

Interagency Agreement

2020

Between

The Department of Education, Special Education Programs

And

The Department of Social Services

Introduction

The South Dakota Department of Social Services (DSS) and the South Dakota Department of Education, Special Education Programs (DOE), enter into this interagency agreement. All of these parties to the agreement are hereafter collectively referred to as “the parties.”

The parties have a consistent mission to serve students with disabilities in the state of South Dakota. The purpose of this agreement is to allow local education agencies (LEAs) to seek reimbursement for Medicaid eligible children receiving a medically necessary covered service and to outline the coordination between the parties.

The parties are committed to the **provision** of appropriate educational services for **students** with disabilities as identified by the Individuals with Disabilities Education Improvement Act (IDEA) and Section 504 of the Rehabilitation Act of 1973, Family Educational Rights and Privacy Act (FERPA), South Dakota Codified Law (SDCL) chapter 13-37 (Special Assistance and Related Services), the Administrative Rules of South Dakota (ARSD) Article 24:05 (Special Education), and the Medicaid Program, Titles XIX and XXI of the Social Security Act, and in conformity with regulations promulgated by the U.S. Department of Education (USED) and Health and Human Services (HHS).

Philosophical Foundations

The parties agree that there are five philosophical foundations in serving students with disabilities. They are: student-centered decisions, equal access, right to service, respect for human dignity, and least restrictive environment.

Student Centered Decisions

This principle is the central focus of special education. It reflects the essential premise that all decisions related to a student with a disability are made by a team which works cooperatively to determine, implement, and evaluate services based on the needs of the individual student.

Equal Access

The parties are committed to the principle of equal access for all students. Students with disabilities are guaranteed equal access to programs and services for the general student population and a free appropriate public education (FAPE) through specially-designed instruction by qualified personnel.

Right to Service

This principle guarantees the right of a student with a disability, age birth through twenty-one, to receive the services which promote and increase independence and competence. The ultimate goal for all persons is to live to the greatest degree possible as full contributing members of society. Services for students with disabilities shall be directed toward this goal.

Respect for Human Dignity

The principle of human dignity is closely related to a person's ability to make choices, select and maintain possessions, be treated with respect, participate in programs which foster individuality and cultural integrity, allow privacy and confidentiality in decisions that affect their lives, and receive an individualized educational program or individualized family services program tailored to their own unique needs. As such, it is the intent of the parties that students with disabilities are provided the same degree of dignity and respect that is afforded to all students.

Least Restrictive Environment

This principle establishes that, to the maximum extent appropriate, each student with a disability is educated with children who are not disabled. The principle further affirms that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

AREAS OF INTENT TO COOPERATE

Responsibilities and Coordination of Services Procedures

Each agency will identify personnel at the state level responsible for liaison with the other agency. Designated personnel will recommend operational procedures and priorities defining services, and scope. Liaison staff will resolve problems or issues in accordance with the dispute resolution process outlined in this agreement. The liaison staff will recommend necessary policy clarification and procedures to carry out the terms of this agreement.

DOE will assume the responsibility for notifying LEAs of the content of this agreement, as well as assist and provide consultation to LEAs in developing needed procedures or mechanisms to

carry out the terms of this agreement. DSS agrees to assist LEAs in enrolling as South Dakota Medicaid providers.

DOE will be responsible for the state or local funds required to match the federal Medicaid funds.

DSS will continue to provide instructions and technical assistance through scheduled provider training sessions on an as needed basis. DOE will assist DSS in contacting LEAs and scheduling training sessions as requested. DSS will be responsible for determining recipient eligibility for Medicaid.

A LEA may use the Medicaid benefits to provide for or pay for services required to ensure a free appropriate public education (FAPE). LEAs may not require parents to sign up for or enroll in Medicaid in order for their child to receive FAPE under Part B of the IDEA. Claims submitted to and paid for by Medicaid will be subject to all Medicaid third-party liability laws, rules, and policies of the federal government and DSS. When private health insurance is in place and a claim is submitted by the LEA to Medicaid for payment, the claim will be paid and private health insurance reimbursement will be sought by DSS.

