



# To Sign or Not to Sign

## Why Are Schools Billing Medicaid for IEP Services?

BY TRACY BRUNNER

**H**AS A SCHOOL DISTRICT requested your consent to disclose information to the Medicaid agency to claim reimbursement for services in your child's Individualized Education Program (IEP)? This article from the National Alliance for Medicaid in Education helps parents understand the facts before making a decision to sign or not to sign the Medicaid consent form.

**School districts receive special education funding, so why are they billing Medicaid for IEP services? Is that a legitimate practice?**

A public school must offer all children a free, appropriate public education regardless whether or not it receives federal funds under the Individuals with Disabilities Education Act. Many IDEA-eligible children are covered by the Medicaid program, whose Early and Periodic Screening, Diagnosis and Treatment mandate requires Medicaid agencies to provide eligible children under 21 years old with the services necessary to meet their medical needs. In many cases, a Medicaid-eligible child's IEP under IDEA includes health-related services such as audiology, nursing and therapies that are medical in nature and covered by Medicaid.\*

Recognizing that schools provide medically necessary services and IDEA funding typically covers less than 20 percent of the average per student costs for special education, the US Congress amended federal law in 1988 expressly to forbid Medicaid from restricting or prohibit-

ing payment for covered services authorized in a child's IEP.\*\* Additionally, the federal special education act (IDEA) requires educational agencies to coordinate with other agencies, including Medicaid, that are responsible for financing and delivering services to children with disabilities.

From a governance perspective, blending Medicaid and education funding is a more efficient use of tax dollars; coordinating care for children served by both programs also helps improve quality and effectiveness. Medicaid reimbursement for school-based services is usually coordinated through an interagency agreement that describes the responsibilities of the state education and Medicaid agencies and outlines the agencies' shared responsibilities for program policy, training and compliance reviews. In some states, a budget or audit oversight agency also shares in these responsibilities.

**How do parents know if services billed to Medicaid were actually provided?**

Like all Medicaid service providers, Medicaid-participating schools must keep detailed records that include a description of the specific service provided and billed to Medicaid, the date of service, and the qualified professional who rendered the service. When a Medicaid-covered IEP service is provided and billed by a school, the service documentation is part of the child's educational record, subject to privacy protections under federal law, and may be produced as necessary to demonstrate that the school is providing services as required by the child's IEP. Because Medicaid service documentation is also subject to federal and state Medicaid audits and compliance reviews, the potential for heightened scrutiny can enhance the amount and quality of data used by the school to measure the student's present levels of performance and progress toward his or her IEP goals.

### What protections are in place for parents who sign the Medicaid Consent form?

Under federal and state education law, parents must be fully informed of their rights and protections *before* a school district may request a one-time consent stating they understand and agree that the school may access their child's Medicaid benefits for IEP-required services. This mandated **prior written notification** may or may not be combined with the consent form. In either case, the notice must be written in easily understood language and explain:

1. what will be disclosed to Medicaid for billing purposes;
2. the parent has the right to refuse or withdraw consent at any time; and
3. that withdrawal or refusal of consent does not relieve the school of its responsibility to ensure that all required services are provided at no cost to the parent.

This written notification must also stipulate that the educational agency may not:

1. require a parent to:
  - enroll a child in public benefits or insurance programs
  - incur an expense, such as a copayment or deductible (the educational agency may pay an insurance copayment or deductible that the parent would otherwise be required to pay) for services provided
2. use a student's public benefits or insurance if doing so would:
  - decrease available lifetime or other covered benefits
  - cause the family to pay for services the student requires outside of school, that would otherwise be covered by the public benefits or insurance program
  - increase premiums or lead to discontinuance of benefits or insurance
  - risk loss of home and community based waiver eligibility based on aggregate expenditures.

After obtaining the one-time Medicaid consent, schools must also provide **annual written notification** to inform parents of these rights and protections.

The US Department of Education website offers guidance on these federal requirements and includes a September 5, 2013 response to a Medicaid Consent inquiry from the PAVE parent information and training program in Tacoma, Washington.\*\*\* State parent information networks for families of children with special needs are another source of information, resources, and opportunities to talk with other parents about questions and concerns.

Parents can also consult the child's school regarding proper channels of communication to address Medicaid Consent issues. Check your state education and Medicaid agency websites to identify the coordinator or division that oversees school-based Medicaid claiming; such sites may also offer a means to submit questions and concerns electronically.

Incurring a Medicaid copayment for an IEP service or receiving a notice indicating school claims were counted toward a child's Medicaid benefit limitation are examples of reasons for parents to contact the child's school or the state's school-based Medicaid coordinator. If you suspect an error has occurred, the responsible state agency or coordinator can investigate the appropriate avenues to resolve any alleged violation of the "no cost" protections in place for families.

### What are the benefits of signing a Medicaid Consent form?

Signing the Medicaid consent form allows schools to recover federal funds that defray a portion of the high costs to furnish health-related services to students with disabilities. In areas with a shortage of healthcare professionals, Medicaid funds may give schools the necessary resources to attract and retain qualified personnel. Medicaid claiming can also lead to improved quality of care in schools, especially in states where Medicaid service providers must meet more stringent licensure and credentialing criteria than those for professionals licensed to practice only in the school setting. Finally, parents often find that Medicaid-participating schools have more flexibility when it comes to financing expensive specialized equipment, professional development and parent training. 🗣️

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### NOTES

\* In the late 1980s courts agreed that inclusion in an IEP did not automatically establish a service as educational rather than medical in nature. See *Commonwealth of Massachusetts v Heckler*, 616F. Supp. 687 (D. Mass. 1985), *Commonwealth of Massachusetts v Bowen*, 816 F.2d 796 (1st Cir. 1987), and *Bowen v Massachusetts*, 487 U.S. 879, 108 S.Ct 2722 (1988).

\*\* Section 411(k)(13) of the *Medicare Catastrophic Coverage Act of 1988* - P.L. 100-360.

\*\*\*See <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/13-013615rwa-mckinney-medicaid9-3-13.pdf>.