

## DEPARTMENT OF EARLY CHILDHOOD

### Early Intervention Colorado Program

## EARLY INTERVENTION RULES AND REGULATIONS

### 8 CCR 1405-1

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 5.100 AUTHORITY

These rules and regulations are adopted pursuant to the rulemaking authority provided in section 26.5-1-105(1)(a), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, section 24-4-101 *et seq.* (APA), C.R.S., and the Anna Jo Garcia Haynes Early Childhood Act, sections 26.5-1-101 *et seq.* (Early Childhood Act), C.R.S.

#### 5.101 SCOPE AND PURPOSE

These rules and regulations shall govern the processes and procedures to administer and/or obtain Early Intervention services in Colorado.

#### 5.102 APPLICABILITY

The provisions of these rules and regulations shall be applicable to the Early Intervention Colorado Program and all individuals involved with service delivery of the Early Intervention Colorado Program.

#### 5.103 EARLY INTERVENTION PROGRAM DEFINITIONS

This rule is promulgated pursuant to section 26.5-3-402, C.R.S.

- A. Abuse or child abuse and/or neglect as used in these rules and regulations has the same meaning as defined in section 19-1-103(1)(a), C.R.S.
- B. Access to records means the right for a parent or guardian to have the opportunity to inspect, review and obtain copies of records related to evaluation, assessment, eligibility determination, development and implementation of an Individualized Family Service Plan, individual complaints pertaining to the child, and any other relevant information regarding their child and family, unless restricted under authority of applicable state law governing such matters of guardianship, separation, or divorce.
- C. Administrative unit means, as defined in section 26.5-3-402(1), C.R.S., a school district, a board of cooperative services, a charter school network, a charter school collaborative, or the State Charter School Institute that is providing educational services to exceptional children and that is responsible for the local administration of the education of exceptional children pursuant to article 20 of title 22.
- D. Assessment means the ongoing procedures used throughout the period of a child's eligibility for early intervention services to identify:
  - 1. The unique strengths and needs of the child and the early intervention services appropriate to meet those needs; and

- 2. The resources, priorities, and concerns of a parent or guardian and the supports needed to enhance the capacity of a parent or guardian or other caregiver to meet the developmental needs of the eligible child within everyday routines, activities, and places.
- E. Atypical Development means development or behaviors that fall within the expected range of development in one or more of the five (5) domains referenced in Rule 5.111(G)(6)(c), and emerge in a way that is significantly different from same age peers. They are not attributable to culture or personality and are different in quality, form, and function. This can be determined through informed opinion of delay, even when evaluation tools do not establish a twenty-five percent (25%) delay in two (2) or more domains or a thirty-three percent (33%) delay in one (1) domain.
- F. Certified Early Intervention Service Broker means as defined in section 26.5-3-402(3), C.R.S.
- G. Child Abuse Prevention and Treatment Act (CAPTA) means the CAPTA state grant program at 42 U.S.C. Section 5106A that provides states with flexible funds to improve their child protective service systems. Last reauthorized by the CAPTA Reauthorization Act of 2010, the program requires states to provide assurances in their five (5) year child and family services plan that the state is operating a statewide child abuse and neglect program. This program includes policies and procedures that address the needs of drug-exposed infants and provisions for referral of children under age three (3) who are involved in a substantiated case of abuse and neglect to early intervention services under Part C.
- H. Child Find means as defined in section 26.5-3-402(4)(a), C.R.S. Part C child find, which is the program component of IDEA that requires states to find, identify, locate, evaluate, and serve children with disabilities, from birth through two years of age.
- I. Child Find program means the multidisciplinary team within an administrative unit that conducts screening and/or evaluation activities for young children.
- J. Children experiencing homelessness means children who lack a fixed, regular, and adequate nighttime residence, in accordance with the McKinney-Vento Homeless Assistance Act, as defined in 42 U.S.C. Section 11434a(2)(A) and Rule 5.104(A)(4).
- K. Coaching means a relationship-based strategy used by trained personnel with a family member, other caregiver, or another provider to support what is already working to help a child develop and to increase their knowledge and use of new ideas to achieve child or family outcomes.
- L. Consent means that the parent or guardian has been fully informed of all information relevant to the activity for which consent is sought in the parent or guardian's native language and the parent or guardian understands and agrees in writing to the carrying out of the activity.
- M. Co-payment means a specified dollar amount that an insured person must pay for covered health care services. The insured person pays this amount to the provider at the time of service.
- N. Criteria means the standards on which a judgment or decision may be based.
- O. Days means calendar days unless otherwise indicated.
- P. Deductible means the amount that must be paid out-of-pocket before a health insurance company pays its share.

- Q. Developmental delay when referenced in these regulations, means a significant delay, defined as the equivalence of a twenty-five percent (25%) delay in two (2) or more domains, or a thirty-three percent (33%) or greater delay in one (1) or more of the five (5) domains of development as defined in Rule 5.111(G)(6)(c), when compared with chronological age; or, presence of atypical development, as defined in Rule 5.103.
- R. Developmental disability means as defined in section 25.5-10-202(26)(a), C.R.S.
- S. Due process procedures means formal procedures used to resolve a dispute involving an individual child or parent or guardian related to any matter described in 34 C.F.R. Section 303.435-438, which are incorporated by reference in Rule 5.104(A)(5).
- T. Duration means the specific and measurable period of time a service is provided, specifying the start and end dates.
- U. Early Intervention early start program means a program separate from early intervention services provided in accordance with Part C that, if the department determines appropriations are adequate, may provide services to children who meet the definition of risk factor and do not meet eligibility criteria as defined in Rule 5.111(C).
- V. Early Head Start means a program funded under the Head Start Act, pursuant to 42 U.S.C. Section 9801, *et. seq.*, and carried out by a local agency or grantee that provides ongoing comprehensive child development services for pregnant women, infants, toddlers, and their families.
- W. Early Intervention Provider Database means the state database located at [www.eicolorado.org](http://www.eicolorado.org) that contains information, and Certified Early Intervention Service Broker affiliation, about all early intervention providers, including personnel qualifications.
- X. Established condition for an infant or toddler means a diagnosed physical or mental condition that has a high probability of resulting in significant delays in development and is listed in the Established Conditions Database.
- Y. Established Conditions Database means the state database located at [www.eicolorado.org](http://www.eicolorado.org) that includes the state-approved list of established conditions.
- Z. Evaluation for early intervention services means the procedures used to determine initial and continuing eligibility. Evaluation includes administration of an evaluation tool(s), observation of the child, parent or guardian report, and a review of pertinent medical records.
- AA. Everyday routines, activities and places means routines that are customarily part of a family's typical day including, but not limited to: meal time; bath time; shopping; play time; outdoor play; activities a family does with its infant or toddler on a regular basis; and, places where the family participates on a regular basis, such as, but not limited to: home, place of worship, store, and child care.
- BB. Evidence-based practices mean practices that integrate research that has demonstrated efficacy and with consideration of the situation, goals, and values of the child, family, and professionals.
- CC. Evidence-informed strategies mean methods that use nationally-recognized recommended practices to inform the effective delivery of early intervention services.
- DD. Family assessment means a process using a department-approved assessment tool and parent or guardian interview prior to the development of an initial Individualized Family Service Plan.

- EE. Family Educational Rights and Privacy Act (FERPA) means the federal law that protects the privacy of students' education records under 20 U.S.C. Section 1232g and 34 C.F.R. Part 99, which is incorporated by reference in Rule 5.104(A)(5). FERPA requirements apply to educational agencies and institutions that receive funds under any program administered by the United States Department of Education.
- FF. Frequency means how often an early intervention service is provided.
- GG. Guardian means a person appointed by the court or named in a will and charged with limited, temporary, or full guardian's power and duties.
- HH. Individuals with Disabilities Education Act (IDEA) means as defined in section 26.5-3-402(13), C.R.S.
- II. Individualized Family Service Plan (IFSP) means a written plan for providing early intervention services to eligible children and their families, in accordance with 34 C.F.R. Section 303.340, *et seq.*, which is incorporated by reference in Rule 5.104(A)(5).
- JJ. Informed opinion of delay means the knowledgeable opinion of the evaluation team who use professional expertise and experience to determine the presence of a significant delay in one or more of the five (5) domains of development referenced in Rule 5.111(G)(6)(c). Informed opinion of delay may be used as an independent basis to establish a child's eligibility and may be especially useful in situations where a clear developmental level cannot be gained through the typical evaluation process.
- KK. Initial assessment means the assessment of the child and family conducted before a child's first IFSP meeting.
- LL. Intensity means the length of time that a service is provided each session.
- MM. Method means how an early intervention service is provided. The type of method may be one of the following:
1. Individual service provided to a child and family;
  2. Co-visit during which services are provided by two professionals during a session;
  3. Teaming through regularly scheduled meetings as the formal time for provider-to-provider information sharing and support to develop strategies designed to build the capacity of parents or guardians and other caregivers to meet child and family outcomes;
  4. Supervision by a qualified provider who oversees the work of a student or paraprofessional through observation and guidance, including direction and evaluation of the activities performed by the supervisee; or
  5. Telehealth.
- NN. Model means one of the following constructs in which a child and family's early intervention services shall be provided:
1. Primary service provider;
  2. Multidisciplinary service providers;
  3. Single provider; or

