

Parental Consent and the Ohio Medicaid School Program

As you read through the MSP Rules, you will notice that there is no mention of “Parental Consent”. The Medicaid School Program is somewhat silent on this issue. They do have a “Recommended Parental Consent Form” and a “Summary of Consent Required to Bill Medicaid for Costs of Special Education” on their website. The bottom line is that the Medicaid School Program does not require Parental Consent, however IDEA and FERPA both have specific parental consent requirements. Each district may want to have their legal counsel review ODE’s summary information before making a decision on how to handle parental consent.

There has been ongoing debate nationwide regarding the need for parental consent. Special exclusion clauses in both IDEA and FERPA rules have been interpreted by some to waive the need for parental consent. The exclusion language in each rule is as follows:

IDEA

“A district does not need to seek parental consent if consent is given directly to another agency, such as the State Medicaid Agency, **as long as the parental consent provided to the other agency meets the requirements set forth above**”. The requirements that this statement refers to are:

1. Parental consent must be obtained each time the IEP is changed, or each time a school district seeks access to public benefits or insurance.
2. Refusal to allow access to their public benefits or insurance does not relieve the district or public agency of its responsibility to ensure that all required services are provided at not cost to the parents.
3. Parent has been informed about all information relevant to the activity for which consent is sought.
4. The consent describes the activity and lists the records (if any) that will be released and to whom.
5. Consent is voluntary on the part of the parent and may be revoked at anytime.

FERPA

“Under FERPA, an educational agency or institution may disclose education records if a parent has provided prior written consent to a third party authorized to receive the records, such as the designated Medicaid fiscal agent. 34CFR 99.30(a)”

Ohio Medicaid Application

“I authorize any person who furnishes health care or medical supplies to give the Ohio Department of Job & Family Services or the Ohio Department of Health any information related to the extent, duration, and scope of services provided under the Healthy Start, Healthy Families Medicaid program, WIC and medical assistance programs. I also authorize the Ohio Department of Health and the Ohio Department of Job & Family Services to exchange any information I have provided on this form, in order to enable the departments to determine my eligibility.”

Based on this language, it appears that FERPA parental consent is not required, but since the Ohio Medicaid application does not contain all of the required elements that IDEA requires, it appears that IDEA still requires consent. Since IDEA does not appear to require signed written consent, it may open the door to what is called “Parental Notification” instead of “Signed Parental Consent”.

Below are four possible options that districts may want to consider regarding Parental Consent to share protected health information (PHI) and bill Medicaid.

1. Send a “Parental Consent Notification” to each IEP/Assessment student parent annually.
2. Send a “Parental Consent Notification” to each IEP/Assessment student parent as soon as possible, and provide the parent with an additional “Parental Consent Notification” each time an assessment is done or the IEP is modified.
3. Send a “Parental Consent Notification” to each IEP/Assessment student parent as soon as possible and obtain a signed “Parental Consent Form” thereafter each time an assessment is done or the IEP is modified.
4. Obtain a signed “Parental Consent Form” each time an assessment is done or the IEP is modified.

Option 1 may meet minimum IDEA requirements, while Option 2 may more fully meet IDEA, Option 3 even more, and Option 4 completely meets IDEA Parental Consent requirements.

It is each district’s choice on how to handle parental consent and HBS will coordinate and track whatever system is chosen.

What effect does Parental Consent have on a district’s Medicaid reimbursement?

If a parent does not consent to the sharing of PHI and billing Medicaid, it would have a negative impact on a district’s interim MSP reimbursement, but the Cost Report and Final Settlement is not student specific and is filed on behalf of your entire district, and non-consent has no effect on your final total MSP reimbursement.

The sharing of PHI with HBS is covered in a “Business Services Agreement”; so parental consent to share information pertains to the sharing of PHI with entities like ODJFS, ODE, and Program Auditors. Enclosed is our Business Services Agreement that needs to be signed and returned to us, which will allow your district to share PHI with HBS.

Also attached is ODE’s “Recommended Parental Consent Form” and a sample “Parental Notification Letter” that has been modeled based on ODE approved Parental Consent Form. We encourage districts to follow the guidelines that have been established by ODE and ODJFS as much as possible.

Also attached is ODE’s “Summary of Consent Required to Bill Medicaid for Costs of Special Education”.

Upon review of this information, please complete the enclosed Parent Consent election form indicating which method your district elects to use and return it to HBS along with your signed Business Services Agreement. If you have any questions, please contact Dan Thomas at dthomas@teamhbs.com or call him at 740-653-6711.