

**24:05:13:01. Definitions.** Terms defined in § 24:43:01:01 and in SDCL 13-37-1 have the same meaning when used in this article. In addition, terms used in this article mean:

(1) "Adjustment training center," "ATC," a facility as defined in § 46:11:01:01(2)

Comments on this section:

The term Adjustment Training Center no longer exists in State law. The term has been changed to Community Support Provider or CSP. The information that was provided is that the term has not yet been changed in the noted administrative rule. The rule cited is part of a group of rules that is in the process of being rewritten. It is suggested that the term be updated at this time so that is consistent with state law and will likely be consistent with the language in the new rule.

**24:05:14:01.04. Use of public benefits or insurance--Annual notification.** A public agency, prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification consistent with § 24:05:30:06 to the student's parents that includes a statement:

(1) Of the parental consent and no cost requirements in § 24:05:14:01.03;

(2) That parents have the right under FERPA, as defined in § 24:05:29:02(1), and Part B of the IDEA to withdraw their consent to disclosure of their student's personally identifiable information to the state Medicaid agency at any time; and<sup>14</sup>

(3) That the withdrawal of consent or refusal to provide consent under FERPA and Part B of the IDEA to disclose personally identifiable information to the state Medicaid agency does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

Comments on this section:

The review of various elements of Medicaid rules has caused the development of further questions regarding this section. Based on a conversation with the administrator of the Recovery and Fraud Investigations program in the Department of Social Services, expenditure of Medicaid funds on behalf of students who use those funds are recorded. If the student becomes the beneficiary of the resources left in trust, the state has the authority recover all amounts remaining in the trust upon the death of the student up to the amount equal to the total medical assistance paid on behalf of the individual. The following questions arise from a review of 42 U.S.C. §1396p(d)(4).

The questions that arise that require clarification are as follows:

Are the funds expended for educational services tracked by the Department of Social Services for possible recovery?

If those funds are tracked and recovery is a possibility, does that impact the notice that must be provided to parents? Should they be informed about the possibility of recovery so that they can make an informed decision about allowing the use of Medicaid funds for educational services?

If recovery is possible, would it violate the requirement of a Free, Appropriate, Public Education to use those funds for educational purposes?

The suggestion for this section is that a discussion be held between the Department of Education and the Department of Social Services to clarify the answers to these questions.