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June 16, 2008

Mr. Tracy R. Justesen
Assistant Secretary for Special Education and Rehabilitative Services
U.S. Department of Education
550 12th Street, SW
Potomac Center Plaza
Room 5107
Washington, DC 20202-2641

Re: U.S: Department of Education correspondence dated May 7, 2008

Dear Mr. Justesen:

Thanks you for your prompt response to my previous letter. As a result of our correspondence I have some follow up questions and am hopeful that you and your agency can clear them up for me. Mary Williams, from the U.S. Department of Education, advised me to direct these questions to you.

Medicaid

Please advise if the following is correct:

1. Medicaid's financial responsibility must precede that of the LEA and the state can require the LEAs to put up the money to fund the Medicaid payment. (Medicaid allows both the use of intergovernmental transfers and certified public expenditures.)
2. A state can require the LEAs to "bill" Medicaid as a condition for receiving state education aid and can use the LEAs' money to make the Medicaid payment.
3. The state can use the federal Medicaid reimbursement for any purpose it chooses. It does not have to share it with the LEAs, as it is reimbursement of the "Medicaid" expenditure made by the LEA to itself.
4. Federal Education agrees that although the LEA never gets any financial benefit, this meets the requirement of the IDEA.

Also, when reimbursing the LEAs must the reimbursement be based on the actual cost of the services or can the program set an arbitrary reimbursement rate that is far below cost? **(For example we are aware of a situation where the LEA actually get far less than 20% of the cost they incur in providing the service.)**

Finally, may the Medicaid agency use parental consent as a reason not to reimburse for IDEA services?

IDEA and Consent

Many of the private providers of IDEA IEP/IFSP services are also Medicaid providers. Often they see a child both as a contractor of an education agency and in their private practice. For the non-IDEA services, they bill Medicaid. As such, they require the parent to consent to billing as a condition of service. **(For example, children needing nursing services may have both IEP and non-IEP services provided by the same provider.)**

The Medicaid program itself also requires the applicant to consent to the release all information necessary for the proper administration of the Medicaid program. This consent cover far more than just billing information as Medicaid eligibility is based on many financial, health and social factors not normally accessible by government agencies. In the functioning of utilization controls, and combating Medicaid fraud and abuse, access to all service information is considered essential.

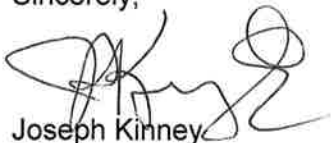
In 1997 the United States Department of Education advised the State of Wisconsin Department of Public Instruction that it's state's Medicaid application met the FERPA consent requirements and did in fact authorize schools to release information to the Medicaid agency. In the discussions that leading up to the 1997 letter federal education staff also commented that the language in the New York Medicaid application met all of the FERPA requirements, and could be used as a model for other states.

Has the Department changed its position on that application? If so what was basis for the change? Is it based on a change in the applicable federal statutes or just a different opinion at this moment in time?

Has the department consider the fact that refusal by a parent to allow such access, a refutation of the terms of their eligibility for Medicaid, raises Medicaid eligibility questions and may result in the loss of Medicaid benefits. Such a refusal will also raise issue with Medicaid auditors as there are known problems with duplicate billing by some Medicaid providers.

Once again, thank you for taking the time to response to my previous correspondence and I look forward to you hearing from you and remain available for any questions you or your staff may have.

Sincerely,



Joseph Kinney
Kinney Management Services, LLC.