



NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES
MEDICAID TO SCHOOLS INFORMATIONAL BULLETIN

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Authorized by	Henry Lipman, Medicaid Director
Division/Office/Bureau	Division of Medicaid Services
Issue Date	January 2022
Effective Date	Immediately
Subject	Parental Consent
Description	Responses to questions received from billing agents and school districts

OVERVIEW

On Friday, February 21, 2020, He-W 589, the new Medicaid to School rule, went into effect. This bulletin is being issued to provide information about parental consent and answer questions that have been received from School Districts on this topic.

Previous informational bulletins are posted on the DHHS website at <https://www.dhhs.nh.gov/ombp/medicaid/mts/index.htm> under the Communication and Guidance link.

Please describe the requirements for parental consent as it pertains to Medicaid billing

Pursuant to 34 CFR §300.154, a school district must obtain written parental consent, after providing notification to the child's parent, prior to accessing a child's or parent's public benefits or insurance for the first time. Implied consent under these regulations is not permissible. The school's written notification to the parent must meet the requirements of 34 CFR §300.503(c). The school must send annual notifications to the parent that meet the requirements of 34 CFR §300.503(c) thereafter.

The regulations do not specify when subsequent annual written notification must be provided.

The written notification must include:

- A statement of the parental consent provisions in 34 CFR §300.154(d)(2)(iv)(A)–(B);
- A statement of the "no cost" provisions in 34 CFR §300.154(d)(2)(i)–(iii);

- A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the school at any time; and
- A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the school does not relieve the school of its responsibility to ensure that all required services are provided at no cost to the parents.

The parental consent provisions in 34 CFR §300.154(d)(2)(iv)(A)–(B) states:

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that -

(A) Meets the requirements of §99.30 of this title and §300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

The no cost provisions in 34 CFR §300.154(d)(2)(i)–(iii) states:

(2) With regard to services required to provide FAPE [Free Appropriate Public Education] to an eligible child under this part, the public agency -

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would -

(A) Decrease available lifetime coverage or any other insured benefit;

(B) 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 child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

The initial notification and consent and the subsequent annual notifications 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. (34 CFR §300.9(a) (consent); 34 CFR §300.503(c) (notifications)) The notification also must be provided before parental consent is obtained (34 CFR §300.154(d)(2)(iv)).

If a parent denies consent, the school district may not seek access to this funding stream. Under the rule, (§300.154(d)(2)(iv)), the school district may make reasonable requests to obtain consent from a parent who has previously declined consent to disclose personally identifiable information to the state's public benefit or insurance program (e.g., Medicaid) for billing purposes under part 300. Again, prior to seeking consent, the school district must provide the parent with written notification consistent with the rule.

If a child who has an IEP in effect in a previous school district transfers to a school in a new district in the same school year, whether or not within the same state, that new school district must obtain a new parental consent (§300.154(d)(2)(iv)(A)–(B)) before it can access the child's or parent's public benefits or insurance. In order to bill a service to Medicaid, parental consent must be obtained prior to the provision of services.

This new parental consent enables the new school district to release the child's personally identifiable information for billing purposes to the public benefits or insurance program (e.g., Medicaid). Consistent with 34 CFR §300.154(d)(2)(iv)(B), the consent also must specify that the parent understands and agrees that the new school district may access the child's or parent's public benefits or insurance to pay for services under part 300.

If a child transfers to a different school in the same district and the public agency has already obtained consent prior to the disclosure of personally identifiable information for billing purposes, the school district is not required to obtain new consent under 34 CFR §300.154(d)(2)(iv).

A school district may accept digital or electronic signatures in obtaining the parental consent required under 34 CFR 99.30 and §300.622 as described in 34 CFR §300.154(d)(2)(iv)(A). Under 34 CFR §99.30 (a), the consent must be signed and dated and an electronic form must:

- identify and authenticate the person as the source of the consent; and
- indicate the person's approval of the information contained in the consent.

Educational Surrogates and Medicaid Billing

Educational surrogate parents act as the child's educational decision-maker in the special education process. The authority of the surrogate is statutorily limited to "the educational decision-making process"—the Medicaid reimbursement form, by its own plain terms, is a financial form rather than an educational form. By its plain terms, the form "will only affect the district's ability to receive reimbursement" and does not impact that school's obligation to provide any specific educational service.

Authorizing disclosure of information to a medical insurer is not within the narrow scope of a surrogate's authority. That would possibly be the case even where the disclosure of information was necessary to secure educational services. Here, however, this form has no bearing on the educational services offered to the student, and thus seems clearly outside the scope of a surrogate's representation of the child.

Educational surrogates have the authority to sign the IEP which includes all the services on the IEP; however, they do not have permission to sign any other document that would agree to services being billed for Medicaid.

Revision History

Activity Date	Version	Description of Activity	Author	Approved By
1/31/2022	Final Version	Parental Consent	J. Hybsch	H. Lipman

Parental Consent Questions and Answers

1) If parent signed the IEP and not the consent until 1 month after services have been provided, can we bill for services before the date of consent?

Answer: Services can only be billed after the parent has received notification and the parent has signed a consent form agreeing to access a child's or parent's public benefits. The parent's signature date on the parental consent form must be after the date the service was billed. The school cannot access any information or use any benefits until after the parent notification and the signature date on the parental consent form. The service does not have to be after the signed parental consent form, but does need to be within NH Medicaid timely filing.

2) Can a district provide services without parental consent?

Answer: Yes. A district can provide services without parental consent. A district may not bill NH Medicaid for service until after the district receives a signed and dated parental consent form. If a district never receives a properly signed and dated form or the parent refused, then the district cannot access any benefit information regarding the child or bill NH Medicaid for any services delivered.

3) If parent agrees to an IEP wouldn't that include parental consent?

Answer: An IEP does not qualify as parental notification or parental consent that is required under 34 CFR §300. An IEP is an authorization of educational and medical services to be performed in a school setting. A parental consent is to allow schools access to the child's public benefits and to bill third parties for the services rendered under the IEP, if appropriate.

4) Can the Medicaid application include parental consent and school districts?

Answer: Member Medicaid application cannot include parental consent or school district. The Member Medicaid application is to determine if a person is eligible for Medicaid benefits for all NH residents. An application cannot be tailored for parental consent, as this is not a requirement to obtain Medicaid benefits. A Medicaid application could not be held for processing awaiting a parental consent signature.

5) Can we have a consent that covers multiple districts?

Answer: A new parental consent must be obtained when a child moves between SAUs. The SAU and/or school district cannot obtain parental consent to allow another SAU or school district access to the child's or parent's benefits as the child is not being treated at the other SAU or school district and that SAU or school district does not have a legal reason to have access to the Child's or parent's benefits. As such, each SAU and/or district, is required to have a unique Provider Medicaid ID for billing purposes.

6) What to do for consents for students between 18-21 who are not under guardianship of their parents?

Answer: If a child is or turns 18 and has a legal guardian, then a parental consent must be properly signed and dated by the legal guardian to access the child's NH Medicaid benefits. If a child is or turns 18 and no longer is required to have a legal guardian, then the child is considered an adult and does not require a consent form. The child (18 years or older) would sign their own IEP, 504 Plan or Health Care Plan and the services must have an order, but under HIPAA there is no authorization requirement for treatment or payment.

A Note about HIPAA: Although health care providers generally seek patients' permission to disclose their information for the purpose of submitting health insurance claims, the HIPAA privacy rule allows disclosure of PHI without authorization for "treatment, payment, or health care operations."