

Wyoming Administrative Rules

Health, Department of

Developmental Disabilities - Infants and Toddlers

Chapter 8: Services for Infants and Toddlers with Developmental Delays

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CHAPTER 8

Services for Infants and Toddlers with Developmental Delays

Section 1. Authority.

(a) These rules are promulgated by the Department of Health, Behavioral Health Division, pursuant to Wyoming Statutes 9-2-102, 21-2-706, and 35-1-620.

(b) These rules govern the operation of all early intervention programs and services provided to infants and toddlers with developmental delays ages birth through age two (2), pursuant to Wyoming law, by a Regional Part C Program Provider and by other public agencies within the State of Wyoming.

Section 2. Purpose and Applicability.

(a) The Department adopts this Chapter to govern:

(i) The eligibility of infants and toddlers for the Part C Early Intervention Program, and

(ii) The implementation and maintenance of a region-wide, comprehensive, coordinated, multidisciplinary, interagency system to provide Part C early intervention services for families and their infant or toddler who has been identified as having developmental delays.

(b) This program shall be governed consistent with 34 C.F.R. Part 303.

(c) The Department may issue manuals, bulletins, or both, to interpret the provision of this Chapter. Such manuals and bulletins shall be consistent with and reflect the policies contained in this Chapter. The provisions contained in manuals or bulletins shall be subordinate to the provisions of this Chapter.

(d) Incorporation by reference.

(i) For any code, standard, rule, or regulation incorporated by reference in these rules;

(A) The Department has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(B) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (ii) of this section; and

(C) The incorporated code, standard, rule, or regulation is maintained at the Behavioral Health Division and is available for public inspection. Copies are available from the Division at the cost of the person requesting the copy.

(ii) Each code, standard, rule, or regulation incorporated by reference is further identified as follows:

(A) 34 C.F.R. Part 303, which is referenced throughout these rules and serves as the United States Department of Education's rules governing early intervention programs for infants and toddlers with disabilities and. Copies are available at the Division's website: <http://www.health.wyo.gov/behavioralhealth/dd/earlyedu/>.

(B) *Rules, Office of Administrative Hearings, General Agency, Board or Commission Rules, Chapter 2 (2017)*, which are referred to in Section 9 as the "OAH Contested Case Rules" and are publically available at: <http://rules.wyo.gov>.

(e) The Division may recover funds from an Early Intervention Service Provider for services to any infant or toddler erroneously classified and reported to the Division as an infant or toddler with a developmental delay.

Section 3. Definitions.

(a) Except as otherwise specified, the terminology used in this Chapter is the standard terminology and has the meaning used in the IDEA and 34 C.F.R. Part 303. Any ambiguity in these rules should be resolved in favor of providing opportunities for children under three years of age who are at risk of having substantial developmental delay if they do not receive early intervention services.

(b) For the purpose of these rules, the following definitions shall apply:

(i) "Developmental Delay" means children who are experiencing at least a 25% developmental delay or a negative of at least 1.5 standard deviation utilizing appropriate diagnostic instruments and procedures in one or more of the following areas: (1) cognitive development; (2) physical development, including vision and hearing; (3) communication development; (4) social or emotional development; (5) adaptive development.

(ii) "Division" means the Behavioral Health Division of the Wyoming Department of Health.

(iii) "Early Intervention Service Provider" or "Provider" means an individual provider who is either employed or contracted by a Regional Part C Program Provider to provide early intervention services as defined in the Individual Family Service Plan (IFSP). The early intervention service provider must either:

(A) Be a licensed professional in the State of Wyoming; or

(B) Meet the personnel standards established in 34 C.F.R. § 303.119, and have education or experience in early childhood development.

(iv) The “Individuals with Disabilities Education Act” or “IDEA” means the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 through 1482.

(v) "Informed Clinical Opinion" means determinations made by licensed professionals using qualitative and quantitative information regarding the difficulty to measure status of a child's development and the potential need for early intervention.

(vi) “Regional Part C Program Provider” means the entity or agency located in a specific geographical area of the state that provides early intervention services to infants and toddlers with developmental delays through a contract with the Division. The Regional Part C Program Provider must provide early intervention services within their jurisdiction consistent with Part C of the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. Part 303, these rules, and Division policy.

Section 4. Identification, Evaluation, and Eligibility Determinations.

