

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
SBCH PROGRAM - REIMBURSEMENT AND CON
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DSS SBCH Parental Consent Information

Updated, Distributed, & Posted to DSS Webpage 3/19/15

This document serves as a formal update from the Department of Social Services SBCH program to the document originally distributed to districts and posted on the DSS SBCH website with the date of 9/17/13.

Updated information provided to DSS by the United States Department of Education, Office of Special Education and Rehabilitative Services (OSEP) appears in [blue](#). For a copy of the full document furnished by the OSEP, please see the attachment at the very bottom of this notification.

Q: Which regulations have been revised?

A: Regulations have been amended for Part B of the Individuals with Disabilities Education Act (IDEA or Act). The revised regulations change the requirements in 34 CFR (Code of Federal Regulations) § 300.154(d) related to written notification and parental consent to access public benefits.

Q: Where are these new regulations published?

A: The new regulations can be found in the Electronic Code of Federal Regulations website (www.ecfr.gov). The link to the revised regulation is:

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=76ddb67f9b9d995991775786830afa96&rgn=div8&view=text&node=34:2.1.1.1.1.2.48.52&idno=34>

The regulations may also be found in the Federal Register, published February 14, 2013. The link to this document is: <https://federalregister.gov/a/2013-03443>.

Additional information, including a one-page summary of the revised regulations, and Q&A guidance, can be found on the U.S. Department of Education (USDOE) website: <http://www2.ed.gov/policy/speced/reg/idea/part-b/part-b-parental-consent.html>

Q: What do the new regulations require?

A: Under the new regulations, a school district must obtain parental consent before accessing a child's or parent's Medicaid benefits for the first time. The new regulations also require that the public agency provide written notification to the child's parents before parental consent is obtained.

Q: Why is the School District, rather than the Medicaid Agency (Department of Social Services), providing parents with written notification and parental consent forms?

A: The regulation requires the " *public agency*" to provide the written notification and to obtain parental consent in order for the school district to bill Medicaid. The "public agency" includes school districts that are responsible for providing education to children with disabilities. See 34 CFR § 300.33.

Q: What are "public benefits or insurance programs," as defined in the federal regulation?

A: "Public benefits or insurance programs" refers to a State's Medicaid program. In Connecticut, School Based Child Health (SBCH) services are covered under Medicaid.

Written Notification Requirements

Q: What are the written notification requirements under the new regulations?

Prior to accessing a child's or parent's public benefits for the first time, and annually after that, a public agency must provide written notification, to the child's parents. The notification must include the following:

- 1) A statement describing the parental consent requirements in the federal regulations (see Q&A below related to Parental Consent Requirements) ;
- 2) A statement explaining that the school district must provide all required services at no cost to the parents.
- 3) A statement that the parents have the right to withdraw their consent to disclosure of their child's personally identifiable information to the Medicaid agency at any time; and
- 4) A statement that the withdrawal of or refusal to provide consent to disclose personally identifiable information to the Medicaid agency does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

The notification 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. The notification also must be provided before the school district obtains parental consent.

Q: How may written notification be provided to parents?

A: There are a number of ways in which the public agency may provide the required written notification to parents.

The written notification may be:

- mailed or
- e-mailed if requested by the parents, and if consistent with your public agency policies, or
- provided at an IEP Team meeting if the meeting occurs prior to the first time a public agency accesses a child's or parent's public benefits, or
- provided through other means determined by the public agency, as long as all of the written notification requirements in the new regulations are met and the notification is given before obtaining parental consent.

Q: May the written notification and parental consent form be presented to the parent at the same time, for instance included in the same mailing, or handed out together at an individualized education program (IEP) team meeting?

A: Yes. As long as the parents receive the appropriate written notification before the public agency requests written consent prior to accessing a child's or parent's public benefits or insurance for the first time, there is nothing in the Part B regulations that would preclude a public agency from providing the parents the written notification and consent at the same time. As stated in the question above, this could occur through mailing the written notification from and the consent form together or providing the parent with the two forms at the same IEP team meeting.

Q: May the school district post the written notification to the district's Web site, in lieu of mailing or providing the written notification at an IEP meeting?

A: No. Under 34 C. F.R. § 300.154(d)(2)(v), public agencies must provide parents written notification of their rights and protections prior to accessing a child's or parent's public benefits or insurance for the first time and annually thereafter. While States and their public agencies have flexibility in the manner in which they provide this notification to the child's parents, a public agency would not meet this obligation under 34 C. F.R. § 300.154(d)(2)(v), by directing a parent to its Web site instead of providing the parents a printed copy of the notification. If a parent declines the offered printed copy of the notification and indicates a clear preference to obtain the notification from the agency's Web site, it would be reasonable for the public agency to document that it offered the parents a printed copy of the written notification, but that the parents declined the copy and instead opted to obtain the notification from the public agency's Web site.

