

May 17, 2011

Addressee

Dear Addressee:

Thank you for sharing your experiences as a third-party billing administrator of Medicaid School-Based Services for Wisconsin schools. In particular, I appreciate your suggestions on how to better align the parental consent requirements in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) with the Medicaid billing administration system.

As you know, IDEA and its implementing regulations require local educational agencies (LEAs) to obtain parental consent prior to billing Medicaid. 34 CFR §300.154(d)(2)(iv)(A). The consent must be consistent with the definition of consent found in 34 CFR §300.9.

The U.S. Department of Education, Office for Special Education programs, has provided guidance regarding parental consent required to bill Medicaid (*Letter to Kinney*, May 7, 2008; *Letter to Hill*, March 8, 2007; *Letter to Guess*, February 9, 2007; *Letter to Smith*, January 23, 2007). The Wisconsin Department of Public Instruction has also provided guidance related to the parental consent needed before billing Medicaid (*Information Update Bulletin No. 07.02* and *Information Update Bulletin No. 09.01*). Consistent with the statute, implementing regulations, and federal and state guidance, this letter answers your specific questions regarding our Model Form M-5 (Consent to Bill Wisconsin Medicaid for Medically-Related Special Education and Related Services).

1. May an LEA use uniform language regarding the services eligible for reimbursement through Medicaid School-Based Services in lieu of identifying student-specific services eligible for reimbursement?

Yes. An LEA is required to “fully inform” a parent of “all information relevant to the activity for which the consent is sought.” (34 CFR §300.9(a)). An LEA may choose to identify student-specific services eligible for Medicaid for reimbursement. Another option for an LEA is to include in all consent forms standardized language such as:

The _____ School District is seeking your consent to bill Wisconsin Medicaid to pay for the following services in your child’s current individualized education program: This may include one or more of the following services, which are listed in your child’s current Individual Education Program (IEP): Attendant Care Services (hands-on assistance or cueing most often related to activities of daily

living), Speech/Language Therapy (including audiology and hearing), Occupational Therapy, Physical Therapy, School Health Services (Nursing Services), Social Work, Guidance Counseling, Psychological Services, Alternative Transportation and

Developmental Testing and Assessment (when it is necessary to develop or revise an IEP).

If an LEA uses unvarying language in all consent forms, then the LEA must use terms sufficient for all parents to understand the activity. For example, “attendant care services” are not typically listed in a student’s IEP; to be consistent with the consent requirements in 34 CFR §300.9, the LEA must use alternative terminology or include explanations of terms that may not be familiar to all parents (*see example, above*).

2. May an LEA use uniform language regarding the possible records that will be released to the State Medicaid agency in lieu of student-specific records?

Yes. An LEA may choose to identify student-specific records to be released to the Wisconsin Medicaid agency. Another option for an LEA is to include in all consent forms standardized language such as:

To bill for these services, the _____ School District may need to disclose the following education records: Individualized Education Program (IEP), daily documentation (for hands-on assistance or cueing most often related to activities of daily living), and signed records documenting each face-to-face session with the service provider.

If an LEA uses unvarying language in all consent forms, then the LEA must ensure it lists all records that will be released for one or more of its students. For example, LEAs are required to maintain daily documentation for attendant care services; to be consistent with the consent requirements in 34 CFR §300.9, a LEA seeking reimbursement for one or more student’s attendant care services through Medicaid School-Based Services must list “daily documentation for hands-on assistance or cueing.”

3. May an LEA obtain parental consent to bill Medicaid for the duration of a school year in lieu of the duration of a child’s IEP?

Yes. An LEA may satisfy the requirement to obtain parental consent “each time that access to public insurance or benefits is sought” by obtaining parental consent for a specified amount of services for a specified period of time that is sufficient to enable parents to make an informed decision as to whether to provide consent for an LEA to access their or their child’s public benefits or other public insurance. (*Letter to Smith, January 23, 2007*).

Consent may be obtained one time for the specific services and duration of services identified in a child’s IEP. (*Ibid.*). LEAs usually obtain consent for students simultaneous with IEP team meetings, although LEAs are not required to obtain consent during an IEP team meeting and are not required to obtain consent in person.

Another option for an LEA is to standardize the consent process by obtaining parental

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consent for a school year. In this case, the LEA must revise their consent forms to read, “The _____ School District is seeking your consent to bill Wisconsin Medicaid to pay for the following services in your child’s ~~current~~ individualized education programs (IEPs) in effect during the _____ school year...”

Regardless of the time period (i.e., IEP duration, school year) for which consent is sought, an LEA must obtain new parental consent 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 an increased amount for such services and would like to charge Wisconsin Medicaid for these costs. (*Letter to Smith*, January 23, 2007).

Please contact Courtney Reed Jenkins at (608)267-9183 or courtney.jenkins@dpi.wi.gov if you have additional questions or comments regarding this letter.

Thank you for your work with Wisconsin schools. It brings much-needed financial resources into schools to serve students with disabilities.

Sincerely,

//signed 5/17/2011

Stephanie J. Petska, Ph.D., Director
Special Education

SJP:crj