LEAs may not require parents to incur an out-of-pocket expense for private health insurance, or public benefits or insurance such as the payment of a deductible or co-pay amount incurred in filing a claim for services. They may not use a child's benefits if that use will decrease available lifetime coverage or any other insured benefit. A child's benefits may not be used if it will result in the family paying for services that would otherwise be covered by the public insurance program and that are required outside of the time the child is in school. It may not be used if it will increase the premiums or lead to the discontinuation of benefits or insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

LEAs, prior to accessing a child's or parent's public benefits or insurance for the first time must provide written notification to the child's parents and then obtain written parental consent. Parental consent must meet the requirements for disclosure of information under FERPA and Part B of IDEA, 34 CFR 99.30 & 34 CFR 300.622, that specifies the personally identifiable information (PII) 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 IDEA), and that the disclosure will be made to Medicaid; and the parent understands and agrees that the LEA may access the parent's or child's public benefits or insurance to pay for services under IDEA. The annual written notification provided to the child's parent must be in understandable language and include the following:

1. A statement of the parental consent provisions;
2. A statement of the no-cost provisions;
3. A statement that the parents have the right under FERPA and IDEA to withdraw their consent to disclosure of their child's PII to Medicaid at any time; and

4. A statement that the withdrawal of consent or refusal to provide consent under FERPA and IDEA to disclose PII to Medicaid does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

In addition to the annual written notification, the LEA must obtain parental consent under 34 CFR 300.9 each time that access to private health insurance is sought. It will be assumed that claims submitted to Medicaid have appropriate consent. It is the responsibility of DOE to monitor parental consent to bill public benefits or private health insurance. The LEA must notify parents that their refusal to allow access to their private health insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

Conditions and Terms of Reimbursement

Payment for services provided by the LEA shall be limited to the federal financial participation portion of the established rate for the service provided.

Certification of Match

The submission of a claim by the LEA shall act as certification that the required expenditure of local matching funds has occurred.

INTERAGENCY DISPUTE RESOLUTION

When disputes arise between the parties that cannot be resolved through other means, the resolution process described herein will be available. During the pendency of the dispute resolution procedures, the parties will ensure that services, including disputed services, required to provide free appropriate public education (FAPE) will continue.

1. All attempts will be made to resolve disputes at the lowest possible level.
2. When disputes cannot be resolved by designated department representatives, a written explanation of the dispute will be sent to the **Director, Office of Special Education** Programs and the Director, Division of Medical Services. These individuals, in consultation with each other, shall review the issues and make a determination as to how the dispute should be resolved. The decision will be shared in writing with each level involved within twenty (20) calendar days of receipt of request for the determination and will include reasons for the decision. If they are unable to reach resolution, they will refer the issue to the Secretary of the Department of Education and the Secretary of the Department of Social Services.
3. If a resolution is not obtained by the Director of Special Education Programs and Director of the Division of Medical Services, the Secretary of the Department of Education and the Secretary of the Department of Social Services will jointly make a final determination with 30 calendar days.

ENACTMENT OF AGREEMENT AND GENERAL PROVISIONS

The terms of this agreement shall begin on this ____ day of _____, 2020 and shall remain in effect until terminated or amended by mutual agreement of the parties. Any termination or amendment must be in writing and signed by authorized representatives of all parties.

This agreement shall be reviewed by all parties at least every three years and evaluated regarding the need for amendments. This agreement is intended to govern only the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

The DSS has the full authority to enter into and secure performance of this agreement, on behalf of the South Dakota Department of Social Services and the DOE has full authority to enter into and secure performance of this agreement on behalf of the South Dakota Department of Education. Each individual signing this agreement has been properly authorized to enter into this agreement.

_____, Secretary, South Dakota Department of Education

Dr. Ben Jones

Signed this ____ day of _____, 2020.

_____, Secretary, South Dakota Department of Social Services

Laurie Gill

Signed this ____ day of _____, 2020.