4. Other model approved by the state.
- OO. Multidisciplinary evaluation team means a group that is made up of two (2) or more qualified personnel who have different training and experience.
- PP. Multidisciplinary Service Providers Model means a model in which two (2) or more qualified providers who have different training and experience provide ongoing services as identified in an IFSP. In this model the providers work independently of each other with minimal interaction with other team members, and perform interventions separately from others while working on discipline-specific goals.
- QQ. Native language means:
1. When used with respect to an individual who has limited English proficiency:
    - a. The language normally used by that individual, or, in the case of a child, the language normally used by the parents or guardians of the child, except as provided below in subsection 2; and
    - b. For evaluations and assessments conducted pursuant to Rules 5.111(G)-(H), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment.
  2. When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language:
    - a. The mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication.
- RR. Natural environments means the day-to-day routines, activities, and places that promote learning opportunities for an individual child and family, in settings such as the family's home and community that are natural or typical for the child's peer who has no disabilities.
- SS. Neglect means an act or failure to act by a person who is responsible for another's well-being so that inadequate food, clothing, shelter, psychological care, physical care, medical care, or supervision is provided. This may include, but is not limited to, denial of meals, medication, habilitation, or other treatment necessities.
- TT. Parent within early intervention services, means:
1. The biological or adoptive parent;
  2. A guardian in a parental relation to the child authorized to act as the child's parent or authorized to make early intervention, educational, health or developmental decisions, but not the State if the child is under the jurisdiction of a court;
  3. A foster parent;
  4. An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives, or an individual who is legally responsible for the child's welfare; or
  5. A surrogate parent who has been appointed in accordance with 34 CFR Section 303.422, incorporated by reference in Rule 5.104(A)(5).

- UU. Part C means Part C of the IDEA that addresses infants and toddlers, birth through two (2) years of age, with developmental delays or disabilities, or physical or mental conditions with a high probability of resulting in significant delays in development, in accordance with 34 C.F.R. Part 303, which is incorporated by reference in Rule 5.104(A)(5).
- VV. Participating agency means, as used in early intervention services, any individual, agency, program, or entity that collects, maintains, or uses personally identifiable information to implement the requirements and regulations of Part C with respect to a particular child.
1. This includes:
    - a. The Colorado Department of Early Childhood;
    - b. The Colorado Department of Human Services;
    - c. Certified Early Intervention Service Brokers; and
    - d. Any individual or entity that provides any Part C services, including service coordination, evaluations and assessments, and other Part C services.
  2. This does not include:
    - a. Primary referral sources; or
    - b. Public agencies, such as the Medicaid program, private entities, or private health insurance carriers, that act solely as funding sources for early intervention services.
- WW. Personally Identifiable Information (PII) as used in early intervention services means, but is not limited to:
1. The infant or toddler's name;
  2. The name of the infant or toddler's parent or guardian or other family member;
  3. The address of the infant or toddler, or their family;
  4. A personal identifier, such as a Social Security Number or other biometric record;
  5. Other indirect identifiers such as the child's date of birth, place of birth, or mother's maiden name;
  6. Other information that, alone or in combination, may be used to identify a specific infant or toddler; or
  7. Information about a child whose identity is believed to be known by the requester of that information.
- XX. Physician means a person licensed to practice medicine under section 12-240-101, C.R.S., *et seq.*, the Colorado Medical Practice Act.
- YY. Post-referral screening means the early intervention activities that take place after a child is referred to the Early Intervention Program to identify infants and toddlers who need more intensive evaluation and assessment to determine eligibility due to a developmental delay.

- ZZ. Primary Service Provider Model means a model of service delivery that utilizes one main qualified provider from any discipline that is the best fit to address the child and family outcomes as identified in an IFSP. Other team members support the primary service provider through teaming and may provide co-visits under this model.
- AAA. Prior written notice for early intervention services means written notice that is given to parents or guardians a reasonable time before the Early Intervention Colorado Program or a Certified Early Intervention Service Broker proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate early intervention services to the child and family.
- BBB. Qualified personnel means personnel who have met the state-approved or recognized certification, licensing, registration, or other comparable requirements, to provide evaluations, assessments, or early intervention services.
- CCC. Referral for early intervention services means a verbal or written notification from a referral source to the Early Intervention Colorado Program referral line or a Certified Early Intervention Service Broker for the provision of information regarding an infant or toddler, birth through two (2) years of age, to identify those in need of early intervention services.
- DDD. Risk factor means if sufficient appropriations are available, a 25% delay in one domain, or other factors determined by the department to have research that supports the potential for impact on development at a later age such as, but not limited to, a substantiated case of abuse or neglect, neonatal abstinence syndrome (NAS), fetal alcohol spectrum disorders (FASD), lead poisoning, global developmental delays, and perinatal mood and anxiety disorders.
- EEE. Service coordination means the activities carried out by a service coordinator to assist and enable a child eligible for early intervention services, and the child's family, to receive the rights, procedural safeguards, and services that are authorized to be provided under Rule 5.104, *et. seq.*
- FFF. Single Provider Model means a model of early intervention service provision in which one provider is utilized to meet the child and family's needs as identified in an IFSP.
- GGG. State complaint procedures means actions taken by the Department to resolve a complaint lodged by an individual or organization regarding any agency or local service provider participating in the delivery of early intervention services that is violating a state or federal requirement.
- HHH. Surrogate parent means an individual appointed by the local Early Intervention Services Program to act in the place of a parent in safeguarding an infant or toddler's rights in the decision-making process regarding screening, evaluation, assessment, development of the IFSP, delivery of early intervention services and transition planning.
- III. Targeted case management services means those case management services which are provided as a Medicaid benefit for a specific target group of Medicaid recipients who have a developmental disability and meet the program eligibility criteria identified in the Medical Assistance rules at 10 CCR 2505-10 Section 8.761.2 (May 30, 2020) published by the Colorado Department of Health Care Policy and Financing. These Department of Health Care Policy and Financing Rules are herein incorporated by reference and do not include any later amendments or editions of these rules. These rules are available for public inspection at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or at [www.sos.state.co.us](http://www.sos.state.co.us). Copies of these rules are available for reasonable cost during normal business hours at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or the Colorado Department of Health Care Policy and Financing, 1570 Grant St., Denver, CO 80203.

- JJJ. Telehealth means a method of service provision that utilizes secure interactive videoconferencing to deliver early intervention services.
- KKK. Waiver Services means those optional Medicaid services defined in the current federally-approved Home and Community Based Services (HCBS) waiver document and do not include Medicaid State Plan services.

#### **5.104 EARLY INTERVENTION PROGRAM**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

The Early Intervention Program shall provide services for an infant or toddler, birth through two (2) years of age, with a developmental delay or disability, and their family through a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.

- A. The Early Intervention Program shall provide services consistent with the following requirements:
1. Sections 26.5-3-401 through 26.5-3-410 of the Colorado Revised Statutes (C.R.S.);
  2. Sections 10-16-102(46) and 10-16-104(1.3), C.R.S.;
  3. Section 22-20-103, C.R.S.;
  4. The following portions of the United States Code (U.S.C.), as amended:
    - a. 20 U.S.C. Section 1232g, (the Family Education Rights and Privacy Act (FERPA);
    - b. The Individuals with Disabilities Education Act of 2004 (IDEA);
    - c. 42 U.S.C. Section 1320, (the Public Health Service Act);
    - d. 42 U.S.C. Section 9801 (the Head Start Act);
    - e. 42 U.S.C. Section 11431 (McKinney-Vento Homeless Assistance Act); and
    - f. The General Education Provisions Act (GEPA) at 20 U.S.C. Sections 1221 through 1234 applies to applicants for new grant awards under the federal Department of Education.
  5. 34 C.F.R. Parts 99 and 303 (2022), which are incorporated herein by reference; no later amendments or editions are incorporated. These regulations are available for public inspection at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or at [www.ecfr.gov](http://www.ecfr.gov). Copies of these regulations are available for reasonable cost during normal business hours at the U.S. Department of Education, Office of Special Education and Rehabilitation Services, 400 Maryland Avenue SW, Washington, D.C. 20202; and
  6. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rule, located at 45 C.F.R. Parts 160, 162, and 164 (2019), herein incorporated by reference; no later amendments or editions are incorporated by reference. These regulations are available for public inspection at the Colorado Department of Early Childhood, Office of Program Delivery, 710 S. Ash St., Denver, CO 80246 or at [www.ecfr.gov](http://www.ecfr.gov). Copies of these regulations are available for reasonable cost during normal business hours at the U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Washington, D.C. 20201.



- B. The Early Intervention Program shall design services to meet the developmental needs of an eligible infant or toddler and the needs of their family related to functional outcomes to enhance the child's development in the domains of adaptive development, cognitive development, communication development, physical development (including vision and hearing), and social and emotional development.
- C. Based on the unique needs of each child, early intervention services shall be delivered through a combination of individualized intervention methods and strategies designed to:
  - 1. Enhance the capacity of a parent or guardian or other caregiver to support a child's well-being, development, and learning;
  - 2. Support full participation of a child in their community; and
  - 3. Meet a child's developmental needs within the context of the concerns and priorities of their family.
- D. All available resources that pay for early intervention services shall be identified and coordinated, including, but not limited to, federal, state, local, and private sources.
- E. A system for the resolution of intra- and inter-agency disputes shall be used.
- F. Formal interagency operating agreements, as needed, shall be developed to facilitate the development and implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services.
- G. A statewide system for compiling data on the early intervention services shall be used to comply with state and federal reporting requirements.

