United States Department of Agriculture
Food and Nutrition Service
Mountain Plains Region
1244 Speer Boulevard
Denver, CO 80204

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Reply to Attn. of: SP-00-24
CACFP-627
SFSP-418

Subject: State Medicaid Program and the State Children's Health Insurance Program - Limited Disclosure of Children's Free and Reduced Price Meal or Free Milk Eligibility Information

To: STATE AGENCY DIRECTORS - (Child Nutrition Programs)
Colorado ED, Colorado DPHE, Iowa, Kansas, Missouri DH, Missouri ED, Montana OPI, Montana DPHHS, Nebraska, North Dakota, South Dakota, Utah and Wyoming

This memorandum addresses disclosure of children's free and reduced price eligibility information for the State Medicaid Program (State Medicaid) and the State Children's Health Insurance Program (SCHIP). The Agricultural Risk Protection Act of 2000, enacted on June 20, 2000, amended the National School Lunch Act (NSLA), (42 U.S.C. 1751(b)(2)(C)), to add State Medicaid under title XIX of the Social Security Act (42 U.S.C. 1396 et. seq.) and the SCHIP under title XXI of that Act (42 U.S.C. 1397aa et seq.) to programs in Section 9(b)(2)(C) of the NSLA that are authorized limited access to children's free and reduced price meal or free milk eligibility information. A memorandum issued on December 11, 1998, "Limited Disclosure of Children's Free and Reduced Price Meal or Free Milk Eligibility Information (SP 99-07 and CACFP-563) addresses disclosure of free and reduced price meal or free milk eligibility information to other programs and entities.

The issues of privacy and confidentiality of personal data are complicated as well as sensitive. Therefore, prior to developing State and local disclosure policies, we recommend that determining agencies discuss the disclosure provisions with their legal counsel. At a minimum,

determining agencies that decide to disclose information that identifies individuals must follow these guidelines. These guidelines apply to eligibility information regardless of the manner in which the information is maintained including, but not limited to, print, tape, microfilm, microfiche, and electronic communication.

For purposes of this memorandum a "determining agency" means the State agency, school food authority, school (including a private school or charter school), child care institution or Summer Food Service Program sponsor that makes the free and reduced price meal or free milk eligibility determination.

Disclosure of Children's Eligibility Information For Health Insurance Programs

Is disclosure of children's free and reduced price meal or free milk eligibility information for State Medicaid and SCHIP required?

Schools and institutions (determining agencies) may disclose free and reduced price meal or free milk eligibility information to identify and enroll eligible children in State Medicaid or SCHIP, provided the determining agency's State agency and determining agency elect to do so. Determining agencies are not required to disclose eligibility information. However, we encourage cooperation with State and local administrators of State Medicaid and SCHIP because studies show that many children eligible for free and reduced price meals and free milk do not have health insurance.

What information may be disclosed for use by State Medicaid and SCHIP and what health agencies or health insurance programs are eligible to receive the information?

Determining agencies may disclose names, eligibility status (whether they are eligible to receive free meals or free milk or reduced price meals), and any other eligibility information obtained through the free and reduced price meal and free milk eligibility process

(including all information on the application or obtained through direct certification or verification) to persons directly connected with the administration of State Medicaid and/or SCHIP.

Who are "persons directly connected" with the administration of State Medicaid and SCHIP?

Persons directly connected with the administration of State Medicaid and SCHIP for purposes of disclosure of free and reduced price meal and free milk eligibility information are State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of applications or to make eligibility determinations. Check with your State Medicaid/SCHIP coordinator to determine the persons or entities in your State authorized to enroll children in Medicaid and SCHIP.

Are there restrictions on how children's free and reduced price eligibility information may be used by State Medicaid and SCHIP?

State Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal or free milk eligibility information may only use that information to enroll children in State Medicaid or SCHIP. The State Medicaid or SCHIP enrollment process may include seeking to identify and identifying children from low income households, who are potentially eligible for State Medicaid or SCHIP for the purpose of enrolling them in State Medicaid or SCHIP.

Must households be notified that their free and reduced price meal or free milk eligibility information may be disclosed?

For any disclosures to State Medicaid and/or SCHIP, parents/guardians **must** be notified of the potential disclosure and given the opportunity to elect **not** to have their children's information disclosed. The notification must inform the parents/guardians that they are not required to consent to the disclosure, that the information will be used to enroll children in a health insurance program, and that their decision will not affect

their children's eligibility for free and reduced-price meals or free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal or free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must be given prior to the disclosure and parents/guardians should be given a reasonable time limit to respond. For children who are determined eligible though direct certification, the notice of potential disclosure may be in the document informing parents/guardians of their children's eligibility for free meals through direct certification.

