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Frequently Asked Technical Assistance Questions Related to Implementation of Virtual Early Intervention Visits During COVID-19 Declared State of Emergency

Electronic Signatures

38. Can the "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" document be signed electronically?

Response: If the early intervention (EI) provider has an electronic documentation system that meets industry standards pertaining to HIPAA, FERPA, and Medicaid, they may incorporate the "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" documentation in their electronic system, as feasible, to obtain electronic signatures from parents. If the EI provider does not have such an electronic system, they must follow the guidance previously issued. Refer to FAQ #28 at https://www.health.ny.gov/community/infants_children/early_intervention/memoranda.htm.

Regardless of methodology, the Consent documentation for provision of EI services via telehealth must be available on audit. This guidance is specific to the "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" document and does not apply to the rest of the consent documents required in the Early Intervention Program (EIP).

Providers who utilize an electronic system that meets HIPAA, FERPA and Medicaid requirements to capture parent signatures for EI service logs may continue to do so. As noted above, only the "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" template may be incorporated in your software system at this time. The EI system that will replace NYEIS is currently under development. Expanded use of electronic signatures for other types of informed consent in the EIP will be considered in the context of federal and State statutory and regulatory requirements and the development of the successor system of NYEIS, which is called the EI-Hub.

Parent Signatures/Parent Consent Documentation

39. Can EI providers use electronic signatures to obtain multidisciplinary evaluation and other required consents?

Response: Electronic signatures are not applicable for other Individuals with Disabilities Education Act (IDEA)-required consents at this time. However, expanded use of electronic signatures will be considered in view of federal and State statutory and regulatory requirements and in the development of the EI-Hub, the successor to the current early intervention system, NYEIS. In the meantime, email communication can be used to obtain confirmation of parent consent, as long as the parent agrees to the use of email for this purpose.

40. If a parent prefers to obtain the “Consent for the use of Telehealth during Declared State of Emergency for COVID-19” document from the provider via email and the email consent is on file, can the document be emailed to the parent?

Response: Please refer to FAQ #28 and FAQ #38 for approaches that may be utilized to obtain parent signatures on the "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" template. Options include:

1. The parent can email a statement indicating they consent to the use of telehealth and the template itself can be signed at a later date. The provider must retain the email and the signed consent document for audit purposes;
2. The template with complete information can be incorporated in the provider’s electronic record system for the parent to sign electronically. Such documentation must be available for audit.

41. Is it acceptable for an agency who provides multiple services for the same child (for example, occupational therapy, physical therapy, and speech-language therapy) to list those services on one "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" document, and collect one signature from the parent that covers all listed services?

Response: No, it is not permissible to combine multiple service authorizations on a single "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" document. For example, if three different services are being provided pursuant to a child's Individualized Family Service Plan (IFSP), a Consent Document must be obtained for each service.

42. If a new Service Authorization for a particular service is authorized, for example when there is an amendment or change to the child's current IFSP, is a new "Consent for the use of Telehealth during Declared State of Emergency for COVID-19" document required?

Response: Yes. Service authorizations are unique to the child, the service to be provided, the county, and provider of record (billing provider). Therefore, an updated consent document is required for each new service authorization, including those for multidisciplinary evaluations, supplemental evaluations, and service delivery.

43. Can the same rendering provider add all service authorization numbers for the same child on one service log?

Response: Yes, it is permissible to have one weekly service log which lists all service authorizations specific to a single service provider, service, and a specific child, that the parent must sign. For example, a single service log could be utilized for a child who has four service authorizations for the same service (e.g., speech) furnished by the same rendering provider.

90-Day Claiming Requirements

44. Are EI providers still required to submit claims within 90 days of the date of service?

Response: The regulatory provision regarding the 90-day claiming limit, 10 NYCRR 69-4.22(a)(4), states:

"*(4) Providers shall submit all claims for payment of evaluations and services within 90 days of the date of service, unless the submission is delayed due to extraordinary circumstances documented by the provider and the department's fiscal agent has been notified of the extraordinary circumstances and has provided written acknowledgement.*
(i) All claims submitted after 90 days shall be submitted within 30 days from the time the provider was relieved from the extraordinary circumstances that previously delayed a timely submission.
(ii) Claims that are not submitted within timeframes set forth shall not be reimbursed by the department's fiscal agent from the escrow account funded by municipal governmental payors."

The Bureau of Early Intervention (BEI) considers the declared state of emergency for COVID-19 an Extraordinary Circumstance (EC) under 10 NYCRR 69-4.22 (a)(4). EI providers that cannot meet the 90-day timely filing requirement as a direct result of the COVID-19 declared state of emergency may utilize EC but must comply with this EI regulation and follow the policy guidance regarding such in EI Billing.