#### **5.105 SYSTEM COORDINATION**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. Local Interagency Coordinating Council
  - 1. Each Certified Early Intervention Service Broker shall have a Local Interagency Coordinating Council that meets at least quarterly to assure that federal, state, local, and private resources are well-coordinated in local communities to assist families to meet the needs of their infants or toddlers with developmental delays or disabilities.
  - 2. Membership of a Local Interagency Coordinating Council shall include, at a minimum:
    - a. At least one (1) member who is a parent or guardian with a child twelve (12) years of age or younger and at least one (1) member who is a parent or guardian of a child six (6) years of age or younger, both of whom have knowledge of, or experience with, early intervention services;
    - b. A representative of an administrative unit;
    - c. A representative of a county department of public health;
    - d. A representative of a county department of social/human services;
    - e. Members who are public or private providers of early intervention services; and,

- f. Other members of the community at large who are interested in early intervention services or involved in the provision of, or payment for, early intervention services.
  - 3. The purpose of a Local Interagency Coordinating Council is to advise a Certified Early Intervention Service Broker regarding:
    - a. The planning, delivery, and evaluation of early intervention services, including methods to identify and correct gaps in services;
    - b. The coordination of services and funding resources; and,
    - c. The collection and use of child and family outcomes and program data to inform early intervention policies and practices within the designated service area.
- B. Interagency Operating Agreements
  - 1. Each Certified Early Intervention Service Broker, as defined in Rule 5.103, shall, at a minimum, establish and maintain the following interagency operating agreements:
    - a. Administrative unit agreements that include responsibilities for Child Find and transition activities, and assisting in the development and implementation of the statewide plan in accordance with section 26.5-3-404, C.R.S.;
    - b. County departments of social/human services agreements that include responsibilities for referrals under the Child Abuse Prevention and Treatment Act, for a child who is less than three (3) years of age and involved in a substantiated case of child abuse or neglect or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;
    - c. Early Head Start Program agreements that include responsibilities for the coordination of available services and avoidance of duplication of effort for children enrolled in Early Head Start and early intervention services; and
    - d. Other local agency agreements, as needed, that are involved with early intervention services that specify the responsibilities of each agency.
  - 2. A Certified Early Intervention Service Broker shall ensure that interagency operating agreements are signed by parties with the authority to carry out the responsibilities of the specific agencies or programs and are reviewed annually and updated as needed.

#### **5.106 FISCAL MANAGEMENT**

This rule is promulgated pursuant to sections 26.5-3-403, 26.5-3-405, and 26.5-3-406, C.R.S.

- A. A Certified Early Intervention Service Broker, as defined in Rule 5.103 shall:
  - 1. Only purchase early intervention services from providers that meet the qualifications as defined by the Department;

2. Establish and maintain necessary cost accounting systems according to general accounting principles to properly record, and allocate separately, the revenue and expenses for federal Part C of the Individuals with Disabilities Education funds, state-funded early intervention services, Medicaid funds and private health insurance funds that are billed through the Certified Early Intervention Service Broker, local funds, and other funds used for the purchase of early intervention services;
  3. Ensure that Part C of the Individuals with Disabilities Education Act funds:
    - a. Are used only as payor of last resort;
    - b. May be used to reimburse a parent or guardian for copayments and deductibles for early intervention services documented on their child's IFSP; and
    - c. For purposes of accounting, not commingled with any other funds received.
  4. Track expenditures for each funding source for service coordination, direct services, management fee, and any other expense line item as defined by the Department; and
  5. Notify the Department of any proposed change of reimbursement rates for any early intervention service at least fifteen (15) calendar days prior to the use of such rates. All rates must be computed using the methodology determined by the department.
- B. The maximum reimbursement rate for any early intervention service shall be subject to restriction by the Department.

#### **5.107 COORDINATED SYSTEM OF PAYMENT**

This rule is promulgated pursuant to sections 26.5-3-406, 26.5-3-407, 26.5-3-408, and 26.5-3-409, C.R.S.

- A. Early intervention services are provided to an eligible child and family at no out-of-pocket costs to a parent or guardian, such that the parent or guardian is not responsible for a sliding fee for services or payment of deductibles and co-payments for any early intervention service on a child's Individualized Family Service Plan, but is responsible for payment of insurance premiums when:
1. Private or public health insurance is used to pay for early intervention services;
  2. Medicaid or Child Health Plan Plus is used to pay for early intervention services; or
  3. Use of private health insurance is required prior to the use of public insurance or benefits.
- B. The Certified Early Intervention Service Broker shall ensure:
1. That the availability of public or private health insurance to pay for services shall not result in the delay or denial of early intervention services to a child or a child's family;
  2. No early intervention service documented in an Individualized Family Service Plan shall be delayed or denied because of a dispute between agencies regarding financial or other responsibilities required under 34 C.F.R. Section 303.510, which is incorporated by reference in Rule 5.104(A)(5);
  3. All early intervention services on a child's Individualized Family Service Plan shall be made available to the child and family whether consent to use insurance or Medicaid is required or provided; and

4. Each parent or guardian of a child receiving early intervention services shall be provided with the written policies that inform the parent or guardian of rights to mediation, due process, and the state complaint process under Rule 5.120, if the parent or guardian is charged for an early intervention service by a provider when the parent or guardian should not be.

**C. Funding Hierarchy**

1. The following order of funding sources shall be used when an Individualized Family Service Plan team determines the appropriate funding source(s) to pay for needed early intervention services and, where required, parental consent is provided to use the available funding source:
  - a. Use of private pay at the discretion of the parent or guardian; then,
  - b. Private health insurance; then,
  - c. TRICARE, a military health system; then,
  - d. Medicaid/Title XIX or Home and Community Based Services waivers, and Child Health Plan Plus; then,
  - e. Child Welfare and Temporary Assistance to Needy Families; then,
  - f. Other local, state, or federal funds, including mill levy funds, as may be made available; then,
  - g. State General Fund early intervention services; then,
  - h. Federal Part C of the Individuals with Disabilities Education Act funds.
2. Implementation of the funding hierarchy shall be in accordance with 34 C.F.R. Section 303.520, which is incorporated by reference in Rule 5.104(A)(5).
3. State and federal funds may be used in combination with other funding sources as necessary and appropriate, and within state and federal defined parameters, to ensure the provision of early intervention services.
4. Private health insurance, with written parental consent, shall be accessed prior to accessing public benefits or insurance.
5. The appropriate Medicaid billing codes for early intervention services shall be used for any service on an Individualized Family Service Plan that has Medicaid as the funding source and the early intervention services provider bills Medicaid.

**D. To use public health insurance or benefits, the Certified Early Intervention Service Broker shall:**

1. Provide written notification of the intent to use public benefits or insurance for payment of early intervention services to a parent or guardian or child who has public health insurance or benefits;
2. Obtain written parental consent to disclose a child's personally identifiable information to the public insurance agency for billing purposes;

3. Not require a parent or guardian to enroll him or herself or the parent or guardian's infant or toddler in a public benefits or insurance program as a condition of receiving early intervention services;
  4. Obtain written parental consent prior to using the public benefits or insurance of a child or parent or guardian if that child or parent or guardian is not already enrolled in such a program; and
  5. Obtain written parental consent to use a child or parent or guardian's public benefits or insurance to pay for early intervention services if that use would result in:
    - a. A decrease in the available lifetime coverage or any other insured benefit for a child or parent or guardian;
    - b. Payment for services that would otherwise be covered by the public benefits or insurance program;
    - c. Increases in premiums or discontinuation of public benefits or insurance for that child or parent or guardian as a result of such use; or
    - d. A risk of loss of eligibility for the child or parent or guardian for Medicaid Home and Community- Based waivers based on aggregate health expenses.
- E. To use private health insurance, the Certified Early Intervention Service Broker shall:
1. Provide prior written notice of the intent to use the private health insurance for payment of early intervention services to a parent or guardian who has or whose child has private health insurance or benefits.
  2. Obtain written parental consent:
    - a. To disclose a child's personally identifiable information to the private health insurance company for billing purposes, including the use of private health insurance when such use is a prerequisite for the use of public insurance or benefits; and
    - b. For a child whose private health coverage plan is not covered under section 10-16-104(1.3), C.R.S., at the initiation of billing for early intervention services and any time there is an increase in frequency, duration, or intensity of a service on the child's Individualized Family Service Plan.
  3. Provide the written coordinated system of payment and procedural safeguard policies each time consent is required that informs the parent or guardian there are no out-of-pocket costs associated with the use of private health insurance, except for:
    - a. Premiums which are the responsibility of the parent or guardian; and
    - b. For any child who has a private health coverage plan not covered under section 10-16-104(1.3), C.R.S., when there may be long-term costs such as the loss of benefits for the child or family because of annual or lifetime health coverage caps under the insurance policy.