Q: Because eligibility for Medicaid may not necessarily coincide with annual IEP Team meetings, may public agencies provide the written notification to ALL parents of children with disabilities, regardless of whether the school district is seeking to bill Medicaid for the SBCH services that the child receives?

A: No. The parental consent form may not be provided to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child's or parent's public benefits or insurance to pay for required special education and related services. The notification requirement described above is separate and distinct from the parental consent requirement. The parental consent requirement in 34 CFR § 300.154(d)(2)(iv), is only applicable to a parent of a child with a disability who is enrolled in a public benefits or insurance program and from whom a public agency seeks to access that parent's or child's public benefits or insurance to pay for the child's required special education and related services for the first time or in the future. The parental consent requirement ensures that the consent from the parent is meaningful, and that the parent understands that, by consenting, the parent is enabling the public agency to access his or her, of the child's public benefits or insurance. Conversely, a public agency may not request consent from all parents of children with disabilities, because the consent requirement is not applicable to parents of children with disabilities who are not yet enrolled in a public benefits or insurance program.

Q: When must subsequent annual written notification be provided to parents?

A: Schools have discretion to determine the timing of subsequent annual written notifications, as long as it done on an annual basis. Some states are providing the subsequent annual written notification to parents in a package along with other special education documents that must be provided to parents on an annual basis.

Q: The written notification form available on the Connecticut State Department of Education (CSDE) website has fields that appear to be required to be completed by the District. What addresses/phone numbers should be used in these fields?

A: School contact information should be provided in these fields.

Q: Why can't I electronically populate the fields in the written notification available on the CSDE website?

A: CSDE IT staff have tested the document in all versions of Adobe Reader, and have found no issues. However, there may be a compatibility issue with the browser being used to view the document. If you are using Chrome or Firefox rather than Internet Explorer, you will need to make a change within your browser to view the document in Acrobat Reader rather than in the browser viewer. These problems require adjusting the settings for your viewer, and are not reflective of a technical problem with the document itself.

Another issue could be related to the device being used to view the document. You may not be able to populate the fields if you are using an iPad, and there could be problems if viewing the document with a Mac computer as well.

Q: How should the school district document that the written notification has indeed been provided to parents, as required by federal regulation?

A: There is no federal guidance on this issue. Other states, however, have added a statement to the parental consent form that the parent acknowledges that he/she **has received** and understands the written notification.

Parental Consent Requirements

Q: What are the parental consent requirements under the new regulations?

A: Public agencies must obtain parental consent before releasing a child's personally identifiable information from education records for billing purposes to the Medicaid program for the first time. This consent must include a statement specifying that the parent understands and agrees that the public agency may access the child's or parent's Medicaid to pay for SBCH services. In addition, the consent form must include the following:

- 1) The personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child),
- 2) The purpose of the disclosure (e.g., billing for services under 34 C.F.R. Part 300),
- 3) The entity to which the disclosure will be made (e.g., the Department of Social Services, State's Medicaid agency), and
- 4) That the parent understands and agrees that the school district may access the child's or parent's Medicaid to pay for services that are provided to the child under 34 CFR Part 300.

Q: How should the school district fill out the middle section of the CSDE Parental Consent Form?

A: Schools have discretion to determine the information to include in this section. Some suggestions are as follows:

- Regarding the question, “What records are being disclosed?” - a general answer such as “SBCH Records” may be used. More specific information such as name, address, date of birth, student ID, Medicaid ID, disability, and dates and services delivered may also be used.

- Regarding the question, “What is the purpose of the disclosure of the records?” - the answer “Billing for Services” may be used.

- Regarding the question, “To what agency are the records being disclosed?” - the answer “Medicaid” may be used.

A sample consent form may be found on the DSS SBCH website at <http://www.ct.gov/dss/cwp/view.asp?a=2349&q=528684>

Sample Consent Form for School-Based Health Services

This consent form allows the _____ (School District) to bill your or your child's public benefits or insurance for covered health-related services (such as physical therapy or speech therapy) in your child's Individualized Education Program (IEP). The funds received from your or your child's public benefits or insurance help pay for the cost of providing these services.

