Requirements to provide Health Advice within six weeks

To develop high quality EHC Plans that integrate provision across service boundaries local areas need a clear, transparent process for undertaking EHC Needs assessments, developed in partnership with parents, young people and professionals.

This needs to include agreement as to how local authorities will secure health advice from relevant health professionals in relation to a child or young person to inform their EHC Needs Assessment. This should be a process agreed with local health commissioners and key health services, as any unilateral approach by the local authority is unlikely to be effective and could lead to unnecessary requests or requests going to the wrong people.

A health professional is defined as someone regulated by the relevant professional council**.** They can be employed by a community provider, acute trust or a mental health trust, in paediatric or adult services.

The regulations which support the Children and Families Act 2014 place a duty on local authorities when carrying out an EHC assessment to obtain 'medical advice and information from a health care professional identified by the responsible commissioning body'.[1] There is then a legal responsibility placed on NHS bodies to respond to requests for advice and information as part of EHC assessments within six weeks of the date on which they receive the request.[2]

The Designated Medical Officer or Designated Clinical Officer (DMO or DCO) should be a key individual to help facilitate appropriate routes for information and advice. For most services, the CCG will be the responsible commissioner, but for some specialised services it will be NHS England. To find out more about responsible commissioners refer to the CDC Commissioning Bulletin.

The aim of the statutory framework for special educational needs is for an effective and timely multi-professional assessment of children's needs, and local arrangements should aim to deliver this. CCGs need to set clear expectations for providers that deliver services to children and young people with SEND from 0-25 that they:

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1 See regulation 6(1)(c) of the SEN and Disability Regulations 2014.

2 See regulation 8(1) of the 2014 Regulations. Under regulation 8(2), a body need not comply with the six week time limit if it is impractical to do so because—
(a) exceptional circumstances affect the child, the child's parent or the young person during that 6 week period;
(b) the child, the child's parent or the young person are absent from the area of the authority for a continuous period of not less than 4 weeks during that 6 week period; or
(c) the child or young person fails to keep an appointment for an examination or a test made by the body during that 6 week period.

- contribute to EHC needs assessments within the timeframes, including providing advice and reports, and
- deliver the health provision agreed in the EHC plan.

This can be included in existing oversight management arrangements, requiring providers to update CCGs on a regular basis on their responses to requests for health advice.

The NHS England Standard Contract 2017/18 and 2018/19 used by CCGs to contract with providers has reinforced the legal duties under the Children and Families Act and now includes the following specification:

> 'Where a local authority requests the cooperation of the Provider in securing an Education, Health and Care needs assessment, the Provider must use all reasonable endeavours to comply with that request within 6 weeks of the date on which it receives it.'

What about children already known to services?

Many children will enter an EHC assessment process already known to health services. They may be under the care of a paediatrician, or receiving therapy, or have received a diagnosis of (for example) autism. In these cases, there may not be any need for a further assessment to be made, and the health advice can be provided based on the existing evidence about the child. This evidence must be able to support the relevant health professional to give advice as to the child's needs, the provision required to meet those needs and the desired outcomes. Local areas should ensure that the arrangements they have agreed ensures that a request for advice can be directed to the right service or professional, being here the service or professional which is best placed to provide 'medical advice' on the child or young person.

Where it seems that a new assessment is needed, because of an apparent change in the nature of a child or young person's needs, or because they have not had any assessment, then arrangements should allow for a referral to be made to the appropriate service. It is essential that any new assessment is completed in time for the required advice to be provided within the statutory timeframe of six weeks. This is why in most cases it will be preferable to provide advice based on existing evidence, with new assessments completed as part of the EHC needs assessment process only where existing evidence is inadequate to provide appropriate advice on needs, provision and outcomes.

What about new health assessments?

It is important to have an oversight mechanism to ensure unrecognised needs are not overlooked where there is no existing health service involvement. There must always be, as part of the agreed local arrangements for SEND, a mechanism for a child or young person, who is not known to professionals (for example, community paediatricians) to be referred appropriately for the health assessment they may need.

In some areas, a DMO/ DCO or community paediatrician reviews the existing information and calls the parents to ask them about any concerns they may have about their child's health. Where it is agreed that a new medical assessment is required this should be organised as soon as possible and there should be a mechanism in place to ensure that this can happen. DMOs/paediatricians could adapt practice, from looked after children health assessments, of reserving a number of appointment slots for potential assessments required so as to contribute advice to EHC needs assessments.

Where a referral for a diagnostic pathway is made following this assessment clear information should be submitted in the health advice that specifies when the child or young person will be seen, by who, and by when the EHC Plan will be updated to reflect this.

For some health services, there are likely to be significant challenges in completing an assessment within 6 weeks because of waiting lists or the length of the assessment pathway. However it is essential that the relevant health professional is in a position to give the required advice as part of the EHC needs assessment process within six weeks.

Where advice being sought is not in relation to the primary condition or need it may not be necessary to provide it to comply with regulation 6(1)(c). So for instance if CAMHS advice is being sought for a child with cerebral palsy, where there is another 'health professional' who can give the necessary advice required by regulation 6, on needs, provision and outcomes relating to the child's cerebral palsy, then this would be sufficient to comply with regulation 6(1)(c), which refers to 'medical advice and information from a health care professional identified by the responsible commissioning body' (emphasis added).[3] It will only be in cases where the child or young person has a primary or exclusive mental health need that the advice must come from CAMHS within the six weeks to comply with regulation 6(1)(c).

