

NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

August 5, 2014

Dear Early Intervention Officials and Managers,

The New York State Department of Health (Department) has received multiple inquiries from providers regarding the impact of amendments to the Public Health Law (PHL) created by Chapter 56 of the Laws of 2012 and additional requirements imposed by municipalities.

Chapter 56 of the Laws of 2012 amended PHL §2550(2)(b) to authorize the Department to enter into agreements with providers that set forth the terms and conditions for participation in the Early Intervention Program (EIP). The legislation repealed statutory provisions that authorized municipalities to contract with Early Intervention (EI) providers and added language that authorized municipalities to monitor providers to ensure compliance with PHL and its implementing regulations. The Department has required that providers enter into agreements ("Provider Agreement") with the Department if they wish to participate in the EIP. The Department sought comments on a draft agreement from various stakeholders, including municipalities, and incorporated the comments into the final Provider Agreement. The Provider Agreement sets forth comprehensive terms and conditions for participation in the EIP including recordkeeping, compliance with the Department's EI Health and Safety Standards, requirements for professional development, and standards for service provision. If the Department and provider enter into a Provider Agreement, the provider is available to provide services within the municipality and should be included on any list of available providers maintained by the municipality and service coordinators. The requirements applicable to participation in the EIP that must be followed by providers in order to be found in compliance with EIP requirements are set forth in PHL §2550 et al, 10 NYCRR §69-4, and the Provider Agreement.

PHL §2552(1) identifies the municipality's continuing responsibility to ensure that the EI services contained in an Individualized Family Service Plan (IFSP) are provided to eligible children and families who reside in the municipality, and authorizes the municipality to monitor providers "in accordance with this title and with regulations promulgated thereunder". Therefore, while municipalities are authorized to monitor providers to ensure compliance with PHL and its regulations, municipalities have no authority to impose additional local policies that go beyond PHL and its regulations and monitor providers against those local policies. Providers have raised concerns about additional record keeping requirements imposed by municipalities that go beyond PHL and regulations. Recordkeeping requirements are set forth in 10 NYCRR

§69-4.26 and Article VI of the Provider Agreement Documentation and Recordkeeping. If the provider meets the requirements set forth in regulation and the Provider Agreement, the provider is compliant with EIP documentation and record keeping requirements, and no additional requirements can be imposed.

In addition, while municipalities may require the submission of session notes from providers to verify that services were appropriately provided, submission of session notes is not a prerequisite for providers to receive payment for services delivered. This is consistent with paragraph (J)(1) of Article II of the Escrow Agreement, which provides that pursuant to 10 NYCRR §69-4.26(b), providers shall maintain documentation in the child's records to support municipal payment and *shall not be required by the municipality or the Department to submit such documentation for routine billing purposes*. Submission of session notes may be requested periodically by the municipality as necessary to effectively monitor providers.

Furthermore, 10 NYCRR §69-4.26 (b)(10) requires the provider to maintain in the child's record periodic progress notes summarizing the effectiveness of the service and the progress being made toward outcomes included in the child's and family's IFSP. The Provider Agreement clarifies that progress notes are required to be written at a minimum frequency of twice during the IFSP yearly cycle, (i.e., for six month IFSP reviews and for the annual IFSP meeting). In accordance with 10 NYCRR §69-4.11 (a)(10)(iv), progress notes may be written more frequently if it is determined by the IFSP team, based on the unique needs of the child and family, that increased frequency of progress note submission is a proper procedure to be used to determine whether progress toward achieving the outcomes is being made or modifications are necessary.

Finally, all decisions regarding service delivery methodology under the EIP are required to be made by the IFSP team, including the parent, provider/evaluator, service coordinator, and the municipal Early Intervention Official/Director (EIO/D). Municipalities cannot require the use of a specific intervention methodology of service delivery.

In furtherance of the goals of increased efficiency and consistency for providers, and to reduce administrative burden on the municipalities, the Department is committed to working with municipalities to develop standardized documentation to be used statewide. Providers are required under the terms of the Provider Agreement to use standardized documentation developed by the Department. In the interim, providers must continue to maintain appropriate documentation (i.e., session notes and progress notes) that contain the information set forth in and in accordance with 10 NYCRR §69-4.26.

Standardized documentation has been developed by the Department for use by service coordinators to facilitate transition and other activities. The *Tool Kit for Service Coordinators* has been updated based on feedback from municipalities to assist service coordinators to effectively complete required activities.

Thank you for your continued collaboration with the Department on these important issues. For questions on this guidance, please contact the Department at 518-473-7016 or bei@health.state.ny.us.

Sincerely,

A handwritten signature in cursive script, reading "Brenda Knudson Chouffi".

Brenda Knudson Chouffi
Co-Director, Bureau of Early Intervention

A handwritten signature in cursive script, reading "Donna M. Noyes".

Donna M. Noyes, Ph.D.
Co-Director, Bureau of Early Intervention