Student's Rights to Special Education*

- ✓ Your child's right to receive the services listed in his or her IEP will continue, without interruption and at no cost to you, whether or not you sign this form.
- ✓ Giving consent will not impact your or your child's public benefits or insurance coverage.
- ✓ You have the right to refuse consent or withdraw your consent at any time.

Consent for the _____ (School District) to Access Parent(s)/Guardian(s) or Student's Public Benefits or Insurance for Student's Health-Related Educational Services

Student's Name: _____
Last Name Middle Name First Name

Student's Date of Birth: _____ Student's SASID #: _____

The school district is seeking permission to access your or your child's public benefits or insurance and to release the following personally identifiable information in order to do so (To be filled out by the school district)

What records are being disclosed? (such as, records or information about the services that may be provided to a particular child)	What is the purpose of the disclosure of the records? (such as, eligibility determination, billing for services and auditing)	To what agency are the records being disclosed? (such as Medicaid)

_____ I have reviewed my child's IEP dated: _____. I understand and agree to give my consent for _____ (School District) to bill my or my child's public benefits or insurance, in accordance with state and federal laws, for health-related educational services in my child's IEP. By signing this consent I authorize the _____ (School District) to release my child's records (as indicated above) to my or my child's public benefits or insurance as necessary for the purposes indicated above. I understand that, upon request, I may receive copies of records disclosed pursuant to this authorization.

_____ I do not give my consent or am withdrawing my consent to the accessing of my or my child's public benefits or insurance and I do not consent or am withdrawing consent to the disclosure of the previously described personal data. I understand that my refusal does not affect my child's access to any service(s) to which he/she is entitled under the Individuals with Disabilities Education Act*.

REQUIRED PARENTAL CONSENT FORM ELEMENTS (highlighted above):

1. Consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child),
2. Consent must specify the purpose of the disclosure (e.g., billing for services under part 300),
3. Consent must specify the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)).
4. Consent must specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

Q: If a parent has previously declined to provide parental consent to disclose personally identifiable information to the Medicaid agency may the school continue to ask for consent?

A: Yes. After providing the written notification to the parent, the school district may make reasonable requests to obtain the parental consent.

Q: If a parent, who previously refused to provide consent for the public agency to bill Medicaid, subsequently signs the consent form, can the school only bill for services delivered as of the date that the consent form is signed, or does the consent override the previous denial, and thus the school may bill for services delivered prior to the date that the consent-to-bill was signed?

A: Public agencies may only bill a child's or parent's public benefits or insurance program for the cost of special education and related services delivered as of the date that the parent signs the consent form. [The consent from the parent required under 34 CFR § 300.154\(d\)\(2\)\(iv\) is PROSPECTIVE \(for disclosure and personally identifiable information to a public benefits or insurance program for future billing purposes\), and not RETROACTIVE.](#) Therefore, if a parent does not provide written consent until April of a school year, the public agency may not bill the child's or parent's public benefits or insurance program for services provided prior to April

Q: If a parent previously provided the school consent to bill Medicaid, but then revokes that consent, for which dates of service may the school bill Medicaid?

A: The revocation of consent is effective the date that it is signed. The district should not bill for an SBCH service on the date that it receives the revocation and going forward. Additionally, if the school has not yet billed for a service but receives the revocation before submitting a claim, the school should not submit a bill for those services. .

Q: If a parent previously provided the school consent to bill Medicaid, but then revokes that consent, is the district permitted to keep previously paid reimbursements for that student?

A: Yes, the district is permitted to keep reimbursements previously paid for that student.

Q: Does obtaining parental consent at an IEP meeting violate HIPAA?

A: No. The HIPAA Privacy Rule does not apply to an elementary or secondary school. For more information about this, please see:

- *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records*, Page 3.

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/hipaaferpajointguide.pdf>

Q: Is a student who is 18 years old or older permitted to sign the parental consent form?

A: A school district should provide the notification and consent forms to the parents of all students for whom it bills Medicaid, regardless of the student's age. If a parent or student raises a question about who should sign the parental consent form, the school district may contact DSS, and DSS will confirm for the school the Medicaid eligibility of student and whether the student or the parent is the Medicaid applicant.

Q: Should a surrogate/foster parent, or a DCF social worker, be provided the written notification and sign the parental consent form?

A: Per DCF, school districts should contact their local DCF area offices with respect to who should receive and sign the forms.

Sample Forms

Q: Are there examples of the written notification and parental consent forms available?

A: Yes. The CSDE has posted guidance, a sample written notification, and a sample parental consent form on its website at:

<http://www.sde.ct.gov/sde/cwp/view.asp?a=2678&Q=320730#Legal>

Q: Are the written notification and parental consent forms available in Spanish?