EI Billing guidance states that a provider must notify the State Fiscal Agent (SFA) and submit the claim within 30 days of the relief from an EC. Such notification includes the date the EC began and the date the EC ended.

The key question for providers is whether the provider is currently able to bill for early intervention services. If they are able to bill, providers cannot enter an EC today in anticipation of what might happen; entering the EC is a post-event process. Providers who are not able to bill for EI services can file an EC once they are able to bill again. When providers file an EC and resume billing for EI services, they will use Medicaid delay reason code 15 to address any Medicaid denials that are in the provider's workable queue.

March 7, 2020 was the date of the declared state of emergency for COVID-19, if that is the applicable EC. EI providers are required to submit the late claims within 30 days of the date of relief. The SFA added a new Delay Reason Code 15 to the drop-down menu

in EI Billing to align with Medicaid coding for COVID-19. This will facilitate electronic submission and processing of EI claims where timely filing limits are exceeded due to the COVID-19 state of emergency. Providers do not have to wait until the declared state of emergency is over to contact the SFA. Providers may contact the SFA when they have the ability to begin submitting claims again. However, providers must contact the SFA no later than 30 days after the declared state of emergency is lifted.

In addition, the billing provider must maintain documentation of the extraordinary circumstance, and the specific issue(s) that prevented them from submitting timely billing, to be produced upon audit of the claims paid from escrow as a result of any EC they filed with the SFA. Providers may need to file a different allowable EC such as 'Hospitalization' if, for example, their biller was hospitalized for any reason. This EC could extend beyond the COVID-19 declared state of emergency and allow claims to be paid out of escrow for a different time period.

Finally, claims are being accepted through NYEIS and the SFA and processed on schedule. There is no "State Administrative Delay" of the payment of claims at this time.

Letter on Telephonic Evaluation and Management Rate Codes

45. Are rate codes 7963, 7964, and 7965 – three telephonic Evaluation and Management (E&M) rate codes – applicable to early intervention services?

Response: Some providers of EI services may have received a letter from the Department of Health dated April 10, 2020, listing three new telephonic E&M rate codes that have been added to their provider profile. These rate codes were established for Medicaid enrolled clinical providers of case management and were not intended for use by EI providers.

As FAQs #16 and #17 indicate, EI providers will continue to use the same CPT codes they would normally use for all services. Service coordinators will continue to use the established rate code 5244 for case management services, and not the telephonic E&M rates codes listed above.

As a reminder, EI services and evaluations furnished via telehealth require an audio and video connection. If you have any questions, please contact BEIPub@health.ny.gov or EIP.Fiscal@health.ny.gov.

Provider Annual Health Statement

46. Is BEI allowing providers' annual health statements ("medicals") to expire and to be renewed after the COVID-19 state of emergency is lifted?

Response: As outlined in the "Early Intervention Provider Agreement", all providers must have an annual health statement, signed by appropriate health care provider, indicating there was an annual health assessment completed and the provider does not

have any type of diagnosed conditions that would preclude them from providing early intervention services. The statement must be received prior to the provision of services and updated on an annual basis. In addition, a Mantoux/PPD or chest X-ray must be completed on annual basis.

All expiring annual health statements, Mantoux/PPD, and chest X-rays will be honored for 30 days following the termination of the COVID-19 state of emergency.

For monitoring purposes, all agencies and individuals with an Appendix Agreement should maintain a copy(ies) of this directive with health statements on file for each staff member, or for themselves as applicable, if such health statements will expire during the COVID-19 state of emergency.

NOTE: During the state of emergency, all providers furnishing early intervention services to children in licensed day care centers should abide by rules set by NYS Office of Children and Family Services Division of Child Care Services and/or NYC Department of Health and Mental Hygiene Bureau of Child Care, https://ocfs.ny.gov/programs/childcare/.

Monitoring of EI Providers

47. Will the Department's programmatic monitoring of EI Providers, conducted by IPRO, be suspended during the declared state of emergency for COVID-19?

Response: IPRO monitoring of early intervention providers is continuing during the state of emergency for COVID-19. Protocols have been adapted to conduct monitoring virtually during this time. In addition, the Department of Health's contractor, IPRO, will accommodate requests to have monitoring reviews rescheduled to a date when face-to-face monitoring reviews can resume.

Reduction in Referrals

48. How are new referrals to the EIP being handled during the COVID-19 state of emergency?

Response: Every effort is being made to ensure that EI services and evaluations remain available during the COVID-19 declared state of emergency through use of telehealth. If there are concerns about a child's development, parents and other primary referral sources may make a referral to the EIP in the county in which the child and family reside. For EI contact information for each county and the City of New York, please go to: https://www.health.ny.gov/community/infants_children/early_intervention/county_eip.htm.

