

Questions That You Have Raised

Prepared by MSB™

We at MSB would like to clarify a few issues that school districts have recently raised. Specifically:

1. Does CMS (Centers for Medicare and Medicaid) allow for electronic records/ signatures?
2. Does the state of Maine allow for electronic records/signatures?
3. Does each provider have to print out, sign, credential, and date each of his/her transaction logs in addition to recording them in X Logs?
4. Does the district risk violating FERPA by releasing all special education student names to MSB as its contracted billing/consulting agency?

We hope that the following information will help clear up some of these issues for you:

1. Does CMS (the “feds”) allow for electronic records and signatures?

Yes. As recently as at the 2010 Fall Conference of the *National Alliance for Medicaid in Education* (NAME), a CMS representative answered the following question:

Question: *Where can we get CMS guidance on proper/acceptable E-signatures?*

Response: *“Normally CMS will approve the State’s policies and procedures associated with E-signatures. Please check with your State’s Medicaid agency to ascertain if they have a written policy on E-signatures.”*

2. Does the state of Maine allow for electronic records/signatures?

Yes. Maine’s policy is found in 10-144 Chapter 101 MaineCare Benefits Manual Chapter I § 1.03-3 Requirements of Provider Participation (M):

“Enrolled providers must:

Have safeguards and security measures in place that allow only authorized persons to enter information into electronic records. Passwords or other secure means of authorization must be used that will identify the individual and the date and time of entry. Such identification will be accepted as an electronic “signature.” With security measures in place, limited access may be allowed for certain individuals for changes such as member demographic information. There shall be a signature of record on file.”

When MSB began the development of X Logs in 2007, we included the Maine DHHS Program Integrity unit (otherwise known as “auditors”) in our process to make sure that electronic records were acceptable not only in the collection of required data elements, but also for the review of records in a post-payment audit. Please see the following email communication between Dan Courter, General Counsel for MSB, and Marc Fecteau, Director of Program Integrity, DHHS:

From: Dan Courter [mailto:dan@msb-services.com]
Sent: Tuesday, May 08, 2007 9:57 AM
To: Fecteau, Marc
Cc: Anthony Wild
Subject: Electronic Signatures

Hi Marc,

We were hoping you could provide us with some guidance. As you know, pursuant to 10-144 Chapter 101 MaineCare Benefits Manual Ch. 1 § 1.03 (M), it appears that providers can utilize electronic records to document the delivery of MaineCare covered services. We are currently developing an electronic format for school districts to capture covered services The format would capture the required components, including an electronic signature of the provider. Our system utilizes a user name and password protocol in order for the practitioner to be able to enter the data. This would allow for security of the data as well as the identification of the practitioner. Is there any general guidance that you can provide us in terms of what you would look for in an audit relative to your being comfortable that the electronic format is in line with the regulatory requirements? What would your preferences be in terms of your review of the data in an audit?

Thanks very much for your assistance.

Dan Courter
MSB
1-800-618-3111

From: Fecteau, Marc [mailto:Marc.Fecteau@maine.gov]
Sent: Wednesday, May 09, 2007 10:36 AM
To: Dan Courter
Cc: Anthony Wild; Esterline, Donna; Ketch, Beth; Murphy, Ryan
Subject: RE: Electronic Signatures

Dan,

The system and process you describe would appear to satisfy the MBM requirement under Chapter I, Section 1.03-3 M, last paragraph. In this section we require that the provider have a secure system where only authorized personnel may enter information into the charts. The system must also identify the individual that enters the information and the date that it is entered. The only other requirement is that there be a record of the signature on file.

If we requested records I would expect that we would receive a print out that included the member name, ID, dates of service, description of the service(s), identification of the servicing provider (individual), their credentials (if applicable), and the date the note was entered into the system.

Marc

MSB carefully followed all of the requirements and guidance referenced in Mr. Fecteau's communication. Upon this year's implementation of X Logs, we submitted a sample "Electronic Verification Form" to Mr. Fecteau's office to meet the last requirement referenced in his email and stated in policy—that there be a signature record on file. On January 7, 2011 MSB received a letter from Program Integrity that the sample electronic verification form that we submitted had been accepted.



Department of Health
and Human Services

Maine People Living
Safe, Healthy and Productive Lives

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Program Integrity
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Tel: (207) 287-3707
Fax: (207) 287-3005; TTY: 1-800-606-0215

January 7, 2011

Mary Meroff, Director
MSB Educational Solutions
97 High Street
Somersworth, NH 03878

Dear Ms. Meroff,

Thank you for including Program Integrity in your process. The Electronic Signature Verification Form we discussed during our conversation today is adequate. Per our discussion the provider who signs the form is confirming that the submission of claims is based upon correct, accurate and complete information as required by policy. It also is confirmation that either they or a designated person is authorized to submit claims on their behalf through the X logs. As we agreed the best business process would be for these forms to be updated at least annually or when a new designated staff person is assigned to these duties.

I look forward to meeting with you on January 11, 2010.

Sincerely,


MaryAnn Anderson, CPC
Program Integrity

cc: Marc Fecteau, Director of Program Integrity
Beth Ketch, Director of Customer Service

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3. Does each provider have to print out, sign, credential, and date each of his/her transaction logs in addition to recording in them in X Logs?

No. As referenced in Mr. Fecteau's email, in an audit, program integrity would likely ask for some type of print out, and MSB's X Logs system can easily accommodate such a request. If the required data elements are documented in an electronic format that captures the identity of the medical professional providing the services, **it should not be necessary to have that professional sign a hard copy version of the documentation.** Additionally, typically the audit will request documentation for a relatively small number of children. Even if Program Integrity decided that they wanted to see the paper documents for the children included in the audit, those could be printed out when needed. However, because those records were in an acceptable electronic format, they would not need to be signed, credentialed, or dated.

4. Does the district risk violating FERPA by releasing all special education student names to MSB as its contracted consulting agency?

No. In a 1997 letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, **United States Department of Education**, Office Management, written to the Wisconsin Department of Public Instruction, the federal DOE made it clear that billing agents/consultants are not restricted from receiving educational records if contracted with a school district:

"Billing Agents for Schools

One of the questions that has been raised with regard to the Medicaid reimbursement issue is whether FERPA prohibits school districts from contracting with private companies for the purposes of confirming a student's Medicaid eligibility and preparing Medicaid claims for the reimbursements process. As explained more fully below, FERPA does not restrict schools in this manner.

As noted in the definition of "education records," FERPA's privacy protections are extended explicitly to records and materials maintained by persons "acting for" an educational agency or institution. In so doing, FERPA recognizes that educational agencies or institutions do not necessarily perform all operations and services on an in house basis and, in fact, frequently obtain professional, insurance, and other business services in consultation with individuals and organizations outside the institution, such as attorneys, accountants, and collection agents. In short, it is our opinion that FERPA's prior written consent requirement was not intended to and does not prevent institutions from disclosing education records, or personally identifiable information from education records, to outside persons performing professional, business, and related services as part of the operation of the institution. Accordingly, a school district may disclose education records, or personally identifiable information from such records, to a consulting agency without prior written consent if that agency is performing a service for the school district that it would otherwise have to perform for itself.

Part of the Medicaid administration services that MSB provides to its contracted school districts is verifying Medicaid eligibility. Students frequently go in and out of eligibility; therefore, it is in the district's best interest to check Medicaid eligibility on all of its special education population.

Further, X Logs is a web-based administrative tracking system that is able to capture all of your special education service delivery for all students. Again, as a contracted agency, MSB hosts that information for you.