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SECRETARY OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

March 17, 2020

Sent Via Electronic Mail

School District and Charter School Leaders

**Re: Payroll and Contractor Considerations during School Closures due to COVID-19
thru April 6, 2020**

Dear School District Superintendent/Charter School Leaders, and Respective Counsel:

This letter addresses questions involving payment of employees and independent contractors who provide ancillary services that are reimbursed through Medicaid. Such ancillary services are not reimbursable through Medicaid unless the services have been rendered in accordance with those applicable provisions. However, there are other matters to take into consideration.

New Mexico Governor, Michelle Lujan Grisham, recently issued Executive Order 2020-005, *ORDER DIRECTING THE CLOSURE OF ALL PUBLIC SCHOOLS UNTIL APRIL 6, 2020* (<https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-005.pdf>).

In this order, the Governor directs the Secretary of Education to exercise all statutory authority to effectuate this order. The NM Secretary of the Department of Health has also issued *Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19* (<https://nmhealth.org/publication/view/help/5668/>).

Although, there is an exemption for schools and educational institutions in this order relative to mass gatherings, these entities should adhere to all other aspects of the order and should adhere to the expectations for mass gatherings to the best of their ability. The Governor has also put forth information that describe expectations for schools during this closure.

[\(https://www.governor.state.nm.us/2020/03/13/new-mexico-closes-k-12-public-schools-to-prevent-potential-spread-of-covid-19/\)](https://www.governor.state.nm.us/2020/03/13/new-mexico-closes-k-12-public-schools-to-prevent-potential-spread-of-covid-19/).

The Public Education Department (PED) has released two memos: one titled *Alternate Work Expectations for school Staff Members During Closure Period* and one titled *Questions Regarding Payment of Teachers, Staff, and Contractors During School Closure Due to COVID-19*, both dated March 13, 2020, which provide further guidance and clarification. These memos are again provided as attachments to this memo.

For ease of reference, here are a few critical points summarized from the previously released documents:

- Schools should collaborate with all state and local community services to ensure that children in NM have access to meals during the current school closure – including spring breaks.
- School buildings will remain open during the break, including cafeterias and school-based health centers.
- Schools that are able to deliver distance learning to students may choose to offer this option during the closure period.
- Schools should maintain social distancing protocols for students and staff. Social Distancing is defined by the US Centers for Disease Control and Prevention (CDC) as: remaining out of congregate settings, avoiding mass gatherings, and maintaining distance (approximately 6 feet or 2 meters) from others when possible (<https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>).
- School buildings can be used for temporary childcare facilities to meet additional demand during the closing.
- The Governor expects all school personnel to be available to conduct business during the closing and to continue being paid as usual.
- Starting Monday, March 16, 2020, the work-search requirement will be waived for anyone whose job is affected by COVID-19 who seeks unemployment compensation. Following a one-week waiting period, these workers could receive \$433 per week for three weeks. Affected workers are highly encouraged to apply for benefits online here: <http://www.dws.state.nm.us/>. There is an 800 number available as well (877-664-6984) but online is the preferred option.

This information creates a unique environment for the work of maintaining finance and operations in your schools. Below is more specific guidance on some of your commonly asked questions. Please note that this guidance is general in nature and it is understood that many unique variations exist in the various settings throughout the state.

Payroll

PED's expectation is that schools ensure that all employees are paid during the time that students are not in session due to the current executive order (through April 6, 2020). School leaders and business officials will have to evaluate their own circumstances to determine the best mechanism to operationalize this expectation - this may include the need to develop policies and must include the development of alternative work assignments for all employees who cannot perform their regular duties. In laymen's terms, PED's expectation is that employees will be paid as if students were present. Additionally, employees should continue to provide services to the school by completing tasks that contribute directly to the support of students and families during the time that students are not in session (meal preparation, meal distribution, virtual instruction, call centers, etc.) or by working on tasks that will support the school when students return (lesson planning, curriculum development, facility maintenance, etc.). To the maximum extent possible, this work should happen remotely or in small groups while maintaining social distancing when the work cannot be completed remotely. Social distancing guidelines include limiting face-to-face contact and maintaining six feet or two meters distance from other persons. Through alternative work assignments, it is expected that all employees continue to provide value to the schools and that they continue to receive compensation for their work.

