

# Negotiated Rulemaking Meeting and Comment Summary

June 17, 2015 2:00 PM (MDT) to 4:00 PM (MDT)

Negotiated Rulemaking DOCKET NO. 16-0309-1501

Video meeting with location in Boise as published in the Administrative Bulletin

Boise and Pocatello

(see attached attendee lists)

**Facilitator:** Matt Wimmer, Deputy Administrator, Administration Policy and Innovations

**Facilitator:** Art Evans, Bureau Chief, Bureau of Developmental Disability Services

**Facilitator:** Tiffany Kinzler, Bureau Chief, Bureau of Medical Care

**Bureau of Developmental Disability Services:** Frede Trenkle-MacAllister, Alternative Care Coordinator

**Bureau of Medical Care:** Jeanne Siroky, Alternative Care Coordinator

## Call to Order and Outline Meeting Format

### I. Purpose of Meeting

Therapy Services: IDAPA 16.03.09.730 - 739

School-Based Services: IDAPA 16.03.09.850 – 859

Rule changes are being proposed to clarify gaps that have been identified in these rules and adjust to changes in current Medicaid practice regarding school-based services and therapy services. Further, rule changes are being proposed to adjust requirements currently resulting in unnecessary regulatory burdens on providers in their efforts to remain in compliance with the rules. The negotiated rulemaking meetings listed above will allow stakeholders to provide their input concerning the proposed changes to school-based services and therapy services.

### II. Discussion Points

#### a. Therapy Services

- i. Define and clarify the language for maintenance therapy to align with Medicare.
- ii. Clarify the language about therapy assistants and aides to align with licensing board rules.
- iii. Clarify which providers are included in the therapy cap.
- iv. Redefine the requirements for physician orders/referral based on comments from the therapy organizations and schools to prevent delays in services.
- v. Define the elements of an acceptable plan of care as recommended by the professional organizations.
- vi. Redefine the criteria for feeding therapy.
- vii. Address supervision requirements.

#### b. School-Based Services

- i. Clarify the definition for “Educational Services”
- ii. Clarify the requirement to obtain the authorization to bill Medicaid
- iii. Clarify timeframe for the Physician’s recommendation
- iv. Individualized Education Program
  1. Removal of age limit to comply with federal regulations
- v. Service Detail Reports

- 1. Clarify requirements for documentation
- vi. Notification to Primary Care Physician
  - 1. Review and clarify requirement
- vii. Psychosocial Rehabilitation (PSR)
  - 1. Remove burdensome requirements for student eligibility for service
  - 2. Review and clarify staff qualifications
- viii. Behavioral Intervention (BI)
  - 1. Review and clarify student eligibility requirements
  - 2. Clarify BI definition
  - 3. Review and clarify group service requirements
  - 4. Removal of BI paraprofessional qualification that states staff must meet the “standards for paraprofessional supporting students with special needs” to align with the Idaho Special Education Manual
- ix. Personal Care Services
  - 1. Clarify requirements for the service
  - 2. Review and clarify personal assistant qualifications to align with highly qualified paraprofessional in the school setting.
- x. Transportation Services
  - 1. Clarify requirements for the service
- xi. Interpretive Services
  - 1. Clarify documentation requirements
- xii. Therapy Paraprofessionals
  - 1. Identify supervision requirements
- xiii. Quality Assurance
  - 1. Increase quality assurance and quality control activities

### **III. Follow Up**

- a. Written comments for Docket No. 16-0309-1501 are to be submitted on or before July 19, 2015 to:

Frede' Trenkle-MacAllister  
 Idaho Department of Health and Welfare  
 Attn: Medicaid Central Office  
 PO Box 83720  
 Boise, ID 83720-0036  
 Phone: (208) 287-1169; Fax: (208) 332-7286  
 E-mail: [TrenkleF@dhw.idaho.gov](mailto:TrenkleF@dhw.idaho.gov)

# Negotiated Rulemaking - Comment Summary

## DOCKET NO. 16-0309-1501

### Comments from June 17, 2015 2:00PM (MDT) to 4:00 PM (MDT) Written Comments Submitted Post-Meeting, and Responses

Verbal and written comments were submitted by the following individuals/organizations:  
{List who comments are from }

