



STATE OF TENNESSEE
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COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM: Joey Hassell
Assistant Commissioner for Special Populations

DATE: May 29, 2013

RE: Private Insurance, Public Benefits and IDEA Related Services

It has come to the attention of the Division of Special Populations that confusion exists regarding the use of private insurance and public benefits for payment of related services determined educationally necessary for an IDEA eligible child to benefit from his/her education.

IDEA Regulations at 34 CFR 300.34 define related services. Related services are services that have been determined necessary, by an IEP team, for the child to benefit from his/her education. Therefore, they are not medically necessary, but educationally necessary and must be identified strictly as such on a child's IEP otherwise an LEA is noncompliant with IDEA.

IDEA Regulations at 34 CFR 300.34(a) and (c) (5) clarify that related services means medical services only for diagnostic or evaluation purposes. Therefore, the only time a service is medically necessary is during the eligibility determination process. Subsequent thereto, such services are educationally necessary related services and not medically necessary.

IDEA Regulations at 34 CFR 300.154 (d)(e) and (f) provide that access by an LEA to a parent's private insurance or public benefits for payment of related services is strictly dependent on the parent's notice of his/her rights and the parent's consent for the LEA to access his/her private insurance or public benefits. If consent to access either private insurance or public benefits is denied by a parent, the LEA is financially responsible for payment to the service provider. Therefore, it is imperative that LEA staff ensure that parents are fully informed and notified of all actions regarding access to, and filing of claims with, private insurance or public benefits. If necessary, meetings should be convened to ensure that parents are fully informed of such actions.

Compensation of related service providers, with whom an LEA contracts, is the direct responsibility of the LEA, whether payment is secured from private insurance, public benefits or LEA funds. Contractual arrangements by an LEA with entities that, either provide related services, and process and submit claims for payment on behalf of an LEA to private insurance or public benefits, or entities that only process and submit claims for payment on behalf of an LEA to private insurance or public benefits, do not relieve an LEA from its responsibilities of appropriate IEP documentation of related

services pursuant to IDEA. Necessity of related services is determined by an IEP team and appropriate designation of related services in a child's IEP is the responsibility of LEA staff, not a contractor or service provider.

Whether private insurance or public benefits will pay for a particular service often depends on the particular description of the service in the claim documentation. Related services determined educationally necessary by an IEP team are not medically necessary services, therefore private insurance or public benefits may or may not pay for such services. As stated above, LEAs must identify related services appropriately on a child's IEP to ensure compliance with IDEA, and claims for payment by private insurance or public benefits must also include accurate information regarding the educational necessity of the related service. If private insurance or public benefits will not pay for the educationally necessary related service, pursuant to IDEA, the LEA is financially responsible.

cc: Nathan Travis, Director of Data Services, Division of Special Populations
Nan McKerley, Consolidated Compliance Monitoring