In addition, EI Providers should consult the EIP Marketing Standards guidance document if they are considering issuing marketing materials to ensure that such materials adhere to the required standards.

For additional information, refer to Marketing Standards for Early Intervention Service Providers, issued in December 2006, available at http://health.ny.gov/community/infants_children/early_intervention/docs/marketing_standards_for_service_providers.pdf and Marketing Standards for Early Intervention Service Providers Addendum, issued August 2009, available at http://health.ny.gov/community/infants_children/early_intervention/marketing_standards_ei_service_providers_addendum.htm.

Prescriptions/Written Orders for EI Services

49. Are written orders required for early intervention services during the COVID-19 declared state of emergency?

Response: Yes. Under EIP Regulation 10 NYCRR § 69-4.26(b)(8), prescriptions/orders are needed for the most current year for occupational therapy, physical therapy, nursing and speech therapy services. If an order is worded "per IFSP" or there is a change in services (increase in frequency/duration or new service), a new prescription/order is needed for each IFSP. During the COVID-19 declared state of emergency, if the physician/ordering practitioner has availability, and is in agreement, prescriptions/orders can be completed via telemedicine.

As a reminder, a recommendation for speech services may be provided by a licensed and currently registered speech-language pathologist (SLP) resulting from an evaluation by an SLP.

50. If the current prescription for early intervention services now being provided via telehealth is expiring, there is no change in the service frequency, and a new prescription cannot be secured because the doctor is saying his staff is too reduced to send out prescriptions – can the service continue?

Response: No, EI services requiring a script or written order cannot be provided if the script or written order has expired. If an EI service requires a prescription (script) or written recommendation, the provider must ensure that they have the script in hand prior to rendering EI services.

51. If the service is a new approved service, such as feeding, and provided by an occupational therapist, physical therapist, or speech-language pathologist via telehealth can the practitioner begin without a prescription as there is a general slowdown from the pediatrician's offices in providing prescriptions?

Response: EI providers are responsible to ensure that the script or written order is obtained prior to delivering services, for any service that requires one. Under Education Law, physical therapy, occupational therapy, and nursing services, require a written order or prescription (script) from a physician, physician's assistant, or nurse practitioner (Education Law § 6731(c); Education Law § 7901; Education Law § 6902(1)). Speech language pathology services require a written order from a physician, physician

assistant, nurse practitioner, or a recommendation from a speech-language pathologist (SLP) based on the results of evaluation. Electronic written orders (scripts) are acceptable.

Additionally, for a supplemental occupational or physical therapy evaluation to be reimbursable by Medicaid and other payors, the supplemental evaluation must be included in the child's IFSP, **there must be a signed/dated written order/prescription for the evaluation**, and there must be an evaluation report.

If a script or written order is needed to initiate or continue EI services, the child's primary care provider may be able to see the child via telemedicine. The child's primary care physician can be contacted with written parental consent.

Co-visits

52. Is it permissible to do co-visits via telehealth?

Response: Co-visits are allowed when providing EI services via telehealth. As you are aware, co-visits must be agreed upon by the entire IFSP team, including the parent and the Early Intervention Official/Designee. Details regarding the provision of the agreed upon co-visits must be outlined and included in the current IFSP.

Group Service Authorizations

53. If a child has a group developmental service authorization and the parent would like services provided via telehealth, how is this effectuated?

Response: For children who currently have a group developmental service authorization (SA) on their IFSP and for whom the child's parent/caregiver has agreed to receive an individual early intervention session via telehealth, the IFSP can be amended to add an individual facility-based service authorization (in lieu of the group developmental SA). The group service authorization(s) should be closed to conform with the early intervention requirement at 10 NYCRR section 69-4.9(g)(1) that providers must deliver services as authorized in the IFSP. An IFSP amendment which includes parental consent to receive the individual service via telehealth, must be obtained prior to service delivery. As a reminder, group telehealth services may not be provided. Group services may resume during Phase 4 of the State's reopening.

General questions on NYEIS functions can be directed to the NYEIS helpdesk at (518) 640-8390 or toll-free at 1-833-395-7058.

Assistance with Providing Telehealth Services

54. If it is not feasible to get the toddler to effectively participate in telehealth, or the parent has requested that EI services be suspended for a time, how do we proceed?

Response: Early intervention services are family based and individualized, so telehealth services may not be right in every situation. If a family decides to suspend telehealth services, and if you have not already done so, please notify the family's service coordinator and the municipality within two (2) business days (Early Intervention Provider Agreement section VII. Notifications-(F)) and document the family's decision in your session notes.