Comments		Responses	
W-Written V-Verbal	School Based Services – Educational Services		Policy Change
<p>W Cliff Hart American Falls School District</p>	<p>The definition in rule reads, "...which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students". Health related School-based services begin when the student arrives and when the student leaves. There are time gaps prior to the beginning and after the ending of specific hours and time periods in which the educational instruction.</p> <p><u>Recommendation:</u> Include after "time for these students", "including up to 60 minutes prior to start and 60 minutes after end of the normal school day".</p>		<p>No</p> <p>The Department appreciates the recommendation from Mr. Hart. The recommended changes that were discussed at the negotiated rulemaking meeting allows flexibility for service setting and service time based on the student's need as identified in the IEP.</p> <p>This written recommendation has a potential to limit this flexibility.</p>
School Based Services – Physician's Recommendation			
<p>W Cliff Hart American Falls School District</p>	<p>The IDAPA 16.03.09 853.02(a) rule reads, "A school district or charter school may not seek reimbursement for services provided prior to receiving a signed and dated recommendation or referral". Also in 853.03 "A school district or charter school may not seek reimbursement for services provided prior to receiving a signed and dated recommendation or referral." The "dated" rule creates a time gap due to IDEA requirements that services must begin within a specific time frame when need is identified.</p> <p>More specifically to the issue, in 854.06 (b) it states, "A recommendation or referral must be obtained prior to the provision of services for which the school district or charter school is seeking reimbursement."</p> <p><u>Recommendation:</u> Remove 854.06 (b). Other sections cover this statement and removing it will limit liability of two rules in conflict.</p> <p>Add "within 60 days of completed IEP", after the term "dated" listed in IDAPA 16.03.09 853.</p>		<p>No</p> <p>Medicaid will reimburse services that have been identified in the Idaho State Plan as long as they are medically necessary for the student. The recommendation and/or referral demonstrates medical necessity for that individual student.</p> <p>Federal regulations require a referral or recommendation for all services that are reimbursable that Idaho has identified as a school-based service; therefore the recommendation or referral must be received prior to the provision of the service and must be maintained in rule for compliance with federal requirements.</p>
School Based Services – Service Detail Reports - Clarify Requirements for Documentation			
<p>W Cliff Hart American Falls School District</p>	<p>Time in, time out documentation is not conducive to the education classroom and setting. The IEP will drive the duration and billable units and also control the overbilling and overlapping of billed services. The state training of documentation of time in/time out of PCS should be utilized for all SDR</p>		<p>No</p> <p>Per federal requirements, documentation must support the service that was provided.</p> <p>In addition, Medicaid claims are submitted using a CPT procedural code. These codes are defined using an identified duration for each unit. The school must have supporting documentation for each claim to</p>

	documentation.  <u>Recommendation:</u> Remove “, and duration” in 854.03 (c).	Medicaid which includes the duration of the service.	
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### School Based Services – Transportation - Clarify Requirements for the Service

W Cliff Hart American Falls School District	IEP services and billable Medicaid services have limitations, however students attend school on a daily bases.  <u>Recommendation:</u> Remove and Replace 853.03 (m)(iii) with, “the student is Medicaid eligible on the date of service and a participant in School-Based services in Idaho.”	Per federal requirements; The Medicaid program can pay for transportation to school based services for children under IDEA when both of the following conditions are met: <ul style="list-style-type: none"> <li>• The child receives transportation to obtain a Medicaid-covered service (other than transportation), and</li> <li>• Both the Medicaid-covered service and the need for transportation are included in the child’s IEP or IFSP</li> </ul> *Medicaid and School Health: A Technical Assistance Guide. The Center for Medicaid and Medicare Services (1997)	No
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### School Based Services – Clarification - Level of Supervision for Paraprofessionals

W Tammy Emerson ISHA, STAR, ASHA	As this is negotiated rule making, I’ve added the proposed definition of direct supervision of paraprofessionals. Also, you requested rationale. I believe supervision of OT/PT in the Medicare rule is not for paraprofessionals but individuals with education and training in the field	Medicaid appreciates the comments from Ms. Emerson. Medicaid has been informed that Idaho Bureau of Licenses is working on language changes in the board rules around supervision for SLP paraprofessionals. Medicaid will refer to the SLP licensing rules to assure consistency in expectations by the board and Medicaid.	No
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### School Based Services – Supervision of PSR

W Multiple Providers	We would encourage either SpEd teachers and/or certified school psychologist be able to provide supervision of school based PSR staff. Schools will have difficulty finding licensed staff to come into the school 1x/month to provide supervision.	Community Based Rehabilitation Services (CBRS) is the service identified in Idaho’s State Plan and has been approved by the Center for Medicaid and Medicare. The description of this service in the State Plan states: “Services include treatment planning, and the provision and coordination of treatments and services delivered by multidisciplinary teams under the supervision of a licensed behavioral health professional staff, physician or nurse.”  The State is unable to allow different requirements in different settings for a service. The State must also follow the State Plan to receive federal funding. Unable to make policy changes for this requirement.	No
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### School Based Services – PSR Name Change