There will be instances where health advice is being sought in relation to a child who is thought to have a condition that has not been formally diagnosed and where the diagnostic pathway exceeds six weeks. In these instances it is important to keep in mind that the provision of health advice does not require any formal

3 A local authority could however make a separate and discrete request for CAMHS advice, because it is also entitled to seek advice from 'any other person the local authority thinks is appropriate', see regulation 6(1)(f). A local authority must also seek advice from 'advice and information from any person the child's parent or young person reasonably requests that the local authority seek advice from', see regulation 6(1)(h). This means a parent or young person could effectively require the local authority to seek advice from CAMHS unless the request to do so is 'unreasonable', which is a high legal hurdle.

diagnosis. What is required is informed advice as to the child's needs, the provision required to meet those needs and the desired outcomes. What will be important is that the chosen health professional to give advice for the purposes of regulation 6(1)(c) has sufficient information to give reasonable and informed advice. This should not require expedited completion of a diagnostic process in a way which may be clinically inappropriate.

In summary, there are several likely scenarios following a request for health advice:

1. the child is not known to services, and has not received an assessment;

The arrangements must therefore allow for immediate action to assess this child so that 'medical advice' can be provided within the required timeframe of six weeks. Medical advice must capture health needs, and actions necessary to meet those needs, and ideally include results of an appropriate assessment / triage.

2. the child has previously been assessed, and is in receipt of health care, or receiving alternative services (educational or social care);

3. the child has previously been assessed, and is not in receipt of health care, or receiving alternative services (educational or social care);

Again, as part of the assessment process, there may need to be consideration of the requirement for a new health assessment. In general however, health advice can be based on existing professional opinions or care plans. However it is important that any evidence relied on covers the matters required by the regulations, being 'the needs of the child or young person, and what provision may be required to meet such needs and the outcomes that are intended to be achieved by the child or young person receiving that provision.'

4. the child has been triaged or otherwise given an onward referral, and is awaiting that assessment to commence.

In these cases, there will be initial health advice which can be provided, but in the absence of, for example, a full CAMHS assessment, the plan must include a marker that a referral has been made, and the plan updated when the results are known. Moreover as set out above the health professional must be in a position to give advice on the matters specified in regulation 6 (needs, provision and outcomes) within six weeks.

In all of these scenarios it is imperative that health professionals providing advice are doing so having seen Section A of the child or young person's EHC plan so that the health advice on needs, provision and outcomes can take into account the child's aspirations. Obviously, the family will also be able to advise on existing health services from which the child or young person is receiving care.

What happens when a plan is appealed?

The First Tier Special Educational Needs and Disability Tribunal

The Tribunal is a legal body and part of its role is to hear appeals made by parents or young people over 16 against decisions taken by the local authority in relation to EHC plans.

The Tribunal makes decisions by applying the law to the decisions taken by local authorities based on the evidence submitted by the local authority and parents. In effect, the Tribunal 'stands in the local authority's shoes' and reaches decisions as to needs and provision for itself. It will also take the Code of Practice into account, but it does ***not*** consider local processes, policies or thresholds.

To date parent and young people have only been able to appeal to the Tribunal about the special educational needs and provision sections and the placement section of EHC plans, except in a limited number of areas where expanded powers have been piloted between 2016-18.

From 3 April 2018 the DfE, building on this pilot, have instituted an England wide trial to extend the powers of the Tribunal to make non-binding recommendations about health and social care aspects of Education, Health and Care (EHC) plans. There is detailed guidance setting out how these new powers are intended to operate.

Health and LA social care commissioners must respond to any request for information and evidence from the Tribunal within the timeframe specified. If required, health and LA social care commissioners must send a witness from the health and/or social care bodies to attend the hearing to give oral evidence. See the Tribunal Procedure Rules for more detail.

The Tribunal will not make decisions relating to conflicting clinical diagnosis from medical professionals concerning health needs or health provision.

Following the health recommendations, the responsible health commissioning body must respond in writing, within 5 weeks from the date of the recommendation (or the date specified by the Tribunal, if different), to the parent or young person, and for health commissioners to the LA, to state what steps they have decided to take or to give reasons for any decision not to follow the recommendation(s).

Although any recommendations made by the Tribunal on health and social care elements of an EHC plan are non-binding and there is no requirement to follow them, in accordance with the guidance the LA and/or responsible health commissioning body would usually be expected to follow them. They are recommendations made by a specialist Tribunal and should not be ignored or rejected without careful consideration. Any reasons for not following them must be explained in sufficient detail and set out in writing in the response to recommendation letters. If recommendations are not followed families are advised in the guidance about the potential to challenge this via a complaint to the Ombudsman or an application for judicial review in the High Court.

About the Council for Disabled Children

The Council for Disabled Children (CDC) is the umbrella body for the disabled children's sector in England, with links to the other UK nations. CDC works to influence national policy that impacts upon disabled children and children with Special Educational Needs (SEN) and their families. The CDC membership is made up of a variety of professional, voluntary and statutory organisations, including disabled young people and parent representatives. CDC's broad based membership and extensive networks of contacts provides a unique overview of current issues. It also enables us to promote collaborative and partnership working among organisations.

CDC hosts the following networks and projects:

- IASS Network
- Independent Support
- Making Ourselves Heard
- Special Educational Consortium
- Transition Information Network

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