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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **1338**

02/16/2017 Authored by Thissen, Loon, Davnie and Erickson  
The bill was read for the first time and referred to the Committee on Education Innovation Policy

1.1 A bill for an act  
1.2 relating to education; third-party reimbursement for special education evaluation;  
1.3 amending Minnesota Statutes 2016, sections 125A.21, subdivision 2; 125A.74,  
1.4 subdivision 1; 256B.0625, subdivision 26.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 125A.21, subdivision 2, is amended to read:

1.7 Subd. 2. **Third-party reimbursement.** (a) Beginning July 1, 2000, districts shall seek  
1.8 reimbursement from insurers and similar third parties for the cost of services provided by  
1.9 the district whenever the services provided by the district are otherwise covered by the  
1.10 child's health coverage. Districts shall request, but may not require, the child's family to  
1.11 provide information about the child's health coverage when a child with a disability begins  
1.12 to receive services from the district of a type that may be reimbursable, and shall request,  
1.13 but may not require, updated information after that as needed.

1.14 (b) For children enrolled in medical assistance under chapter 256B or MinnesotaCare  
1.15 under chapter 256L who have no other health coverage, a district shall provide an initial  
1.16 and annual written notice to the enrolled child's parent or legal representative of its intent  
1.17 to seek reimbursement from medical assistance or MinnesotaCare for:

1.18 (1) the evaluations required as part of the individualized education program process or  
1.19 individualized family service plan process; and

1.20 (2) health-related services provided by the district in accordance with the individualized  
1.21 education program or individualized family service plan.

2.1 The initial notice must give the child's parent or legal representative the right to request a  
2.2 copy of the child's education records on the health-related services that the district provided  
2.3 to the child and disclosed to a third-party payer.

2.4 (c) The district shall give the parent or legal representative annual written notice of:

2.5 (1) the district's intent to seek reimbursement from medical assistance or MinnesotaCare  
2.6 for evaluations required as part of the individualized education program process or  
2.7 individualized family service plan process, and for health-related services provided by the  
2.8 district in accordance with the individualized education program or individualized family  
2.9 service plan;

2.10 (2) the right of the parent or legal representative to request a copy of all records  
2.11 concerning individualized education program or individualized family service plan  
2.12 health-related services disclosed by the district to any third party; and

2.13 (3) the right of the parent or legal representative to withdraw consent for disclosure of  
2.14 a child's records at any time without consequence.

2.15 The written notice shall be provided as part of the written notice required by Code of Federal  
2.16 Regulations, title 34, section 300.504 or 303.520. The district must ensure that the parent  
2.17 of a child with a disability is given notice, in understandable language, of federal and state  
2.18 procedural safeguards available to the parent under this paragraph and paragraph (b).

2.19 (d) In order to access the private health care coverage of a child who is covered by private  
2.20 health care coverage in whole or in part, a district must:

2.21 (1) obtain annual written informed consent from the parent or legal representative, in  
2.22 compliance with subdivision 5; and

2.23 (2) inform the parent or legal representative that a refusal to permit the district or state  
2.24 Medicaid agency to access their private health care coverage does not relieve the district of  
2.25 its responsibility to provide all services necessary to provide free and appropriate public  
2.26 education at no cost to the parent or legal representative.

2.27 (e) If the commissioner of human services obtains federal approval to exempt covered  
2.28 individualized education program or individualized family service plan health-related  
2.29 services from the requirement that private health care coverage refuse payment before  
2.30 medical assistance may be billed, paragraphs (b), (c), and (d) shall also apply to students  
2.31 with a combination of private health care coverage and health care coverage through medical  
2.32 assistance or MinnesotaCare.

3.1 (f) In the event that Congress or any federal agency or the Minnesota legislature or any  
 3.2 state agency establishes lifetime limits, limits for any health care services, cost-sharing  
 3.3 provisions, or otherwise provides that individualized education program or individualized  
 3.4 family service plan health-related services impact benefits for persons enrolled in medical  
 3.5 assistance or MinnesotaCare, the amendments to this subdivision adopted in 2002 are  
 3.6 repealed on the effective date of any federal or state law or regulation that imposes the  
 3.7 limits. In that event, districts must obtain informed consent consistent with this subdivision  
 3.8 as it existed prior to the 2002 amendments and subdivision 5, before seeking reimbursement  
 3.9 for children enrolled in medical assistance under chapter 256B or MinnesotaCare under  
 3.10 chapter 256L who have no other health care coverage.

3.11 **EFFECTIVE DATE.** This section is effective August 1, 2017.

3.12 Sec. 2. Minnesota Statutes 2016, section 125A.74, subdivision 1, is amended to read:

3.13 Subdivision 1. **Eligibility.** A district may enroll as a provider in the medical assistance  
 3.14 program and receive medical assistance payments for covered evaluations and special  
 3.15 education services provided to persons eligible for medical assistance under chapter 256B.  
 3.16 To receive medical assistance payments, the district must pay the nonfederal share of medical  
 3.17 assistance services provided according to section 256B.0625, subdivision 26, and comply  
 3.18 with relevant provisions of state and federal statutes and regulations governing the medical  
 3.19 assistance program.

