



Information UPDATE

Wisconsin Department of Public Instruction/Tony Evers, PhD, State Superintendent/P.O. Box 7841/ Madison, WI 53707-7841

BULLETIN NO. 14.01

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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

SUBJECT: Wisconsin Medicaid (This replaces Bulletins 07.02 and 09.01)

This Information Update Bulletin explains how Wisconsin's Medicaid program interfaces with the Individuals with Disabilities Education Act (IDEA) and state special education law, including:

- Medicaid funding for certain medically-related services provided under the IDEA, including School-Based Services (SBS) and Medicaid Administrative Claiming (MAC); and
- Regulations regarding parental consent for the use of Medicaid to pay for services under the IDEA, issued February 14, 2013, by the U.S. Department of Education (DOE), effective March 18, 2013. These regulations replace 34 CFR § 300.154(d)(2)(iv) published in the *Federal Register* on August 14, 2006.

The Department of Public Instruction (DPI) believes 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 Medicaid-eligible, 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 an LEA is encouraged to use the public benefits or insurance to the extent possible.

In March 2013, DPI developed a related model notice of parental rights, *Parental Notice for Billing Medicaid for Health-Related Services in Student's Individualized Education Programs*, and updated Model Form M-5, *Consent to Bill Wisconsin Medicaid for Medically Related Special Education and Related Services*. You may download the model notice and the revised Model Form M-5 at: http://sped.dpi.wi.gov/sped_subjects#m-sbs.

Questions related to the content of this bulletin or the DPI Model Parental Notice and Model Form M-5 may be directed to the DPI Special Education Medicaid Consultant, dpisped@dpi.wi.gov or (608) 266-1781.

IDEA and Medicaid

1. How do IDEA and Medicaid work together?

IDEA is a federal law intended to ensure the FAPE of students with disabilities. Medicaid is a federal program intended to provide health care to qualifying low-income individuals, including children. Medicaid is a resource that supports children eligible for special education services who have specific health-related needs that affect their educational performance, as identified in their IEPs. Wisconsin Medicaid provides LEAs access to funding through two programs: SBS and MAC. The SBS benefit is designed to provide Medicaid funding to Wisconsin schools to help pay for medically-related special education and related services for students who are eligible for the Medicaid program. MAC reimburses administrative expenses incurred by LEAs in providing Medicaid services, such as outreach and case management. The outreach services may be to students or their families, and may be for activities that include coordinating, referring, or assisting the student or family in accessing needed medically-related or mental health care services. Wisconsin's MAC program reimburses expenses related to the provision of health services and expenses to enhance, improve, and/or expand the level and quality of medically-related services provided to all students within a LEA.

2. For which special education and related services will Medicaid pay?

LEAs may submit claims to Wisconsin Medicaid for covered SBS provided to Medicaid-eligible students enrolled in special education programs. These services must be listed in a student's IEP and include: attendant care services, 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 Services (DHS) coordinates the SBS benefit program. Additional information is available at <https://www.forwardhealth.wi.gov/WIPortal/>.

3. Must a 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 a commercial insurer only for physical therapy and occupational therapy before it bills Wisconsin Medicaid, if the student has commercial health insurance. LEAs must obtain parental consent to bill a student's commercial health insurance. 34 C.F.R. § 300.154(e)(1).

4. How are benefits calculated for the School-Based Services and Medicaid Administrative Claiming programs?

For SBS, LEAs must provide the total number of students receiving medically-related services specified in an IEP (denominator) and the subset of those students who are also Medicaid-eligible (numerator). For MAC, LEAs must provide the total number of Medicaid-eligible students in an LEA (numerator) and the total student population in the LEA (denominator).

5. Is parental consent required to release student rosters necessary for MAC and SBS benefits calculations to the Department of Health Services?

No. The Family Educational Rights and Privacy Act (FERPA) and Wisconsin Statute 118.125(2)(j) allow schools to disclose directory data without consent. LEAs upload student information via the *Student Roster*,

and DHS creates the Medicaid match. DHS has revised its *Student Roster* to request only directory data to create the Medicaid match.

6. If a parent has requested a school not disclose directory data under FERPA, may the LEA include that student for purposes of calculating benefits under MAC or SBS?

The LEA must remove the student from their directory before releasing the data to DHS for the Medicaid match. Therefore, the LEA will not know whether the student is eligible for Medicaid, and cannot include the student in the **numerator** for either MAC or SBS benefits calculation. However, districts must include the student in the **denominator** for both MAC and SBS benefits calculations. For MAC, the total number of students in the LEA can be reported as an aggregate; a data match between LEA directory data and DHS Medicaid information is not required. The same is true for SBS.

