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July 2013

SPECIAL EDUCATION FIELD ADVISORY

FROM: James P. DeLorenzo

SUBJECT: Parental Consent for the Use of Public Benefits or Insurance Pursuant to the Individuals with Disabilities Education Act

This memorandum is to inform you that the Board of Regents has approved as a permanent rule the amendment to section 200.5(b) of the Regulations of the Commissioner of Education. The amendment aligns State regulations to 34 Code of Federal Regulations (CFR) section 300.154(d) and (e) relating to students with disabilities who are covered by public benefits or insurance and students who are covered by private insurance. The effective date of the new rule is July 3, 2013.

Consistent with newly amended federal regulations, the amendment establishes procedures for districts and municipalities to access public benefits such as Medicaid to pay for certain special education and related services. Specifically, the amendment requires that public agencies:

1. obtain a one-time written consent from the parent before accessing the child's or parent's public benefits or insurance for the first time; and
2. prior to obtaining consent for the first time and annually thereafter, provide parents with a written notification that ensures that they are fully informed of their rights before a public agency can access public benefits or insurance to pay for services under the Individuals with Disabilities Education Act (IDEA). This notice must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

Attached, for additional information, are the amended regulations (Attachment 1); a sample written annual notification form based on the sample form issued by the U.S. Department of Education for this purpose (Attachment 2); and a sample consent form (Attachment 3) that districts may use. Also attached are questions and answers based on federal guidance (Attachment 4). Please note that the attached sample forms replace those included in New York State Education Department's (NYSED) June 2008 and

December 2009 field memorandums regarding parental consent for the use of public benefits or insurance pursuant to IDEA.

Please direct questions regarding Medicaid reimbursement to NYSED's Medicaid Unit at 518-474-7116 or MedinEd@mail.nysed.gov. Questions relating to the IDEA requirement for parental consent may be directed to the Special Education Policy Unit at 518-473-2878 or speced@mail.nysed.gov or the Special Education Quality Assurance Office in your region:

Central Regional Office	(315) 428-4556
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185
Long Island Regional Office	(631) 952-3352
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002
Nondistrict Unit	(518) 473-1185

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with individuals such as Directors of Special Education, School Psychologists, Committee on Special Education and Committee on Preschool Special Education Chairpersons, Guidance Counselors and Directors of Pupil Personnel and Parent Teacher Associations.

Attachments

This excerpt from the Regulations of the Commissioner of Education is unofficial, and is presented for general informational purposes as a public service.

Sections 200.5(b)(8) and (9)

(8) Students with disabilities who are covered by public benefits or insurance.

- (i) *Consent.* Prior to accessing a student's or parent's public benefits or insurance for the first time, after providing notification to the student's parents consistent with subparagraph (ii) of this paragraph, the school district must obtain the written consent of the parent, consistent with the confidentiality requirements of sections 99.30 and 300.622 of the Code of Federal Regulations (Code of Federal Regulations, 2012 edition, title 34, sections 99.30 and 300.622, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2012 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student), the purpose of the disclosure (e.g., billing for special education services), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program, such as Medicaid or Supplemental Security Insurance); and specify that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this Part.
- (ii) *Notification.* Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide the student's parents with written notification, consistent with the requirements of subdivision (a)(4) of this section, that includes:
 - (a) a statement of the parental consent provisions in subparagraph (i) of this paragraph;
 - (b) a statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;
 - (c) a statement that the parents are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim for services pursuant to this Part;
 - (d) a statement that the school district may not use the student's benefits under a public benefits or insurance program if that use would:
 - (1) decrease available lifetime coverage or any other insured benefit;

- (2) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
 - (3) increase premiums or lead to the discontinuation of benefits or insurance; or
 - (4) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
- (e) a statement that the parents have the right, pursuant to Parts 99 and 300 of Title 34 of the Code of Federal Regulations, to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and
 - (f) a statement that the withdrawal of consent or refusal to provide consent under Parts 99 and 300 of Title 34 of the Code of Federal Regulations to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.
- (9) *Students with disabilities who are covered by private insurance.* With regard to services required to provide a free appropriate public education to an eligible student under this Part, a school district may access the parents' private insurance proceeds only if the parents provide consent consistent with section 200.1(l) of this Part. Each time the school district proposes to access the parents' private insurance proceeds, the school district must obtain such parental consent, and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

SAMPLE FORM
Written Notification Regarding Use of
Public Benefits or Insurance to Pay for Certain Special Education and
Related Services

This form has been adapted from the U.S. Department of Education's model Notification Form¹.

INTRODUCTION

You are receiving this written notification to give you information about your rights and protections under the federal Individuals with Disabilities Education Act (IDEA), so that you can make an informed decision about whether you should give your written consent to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services that your school district is required to provide at no cost to you and your child under IDEA.