Contractors

School leaders and business officials are expected to work with contractors to minimize the potential effects of the current health emergency. Some contractors will continue to provide the same services during the time that students are not in session as when students are in session (cafeteria contractors providing meals); while others, will provide different services as when students are in session (bus drivers delivering food). Where able, contractors should continue to receive payments similarly to what they were paid when school was in session. To the extent possible, PED encourages contractors, including bus contractors, to pay their employees at rates consistent with typical pay during the time that students are not in session. If a contractor cannot or will not pay their employees, PED recommends that school districts and charter schools adjust their payments to the contractors to compensate for the fact that they are not paying their employees. For contractors that itemize their billing, they should not be compensated for costs not actually incurred. For example, a contractor that typically charges for mileage should not charge for mileage, if they are not travelling to school sites.

Additionally, PED recommends contractors be retained to provide services to the school by completing tasks that contribute directly to the support of students and families during the time that students are not in session (meal preparation, meal distribution, virtual service provision, call centers, etc.) or by working on tasks that will support the school when students return (service planning, facility maintenance, training, etc.). To the maximum extent possible, this work should happen remotely or with careful attention to maintaining social distancing when the work cannot be completed remotely. Social distancing guidelines include limiting face-to-face contact and maintaining six feet or two meters distance from other persons.

Federally Funded Employees and Contractors

It is an expectation of school districts and charter schools that they continue to utilize their federally funded employees and contractors to the best of their ability during the time that students are out of school for the current health emergency. It is also the expectation of the PED that all work that is to take place during the time that students are out of school is well documented and can be used to justify payment for the time that students are out of session. If a federally funded employee or contracted service is unable to provide a service under the federal program that funds their work, then these employees or contractors cannot be paid for that specific service per federal requirements, and therefore do not generate a liability for their work. The attached document on alternative work expectations can help generate ideas for the type of work that could be considered. Nothing in this guidance should prevent an employee or contractor from discontinuing billing/submitting hours during the school closure, if the employee or contractor and the district or charter school agree to temporarily discontinue billing/hours.

Below are suggestions from various federal programs related to alternative assignments.

Medicaid:

Contact: Gregory Frostad, gregory.frostad2@state.nm.us, 505-470-5752

Ancillary services are not reimbursable through Medicaid unless the services have been rendered in accordance with those applicable provisions.

School districts and charter schools should consider continuing to provide Medicaid billable related services while the schools are closed. Because such services are not general instruction and are highly individualized, they may not need to be completed in the same manner as would require the school remaining open. Students would be able to benefit from these services during school closure, even if such services are not required during school closure, and even if services such as counseling and therapy have to take place virtually or by phone.

The state's Human Services Department is currently working with CMS on waivers to allow for remote provision of services for Medicaid purposes. Attached please find a list of codes that can be used immediately to assure Medicaid reimbursement for telephonic and virtual visits. Behavioral Health telephonic visits are also authorized for reimbursement as indicated on the attachment and when billed as instructed. HSD will be sending official instructions to providers regarding the use of these codes as soon as possible this week.

School districts and charter schools should also consider that Medicaid reimbursements do not pay for the entirety of services for those employees or staff who provide such ancillary services. Medicaid reimbursements reimburse approximately thirty percent of the cost of services. As such, schools should continue exploring how they can continue to obtain Medicaid reimbursement for services provided to Medicaid members during the emergency period, even when such services are not provided in person in accordance with normal service standards.

