

Regulations Task Force

4/11/12

Minutes

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

Expected Outcome: Review the new federal regulations related procedural safeguards and IFSP requirements to determine what, if any, changes are needed in Virginia's practices.

Follow-Up on Items from March 28 Meeting

- Family assessment questions
 - Ginny has requested from Terry Erhlichman the set of questions the service coordinators are using in Prince William and will forward them to Kyla as soon as she gets them. Ginny also reported that the materials from Robin McWilliams say you cannot dilute his process and questions, but what they're using in KI and KII is good. Kyla will get the information being used in Kaleidoscope training and use that plus the information from Prince William to draft a set of questions for the group to review.
 - A local system manager in one region asked whether the requirement for a family assessment tool requires us to get consent for family assessment sooner since we begin gathering information related to family assessment during the initial phone call and/or intake visit. The group discussed the fact that we also begin gathering information about the child in the initial call and intake that is later used for eligibility determination and assessment, even before we may have gotten consent. Just because the information we gather as we get to know the child and family may later be useful in assessment, it doesn't mean we have started the assessment.
- Constituent feedback on the issue of multidisciplinary when one person is dually qualified –
 - In two regions, local system managers stated that this new definition of multidisciplinary team for eligibility determination and assessment doesn't really affect their systems so they didn't have strong opinions. They didn't want to discount the option of using one individual if that is beneficial to other local systems.
 - One local system manager submitted written feedback that she felt it should always be two people.
 - There was consistent feedback that if we allow one person who is dually qualified to complete eligibility determination and assessment, then the Practice Manual should include clear guidance about when that practice is appropriate (points to consider) and how to do it.
 - Two regions commented that they were less comfortable with one person determining a child ineligible than determining a child eligible
 - There were also comments that it would be easier to use this process at annual than initial eligibility determination
 - Northern Virginia, Richmond/Central, and Tidewater regions have not yet had an opportunity to provide input so we will revisit this topic at our next meeting

Procedural Safeguards

The group reviewed the following new requirements related to procedural safeguards:

- Access to records
 - Regulatory requirement - Must make available to parents an initial copy of the child's early intervention record at no cost to the parents. (303.400(c))
 - Mary Anne pointed out that even though this and many of the other procedural safeguards changes will impact few families, it will be important to be sure local systems are aware of the changes.
 - Regulatory requirement - Must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
 - OSEP states that the purpose is to ensure families can be full and equal participants in IFSP process.
 - Copies must be at no cost since these functions (evaluation, assessment, IFSP development) must be provided at no cost.
 - We already provide copy of Eligibility Determination form and IFSP (which includes the assessment narrative) to families
 - The group discussed whether this means that we must also provide the family with the evaluation or assessment tool used? Given the purpose behind this requirement, there was consensus that we should not require that the family be provided a copy of the tool. Group members commented that the tool would be confusing rather than helpful in preparing families to be full participants in the IFSP process. However, if a family asks to see the tool, local systems would provide it and explain it to families.
 - Regulatory requirement - Must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP or any due process hearing, and in no case more than 10 days after the request has been made. (303.405(a))
 - The 10-day timeline is new
 - Regulatory requirement - A parent who believes that information in the EI record ... is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information. (303.410(a)).
 - Previously the regulations said, "... or other rights of the child." The new regulations add "or parent." OSEP believes these protections apply to information about the parent as well as the child.
 - Regulatory requirement - Destruction of personally identifiable information -- A permanent record of the child's name, date of birth, parent contact information (including address and phone number), name of service coordinator(s) and EIS provider(s), and exit date (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limit.
 - This expands what can be permanently maintained
- Consent
 - Regulatory requirement - The lead agency must provide policies and procedures to be used when a parent refuses to provide consent to release personally identifiable information (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this part), provided that those procedures do not override a parent's right to refuse consent under 303.420 (consent for evaluation, assessment, services, use of public or private insurance). (303.414(c))

- The group discussed examples of when a parent might refuse consent to release records and that refusal might affect services include requesting medical records for eligibility determination or physician certification for IFSP services
 - To meet this requirement, there will need to be a statewide policy for the steps to take when a parent refuses.
 - **Task force recommendation for implementation in Virginia** – Service coordinator explains to the family the impact of their decision to refuse consent to release of information, including why the consent is needed, what the information will be used for, and how the absence of that info would affect services. The discussion with the family and the outcome must be documented in a contact note.
- Surrogate parents
 - Regulatory requirement - Must ensure that a surrogate parent is not an employee of the lead agency or any other public agency or EIS provider that provides early intervention services, education, care or other services to the child or any family member of the child. (303.422(d)(2)(i))
 - Previous regulations said that a surrogate may not be an employee of any state agency or a person or an employee of a person providing early intervention services to the child or any family member of the child.
 - OSEP’s analysis of comments says they added the new language to more expressly prohibit employees who provide any services to the child or a member of the child’s family from serving as the surrogate parent.
 - Regulatory requirement - Must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after determining that the child needs a surrogate parent. (303.422(g))
 - One local system manager commented that they rarely have a situation in which a surrogate is needed but thought the 30-day timeline might be a challenge in some cases. Kyla noted that, as with other timelines associated with Part C, it would be important to document your attempts to make the assignment within 30 days.
 - Regulatory requirement - In the case of a child who is a ward of the state, the surrogate parent may be assigned by the State Lead Agency or by the judge overseeing the infant or toddler’s case provided that the surrogate meets the requirements of a surrogate parent under Part C. (303.422(c))
 - This new language allows a judge to assign a surrogate parent
 - Regulatory requirement - In implementing the surrogate parent requirements for children who are wards of the state or placed in foster care, must consult with the public agency that has been assigned care of the child.
- Dispute resolution
 - Regulatory requirement - A mediation agreement must state that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and must be signed by both the parent and a representative of the local lead agency that has the authority to bind that agency. (303.431(b)(5))
 - Regulatory requirement - Compensatory services or monetary reimbursement are examples of corrective actions the State Lead Agency may determine are appropriate in resolving an administrative complaint in which it is determined that a local system has failed to provide appropriate services to the child. (303.432(b))

