

**New York State Department of Health
Early Intervention Program**

**Responses to Technical Assistance Questions From Municipalities
Regarding NYSAC-DOH Training Sessions
On Early Intervention Guidance Memorandum 2003-1
Early Intervention Program Records**

CPT Codes/ICD-9 Codes

- 1. Where/how can counties access a full and accurate listing of CPT codes to share with their providers (as well as to use themselves in verifying forms received from providers) in preparing for the expectation that all relevant forms will include a CPT code as of November 2003?**

As page 6 of Early Intervention Memorandum 2003-1 indicates, providers are responsible for supplying appropriate CPT codes to municipalities. CPT codes are available through the professional organizations and are used by licensed professionals such as audiologists, nurses, occupational therapists, physical therapists, and speech-language pathologists.

- 2. Are there CPT codes for special education services?**

There are no CPT (current procedural terminology) codes for special education services, including services typically delivered by teachers of the visually impaired, teachers of the speech and hearing handicapped, and special educators. CPT codes are used for billing purposes for medical/health services. No such coding system exists for special education services. These types of services are not typically reimbursed by insurers.

- 3. A number of my providers are using a reason for treatment as their ICD-9 code (for example, low tone versus Down syndrome for physical therapy services). Is it permissible to code the service this way?**

As indicated in our guidance documents on EI Records and Commercial Insurance, providers are responsible for identifying the appropriate ICD-9 code for the conditions or reasons for which care is provided. The condition noted for billing does not necessarily have to be the condition for which the child is eligible for the EIP. Use of an ICD-9 code related to the explicit reason for treatment (e.g., low tone) may be appropriate.

Prescriptions

4. Must the provider have an individual original prescription for the service he/she provides or would a copy of a script/form including multiple services, signed by the child's health care provider, suffice?

As stated in the Guidance Memorandum on Early Intervention Program Records, individual early intervention providers must maintain and retain records in accordance with the laws and regulations that apply to their profession. All professionals must be aware of the record/documentation standards that apply to their professions. If the practice act that applies to the profession with which a provider is affiliated allows the provider to maintain a copy rather than an original prescription/order, of a prescription, such practice would be permissible under requirements for the Medicaid Program, provided that *either* the municipality or the provider can produce the original prescription for audit purposes. Therefore, municipalities may use a form for multiple services included in a child's IFSP (e.g., physical therapy, occupational therapy, speech-language therapy), signed by the health care provider, and provide copies of this type of prescription or order to all providers involved in service delivery to the child *as long as such a practice is acceptable to all professionals involved in service delivery*. Under such circumstances, it is not necessary for municipalities and all providers to have original prescriptions/orders, as long as the original prescription/order is retrievable for audit/quality assurance purposes. In the event that the county maintains the original script/order, the provider should have a copy of the script/order in the child's file.

5. How specific does the script need to be in terms of the time period and frequency of the service (e.g., can the script say "as needed")?

In general, the script must be consistent with the time period and frequency of early intervention service delivery and should not contradict the frequency and time period designated for the service. If a physician prescribes a service (for example, physical therapy, occupational therapy, etc.) on a specific date subsequent to an IFSP meeting and agreement on the plan, and the script says "on an as-needed basis," but does not give a specific time frame or frequency, this is sufficient to cover the current IFSP. Under such circumstances, a new prescription should be obtained when services in the IFSP are amended. A new prescription is not necessary for the six-month review of the IFSP, as long as the frequency and duration of the specific service has not been amended.

6. Can the physician's script have a general statement to cover all services? (For example, "this script is to cover all Early Intervention Program services in the IFSP for a period of three months.") The script would not be specific to any one service such as physical therapy or occupational therapy, but would allow anything.

No. A script with a general statement "to cover all services" may not be used under the EIP. This would not meet the minimum requirements for professionals to provide services to the child and family. As footnote 13 of Early Intervention Program Guidance Memorandum 2003-01 indicates, physical therapy services require a

written order from a physician, physician's assistant, or nurse practitioner; occupational therapy services require a written order from a physician or nurse practitioner. The use of a prescription with a "general statement" as described above does not meet minimum standards for these practitioners and is not permissible under the EIP.

Session Notes

7. If session notes are written after a date a child was seen, is there any suggested timeframe for how delinquent these notes can be by a provider and still be considered meeting standards?

The Medicaid Program requires providers to maintain contemporaneous records that demonstrate the provider's right to receive payment under the Medicaid Program. This requirement applies to session notes.

8. What type of notes should be kept for family support groups? Are progress notes necessary?

As with any other early intervention service, session notes, reflecting what took place in each session, and progress notes, summarizing progress toward goals included in the Individualized Family Service Plan, should be maintained related to this service.

9. Must providers keep daily session notes for groups (e.g., for children receiving group developmental services)?

Yes. As page 7 of the Early Intervention Records guidance memorandum indicates, session notes must be completed by all qualified personnel delivering the early intervention services authorized in a family's IFSP for *each service delivered*. See response to question # 8 above, also.

