

Regulations Task Force

2/27/12

Minutes

Participants: Kendall Lee, Debra Holloway, Mary Lou Hutton, Rosalind Cutchins, Ginny Heuple, Bev Crouse, Carol Burke, Sandra Church

Expected Outcome: To determine how Virginia will implement the new requirements for use of public and private insurance to pay for early intervention services.

Process for Revising Forms:

Our group will identify the content changes required to forms in order to meet the new regulations. The Forms Committee will then consider the formatting, etc. to incorporate those changes.

Use of Public Insurance (Medicaid):

- Regulatory requirement - Must obtain parental consent prior to using public insurance if child not already enrolled in a public insurance program. (303.520(a)(2)(ii))
 - Preamble to regulations clarifies that this means we must get parental consent prior to requiring parent *to enroll* in public insurance program to pay for Part C services
 - **Task Force recommendation for implementation in Virginia** – The existing wording under Uninsured section on the *Family Cost Share Agreement* form is sufficient to document consent.
 - **Additional recommendations:** Add a third bullet under Uninsured that allows the family to indicate that they are already in the process of applying for Medicaid. If the family then gets Medicaid (after checking any one of the 3 options under Uninsured), a new agreement form must be completed.
- Regulatory requirement - Must obtain parental consent to use public insurance if child is already enrolled in such a program and use of the insurance would result in certain costs to the family. (303.520(a)(2)(ii))
 - We have confirmed with DMAS that, in Virginia, families would not incur any of the costs listed in the federal Part C regulations
- Regulatory requirement - Parental consent is required before the local lead agency or provider discloses, for billing purposes, a child's personally identifiable information to DMAS. (303.520(a)(3)(i))
 - So, although we do not need permission to use the child's Medicaid if the child's already enrolled in Medicaid, we do need consent to release the personally identifiable information necessary to actually bill Medicaid
 - Could add wording to the consent statement on page 1 of the *Family Cost Share Agreement* form or require use of the third page (Information Release and Assignment of Benefits) of the agreement form.
 - **Task Force recommendation for implementation in Virginia** – Incorporate the release of information wording into the consent statements for both public

and private insurance on page 1 of the agreement form and eliminate the third page of the form.

- **Follow-Up** – Mary Lou, Rosalind and Sandra have regional meetings within the next week and will gather input from other local system managers in their regions about this recommendation to be sure there is agreement that this is the easiest way to meet the requirement.
- Regulatory requirement - When using a child's public insurance to pay for Part C services, we must provide a written notification to the parent that includes a statement that parent consent is required before disclosure of personally identifiable information for billing purposes, a statement that parents have the right to withdraw that consent at any time, a statement of the general categories of costs to parents for using their public insurance, and a statement of the no-cost protections in 303.520(a)(2). (303.520(a)(3))
 - We have confirmed with DMAS that the only category of cost to parents for using their public insurance would be that if they have private insurance and consent to bill that private insurance, then that private insurance must be billed prior to billing Medicaid
 - **Task Force recommendation for implementation in Virginia** – Add the required information to *Facts About Family Cost Share*. Minimize the number of forms whenever possible by adding new info to existing forms.

Use of Private Insurance:

- Regulatory requirement - Must obtain parental consent for use of private insurance for initial provision of an EI service and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP. (303.520(b)(1))
 - This means that in addition to obtaining consent for use of private insurance at the initial IFSP and annually thereafter (which is how we do it now), we must also obtain consent any time an IFSP review results in an increase in services
 - Discussed either adding more lines for consent on the *Family Cost Share Agreement* form or adding something in the parent consent statements on page 9 of the IFSP.
 - **Task Force recommendation for implementation in Virginia** – Add to page 9 of the IFSP since not all service coordinators have access to the *Family Cost Share Agreement* form or would remember to have it with them at every IFSP review in case of an increase in services. There will be a check box in the Consent section on page 9 of the IFSP, so it can be checked only when it applies, with a statement that the family agrees to keep paying for services in accordance with the Family Cost Share Agreement form, including continuing to use private insurance. We will also include a statement about how the family can get more information if needed (in case they don't remember what they agreed to on the Agreement form). Kyla will draft wording for the group to review.
- Regulatory requirement - Each time consent is sought for use of private insurance, must provide a copy to the parent of the state's system of payment policies that identify the potential costs (co-payments, premiums, deductibles, of other long-term

costs such as the loss of benefits because of annual or lifetime health insurance coverage caps) that parents may incur as a result of using their private insurance to pay for Part C services. (303.520(b)(1)(iii))

- The federal regulations specify that the system of payment policies must include a copy of the sliding fee scale.
- **Task Force recommendation for implementation in Virginia** – Use *Facts About Family Cost Share* as the system of payment policies. Add the necessary information about costs and a copy of the sliding fee scale to *Facts About Family Cost Share*. We will ask the Forms Committee to consider how *Facts About Family Cost Share* can be formatted to include the new information required by the federal regulations and still be clear and understandable to families.
- The new regulatory requirement impacts when families will need to receive *Facts About Family Cost Share*. Not only must this document be shared prior to the initial and annual IFSPs, it will now be necessary to give it to families at IFSP reviews when there is an increase in services. The group reviewed the proposed language on page 6 in draft revisions to Chapter 11 of the Practice Manual (currently out for public comment), which allows local systems to offer subsequent copies of *Facts About Family Cost Share* in the same way they offer copies of the Notice of Rights and Safeguards.