- F. Payment from Early Intervention Services Trust Qualified Private Health Insurance Carriers
1. Subject to section 10-16-104(1.3), C.R.S., qualified private health insurance carriers who are required to cover early intervention services for an eligible dependent child shall provide early intervention services. Non-emergency medical transportation and assistive technology, as defined in Rule 5.114(B)(1), shall be excluded, unless assistive technology is covered under an applicable insurance policy or service or indemnity contract as durable medical equipment benefit provisions.
  2. Coverage required by private health insurance carriers shall be available annually to an eligible infant or toddler from birth up to the third (3rd) birthday. As of January 1, 2013, the maximum annual benefit payable for early intervention services and service coordination for each dependent infant or toddler, per benefit plan year, shall be limited as required by sections 10-16-104(1.3) and 26.5-3-409, C.R.S.
    - a. For policies or contracts issued or renewed on or after January 1, 2015, and on or after each January 1 thereafter, the limit shall be adjusted by the Department. This adjustment is based upon the consumer price index for the Denver – Boulder - Greeley metropolitan statistical area for the State Fiscal Year which ends in the preceding calendar year or by such additional amount to be equal to the increase by the General Assembly to the annual appropriated rate. This rate is based on service to one (1) child for one (1) fiscal year in the state-funded Early Intervention Program if that increase is more than the consumer price index increase.
    - b. The limit on the annual amount of coverage for early intervention services shall not apply to:
      - (1) Rehabilitation or therapeutic services that are necessary as the result of an acute medical condition or post-surgical rehabilitation;
      - (2) Services provided to a child who is participating in early intervention services that are not provided pursuant to an Individualized Family Service Plan; however, such services shall be covered at the level specified in section 10-16-104(1.3), C.R.S.; or
      - (3) Assistive technology that is covered by the policy's durable medical equipment benefit provisions.
  3. Any benefits paid under the coverage required by section 10-16-104(1.3), C.R.S., shall not be applied to an annual or lifetime maximum benefit contained in the policy or contract, except as provided for high deductible plans in section 10-16-104(1.3)(d), C.R.S.
  4. A qualified early intervention services provider that receives reimbursement for services funded by the trust fund shall accept such reimbursement as payment in full for services under section 10-16-104(1.3), C.R.S., and shall not seek additional reimbursement from either the eligible infant or toddler's family or the carrier.
  5. If funds deposited into the trust are fully expended prior to the end of the insurance plan year, the Certified Early Intervention Service Broker, as defined in Rule 5.103, shall coordinate with the Department to ensure that services continue as designated in the Individualized Family Service Plan. At the beginning of the new plan year, the private health insurance carrier shall be required to deposit additional funds into the Early Intervention Services Trust as established by Rule 5.107(G)(1).

6. Private health insurance carriers shall be notified within ninety (90) calendar days if an infant or toddler is no longer eligible for early intervention services.
- G. Use of Early Intervention Services Trust
1. A trust fund shall be established in accordance with section 26.5-3-409, C.R.S. for the purpose of accepting deposits from a participating public health insurance or benefits program, or from the required private health insurance carriers for early intervention services provided to infants and toddlers under a participating insurance plan.
  2. Funds deposited in the trust fund shall be only utilized on behalf of each infant and toddler for whom funds have been placed into the trust fund for the following:
    - a. Early intervention services, with the exclusion of assistive technology services and transportation, as described in Rule 5.114(B);
    - b. Monthly case management (service coordination) fee as determined by the Department;
    - c. Monthly Certified Early Intervention Service Broker fee as defined by the Department; and
    - d. Monthly fee to administer the Early Intervention Services Trust to each child covered by a qualifying plan as determined by the Department.
  3. Upon exit from early intervention services or discontinuation of coverage by the private health insurance carrier, a private health insurance carrier shall be notified of monies deposited in the Early Intervention Services Trust on behalf of an eligible dependent infant or toddler that are not expended and the funds shall be returned within ninety (90) calendar days.
  4. No later than April 1 of each year, private health insurance carriers shall be provided with a report specifying the amount of benefits paid to each Certified Early Intervention Service Broker for services provided to eligible infants or toddlers during the prior calendar year.

#### **5.108 CERTIFIED EARLY INTERVENTION SERVICE BROKERS**

This rule is promulgated pursuant to section 26.5-3-408, C.R.S.

- A. Designation of Roles and Responsibilities
1. One entity per designated service area shall be designated in writing by the Department as the Certified Early Intervention Service Broker for that region and shall provide early intervention services and service coordination to any eligible child who resides in that region.
  2. A Community Centered Board or other interested agency shall submit a Department approved application for designation as a Certified Early Intervention Service Broker.
  3. Designation as a Certified Early Intervention Service Broker shall be based on the following criteria:
    - a. Agency background and expertise in early intervention services;

- b. Agency policies and procedures that ensure accurate data entry as required by the Department;
  - c. Demonstrated ability to conform with generally accepted accounting and contracting practices; and,
  - d. Assurance to comply with state and federal laws and regulations regarding early intervention services as described in Rules 5.100, *et. seq.*
- 4. Failure to maintain ongoing compliance with the above criteria may result in revocation of designation as a Certified Early Intervention Service Broker.
- 5. If the Department determines that a Community Centered Board or other entity does not meet the criteria to be designated as a Certified Early Intervention Service Broker or is de-designated as the Certified Early Intervention Service Broker, the Community Centered Board or other entity may dispute the decision in accordance with provisions of section 24-4-105, C.R.S.
- 6. If a Community Centered Board is unwilling to be the Certified Early Intervention Service Broker for its service area, or the Community Centered Board does not meet the criteria established in Rule 5.108(A)(3), then applications from other entities shall be solicited and accepted and another entity shall be designated as the Certified Early Intervention Service Broker.
- 7. The Department may act as the Early Intervention Service Broker until such time as a Certified Early Intervention Service Broker can be found.
- 8. Upon designation, a Certified Early Intervention Service Broker shall:
  - a. Ensure payment for early intervention services is rendered pursuant to an Individualized Family Service Plan;
  - b. Ensure that the funding hierarchy in Rule 5.107(C)(1), is followed;
  - c. Ensure that federal funds for early intervention services are utilized as payor of last resort;
  - d. Use procedures and forms as defined by the Department to document the provision or purchase of early intervention services;
  - e. Negotiate, within state and federally-defined parameters and Rule 5.107(B), for payment of early intervention services;
  - f. With written parental consent, notify the appropriate public or private health insurance plan within ten (10) working days that a covered infant or toddler has been determined eligible for early intervention services. At a minimum, the notification shall include:
    - (1) The child's name;
    - (2) The child's date of birth;
    - (3) The name of the public or private health insurance carrier;



- (4) The policy/group number and subscriber number or Social Security Number;
      - (5) The name of the primary policy holder;
      - (6) The customer service telephone number for the insurance carrier;
      - (7) The initial Individualized Family Service Plan date; and
      - (8) The contact person and telephone number for the Early Intervention Service Broker.
    - g. Establish a registry of qualified early intervention service providers who have active records in the Early Intervention Provider Database from which early intervention services for eligible infants and toddlers in the designated service area shall be purchased;
    - h. Accept and process insurance claims in accordance with state and federal law for those families with health insurance coverage for early intervention services;
    - i. Ensure that all required demographic and billing information is entered into the early intervention statewide data system for each child who is eligible for early intervention services, as defined in Rule 5.111(D);
    - j. Participate in ongoing reviews of the use of the funding hierarchy; and
    - k. Provide the Department with accurate data for reporting purposes for the legislature or other funding sources.
  - 9. Certified Early Intervention Service Brokers may provide early intervention services directly or may subcontract the provision of services to other qualified providers.
  - 10. Invoices or insurance claims for early intervention services shall be submitted based on the available funding source for each eligible child and the reimbursement rate for the appropriate federal, state, local, or private funding sources, including public health insurance and benefits, and private health insurance.
  - 11. Reimbursement rates for Early Intervention Service Broker functions shall be established with input from Certified Early Intervention Service Brokers.
  - 12. Use of a Certified Early Intervention Service Broker for billing non-qualifying plans on behalf of a contractor shall be voluntary. Qualified early intervention service providers may directly bill the appropriate program of a public health insurance plan or benefits, or a participating private health insurance carrier, for services rendered, in accordance with section 10-16-104(1.3), C.R.S.
- B. Purchase of Service Rates**
- 1. The Certified Early Intervention Service Broker shall adopt and implement sufficient policies and procedures to ensure:
    - a. The qualified provider or employee meets minimum provider qualifications as set forth in Rule 5.115;

