



PUBLIC SCHOOLS OF NORTH CAROLINA

DEPARTMENT OF PUBLIC INSTRUCTION | June St. Clair Atkinson, Ed.D., *State Superintendent*

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March 29, 2011

MEMORANDUM

TO: Directors, Exceptional Children Programs
Directors, Charter Schools

FROM: Mary N. Watson, Director *MNW*
Exceptional Children Division

RE: Revised North Carolina Medicaid Notice of Privacy Practices

The North Carolina Division of Medical Assistance (DMA) issued a revised Notice of Privacy Practices effective February 1, 2011. Page 3 of the notice includes the following language:

Obtain information from school districts to pay for health related services. By signing the Medicaid application, you give your authorization for the school district that provides Medicaid-covered services to you or your child(ren) to release to Medicaid information from your or your child(ren)'s educational records in order for Medicaid to make payments for the services. The information that will be released each time payment is made may include your or your child(ren)'s name, date of birth, and the type and amount of services that were provided. Your authorization is voluntary and may be rescinded at any time by contacting the school district. If you rescind your authorization, the school district will continue providing services to you or your child(ren) at no cost to you.

Some LEAs and third-party vendors have interpreted this to mean: assume 'yes' to consent until a parent says 'no'. Further, some have suggested that LEAs are no longer required to obtain parental consent to release information to DMA at the annual review or whenever services on the IEP change, since the parent gave consent when they signed up for Medicaid.

This is not the interpretation of NCDPI Exceptional Children Division, based on the May, 2007, and August, 2010, OSEP letters from Alexa Posny and current DMA procedure for disseminating the privacy notice. Under CFR§ 300.154 (d)(2)(iv)(A), public agencies must obtain parental consent each time access to public benefits are sought. Obtaining consent from parents for a specified amount of services for a specified period of time (e.g., 36 PT visits for the duration of the IEP) complies with the regulation. The DMA privacy notice does not specify the amount of services or the time period for which the parent is giving consent. Further, a hard copy of the privacy notice is given to the parent as part of the initial Medicaid application. After that, parents receive email notice once every three years as to

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where the notice can be found on the DMA website. The lack of specificity as to amount of services, time period covered, and the infrequency of notice provision do not provide parents adequate information to meet the standard of providing informed consent under IDEA.

NCDPI Exceptional Children Division recognizes the burden of obtaining parental consent to release information to NC DMA. Division staff continues to work with DMA, OSEP, and the National Alliance on Medicaid in Education to formulate and advocate for policy that supports and protects both parents and schools.

Questions regarding this memo can be directed to:

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MNW/IBW/LH:lh