



**Special Education Alert
July 2013**

**U.S. DOE and DESE Issue Revised Requirements for Parental
Consent to Access a Student's MassHealth (Medicaid)**

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The U.S. Department of Education recently revised the federal regulations under the I.D.E.A., Part B, relating to parental consent to access Medicaid. On June 13, 2013, the Massachusetts Department of Elementary and Secondary Education (DESE) issued Administrative Advisory SPED 2013-1, which interprets the revised federal regulations permitting school districts to bill MassHealth for the cost of special education services provided to eligible students. The U.S. DOE and DESE have substantially eased the process for school districts to access MassHealth by adopting a one-time consent rule instead of requiring renewed consent each time the student's services change.

Massachusetts' school districts may seek reimbursement from MassHealth for the cost of covered services provided to an eligible child under his or her IEP, such as therapy services or the time spent by providers of such services to participate in Team meetings. Previously, if a school district wished to seek such reimbursement, it was required to obtain written parental consent each time the covered services changed in type, frequency, or cost. Practically speaking, this often meant that school districts needed to obtain renewed parental consent to access MassHealth after each annual review of the child's IEP.

Under the new regulations, school districts are required to obtain parental consent only once, prior to initially accessing MassHealth, and must provide only annual notice thereafter. Parents may affirmatively withdraw their consent at any time. However, the school district is not required to obtain renewed consent if the student's services change, if the student transfers to a new building in the same district, or if the student is placed in a private school by the programmatically responsible school district. In such situations, the school district may continue to seek reimbursement from MassHealth under the previously obtained one-time parental consent.

The changes in the federal regulations became effective on March 18, 2013. DESE has developed a new mandated form for obtaining the one-time parental consent, which school district can start using immediately.¹ DESE will also be reissuing the Parent's Notice of

¹ DESE's new mandated form, known as the 28M/13 template, is available here:
<http://www.doe.mass.edu/sped/28mr/28m13.pdf>



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Procedural Safeguards (PNPS) within this calendar year in order to include the necessary annual notice about parental consent to access MassHealth. Once DESE has updated the PNPS, school districts are advised to ensure that the updated version is being issued at least annually to all parents of students with disabilities. In this way, the PNPS will meet the annual notice requirement of the revised federal regulations.

The revised regulation does not change the fact that parents cannot be required to provide consent for the school district to access MassHealth, and the parents' refusal or withdrawal of consent does not impact the school district's legal obligation to provide special education students with a free, appropriate public education. Nevertheless, it is hoped that these changes will reduce the administrative burden on school districts seeking reimbursement for covered services from MassHealth. We will keep you apprised of further developments on this issue.

This Alert was prepared by Tami L. Fay, an associate in the law firm of Murphy, Hesse, Toomey & Lehane, LLP. If you have any questions or concerns with regard to this alert, please contact Attorney Fay, the attorney assigned to your account, or your own special education counsel.

Murphy, Hesse, Toomey & Lehane, LLP, is a multi-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm emphasizes labor & employment law, employee benefits law, municipal law, public sector labor law, education law, special education law, and related litigation.