We suggest that parents/guardians be given a minimum of 10 calendar days as a reasonable time in which to respond to a request that information not be disclosed. Additionally, in the event that a parent or guardian notifies the determining agency past the deadline that he or she chooses not to permit disclosure of the child's eligibility, it would be prudent for the determining agency to inform the recipient agency not to make any further use of that child's eligibility information.

Should we have an agreement with State Medicaid and/or SCHIP?

The determining agency **must** have a written agreement with the State or local agency or agencies administering State Medicaid and/or SCHIP prior to disclosing children's free and reduced price meal or free milk eligibility information. At a minimum, the agreement must identify the health insurance program or health agency receiving children's eligibility information; describe the information that will be disclosed and specify that the information must only be used to seek to enroll children in State Medicaid or SCHIP; describe how the information will be protected from unauthorized uses and disclosures; describe the penalties for unauthorized disclosure; and be signed by both the determining agency and the State Medicaid/SCHIP program or agency receiving the children's eligibility information.

What are the requirements for disclosure of social security numbers?

When disclosing or using the social security number provided by the household on the application for any purpose other than the program for which the number was collected, the determining agency must modify the notice required by the Privacy Act of 1974 concerning the potential uses of the social security number. The notice must inform households of the additional intended uses of the number.

Are there any penalties for improper disclosure?

The NSLA establishes a fine of not more than $1000 or imprisonment of not more than 1 year, or both, for publishing, divulging, disclosing, or making known in any manner or extent not authorized by Federal law, any eligibility information. This includes the disclosure of eligibility information by one entity authorized under the statute to receive the information to any other entity, even if that entity would otherwise be authorized to receive the information directly from the determining agency. For instance, a State or local agency administering State Medicaid and/or SCHIP which has received eligibility information from a determining agency through a written agreement between the two agencies, may <u>not</u> disclose that information to any other health insurance program or health agency that is not a party to the written agreement.

These guidelines are effective October 1, 2000, and are subject to change pending issuance of a final rule addressing the disclosure provisions for State Medicaid and SCHIP.

Attached is a copy of a "Prototype Disclosure of Free and Reduced Price Information Agreement", and a copy of a "Prototype Parent/Guardian Notification for Medicaid/SCHIP".

If you have any questions please contact our office at (303) 844-0355, or 844-0359.

RALPH W. MERRILL
Acting Regional Director
Child Nutrition Programs

Attachments

PROTOTYPE
DISCLOSURE OF FREE AND REDUCED PRICE INFORMATION AGREEMENT

I. PURPOSE AND SCOPE

(Insert name of determining agency) and (insert name of receiving agency) acknowledge and agree that children's free and reduced price meal and free milk eligibility information obtained under provisions of the National School Lunch Act (42 USC 1751 et. seq.) or Child Nutrition Act of 1966 (42 USC 1771 et. seq.) and the regulations implementing those Acts is confidential information. This Agreement is intended to ensure that any information disclosed by the (insert name of determining agency) to the (insert name of receiving agency) about children eligible for free and reduced price meals or free milk will be used only for purposes specified in this Agreement and that the (insert name of determining agency) and (insert name of receiving agency) recognize that there are penalties for unauthorized disclosures of this eligibility information.

II. AUTHORITY

Section 9(b)(2)(C)(iii) of the National School Lunch Act (42 USC 1758(b)(2)(C)(iii)) authorizes the limited disclosure of children's free and reduced price meal or free milk eligibility information to specific programs or individuals, without prior parent/guardian consent. Except that, the parent/guardian must be provided the opportunity to decline to share eligibility information prior to the disclosure for identifying children eligible for benefits under or enrolling children in the State Medicaid Program and the State children's health insurance program. Additionally, the statute specifies that for any disclosures not authorized by the statute, the consent of children's parents/guardians must be obtained prior to the disclosure.

The *requesting* agency certifies that it is currently authorized to administer the following program(s) and that information requested will only be used by the program(s) indicated:

Check all that apply	Program	Information authorized
	Medicaid or the *State children's health insurance program (SCHIP)*, administered by a State or local agency authorized under titles XIX or XXI of the Social Security Act. Specify Program:	All eligibility information, unless parents elect not to have information disclosed.
	State health program other than Medicaid/SCHIP, administered by a State agency or local education agency. Specify Program:	Eligibility **status** only; consent not required.
	Federal health program other than Medicaid/SCHIP Specify Program:	NO eligibility information, unless parental consent is obtained.
	Local health program Specify Program:	NO eligibility information, unless parental consent is obtained
	Child Nutrition Program under the National School Lunch Act or Child Nutrition Act Specify Program:	All eligibility information; consent not required.
	Federal/State or local means tested nutrition program with eligibility standards comparable to the National School Lunch Program Specify Program:	Eligibility **status** only; consent not required.
	Federal education program Specify Program:	Eligibility **status** only; consent not required.
	State education program administered by a State agency or local education agency Specify Program:	Eligibility **status** only; consent not required.
	Local education program Specify Program:	NO eligibility information, unless parental consent is obtained

Note: Section 9(b)(2)(C)(iv) specifies that certain programs may receive children's eligibility status **only**, without parental consent. Parental consent must be obtained to disclose any additional eligibility information. Section 9(b)(2)(C)(iv) specifies that for State Medicaid or SCHIP, parents must be notified and given opportunity to elect not to have information disclosed. Social security numbers may only be disclosed if households are given notice of the disclosure and the uses to be made of their social security numbers as required by Sec. 7 of the Privacy Act.