(a) Each infant or toddler referred to an Early Intervention Service Provider must receive an evaluation of eligibility pursuant to this section within forty-five (45) days of the Provider’s receipt of the initial referral.

(b) An infant or toddler may be deemed eligible for services under this Chapter if he/she is less than three (3) years old, a resident of the state of Wyoming and:

(i) Has a documented developmental delay; or

(ii) Has a diagnosed physical or mental condition that has a high probability resulting in a developmental delay.

(c) An infant or toddler may receive services for up to six (6) months based solely on informed clinical opinion provided that:

(i) The infant or toddler must be deemed eligible for services under subsection (a) within six (6) months after the beginning of services under this provision; and

(ii) The infant or toddler must qualify for services under subsection (a) to continue receiving Early Intervention Services.

Section 5. Assessment for Service Provision.

(a) Each infant or toddler deemed eligible for services pursuant to Section 4, must also receive an initial assessment within forty-five (45) days of the Provider's receipt of the initial referral. The initial assessment must consist of:

(i) A family assessment;

(A) The family assessment must be:

(I) Family-directed;

(II) Designed to determine the resources, priorities, and concerns of the family, and the identification of the supports, and services necessary to enhance the family's capacity to meet the developmental needs of the child;

(III) Voluntary on the part of the family;

(IV) Conducted by qualified personnel who are trained to utilize appropriate methods and procedures;

(V) Based on information provided by the family through a personal interview; and

(VI) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(ii) A review of the pertinent records related to the child's current health status and medical history; and

(iii) A review of the evaluation conducted pursuant to section 4.

(b) The Early Intervention Service Provider shall use the results of the initial assessment to develop an Individual Family Service Plan in accordance with this Chapter and 34 C.F.R. Part 303 to ensure that comprehensive services are provided which address the needs of the infant or toddler and his/her family.

Section 6. Individual Family Service Plan (IFSP).

(a) Each infant or toddler's IFSP must:

(i) Identify the natural supports of the family and incorporate those supports into specific strategies contained in the IFSP;

- (ii) Include child and family outcomes that are measurable, and functional,
- (iii) Address family concerns and the developmental delays of the child;
- (iv) Include the specific services that will be offered to the family and child, when services will begin, and frequency of services; and
- (v) Be signed by the parent or primary caregiver and all IFSP team members.

(b) The Early Intervention Service Provider shall review the IFSP at least every six (6) months and document the infant or toddler's progress on the child and family's outcomes. The Provider must develop a new IFSP annually.

Section 7. Early Intervention Service Provider Standards.

(a) All persons providing services on behalf of a Regional Part C Program Provider must meet applicable licensure requirements under Title 33 of the Wyoming Statutes and applicable agency, board, or commission rules.

(b) Service coordinators must be knowledgeable of and support best practices for providing early intervention services.

(c) Early intervention services may be provided by paraprofessionals or assistants who are appropriately trained and supervised according to State laws and regulations.

Section 8. Natural Environment.

(a) Regional Part C Program Providers must ensure early intervention services are provided in natural environments.

(i) Natural environments include settings where typically developing infants and toddlers participate, including their home, child care settings, and other community or public settings;

(ii) The infant or toddler's IFSP must include a statement of the natural environment in which early intervention services will be provided.

(iii) Services may only be provided outside of the natural environment, such as a clinician's office, if:

(A) The parent(s) and the Individual Family Service Plan team determine that early intervention outcomes cannot be achieved satisfactorily in a natural environment; and

(B) For each early intervention service that cannot be delivered in a natural environment, the IFSP contains written justification, and a plan and timeline of moving services back to a natural environment.

Section 9. Complaint Procedures.

(a) Complaints may be submitted by a parent, Regional Part C Program Providers, early intervention provider, or other entity that provides early intervention or health care to the infant or toddler or family. All complaints must be in writing and mailed to the attention of the Part C Coordinator, Wyoming Department of Health, 6101 Yellowstone Rd., Suite 220, Cheyenne, WY 82009. The Division shall, within 60 days of receiving the written complaint:

(i) Send written acknowledgement to complainant of receipt of complaint;

(ii) Carry out an independent investigation including, if necessary, an on-site visit;

(iii) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegation of the complaint;

(iv) Provide the provider with an opportunity to respond to the complaint, and provide a proposal to resolve the complaint;

(v) Review all relevant information and make an independent determination as to whether the provider is violating a requirement of these rules, 34 C.F.R. Part 303, or the IDEA; and

(vi) Issue a written decision to the complainant that addresses each allegation in the complaint, and contains:

(A) Findings of fact and conclusions;

(B) The Division's final decision, and

(C) Any agreed upon remediation efforts.