A: Yes. The written notification and parental consent forms are available in both English and Spanish on the CSDE website.

Q: Why do the written notification and parental consent available on the CSDE website have the word “Sample” in the title? Does this mean they are draft documents and not final yet?

A: No. The forms available on the CSDE website are final documents. The word “sample” means that school districts may choose to use these forms, but are not required to do so. School districts may choose to modify the CSDE forms, or use their own forms, as long as they are consistent with the requirements in federal law, 34 CFR. § 300.154(d)(2)(iv) and 34 CFR § 300.154(d)(2)(v).

Billing Medicaid

Q: What is required for students currently receiving SBCH services for which the school has already billed Medicaid prior to March 18, 2013?

A: The school district must provide written notification to parents before the school may continue to bill Medicaid, and must obtain parental consent prior to July 1, 2013. The school district must provide the written notification annually after that.

Q: What is required when a child has an IEP but the school has not previously sought to access the parent’s or child’s Medicaid to pay for services under the IDEA, and the school seeks to access the child’s or parent’s public benefits or insurance for the first time?

A: As of March 18, 2013, if a school district seeks to access the child’s or parent’s Medicaid to pay for services for the first time, the school district must provide the parents with written notification and obtain parental consent before billing Medicaid for the first time. The school district must provide the written notification annually after that.

Q: Do the new regulations apply to the use of private insurance?

A: 34 CFR § 300.154(d)(2)(iv)-(v) applies to public benefits and insurance programs and does not apply to private insurance programs. The requirements for children with disabilities covered by private insurance are found in 34 CFR § 300.154(e).

Relocation to New School District/Return to previous District

Q: How is written notification and parental consent handled when a child relocates to another school district, another State, or [returns to a district where they previously attended](#) and parental consent was on file?

A: The responsibility for providing notification and obtaining parental consent prior to the disclosure of personally identifiable information for billing purposes and before accessing a child's or parent's public benefits or insurance for the first time

rests with the school district, not with the individual school. Thus, if a child who had an IEP in effect in a previous school district transfers to a school in a new school district in the same school year, whether or not within the same State, [or back to a school previously attended](#), the new school district or previous school district must provide notification and obtain parental consent before billing Medicaid for the first time, and annually after that. If a child transfers to a different school but remains within the same school district, the notification and parental consent that the school district has provided and obtained remain valid.

Administrative Questions

Q: If sending by postal mail, do the written notification and parental consent forms need to be sent by registered mail? Is a cover letter required?

A: No. The school may determine the most appropriate method by which to send the written notification and parental consent form to parents. A cover letter is not required.

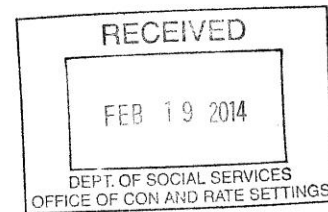
Q: Where should parental consent forms be filed?

A: They should be kept in the child's IEP file within the District.



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

FEB 10 2014



Jennifer Pardus
Department of Social Services
Reimbursement and Certificate of Need, 11th floor
25 Sigourney Street
Hartford, CT 06106

Dear Ms. Pardus:

This letter is in response to your April 5, 2013 and July 30, 2013 electronic mail (email) correspondence to the Office of Special Education and Rehabilitative Services, U.S. Department of Education (Department). Your questions were forwarded to the Office of Special Education Programs (OSEP) for a response. In your email, you asked a series of questions regarding the revised parental consent and new written notification requirements in the Part B of the Individuals with Disabilities Education Act (IDEA or Part B) regulations regarding children with disabilities who are covered by public benefits or insurance, which were published in the Federal Register on February 14, 2013 at 78 FR 10525. Answers to your questions are provided below.

Question 1: May the Written Notification and Parental Consent Form be presented to the parent at the same time, for instance included in the same mailing, or handed out together at an individualized education program (IEP) team meeting?

OSEP's Response: Yes. Under 34 CFR §300.154(d)(2)(iv), prior to accessing a child's or parent's public benefits or insurance for the first time, the public agency, after providing notification to the child's parents consistent with §300.154(d)(2)(v), must obtain written consent from the parent, consistent with 34 CFR §300.154(d)(2)(iv)(A)-(B). There is nothing in Part B that would prevent a public agency from providing the written notification to the child's parents at the same time that parental consent is requested, because parental consent cannot be obtained without providing the parents the written notification. Therefore, so long as the parents receive the appropriate written notification before the public agency requests written consent prior to accessing a child's or parent's public benefits or insurance for the first time, there is nothing in the Part B regulations that would preclude a public agency from providing the parents the written notification and consent form at the same time. As you suggest in your question, this could occur through mailing the written notification form and the consent form together or providing the parent with the two forms at the same IEP Team meeting.