III. RESPONSIBILITIES

(Insert Name of Determining Agency) will:

When required, secure parents/guardians consent prior to any disclosure not authorized by the National School Lunch Act or any regulations under that Act, unless prior consent is secured by the receiving agency and made available to the determining agency;

For State Medicaid and SCHIP notify parents/guardians of potential disclosures and provide opportunity for parents/guardians to elect not to have information disclosed;

Disclose eligibility information only to persons directly connected to the administration or enforcement of programs authorized access under the National School Lunch Act or regulations under the Act or to programs or services for which parents/guardians gave consent.

(Insert Name of Receiving Agency) will:

Ensure that only persons who are directly connected with the administration or enforcement of the *(insert name of the Program)* and whose job responsibilities require use of the eligibility information will have access to children's eligibility information:

(Specify by name(s) or title(s)) _____

_____

_____

Use children's free and reduced price eligibility information for the following specific purpose(s):

(Describe) _____

_____

_____

Inform all persons that have access to children's free and reduced price meal eligibility information that the information is confidential, that children's eligibility information must only be used for purposes specified above, and the penalties for unauthorized disclosures.

Protect the confidentiality of children's free and reduced price meal or free milk eligibility information as follows:

(Specifically describe how the information will be protected from unauthorized uses and further disclosures.) _____

_____

_____

_____

_____

Description of Procedures to Transfer Meal Eligibility Information (May be completed by either the determining agency or receiving agency)

Describe the procedures for transferring students' meal eligibility information from the determining agency to the requesting agency/program so as to limit the number of individuals who have access to the information.
(Describe) _____

_____

_____

_____

_____

IV. EFFECTIVE DATES

This agreement shall be effective from _____ to _____

V. PENALTIES

Any person who publishes, divulges, discloses, or makes known in any manner, or to any extent not authorized by Federal law (Section 9(b)(2)(C) of the National School Lunch Act; 42 USC 1758(b)(2)(C)) or a regulation, any information about a child's eligibility for free and reduced price meals or free milk shall be fined not more than a $1,000 or imprisonment of not more than 1 year or both.

VI. SIGNATURES

The parties acknowledge that children's free and reduced price meal and free milk eligibility information may be used only for the specific purposes stated above; that unauthorized use of free and reduced price meal and free milk information or further

disclosure to other persons or programs is prohibited and a violation of Federal law which may result in civil and criminal penalties.

Requesting Agency/Program Administrator

Printed Name:_____
Title:_____ Phone:_____
Signature:_____
Date:_____

Determining Agency Administrator

Printed Name:_____
Title:_____ Phone:_____
Signature:_____
Date:_____

*Any attachments will become part of this agreement.

Prototype Parent/Guardian Notification for Medicaid/SCHIP

Dear Parent/Guardian

Children with health insurance are more likely to get preventive health care and care when they are sick. This results in fewer absences from school because of illness and children coming to school ready to learn. If your children do not have health insurance, you will be interested to know that many families getting free and reduced price school meals can also get free or low-cost health insurance for their children. However, many families do not know about the health insurance programs available to them.

The law now allows us to share your free and reduced price meal eligibility information with Medicaid and the State children's health insurance program. Medicaid and the State children's health insurance program can only use the information to identify children who may be eligible for free or low-cost health insurance and to enroll them in either Medicaid or the State children's health insurance program. They are not allowed to use the information from your free and reduced price school meal application for any other purpose. Medicaid officials or officials with the State children's health insurance program may contact you to get more information.

You are not required to allow us to share information from your children's free and reduced price meal application with Medicaid or the State children's health insurance program. It will not affect your children's eligibility for free and reduced price meals. If you do **not** want your information shared with Medicaid or the State children's health insurance program, you must let us know. You may complete the form below and send it back to your children's school by (insert date)_____ if you do not want your children's free and reduced price meal eligibility information shared with Medicaid or the State children's health insurance program. If you want further information, you may call (name of a school contact person)____ at (phone)_____.

I **do not** want school officials to share information from my free and reduced price school meal application with Medicaid or the State children's health insurance program.

Child's Name _____ School _____
Child's Name _____ School _____
Child's Name _____ School _____

Signature of Parent/Guardian _____ Date _____

Printed name _____
Address _____
_____
_____