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Division of Special Education/Early Intervention Services

Documentation of Delivery of Related Service(s), in Accordance with the Individuals with Disabilities Education Act (IDEA) and Code of Maryland Regulations (COMAR)

The Individuals with Disabilities Education Act (IDEA) emphasizes the individualized design of a free appropriate public education (FAPE) to meet the unique needs of each infant, toddler, child, and youth with a disability in order to prepare them for education, employment and independent living. It is the responsibility of each local Infants and Toddlers Program, local school system, public agency, and nonpublic special education facility to accurately reflect the frequency and duration of each session of related service(s).

An Individualized Family Service Plan (IFSP) documents and guides the early intervention process for children with disabilities and their families. The IFSP is the vehicle through which effective early intervention is implemented in accordance with Part C of IDEA. It contains information about the services necessary to facilitate a child's development. Through the IFSP process, family members and service providers work as a team to plan, implement, and evaluate services specific to the family's concerns, priorities, and available resources. An Individualized Education Program (IEP) is a written statement for each student with a disability that describes the student's present levels of educational performance, progress in the general curriculum, services to be provided, annual goals, and complies with many other statutory requirements. The specific requirements for IEPs are found at 20 USC §1414(d), 34 CFR §300.320, and Code of Maryland Regulations (COMAR) 13A.05.01.09.

The regulations for the Department of Health and Mental Hygiene (DHMH) in COMAR require the IFSP or IEP to accurately reflect the service(s) provided. In order for Medicaid to reimburse a local Infants and Toddlers Program, local school system, public agency, or nonpublic special education facility for health related services, the service must be "medically necessary" and identified on the child's IFSP or IEP, and the information must be maintained in an accurate service log for each of the related service(s) provided. The IFSP or IEP must have the basis for why the service(s) is being provided. For Medicaid to determine medical necessity, the IFSP or IEP must clearly identify the scope and frequency of the service(s).

DHMH will not reimburse local lead agencies, local school systems, public agencies, or nonpublic special education facilities for services on IFSPs or IEPs reviewed and/or developed after July 1, 2010 which do not clearly specify the frequency and duration of the service(s). Further, billing reimbursement requests (codes) for services must match the child's IFSP or IEP [COMAR

10.09.50.05; COMAR 10.09.36.03]. DHMH has requested that the Interagency Medicaid Monitoring Team review the frequency and duration of services specified on IFSPs and IEPs developed or updated after July 1, 2010. Quantifying the provision of occupational therapy, physical therapy, speech/language therapy, nursing, or mental health as “quarterly,” “semi-annually,” or “yearly” is not acceptable for reimbursement by Medicaid.

Below is a series of frequently asked questions with responses relative to a child’s IFSP or IEP and appropriate documentation of frequency and duration of recommended services.

1. What are federal regulations regarding the documentation of service frequency on an IFSP or IEP?

When an IFSP is developed for a child and family, the IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes, ...including the frequency, intensity, and method of delivering the services.” [34 C.F.R. § 303.344(d)(i)]

For IFSPs, “frequency and intensity mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis.” [34 CFR §303.344(d)(2)(i)]

Early intervention services must be provided as set forth in the IFSP to eligible infants and toddlers and their families on a continuous, year round basis [U.S. Department of Education, Office of Special Education Programs (OSEP) Maryland Part C Monitoring Report, pages 15-16, July 26, 2001].

When an IEP is developed for a student, each student’s IEP must include information about the amount of services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP [Analysis of Comments, Federal Register/ Vol 71, No 156/ August 14, 2006, page 46667].

The IEP must include the projected date for the beginning of the special education and related services and supplementary aids and services. When the IEP requires provision of related services, staffing support, and program modifications, the IEP must also include the anticipated frequency, location, and duration of those services, supports and modifications [34 CFR §300.320(a)(7);COMAR 13A.05.01.09A(1)(c)(d) (h)].

2. Must a child’s IFSP or IEP include, with specificity, the amount of each service to be provided?

Yes. When an IFSP is developed for a child, the IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family, including the frequency, intensity, and method of delivering the services, to achieve the

outcomes identified,. The frequency and intensity of services requires the IFSP state the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis. Any change in location, frequency, or intensity of services from the child's IFSP may be made only to accommodate changes in the developmental needs of the child or the needs of the family. A public agency may not reduce or discontinue services due to staffing shortage.

[34 C.F.R. § 303.12; 34 C.F.R. § 303.322(c); 34 C.F.R. § 303.344(d)(f); 34 C.F.R. § 303.344(f)]

For a child with an IEP, the IEP must include a statement of the special education and related services and supplementary aids, services, program modifications and supports to be provided to the student. The IEP must also include a statement of the projected date those services will begin as well as the anticipated frequency, location, and duration of those services.

This statement of projected start date and frequency, location, and duration of services must be provided so that the level of the public agency's commitment of resources is transparent to parents and the other IEP team members. The amount of time committed to each of the various services the child will receive must be appropriate to the specific service; further, the time committed to each service must be stated in the IEP in a manner that is clear to all who are involved with the development and implementation. A range may not be used to account for personnel shortages or uncertainty regarding the availability of staff.

[34 C.F.R. § 300.320(a)(4)(7); *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 12, 1999, and unchanged in the 2004 reauthorization of the IDEA]

3. How does the Statewide IEP support the documentation of the frequency and duration of services for a student?

The Statewide IEP form and format requires each student's IEP team to document the specific number of sessions of a related service, the length of time of each session of service and how often the services is to be provided. The Summary of Service quantifies the total time of each service calculated in terms of the total number of hours and minutes described in terms of weekly, monthly, or annually.