3.20 **EFFECTIVE DATE.** This section is effective August 1, 2017.

3.21 Sec. 3. Minnesota Statutes 2016, section 256B.0625, subdivision 26, is amended to read:

3.22 Subd. 26. **Special education services.** (a) Medical assistance covers evaluations necessary  
 3.23 in making a determination for eligibility for individualized education program and  
 3.24 individualized family service plan services and for medical services identified in a recipient's  
 3.25 individualized education program and individualized family service plan and covered under  
 3.26 the medical assistance state plan. Covered services include occupational therapy, physical  
 3.27 therapy, speech-language therapy, clinical psychological services, nursing services, school  
 3.28 psychological services, school social work services, personal care assistants serving as  
 3.29 management aides, assistive technology devices, transportation services, health assessments,  
 3.30 and other services covered under the medical assistance state plan. Mental health services  
 3.31 eligible for medical assistance reimbursement must be provided or coordinated through a  
 3.32 children's mental health collaborative where a collaborative exists if the child is included

4.1 in the collaborative operational target population. The provision or coordination of services  
4.2 does not require that the individualized education program be developed by the collaborative.

4.3 The services may be provided by a Minnesota school district that is enrolled as a medical  
4.4 assistance provider or its subcontractor, and only if the services meet all the requirements  
4.5 otherwise applicable if the service had been provided by a provider other than a school  
4.6 district, in the following areas: medical necessity, physician's orders, documentation,  
4.7 personnel qualifications, and prior authorization requirements. The nonfederal share of costs  
4.8 for services provided under this subdivision is the responsibility of the local school district  
4.9 as provided in section 125A.74. Services listed in a child's individualized education program  
4.10 are eligible for medical assistance reimbursement only if those services meet criteria for  
4.11 federal financial participation under the Medicaid program.

4.12 (b) Approval of health-related services for inclusion in the individualized education  
4.13 program does not require prior authorization for purposes of reimbursement under this  
4.14 chapter. The commissioner may require physician review and approval of the plan not more  
4.15 than once annually or upon any modification of the individualized education program that  
4.16 reflects a change in health-related services.

4.17 (c) Services of a speech-language pathologist provided under this section are covered  
4.18 notwithstanding Minnesota Rules, part 9505.0390, subpart 1, item L, if the person:

4.19 (1) holds a masters degree in speech-language pathology;

4.20 (2) is licensed by the Minnesota Board of Teaching as an educational speech-language  
4.21 pathologist; and

4.22 (3) either has a certificate of clinical competence from the American Speech and Hearing  
4.23 Association, has completed the equivalent educational requirements and work experience  
4.24 necessary for the certificate or has completed the academic program and is acquiring  
4.25 supervised work experience to qualify for the certificate.

4.26 (d) Medical assistance coverage for medically necessary services provided under other  
4.27 subdivisions in this section may not be denied solely on the basis that the same or similar  
4.28 services are covered under this subdivision.

4.29 (e) The commissioner shall develop and implement package rates, bundled rates, or per  
4.30 diem rates for special education services under which separately covered services are grouped  
4.31 together and billed as a unit in order to reduce administrative complexity.

4.32 (f) The commissioner shall develop a cost-based payment structure for payment of these  
4.33 services. Only costs reported through the designated Minnesota Department of Education

5.1 data systems in distinct service categories qualify for inclusion in the cost-based payment  
5.2 structure. The commissioner shall reimburse claims submitted based on an interim rate, and  
5.3 shall settle at a final rate once the department has determined it. The commissioner shall  
5.4 notify the school district of the final rate. The school district has 60 days to appeal the final  
5.5 rate. To appeal the final rate, the school district shall file a written appeal request to the  
5.6 commissioner within 60 days of the date the final rate determination was mailed. The appeal  
5.7 request shall specify (1) the disputed items and (2) the name and address of the person to  
5.8 contact regarding the appeal.

5.9 (g) Effective July 1, 2000, medical assistance services provided under an individualized  
5.10 education program or an individual family service plan by local school districts shall not  
5.11 count against medical assistance authorization thresholds for that child.

5.12 (h) Nursing services as defined in section 148.171, subdivision 15, and provided as an  
5.13 individualized education program health-related service, are eligible for medical assistance  
5.14 payment if they are otherwise a covered service under the medical assistance program.  
5.15 Medical assistance covers the administration of prescription medications by a licensed nurse  
5.16 who is employed by or under contract with a school district when the administration of  
5.17 medications is identified in the child's individualized education program. The simple  
5.18 administration of medications alone is not covered under medical assistance when  
5.19 administered by a provider other than a school district or when it is not identified in the  
5.20 child's individualized education program.

5.21 **EFFECTIVE DATE.** This section is effective August 1, 2017.