(b) During a complaint investigation the Division shall provide an opportunity for the complainant to voluntarily engage in mediation with the Regional Part C Program Provider they have a complaint about.

(c) Complaint Resolution. In resolving a complaint in which a failure to provide appropriate services has been found, the Division shall require the Early Intervention Service Provider to:

(i) Address any failure to provide appropriate services,

(ii) Take corrective action appropriate to address the needs of the child;
and

(iii) Implement appropriate future provisions for services to all children who are identified as having developmental delays.

(d) Due process hearing procedures. Following the complaint resolution process, a parent or Early Intervention Services Provider may request an administrative hearing to contest any issue regarding the identification, evaluation, or placement of an infant or toddler, or the provision of early intervention services to the infant or toddler or family. Notice, opportunity for hearing, and hearing procedures shall be in accordance with the procedural safeguards established in 34 C.F.R. Part 303, Subpart E.

(e) Hearings under this section shall be governed by the OAH Contested Case Rules, which have been incorporated by reference under these rules.

(f) Within ten (10) business days of receiving a request for an Administrative Hearing, the Division will notify the parent and the Regional Part C Program Provider via certified mail that the request has been received along with information regarding the process and timelines for Administrative Hearings.

(g) Child's status during proceedings. During the pendency of any administrative or judicial proceeding regarding a due process hearing, unless the parents of the child agree otherwise, the child that is the subject of the dispute must remain in his or her current services.

Section 10. Payment for Services.

(a) In determining contract amounts pertaining to state general funds, regional Part C Program Providers shall calculate the number of children age birth through two (2) years of age who have a completed and signed IFSP on December 1st or the first business day thereafter. These numbers shall be used to calculate payments to service providers for the subsequent fiscal year.

(b) In determining contract amounts pertaining to federal funding, the Division shall multiply the total number of children age birth through two (2) receiving Part C Early Intervention Services on December 1st by the specified federal per child amount.

(c) Part C funds may only be used for early intervention services that an eligible infant or toddler needs but is not currently entitled to under any other federal, State, local, or private source. All Part C funds disseminated by formula are specified as payer of last resort. The regional Part C Program Provider is required to identify all available resources in their community and to use such resources prior to the use of Part C funds to develop or pay for direct services.

(i) The Regional Part C Program Provider may bill public and private insurance to pay for early intervention services if the parent provides informed consent. A parent's refusal to provide consent to access insurance shall not result in the denial of early intervention services to a child and their family. The consent to bill insurance must clearly state the parents:

(A) Agree to the Early Intervention Service Program's filing of an insurance claim to obtain reimbursement for specifically identified services;

(B) Acknowledge the information and records identified in the request for consent will be released to specifically identified persons or entities in connection with submitting the claim for reimbursement;

(C) Understand the parent is not required to consent to the filing of insurance claims and may refuse to do so at any time in the future; and

(D) Recognize that any refusal to permit the early intervention program to access their private insurance does not relieve the early intervention program of its obligation to provide all required services at no cost.

(ii) Families must be informed by the regional Part C Program Provider of possible consequences that may occur in accessing their private insurance, including but not limited to:

(A) A decrease in available lifetime benefit coverage or decrease in any other public benefit;

(B) Increase in premiums;

(C) Cancellation or non-renewal of coverage; and

(D) Decreased or inability to obtain alternate acceptable coverage.

(d) If a family's public or private insurance is accessed, the Regional Part C Program Provider may use Part C funding to pay for deductible and co-pays. Proceeds from public or private insurance are not treated as program income.

(e) The regional Part C Program Provider must provide the following without charge to the parent/caregiver:

(i) Implementing the child find requirements in 34 C.F.R. § 303.321;

(ii) Evaluation and assessment, as included in 34 C.F.R. § 303.321, and including the functions related to evaluation and assessment in § 303.12;

(iii) Service coordination, as included in 34 C.F.R. §§ 303.34 and 303.344(g); and

(iv) Administrative and coordinative activities related to the development, review, and evaluation of IFSPs in 34 C.F.R. §§ 303.340 through 303.346.