

**QUESTIONS AND ANSWERS REGARDING
PARENTAL CONSENT AND NOTIFICATION REQUIREMENTS
FOR ACCESS TO PUBLIC BENEFITS AND INSURANCE
(Updated November 2018)**

The following questions and answers replace those issued with the July 2013 *Parental Consent for the Use of Public Benefits or Insurance Pursuant to the Individuals with Disabilities Education Act* field memorandum.

1. What is meant by “other public benefits or insurance programs”?

Other public benefits or insurance programs are those associated with the State agency that is responsible for the administration of a State’s Medicaid program, which is the source of funding for medically necessary school-based services that are covered benefits under Medicaid. Another example of a public benefit or insurance program is the Children’s Health Insurance Program (CHIP) (e.g., Child’s Health Plus). Section 200.5(b)(8) of the Commissioner’s regulations relating to parental consent applies to all public benefits or insurance regardless of whether they are Medicaid programs.

2. Can a public agency ask a parent for permission to bill public insurance or benefits and/or to disclose personally identifiable information to the State public benefits or insurance program if the parent previously declined to provide consent (or withdrew consent) for such activity?

Yes. A public agency may make reasonable requests to obtain the parental consent required under the new regulations from a parent who previously declined or withdrew consent. Prior to seeking this consent, a public agency must provide the parent(s) with written notification consistent with the new regulations. However, a parent’s refusal to consent or withdrawal of consent does not relieve the agency of providing services at no cost to the parent(s).

3. Will a public agency need to obtain a new parental consent to disclose personally identifiable information (PII) to access a child’s or parent’s public benefits or insurance when consent was obtained in one school district and the child relocates to another school district outside the State or to a location within the State?

Yes.

4. If a student with a signed parental consent in one school district (“District A”) relocates to a new school district (“District B”) but returns to District A, would District A be required to obtain a new parental consent if the previously signed consent is still on file?

Yes. The school’s district’s responsibility in this scenario would be similar to the requirements for when a student relocates to another school district (**see question 3**). If a student who was enrolled in District A relocates to District B but then returns to District A, District A must obtain a new parental consent to disclose PII to access a

child's or parent's public benefits or insurance (even if District A has a signed parental consent on file from when the student was previously enrolled in the district).

- 5. If a student who is determined to no longer be a student with a disability (i.e., declassified) is subsequently identified as a student with a disability in the same school district, does the school district need to obtain a new signed parent consent to disclose PII to access a child's or parent's public benefits or insurance?**

Yes. If a student who is declassified is subsequently identified as a student with a disability in the same school district, the school district must obtain a new parental consent. This ensures that the parent has been fully informed of all the information relevant to the activity for which the consent is sought and has been notified as to which of the student's records will be released and to whom.

- 6. May a signed parental consent to bill Medicaid be backdated?**

No. A public agency cannot "back date" parental consent. The one-time written consent from the parent must be obtained before accessing the child's or parent's public benefits or insurance for the first time.

- 7. Who should school districts contact if they have questions regarding the submission of Medicaid claims?**

For questions regarding submissions of claims, please contact the New York State Department of Health's School Supportive Health Services Program (SSHSP) Medicaid Policy and Medicaid Claiming Questions at sshsp@health.ny.gov.

- 8. Does the written notification take the place of the written parental consent?**

No. Written notification is a separate and distinct requirement and does not replace the parental consent requirement.

- 9. When and how must a public agency provide the written notification to the parent?**

The written notification must be provided to the parent before the parent provides consent to access the parent or child's public benefits or insurance for the first time, and it must be provided annually thereafter and prior to checking with the New York State Department of Health for a child's Client Identification Number (CIN) or for whether the student has Medicaid coverage. The notification may be mailed to the parent(s); personally delivered; and/or provided through electronic mail (email) communication, provided the school district makes this option available and the parent(s) agrees to electronic communication.

Once the public agency provides the child's parent(s) the written notification that meets these requirements, public agencies will have the flexibility to determine the timing of subsequent annual written notifications. However, the notification must be provided

annually. Nothing would preclude districts from providing this notification more frequently than annually.

10. Must the annual written notification be provided within one year (365 days) of the last notification?

Federal and State regulations do not specify when subsequent annual written notifications must be provided to the parents. The timing is otherwise left to the discretion of the public agency. This provides public agencies the flexibility to provide this written notification in conjunction with the other required documentation or activities (see question 9).

