TO:** **The Honorable Valerie Longhurst, Debra Heffernan, Melissa Minor-Brown, and Michael Smith, Delaware State House of Representatives**  
**The Honorable Nicole Poore, Delaware State Senate**  
**The Honorable Representatives Chukwuocha, Dukes, Hensley, Lambert, S. Moore, Morrison, and Osienski**  
**The Honorable Senators Gay, Hoffner, Huxtable and Sturgeon**

**FROM:** **Ann Fisher, Chairperson**  
**GACEC**

**RE:** **House Substitute 1 to House Bill No. 5 Medicaid Reimbursement for School-Based Services**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Substitute 1 to House Bill No. 5**, relating to Medicaid Reimbursement for School-Based Services. Council **endorses** the proposed legislation; however, we would like to share the following recommendations.

House Substitute 1 for House Bill 5 would do the following:

1. Require the Department of Health and Social Services (DHSS) to apply to the Centers for Medicare & Medicaid Services (CMS) by January 1, 2025 (previously in House Bill 5 the date was January 1, 2024), for a State Plan Amendment which would allow for reimbursement of medically necessary behavioral health services without Individualized Education Program (IEP) or Individualized Family Service Plan documentation (IFSP) (proposed §533(a));
2. Once the State Plan Amendment is approved, require reimbursement for "eligible services provided in a school setting by any school Medicaid allowable licensed or credentialed mental health provider" (proposed §533(b));
3. Permit the Department of Education (DOE) to keep up to five percent (5%) of federal reimbursements for administrative costs and require the balance of "federal reimbursement for school-based services" to "be disbursed to the local education agencies through which services were provided" (proposed §533(c) is a new section);
4. Requires Local Education Agencies ("LEAs") to reinvest reimbursed funds to support school-based behavioral health programs and services (proposed § 533(d));

5. Requires DHSS to update regulations and provider manuals to comport with the approved changes and to “provide comprehensive and advanced training to local education agencies” (proposed §533(e) expands the language in House Bill 5 which was “mental health trainings for educators); and
6. Requires DHSS to notify the Chief Clerk of the House and the Secretary of the Senate when the State Plan Amendment is submitted to the CMS, when approval for the State Plan Amendment is received, when the Cost Allocation Plan amendment is submitted to CMS, and when approval of the Cost Allocation Plan amendment is received (proposed §533(f) has far more detailed notifications than was required in House Bill 5).

The focus of House Substitute 1 for House Bill 5 is specifically on expanding access to behavioral health services. However, the current State Plan restricts Medicaid reimbursement for all services unless it is an Early and Periodic Screening, Diagnostic and Treatment (EPSDT) screening service or documented within a student’s IEP or IFSP. Besides EPSDT screening services and behavioral health services, the Delaware State Plan also includes nursing services, physical therapy, occupational therapy, speech therapy, language and hearing services, and specialized transportation.

As mentioned earlier, Council supports the bill and would like to share the following recommendations with the sponsors of the legislation:

1. Given the range of school-based services currently available under the State Plan, the bill should apply to *all* school-based services allowable under Medicaid and not just behavioral health services, such as school health services and assistive technology;
2. Consider whether additional provisions should be added related to outreaching for enrollment purposes within schools;
3. Consider whether any directives need to be given to the Delaware Department of Education in assisting DHSS with this expansion; and
4. Consider whether to use this opportunity to revise the current §501 which describes the legislative intent of the State Public Assistance Code and includes the following disturbing and troublesome language: “It is further declared to be the legislative intent that public assistance be administered, to the extent practicable, in such a way that . . . both parents are held responsible for supporting and parenting their children; recipients are not encouraged to have additional children while receiving public assistance; and the formation and maintenance of two-parent families is encouraged and teenage pregnancy is discouraged.”

Thank you for the opportunity to share our support with you. We would really like to discuss this legislation and develop a pattern of discussion on any future legislation that may impact individuals with disabilities. Please feel free to contact me or Pam Weir at the GACEC office should you have any questions on our comments and any suggestions on how the GACEC may develop a more collaborative relationship with our legislators.