- b. Services are delivered in accordance with Rule 5.114 and as identified in the Individualized Family Service Plan; and
  - c. The qualified provider maintains sufficient documentation to support the claims submitted.
- 2. The process and methodology the Certified Early Intervention Service Broker implements to determine the rates to be paid to the qualified contracted provider or for services provided directly by the Certified Early Intervention Service Broker employed providers shall be based on the usual and customary practices of the local community, be documented in the policies and procedures of the Certified Early Intervention Service Broker, and shall be made available to the Department upon request.
- 3. The Certified Early Intervention Service Broker is the provider of record for all services for which it contracts through qualified providers.
- 4. The Certified Early Intervention Service Broker's purchase of service rates shall comply with the following:
  - a. Rates shall be consistent with efficiency, economy, and quality of care;
  - b. The policy and methods used in setting payment rates shall be in writing and consistently applied to all qualified providers, including the Certified Early Intervention Service Broker employed providers; and
  - c. Documentation of payment rates shall be maintained and kept on file with the Department.
- 5. A qualified provider shall be given sufficient information concerning the service obligations to assist them in developing cost effective and efficient rate proposals.
- 6. The Certified Early Intervention Service Broker shall maintain written documentation for an audit trail on how rates were established and paid, and provider expenses to support payments.
- 7. When a Certified Early Intervention Service Broker proposes to charge fees to a contracted service agency for managing the billing process for early intervention direct services, the following shall be complied with:
  - a. The Certified Early Intervention Service Broker shall provide the qualified provider with a written description for each service provided and the amount of the proposed fee for each service;
  - b. The proposed fee to a qualified provider cannot be established to pay for services otherwise reimbursed, as determined by the Department;
  - c. Any proposed fee by a Certified Early Intervention Service Broker related to managing the billing process shall meet the following criteria:
    - (1) The fee shall relate to the cost of processing billings and other administrative functions defined in the contract between the Certified Early Intervention Service Broker and the contracted service provider; and
    - (2) The fee shall not be dependent upon the collection of payment.

- d. The Certified Early Intervention Service Broker shall provide the qualified contracted provider with statements for services delivered;
  - e. The Certified Early Intervention Service Broker shall establish procedures and time frames that provide the opportunity for a qualified contracted provider to protest the proposed fee charges to the Certified Early Intervention Service Broker, and for a timely written response within ten (10) days of receipt;
  - f. The Certified Early Intervention Service Broker shall inform the qualified contracted provider of the opportunities to dispute the decision to the Department, as defined in Rule 5.108(C); and
  - g. The Certified Early Intervention Service Broker shall submit a copy of all disputes and subsequent proceedings to the Department within ten (10) days of completion of the proceedings.
- C. The following shall apply in the event of a contractual dispute between a qualified contracted provider and a Certified Early Intervention Service Broker:
  - 1. The dispute shall be submitted in writing by the contracted early intervention provider to the Certified Early Intervention Service Broker and shall:
    - a. State the specific grounds for the dispute and the relief requested; and
    - b. Provide all available exhibits, evidence, arguments and documents believed to substantiate the dispute.
  - 2. The Certified Early Intervention Service Broker may request, within fifteen (15) working days following the date of the written dispute, additional information deemed necessary to resolve the matters of the dispute.
  - 3. Within fifteen (15) working days following the receipt of written documentation and additional requested information, if applicable, the Certified Early Intervention Service Broker shall respond to the dispute by issuing a written decision, which shall include:
    - a. The reason(s) for the decision; and
    - b. The right of the provider to seek departmental review of the decision.
  - 4. If a contracted early intervention provider disagrees with the decision of the Certified Early Intervention Service Broker, within ten (10) working days of the decision, the provider may request that the Executive Director of the Department or designee review the decision.
    - a. Upon a request for review, the protesting party shall submit all relevant documents related to the dispute;
    - b. The Executive Director or designee shall review the dispute and determine if the issue in dispute is within the jurisdiction of the Department to resolve or if court action is necessary;
    - c. If the Executive Director or designee determines that Department review is appropriate, the Certified Early Intervention Service Broker shall respond to the submitted information within ten (10) working days.;

- d. The Department shall have the right to additional information it deems necessary and may request oral argument from the parties involved in the dispute; and
- e. The Executive Director or designee shall render a final binding decision within fifteen (15) working days of receiving all relevant information. The determination shall set forth a course of action for resolution of the contract dispute.

#### **5.109 DATA COLLECTION**

This rule is promulgated pursuant to sections 26.5-3-408 and 26.5-3-410, C.R.S.

- A. A Certified Early Intervention Service Broker shall ensure that policies and procedures are developed and maintained, and that information regarding early intervention services is collected and documented as defined by the Department.
- B. A Certified Early Intervention Service Broker shall have an Early Intervention Data Coordinator who shall:
  - 1. Be knowledgeable of the statewide data system, data entry requirements and timelines, and report information;
  - 2. Ensure that staff who enter data into the statewide data system complete the department-approved data training; and,
  - 3. Ensure that all data is entered into the early intervention statewide data system.
- C. A Certified Early Intervention Service Broker shall ensure that for each child referred for early intervention services:
  - 1. Electronic Case is established and maintained in the statewide data system; and,
  - 2. All required data from a child's record is entered into the statewide data system within fifteen (15) days from the date of the referral and tracked through eligibility or ineligibility and exit from early intervention services.
- D. A Certified Early Intervention Service Broker shall ensure that accurate child outcomes data is entered into the statewide data system for measuring outcomes.

#### **5.110 GENERAL SUPERVISION AND MONITORING**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. Monitoring activities shall ensure compliance with Part C of the Individuals with Disabilities Education Act as well as state statutes and rules and shall include the following:
  - 1. Self-assessment procedures;
  - 2. Examination of program data;
  - 3. Special analysis;
  - 4. On-site reviews; and
  - 5. Any other methods as determined by the Department.

- B. The results of monitoring shall be publicly reported on the Early Intervention Colorado website and submitted to state and federal entities, as needed.
- C. A Certified Early Intervention Service Broker shall have an Early Intervention Coordinator who shall complete required training, as determined by the department and posted on the Early Intervention Colorado website at [eicolorado.org](http://eicolorado.org) and is:
  - 1. Knowledgeable of early intervention services and federal and state requirements;
  - 2. The liaison to the Department regarding the Early Intervention Program;
  - 3. Responsible for the local implementation of a comprehensive and coordinated system of early intervention services; and
  - 4. The contact for families regarding procedural safeguards.
- D. A Certified Early Intervention Service Broker shall maintain:
  - 1. A complete file of all early intervention records, documents, communications, and other written and/or electronic materials which pertain to the operation of an Early Intervention Program or the delivery of early intervention services; and
  - 2. Such records for a period of six (6) years after the date of closure of the record or for such further periods as may be necessary to resolve any matters that may be pending.
- E. The following information shall be maintained for each child's record:
  - 1. Log of access;
  - 2. Referral information;
  - 3. Parental consent to evaluate;
  - 4. Parental consent to use private health insurance or Medicaid;
  - 5. Prior notice documentation;
  - 6. Parental consent to share information;
  - 7. Individualized Family Service Plan(s);
  - 8. Progress and assessment reports, including child outcomes measurement information;
  - 9. Case notes;
  - 10. All correspondence related to a child and family;
  - 11. Fiscal records, including documentation of early intervention service provision by qualified providers; and
  - 12. Any medical documentation related to the diagnosis or medical condition of the referred child, including history and services.

- F. A Certified Early Intervention Service Broker shall permit the state, federal government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy, and/or transcribe records during the term of a contract for early intervention services and for a period of six (6) years following termination of the contract or final payment, whichever is later, to assure compliance with federal regulations and/or state statutes and rules or to evaluate an Early Intervention Program's performance.

### **5.111 CHILD IDENTIFICATION**

This rule is promulgated pursuant to section 26.5-3-404, C.R.S.

The Early Intervention Program shall have a comprehensive Child Find system, pursuant to 34 C.F.R. Section 303.302., that focuses on the early identification of infants and toddlers who have developmental delays or disabilities, including a system for making referrals so that timely and rigorous identification in accordance with Rules 5.111(A)-(G), shall occur.

#### **A. Referral**

1. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, to identify infants and toddlers in need of early intervention services.
2. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the Early Intervention Colorado Program or a Certified Early Intervention Service Broker about a child who:
  - a. Is known to have or suspected of having a developmental delay;
  - b. Has an established condition, as defined in Rule 5.111(E);
  - c. Lives with a parent with a developmental disability;
  - d. Has been identified as the subject of a substantiated case of child abuse or neglect; or
  - e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

#### **B. Post-Referral Process**

1. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others.
2. A service coordinator will be assigned within three (3) working days from the date of a referral by the Early Intervention Colorado Program or an authorized Certified Early Intervention Service Broker.
3. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards.

4. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall:
  - a. Notify the referral source of the receipt of the referral using the state referral form;
  - b. Provide the contact information for the assigned service coordinator; and
  - c. With written parental consent, notify the referral source and the child's primary health provider of the results of the evaluation and/or assessment using the state referral form.

**C. Eligibility Criteria**

An infant or toddler, birth through two (2) years of age, shall be eligible for early intervention services if he or she has a developmental delay or atypical development as defined in Rule 5.103, an established diagnosed physical or mental condition as defined in Rule 5.103, or lives with a parent who has a developmental disability as defined in Rule 5.111(F).

