



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 13, 2011

Dear County and District Superintendents, Special Education Local Plan Area Directors, Special Education Administrators at County Offices of Education, Charter School Administrators, Principals, and Nonpublic School Directors:

ASSEMBLY BILL 114: INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND THE USE OF INSURANCE FOR RELATED SERVICES

Assembly Bill 114, Chapter 43, Statutes of 2011, made significant changes to Chapter 26.5 of the California *Government Code* (GC) regarding the provision of mental health services to students with disabilities. As a result of AB 114, local educational agencies (LEAs) are responsible for ensuring the provision of special education and related services which were previously provided by county mental health agencies (CMHAs) under Chapter 26.5 of the GC. As LEAs implement this transition, and as a result of changes in state statute stemming from AB 114, the Individuals with Disabilities Education Act (IDEA) serves as the statutory framework for the provision of related services. This transition of responsibility to districts has generated questions regarding the possibility of accessing parents' health insurance benefits to pay for related services formerly provided by CMHAs under Chapter 26.5 of the GC.

This document is intended to assist LEAs in facilitating the transition of services formerly provided by CMHAs under state law prior to AB 114, to provide special education and related services authorized by the IDEA, and to comply with the requirements therein.

Some financial assistance in paying for certain health care-related services may be available from insurance sources (see also *Education Code* 56363.5). The *Code of Federal Regulations* (CFR) implementing the IDEA includes guidelines outlining when school districts may access insurance:

1. An LEA may access parents' public or private health insurance benefits to pay for related services required for free appropriate public education (FAPE) only if the parents provide informed consent (34 *CFR* 300.154[d][2][iv]; 34 *CFR* 300.154[e][2][i]; 34 *CFR* 300.9). The LEA may not require that the parent consent in order for the child to receive FAPE.
2. An LEA may **not** use the child's **public** insurance benefits (such as Medi-Cal) to pay for related services required for FAPE if the use would result in any of the following:

- Out of pocket expenses, i.e., deductible or copayment amounts (although the LEA may pay the amount the parent would otherwise have to pay, see number four below)
 - Decrease in lifetime benefits coverage
 - Decrease in any other policy benefit
 - Increase in premiums
 - Cancellation or non-renewal of coverage
 - Risk of loss of eligibility for home and community-based waivers (34 *CFR* 300.154[d][2][iii])
3. If an LEA is unable to obtain parental consent for the use of a parent's public or private insurance when the parent would incur a cost for a specified service required to ensure FAPE, the LEA may pay for the service (34 *CFR* 300.154 [f][1]).
 4. To avoid financial cost to parents who otherwise would consent to use public or private insurance, if the parents incur a cost, the LEA may pay the cost that the parent would otherwise have to pay to use their benefits or insurance (e.g., deductible or co-pay amounts [34 *CFR* 300.154[f][2]).

Case law has confirmed that private health insurance carriers can reduce, eliminate, or exclude coverage of services that the individualized education program (IEP) Team determined are required to provide FAPE. See *Chester County Interm Unit v. Pennsylvania Blue Shield*, 896 F.2d 808, 812-814 (3d Cir. 1990). In the Chester County case, a student received physical therapy from the LEA as a related service per his IEP. The parents had health insurance through Blue Shield. However, the insurance policy specifically excluded payment for "services which the subscriber is entitled to obtain without cost under (federal or state) law." The court found that Blue Shield was entitled, based on the terms of its policy, to decline payment for the physical therapy.

If you have any general questions regarding this subject, please contact the Policy and Program Services unit of the Special Education Division by phone at 916-323-2409.

Sincerely,

Original signed by Fred Balcom. Hard copy of the signed document is available by contacting the Special Education Division's Director's Office at 916-445-4602.

Fred Balcom, Director
Special Education Division

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