



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

NOV - 6 2002

Susan D. DuRant, Director
Programs for Exceptional Children
South Carolina Department of Education
Rutledge Office Building
1429 Senate Street
Columbia, South Carolina 29201

Dear Ms. DuRant:

This letter is in response to your request for additional clarification on whether parental permission is required prior to accessing Medicaid if all of the provisions of Part B of the Individuals with Disabilities Education Act (IDEA) 34 CFR § 300.142(e) have been met by the State.

Part B requires States and local school districts to make a free appropriate public education (FAPE) available to all children who are eligible to receive services. FAPE includes the provision of special education and related services which meet State educational standards and Part B requirements. These services must be provided as written in the child's individualized education program (IEP) and at no cost to parents. Public agencies may access, as appropriate, available public sources of support (for example, public insurance or Medicaid programs) to pay for required services to the extent that parents would not incur a financial loss by the use of other sources of support.

A public agency may not require a parent to sign up for Medicaid or other public insurance benefits as a condition for the child's receipt of FAPE under Part B. A child's entitlement to FAPE under Part B exists whether or not a parent is willing to sign up for Medicaid or other public insurance benefits. Children with disabilities are entitled to services under Part B, regardless of parents' personal choices to access Medicaid or other public insurance benefits. Medicaid or other public insurance benefits cannot be considered available public sources of support when parents decline to sign up for those public benefits. However, there is nothing in the Federal Regulations that would prohibit a public agency from requesting that a parent sign up for Medicaid or other public insurance benefits.

With regard to your specific question related to whether parental permission is needed prior to accessing Medicaid, I will address the requirements under Part B and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 34 CFR § 99.31. It is important to note that the terms of the public insurance and State law should also be consulted as they may have additional requirements.

Under FERPA, a parent must provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in FERPA. See 34 CFR §§ 99.30 and 99.31. In Wisconsin Dept. of

Pub. Instruction, 28 IDELR 497 (FPCO 1997), the Family Policy Compliance Office (FPCO) addressed the question of whether FERPA requires parental written consent “before school districts disclose information from student education records in order to determine which students with disabilities are Medicaid eligible and to seek reimbursement from the State’s Medicaid agency for services provided to those students.” The FPCO found that “it does not appear that any of FERPA’s exceptions to the prior written consent provisions would permit the nonconsensual disclosure by school districts of personally identifiable information from education records to the State Medicaid agency.” Accordingly, schools may not disclose information on students who are receiving services under IDEA to the State’s Medicaid agency in order to determine which of the students are Medicaid eligible, or to seek reimbursement, without the prior consent of the students’ parents. School officials that have additional questions about FERPA as it relates to this matter should contact the FPCO directly at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

Under Part B, if a child is covered by a public insurance program and there is no cost to the family or the child in using the benefits of that program to support a service written in a child’s IEP, the public agency is encouraged to use the public insurance benefits to the extent possible. Although Part B does not specifically require public agencies to obtain parental consent when they use public insurance if there is no cost to the family or child in using the benefits of that program, Part B does require public agencies to comply with FERPA with regard to releasing information. 34 C.F.R. § 300.571(b). Accordingly, under Part B, public agencies are required to obtain parental consent prior to releasing personally identifiable information about students to public insurance agencies.

Furthermore, if the Medicaid-enrolled child also has private insurance coverage, Medicaid would require the use of the private insurance. The Part B regulations do not affect the requirement under Medicaid that the State Medicaid agency pursue liable third party payers such as private insurance providers. In this case, in addition to obtaining consent for releasing information to public insurance agencies, the public agency would also be required to obtain consent to use the private insurance program to support the service prior to accessing the public insurance. 34 C.F.R. § 300.142(f). Under IDEA, parents may not be required to assume costs incurred through use of private insurance so that the school can get reimbursement from the public insurer for services in the child’s IEP. Under IDEA, if a Medicaid-enrolled child also is covered by private insurance, the public agency must either obtain the parent’s consent to use the private insurance, or not use Medicaid to provide the service. See, 64 Fed. Reg. 12568 (March 12, 1999). One way a public agency might be able to obtain consent would be by offering to cover the costs that would normally, under Medicaid, be assessed against the private insurer, and agree to cover all out-of-pocket expenses. As stated in 34 CFR § 300.142(g), if a public agency is unable to obtain parental consent to use the parent’s private insurance, or public insurance when the parent would incur a cost for a specified service, to ensure FAPE, the public agency may use its Part B funds to pay for the services.

I hope that this information provides clarity to obtaining parent consent in order to access Medicaid or public insurance benefits. As I stated above, the terms of the public insurance and state law should also be consulted as they may have additional requirements. If you have any questions regarding this letter, please contact Dr. JoLeta Reynolds of my staff at 202-205-5507.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie S. Lee". The signature is written in a cursive style with a large initial 'S' and a long horizontal stroke at the end.

Stephanie S. Lee
Director
Office of Special Education Programs