

Summary of Consent Required to Bill Medicaid  
for Costs of Special Education  
May 12, 2009

**I. Provisions of IDEA regarding parental consent**

In order for a district or other public agency to bill Medicaid or another public insurance program for costs related to special education services, two requirements must be satisfied:

- A) Parental consent (as defined below) must be obtained **each time** that a school district or other public agency seeks access to public benefits or insurance, and
- B) Parents must be notified that refusal to allow access to their public benefits or insurance does not relieve the district or public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

See 34 CFR 300.154(d)(2)(iv)(A), (B).

*Consent* for purposes of IDEA means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and **agrees in writing** to the carrying out of the activity for which his or her consent is sought, and **the consent describes that activity and lists the records (if any) that will be released and to whom**; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
  - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

34 CFR 300.9.

*Each time* means that consent “may be obtained one time for the specific services and duration of services identified in a child’s IEP.” If the district later seeks to use public insurance to pay for additional hours of service (due to the IEP being revised or extended, for example), the district must seek parental consent again. OSEP letter to John Hill, National Alliance for Medicaid in Education, Inc., March 8, 2007.

A district does not need to seek parental consent if consent is given directly to another agency, such as the State Medicaid Agency, **as long as the parental consent provided to the other agency meets the requirements set forth above.** OSEP letter to John Hill, National Alliance for Medicaid in Education, Inc., March 8, 2007. OSEP Memorandum to State Directors of Special Education, May 3, 2007.

## **II. Consent to Release Educational Records Under FERPA For Purposes of Billing Medicaid**

FERPA requires:

The parent must provide a signed and dated written consent before an educational agency discloses personally identifiable information from the student's records, unless the disclosure falls within exceptions listed in FERPA and its implementing regulations.

The written consent must:

- Specify the records that may be disclosed;
- State the purpose of the disclosure; and
- Identify the party or class of parties to whom the disclosure may be made.

34 CFR 99.30.

FERPA applies to Medicaid claims documentation for eligible Part B services. Family Policy Compliance Office Letter to Mr. Dann Stevens, Iowa Department of Education, dated October 12, 2005. (The Family Policy Compliance Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with FERPA and regulations).

Under FERPA, an educational agency or institution may disclose education records if a parent has provided prior written consent to a third party authorized to receive the records, such as the designated Medicaid fiscal agent. 34 CFR 99.30(a)