7. How are claims submitted for reimbursement through MAC or SBS?

To be reimbursed through MAC for outreach and case management services, LEAs identify staff who perform the allowable administrative activities during part of their regular work day. The staff participate in random moment time studies so the portion of their time that can be claimed as Medicaid administration is properly allocated. To be reimbursed through the MAC program, LEAs first identify eligible staff who will participate in the time study prior to the quarter, complete random moment time studies during the quarter, and submit their expenditures for the participating staff after the quarter. Once the claim amount is calculated, the LEA must sign and submit the quarterly *Certification of Expenditure* form prior to receiving payment. LEAs do not submit interim claims through the MAC program.

Under the SBS program, on an annual basis LEAs are required to submit interim direct service claims and an Annual Medicaid Cost Report. Payments by DHS for interim claims submitted to the state throughout the year are based on established rates, which are specific to each reimbursable service. A LEA's interim payments are compared directly to allowable costs identified in their cost report to determine cost settlements and recoupment. The Annual Cost Report is submitted to Public Consulting Group (PCG) each fall. The Annual Cost Report is opened October 1st and must be completed and submitted no later than December 15th. The Annual Cost Report does not request student-specific information, and the cost settlement methodology allows the SBS program to reconcile the interim reimbursements to actual costs.

8. Is parental consent required to submit claims under MAC and SBS?

Parental consent is **not** required to submit claims through the MAC program because LEAs do not disclose any student-specific information in its claims, nor does the MAC program access individual public benefits or insurance to reimburse a LEA.

Parental consent is **not** required to receive SBS funds through cost report settlement. The *SBS Cost Report* does not ask LEAs to report confidential student information, nor does it seek to use a specific child's public benefit or insurance. Parental consent is required to submit interim claims through the SBS program because a LEA includes confidential student information in its claims and seeks to use a specific student's public benefit or insurance (Wisconsin Medicaid).

9. If a parent has not yet been provided a notification of rights and has not provided parental consent to bill Medicaid may a LEA include that student for purposes of calculating benefits under MAC or SBS?

Yes. Requirements related to providing parental notice for billing Medicaid and obtaining consent to bill Medicaid are triggered only when a LEA submits an interim claim under SBS.

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

A LEA may not require a parent to sign up for, or enroll in, Wisconsin Medicaid in order for a student with a disability to receive FAPE. A LEA may not require a parent to pay an out-of-pocket expense, such as the payment of a deductible or co-pay amount for filing a claim for services that the LEA is otherwise required to provide under IDEA without charge. A LEA may not access Wisconsin Medicaid for covered services in a student's IEP if using that benefit would: decrease the available lifetime coverage or any other insured benefit; result in the family paying for services that would otherwise be covered by Wisconsin Medicaid because the student also requires those services outside of the time the student is in school; increase premiums or lead to the cancellation of Wisconsin Medicaid; or risk loss of eligibility for home and community-based waivers, based on total health-related expenditures. Further, a LEA may not access Wisconsin Medicaid for covered services in a student's IEP until it provides parental notification and obtains parental consent for billing in accordance with 34 C.F.R. § 300.154(d). See *Part II* below for further information regarding parental consent regulations.

Parental Consent to Bill Medicaid

The regulations effective March 15, 2013, amend prior regulations that required LEAs to obtain parental consent each time access to public benefits or insurance (e.g., Wisconsin Medicaid) is sought. The current regulations have two basic requirements.

- First, the LEA must notify parents in writing of a number of safeguards to protect their rights before the LEA accesses Wisconsin Medicaid to pay for special education or related services under the IDEA for the first time, and annually thereafter. 34 CFR 300.154(d)(2)(v).
- Second, the LEA must obtain from the parent, a one-time written consent that meets the requirements of FERPA, 34 CFR 99.30, and the IDEA, 34 CFR 300.622, and also specifies the parent understands and agrees that the LEA may access the student's or parent's Wisconsin Medicaid to pay for special education or related services under IDEA. 34 CFR 300.154(d)(2)(iv).

1. What is a LEA's obligation with respect to obtaining consent from a parent to access the student's or parent's Wisconsin Medicaid benefits?

A LEA must obtain parental consent before the LEA accesses Wisconsin Medicaid for the first time. This is a **one-time consent**. The LEA is no longer required to obtain parental consent each time access to Wisconsin Medicaid is sought. Additionally, the current regulations require the LEA provide written notification to the student's parents **before** parental consent is obtained, and annually thereafter (34 CFR 300.154(d)(2)(iv)-(v)).