11. Can districts provide the annual written notification at the Committee on Special Education (CSE) meeting?

In those instances where a child has been determined eligible for public benefits prior to the CSE meeting, the public agency could provide the child's parent(s) with the written notification at the CSE meeting or at some other meeting, provided the child's parent(s) receives the written notification **before** the public agency obtains the requisite parental consent to check with the New York State Department of Health for a child's CIN or whether the child has public benefits or insurance (e.g., Medicaid) coverage, and before accessing the parent's or child's public benefits or insurance (e.g., Medicaid) for the first time.

12. Will the district need to provide written notification each time it amends a child's IEP in a manner that would result in a change to the type or amount of services billed to the public benefits or insurance program?

No. Providing parents the annual written notification that meets the requirements of the final regulations is sufficient protection in these situations. A school district may provide written notification more frequently than annually, if they deem it appropriate.

13. Is consent obtained by the county to access a child's or parent's public benefits or insurance for a preschool student with a disability still in effect when the student is determined eligible for school-age special education services?

No. If consent was obtained by the county, not the school district, to access a student's public benefits or insurance to pay for preschool services, once the student becomes school age, the school district would need to obtain its own consent prior to accessing the child's or parent's public benefits or insurance for the first time.

14. Is parental consent obtained for a preschool student with a disability invalidated when the student becomes school age if the consent form is on county preschool letterhead?

See response to question 13.

- 15. If a school district withdraws from the SSHSP and later decides to re-enter, would new parental consent need to be obtained to access a student's public benefits or insurance for the first time as a part of the recertification process (even if signed parental consent is on file from before the district withdrew from SSHSP)?**

Yes. If a school district decides to again enroll as a billing provider in the SSHSP, a new signed parental consent would need to be obtained before accessing student's or parents' public benefits or insurance. Once parental consent has been obtained for the district to access Medicaid for the first time after the district re-enters the SSHSP, no additional parental consent is required for the district to bill Medicaid in the future.

- 16. Will public agencies be able to check whether a child has Medicaid coverage for a date of service(s) without first obtaining consent from the parent?**

No. Public agencies must obtain parental consent prior to checking a student's Medicaid eligibility. Additionally, if a public agency already has a child's CIN, it must first obtain parental consent before checking with the New York State Department of Health whether the child has public benefits or insurance (e.g., Medicaid) coverage and before accessing the parent's or child's public benefits or insurance for the first time.

- 17. Will public agencies be able to share student information with a third party to obtain a child's Medicaid CIN without first obtaining consent from the parent?**

No. Public agencies must obtain parental consent prior to obtaining a student's Medicaid CIN.

- 18. Must public agencies obtain new parental consent forms to submit SSHSP claims directly to eMedNY or when using a new Medicaid Service Bureau?**

No. If the public agency already has a parental consent form on file, it is not required to obtain a new one-time parental consent form because it is using a new Medicaid billing service, obtaining a student's Medicaid CIN or verifying Medicaid coverage. Public agencies are required to obtain parental consent, if they have not already done so, before checking with the New York State Department of Health as to whether the child has a Medicaid CIN, public benefits or insurance (e.g. Medicaid) coverage and before accessing the parent's or child's public benefits or insurance for the first time.

- 19. Can counties share a child's CIN with the school district upon a preschool student with a disability's transition to school-age special education services?**

Yes.

- 20. Where should signed parental consent forms be maintained?**

[Records Retention and Disposition Schedule ED-1](http://www.archives.nysed.gov/records/retention_ed-1_records-description-retention) (http://www.archives.nysed.gov/records/retention_ed-1_records-description-retention) requires that "Federal Medical Assistance records for Special Education and Case Management Services, including but not limited to all documentation, logs, surveys, reports, remittance statements and

Attachment 4

memoranda of advisements pursuant to the School Supportive Health Services Program (SSHSP) and the Preschool Supportive Health Services Program (PSHSP)” be retained in a student’s special education file for “6 years after the date of payment to school district or BOCES [board of cooperative educational services].” This would include the signed consent to access the parent or child’s public benefits or insurance (e.g., Medicaid). Additional guidance regarding the retention of Medicaid records and documentation for reimbursement under the School Supportive Health Services Program can be found in Question 42 of the [School Supportive Health Services Program Preschool Supportive Health Services Program – Question and Answers](http://www.oms.nysed.gov/medicaid/q_and_a/q_and_a_combined_revised_12_9_16.pdf) (http://www.oms.nysed.gov/medicaid/q_and_a/q_and_a_combined_revised_12_9_16.pdf).