



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

May 7, 2008

Mr. Joseph Kinney
Kinney Management Services, LLC.
659 Plank Rd.
P.O. Box 1047
Clifton Park, New York 12065-0803

Dear Mr. Kinney:

This letter is in response to your March 5, 2008 letter and your March 17, 2008 email asking about states' public insurance payment processes and how to obtain informed parental consent for releasing information to Medicaid. Your letter and email included several questions. Your questions and the Office of Special Education and Rehabilitative Services' (OSERS) responses are below.

Question 1

Do the public insurance payment processes employed by states meet the requirements in section 1412(a)(12)(A) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.154 of Part B of the Act? You stated in your letter that local educational agencies (LEA) are reimbursed only a portion of the amount paid for Medicaid covered services, resulting in what you described as Medicaid's financial responsibility being permanently shifted to LEAs.

Response

Section 1412(a)(12)(A) of IDEA and 34 CFR §300.154(a)(1) of Part B of the Act require that the financial responsibility of each noneducational public agency, including the state Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or a state agency responsible for developing the child's individualized education program (IEP)). It further requires that an interagency agreement or other mechanism of interagency coordination between a state educational agency (SEA) and noneducational public agency must include the conditions, terms, and procedures under which an LEA must be reimbursed by other agencies. It does not, however, dictate the terms of public insurance programs, such as that of Medicaid. The circumstances under which a state may require local governmental entities to bear a portion of the non-Federal share of Medicaid payments is governed by the Medicaid statute and regulations and a state's Medicaid plan. Therefore, we suggest that you address your question regarding states' public insurance payment processes to the specific state Medicaid office and Center for Medicare and Medicaid Services of the Department of Health and Human Services.

Question 2

Can states reduce education aid to offset the cost incurred by the public health insurance programs?

Response

Section 1412(a)(18)(A) of IDEA and 34 CFR §300.163 (a) of Part B of the Act require that a state must not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. A state may include in this calculation, though, the total amount of state support for special education and related services, and not just the total of state support identified as education aid.

Question 3

Clarify how states can obtain informed parental consent for releasing information to Medicaid.

Response

The IDEA regulations at 34 CFR §300.154(d)(2)(iv)(A) specify that a public agency obtain parental consent, consistent with the definition of 'consent' in 34 CFR §300.9, each time that access to public insurance or benefits is sought. The public agency seeking parental consent to access public benefits or public insurance programs is also obligated, under 34 CFR §300.154(d)(2)(iv)(B), to notify the parent that the parent's refusal to allow access to their public benefits or public insurance does not relieve the public agency of its responsibility to ensure that all required free appropriate public education (FAPE) services are provided at no cost to the parent. Parental consent may be given directly to another agency, such as the state Medicaid agency, and the 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.

A public agency 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 a public agency to access their or their child's public benefits or other public insurance. In other words, consent may be obtained one time for the specific services and duration of services identified in a child's IEP. However, if the public agency seeks to use the child's or parents' public benefits or public insurance to pay for additional hours of service (due to the IEP being revised or extended) or the public agency is charging different amounts

for such services, and would like to access the child's or parents' benefits or insurance for those costs, the public agency must obtain parental consent, covering the additional amount of service or costs to be charged to the child's or parents' public benefits or public insurance.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope that you find the responses to your questions helpful. If you need further assistance, please feel free to contact Mary Williams at (202) 245-7586.

Sincerely,

A handwritten signature in blue ink that reads "Tracy R. Justesen". The signature is written in a cursive style with a large, looping "T" and "J".

Tracy R. Justesen