



Medicaid School Program (MSP) Stakeholder Consensus Statement

March 2019

Earlier this year, representatives of the Ohio Occupational Therapy Association and Ohio School Health Services Association met to discuss concerns with MSP. OOTA had conducted a survey of members and several issues arose from the results. Many of these issues are likely due to misunderstandings or a lack of awareness of the statutes rules that related services providers, school districts, and billing agents operate under. The goal of this document is to establish a set of agreed upon principles and programmatic standards for interested parties who have a role in implementing MSP in Ohio.

MSP is operated jointly by the Ohio Department of Education (ODE) and Ohio Department of Medicaid (ODM). Under MSP, school districts fulfill the role of Medicaid provider and utilize related service providers to render many of the eligible services authorized under MSP. Recent changes to MSP have created new challenges for MSP providers, related service providers, and billing agents who contract with school districts to process claims. Given the numerous questions, concerns, and misconceptions in the MSP community, information provided in this document should provide clarity and consistency across the entire program.

The goal of the organizations listed above is to ensure that MSP is effectively and ethically operated and that services are delivered to students without disruption. We are universally committed to serving students with exceptional needs and recognize that MSP can be a useful tool to supporting those students. At the end of the day, we are committed to working together to strengthen MSP.

The following entities are eligible MSP providers (OAC 5160-35-02):

*Traditional School Districts
Community Schools*

*Ohio School for the Deaf
Ohio School for the Blind*

The following individuals are related service providers who may provide referrals for MSP services (OAC 5160-35-05):

*Occupational Therapists
Physical Therapists*

*Speech-Language Pathologists
Audiologists*

Enrollment as a Medicaid Independent Provider to Render MSP Services

- A Medicaid agreement is required by the Ohio Department of Medicaid for all related service therapy providers who make 'referrals' for MSP Services. Legislation enacted in 2016 allows related service providers to make referrals within Medicaid only for MSP-related services (OAC 5160-35-04).
- A referral can also originate from a physician or other eligible provider as required under Federal Law ([42 CFR 440.110](#)) and OAC 5160-1-17.9, for those related service providers who do not have a Medicaid agreement in place.
- MSP providers (school districts) discussing enrollment with related service providers should address any ethical concerns raised by those providers. If a provider has an ethical or legal concern with enrollment, the MSP provider should work with the billing agent to develop an alternative method of compliance.

- It is important to note that the MSP provider is the employer of record for the employed related service provider. In some situations, the MSP provider may contract with a related service provider to provide IEP services. Instructions and mandates related to the responsibilities of the related service provider, including enrollment as a Medicaid Independent Provider, should come from the MSP provider and not the billing agent contracted by the MSP provider.

Ethical Concerns and Conflicts with Related Service Provider Practice Law

- Related service providers must adhere to their individual professional practice acts and codes of ethical conduct. MSP providers and billing agents should never request or encourage actions that a related service provider believes to be unethical or otherwise in conflict with a state regulatory practice act.
- MSP providers and billing agents are to be familiar with the individual code of ethics for each type of related service provider and address any ethical questions to the appropriate state licensure board. Any ethical concerns raised by a related service provider to their employer is to be treated seriously and addressed collaboratively and promptly.
- Related service providers should never be asked to undertake any action that is fraudulent or unethical. Examples of unethical conduct include inappropriate supervision of unlicensed personnel, supervision of individuals performing unauthorized duties, incentive payments or kickbacks to related service providers who increase billable services, improper documentation or billing practices such as back-dating, violation of patient confidentiality including the disclosure of the names of children served, or failure of a licensee or employer to report unethical conduct to the appropriate licensure board. (see OAC 4755-7-08)
- Regarding documentation of information on the ETR, IEP and other ODE forms, related service providers are to act in accordance with guidance from the Department of Education, Office for Exceptional Children using the current ETR/IEP process. Billing agents are not to give instructions to related service providers when providing ETR or IEP documentation. For example, related service providers are not to include medical terminology or a medical necessity recommendation within the body of the ETR or IEP. This avoids potential legal and ethical issues related to ODE compliance with Operating Standards 3301-51 and IDEA. The IEP is not to be used for billing purposes.
- For reference, here are links to the Ohio Administrative Code sections that pertain to ethics and conduct for related services providers—

Occupational Therapy: <http://codes.ohio.gov/oac/4755-7>

Physical Therapy: <http://codes.ohio.gov/oac/4755-27>

Speech-Language Pathology and Audiology: <http://codes.ohio.gov/oac/4753-9>

- In addition to professional ethical and conduct standards put in place by individual licensure boards, the Ohio Department of Medicaid also has ethical standards for providers registered with the program. Those rules can be found here: <http://codes.ohio.gov/oac/5160>. Providers must also adhere to rules regarding conduct of licenses maintained by the Ohio Department of Education: <http://codes.ohio.gov/oac/3301-24>.
- School districts, MSP billing agents, related services providers, and other stakeholders can also refer questions or concerns to the various state and national associations that represent related services providers. These organizations often contribute to the development of rules related to ethics and scope of practice under which licensed providers are required to practice.

