

Katy Neas
Deputy Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
400 Maryland Ave., SW
Washington, DC 20202-7100

July 12, 2023

RE: Docket ID ED-2022-OSERS-0052; RIN 1820-AB82

Dear Deputy Secretary Neas:

On behalf of ten national education and healthcare organizations representing millions of educators, administrators, and healthcare providers, we write to share our support for the proposed revisions to 34 CFR 300.154(d)(2). We believe rescinding 34 CFR 300.154(d)(2)(iv) and revising 34 CFR 300.154(d)(2)(v) would eliminate a key barrier for districts in obtaining Medicaid reimbursement for services delivered to students with disabilities. By growing the ability of districts to bill Medicaid for school-based services, this proposed change would increase funding available to districts for important services and supports to students under the IDEA. Streamlining the reimbursement process and ensuring districts are treated the same as other Medicaid providers when schools provide reimbursable services to Medicaid eligible children will enable districts to expand the delivery and help cover the costs of healthcare and special education service.

Ensuring districts can bill Medicaid for services provided to students receiving special education is especially important, given the number of children with disabilities ages 3 through 21 in public schools is increasing and projected to reach 7,480,692 in 2024. Of the 524,652 new students that are likely to be found eligible for special education in the 2023-2024 school year, almost 300,000 of them will be eligible for Medicaid. While Congress originally promised districts a federal contribution of 40 percent of the average per pupil expenditure for students under the IDEA, in FY 2023 the federal contribution was only 12.1 percent. This regulatory effort to improve and expand Medicaid reimbursement by the U.S. Department of Education is even more important given the shortfall in IDEA funding as well as the increased number of special education students served in public schools.

A [survey from December 2022](#) of 458 districts and education services agencies found that meeting the current parental consent process in 34 CFR 300.154(d)(2)(iv) was incredibly challenging and led to a critical loss of resources for Medicaid-reimbursable services. Two-thirds of respondents described as significant the burden on staff to follow up with parents to complete forms. Approximately a third of respondents said that between 26-50 percent of forms are not completed and 18 percent said over 50 percent or more are not signed. Fifty-six percent of respondents report it was more challenging to obtain parental consent to bill for Medicaid services in 2022 than it was in 2017.

Many school-based Medicaid providers and specialized instructional support personnel in schools lack the administrative support common in healthcare settings to complete Medicaid documentation. The effort required to obtain signed consent forms also falls on these school professionals, diverting time away from their student-focused responsibilities and services. Given the national shortage of these professionals in our schools, it is imperative school personnel remain focused on serving the high caseloads of students they see every week rather than tracking down duplicative parental consent forms.

As the NPRM notes, the consent requirement in 34 CFR 300.154(d)(2) is separate from, and in addition to, the parental consent requirements under both Part B of the IDEA (34 CFR 300.622) and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g and 34 CFR 99.30), which require school districts to obtain parental consent to disclose personally identifiable information (PII) to a public benefits or State Medicaid agency for billing purposes. The Department would continue to require parents receive written notification that the district will be billing Medicaid for the services provided to their child prior to doing so the first time and annually thereafter, which provides parents the opportunity to object to the district obtaining Medicaid reimbursement for any reason. In addition, regardless whether the parent permits the district to bill Medicaid, the district's access to a child's or parent's Medicaid to pay for special education and related services would never result in additional costs to the parent or reduced benefits to the child.

We commend the U.S. Department of Education in taking this important step toward reducing the administrative burden on districts seeking Medicaid reimbursement and expanding new resources to districts that deliver Medicaid services to children. As more students with disabilities enter our public schools each year and districts work to address the behavioral and mental health crisis impacting all students, this critical funding is more important than ever before.

Sincerely,

AASA, The School Superintendents Association

American Federation of Teachers

American Physical Therapy Association

American Psychological Association Services

Association of Educational Service Agencies

Association of School Business Officials International (ASBO)

Council of Administrators of Special Education

National Association of Pupil Services Administrators

National Association of School Nurses

National Education Association