

N A M E

National Alliance for Medicaid in Education, Inc.

NAME Governmental Affairs Committee Update: Parental Consent 34CFR § 300.154(d)(2)(iv)(A)

The National Alliance for Medicaid in Education (NAME), began meeting with the Office of Special Education Programs (OSEP) and the Office of Special Education and Rehabilitation Services (OSERS) in July 2007, regarding 34CFR § 300.154(d)(2)(iv)(A) which went into effect in October 13, 2006. This required Local Education Agencies (LEA) to obtain parental consent prior each and every time they accessed Medicaid (public insurance) for IEP medically related education services. OSERS/OSEP provided a written response to NAME on March 12, 2007 on guidance to implement this new regulation. NAME and OSERS/OSEP have met six times since July 2007 and July 2011 regarding this issue. The following is a brief historical recap of those meetings.

July 2007 - Washington DC

The Acting OSEP Director, Patti Guard, along with several other OSEP staff and Mary Williams (OSERS) met with NAME and the three local directors of special education. They discussed concerns by NAME and the local directors related to implementing this regulation. NAME and OSEP/OSERS agreed to continue working together to address these unresolved concerns. Multiple letters, emails, and phone calls were exchanged over the course of the year without any resolution to the issues identified by NAME.

July 2008 - Washington DC

OSERS/OSEP met with NAME, along with a representative from Council of Administrators of Special Education (CASE) and several local directors of special education from around the country. The discussion focused on the burdens, including financial impact on LEAs due to the implementation of the Parental Consent to access Medicaid regulation. The discussion also included that the new regulation provided no additional protections to the student/family that were not already in place prior to IDEA 2006. Another issue discussed was that no other Medicaid provider has to obtain a release to access Medicaid each and every

time, because it is already covered in the recipient's application for Medicaid benefits. There was no action taken after this meeting, but OSEP/OSERS agreed to continue discussion about the regulation. During the following year, NAME and its partners shared information with OSEP/OSERS regarding the continued impact implementing the regulation had on school districts and parents across the country as well as why the regulation was not needed.

August 2009 - Washington DC

- OSERS/OSEP (Patti Guard, Ruth Ryder, Deb Morrow, Jennifer Sheehy, Mary Louise Dirrigl) met with John Hill (NAME), Bruce Hunter (American Association of School Administrators, AASA), Nancy Reder (National Association of Directors of Special Education, NASDSE), Kathy Merry (LEAnet), Amy Edwards (NAME) and Larry Charny representing New York City Public Schools. Additional information was provided in regards to the negative financial and bureaucratic impact the regulation continued to have on LEAs. Also discussed the regulation anticipated the LEAs would participate in accessing Medicaid as evident by 34 CFR §300.154(a)(1).... Medicaid... "must precede" the financial responsibility of the LEA... It was acknowledged that the regulation might be a problem and OSEP/OSERS agreed to deliberate it internally. Both sides continued to correspond via phone calls, letters, emails, without any resolution to the issues raised by NAME and its partners.

July 2010 - Washington DC

OSERS/OSEP (Deb Morrow from OSEP and Jennifer Sheehy and Mary Louise Dirrigl from OSERS), met with, John Hill, Nancy Reder, NASDSE, Kathy Merry, LEAnet, Thom Adams, CASE and Pattie Kim, Indiana LEA Special Cooperative Director, and Judi Wallace (CMS). NAME asked the CMS representative if it obtaining consent to bill Medicaid was a routine requirement for any other provider, other than schools and her response was "No, it was not". OSERS/OSEP indicated that it was clear that this was an issue and they would explore potential ways to resolve it.

Alexa Posny, Assistant Secretary OSERS, stated that the Department of Education hoped to have a solution to the problem during a presentation at the NAME Annual Conference in Williamsburg September 2010. She requested that we continue to provide OSERS/OSEP with data on the impact of implementing the regulation.

In October 2010 two Indiana statewide parent/advocacy organizations sent letters to Secretary Duncan asking that the regulation be removed because of the undue hardship it was placing on schools as well as families.

January 2011 - Washington DC

OSERS/OSEP (Ruth Rider, Jennifer Sheehy, Laura Duos, and Susan Swensen) met with John Hill (NAME), Judi Wallace (CMS) and Sasha Bartolf (AASA), to discuss the regulation. OSERS/OSEP indicated they had received some opposition to change the regulation from the congressional offices on the Hill and from a national advocacy organization. They suggested we continue to share additional specifics on fiscal impacts of implementing the regulation. Following this meeting, NAME provided OSERS/OSEP with additional information from states and LEAs around the country.

July 19, 2011 - Washington DC

OSERS/OSEP (Jennifer Sheehy, Mary Louise Dirrigr and Laura Duos) met with John Hill (NAME), Judi Wallace (CMS), Thom Adams (CASE), Jennifer Burton (Washtenaw Intermediate School District, MI), Yvette Goorevitch (school district in New Rochelle NY) and Karen Kemp (school district in Schenectady, NY). OSERS/OSEP had no new information and restated the push back they had gotten from the Hill. Those present at the meeting informed OSERS/OSEP that there were over 100 individuals that were attending the CASE Legislative Seminar and they were currently on the Hill expressing their concerns to their congressional representatives that this issue needs to be resolved.

Based upon the July 19, 2011 OSERS/NAME meeting and the feedback from the Hill visits on the same day which indicated many of the legislative staff had thought the issue had been resolved and that several were prepared to draft legislation to fix the issue, NAME requested some guidance from their partner agencies and their beltway experts regarding next steps. The decision was made to hold off any additional action in lieu of the pending PART-C regulations that were due to be published in August 2011. OSERS/OSEP had previously alluded that potential changes in the PART-B Medicaid parental consent regulation would most likely be a mirror reflection of the PART-C parental consent to access Medicaid regulation. On September 6, 2011, the Final Part-C regulations and a notice of proposed rulemaking (NPRM) to amend the *IDEA* Part B Medicaid parental consent regulation were released.

September 6, 2011

Part B of the Individuals with Disabilities Education Act Notice of Proposed Rulemaking: 34 CFR § 300.154(d)(iv)(A)

On September 6, 2011, the Department released a notice of proposed rulemaking (NPRM) to amend the *IDEA* Part B regulations. Changes are being proposed to the regulations regarding when a State or local educational agency seeks to use a child's or parent's public benefits or insurance (e.g., Medicaid) to pay for Part B services. The proposed regulation appears to significantly reduce the administrative burden by

eliminating the *34 CFR § 300.154(d)(iv)(A)* requirement that states a school "Must obtain consent consistent with § 300.9 each time that access to public benefits or private insurance is sought." These proposed amendments to the Part B regulations would ensure the protection of the rights of parents and children and ensure that children with disabilities receive a Free Appropriate Public Education (FAPE) while addressing concerns raised by state educational agencies and local educational agencies regarding the burdens imposed by the current regulation.

September 28, 2011

Federal Register: Proposed Change in Medicaid Parental Consent Regulation – 34 CFR § 300.154(d)(iv)(A)

On September 28, 2011, the Office of Special Education and Rehabilitative Services posted a proposed regulation in the *Federal Register* that will change the IDEA regulation requiring schools to obtain parental consent prior to billing Medicaid for health-related IEP services. The proposed regulation can be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22784.pdf>

The 60 day comment began on September 28, 2011 and ends on December 12, 2011.

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