



# 2013 Parental Consent Changes

Federal Changes

Effective Date March 18, 2013

# The Required Yellow Flags Caution!

Every State will Issue their Own Directives

We can't predict how government attorneys will interpret these regulations.



# 2013 Medicaid Parental Consent Requirements

- Initial Notice
- One time informed and then signed consent
- Annual Notice Thereafter.



# Initial Notification

## **Federal Education to Issues Model Language**

**“Following the publication of these final regulations, the Department intends to issue model language for the written notification requirement described in final § 300.154(d)(2)(v).”**



# Initial Notification – When?

**“Finally, for those children with IEPs or whom services have previously been billed to Medicaid, when the final regulations become effective, the written notification requirement in final 300.154(d)(2)(v) applies. The written notification, therefore, must be provided before the public agency may access the child’s or parent’s public benefits or insurance after these final regulations become effective.....”**

Ref: 10530 Federal Register /Vol. 78, No. 31 /Thursday, February 14, 2013 /Rules and Regulations



# Initial Notification – When?

**“Provide the first written notification to the parents prior to accessing the child’s or parent’s public benefits or insurance for the first time....”**

**Translates to first time on or after March 18, 2013.**



# Content of Notification

1. A statement of the parental consent provisions in §300.154(d)(2)(iv)(A)-(B);
2. A statement of the “no cost” provisions in §300.154(d)(2)(i)-(iii);
3. A statement of right to withdraw consent at any time 34 CFR part 99 and part 300.
4. A statement that withdrawal or refusal to provide consent does not relieve the public agency of its responsibility to provide services at no cost to the parents. 34 CFR §300.154(d)(2)(v).
5. Written or communicated in native language and method of communication used by the parent unless it is clearly not feasible to do so
6. Language used is understandable to the general public.
7. The notification must be provided before parental consent is obtained.



# Meaning of Consent Provisions In §300.154(d)(2)(iv)(A)-(B);

Letter From Office Of Special Education And Rehabilitative Services  
to States dated May 3, 2007

“In this context, "parental consent" means –

- The parent has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication;
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records that will be released and to whom;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent is given and before it is revoked).”





# Annual Notice When and How

- **Scheduled when It works best for the LEA.**
- **Contains all required Elements.**
- **May be delivered any way the district chooses, including electronically.**
- **Must be done prior to getting signed consent.**



# Signed Consent

## Question's on Notice?



# Signed Consent Medicaid Application No Longer Valid

Q8. A8. “..... The public agency must obtain a new parental consent containing this explicit statement from the parent even if the public agency has on file a consent provided to another agency, such as the State Medicaid agency.”



# Signed Consent Needed Or When

There is change in the:

- **type** of service (e.g., physical therapy or speech therapy)
- **amount** of services (frequency or duration)
- **cost** charged to the public program (e.g., Medicaid)

Must be secured by the LEA.



# Content of Consent Form

**This parental consent form must specify:**

- 1) 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) The purpose of the disclosure (e.g., billing for services under part 300),**
- 3) The agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)). 34 CFR §300.154(d)(2)(iv)(A), and**
- 4) That the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services under part 300.**



# New Signed Consent Not Needed

**You have on file on file a parental consent that meets the requirements of the prior §300.154(d)(2)(iv)(A) and 34 CFR §99.30 and §300.622. This would include a parental consent on file that has been given directly to another agency, such as the State Medicaid agency.**



# Get New Conforming Consent This IEP Cycle

- ✓ **Any LEA in a State using a Medicaid cost settlement process charges Medicaid a different amount each school year.**
- ✓ **That requires you to get the one time conforming signed consent before you bill for services dated after on or after July 1, 2013.**



# Required Actions

- ✓ **Prepare to send out your first notice.**
- ✓ **Contact State Education Agency and tell them you need the language.**

**We will not submit any bills after 3/18/2013 until the notice is sent or federal education says it isn't needed.**

***This is now a federal regulation no longer an informal policy statement.***





# Questions

Best Contact email address for questions is [helpdesk@kinneyassoc.com](mailto:helpdesk@kinneyassoc.com).

Phone 518-371-0176.

