



Information UPDATE

Wisconsin Department of Public Instruction/Elizabeth Burmaster, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

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TO: District Administrators, CESA Administrators, CCDEB Administrators, Directors of Special Education and Pupil Services, and Other Interested Parties

FROM: Carolyn Stanford Taylor, Assistant State Superintendent
Division for Learning Support: Equity and Advocacy

SUBJECT: Parental consent to bill Wisconsin Medicaid for medically-related special education and/or related services

The Department of Public Instruction (DPI) believes that public benefits and insurance are important resources for local educational agencies (LEAs) and other public agencies to access, when appropriate, to assist in meeting their obligation to make a free appropriate public education (FAPE) available to all students who are eligible to receive services. If a student is covered by a public benefits or insurance program and there is no cost to the family or the student in using the benefits of that program to support a service included in a student's Individualized Education Program (IEP), then the LEA is encouraged to use the public benefits or insurance to the extent possible.

The department is providing this bulletin to assist LEAs in accessing Wisconsin Medicaid funds to pay for special education and/or related services while complying with requirements in the Individuals with Disabilities Education Act, Part B, (2004) ("IDEA") and in the Family Educational Rights and Privacy Act ("FERPA").

In addition, the department developed a related model form for district use. You may download Model Form M-5 (*Consent to bill Wisconsin Medicaid for medically-related special education and related services*) at <http://www.dpi.wi.gov/sped/forms06.html>.

Questions related to the content of this bulletin or DPI Model Form M-5 may be directed to Courtney Reed Jenkins, Consultant, at courtney.jenkins@dpi.state.wi.us or (608) 267-9183.

Questions

1. **When is the LEA prohibited from accessing Wisconsin Medicaid to pay for a student's medically-related special education and/or related services?**
2. **For which special education and/or related services will Wisconsin Medicaid pay?**
3. **Must the LEA seek payment from a student's commercial or other health insurance before seeking payment from Wisconsin Medicaid for a student's medically-related special education and/or related services?**
4. **When must the LEA obtain parental consent to bill Wisconsin Medicaid for a student's medically-related special education and/or related services?**
5. **What must the consent include?**

The Wisconsin Department of Public Instruction does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.

6. **If the LEA would like to bill Wisconsin Medicaid for special education and related services in a student's IEP and has already conducted the annual IEP team meeting, how can the LEA obtain parental consent for the billing?**
7. **Wisconsin Medicaid requires an annual application for public benefits. As part of the application, parents must consent to the release of records to the local Medicaid office and the Department of Health and Family Services. Does this release meet the consent requirements for purposes of billing Wisconsin Medicaid?**

Answers

1. **When is the LEA prohibited from accessing Wisconsin Medicaid to pay for a student's medically-related special education and/or related services?**

The LEA may not bill Medicaid for covered services in a student's IEP unless and until it obtains parental consent for billing (34 CFR §300.154(d)(2)(iv)).

The LEA may not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, in filing a claim for services (34 CFR §300.154(d)(2)(ii)). The LEA may pay the cost that the parents otherwise would be required to pay (*Ibid.*).

In addition, the LEA may not use a student's benefits under a public benefits or insurance program if that use would decrease available lifetime coverage or any other insured benefit; 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; increase premiums or lead to the discontinuation of benefits or insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures (34 CFR §300.154(d)(2)(iii)).

2. **For which special education and/or related services will Wisconsin Medicaid pay?**

Through the Medicaid school-based services (SBS) benefit, LEAs may submit claims to Wisconsin Medicaid for covered services provided to Medicaid-eligible students enrolled in special education programs. These services must be listed in a student's IEP and include: nursing services, physical therapy, occupational therapy, speech and language pathology services, specialized medical transportation, psychological services, counseling, social work services, and developmental testing and assessment.

The Department of Health and Family Services coordinates the SBS benefit program. For additional information, visit <http://dhfs.wisconsin.gov/medicaid/>. An electronic copy of the *School-Based Services Handbook* (2005) is available online at <http://dhfs.wisconsin.gov/medicaid2/handbooks/sbs/>. Changes to SBS policies are published first in *Updates* and available at dhfs.wisconsin.gov/medicaid/.

3. **Must the LEA seek payment from a student's commercial or other health insurance before seeking payment from Wisconsin Medicaid for a student's medically-related special education and/or related services?**

Under the SBS benefit, Wisconsin Medicaid requires LEAs to seek payment from the commercial insurer only for physical therapy and occupational therapy services before billing Wisconsin

Medicaid if a student has commercial health insurance. LEAs are required to obtain parental consent to bill a student's commercial health insurance (34 CFR §300.154(e)(1)).

4. When must the LEA obtain parental consent to bill Wisconsin Medicaid for a student's medically-related special education and/or related services?

“Each time a public agency proposes to access a child's 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” (34 CFR §300.154(d)(2)(iv)(A)).

The U.S. Department of Education does not interpret this provision to require 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 (*Letter to Smith*, January 23, 2007).

The consent may be obtained one time for the specific services and duration of services identified in a student's IEP (*Ibid.*). The amount billed would depend on the amount of service actually provided and may be less than that for which consent was obtained.

If the LEA seeks to use Wisconsin Medicaid to pay for additional hours of service (due to the IEP being revised) or the LEA is charging different amounts for such services and would like to charge Wisconsin Medicaid for those costs, then the LEA must obtain parental consent for the additional amount of service or costs to be charged (*Ibid.*).

5. What must the consent include?

First, IDEA regulations require the LEA to obtain parental consent consistent with 34 CFR § 300.9, which 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) (34 CFR § 300.154(d)(2)(iv)(A)).

Second, the LEA must comply with consent requirements in FERPA and its implementing regulations because the LEA must provide Wisconsin Medicaid with information from the child's education records (*e.g.*, services provided, length of the services). Both FERPA and IDEA prohibit the LEA from releasing a student's education records to a State Medicaid agency without parental consent, except for a few specified exceptions that do not include the release of education records for insurance billing purposes. In addition to, or as slight modification from, the IDEA requirements above, FERPA requires:

- the parent must provide a signed and dated written consent (34 CFR § 99.30(a));
- the parents to be informed of the reasons or purpose for a release of education records (20 USC § 1232(g)(b)(2)(A), 34 CFR § 99.30(b)(2)); and

- the LEA to provide to the parents and the student, if requested by the parents, a copy of the records to be released (34 CFR §99.30(c)(1)).

Finally, IDEA regulations also require the LEA to notify the parents that the parents' refusal to allow access to public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required special education and related services are provided at no cost to the parents (34 CFR § 300.154(d)(2)(iv)(B)).

All required consent and notification requirements, above, are included in DPI Model Form M-5 (*Consent to bill Wisconsin Medicaid for medically-related special education and related services*).

6. If the LEA would like to bill Wisconsin Medicaid for special education and related services in a student's IEP and has already conducted the annual IEP team meeting, how can the LEA obtain parental consent for the billing?

While consent to bill Medicaid may be obtained at the IEP meeting, it could also be obtained at some point after the IEP is developed and before billing occurs. The LEA is not required to obtain consent during an IEP team meeting. The LEA is not required to obtain consent in person. The LEA could obtain consent via mail.

7. Wisconsin Medicaid requires the annual application for public benefits. As part of the application, parents must consent to the release of records to the local Medicaid office and the Department of Health and Family Services. Does this release meet the consent requirements for purposes of billing Wisconsin Medicaid?

No. The release of information does not meet the consent requirements of IDEA for purposes of billing Wisconsin Medicaid for services in a student's IEP.

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This information update can also be accessed through the Internet:

<http://dpi.wi.gov/sped/bulindex.html>