**D. Eligibility Determination for Developmental Delay and Atypical Development**

1. Eligibility shall be based on a developmental delay and atypical development as defined in Rule 5.103.
2. Results derived solely from a single procedure shall not be used to determine eligibility or ineligibility.
3. The following shall be documented in an Individualized Family Service Plan:
  - a. Name and discipline of each team member who participated in the evaluation and assessment;
  - b. Evaluation instrument(s), child assessment tool(s), and methods and procedures used to conduct the evaluation and assessment;
  - c. The measurable results of the multidisciplinary evaluation and/or assessment in each of the developmental domains;
  - d. Eligibility or ineligibility determination;
  - e. Name and signature of the Evaluation Entity representative that conducts an evaluation, as defined in Rule 5.103, who verifies that the evaluation and assessment team gathered and provided diagnostic information to establish eligibility or ineligibility; and
  - f. Signature of a parent or guardian acknowledging that he or she has been informed of their child's eligibility determination.
4. If a child is determined ineligible for early intervention services based on evaluation procedures identified in Rule 5.111, the family shall be provided prior written notice to inform them of:
  - a. The right to dispute resolution procedures as defined in Rule 5.120;

- b. A referral to the Early Intervention early start program if the child has an identified risk factor as defined in Rule 5.103, and with written parental consent and sufficient appropriations available; and
    - c. Other community resources that may assist their child.
- E. Eligibility Determination Based on an Established Condition
  - 1. There shall be supporting documentation from a qualified health professional maintained in the child's record for a diagnosed physical or mental condition.
  - 2. The diagnosis or condition shall be included in the Established Conditions Database.
  - 3. There shall be documentation in the Individualized Family Service Plan regarding the name of the diagnosed condition on which eligibility is based.
  - 4. A child with an established condition does not have to be exhibiting delays in development at the time of diagnosis to be eligible for early intervention services.
- F. An infant or toddler who lives with a parent who has been determined by a Community Centered Board to have a developmental disability is eligible to receive early intervention services using any funding source other than the federal Part C funds. Such services may include, but are not limited to, developmental intervention for parent education and monitoring child development.
- G. Evaluation to Determine Extent of Child's Delay
  - 1. Written notice shall be provided to the parent or guardian prior to the scheduling of an evaluation and a copy of the notice shall be maintained in the child's record.
  - 2. Written parental consent shall be obtained prior to any evaluation being conducted and a copy of the consent shall be maintained in the child's record.
  - 3. An evaluation shall include a multidisciplinary process by a team comprised of a minimum of two (2) appropriately licensed/qualified professionals, at least one (1) of whom is qualified in the primary area of developmental concern.
  - 4. Child evaluation shall be conducted in the native language of the child, unless clearly not feasible to do so.
  - 5. An evaluation shall be based on an informed opinion of delay and administered so that it is not racially or culturally discriminatory.
  - 6. Procedures for the evaluation to determine if an infant or toddler has a developmental delay shall include:
    - a. Administering an evaluation instrument;
    - b. Documenting the child's history, including interviewing the parent or guardian(s);
    - c. Identifying the child's level of functioning in each of the following developmental domains:
      - (1) Adaptive development;
      - (2) Cognitive development;



- (3) Communication development;
- (4) Physical development, including vision and hearing; and
- (5) Social or emotional development.

- d. Gathering information from other sources such as family members, other caregivers, medical providers and other professionals working with the child and family.

**H. Assessment**

If a child is determined to be eligible for early intervention services because of a developmental delay, atypical development, or an established condition, a Certified Early Intervention Service Broker shall ensure that the following occurs:

1. Prior to conducting a child assessment, written notice shall be provided to the parent or guardian and parental consent for the assessment obtained. A copy of the notice and the consent shall be maintained in the child's record. For a child determined eligible due to a developmental delay, this notice may have been provided at the time of evaluation.
2. A child assessment, conducted by qualified personnel, shall be conducted in the native language of the child, unless clearly not feasible to do so (such as an interpreter is unable to be located), and may include the following:
  - a. A review of the results of the multidisciplinary evaluation, informed opinion of delay, and medical and other records used to establish eligibility, including the results of hearing and vision screening;
  - b. Personal observations of the child;
  - c. The identification of the child's strengths and needs in each developmental area; and
  - d. The identification of early intervention services that would meet the child's needs.
3. A family assessment is made available to any parent or guardian or other family member of an eligible child.
  - a. A family assessment is voluntary on the part of each family member participating in the assessment.
  - b. A family assessment shall be family-directed and designed to determine the resources, priorities and concerns of a parent or guardian or other family member related to the enhancement of their child's development.
  - c. A family assessment shall be conducted in the native language of the family member(s) participating in the family assessment, unless clearly not feasible to do so.
  - d. When completed, the family assessment shall be:
    - (1) Conducted by qualified personnel trained to utilize a department-approved family assessment tool, that is available on the early intervention Colorado website at [www.eicolorado.org](http://www.eicolorado.org);

- (2) Based on information provided by the parent or guardian or other family member through a personal interview and family assessment tool;
    - (3) Inclusive of a parent or guardian or other family member's description of their resources, priorities, and concerns related to enhancing their child's development; and
    - (4) Completed prior to the development of the initial individualized family service plan.
  4. If an Individualized Family Service Plan is developed at the same meeting as the evaluation and assessment, the service coordinator shall ensure that prior written notice about the development of the Individualized Family Service Plan is provided to the parent or guardian.
  5. If a second meeting is required, notification of the date, time, and location of that meeting needs to be coordinated with, and received by, the parent or guardian far enough in advance of the meeting date so that the parent or guardian will be able to attend the meeting. The meeting cannot occur without the parent. A copy of the notice shall be maintained in the child's record.
- I. Eligibility for Early Intervention Early Start Program
  1. Services under the Early Intervention early start program are only available if there are sufficient appropriations after funding early intervention services to children with a developmental delay or atypical development as defined in Rule 5.103.
  2. When sufficient appropriations for the Early Intervention early start program exist, if a child does not meet the definition of developmental delay or atypical development and is, therefore, ineligible for early intervention services in accordance with Part C, he or she shall be evaluated for eligibility for the Early Intervention early start program.
  3. To be eligible for the Early Intervention early start program, the child must meet the definition of risk factor in Rule 5.103.
  4. If the child does not meet the definition of risk factor in Rule 5.103, and is, therefore, ineligible for the Early Intervention early start program, the family shall be provided written notice of:
    - a. The right to dispute resolution procedures as defined in Rule 5.120; and
    - b. Other community resources that may assist their child.

#### **5.112 SERVICE COORDINATION**

This rule is promulgated pursuant to section 26.5-3-405, C.R.S.

- A. The Early Intervention Colorado Program or a Certified Early Intervention Service Broker shall provide service coordination for each infant and toddler from the date of the referral through transition at three (3) years of age, exit from early intervention services, or a determination of ineligibility, whichever occurs first.
- B. A service coordinator shall:
  1. Meet the following standards:

- a. A bachelor's level degree of education; or
  - b. Five years of experience in the field of early childhood or developmental disabilities; or
  - c. Some combination of education and experience appropriate to the requirements of the position.
2. Complete the following:
  - a. Required service coordination online orientation training modules within one (1) month of employment as a service coordinator;
  - b. All introductory training required by the Department on the service coordination core competency requirements and the development and implementation of an Individualized Family Service Plan within one hundred and twenty (120) calendar days of employment as a service coordinator; and
  - c. Document all completed training in the Early Intervention Provider Database.
3. Inform a parent or guardian of their rights and procedural safeguards, and how to exercise them as set forth in Rule 5.119;
4. Ensure that required information for each child referred for early intervention services is provided for entry into the statewide database in accordance with reporting requirements of the Department found in the early intervention data system user guide and located on the Early Intervention Colorado website at [eicolorado.org](http://eicolorado.org);
5. Coordinate with appropriate providers to ensure the completion of a child's evaluation and assessment and ensure compliance with all parts of the requirements of Rule 5.111;
6. Facilitate and participate in the development, review, and evaluation of Individualized Family Service Plans;
7. Make referrals to providers for early intervention services authorized in an Individualized Family Service Plan, assist with scheduling appointments, ensure initiation within twenty-eight (28) calendar days of written parental consent for early intervention services, and coordinate, facilitate, and monitor the delivery of early intervention services;
8. Ensure that a parent or guardian is informed of the coordinated system of payment funding hierarchy and no-cost protections for families, and ensure appropriate use of all available funding for early intervention services;
9. Coordinate the provision of medical and other services, such as educational and social, that the child or family needs or is receiving through other sources;
10. Inform a parent or guardian of available advocacy services;
11. Facilitate development of the transition to preschool special education services or other services for a toddler approaching three (3) years of age;
12. Assist a parent or guardian with dispute resolution regarding early intervention services, if needed; and

13. Maintain at least monthly contact with a parent or guardian whose child is enrolled in early intervention services, including written, electronic, or phone communication, and document the contact in the child's record.

