

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR - 8 2007

John D. Hill, Chairman
Governmental Affairs Committee
National Alliance for Medicaid in Education, Inc.
Indiana Department of Education
Room 229 State House
Indianapolis, IN 46204-2798

Dear Chairman Hill:

This is in response to your letter to me on behalf of the National Alliance for Medicaid in Education (NAME) asking for a written clarification regarding the policy interpretation of the requirement at 34 CFR §300.154 of the “federal regulations interpreting the reauthorized Individuals with Disabilities Education Act (IDEA).” Specifically, you ask that I put in writing, and make publicly available, the clarification provided at the August 2006 Office of Special Education Programs (OSEP) Leadership Conference regarding the meaning of the words “each time” as used in 34 CFR §300.154(d)(2)(iv)(A). Below is the question to which you refer:

Question:

Section 300.154 states that parental consent must be obtained each time that access to public benefits or public insurance is sought. Does this mean parental consent must be obtained each time the service is offered, every time new billing occurs, when the IEP [individualized education program] is generated, when there is a change in the type of service, or only when there is a change in the amount of a particular service? Finally, the Analysis of Comments and Changes section stated that “a public agency could satisfy parental consent requirements under FERPA and section 617(c) of the Act if the parent provided the required parental consent to the State Medicaid agency...” Does this mean the local educational agency (LEA) does not have to obtain consent and, if so, must the LEA maintain a copy of the consent given to the Medicaid agency?

Answer:

The IDEA, Part B regulations at 34 CFR §300.154(d)(2)(iv) state that each time the public agency proposes to access the child or parent’s public benefits or insurance to provide or pay for services required to provide a free appropriate public education (FAPE) to an eligible child, the agency must obtain parental consent, consistent with 34 CFR §300.9. However, we do not interpret this provision to require that a separate written parental consent be obtained prior to each individual delivery of services for which payment will be requested or every time a billing occurs. In this context, “parental consent” means -

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

This consent may be obtained one time for the specific services and duration of services identified in a child's IEP. For example, if it is known that a child is to receive three hours of occupational therapy (OT) each week for 36 weeks, parents could be asked to give consent once to the public agency's billing of the child or parent's public benefits or public insurance for up to 108 hours of OT service for that 36-week period. (The amount billed would depend on the amount of OT service that was actually provided.) While this consent may be obtained at an IEP meeting, it could also be obtained at some point after the IEP is developed.

If however, the public agency seeks to use the child's or parent's public benefits or public insurance to pay for additional hours of service (due to the IEP being revised or extended) or the public agency is charging different amounts for such services, and would like to again charge the child or parent's public benefits or public insurance for those costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parent's public benefits or public insurance. The Part B regulation provisions in 34 CFR §300.154(d)(2) are intended to ensure that the parent is fully informed of a public agency's proposed access of the child's or parent's benefits under a public benefits or public insurance program and provide written parental consent prior to the public agency's access to those public benefits or public insurance.

If parental consent is given directly to another agency, such as the State Medicaid agency, the LEA does not have to independently obtain a separate parental consent, as long as the parental consent provided to the other agency meets the requirements of 34 CFR §§300.9 and 300.154(d). The public agency seeking parental consent to access public benefits or public insurance programs is also obligated, under 34 CFR §300.154(d)(2)(iv), to notify the parent that the parent's refusal to allow access to their public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required FAPE services are provided at no cost to the parent. If another agency obtains the parental consent required by 34 CFR §§300.9 and 300.154(d)(2), the LEA must maintain a copy of the parental consent to both demonstrate its compliance under Part B of the IDEA and to ensure that it is available for the parent or child to review.

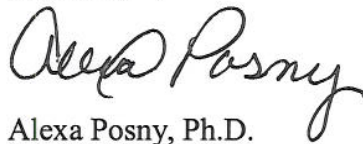
Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

You indicate that your second reason for writing is to seek the input and active collaboration of OSEP in the important and ongoing national dialogue about access to Medicaid funding for direct medical services and administrative activities performed in school-based settings. OSEP agrees that the collaboration between OSEP and the office administering the Medicaid program, Centers for Medicare and Medicaid Services (CMS), is critical and over the years, the Department has had an ongoing working relationship with that office and has had staff from the Department working with CMS on issues such as transportation, the Administrative Claiming Guide, bundling of services as well as other issues of mutual interest.

However, we will be happy to meet with you to receive suggestions for other areas of collaboration. If you wish to set up a meeting, please feel free to call my office assistant, Betty McMahon, to schedule an appointment. Her telephone number is 202-245-7441.

I hope this letter will be helpful to you and your colleagues. Let me know if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Alexa Posny".

Alexa Posny, Ph.D.

Director

Office of Special Education

Programs

cc: Stephen DeMougin
Indiana Family and Social Services Administration
Robert Marra
Indiana Department of Education