

[NOTE: Only Text Version available from U.S. Dept. of Education]

October 12, 2005

Mr. Dann Stevens
Program Consultant-Medicaid
Iowa Department of Education
Grimes Office Building-Third Floor
Des Moines, Iowa 50319

Dear Mr. Stevens:

This responds to your letter requesting an opinion whether Medicaid claim documentation used by school districts and other educational agencies is considered an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. This Office administers FERPA and provides technical assistance to educational agencies and institutions to ensure compliance with the statute and regulations, which are codified at 34 CFR Part 99.

You explained by way of background that both local school districts and intermediate agencies, known as Area Education Agencies (AEAs), seek Medicaid reimbursement for eligible services provided to students under Part B of the Individuals with Disabilities Education Improvement Act (Part B or IDEA). Regional AEAs provide Medicaid eligible support services to local school districts in the State, including physical therapy, speech-language therapy, occupational therapy and behavioral support from school psychologists and social workers. The Medicaid program in Iowa provides that the student's Individualized Education Program (IEP) must define Medicaid eligible services.

According to your letter, AEAs in Iowa use a statewide computer system that stores the IEP service information and generates a Medicaid Service Form that includes the student's name; date of birth; Medicaid ID; attending school, IEP service specialty; and staff person assigned to the student for the service. Once completed by AEA staff, the data is entered into the statewide computer system by AEA staff. The AEA then uses this data to submit an electronic Medicaid claim to the Iowa Medicaid fiscal agent for reimbursement. You indicated that local school districts may also seek Medicaid reimbursement using electronic filing or paper claims that contain essentially the same data that appears in the AEA electronic claim. Both AEAs and local school districts retain the Medicaid claim documentation in an area that is separate from the student's IEP file. You indicated that some of your staff maintain that the Medicaid Service Form is an "education record" under FERPA, while others argue that it is like forms used for other Federal programs that are not treated as "education records," such as the free and reduced price lunch program.

FERPA applies to educational agencies and institutions that receive funds under any program administered by the Secretary of Education. 34 CFR § 99.1(a). We assume for purposes of this discussion that both local school districts and AEAs in Iowa are subject to FERPA under this provision. Under FERPA a parent or eligible student (i.e., a student who has reached 18 years of age or attends a postsecondary institution) must provide a signed and dated written consent

before the agency or institution discloses education records, or personally identifiable information from education records. 34 CFR § 99.30. Exceptions to this requirement are set forth in § 99.31 of the FERPA regulations. The term “education records” is defined as those records that are:

- 1) Directly related to a student; and
- 2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

34 CFR § 99.3 (“Education records”). Exclusions to this definition, which are set forth in subsection (b) of the regulatory definition, are:

- 1) Record kept in the “sole possession” of the maker under specified conditions;
- 2) Records of the institution’s “law enforcement unit”;
- 3) Employee or personnel records;
- 4) Medical and psychological “treatment” records of postsecondary students; and
- 5) Records that only contain information about an individual after he or she is no longer a student (“alumni records”).

There is no exception to the definition of “education records” for records used to submit reimbursement claims to a State Medicaid fiscal agent or for forms used by other Federal agencies. Nor is there any exception to the written consent requirement in FERPA that permits an educational agency or institution to disclose personally identifiable information to the Iowa Medicaid fiscal agent for reimbursement unless a parent or eligible student has provided prior written consent. Student records are protected under FERPA unless there is another Federal law that presents an irreconcilable conflict with FERPA requirements and governs as a later-enacted statute. See Watt v. Alaska, 451 U.S. 259, 267-268 (1981). We are aware of no such conflicting Federal law that applies to the circumstances you have described.

Note that under § 99.30(a), an educational agency or institution may disclose education records if a parent has provided prior written consent to a third party authorized to receive the records, such as the designated Medicaid fiscal agent. The agency or institution must have a reasonable basis for concluding that the parent has in fact provided the necessary written consent to the third party, and the consent must conform to the requirements of § 99.30(b) of the regulations.

I trust that the above information is helpful in explaining the scope and limitations of FERPA as it relates to your concern.

Sincerely,

/s/

LeRoy S. Rooker
Director
Family Policy Compliance Office