### **5.113 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. An IFSP shall serve as the Individualized Plan for a child, from birth through two (2) years of age, receiving early intervention services in accordance with Part C. Children receiving services through the Early Intervention early start program will not have an IFSP.
- B. A service coordinator shall ensure that an IFSP is:
  1. With prior written notice given to the parent or guardian, developed within a reasonable time after an eligibility determination has been made, but no later than forty-five (45) calendar days from the date of the referral, unless a delay is due to documented exceptional family circumstances;
  2. Developed with all required participants as set forth in Rule 5.113(E);
  3. Based on, and contains the results of, the Evaluation and Assessment, and the family's concerns and priorities;
  4. Inclusive of early intervention services to be provided in natural environments that are necessary to meet the unique needs of the child and parent or guardian or other caregiver, and implement the strategies to achieve the developmental outcomes of the child;
  5. Culturally sensitive;
  6. With prior written notice given to the parent or guardian, reviewed every six (6) months, or more frequently if necessary or if requested by the parent or guardian, to:
    - a. Determine progress toward achieving the identified outcomes;
    - b. Revise or add an outcome, if needed; and
    - c. Determine if a change in early intervention services is necessary to meet the identified outcomes.
  7. With prior written notice given to the parent or guardian, updated annually through a meeting of the IFSP team and the parent or guardian to:
    - a. Discuss and document the child's current developmental levels in all developmental domains gathered through assessment methods as defined by the Department;
    - b. Determine progress towards achieving the identified outcomes;
    - c. Determine the child's ongoing need for early intervention services;
    - d. Revise or add an outcome, if needed; and

- e. Determine the early intervention services necessary to meet the identified outcomes.
- C. If it is determined during an IFSP annual review that a child is functioning at age-expected levels when compared with chronological age, as documented in current assessment results, the following shall occur:
  - 1. The IFSP team shall determine whether one (1) or more early intervention services are no longer needed for the child to continue to progress; and
  - 2. If the IFSP team determines that early intervention services are no longer needed and the child is no longer eligible to receive services, the following shall occur:
    - a. The service coordinator shall explain to the parent or guardian the dispute resolution procedures, as defined in Rule 5.120;
    - b. The service coordinator shall provide prior written notice to the parent or guardian that the members of the IFSP team have determined the child no longer has any identified need for early intervention services, and the child has completed the IFSP;
    - c. The child's record shall remain open for ten (10) calendar days from the prior written notice date; and
    - d. Following the ten (10) calendar day period from the prior written notice date, if there is no dispute resolution request from the parent or guardian, the early intervention services shall cease, and the child's record shall be closed.
- D. Completion of an IFSP
  - 1. If future concerns arise about the child's development and the child is still less than three (3) years of age, the family shall contact the Certified Early Intervention Service Broker to conduct an evaluation and determine whether the child meets the eligibility criteria. If the child meets the eligibility criteria, the Community Centered Board shall re-initiate an IFSP.
  - 2. An infant or toddler found eligible due to an established condition, as defined in Rules 5.103 and 5.111(F), shall not have his/her early intervention services ended unless the parent or guardian chooses to withdraw from services.
- E. An initial, annual, or periodic review meeting to evaluate an IFSP shall include the following participants:
  - 1. Parent or guardian of a child;
  - 2. Service coordinator;
  - 3. Persons directly involved in conducting the evaluations and assessments;
  - 4. As appropriate, a person or persons who will be providing early intervention services to a child or family; and
  - 5. Additional participants may include, but are not limited to, the following:
    - a. Other family members, as requested by a parent or guardian; and

- b. An advocate or person outside of a family, as requested by a parent or guardian.
- F. If any person who conducted an evaluation and/or assessment is unable to participate in person, he or she shall participate by:
  - 1. Telephone or Internet web conference;
  - 2. A knowledgeable authorized representative attending the meeting in their place; or
  - 3. The provision of appropriate reports for use at the meeting.
- G. If the evaluation and assessment report is provided and there is no authorized representative at the meeting, the Certified Early Intervention Service Broker shall ensure that at least one qualified early intervention professional reviews and interprets the developmental information in the report to inform the team completing the IFSP.
- H. An IFSP shall be conducted in accordance with 34 C.F.R. Sections 303.340 - 303.345, which are incorporated by reference in Rule 5.104 (A)(5):
  - 1. In a setting and at a time that is convenient to the parent or guardian; and
  - 2. In the language or mode of communication normally used by the parent or guardian, unless clearly not feasible to do so.
- I. The content of an IFSP shall, at a minimum, meet the requirements of 34 C.F.R. Section 303.344, which is incorporated by reference in Rule 5.104(A)(5), and be completed using the department required IFSP form available at the Early Intervention Program website at [www.eicolorado.org](http://www.eicolorado.org), and shall include the following:
  - 1. The type of model for each service shall be one of the following, as defined in Rule 5.103:
    - a. Primary service provider;
    - b. Multidisciplinary service providers;
    - c. Single provider; or
    - d. Other model approved by the state.
  - 2. The type of method for each service shall be one of the following, as defined in Rule 5.103:
    - a. Individual;
    - b. Co-visit;
    - c. Teaming;
    - d. Supervision; or
    - e. Telehealth, with parental consent.
- J. A parent or guardian may withhold consent for an early intervention service without jeopardizing the delivery of any other early intervention service for which consent is given.

- K. If a parent or guardian and an IFSP team member(s) do not agree on an aspect of an early intervention service, a service coordinator shall implement the sections of the plan that are not in dispute.
- L. A parent or guardian may exercise their rights, as defined in Rule 5.120, to resolve a dispute while continuing to receive those services in an IFSP that are not subject to a dispute.
- M. An interim IFSP shall be developed to provide a temporary early intervention service prior to completion of an evaluation and assessment, only when the service is determined by qualified professionals to be immediately necessary and when the following conditions are met:
  - 1. A child has been determined to be eligible for early intervention services;
  - 2. Written parental consent is obtained; and
  - 3. An evaluation and assessment are completed within forty-five (45) calendar days of the date of the referral.

#### **5.114 EARLY INTERVENTION SERVICES**

This rule is promulgated pursuant to sections 26.5-3-403, 26.5-3-406, 26.5-3-408, and 26.5-3-409, C.R.S.

- A. Early intervention services shall be:
  - 1. Provided only after the development of an Individualized Family Service Plan and written parental consent is obtained for those services identified in the Individualized Family Service Plan;
  - 2. Provided to meet the developmental needs of an eligible infant or toddler, parent or guardian, or other caregivers, to achieve the outcomes identified in the Individualized Family Service Plan;
  - 3. Based on appropriate peer-reviewed, evidence-based practices, to the extent which is practical;
  - 4. Related to functional outcomes and developmentally appropriate practices to support participation in everyday routines, activities, and places;
  - 5. Provided by qualified providers who meet the state personnel standards for each Early Intervention Service;
  - 6. Provided in a culturally relevant manner, including use of an interpreter, if needed;
  - 7. Provided in the natural environments of the child and family to the maximum extent appropriate. If there is a determination that an Early Intervention Service cannot be provided in a natural environment, written justification shall be provided in the Individualized Family Service Plan; and
  - 8. Provided in physical settings where community-based early intervention services are accessed that meet all fire, building, licensing, and health regulations, as applicable.
- B. Early intervention services shall include the following:
  - 1. Assistive Technology Services:

- a. Means the direct selection, acquisition, or use of assistive technology devices and includes:
  - (1) Functional evaluation of the developmental needs of the infant or toddler in their usual environments;
  - (2) Selection, acquisition, modification, or customization and maintenance of assistive technology devices;
  - (3) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing intervention plans and programs;
  - (4) Training or technical assistance for professionals providing early intervention services or other individuals identified as providing early intervention services to, or are otherwise substantially involved in the major life functions of, an infant or toddler on the use of assistive technology devices;
  - (5) Training or technical assistance for an infant or toddler receiving early intervention services or, if appropriate, the child's family; and
  - (6) Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain, or improve the functional, developmental capabilities of an infant or toddler in their usual environments.
    - (a) The device must be identified in the Individualized Family Service Plan; and
    - (b) Prior to purchase or lease of an assistive technology device, an assessment shall be conducted by a qualified early intervention provider to assure that the device is appropriate for the child and family's needs.
- b. Does not mean a device that is primarily intended to treat a medical condition, meet life-sustaining needs, or a medical device that is surgically implanted, including a cochlear implant. It also does not mean the optimization, maintenance, or the replacement of such a device.