[Maryland Statewide IEP Process Guide, page 135, June 28, 2010]

4. Are there Medicaid guidelines regarding the nature and documentation of related services ordered on an IFSP or IEP?

Yes. Physical therapy and other related services are required to be structured, systematic, goal-directed, individualized and restorative. It is essential that the early intervention or school records document the necessity for a course of therapy through objective findings. The child's records are required to include the following elements:

- Planned modalities and procedures;
- Frequency of the treatment;
- Attainable short- and long-term goals; and
- Duration of treatment.

The IFSP or IEP must have the basis for why the service is being provided and document the medical necessity for the health related service. An aspect of medical necessity is to determine the service scope and frequency of the service(s). Medicaid cannot approve a request for payment by a local Infants and Toddlers Program, local school system, public agency, or nonpublic special education facility that does not clearly identify the frequency and scope of service(s).

[COMAR 10.09.23.01B(19); COMAR 10.09.17.04A; COMAR 10.09.34.03B; COMAR 10.09.51.05]

5. Does Medicaid allow the practice of establishing the frequency of a service as semi-annually, quarterly, or yearly to give a provider greater flexibility in scheduling services across a caseload of children with IFSPs or students with IEPs?

No. Medicaid requires that the frequency of service be clearly delineated for the provider and the participant. In order for Medicaid to reimburse an Infants and Toddlers Program, local school system, public agency, or nonpublic special education facility for billable health related services, the service must be “medically necessary.” For an IFSP or IEP to document medical necessity, the basis for the service provision must be given. Documenting the service location, duration, and frequency is part of the medical necessity determination. The documentation of medical necessity for these services is the IFSP or IEP.

[COMAR 10.09.23.01B(19); COMAR 10.09.17.04A; COMAR 10.09.34.03B; COMAR 10.09.51.05]

6. If an IFSP or IEP currently establishes the frequency of a child’s or family’s service(s) as yearly, quarterly, or semi-annually, does the IFSP or IEP need to be revised?

Yes. A child’s IFSP or IEP developed or reviewed after July 1, 2010 that does not accurately reflect the duration and frequency of health related service will need to be reviewed and revised by the child’s IFSP or IEP team, including the child’s parents, as appropriate, if the agency is seeking MA reimbursement.

7. When a service is identified as weekly and the provider is out for one week, will there be a loss of Medicaid Revenue?

No. When the service is made-up, the provider must document the service as a make-up service and identify the date that the service was scheduled to be provided. Medicaid will pay for the make-up service even if it exceeds the documented number of services per week on the IFSP or IEP.

8. Are there instances when service frequencies other than weekly or monthly are utilized when an IFSP or IEP is developed or revised?

Yes. Frequencies other than weekly or monthly may be utilized to accommodate the unique needs of the child and/or the family. The reason or explanation for the use of frequencies other than weekly or monthly must be clearly justified and documented on the child's IFSP or IEP. Setting a frequency of service provision such as "20 times yearly" or "20 times only" will require clear therapeutic documentation. Lack of staff, administrative convenience, and other non-therapeutic reasons are insufficient to support a frequency such as "20 times yearly" or "20 times only." Frequency of service provision typically should be 'weekly' or 'monthly' so that families and service providers have a clear understanding of how often the student will receive the service.

9. Do these requirements also apply to year-round services on an IFSP and extended school year services (ESY) on an IEP?

Yes. These requirements apply to year-round services on an IFSP and ESY services on an IEP. For a child with an IFSP, "year-round services" means the early intervention system operates on a continuous basis to identify and serve eligible children and families. Early intervention systems may not establish a schedule of service delivery which compromises the availability of services on a year-round basis. Early intervention providers may not interrupt, modify, or otherwise change early intervention services for reasons unrelated to the needs of the child and/or family, *e.g.* service provider unavailable, change in providers' schedules, etc..

For a child with an IEP that provides ESY, the IEP must include, among other things, a statement of the special education, related services, supplementary aids, services, program modifications, and supports to be provided to the student, including the projected date for the beginning of the services and the anticipated frequency, location, and duration of those services during ESY.

[U.S. Department of Education, Office of Special Education Programs (OSEP) Maryland Part C Monitoring Report, pages 15-16, July 26, 2001; 34 C.F.R. § 300.320(a)(4) (7); COMAR 13A.05.01.09]

10. Service providers often need time to set up a schedule prior to beginning services at the start of the year, as well as time to complete reports at the end of the year. Must a service provider provide services during the first week(s) and last week(s) of school?

Services must be provided as specified in the child's IFSP or IEP. Services identified on a child's IFSP or IEP are determined by the IFSP or IEP team to be necessary to meet the unique needs of the child. If the IEP/IFSP establishes a date when services are to begin or end, schools must ensure services are provided consistent with the IEP/IFSP. Provider issues and/or "administrative convenience" **do not** justify a delay or deviation from the service delivery schedule as determined by the IFSP/IEP.

11. What should service providers in a nonpublic special education facility do if they receive an IFSP or IEP with a service listing “yearly” as the frequency?

Nonpublic school staff shall contact the local Infants and Toddlers Program, or local school system to request an IFSP or IEP team meeting to review and revise the student's IFSP or IEP as appropriate.

12. May a service provider substitute a direct service session with a child to spend time observing the child in his/her natural environment or classroom to ensure he/she is using the skills mastered during direct service instruction?

Services must be provided as stated on the child’s IFSP or IEP. To observe a child, the child’s IFSP or IEP must state in the “Discussion of Service Delivery” box that periodically the child will be observed in his/her natural environment, classroom, etc. for the purpose of gathering data, observing transfer of skills, etc. The service provider must record the time, location, and results of the observation in the student’s service log. Please note such an observation of the child is not billable to Medicaid. COMAR 10.09.17.04.

For more information, call 410-767-0858

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