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MEMORANDUM

TO: Exceptional Student Education Directors
Student Services Directors

FROM: Dr. Frances Haithcock

DATE: May 15, 2009

**SUBJECT: COMPLIANCE WITH IDEA REQUIREMENTS FOR PARENTAL
CONSENT/MEDICAID CERTIFIED SCHOOL MATCH PROGRAM**

Contact Information:

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DPS: 2009-090

The Division of K-12 Public Schools has received guidance from the General Counsel's Office in response to our request for an opinion regarding the requirements under the Individuals with Disabilities Education Act (IDEA) to obtain signed parental consent before a school district can access a student's Medicaid funds. This memorandum will provide you with information regarding IDEA parental consent requirements as it pertains to school district reimbursement of individual educational plan (IEP) or individualized family support plan (IFSP) Medicaid billable services through the Medicaid Certified School Match Program.

The Florida Department of Education (FLDOE) previously provided guidance through the July 7, 2006, memorandum from Bambi Lockman, Bureau Chief, Bureau of Exceptional Education and Student Services, as to Family Educational Rights and Privacy Act (FERPA) requirements school districts should follow prior to submitting a student's personal and Exceptional Student Education (ESE) information to Medicaid fiscal agent Electronic Data Systems (EDS) to determine eligibility. That requirement for obtaining written consent remains intact.

When the 2006 IDEA regulations were issued requiring districts to obtain signed consent "each time Medicaid was accessed," a second "Medicaid billing" consent became necessary. The Office of Special Education Programs' (OSEP) 2007 interpretation of these regulations allowed

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districts to obtain annual consent to bill Medicaid for the services listed on the student's IEP provided no changes to services were made. OSEP's 2008 response to a question about school district requirements indicates that school districts need not obtain additional IDEA "billing" consent if the parent has already given consent to another public agency, namely the state Medicaid agency, that meets the requirements of 34 CFR §300.154(d)(2)(iv)(B).

FLDOE General Counsel's opinion concurs with OSEP's 2008 statement indicating that "Parental consent may be given directly to another agency, such as the state Medicaid agency, and the local education agency (LEA) would not have to independently obtain a separate parental consent as long as the parental consent provided to the other agency meets the consent and public benefits or insurance requirements of 34 CFR §§300.9 and 300.154(d). If another agency obtains the required parental consent, the LEA must maintain a copy of the parental consent to both demonstrate its compliance under Part B of the Act and to ensure that the consent is available for the parent or child to review."

This opinion clarifies FLDOE policy in the area. FLDOE will work closely with districts in the implementation of this policy and will provide further technical assistance.

A district need no longer obtain separate parental consent annually in order to meet IDEA consent requirements. However, one-time parental consent is still required to meet FERPA consent requirements for checking a student's Medicaid eligibility. Additionally, the district consent statement should clarify that IEP services will be unaffected regardless of consent status, and the district should maintain a copy of parental Medicaid agency consent. The attached is offered as an example of Medicaid parental consent language.

Thank you in advance for ensuring implementation of this procedure. If you have questions concerning this information, please contact Susan Douglas, Medicaid Consultant, by telephone at (850) 487-8716 or by electronic mail at sdouglas@coedu.usf.edu.

FH/bjl/sd

Attachment

cc: District School Superintendents
Medicaid Contacts
Bettye Hyle

Attachment

I authorize the School District of _____, Florida to release and exchange my child's confidential information to agencies of the State of Florida which would allow _____ Schools to verify Medicaid eligibility, bill Medicaid for reimbursable Certified School Match services referenced on my child's individual educational plan (IEP) and receive Medicaid reimbursement for Exceptional Student Education (ESE) services it provides to my child while at school. I understand that my child will continue to receive services referenced on his/her IEP whether or not I give consent.