Funds from a public benefits or insurance program (for example, Medicaid funds) may be used by your school district to help pay for special education and related services, but only if you choose to provide your consent, as explained below.

Before your school district can ask you to provide your consent to access your or your child's public benefits or insurance for the first time, it must provide you with this notification of the rights and protections available to you under IDEA. This notification is intended to help you understand these rights and protections, including the type of consent your school district will ask you to provide. If you choose not to provide your consent, or later decide to withdraw your consent, your school district has a continuing responsibility to ensure that your child is provided all required special education and related services under IDEA at no charge to you or your child.

PARENTAL CONSENT

34 CFR §300.154(d)(2)(iv)(A)-(B) and 8 NYCRR §200.5(b)(8)(i)

Beginning on July 3, 2013, before your school district can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, it must obtain your signed and dated written consent. Your school district is only required to obtain your consent one time.

This consent requirement has two parts.

¹For the full Suggested Model for Written Notification of Parental Rights regarding Use of Public Benefits or Insurance developed by the U.S. Department of Education, see:
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accmodelwrittennotification-6-11-13.pdf>

1. Consent to share records about your child: Your school district is required to obtain your written consent before disclosing [sharing] personally identifiable information about your child (such as your child's name, address, social security number, individualized education program (IEP), and evaluation results) from your child's education records. In asking for your consent, the district will (1) identify the records [or information] about your child that will need to be shared (for example, about the services that may be provided to your child); (2) tell you the purpose of sharing the records (for example, billing for special education and related services); and (3) identify the agency to which your school district may disclose the information (for example, the Medicaid agency).
2. Consent to bill your public insurance program (for example, Medicaid): Your consent must include a statement specifying that you understand and agree that your school district may use your or your child's public benefits or insurance (e.g., Medicaid) to pay for some of your child's special education services.

If your school district has on file your consent that you provided before July 3, 2013 to release your child's records and to use your or your child's public benefits or insurance to pay for special education and related services, your school district is required to request a new consent from you only when there is a change in any of the following: the type of services to be provided to your child (for example, physical therapy or speech therapy), the amount of services to be provided to your child (for example, hours per week lasting for the school year), or the cost of services (that is, the amount charged to the public benefits or insurance program).

If any of these changes occur, your school district must obtain from you a new one-time consent. Before you provide your school district the new, one-time consent, your school district must provide you with this notification. Once you provide this one-time consent, you will not be required to provide your school district with any additional consent in order for it to access your or your child's public benefits or insurance even if your child's services change in the future. However, your school district must continue to provide you with this notification annually.

You have the right to withdraw your consent at any time. If you withdraw your consent, the school district must still provide all of your child's IEP special education and related services at no cost to you. To withdraw your consent, you will need to submit your request in writing to your child's school district.

NO COST PROVISIONS

34 CFR §300.154(d)(2)(i)-(iii) and 8 NYCRR §200.5(b)(8)(ii)(b)-(d)

The IDEA "no cost" protections regarding the use of public benefits or insurance are as follows:

1. Your school district may not require you to sign up for, or enroll in, a public benefits or insurance program in order for your child to receive a free appropriate public education.
2. Your school district may not require you to pay any out-of-pocket expenses, such as the payment of a deductible or co-pay amount for filing a claim for services that your school district is otherwise required to provide your child without charge.
3. Your school district may not use your or your child's public benefits or insurance if using those benefits or insurance would:
 - a. decrease your available lifetime coverage or any other insured benefit, such as a decrease in your plan's allowable number of physical therapy sessions available to your child or a decrease in your plan's allowable number of sessions for mental health services;
 - b. cause you to pay for services that would otherwise be covered by your public benefits or insurance program because your child also requires those services outside of the time your child is in school;
 - c. increase your premium or lead to the cancellation of your public benefits or insurance; or
 - d. cause you to risk the loss of your child's eligibility for home and community-based waivers that are based on your total health-related expenditures.

We hope this information is helpful to you in making an informed decision regarding whether to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services under IDEA.

Contact information: For additional information and guidance on the requirements governing the use of public benefits or insurance to pay for special education and related services see: <http://www2.ed.gov/policy/speced/req/idea/part-b/part-b-parental-consent.html>.

SAMPLE CONSENT FORM FOR ACCESSING A PARENT OR STUDENT'S MEDICAID INSURANCE TO PAY FOR CERTAIN SPECIAL EDUCATION SERVICES IN A STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Dear Parent/ Guardian of _____:

This is to ask your permission (consent) to bill your or your child's Medicaid Insurance Program for special education and related services that are on your child's individualized education program (IEP).

This consent allows the school district to bill for covered health-related services and to release information to the school district's Medicaid Billing Agent for that purpose.

I, _____ as the parent/guardian of _____,
(Print child's name)

have received a written notification from the school district that explains my federal rights regarding the use of public benefits or insurance to pay for certain special education and related services.

I understand and agree that the school district may access Medicaid to pay for special education and related services provided to my child.