2. What are the parental notification requirements?

Before a LEA accesses Wisconsin Medicaid for the first time, and **annually** thereafter, the LEA must provide written notification to the student's parents that includes:

- a) A statement of the parental consent provisions in 34 CFR 300.154(d)(2)(iv)(A)-(B);
- b) A statement of the "no cost" provisions in 34 CFR 300.154(d)(2)(i)-(iii);
- c) A statement of the parental right to refuse to provide consent or to withdraw consent at any time under 34 C.F.R. § 99.30 and 34 C.F.R. § 300.622; and

- d) A statement that the refusal to provide consent or withdrawal of consent does not relieve the LEA of its responsibility to ensure all required services are provided at no cost to the parents. 34 CFR 300.154(d)(2)(v).

The notification must be written in language understandable to the general public, and 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. The notification must be provided **before** the LEA obtains parental consent to access Wisconsin Medicaid. While current regulations require LEAs to provide written notification to the parents prior to accessing Wisconsin Medicaid for the first time, the regulations do not specify when the subsequent annual written notification must be provided to the parents. This gives LEAs the flexibility to determine the timing of the annual written notification.

- DPI has a sample *Parental Notice for Billing Medicaid for Health-Related Services in Student's Individualized Education Programs* available at: http://sped.dpi.wi.gov/sped_subjects#m-sbs.
- The U.S. Department of Education developed a *Suggested Model for Written Notification of Parental Rights regarding Use of Public Benefits or Insurance*, available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accmoelwritennotification-6-11-13.pdf>.

3. How should a public agency provide the written notification to parents?

LEAs may provide the required written notification to parents via U.S. mail to the parents; email to the parents, pursuant to parent request for electronic notification; an IEP team meeting, if the meeting occurs prior to the first time the LEA accesses Wisconsin Medicaid; or other means determined by the LEA, as long as all of the written notification requirements in the new regulations are met. This includes the requirement that LEAs must provide written notification before obtaining parental consent. LEAs may send the written notification of parental rights and request for parental consent in the same mailing. This method allows the parents to have a reasonable amount of time to ask the LEA questions and to provide informed consent. LEAs may provide the parents with a written notification and form to provide parental consent at an IEP team meeting. However, LEAs may not require the parent to provide consent at the IEP team meeting. LEAs must allow the parents a reasonable time to ask questions and provide informed consent.

4. What are the parental consent requirements with respect to the release of personally identifiable information?

A LEA must obtain written parental consent before releasing a student's personally identifiable information to Wisconsin Medicaid for billing purposes for the first time. This consent must include a statement specifying the parent understands and agrees that the LEA may access Wisconsin Medicaid to pay for medically-related special education and/or related services. The parental consent form must specify:

- a) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student);
- b) The purpose of the disclosure (e.g., billing for services under IDEA);
- c) The agency to which the disclosure may be made (e.g., Wisconsin Medicaid); and
- d) The parent understands and agrees that the LEA may access Wisconsin Medicaid to pay for medically-related special education and/or related services.

5. Must LEAs modify their consent forms to comply with the new parental consent requirements?

In implementing the new parental consent requirement, a LEA may choose to use DPI Model Form M-5, *Consent to Bill Wisconsin Medicaid for Medically Related Special Education and Related Services* at http://sped.dpi.wi.gov/sped_subjects#m-sbs; modify its existing forms; or develop a new form. Forms must include the statement the parent understands and agrees that the LEA may access Wisconsin Medicaid to pay for medically-related special education and/or related services, and to the consent required under FERPA and IDEA regarding the release of personally identifiable information to Wisconsin Medicaid for billing purposes.

6. May LEAs accept digital or electronic signatures when they obtain consent under the parental consent requirements?

Yes. A LEA may accept a digital or electronic signature when obtaining the required parental consent that:

- a) Identifies and authenticates a particular person as the source of the electronic consent;
 - b) Indicates such person's approval of the information contained in the electronic consent, i.e., disclosure of the student's personally identifiable information to the agency responsible for administering Wisconsin Medicaid for billing purposes to pay for services under IDEA; and
 - c) Includes a statement that the parent understands and agrees that the LEA may access Wisconsin Medicaid to pay for services under IDEA. 34 C.F.R. § 154(d)(2)(iv)(B).
7. Are there any situations in which a LEA is not required to obtain a new parental consent under the regulations?

Yes. Under the current regulations, and notwithstanding the annual written notification requirements, a LEA is not required to obtain a new parental consent if the following conditions are present:

- a) There is no change in any of the following: the type (e.g., physical therapy or speech therapy) of services to be provided to the student; the amount of services to be provided to the student (frequency or duration); or the cost of the services charged to Wisconsin Medicaid; **and**
 - b) The LEA has on file a parental consent that meets the prior requirements of 34 C.F.R. §300.154(d)(2)(iv)(A) and 34 C.F.R. § 99.30 and § 300.622. This would include a parental consent on file that has been given directly to another agency, such as the State Medicaid agency.
8. If parents have previously declined to consent to the use of Wisconsin Medicaid to pay for services under the IDEA, what steps must a LEA take? If a parent continues to refuse to consent, or withdraws consent, what are a LEA's obligations?