Title I-A

Contact: Gabe Baca, gabriel.baca2@state.nm.us, 505-670-8402

Contractors typically funded out of this revenue source may complete the following activities which are allowable under federal provisions:

- Distance education for students,
- Family engagement outreach,
- Professional development provided to teachers, educational assistants, and other personnel (online),
- Curriculum and lesson planning,
- Processing of payments,
- Submission of requests for reimbursement,
- Completion and submission of application and budget,
- Administrative functions.

Title III

Contact: Mayra Valtierrez, mayra.valtierrez@state.nm.us, 505-231-1140

Contractors typically funded out of this revenue source may complete the following activities which are allowable under federal provisions:

- Provide effective professional development to classroom teachers, principals and administrators that is designed to improve the instruction of ELs,
- Parent, family and community engagement activities.

IDEA- B

Contact: Deborah Dominguez-Clark, Deborah.clark@state.nm.us, (505) 819-1337

Contractors typically funded out of this revenue source may complete the following activities which are allowable under federal provisions:

- Review SAT data,
- Schedule and complete screenings and evaluations,
- Schedule IEPs,
- Create at-home supports based on IEPs,
- Take at-home supports to children, or ask parents to come in to demo the at-home activities with the child,
- Conduct IEP meetings that are coming due in the building or via Zoom,
- Train educational assistants in strategies to work with specific children including making materials,
- Train educational assistants in literacy and positive behavioral interventions,
- Organize files,

- Review individual child data and create instructional plans based on data,
- determine if IEP goals need to be adjusted based on data,
- Develop general intervention lessons and materials for students in the MLSS process based on grade level standards,
- Complete progress reports on IEP goals,
- Update contact logs for services completed,
- Work with Early intervention agencies to gather data (with parent consent) to begin planning for transition conferences,
- Complete REED information for students transitioning from FIT (Transition C to B),
- Update FBAs and BIPs,
- Review BIPs for needed updates (using zoom or other media to work with the IEP Team),
- Disinfect equipment used for therapy and instruction,
- Begin to gather Early Childhood Outcome updates from family members via phone conversations,
- Distribute materials to families via the school meal distribution sites.

Also fundable under IDEA-B, Related Service Providers (social workers, speech-language pathologists, occupational therapists, educational diagnosticians, school psychologists, recreational therapists, audiologists, interpreters for the deaf, rehabilitation counselors, orientation and mobility specialists) can perform the following activities:

- Conduct lesson planning/therapy preparation,
- Write reports,
- Complete therapy notes or Medicaid notes,
- Use existing documentation to update present levels of performance for upcoming IEPs,
- Email or consult over the phone with district staff on program supports for students that will occur once school resumes,
- Facilitate or participate in phone and/or web-based IEPs,
- Develop visual materials that can be used in general and special education settings to support student needs in all tiers/layers (e.g., visual schedules, choice boards, etc.),
- Develop training and/or tip sheets for staff on collecting behavioral data and using it to support classroom interventions (whether through Tier 2, MLSS, FBA/BIP),
- Create Tip Sheets for teachers to help carry out high quality evidence-based strategies in the classroom for each discipline in general and special education classrooms,
- Create Fact Sheets providing technical assistance for early communication, augmentative communication, toileting for children with vision loss, assessment, and strategies for children with combined vision and hearing loss, universal design tool-kits every teacher can use,
- Work with educational assistants, special education teachers, and regular education teachers on how to implement IEP accommodations and modifications,
- Begin evaluations by interviewing parents via phone,
- Score any scales/assessments that have not been scored,

- Write evaluation reports,
- Conduct supervision for level 1 staff via telecommunication (Zoom, Skype, FaceTime, etc... can be considered for face-to-face supervision).