If you are interested in resources on the provision of telehealth services, we recommend that you check with the professional organizations that you may be a member of, or if possible, some of your fellow professionals. Additionally, the links below are online resources you may wish to review:

A Practical Guide to the Use of Tele-Intervention in Providing Early Intervention Services to Infants and Toddlers Who Are Deaf or Hard of Hearing
http://www.infanthearing.org/ti-guide/index.html

Telehealth Service in Infant Mental Health Home Visiting
https://www.allianceaimh.org/new-gallery/z8thudu3t0wo86o0mwqriqitmny8la
This document offers ways of tailoring strategies that are part of infant mental health services to be effective in the context of tele-mental health.

Tele-Intervention: The Wave of the Future Fits Families' Lives Today
https://infanthearing.org/resources_home/events/docs_events2011/tele-intervention.pdf

Engaging in Telepractice in the Speech-Language Pathology & Audiology Professions
http://www.op.nysed.gov/prof/slpa/speechguidetelepractice.htm

Tele-Intervention and Distance Learning
The Early Childhood Technical Assistance Center (ECTA) has compiled information on tele-intervention and distance learning, including state guidance, technology and privacy, service delivery, activities for families at home, and research on effectiveness
https://ectacenter.org/topics/disaster/tele-intervention.asp

Best Practices for Telehealth
A webinar discussing types of telehealth available and best practices for using technology to effectively and safely provide continuity of care to recipients.
https://ctacny.org/training/best-practices-telehealth

Use of telehealth in early intervention (IDEA Part C) – Resources to consider during the COVID-19 public health emergency.
https://www.publicconsultinggroup.com/news-perspectives/use-of-telehealth-in-early-intervention-idea-part-c-resources-to-consider-during-the-covid-19-public-health-emergency/

Planning for the Use of Video Conferencing for Early Intervention Home Visits during the COVID-19 Pandemic (prepared by Larry Edelman) suggests key topics to be addressed and provides information and resources to assist in planning how to use video conferencing for home visiting.

Service Delivery Through Tele-Intervention and Distance Learning – The first section of this site includes guides and information for supporting tele-practice, including a video that illustrates the providing of early intervention services through distance technology. The second section includes tip sheets in English and Spanish to help families better understand how tele-intervention will work in helping to achieve their children's outcomes and a checklist to help prepare for a tele-intervention visit. **https://ectacenter.org/topics/disaster/ti-service.asp**

Providers Choosing not to Provide EI Services via Telehealth

55. If a provider decides not to render services via telehealth during this time, what are the consequences?

Response: Providers who decide not to deliver EIP telehealth services at this time will not be penalized.

However, in accordance with the Early Intervention Provider Agreement (Section VII. Notifications), providers must make reasonable efforts to notify the Department and municipality(s) within five (5) business days of any prolonged closure or unavailability to provide EI services, including telehealth services, to children located in a specific municipality. Additionally, in accordance with EIP regulations at 10 NYCRR § 69-4.9(g)(2)(i), providers must make reasonable efforts to notify the child's parent(s) within a reasonable period prior to the date and time on which a service is to be delivered, of any temporary inability to deliver such services due to circumstances, such as illness, emergencies, hazardous weather, or other circumstances which impede the provider's ability to deliver the EI service. Documentation of said notifications must be maintained in the child's record.

Transition from Early Intervention

Some children who are turning three years old have not yet had their initial evaluation to determine eligibility for preschool special education services due to school closures under the declared state of emergency for COVID-19. FAQ #37 addresses transition from the EIP for children who have not had an eligibility determination for preschool special education services and have turned three years of age. Please refer to: https://www.health.ny.gov/community/infants_children/early_intervention/docs/doh_covid19_eifaqs_23-37_04.01.20.pdf for more information.

56. What steps toward transition from the EIP must be in place for those children who have turned three and have not been determined eligible for 4410 preschool special education services due to school closures to remain in the EIP until June 30, 2020?

Response: To extend EI services past the child's third birthday, children currently in the EIP who are potentially eligible for the preschool special education program under Part B of the IDEA, must have a transition plan in place in their IFSP, in accordance with federal regulations at 34 CFR section 303.209 and EIP regulations at 10 NYCRR section 69-4.20(b). The local (county or municipal) EIP must have notified local school district of children potentially eligible for Part B preschool special education services not fewer than 90 days before the toddler's third birthday. Children potentially eligible for preschool special education services must also have had a referral transmitted, with parental consent, to the Committee on Preschool Special Education. The transition plan, notification of the local education agency, and parental consent for referral of their child who is currently receiving EI services to the preschool special education program must be in place for the child to remain in the EIP until a Part B eligibility determination can be made or June 30, 2020, whichever comes first.