Referrals, Service Delivery, and the IEP Process

- In order for IEP services to be eligible for reimbursement under MSP, services must meet the definition of ‘medical necessity’ established by the Ohio Department of Medicaid. [Chapter 5160-35 of the Ohio Administrative Code](#) states *how* medical necessity applies to MSP services—

*(A)(13) Medically necessary: skilled services recommended by a qualified licensed practitioner in accordance with rules 5160-35-05 and 5160-35-06 of the Administrative Code who is acting within the scope of his or her licensure that meet the requirements in **rule 5160-1-01 of the Administrative Code** and meet general principles regarding reimbursement for Medicaid covered services found in **rule 5160-1-02 of the Administrative Code**.*

- Further, it is important to note that the above Administrative Code 5160-35 is not the prevailing rule for *determining* medical necessity. MSP providers, related service providers, and billing agents must also refer to ODM’s “conditions of medical necessity” and reimbursement rules, which are found in [Chapter 5160-1 of the Ohio Administrative Code, specifically 5160-1-01](#).
- Many MSP services are delivered by a related service provider who is licensed by a state healthcare licensure board; this does not necessarily mean that all services provided in a school setting are medically necessary. Services documented in an IEP are first educationally relevant and specific to educational needs identified for a student through the ETR and IEP processes. Some provided services may also meet the definition of “Medicaid medical necessity” in OAC 5160-1-01.
- Related service providers are not to be asked to write notes or make referrals that inaccurately represent services rendered as medically necessary, nor provide a blanket declaration that all services are medically necessary. Related service providers are to render IEP services (as required by Operating Standards 3301-51-06,07, 09, 11), regardless of whether or not they meet ODM’s definition of medical necessity.
- Related service providers are never to be asked to alter or back-date referrals or undertake any action that is fraudulent or unethical. Instructions related to documentation and referrals should come from the MSP provider and not a billing agent. Related service providers should not receive any incentive or other payment for increasing MSP reimbursement.
- Related service providers are not to know which students on their caseload or workload are enrolled in Medicaid. Services delivered to students under an IEP are determined by the IEP team, based on educational needs. No consideration is to be given to the student’s status as a Medicaid enrollee and related service providers are not to be asked to render certain services based upon the availability of MSP reimbursement. This is to assure related service providers are not providing a different standard of care or service to students based on income and health insurance status.

MSP stakeholders and other interested parties are encouraged to discuss and collaborate regarding concerns and questions encountered as implementation and practitioner issues arise. Solutions must consider and adhere to the array of rules and policies that impact service delivery, so that a consistent and accurate operation of the MSP program is promoted throughout the state. Our shared goal is to effectively serve students so that they may achieve educational success and prepare for a productive and meaningful life after graduation. Working together, we can succeed in this endeavor.

Stakeholder Roles and Responsibilities Summary

This table summarizes the various tasks associated with MSP and the role of each individual/entity to accomplish those tasks—

Task / Role	MSP Provider (local district or community school)	Related Service Provider (OT, PT, SLP, or Audiologist)	MSP Billing Agent
<i>Enrollment as a Medicaid Provider</i>	Discuss potential enrollment with related service provider	Complete enrollment application. Seeks ODM clarification and assist.	Provide technical assistance to related service providers upon their request
<i>Referrals for MSP Services</i>	Determine if MSP reimbursement to be pursued	Complete referral documentation	Process claims for MSP services
<i>Compliance with Licensure Board Rules</i>	No direct role (should be familiar with rules)	Must comply with all rules and ethical guidelines adopted by regulatory board and professional standards	No direct role (should be familiar with rules)
<i>Determination of Medical Necessity</i>	No direct role	Determines, documents Medicaid medical necessity, per definition OAC 5160-1-01	No direct role. Seeks ODM guidance regarding Medicaid medical necessity OAC 5160-1-01
<i>Establishment of Services and IEP Goals</i>	Determined by IEP team, in alignment with IDEA, ODE OEC guidance and OAC 3301-51-06 and 07	Participates in ETR planning, determination of eligibility. IEP team decision-making in alignment with IDEA, ODE OEC guidance and OAC 3301-51-06 and 07	Consults ODE OEC ETR IEP monitoring team with technical and content questions for these forms.
<i>Processing and Submission of Claims</i>	May submit claims or utilize billing agent	No direct role. Provides independent documentation of IEP services	Processes MSP claims under contract with MSP provider
<i>Determination of Medicaid Eligibility</i>	No direct role. Submits claims or works through MSP billing agent	No direct role. Practitioner is not aware of child's Medicaid enrollment status	No direct role. Complies with Medicaid eligibility per ODM on behalf of MSP provider