

## EDUCATION DEPARTMENT [281]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 256B.3(16), the State Board of Education hereby amends Chapter 41, “Special Education,” Iowa Administrative Code.

In February 2013, the United States Department of Education amended its special education regulations related to access to Medicaid to pay for special education services. This amended federal regulation requires one-time consent and written notification for schools to access Medicaid or other public insurance benefits and annual notification thereafter. The amendments to Chapter 41 make changes required to conform to this federal rule making.

An agency wide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the April 17, 2013, Iowa Administrative Bulletin as ARC 0693C. Public comments were allowed until 4:30 p.m. on May 22, 2013. Two public hearings were held on May 15 and May 22 to conform with federal regulations of two hearing dates. No person attended either hearing. No written comments were received on these amended rules.

These amendments are identical to that published under Notice.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement 34 CFR Section 300.154 as amended by 78 Federal Register 10525 (Feb.14, 2013).

The following amendments are adopted.

ITEM 1. Amend paragraph **41.154(4)“a”** as follows:

*a. General.* A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required

under this chapter, as permitted under the public benefits or insurance program, except as provided in 41.154(4) “b-” through “d.”

ITEM 2. Amend rule **41.154(4)“b”** as follows:

*b. Exceptions to ability to use public benefits or insurance.* With regard to services required to provide FAPE to an eligible child under this chapter, the public agency:

(1) No change.

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this chapter but, pursuant to 41.154(6) “b,” may pay the cost that the parents otherwise would be required to pay; and

(3) May not use a child’s benefits under a public benefits or insurance program if that use would do any of the following:

1. to 3. No change.

4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures; ~~and.~~

~~(4)~~ Must obtain parental consent, consistent with rule 281—41.9(256B,34CFR300), each time that access to public benefits or insurance is sought and notify parents that the parents’ refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

ITEM 3. Adopt the following new paragraphs **41.154(4)“c”** and **“d”**:

*c. Consent requirements.* Prior to accessing a child’s or parent’s public benefits or insurance for the first time, and after providing notification to the child’s parents consistent with 41.154(4) “d,” the public agency must obtain written parental consent that:

(1) Meets the requirements of 34 CFR Section 99.30 and rule 281—41.622(256B,34CFR300), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under this chapter), and the agency to which the disclosure may be made (e.g., the state’s public benefits or insurance program (e.g., Medicaid)); and

(2) Specifies that the parent understands and agrees that the public agency may access the parent’s or child’s public benefits or insurance to pay for services under this chapter.

*d. Notification requirements.* Prior to accessing a child’s or parent’s public benefits or insurance for the first time, and annually thereafter, the public agency must provide written notification, consistent with 41.503(3), to the child’s parents, that includes:

(1) A statement of the parental consent provisions in paragraph 41.154(4)“c”;

(2) A statement of the “no cost” provisions in 41.154(4)“b”;

(3) A statement that the parents have the right under 34 CFR Part 99 and this chapter to withdraw their consent to disclosure of their child’s personally identifiable information to the agency responsible for the administration of the state’s public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and this chapter to disclose personally identifiable information to the agency responsible for the administration of the state’s public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.