W Bryon Kennedy Support Services Director	I understand that school based PSR name change has been discussed. Since the acronym of CBRS begins with community, at times I think there could be confusion. If you are changing it, I would suggest SBRS--school based rehabilitation services. The reason is that we follow the rules found under school-based services, so I believe to keep thoughts/processes straight, we need to reflect school-bases verses community based services.	Medicaid appreciates the comments from Mr. Kennedy. Community Based Rehabilitation Services (CBRS) is the service identified in Idaho’s State Plan and has been approved by the Center for Medicaid and Medicare. Idaho must align the service approved in the State Plan to the service provided by the schools.	No
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### Therapy Services – Requirements for Physician Orders

Verbal Eydie Kendall Idaho State University	What about the 90 days if it’s not a chronic condition?	If it’s not a chronic condition we would probably go ahead and keep that as it is.  An acute condition is usually treatable within the	No
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	<p>That's a real burden for the schools. Every 3 months to be getting a new Physician's Order when we go by the IEP prescription which is 365 days. But most of our kids if their condition isn't acute, it's driven by the IEP, which is one year and we are having to get these referrals every 90 days on all these kids.</p> <p>If they have a language impairment. Well, we've been erring on the side of doing it every 90 days. Because the physician doesn't list it as chronic. They might get better in a year with therapy. So we have been instructed that we need to get it for OT, PT and speech every 90 days. Unless it is a chronic condition.</p> <p>The terms "chronic" and "acute" are usually used for orthopedic issues; it doesn't really apply to neurological or genetic issues. It is misleading. It is very hard to get a physician to say "this is a chronic condition".</p> <p>I can't speak for SLPs or OTs but PT has had autonomy of practice for a very long time. Therapists are taught now to differentially diagnose and quite often know a lot more about the issues they treat than the family practitioner. It's typically a bunch of paperwork for family practitioner.</p>	<p>first 90 days.</p> <p>The State Medicaid Program must follow federal guidance</p>	
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**Therapy Services – Federal Guidance**

<p>Verbal Cliff Hart American Falls School District</p>	<p>Do you submit your plan to CMS for their approval so it's your plan and then you have to follow their guidelines if you make that too restrictive then when you ask the feds for approval for something they are going to tell you no because you developed the plan. Is that correct? Because the plan that you put in place they accepted and you can't venture off that plan?</p>	<p>Our plan is based on the federal regulations for the services we are allowed to cover (1905(a) of the Social Security Act). Our services are provided under a physician order/recommendation. They are provided by the licensed professional. There are certain standards that we have to follow but we can venture out a little bit. The other thing is that you have to remember that any of the rules we have for Therapy Services, those are the same rules that work in the community.</p>	<p>No</p>
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**Therapy Services – Physician Referrals/Orders**

<p>Verbal Cliff Hart American Falls School District</p>	<p>I am having trouble with the difference between "Physician Referral" and "Physician Order"</p>	<p>A Physician's referral is given from the child's Primary Care Physician. IDAPA excludes schools from being required to receive a referral but does require them to receive a physician's order for OT/PT/SLP and a recommendation for all other services. The order is very specific and it must include the following at a minimum:</p> <ul style="list-style-type: none"> <li>• The service to be provided</li> <li>• Frequency</li> <li>• Duration of each therapeutic session (where applicable)</li> </ul>	<p>Yes - The therapy rules are changing removing the referral requirement in the community and the requirements for the physician order are being extended for children with a chronic medical condition.</p>
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**School Based Services – Educational Services and IEP**

<p>Verbal Cliff Hart American Falls School District</p>	<p>So you are basically taking the least restrictive environment from an IDEA standpoint? That last statement, "in which includes the individual education plan for the participant". Is that what you are talking about? That's what you have in your definition, on your IDAPA rules.</p> <p>That statement right there allows us to get the reimbursement for the services that we are providing.</p>	<p>Correct</p> <p>Yes. It opens it up and allows flexibility for the service to be provided wherever the IEP identifies it</p>	<p>Yes</p> <p>Yes</p>
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	<p>Is that correct?</p> <p>So will this cover the kid on a field trip? Even though it's not the "normal" school day?</p>	<p>as a need. Everything will be tied to the IEP.</p> <p>Field trips could be covered currently as long as this time is captured on the IEP.</p>	<p>No</p>
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### School Based Services – Verbal Order from Physician for Services

