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Bureau of Special Education FY'15 Memo #2

Date: July 30, 2014

To: Superintendents of Schools
Special Education Director

From: Office of the Commissioner
Division of Educational Improvement
Bureau of Special Education

Re: Guidance for Written Notification of Parental Rights regarding use of public benefits or insurance

On February 14, 2013, the Office of Special Education and Rehabilitative Services (OSERS) published the final regulations under the Individuals with Disabilities Education Act (IDEA) to amend 34 CFR 300.154(d) governing the use of public benefits or insurance. 34 CFR 300.154(d)(2)(v) included a new requirement for public agencies to provide written notification to a child's parents before accessing a child's or parent's public benefits or insurance (e.g. Medicaid) for the first time and annually thereafter.

The NH Department of Education (NHDOE), Bureau of Special Education entered into Rule Making to address the change in the federal law 34 CFR 300.154(d)(2)(v) to ensure that the New Hampshire Rules for the Education of Children with Disabilities reflected the current law. The new Rules were adopted into law on May 14, 2014. The Bureau of Special Education FY'14 Memo #34, dated May 28, 2014, provides guidance for the amended New Hampshire Rules.

The requirements for the written annual notification are:

- You must receive this notification before your school district seeks to use your child's Medicaid for the first time and before it obtains your consent to use those benefits for the first time.
- A statement that parents have the right to withdraw their consent to disclosure of their child's personally identifiable information to the public benefits or insurance program (e.g. Medicaid) at any time; and
- A statement of the public agency's continuing obligation to ensure that all required services are provided at no cost to the parent even if the parent withdraws his or her consent or refuses to consent.

- A statement that must include the parent's understanding and agreement that the school district may use the parent's or child's public benefits or insurance to pay for special education and related services under IDEA.
- A withdrawal of consent provision which if utilized by the parent, terminates the LEA's authority to access the child's state public benefits or insurance program. The withdrawal of consent provision is effective upon the school district's receipt of the parent's signed withdrawal (Ed 1120.08(a)(2)).

The NHDOE, Bureau of Special Education is providing the attached model form, *Written Notification Regarding Use of Public Benefits or Insurance* to assist school districts and public agencies in implementing Ed 1120.08 and 34 CFR 300.154. School districts are not required to use this model notification to satisfy the responsibilities under 34 CFR 300.154 and Ed 1120.08. School districts that choose to develop their own notification; it must include all of the required information in 34 CFR 100.154 and Ed 1120.08.

The NHDOE sought input from parent organizations, representatives of school districts, Medicaid billing agencies, and Department of Health and Human Services Medicaid to Schools Program to develop this model form for school districts to utilize.

WRITTEN NOTIFICATION REGARDING USE OF PUBLIC BENEFITS OR INSURANCE

Dear Parent or Guardian,

You are receiving this written notification to give you information about your rights and protections under the federal special education law, the Individuals with Disabilities Education Act (IDEA), regarding the use of your or your child's public benefit or insurance. In New Hampshire "public benefit or insurance" is Medicaid, which is provided through the State's Medicaid to Schools program, including Medicaid programs provided through a managed care organization. Through the Medicaid to Schools Program, NH school districts statewide receive millions of dollars each year that would otherwise have to come from State or local funding sources.

IDEA funds pay a portion of your child's special education and related services. Funds from a public benefits or insurance program, which in NH is Medicaid, also may be used by your school district to help pay for special education and related services based on your child's IEP, but only if you choose to provide your consent. Your school district cannot access your child's Medicaid benefits if it would result in a cost to you, such as a decrease in your benefits or an increase in your premiums.

The school district is responsible for ensuring that your child receives all of the services in his/her IEP, regardless of whether you give consent for the school district to use your or your child's public insurance or benefits. If you do not give consent, or withdraw your consent after you have given it, your child's services will not be affected; all of the services in your child's IEP will continue to be provided. You are also not required to apply for or enroll in Medicaid for your child to receive special education services.

WHEN WRITTEN NOTIFICATION MUST BE PROVIDED

Before your school district can ask you to provide your consent to access your child's Medicaid for the first time, it must provide you with this notification of the rights and protections available to you under IDEA.

- IDEA requires that you be provided with this notice before the school district seeks to use your child's Medicaid for the first time,
- Before it obtains your consent to use those benefits for the first time; and
- Annually thereafter.

This written notification must be written, in a language understandable to the general public and in your native language or in another mode of communication you use, unless it is clearly not feasible to do so.

PARENTAL CONSENT

Before your school district can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, they must obtain your signed and dated written consent. Your school district will provide you with a consent form for you to sign and date. Your school district is only required to obtain your consent *one* time.

The consent requirement has two parts:

- 1.) Consent for disclosure of your child's personally identifiable information to the state agency responsible for administering Medicaid.
 - To access your child's Medicaid, certain personally identifiable information will be disclosed for billing purposes by the school district to the State Medicaid agency or Medicaid billing agent. Under federal law, your written consent is required before the school district can disclose personally identifiable information (such as your child's name, address, student number, IEP, or evaluation results) from your child's education records to a party other than your school district, with some exceptions. Your initial consent, for the use of your child's Medicaid, allows your school district to disclose the personally identifiable information, required for Medicaid reimbursement, to the State Medicaid agency or Medicaid billing agent.

2.) A statement to access your child's Medicaid:

- Your consent to allow the school district to use your child's Medicaid will not cost you anything, and it will not have a negative impact on any other medically necessary services your child may receive through the Medicaid system. There are specific protections regarding the use of Medicaid:
 - The school district must obtain written parental consent before it can use your child's Medicaid for the first time.
 - Your school district cannot access (use) your child's Medicaid if that use would:
 - Decrease available lifetime coverage or any other Medicaid benefit;
 - Result in the family paying for medically necessary services (whether provided in school or other setting) that would otherwise be covered by the child's Medicaid.
 - Increase premiums (where applicable) or lead to the discontinuation of benefits or insurance; or
 - Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

WITHDRAWAL OF CONSENT

If you provided your consent for your school district to disclose your child's personally identifiable information to the State agency that is responsible for administering your child's Medicaid, you have the right under federal law to withdraw that consent at any time.

If you do not want your school district to continue to bill your or your child's public benefits or insurance program for special education and related services under IDEA, you would need to withdraw your consent that allows the school district to access your child's Medicaid benefits. By withdrawing your consent you are terminating the school district's authority to access the child's State public benefits or insurance program. This withdrawal of consent is effective upon the school district's receipt of your signed withdrawal.

Complete the section below ONLY if parent/guardian is withdrawing consent to access to the child's Medicaid

WITHDRAWAL OF CONSENT

Student Name: _____ Date of Birth _____/_____/_____

Medicaid ID Number _____

As the parent/guardian of the above student, I withdraw my consent to allow the school district to access the child's Medicaid. I understand that this means that the school district will no longer be able to use my child's Medicaid to help pay for my child's special education and related services. This withdrawal of consent is effective upon the school district's receipt of the parent/guardian's signed *Withdrawal of Consent* form.

Parent's Signature

Today's Date

Original to student's file-----copy to parent/guardian