

Authorizing Private Health-Care Specialists to Provide Medically Necessary Treatment in School Settings

A private health-care specialist may be granted access to an IDEA-eligible student's educational setting to provide medically necessary treatment to a student if it has been determined by the student's IEP team that such medically necessary treatment is required within the school setting pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.

BOCES member districts' policies relating to medically necessary treatment must include provisions requiring at minimum that prior to the administration of medically necessary services within an IDEA-eligible student's educational setting, the following must occur:

1. **Development of a written plan.** The member district of attendance, with input from the BOCES Executive Director, student's private health-care specialist and the student's parents/legal guardians, will prepare a written plan regarding the administration of treatment. The plan will include, at minimum, the form of treatment, the designated location(s) where treatment will be administered, and the frequency of the treatment. The written plan must be signed by the BOCES Executive Director, administrator at the school of attendance, the student (if appropriate), the private health-care specialist, and the student's parents/legal guardians. The written plan expires at the end of the then-current school year unless the written plan states otherwise. BOCES member districts' policies relating to medically necessary treatment must include provisions requiring a written plan that meet the minimum requirements of this paragraph.
2. **Member District Representative.** The member district of attendance will designate a representative who will collaborate with the parents/legal guardians and private health-care specialist to schedule the medically necessary treatment sessions to occur in school settings during the school day.
3. **Supervision of Health-Care Specialists.** A health-care specialist must submit to and cooperate with a background check consistent with the requirements of the member district of attendance, which may include fingerprinting. The BOCES is not responsible for any costs associated with the background check. All health-care specialists must be appropriately supervised by their employing agency in compliance with industry standards.
4. **Consent Forms and Releases of Information.** The student's parents/legal guardians must execute all consent forms required for the health-care specialist to provide medically necessary treatment in the school setting. The student's parents/legal guardians must also execute a Family Educational Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPAA) Release of Information so that BOCES and member district of attendance staff members and the health-care specialist can share protected information regarding the provision of treatment at school.
5. **Confidentiality Requirements.** BOCES and member district of attendance staff shall not share the qualifying student's educational information with the health-care specialist except as authorized by parents/legal guardians. The private health-care specialist will not provide medically necessary treatment to any other student, staff, or visitor in the educational setting and will also sign a Confidentiality Affidavit certifying

that they will comply with FERPA and HIPAA, and shall not read any documents or file materials pertaining to any student other than the qualifying student.

6. **Insurance Requirements.** The private health-care specialist must provide evidence of commercial general liability insurance and professional liability insurance in an amount no less than one million dollars (\$1,000,00.00) per occurrence and three million dollars (\$3,000,000.00) annual aggregate. The private health-care specialist must also provide evidence of Auto Liability insurance. The district/administrative unit of attendance, district/administrative unit of residence, and BOCES must be named as an additional insured party under these policies.
7. **Licensure.** The private health-care specialist must provide evidence satisfactory to the Member District's Representative that the health-care specialist has all required certificates or licenses as required by the State of Colorado relating to the provision of medically necessary treatment for the student.
8. **Assumption of Risk.** The private health-care specialist must execute an Assumption of Risk form, which waives any and all claims and demands for relief concerning any physical or emotional harm, injury, or damage caused to the private health-care specialist by the student and/or any other student on district or BOCES property.

The administration of medically necessary treatment is subject to the following conditions:

1. At all times, through implementation of this regulation and accompanying policy, all parties shall make a good faith effort to not disturb the district of attendance's learning environment, interfere with the student's access to special education and related services, as applicable, and maintain the integrity of the district/administrative unit of attendance's and BOCES's instructional programming. If the medically necessary treatment interferes with the student's access to instruction, activities, special education or related services, or access to general education peers, the BOCES and its member districts do not owe compensatory education for the instruction, activities, special education or related services, or access to general education peers that the student may have missed due to such interference.
2. If the private health-care specialist seeks to schedule additional services beyond those agreed-upon in the written plan, the health-care specialist must provide the Member District Representative at least two weeks' advance notice of any additional visits.
3. The member district of attendance has sole discretion to deny additional visits or to reschedule or modify any planned visit, if the visit to the school would interfere with its instructional programming and operation. Except in an emergency, the private health-care specialist and the student's parents/legal guardians will be provided two weeks' advance notice of any rescheduling or modification to schedule an observation or treatment session.
4. The student's parents/legal guardians will be solely responsible for compensating the private health-care specialist for any treatment administered to the student, and the member district of attendance, member district of residence, and BOCES will have no financial obligation to the private health-care specialist for fees, expenses, or any other associated cost. If the private health-care specialist volunteers suggestions, professional observations, opinions, advice, or consultation to and for member district or BOCES

staff, the member district(s) and BOCES are not obligated to compensate the private health-care specialist for these offerings.

5. The private health-care specialist must follow all applicable provisions of state and federal law and district of attendance and school policies while within the educational setting. Questions regarding emergency procedures (e.g., fire procedures, lockdown protocols, etc.) may be directed to the district of attendance.
6. The member district of attendance, member district of residence, and BOCES will not exercise supervisory control over the content or nature of the private health-care specialist's administration of medically necessary treatment to the student. However, if requested, the private health-care specialist is required to provide the BOCES an explanation of the form and frequency of such services in order for the BOCES to coordinate the provision of treatment with special education and related services, as well as classroom and school activities.
7. Permission for the private health-care specialist to administer medically necessary treatment to a student in the student's educational setting may be limited or revoked if the private health-care specialist violates this regulation or demonstrates an inability to responsibly follow this regulation's parameters. The decision to revoke a private health-care specialist's access to the educational setting is solely that of the district of attendance.

LEGAL REFS: 42 U.S.C. § 1396 and 1396d(r)(5) (Colorado's Medicaid program is required to cover all medically necessary treatment, including treatment in school settings)
C.R.S. § 22-20-121 (medically necessary treatment in school setting)
1 CCR 301-8, 2220-R-2.02, R-8.03, and R-9.01(dividing application of certain responsibilities among administrative unit of attendance, district of attendance, administrative unit of residence, and district of residence)

CROSS REFS: JLCDC*: Medically Necessary Treatment in School Setting

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Centennial BOCES

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