- This is a clarification of existing regulations, and Virginia already operates under this understanding.
- Regulatory requirement - The administrative complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. (303.434(c))
 - Previous regulations said not more than one year prior "... unless the alleged violation continues for that child or other children.
 - This was changed because OSEP believes the one-year timeline is reasonable and will ensure that problems are raised and addressed promptly.
- The complaint must include (1) a statement that the lead agency, public agency or EIS provider has violated a requirement of Part C; (2) the facts on which the statement is based; (3) the signature and contact information for the complainant; (4) if alleging violations with respect to a specific child, then the name and address of the residence of the child, the name of the EIS provider serving the child, a description of the nature of the problem of the child including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. (303.434(b)).
 - Previous regulations only required the complainant to include the first 2 items.
- Regulatory requirement - The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency. (303.434(d)).
 - OSEP believes this requirement enables the public agency or EIS provider to be informed of the issues in the complaint in order to provide an opportunity for the voluntary resolution of the complaint. They believe this benefit outweighs the minimal burden it places on the complainant.
 - One group member asked what happens if the family does not forward a copy of the complaint to the agency or provider as required. Although OSEP stated at a previous meeting that they did not know the answer to this question, the Response to Comments section of the regulations states that they don't feel it's necessary to specify in the regulations the consequences of a complainant's failure to forward a copy of the complaint to the public agency or EIS provider because the "State Lead Agency is already required to provide the public agency or EIS provider an opportunity to respond to the complaint, thereby implicitly requiring the State Lead Agency to inform the public agency or EIS provider of the relevant allegations in the complaint."
- Regulatory requirement - Each lead agency must ensure that the parents of a child referred to Part C are afforded the due process right. (303.436(a)).
 - Previous regulations stated "... must ensure that the parents of children *eligible* under this part..."
 - New requirement clarifies that due process rights are available to the family of any child referred to Part C, not just those found eligible.
- Regulatory requirement - Any parent involved in a due process hearing has the right to obtain a written or electronic verbatim transcript of the hearing and to receive a written copy of the findings of fact and decisions, each at no cost to the parent. (303.436(a)(4) and (5))
 - Previous regulations said the parent had the right to obtain a copy; did not say at no cost

- Mary Anne shared with the group a copy of the Dispute Resolution Form and asked members to please send her any feedback. Mary Anne and Kyla will also need to review the form to be sure it's consistent with the new regulations.

IFSP

- Regulatory requirement - The IFSP is developed by a multidisciplinary team, which includes the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator. (303.340)
 - In contrast with the definition of multidisciplinary team for evaluation and assessment, when used with regard to the IFSP team “multidisciplinary” means there must be two or more individuals from different disciplines participating with the parent
 - One person asked whether this requirement was true for IFSP reviews as well. Kyla responded that it does not ... the required participants in an IFSP review are still the family and service coordinator.
 - There was also a question about whether the service coordinator always counts as one of the disciplines for the IFSP team or if that's only true if the service coordinator is also a certified EI Professional. Kyla replied that the service coordinator always counts.
- Regulatory requirement - The IFSP must include a statement of the specific services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family ... (303.344(d)(1))
 - This language is from the statute so we've been aware of this since 2004. In their response to comments, OSEP clarified that using early intervention services based on peer-reviewed research, to the extent practicable, means that, “specific early intervention services should be based on peer-reviewed research to the extent that it is feasible or possible, given the availability of peer-reviewed research on the early intervention services determined to be most appropriate to respond to the child's needs and strengths ...”
 - Virginia does not plan to make any changes in how we are implementing this requirement.
- Regulatory requirement - The statement of the needed early intervention services must include the length, duration, frequency, intensity, and method of delivering services. Intensity means whether the service is provided on a group or individual basis; length means the length of time the service is provided during each session of that service (such as an hour or other specified time). (303.344(d)(1)(i)) and (303.344(d)(2)(i) and (iii))
 - We currently include individual/group and the amount of time each service is to be provided, but we don't call them by the proper names (length and intensity, respectively) in accordance with the definitions in the new regulations
 - **Task force recommendation for implementation in Virginia** - Update the IFSP form to match the terminology in the regulations. We recognize that there may be a period of time before ITOTS can be changed to match the IFSP, but making all of the changes to the IFSP form now helps those with electronic forms/records and allows Kaleidoscope materials to be updated and service coordinators trained on all IFSP changes. The group felt that instructions can be provided for entering the data into ITOTS until ITOTS can be updated to match.

Next Steps

- Next meeting – April 25, 1:00 – 2:30
- Next topic - Transition, including content of IFSP related to transition

- At the next meeting, we will also follow-up on the issue of a multidisciplinary team of one for eligibility determination and assessment for service planning