Perkins

Contact: Elaine Perea, Elaine.Perea@state.nm.us, 505-369-3475

Contractors typically funded out of this revenue source may complete the following activities that are allowable under federal provisions:

- Complete the comprehensive local needs assessment and the funding application for 2020-21,
- Develop a strategic plan for developing or expanding programs in alignment with local needs, including researching and purchasing major equipment,
- Provide effective professional development to CTE and core teachers that is designed to improve the instruction of CTE and the integration of core academics into CTE,
- Transition existing materials to an online delivery method.

Title IV - Part A (SSAE)

Contact: Gregory Frostad, gregory.frostad2@state.nm.us, 505-470-5752

Expenses in well-rounded education may include a broad range of expenses for a wide array of classes. Contractors typically funded out of this revenue source may complete the following activities which are allowable under federal provisions:

- Use technology for distance learning opportunities. Expenses for safe and healthy students may include expenses associated with
- Facilitate PBIS discussions or trainings, and/or develop PBIS-related materials,
- Facilitate conversations or professional development related to school culture, and/or develop materials intended to improve school culture,
- Engage in activities related to the prevention of abuse of alcohol, tobacco and other drugs,
- Provide school nursing services,
- Purchase or research the purchase of supplemental health supplies, etc...
- Conduct activities or research and execute expenses associated with effective use of technology.

Title II

Contact: Danielle Gothie, katya.gothie@state.nm.us, 505-690-4551

This program is focused on teacher and school leader development to improve outcomes for students. Contractors typically funded out of this revenue source may complete the following

activities that are allowable under federal provisions:

- Facilitate, design, or participate in online professional development,
- Work on curriculum,
- Plan lessons,
- Facilitate, design, or participate in virtual book studies as a PLC, or grade level group.

21st Century Community Learning Centers

Contact: Tyson Ledgerwood, Tyson.Ledgerwood@state.nm.us, 505-670-7204

Staff may continue to be paid with 21st CCLC grant funds, for work including remote work at the discretion of the local Supervisory Union in service to your local 21st CCLC project goals.

Allowable work includes:

- Virtual staff meetings (conference calls, Zoom meetings, Skype, etc.)
- Curriculum work (must be specific to the 21st CCLC program)
- Lesson plan development (must be specific to the 21st CCLC program)
- 21st CCLC program data entry/validation
- Online professional development
- Systems planning work (e.g., summer programs, evaluation, sustainability, safety, budgeting)
- On-line programming for youth that may be reasonable and necessary
- Services related to providing federally approved afterschool meals or snack programs served after 2.00 p.m.
- Other expectations and associated job tasks listed in job descriptions that are reasonable and necessary during the closure period

Spring Budget Conference

The live annual Spring Budget Conference has been cancelled. PED is currently exploring alternative ways to distribute the information that is typically distributed at the conference.

School Budget and Finance Analysis Bureau (SBFAB) Reporting

The School Budget and Analysis Bureau will continue to operate and will be available to consult with districts through the health emergency.

School business officials should continue submitting all required reports during the health emergency. Please use normal contact mechanisms to communicate with the School Budget and Analysis Bureau; however, because most staff are working off-site during the health emergency, OBMS or email communication is the most efficient and preferred mechanism for communication.

Requests for Reimbursement

Requests for Reimbursement will continue to be processed during the health emergency. Please use normal contact mechanisms to communicate with program staff and Fiscal Grants Management Bureau. HOBMS or email communication is the most efficient mechanism for communication since some staff are working off-site during the health emergency. Please respond to information requests within OBMS within a 48 hour time frame.

Additional information from NM Department of Workforce Solutions

Please see the attached email correspondence from the New Mexico Department of Workforce Solutions regarding new guidance related to Unemployment Benefits

Sincerely,

Ryan Stewart
Secretary of Education
State of New Mexico

Attachments:

3/13/20 Memo: Questions Regarding Payment of Teachers, Staff, and Contractors During School Closure Due to COVID-19

3/13/20 Memo: Alternate Work Expectations for School Staff Members During Closure Period

3/16/20 Email from Department of Workforce Solutions