

## CONFIDENTIALITY ATTACHMENT

### Components to Include/Describe in Written Policy and/or Procedure for Maintaining Provider Early Intervention Records

Early Intervention Program (EIP) records are defined in EIP regulations, Section 69-4.1(ak). A child's early intervention clinical record is considered an educational, not medical, record and is governed by the Federal Family Educational Rights and Privacy Act (FERPA). EIP billing/claiming records must also meet the requirements of the Federal Health Insurance Portability and Accountability Act (HIPAA). EI providers who are licensed, registered, or certified under New York State Education Law must maintain their records in accordance with the laws and regulations that apply to their profession.

Policies and procedures for confidentiality should apply throughout the stages of collection, storage, disclosure and destruction of records, including electronic records. All providers delivering early intervention services should develop a policy/procedure describing how they will meet the following confidentiality requirements (providers who contract directly with a municipality must maintain a written policy):

- Agencies must designate an individual who has appropriate authority to be responsible for ensuring the confidentiality of personally identifiable information in records, including electronic records.
- Describe how the storage of records is secure. Records containing personally identifiable information must be maintained in secure locations, such as a file or room that can be locked when unattended. Records must be disposed of using an appropriate method such as shredding.
- If records that contain personally identifiable information are stored off-site, describe how the storage of these records is secure. These records must be maintained in secure locations such as in a file, room, or storage unit that is locked. The method of retrieving these files must also maintain the confidentiality of these records. Records must be disposed of using an appropriate method such as shredding. When a professional records management company is used for storage of records containing personally identifiable information, confidentiality requirements must be followed by this company during the storage, retrieval, and disposal of records. The provider's contract with this company must meet all confidentiality requirements of FERPA and Title 34 CFR applicable to child/family records with the EIP. (The provider must be able to produce this contract for review.)
- Describe how transported records are secured and how confidentiality is maintained when records are not with the provider.
- Describe how the confidentiality of electronic records is maintained, as follows:
  - Describe how the confidentiality of electronic records that are stored on computer is maintained. Internal controls must be in place when information is stored on computers that limit access to authorized staff within an agency or to the individual provider. This includes,

but is not limited to, password protection and secure storage of discs, CD's, DVD's and/or other removable storage devices.

- Describe how confidentiality is maintained when e-mail is used. Due to the potential for breach of confidentiality, child specific identifiable information may not be transmitted via e-mail unless rigorous administrative, technical and physical safeguards are in place including, but not limited to, password protection, encryption, and firewalls. All parties involved in the sending and receipt of an electronic record must be able to maintain the confidentiality of that record. Child specific identifiable information includes a list of personal characteristics or other information that would make it possible to identify the child, the parent or other family members with reasonable certainty. In addition to obvious identifiers such as name, address, etc., the combination of facts presented in the e-mail (e.g., initials, family composition, unique diagnosis, heritage, neighborhood, etc.) should not be able to identify a particular family or child.
- Describe how confidentiality of faxed information is maintained. Safeguarding of faxed information requires, but is not limited to, the use of a fax cover sheet that includes a confidentiality statement. The provider must also ensure that the fax recipient maintains a secure site where faxed information would not be accessible to unauthorized personnel or to the general public.
- Agencies must identify those individuals within their agency who are authorized to routinely access a child's record. Each agency must maintain a current listing of the names and titles/positions of those employees who may have routine access to personally identifiable information. Only individuals who collect or use information for the purpose of facilitating the child's/family's participation in the EIP should be given this authorization. Describe how this is implemented. (The provider must be able to produce this list for review.)
- A record must be kept of all individuals, other than authorized individuals, who access a child's record, including the date of access and the purpose for which the record was accessed. Describe how this access is documented. If the method for documenting access contains multiple child names, there must be a procedure for maintaining the confidentiality of each child/family. (The provider must be able to produce a sample of this access record for review.)
- Describe how parents are notified of the process that they must follow to inspect and review all records pertaining to their child. This notification should include a description of the process including how parents would make the request, who they must speak to, and other details. Please note, if a parent is unable to submit a request to review records in writing, a verbal request should be accepted.
- Parental access to their child's record must be ensured. Access to records includes: a review of the record by the parent or a representative on behalf of the parent unless such access is prohibited under State or federal law; an explanation and interpretation of material included in any EI record upon request; and a copy of any record within 10 working days of the request (if the request is made as part of mediation or an impartial hearing, a copy must be provided within 5 days.) Describe how this confidentiality requirement will be met.

