EDUCATION DEPARTMENT [281]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 256B.3(16), the State Board of Education hereby proposes to amend 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 proposed amendments to chapter 41 make changes required to conform to this federal rulemaking.

An agencywide waiver provision is provided in 281— Chapter 4.

Two public hearings will be held. The first will be on May 15, 2013, from 1 to 2 p.m., and the second will be on May 22, 2013, from 1 to 2 p.m. Both hearings will be in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. All persons who intend to attend either of the public hearings and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281–5295.

Any interested person may make written comments on the proposed rules on or before 4:30 p.m. on May 22, 2013. Comments should be directed to Thomas A. Mayes, Attorney, Grimes State Office Building, Third Floor, 400 East 14th Street, Des Moines, Iowa 50319–0146. Comments may be sent by fax to (515) 242-5988 or submitted by e–mail to thomas.mayes@iowa.gov.

These rules are intended to implement 34 C.F.R. § 300.154, as amended by 78 Federal Register 10525 (Feb. 14, 2013).

The following amendments are proposed.

ITEM 1. Amend paragraph 41.154(4)"a" as follows:

a. *General.* A public agency may use 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 paragraph 41.154(4)"b" by rescinding subparagraph (4).

ITEM 3. Amend subrule 41.154(4) by adding new paragraphs "c" and "d" as follows:

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 C.F.R. § 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 C.F.R. 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 C.F.R. 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.