“The family must be offered a copy of *Facts About Family Cost Share* at each of the points listed above. However, if the family has previously received a copy of the document and states that they do not want another copy, it is not necessary to leave another copy. A contact note must be used to document that another copy of the document was offered and that the family declined.”
- **Task Force recommendation for implementation in Virginia** – Handle the requirement to give copies of *Facts About Family Cost Share* in the same way as we do the Notice of Rights and Safeguards and as outlined in the draft revisions to Chapter 11.
- Regulatory requirement - If a family is determined to be unable to pay and does not consent to use of their private insurance, then that lack of consent cannot be used to delay or deny services. (303.520(c))
 - Regardless of why the family declines use of their insurance, they cannot be denied services due to an inability to pay. Therefore, the group discussed whether Virginia’s current policy (of allowing families with private insurance to access the sliding fee scale only if they consent to use of that insurance or decline use of their insurance because they believe it will result in a “financial loss”) is in line with the new regulations. The regulations do not appear to allow us to treat families differently based on why they decline use of their private insurance.
 - **Task Force recommendation for implementation in Virginia** – Revise practices to allow families to access to the sliding fee scale regardless of whether or not they consent to use of their private insurance (as long as they provide income information). Revise *Family Cost Share Agreement* form to

give only two options under Health/Medical Insurance: “My insurance should be billed” or “My insurance should not be billed”

Procedural Safeguards:

- Regulatory requirement - State’s system of payments must include written policies to inform parents that they may request mediation, due process or file an administrative complaint if they wish to contest the imposition of a fee. (303.521(e)(1))
 - We already meet this requirement
- Regulatory requirement - Must inform parents of these procedural safeguards options by either providing parents with a copy of the system of payments policies when obtaining consent for services or including this information in the Parental Prior Notice. (303.521(e)(2))
 - We already include the required procedural safeguard information in *Facts about Family Cost Share*.
 - **Task Force recommendation for implementation in Virginia** – Meet this requirement by giving *Facts About Family Cost Share* at every IFSP (initial, reviews, annuals) when consent for services is sought.

System of Payment Procedures – Proposed Revisions to Practice Manual, Chapter 11:

- The group then discussed any questions related to the proposed revisions to Chapter 11 of the Practice Manual:
 - On Page 1, what is the reason for the added wording that families with public or private insurance will not be charged disproportionately more than families who do not have public or private insurance? Kyla clarified that this was added because the new regulations require that our system of payment policies include an assurance that families with public or private insurance will not be charged disproportionately more than families who do not have public or private insurance. We are already meeting this requirement but needed to add the assurance in writing.
 - It was noted that we need to be careful with the wording on page 12 about the “required” use of private insurance prior to billing Medicaid. We need to re-word this to be sure it’s clear that private insurance can only be billed with parent consent.
- Although not related to the new regulations, a couple of additional changes to the *Family Cost Share Agreement* form were requested. Kyla stated that these changes are on the list to be addressed by the Forms Committee:
 - Add a place for families to mark if they have a flexible spending account. (We will also be adding the info that’s currently on the Family Cost Share Agreement Addendum to the agreement form itself).
 - Add a release/consent to check the child’s Medicaid status/coverage to be sure we’re not missing children who have Medicaid.

Planning for Implementation:

- DBHDS is still trying to clarify with OSEP whether the new system of payment policies have to be implemented on April 16th (when the federal application is due) or on July 1st (when all other new regulations must be implemented). Although OSEP

originally said April, some other requirements for April have changed so we plan to double-check with OSEP about the system of payments situation.

- DBHDS is committed to giving local systems as much notice and training as possible prior to the need to implement new requirements.
- A group member asked whether it will be necessary to re-do financial forms with every family as of the date of implementation? Kyla stated that every effort will be made to allow new financial forms to be completed at the next IFSP meeting. If that's not possible, then we will work to really narrow down those that must be done immediately at implementation.

Next Steps:

- Kyla will work with Catherine to check with OSEP on implementation date for new requirements
- Kyla will draft wording for page 9 of the IFSP for the group to review
- Rosalind, Sandra and Mary Lou will solicit input during regional meetings
- Kyla will forward info to the Forms Committee as we finalize content changes for the IFSP, Family Cost Share Agreement form and Facts About Family Cost Share.

Next Meeting March 13, 1:00 – 2:30