- Fees for copying and retrieving records must not exceed allowable rates. A fee not to exceed 10 cents per page for the first copy and 25 cents per page for additional copies may be charged to the parent to copy EI records unless the fee prevents the parent from inspecting and reviewing the records. No fee may be charged for records related to evaluations and assessments or for the search and retrieval of records. An evaluator or service provider licensed by NYSED may charge for copies as permitted under PHL §18.
- Describe how the procedure to address amendment of their child's records protects the parent's rights. The parent has the right to request an amendment to their child's record when the parent believes the information contained in the record is inaccurate, misleading, or violates the privacy or other rights of their child.
  - If the provider decides not to amend the record as requested, the provider informs the Early Intervention Official of this decision. The Early Intervention Official is responsible for informing the parent in writing of the provider's decision not to amend the record and that the parent has the right to a hearing. The hearing will be conducted by an individual designated by the municipality who does not have a direct interest in the outcome of the hearing.
  - If information in the record is found to be inaccurate, misleading, or to violate the privacy of the child/family, the provider will amend the information and will inform the family's service coordinator. The service coordinator ensures the contents of the record are amended and notifies the parent of the amendment in writing.
- When records contain information about more than one child, information about other children receiving services must be protected. Only information pertaining to the child/family who is the subject of a request for record access or disclosure may be released. Describe how personally identifiable information about other children receiving services is protected.
- Written parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized individuals. Written parental consent for release of or obtaining information must include the name of the entity; which records will be obtained or released; the specific record(s) to be used and the purpose of such use; the date the parent signed the consent; and the parent's signature and relationship to the child. Only information appropriate to a request should be released. (The provider must be able to produce a sample consent form for review.) \*
- Describe how records containing sensitive information are protected. Providers must adhere to the confidentiality requirements of the EIP, including all legal requirements that protect records containing sensitive information (such as sexual or physical abuse, treatment for mental illness or mental health problems, HIV status, communicable disease status, the child's parentage, etc.). When consent is given by a parent or guardian to release information, only information appropriate to a request should be released. Sensitive information about the child and family must be protected.
- At a minimum, records must be retained for six years from the date that care, services, or supplies were provided or billed, whichever is later. Providers who are licensed, registered, or

certified under New York State Education Law must retain records in accordance with the laws and regulations that apply to their profession.

- If electronic signatures are used, electronic documentation must be maintained in a manner that demonstrates the provider's right to receive payment under the Medicaid program and ensures the confidentiality of child and family information. Records must meet the general and specific requirements of the regulation as to content. It must be possible to determine when the record was created. There must be a process to document alteration of the record and also a process to prevent alteration (i.e. 'read-only' format, PDF, etc.). The direct provider of service must be identified in the record. If electronic signatures are used, provide details of how this compliance is assured. (The provider must be able to produce a sample record for review.)
- Describe how provider assures adherence to requirements for maintaining the confidentiality of personally identifiable information, as follows:
  - Agency providers must assure that all employees, independent contractors, consultants, and volunteers with access to personally identifiable information are informed about, and required to adhere to, all confidentiality requirements applicable to personally identifiable information within the EIP. Agencies must also assure knowledge of and compliance with all legal requirements that protect records containing sensitive information (such as sexual or physical abuse, treatment for mental illness or mental health problems, HIV status, communicable disease status, the child's parentage, etc.).
  - Individual providers must keep informed of all applicable confidentiality requirements as described above.

\*Note: The New York State Department of Health, as lead agency responsible for oversight of the EIP, is required to monitor providers of early intervention evaluation, services, and service coordination. The department has contracted with IPRO to perform on-site reviews of early intervention providers under contract with municipality(ies). FERPA authorizes the disclosure of the child/family's record, without parent consent, to specified officials (e.g., state officials/IPRO) for audit or evaluation purposes of any federally or state-supported education program or in connection with the enforcement of or compliance with federal legal requirements which relate to any such program.