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DMS Numbered Memo 2019-05

To: County Birth to 3 Program Coordinators
County Department of Human Services Directors
County Department of Social Services Directors
County Department of Community Programs Directors
Long-Term Support Supervisors and Leads

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Division of Medicaid Services

Birth to 3 Program: Annual Data Review Process and Issuing Findings of Noncompliance

Background

The federal Office of Special Education Programs (OSEP) requires states to provide monitoring and oversight of programs that provide early intervention services to ensure compliance with the Individuals with Disabilities Education Act (IDEA) Part C requirements. As part of this monitoring, states must identify and demonstrate timely correction of instances of noncompliance in early intervention service programs. The [OSEP 09-02 Memorandum](#) established specific requirements for demonstrating timely correction of instances of identified noncompliance. As the IDEA Part C lead agency, the Department of Health Services (DHS) is tasked with undertaking these requirements and monitoring compliance of local Birth to 3 Programs. In order to comply with federal requirements regarding the timely correction of instances of noncompliance, DHS undertakes the following actions:

1. DHS notifies local Birth to 3 Programs in writing of any findings of noncompliance.
2. DHS ensures that local Birth to 3 Programs have corrected each individual case of noncompliance and have completed the action required for the relevant indicator, unless the child is no longer within the jurisdiction of the local Birth to 3 Program (referred to as “Child Level correction”).
3. DHS reviews updated data submitted by the local Birth to 3 Program in order to determine whether the local Birth to 3 Program has correctly implemented requirements (referred to as “System Level correction”).
4. DHS requires that correction will be completed by the local Birth to 3 Program by the date determined by DHS, and no later than 12 months from the date of written notification.

Purpose

This memo details a change to the DHS procedure for identification and issuance of findings of noncompliance to local Birth to 3 Programs. This memo establishes a data clarification period in the annual data review process during which local Birth to 3 Programs may remediate a data concern and demonstrate compliance prior to receiving a written notification of findings of noncompliance from DHS. The purpose of the data clarification period is to align DHS local compliance monitoring with

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federal flexibilities in oversight; support real-time correction of identified errors; and focus any necessary issuances of findings of noncompliance on systemic problems that impair the quality of local Birth to 3 Programs.

Current Annual Data Review Process

Currently, DHS reviews data from January 1 through March 31 each year to monitor Part C compliance. DHS issues a written finding of noncompliance to a local Birth to 3 Program when the annual compliance data review shows less than 100% compliance for the following indicators:

- Indicator 1: Timely Services
- Indicator 7: Timely Individualized Family Service Plans
- Indicator 8: Timely Transition
 - Indicator 8A: Timely Transition Planning
 - Indicator 8B: Timely Referral to the Local Education Agency (LEA)
 - Indicator 8C: Timely Transition Planning Conference

Data Clarification Period

With the release of this memo, DHS has established a data clarification period as part of the annual data review process. This data clarification period allows local Birth to 3 Programs an opportunity to demonstrate compliance with Part C requirements for indicators 1, 7, 8a, 8b, and 8c prior to the issuance of a written notification of noncompliance from DHS. The following data clarification process will precede the issuance of a finding of noncompliance:

- DHS will review data reports and identify any data from the annual compliance data review needing clarification.
- DHS will inform local Birth to 3 Programs of any data needing clarification.
- By the deadline outlined by DHS, local programs may demonstrate that:
 - The program had incorrectly entered data for the dates between January 1–March 31, and this data is now accurate; and/or
 - The program has made a system-level adjustment and can demonstrate this by identifying 60 consecutive days with 100% compliant data for the identified indicator(s) within the timeframe prescribed by DHS.

Issuing Findings of Noncompliance

DHS will issue a written notification of findings of noncompliance to the local program if it is unable to demonstrate compliance during the data clarification period. The local program must then follow the DHS correction process for findings of noncompliance.

Correction of Findings of Noncompliance

The local Birth to 3 Program must demonstrate correction of findings of noncompliance. The local Birth to 3 Program is required to take the following actions to correct findings of noncompliance:

- By the date determined by DHS, and no later than 12 months after the dated findings of noncompliance notification letter, the local program must demonstrate child level correction, when applicable, and system level correction for any indicator(s) identified.
- Child level corrections for indicator(s) 1 and 7 must be demonstrated by submitting child file documentation to DHS showing the implementation of required activity for the indicator(s).
- System level correction for indicator(s) 1, 7, 8a, 8b, and 8c must be demonstrated by identifying 60 consecutive days with 100% compliant data in the statewide data base for the indicator(s). This data may be subject to file-level review by DHS.

- At any time after receiving a written notification of findings of noncompliance from DHS, the local Birth to 3 Program may contact their [DHS technical assistance lead](#) for support to correct the findings of noncompliance.

Verification of Correction of Findings of Noncompliance

DHS examines documentation submitted by the local Birth to 3 Program to ensure that child level correction was completed for child file(s) where findings of noncompliance were identified and the local Birth to 3 Program has correctly implemented regulatory requirements.

The local Birth to 3 Program will receive a written notification communicating the outcome of the DHS verification review. The written notification will include the following information:

- Date finding(s) of noncompliance was given
- Identification of Finding(s)/Indicator(s) involved
- Date of DHS review
- Two months of data reviewed for verification of correction
- Outcome of verification process

Corrective Action Plans

Failure to correct findings of noncompliance will result in the issuance of a corrective action plan. The local Birth to 3 Program must then implement the correction process with assistance from DHS.

Summary of Action

This information is effective immediately and replaces any previous findings of noncompliance guidance provided by DHS.

Assistance

Local Birth to 3 Programs are encouraged to direct any questions to their [DHS technical assistance lead](#).