I understand that:

- Providing consent will not impact my child's/my Medicaid coverage;
- Upon request, I may review copies of records disclosed pursuant to this authorization;
- Services listed in my child's IEP must be provided at no cost to me whether or not I give consent to bill Medicaid;
- I have the right to withdraw consent at any time; and
- The school district must give me annual written notification of my rights regarding this consent.

I also give my consent for the school district to release the following records/information about my child to the State's Medicaid Agency for the purpose of billing for special education and related services that are in my child's IEP. The following records will be shared.

Records to be shared (such as records or information about services your child receives)

I give my consent voluntarily and understand that I may withdraw my consent at any time. I also understand that my child's right to receive special education and related services is in no way dependent on my granting consent and that, regardless of my decision to provide this consent, all the required services in my child's IEP will be provided to my child at no cost to me.

Parent/Guardian Name and Signature:

Print Name

Date

QUESTIONS AND ANSWERS REGARDING PARENTAL CONSENT AND NOTIFICATION REQUIREMENTS FOR ACCESS TO PUBLIC BENEFITS AND INSURANCE

The following guidance is based on information published in the Federal Register, Volume 78, Issue 3, dated February 14, 2013.

1. What is meant by “other public benefits or insurance programs”?

Other public benefits or insurance programs are those associated with the State agency that is responsible for the administration of a State’s Medicaid program, which is the source of funding for medically necessary school-based services that are covered benefits under Medicaid. Another example of a public benefit or insurance program is the Children’s Health Insurance Program(CHIP) (e.g., Child’s Health Plus). These regulations apply to all public benefits or insurance regardless of whether they are Medicaid programs.

2. Can a public agency ask a parent for permission to bill public insurance or benefits and/or to disclose personally identifiable information to the State public benefits or insurance program if the parent previously declined to provide consent (or withdrew consent) for such activity?

Yes. A public agency may make reasonable requests to obtain the parental consent required under the new regulations from a parent who previously declined or withdrew consent. Prior to seeking this consent, a public agency must provide the parent(s) with written notification consistent with the new regulations. However, a parent’s refusal to consent or withdrawal of consent does not relieve the agency of providing services at no cost to the parent(s).

3. Will a public agency need to obtain a new consent if they already have consent on file that was signed by the parent before July 3, 2013?

No. A public agency is not required to obtain a new parental consent provided the following requirements are met.

- There is no change in any of the following: type of service(s) (e.g., speech therapy) to be provided to the child; the amount of services (frequency and duration) to be provided to the child; or the cost of services charged to public benefits or insurance; and
- A public agency has on file a parental consent that meets the requirements of the previous section 300.154 (d)(2)(iv)(A), 34 CFR 99.30 and section 300.622.

However, for children for whom the public agency already has consent under the previous section 300.154(d)(2)(iv)(A), the first time after the effective date of changes to State regulations (July 3, 2013) that there is a change in the type or amount of

services to be provided, or the amount charged by the public agency or cost of services billed to the public benefits or insurance, the public agency must provide the parents the written notification and also obtain consent consistent with the new requirements consistent with section 200.5 of the Regulations of the Commissioner of Education.

4. Will a public agency need to obtain a new parental consent to disclose personally identifiable information to access a child's or parent's public benefits or insurance when consent was obtained in one school district and the child relocates to another school district outside the state or to a location within the state?

Yes.

5. Will the written notification take the place of the written parental consent?

No. Written notification is a separate and distinct requirement and does not replace the parental consent requirement.

6. When and how must a district provide the written notification to the parent?

The written notification must be provided to the parent before the parent provides consent to access the parent or child's public benefits or insurance for the first time and it must be provided annually thereafter. The notification may be mailed to the parent(s); personally delivered; and/or provided through electronic mail (email) communication provided the school district makes this option available and the parent(s) agrees to electronic communication.

Once the public agency provides the child's parent(s) the written notification that meets the requirements of the regulations, prior to accessing the child's or parent's public benefits or insurance for the first time, public agencies will have the flexibility to determine the timing of subsequent annual written notifications. However, the notification must be provided annually. Nothing would preclude districts from providing this notification more frequently than annually.

7. Can districts provide the annual written notification at the Committee on Special Education (CSE) meeting?

In those instances where a child has been determined eligible for public benefits prior to the CSE meeting, the public agency could provide the child's parent(s) with the written notification at the CSE meeting or at some other meeting, provided the child's parent(s) receives the written notification **before** the public agency obtains the requisite parental consent to access the parent's or child's public benefits or insurance for the first time.

- 8. Will the district need to provide written notification each time the public agency amends a child's IEP in a manner that would result in a change to the type or amount of services billed to the public benefits or insurance program?**

No. Providing parents the annual written notification that meets the requirements of the final regulations is sufficient protection in these situations. A public agency may provide written notification more frequently than annually, if they deem it appropriate.