If a parent previously declined to provide consent (or withdrew consent) to disclose personally identifiable information to Wisconsin Medicaid for billing purposes, the LEA may make reasonable requests, after providing written notification to obtain the required parental consent. However, a parent's withdrawal of consent or refusal to provide consent to disclose personally identifiable information to the agency responsible for the administration of Wisconsin Medicaid for billing purposes does not relieve the LEA of its responsibility to provide FAPE to the student at no cost to the parents.

9. What is a LEA's obligation to provide parental notification and obtain parental consent when a student transfers to a new school within a new school district?

If a student with an IEP who was enrolled in a school within one LEA transfers to a school within a new LEA, the new LEA responsible for educating the student must provide the parents with written notification when access to Wisconsin Medicaid is sought. The new LEA must obtain parental consent to disclose

personally identifiable information to Wisconsin Medicaid for billing purposes and prior to accessing Wisconsin Medicaid for the first time. This new consent must include the statement specifying the parent understands and agrees that the new LEA may access Wisconsin Medicaid to pay for services under IDEA. Once parental consent has been obtained for the new LEA to access Wisconsin Medicaid for the first time, no additional parental consent is required for the new LEA to bill Wisconsin Medicaid in the future, regardless of whether there is a change in the type or amount of services to be provided to the student or in the cost of the services to be charged to Wisconsin Medicaid. However, the new LEA must provide written notification to the parents annually thereafter.

10. What is a LEA's obligation with respect to providing written parental notification and obtaining parental consent to access Wisconsin Medicaid if the child transfers to a new school within the same school district?

If a student transfers to a different school within the same LEA, any parental consent that the LEA previously obtained would continue to apply. The LEA would continue to provide the parents the written notification annually. The responsibility for providing written notification and obtaining parental consent prior to the disclosure of personally identifiable information for billing purposes to Wisconsin Medicaid, and before accessing Wisconsin Medicaid for the first time, rests with the LEA responsible for providing FAPE to the child, not with the individual school.

11. What is a LEA's obligation with respect to providing written parental notification and obtaining parental consent to access Wisconsin Medicaid if the following occurs: (1) a LEA provides the written parental notification and obtains the one-time parental consent pursuant to the March 2013 regulations; (2) the student transfers to a new LEA; and (3) the student then returns to the LEA that properly notified the parents and obtained consent to bill Medicaid?

A LEA's obligations in this instance are similar to the obligations when a student transfers into the LEA. If a student with an IEP who was enrolled in the LEA transferred to a new LEA, but then returned to the former LEA, the LEA responsible for educating the student must provide the parents with the written notification to inform the parents of their rights and protections when access to Wisconsin Medicaid is sought (even if it had already done so while the student was previously enrolled in the LEA). The LEA must obtain parental consent to disclose personally identifiable information to Wisconsin Medicaid for billing purposes and prior to accessing Wisconsin Medicaid for the first time after the student re-enrolls in the district (even if the LEA has a signed parental consent on file from when the student was previously enrolled in the LEA). This new consent must include the statement specifying that the parent understands and agrees that the LEA may access Wisconsin Medicaid to pay for services under IDEA. Once parental consent has been obtained for the LEA to access Wisconsin Medicaid for the first time after the student re-enrolls in the LEA, no additional parental consent is required for the new LEA to bill Wisconsin Medicaid in the future, regardless of whether there is a change in the type or amount of services to be provided to the student or in the cost of the services to be charged to Wisconsin Medicaid. However, the LEA must provide the written notification to the parents annually thereafter.

12. What is a LEA's obligation if a LEA obtained the one-time parental consent to bill Wisconsin Medicaid, but did not first provide the parent with a notification of rights?

If a LEA obtains a one-time parental consent to bill Wisconsin Medicaid, but the LEA did not first provide the parent with written notification to inform the parents of their rights and protections when access to Wisconsin Medicaid is sought, the LEA may not use this consent to access Wisconsin Medicaid to bill for services provided under IDEA. The LEA must provide the parent with the written notification and then

obtain parental consent, dated after the notification, to disclose personally identifiable information to Wisconsin Medicaid for billing purposes and prior to accessing Wisconsin Medicaid.

13. 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 Services. Does this release meet the notice and 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://sped.dpi.wi.gov/sped_bulindex.