Question 2: Pertaining to the following quote from the Federal Register:

"There are a number of ways in which the public agency may provide the written notification to parents. The annual written notification may be mailed to the parents, provided at an IEP Team meeting if it occurs prior to the first time a public agency accesses a child's or parent's public benefits or insurance, or provided through other means determined by the public agency, so long as all of the written notification

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requirements in these final regulations are met, including the requirement in §300.154(d)(2)(v) that the public agency provide written notification before obtaining parental consent under new § 300.154(d)(2)(iv).” 78 FR 10525, 10530 (Feb. 14, 2013).

May a school district post the written notification to the school district’s Web site, in lieu of mailing or providing the written notification at an IEP meeting?

OSEPS’s Response: No. Under 34 CFR §300.154(d)(2)(v), public agencies must provide parents written notification of their rights and protections prior to accessing a child’s or parent’s public benefits or insurance for the first time and annually thereafter. While States and their public agencies have flexibility in the manner in which they provide this notification to the child’s parents, a public agency would not meet its obligation under 34 CFR §300.154(d)(2)(v) by directing a parent to its Web site instead of providing the parents a printed copy of the notification. If a parent declines the offered printed copy of the notification and indicates a clear preference to obtain the notification from the agency’s Web site, it would be reasonable for the public agency to document that it offered the parents a printed copy of the written notification, but that the parents declined the copy and instead opted to obtain the notification from the public agency’s Web site.

Question 3: Pertaining to the following quotes from the Federal Register:

“As a practical matter, however, eligibility for Medicaid may not necessarily coincide with annual IEP Team meetings...Further, nothing in these regulations would prevent public agencies from providing the notification described in final § 300.154(d)(2)(v) to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child’s or parent’s public benefits or insurance.” 78 FR at 10530.

May a school district likewise provide the parental consent form described in final 34 CFR §300.154(d)(2)(iv) to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child’s or parent’s public benefits or insurance?

OSEP’s Response: No. The parental consent form may not be provided to all parents of children with disabilities, regardless of whether the public agency is seeking to access the child’s or parent’s public benefits or insurance to pay for required special education and related services. The notification requirement described in the quote above is separate and distinct from the parental consent requirement. The parental consent requirement in 34 CFR §300.154(d)(2)(iv) is only applicable to a parent of a child with a disability who is enrolled in a public benefits or insurance program and from whom a public agency seeks to access that parent’s or child’s public benefits or insurance to pay for the child’s required special education and related services for the first time or in the future. The parental consent requirement ensures that the consent from the parent is meaningful, and that the parent understands that, by consenting, the parent is enabling the public agency to access his or her, or the child’s, public benefits or insurance. Conversely, a public agency may not request consent from all parents of children with disabilities, because the consent requirement is not applicable to parents of children with disabilities who are not yet enrolled in a public benefits or insurance program.

Question 4: If a parent, who previously refused to provide consent for the public agency to bill Medicaid, subsequently signs the consent form, can the school only bill for services delivered as of the date that the consent is signed, or does the consent override the previous denial, and thus the school may bill for services delivered prior to the date that the consent-to-bill was signed?

OSEP's Response: Public agencies may only bill a child's or parent's public benefits or insurance program for the cost of special education and related services delivered as of the date that the parent signs the consent form. The consent from the parent required under 34 CFR §300.154(d)(2)(iv) is prospective (for disclosure of personally identifiable information to a public benefits or insurance program for future billing purposes), and not retroactive. Therefore, if a parent does not provide written consent until April of a school year, the public agency may not bill the child's or parent's public benefits or insurance program for services provided prior to April. In the situation you pose, we understand that a parent previously refused to consent and later provided their consent for the public agency to access public benefits or insurance to pay for special education and related services. In the written notification described in §300.154(d)(2)(v), the public agency must include a statement that the parent's withdrawal of consent or refusal to provide consent under 34 CFR part 99 and §300.622 to disclose personally identifiable information to the State agency responsible for the administration of the public benefits or insurance program for billing purposes does not relieve the public agency of its responsibility to ensure that all required special education and related services are provided at no cost to the parents. 34 CFR §300.154(d)(2)(v)(D).

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.

If you have any further questions, please do not hesitate to contact Laura Duos at 202-245-7324 or by email at Laura.Duos@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs