

May 2, 2013

Dear Superintendents, Special Education Directors and Third Party Billing Coordinators:

The Commissioner of Education has prioritized consolidating special education paperwork and ensuring the rights of students with disabilities and their parents. As part of this effort, current school district practices of procuring parental consent for sharing special education related services information and third-party billing were reviewed with the goal of identifying options that met the Commissioner's priorities. Revision of the Minnesota Health Care Programs (MHCP) enrollment form in 2012 presented an opportunity to eliminate redundancy and establish a statewide third-party billing prior information and consent procedure that is efficient, consistent and understandable to parents and educators. Issuance of new guidance in February 2013 on parental consent requirements from the federal Office of Special Education Programs (OSEP) also presented an additional opportunity to align state policies and procedures with federal regulations.

The Minnesota Department of Education is adopting the following policies for school districts to obtain informed consent of parents for sharing data and billing Medical Assistance and other Minnesota Health Care Programs. These policies are effective July 1, 2013.

A. Parent Information Prior to Consent and Annual Information

New federal regulations specify that parents must receive certain information prior to providing consent for sharing data and billing public insurance, including Medical Assistance (MA). Families renew their enrollment in MA with written consent annually (or within a year). This enables school districts to determine that if a student is currently enrolled in MHCP (and MA), then that student's family provided consent for sharing of data and billing within the last year. Prior to this one year period, whether or not a family received prior information for consenting to sharing data and billing MA, depends upon whether the student had an IEP and the family received procedural safeguards information from the school district.

1. How does a school district ensure parents received prior notice in procedural safeguards information for public insurance data sharing and billing consent?

A school district may ensure parents received prior consent information in procedural safeguards information for third-party data sharing and billing consent in one of two ways, depending on how long a child has had an IEP within the school district:

- a. If a child has had an IEP within the school district for more than a year, a school district may conclude that the parents received a copy of procedural safeguards information prior to their most recent (re-)enrollment in MA. Federal requirements for information prior to consent are therefore met and MA-billing can proceed.

- b. If a child has had an IEP for less than a year, then in order to ensure information was provided prior to consent, the school district must:
 - i. Complete their own inform and consent process (e.g., with MDE forms); or
 - ii. Provide parents with procedural safeguards information and wait out a subsequent one-year period prior to submitting bills to MA, during which time the parents may re-enroll in MA and federal regulations requiring information prior to consent are fulfilled.

These approaches require and assume that the school district's *Notice of Due Process and Procedural Safeguards* information meets federal requirements for information prior to consent for data sharing and third-party billing. A school district may need to use option "b" (above) for students who transfer into the school district if the district cannot establish that parents received information prior to consent that meets the requirements of federal regulations.

2. *What are the required elements of prior information in the Notice of Due Process and Procedural Safeguards for third-party data sharing and billing consent?*

Federal regulations require that school districts provide written notification to the child's parents **before** accessing the child's or the parent's public benefits or insurance, including Medical Assistance, for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents under Part B of the IDEA, as described in 34 CFR §300.154(d)(2)(v) to ensure that parents are fully informed of their rights before a school district can access their or their child's public benefits or insurance to pay for services under the IDEA, including Medical Assistance. The notice 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. Recommended text is provided in the addendum to this letter.

B. *Procurement and Documentation of Consent*

In January 2012 the Minnesota Department of Human Services (DHS) revised the Minnesota Health Care Programs (MHCP) enrollment form to include parental informed consent for school districts to share information with the Department of Human Services (DHS) and submit claims for MHCP, including Medical Assistance reimbursement. The revised MHCP enrollment form meets federal and state requirements for parental informed consent (34 CFR §300.9 and Minn. Stat. §125A.21, Subd. 2). Adoption of the revised form by community agencies statewide requires a transition period. During the transition, the Minnesota Department of Education (MDE) advises Minnesota school districts to use the [Combined Consent to Share Data and Seek Payment for Individualized Education Program \(IEP\) Health-Related Services-A](#) form available on the MDE website. MDE has determined that a reasonable and sufficient transition period ends July 1, 2013.

Given revision of the MHCP enrollment form in 2012 and the allowed transition period, beginning July 1, 2013, Minnesota school districts will not be required to maintain their own separate documentation of parental active informed consent for sharing information with DHS to submit claims for Medical Assistance (MA) reimbursement. Active enrollment of a student in MA is sufficient documentation because, when enrolling, a parent must consent to the school district sharing information with DHS and other health providers, as well as to submit claims for special education services provided to the student during the period the student is eligible for MA.

The intent of this revision to school district MA billing policies and procedures is to further consolidate special education paperwork while ensuring the rights of students with disabilities and their parents. For further information concerning this revision, please contact:

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Sincerely,

Elia Dimayuga-Bruggeman
Assistant Commissioner

Attachment: Addendum

ADDENDUM

The following is recommended text for providing notice in *Procedural Safeguards* information:

WRITTEN ANNUAL NOTICE RELATING TO THIRD PARTY BILLING FOR IEP HEALTH-RELATED SERVICES

Before billing Medical Assistance or MinnesotaCare for health-related services the first time, and each year, the district must inform you in writing that:

1. The district will share data related to your child and health-related services on your child's IEP with the Minnesota Department of Human Services to determine if your child is covered by Medical Assistance or MinnesotaCare and whether those services may be billed to Medical Assistance or MinnesotaCare.
2. Before billing Medical Assistance or MinnesotaCare for health-related services the first time, the district must obtain your consent, including specifying the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided), the purpose of the disclosure, the agency to which the disclosure may be made (i.e., the Department of Human Services) and which specifies that you understand and agree that the school district may access your (or your child's) public benefits or insurance to pay for health-related services.
3. The district will bill Medical Assistance or MinnesotaCare for the health-related services on your child's IEP (Minn. Stat. § 125A.21, Subd. 2(c)(1)).
4. The district may not require you to sign up for or enroll in Medical Assistance or MinnesotaCare or other insurance programs in order for your child to receive special education services.
5. The district may not require you to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for health services provided, but may pay the cost that you otherwise would be required to pay.
6. The district may not use your child's benefits under Medical Assistance or MinnesotaCare if that use would: decrease available lifetime coverage or any other insured benefit; result in your 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 your child is in school; increase your premiums or lead to the discontinuation of benefits or insurance; or risk your loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
7. You have the right to receive a copy of education records the district shares with any third party when seeking reimbursement for IEP health-related services.
8. You have the right to stop your consent for disclosure of your child's education records to a third party, including the Department of Human Services, at any time. If you stop consent, the district may no longer share your child's education records to bill a third party for IEP health-related services. You can withdraw your consent at any time and your child's IEP services will not change or stop (Minn. Stat. § 125A.21, Subd. 2(c)(3)).