<p>Verbal Cliff Hart American Falls School District</p>	<p>We had a situation where we had a physician, they were going to sign off and give the paperwork. In the meantime, the child has been determined eligible and we are starting services that the physician has not signed off on. If he signs off on the IEP, as far as letting us know, meanwhile we can't do any reimbursement until we actually have that signed document. Is there anything that we are looking at to simplify that or to clarify that as to if the physician is aware of it that we can go ahead and get reimbursed.</p> <p>So you are going to come out with some clarification on that?</p>	<p>(Frede') Right now it does have to be signed and dated in Rule.</p> <p>(Matt) If you've had discussion with physician and the physician is recommending it, as long as we get documentation from them, within a reasonable timeframe, it should be okay. Clarification was provided in the handbook regarding verbal approval. In Title 19 and Title 21 of the Social Security Act it gives the different types of services and the different categories of services you can provide and they have to be physician recommended services. We can't have services that are reimbursable unless we have a physician recommendation. We can talk about how that happens and what the timeframes are and all the different parameters around that. So if you get a verbal and it is followed up with a written, that's doable.</p> <p>Yes, we can think about that as far as what we put in the handbook and what we put into Rule.</p>	<p>Yes - We are changing the order requirements for OT/PT/SLP so they can receive an initial order to evaluate and treat services right away for acute patients. The provider must obtain the Dr. order (dated and signed the date of the initial order) within 30 days and can only be bill after the provider has received the written order.</p>
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### School Based Services – Physician Referral

<p>Verbal Group Question</p>	<p>Can we discuss the possibility of Physician Referral's not being required for schools?</p> <p>Idaho is one of the few states that still require them. Other states don't require them. It is hard to understand why Idaho does.</p> <p>Even though you do realize that most times it is just a rubber stamp at the physician's office.</p>	<p>(Frede') Actually I did research on that and they do. The research is out on our website. Within federal regulations there are several services that you have to have a physician referral or recommendation.</p> <p>(Art) We have done a lot of research and I think there has been some misinformation that has gone out about what other states require. If you look at the School Based Services Technical Guide, it is very clear that there are certain services that have to have; in fact most services have to have a physician's referral or a licensed physician referral. A lot of our services are going to require a physician's referral or recommendation because there is no licensure. For example, Behavioral Intervention does not have a licensure. So that will always have to have some kind of physician referral. I agree with Matt that if we can work out something to get a verbal approval and we have a way to document it so we can make sure it is done; we can certainly look at that. There is no way we can get around it. It is medically necessary and is required by federal regulation and we are going to have to continue to look at that.</p> <p>(Matt) It would literally take an act of Congress for us to move away from that requirement. I understand what you are saying but we just don't have the flexibility.</p>	<p>No</p>
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### School Based Services – Cost to Schools for Physician Signature

Verbal Group Question	This is a cost to our schools. We still have to put up the 30%. We pay at least \$5 per signature for PR's, plus the time and the software to get that done.	(Frede') You could go to the child's Primary Care Physician, they are a Healthy Connection doctor and they do not charge to sign those recommendations.  *The best practice for the child is to get the order from the child's primary care physician who can coordinate care and would sign the order without charging the school	No
<b>School Based Services – Quality Assurance</b>			
Verbal Cliff Hart American Falls School District	As you are going through this, will there be training to be presented, either regionally or to the districts? Are you going to be able to help us out?	(Matt) If you want us to, we can look at doing that training in Rule.  *Language has been included in the proposed rule to capture this collaboration.	Yes
<b>School Based Services – Psychosocial Rehabilitation (PSR)</b>			
Verbal	Are Occupational Therapists eligible to supervise? They are probably more qualified than a Social Worker.	The Licensed Professional must work within their scope of licenses outlined in their board rules. CBRS/PSR is a mental health service, the license that the professional holds must be considered a behavioral health license.	No
<b>School Based Services – Psychosocial Rehabilitation (PSR)</b>			
Verbal Cliff Hart American Falls School District	Is a Master's level Certified Teacher able to supervise PSR? That would help the rural districts with supervision.	No, criteria identified in the State Plan states that CBRS/PSR providers must be supervised by a <u>licensed</u> professional.	No
<b>School Based Services – Therapy Paraprofessionals</b>			
Verbal Cliff Hart American Falls School District	Define supervision?	Medicaid has been informed that Idaho Bureau of Licenses is working on language changes in the board rules around supervision for SLP paraprofessionals. Medicaid will refer to the SLP licensing rules to assure consistency in expectations by the board and Medicaid.	No