10. What documentation is necessary in the child's record (e.g., service coordination logs, session notes) for billing/audit purposes relative to time spent on an activity?

The record must indicate either the length of time spent on an activity or session, or the actual time spent during which the activity was completed or service was provided (e.g., "eight minutes on the telephone with a parent" or "telephone call with a parent from 9:05 to 9:13 AM"; or "speech language pathology services, forty-five minutes" or "speech language pathology services – "9:00 AM – 9:45 AM"). In addition, as discussed in the Guidance Memorandum on Early Intervention Program Records, the date on which the activity was completed or service provided must be documented.

Signatures, Signature Stamps, Electronic Signatures, Signatory

11. Does each note in an EI record have to be dated, signed and show title/credentials or can a page of notes with one signature, etc. indicate this information?

As page 7 in Early Intervention Memorandum 2003-1 indicates, *each* note must be dated, signed, and show title/credentials.

12. Is the use of a stamped signature on a claim to Medicaid or third party payers acceptable?

An individual provider or an authorized representative of the agency provider or municipality must sign claim forms that are submitted to Medicaid. Stamped signatures are unacceptable and will cause the claim to be rejected.

13. Is there a legal definition of electronic signature that applies to EI provider records? How does this apply to e-mailed reports?

The standards with respect to use of electronic records and signatures are clearly stated on page 9 of the guidance document. As long as provider record-keeping practices meet these standards, the use of electronic records and signatures is permissible. Please note, however, that e-mail is not a secure way to transmit children's records and is of concern from a confidentiality point of view. Unless there is a secure file transfer system in place between offices, providers should not be e-mailing reports with child identifying information.

14. Can an evaluation report be signed by an agency representative as opposed to the actual provider who did the evaluation? Who must sign the core evaluation report?

The core evaluation report must be signed by each of the evaluators who provided a component of the core (multidisciplinary) evaluation. The evaluation report should include the name, title, signature, and license, certification, or registration number of the professional who directly delivered the diagnostic service. Therefore, an evaluation report cannot be signed by an agency representative instead of the actual provider/evaluator.

Consent/Release of Information

15. If a county early intervention program obtains consent to evaluate a child and then provides a copy of this consent to the evaluator, does the evaluator need to obtain another parental consent to perform the evaluation?

Yes, Early Intervention Program regulations [(Section 69-4.8(a)(1)(ii)] specifically require the evaluator to obtain parent consent to perform the evaluation and to send evaluation reports. This regulatory requirement should not be confused with Section 69-4.17(c)(5), which states that the county is responsible for confidential exchange of information among parent, evaluators, providers, and service coordinators, which is discussed in question #16, below.

16. Do all providers need consent forms signed by parents if they communicate about the child outside of the typical EI service delivery format (i.e., IFSP meeting)?

As discussed in the Guidance Document on Early Intervention Records (see pages 12-13), Early Intervention Program regulations [(69-4.17 (c)(5)] require the Early Intervention Official to provide for the confidential exchange of information among the parent, evaluators, service providers, and service coordinators providing services to a child and family. As described in the Guidance Document, Early Intervention Officials (EIOs) must have policies and procedures in place for a parent to voluntarily give written consent for release of information included in their child's early intervention record. EIOs must inform parents of the right to refuse a general release for disclosure of information; offer parents the opportunity to sign selective releases that specify by name or category those individuals to whom information may be disclosed or from whom it is sought; and, provide parents with the ability to revoke a general release at any time and include a statement to this effect on any general release forms used.

Therefore, it is the responsibility of the EIO to ensure that service providers are informed about the type of consent the parent has signed, and with whom it is permissible for the service provider to exchange information. The original consent forms should be retained by the EIO. The EIO should provide service providers with copies of parent consents for exchange of information, as appropriate, for the children to whom they are providing services.

17. Is a general parent consent for release of information sufficient to allow a municipality to use the services of an employee, who has no duties or responsibilities relative to the Early Intervention Program, to perform quality reviews of Early Intervention Program child records? Would a confidentiality statement signed by the county employee suffice to allow such an individual to complete record reviews?

No. For such an employee to access an early intervention record, a separate release signed by the parent, providing specific parental consent for the child's record to be reviewed, is necessary.

18. In the instance where a child's case is transferred from one county to another county, is a general release from parents sufficient to continue activity for the reconciliation of billing?

Yes. A general consent (or specific consent, if the parent refuses to sign or revokes a general consent) is sufficient for this purpose, provided that the general consent extends through the period of time required to complete all billing activities.

19. If a record is subpoenaed, who is responsible for responding to such a subpoena?

In general, the holder of the records should be subpoenaed for the records. If an agency is subpoenaed, the agency must provide the records that it has created, while an independent contractor should be subpoenaed individually and provide the requested records.

20. What is the minimum requirement for what must be shared with a parent, both in terms of clinical and administrative materials, when a parent asks for a copy of their child's records?

As indicated on page 4 of the guidance document on Early Intervention Program Records (EI Memorandum 2003-1), Early Intervention Program regulations define "record" to mean "any information recorded in any way, maintained by an Early Intervention Official, designee, or approved evaluator, service provider, or service coordinator. A record includes "any file, evaluation, report, study, letter, telegram, minutes of meetings, memorandum, summary, interoffice or intraoffice communication, memorandum reflecting an oral conversation, a handwritten or other note, chart, graph, data sheet, film, videotape, slide, sound recording, disc, tape, and information stored in microfilm or microfiche or in computer readable form."

The parent has the right to inspect and review all records pertaining to the child and the child's family that are maintained or used for the purposes of the Early Intervention Program. This includes, as described above, "any information recorded in any way" by an Early Intervention Official, designee, or approved evaluator, service provider, or service coordinator, and therefore includes any information in a child's record, whether such information is clinical or administrative in nature. The only circumstance under which a parent does not have the right to review and inspect all information in a child's record is when a parent has been prohibited such access under State or federal law. It should be presumed that the parent has the authority to inspect or review early intervention records pertaining to his or her child unless the Early Intervention Official or early intervention service provider has been advised otherwise under applicable State law and regulations pertaining to guardianship and custody. If a record contains information on more than one child or on non-participants, only the portion of the record pertaining to the child's participation in the EIP may be accessed (see pages 13-14 of the Guidance Memorandum on Early Intervention Program records).

21. Is specific parent consent for release of information in a child's Early Intervention Program record necessary to provide such information to a child's case worker/case manager in the foster care system?

Page 15 of Early Intervention Memorandum 2003-1 on Early Intervention Program Records contains information about requirements for children in foster care. Early

Intervention Program regulations [(69-4.17(d)(2))] provide that for children in the care and custody or custody and guardianship of the local social services district, the local Commissioner of Social Services or his/her designee has the right to access the records collected, maintained, or used for the purposes of the Early Intervention Program. As long as the case worker/manager is a designee of the Commissioner who is responsible for the child, s/he can access the information in the child's early intervention record.

22. What is the fee for a lawyer requesting a copy of an EI record [on behalf of parents]?

The federal regulations at 34 CFR 300.566 provide that an agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. It does not matter whether the person requesting the record is an attorney acting on behalf of the parent or the parent. The fee must be the same. Early Intervention Program regulations [(69-4.17(d)(4))] state that the charge for copies of records cannot exceed 10 cents per page for the first copy and 25 cents per page for additional copies. The fee must be reasonable and cannot be so high as to prevent a parent from exercising his or her right to obtain a copy of the records. The Early Intervention Program Model Contract, which has been disseminated to municipalities, contains a fee schedule on page 36 (Exhibit D) that can be utilized and is consistent with Early Intervention Program regulations.

Record Retention and Destruction of EI Records

23. When minor corrections are made to the EI record, such as a birth date or correction in name, what happens to the "old" paperwork? Does this get destroyed so there will be no confusion with the "new" corrected paperwork?

All paperwork should be retained and designated as original versus corrected or amended documentation, in accordance with the requirements for early intervention record retention.

24. What constitutes a reasonable effort to notify parents that their child's EI record will be destroyed when the child reaches age 21?

Is it permissible to have the parents sign a statement that they are aware a record will be destroyed when their child reaches age 21?

Counties are bound by the State Archives and Records Administration (SARA) to retain EI records until the child reaches age 21 years. It would be proper for the county to give the parents notice when the child is about to transition that the records are no longer needed to provide educational services, but SARA requires the record to be maintained until the child is 21, at which time the records may be destroyed. The county should obtain a written statement from the parent indicating that the parent received notice that the record would be destroyed on the applicable date.

New York City public agencies are subject to Department of Records and Information Services (DORIS) and requirements under the Family Educational Rights and Privacy Act (FERPA), IDEA, PHL, and Medicaid. In New York City, early intervention records must be retained for a minimum of six years from the last date that care, services, or supplies were provided to the child and family.

25. Are independent providers expected to keep records in their homes?

Independent providers are required to keep child records secure, whether they are stored in their home or at a secure location outside the provider's home. They are expected to have a written policy and meet all confidentiality requirements of the EIP, including physical security.

26. When do billing records get destroyed? Sometimes there is a need to keep them beyond the six year requirement normally adhered to for Medicaid purposes.

Billing records must be maintained for at least six (6) years from the last date that early intervention services or supplies were provided to the child and family. There is nothing to prohibit a municipality from storing them for a longer period of time.

27. How long should a municipality maintain provider contract records for audit purposes?

All fiscal records, including provider contracts, must be maintained for the current year plus six (6) years for audit purposes.

Contact Information

28. What is the contact information for the Bureau of Medicaid Law?

Page 13 of the guidance document contains contact information for the Department of Health's Division of Legal Affairs, Bureau of Medicaid Law (518) 408-1495.

29. Where can additional information about EI Records be obtained?

For further information and assistance related to early intervention records requirements, please consult *Early Intervention Guidance Memorandum 2003-1* on Early Intervention Program Records, or contact:

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