**2. Audiology Services:**

- a. Means services for the identification of an infant or toddler with an auditory impairment, using at-risk criteria and appropriate audiologic screening techniques, and includes:
  - (1) Loss and communication functions, by use of audiological evaluation procedures;
  - (2) Auditory training, aural rehabilitation, speech reading and listening devices, orientation, and other training to increase functional communication skills;



- (3) The determination of the need for individual amplification, including selecting, fitting and dispensing an appropriate listening and vibrotactile device, and evaluating the effectiveness of the device;
    - (4) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability which is an auditory impairment;
    - (5) Family training, education, and support provided to assist a parent or guardian or other caregivers of a child eligible for services in understanding the special needs of the infant or toddler as related to audiology and aural rehabilitation services; and
    - (6) The provision of services for prevention of hearing loss.
  - b. Does not mean therapeutic services required for an infant or toddler to recover from medical procedures such as surgery, or pre-surgery therapeutic services required by a physician to prepare a child for surgery and that are beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.
- 3. Developmental Intervention Services:
  - a. Means developmental assessment and special instruction to address the functional developmental needs of an infant or toddler and includes:
    - (1) The design or adaptation of learning environments, activities and materials to enhance developmental and learning opportunities that promote the infant or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
    - (2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's Individualized Family Service Plan;
    - (3) Working with the child to enhance the child's development; and
    - (4) Family training, education and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child related to enhancing the skill development of the child.
- 4. Health Services:
  - a. Means services by a licensed health care professional that enable an eligible infant or toddler to benefit from other allowable early intervention services and includes:
    - (1) Assessment to determine the health status and special health care needs that will impact the provision of other early intervention services;
    - (2) Services such as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy bags, and other health services; and

- (3) Consultation by a health care professional with a parent or guardian or other service provider regarding the impact of the infant or toddler's health status on the provision of other early intervention services.
  - b. Does not mean:
    - (1) Services that are:
      - (a) Purely medical in nature, such as hospitalization, or the prescribing of medicine or other drugs for any purpose;
      - (b) Surgical in nature, such as cleft palate surgery or shunting for hydrocephalus;
      - (c) Medical diagnostic procedures, services that are primarily intended to treat a medical condition; or
      - (d) Related to the implementation, optimization, maintenance, or replacement of a medical device that is surgically implanted.
    - (2) Devices necessary to control or treat a medical condition, or that are medical or health services routinely recommended for all infants and toddlers.
  - c. Nothing in this section of the rules limits the rights of an infant or toddler with a disability, that has a surgically implanted device, to receive the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.
  - d. Nothing in this section of the rules prevents the early intervention services provider from routinely checking that either the hearing aid or the external components of a surgically implanted device, such as a cochlear implant, used by an infant or toddler with a disability are functioning properly.
- 5. Medical services means services provided by a licensed physician for diagnostic or evaluation purposes, to determine a child's developmental status and need for early intervention services.
- 6. Nursing Services:
  - a. Means assessment of health status for the purpose of providing:
    - (1) Nursing care, including the identification of patterns of human response to actual or potential health problems;
    - (2) Nursing care to prevent health problems, restore or improve functioning, and promote health and development; and
    - (3) The administration of medications, treatments, and regimens prescribed by a licensed physician.
- 7. Nutrition Services:
  - a. Means development of a plan to address the nutritional and feeding needs of an infant or toddler related to their development, and includes:

- (1) The assessment of the nutritional history, dietary intake, body measurements such as height and weight, and feeding status;
- (2) Consultation to develop, implement and monitor appropriate plans to address the nutritional needs;
- (3) Referral to appropriate community resources to carry out nutritional plans; and
- (4) Family training, education and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child related to nutrition and feeding and enhancing the child's development.

**8. Occupational Therapy Services:**

- a. Means assessment and intervention services with an emphasis on adaptive skills, motor and sensory development, mobility, play and oral-motor functioning and includes:
  - (1) Intervention strategies to address the functional developmental needs, including oral motor functioning of an infant or toddler, minimizing the impact of initial or future impairment, and delay in development or loss of functional ability;
  - (2) Consultation to adapt the environment to promote development, access and participation in everyday routines, activities and places;
  - (3) The selection, design, or fabrication of assistive and orthotic devices to promote mobility or participation in everyday routines, activities, and places; and
  - (4) Family training, education, and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to occupational therapy strategies and enhancing the child's motor development.
- b. Does not include therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury that is expected to heal without a long-term impact to child development and that is beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

**9. Physical Therapy Services:**

- a. Means assessment and intervention services with an emphasis on mobility, positioning, motor development, and both strength and endurance and includes:
  - (1) Intervention strategies to address the functional developmental needs of an infant or toddler;
  - (2) Through individual or group services, to obtain, interpret, and integrate information for program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems;

- (3) The design or acquisition of assistive and orthotic devices, and effective adaptation of the child's environment to promote mobility and participation in everyday routines, activities and places, and minimize the impact of initial or future impairment, delay in development or loss of functional ability; and
    - (4) Family training, education, and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to physical therapy strategies and enhancing the child's motor development.
  - b. Does not include therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury that is expected to heal without a long-term impact to the child's development and that is beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.
- 10. Psychological Services:
  - a. Means assessment and intervention services that address the development, cognition, behavior, and social or emotional development of an infant or toddler and includes:
    - (1) The administration of psychological and developmental tests and other assessment procedures to identify the developmental, cognitive, behavioral and social emotional status;
    - (2) The acquisition, integration and interpretation of test results, other information about development and behavior and the family and living situation related to learning, social or emotional development and behavior;
    - (3) The provision of individual or parent or guardian counseling;
    - (4) Planning and managing a child's program of psychological services;
    - (5) Consultation on child behavior, child and family conditions related to learning, mental health, and development to a parent or guardian, other caregivers, and other service providers; and
    - (6) Family training, education, and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to psychological strategies and enhancing the child's psychological and cognitive development.
- 11. Sign Language and Cued Language Services means instruction that includes sign language, cued language, auditory or oral language, providing oral transliteration services, and providing sign and cued language interpretation for an infant or toddler.
- 12. Social and Emotional Services:
  - a. Means assessment and intervention services that address social and emotional development in the context of a family and parent or guardian-child interaction and includes:

- (1) Home visits to evaluate an infant or toddler's living conditions and patterns of parent or guardian-child interaction;
- (2) The completion of social or emotional developmental assessment;
- (3) The provision of individual or group counseling to an infant or toddler or a parent or guardian in order to understand the parental needs related to their child's development and how to enhance the development of the child;
- (4) The provision of social skill building activities with the child and parent or guardian;
- (5) Intervention strategies to address issues in the living or caregiving situation that may affect the child's development and/or utilization of other allowable early intervention services;
- (6) The identification, mobilization and coordination of community resources and services to enable an infant or toddler and their parent or guardian to receive maximum benefit from other early intervention services; and
- (7) Family training, education, and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to strategies for enhancing the child's social or emotional development. "Social and emotional services" means assessment and intervention services that address social emotional development in the context of a family and parent or guardian-child interaction and includes:
  - (a) Home visits to evaluate an infant or toddler's living conditions and patterns of parent or guardian-child interaction;
  - (b) The completion of social or emotional developmental assessment;
  - (c) The provision of individual or group counseling to an infant or toddler or a parent or guardian in order to understand the parental needs related to their child's development and how to enhance the development of the child;
  - (d) The provision of social skill building activities with the child and parent or guardian;
  - (e) Intervention strategies to address issues in the living or caregiving situation that may affect the child's development and/or utilization of other allowable early intervention services;
  - (f) The identification, mobilization and coordination of community resources and services to enable an infant or toddler and their parent or guardian to receive maximum benefit from other early intervention services; and
  - (g) Family training, education, and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to strategies for enhancing the child's social or emotional development.

13. Speech Language Pathology Services:
  - a. Means assessment and intervention services to address the functional and communication needs of an infant or toddler, and includes:
    - (1) Language and speech development;
    - (2) Oral motor functioning, including the identification of specific communication disorders;
    - (3) Consultation to adapt an environment and activities to promote speech and language development and participation in everyday routines, activities and places;
    - (4) Habilitation, rehabilitation or prevention of communication disorders, and delays in language and speed development;
    - (5) Referral for medical or other professional services necessary for the habilitation or rehabilitation of an infant or toddler with communication disorders or delays; and
    - (6) Family training, education and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to speech language pathology strategies and enhancing the child's communication development.
  - b. Does not include therapeutic services required due to, or as part of, a medical procedure, a medical intervention or an injury that is expected to heal without a long-term impact to the child's development and that is beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.
14. Transportation Services means reimbursement for the cost of travel, including mileage, taxis, common carriers, and tolls or parking, that are necessary to enable an infant or toddler and their parent or guardian to receive an Early Intervention Service identified in the Individualized Family Service Plan.
15. Vision Services:
  - a. Means evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders and delays that affect child development, and the intervention services to address the functional visual needs of an infant or toddler with significant vision impairment and includes:
    - (1) Communication skills training;
    - (2) Orientation and mobility training for all environments;
    - (3) Visual and other training necessary to activate visual motor abilities;
    - (4) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both;

- (5) Consultation to adapt an environment and activities for a child with a visual impairment to promote development, access and participation in everyday routines, activities, and places; and
  - (6) Family training, education and support provided to assist a parent or guardian or other caregivers in understanding the special needs of the child as related to vision strategies and enhancing the child's overall development.
- b. Does not mean therapeutic services required due to, or as part of, a medical procedure, a medical intervention, or an injury and that is beyond the scope of the early intervention services identified in the child's Individualized Family Service Plan as being needed to meet the child's developmental outcomes.

#### **5.115 EARLY INTERVENTION PROVIDER QUALIFICATIONS**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. Early intervention services shall be provided by qualified providers who meet the Early Intervention Colorado Program state personnel standards for each early intervention service.
- B. Early Intervention providers shall maintain current and accurate documentation, including certifications, licensing, endorsements, and registrations and shall register and update their information at least annually, in the statewide data system provider portal.
- C. Early intervention providers shall complete all required training, as determined by the Department and listed on the Early Intervention Colorado Program website at [www.EIColorado.org](http://www.EIColorado.org).

#### **5.116 CHILD OUTCOMES MEASURES**

This rule is promulgated pursuant to sections 26.5-3-403 and 26.5-3-410, C.R.S.

The Early Intervention Program, pursuant to 20 U.S.C. 1416(a) and 1442 which is referenced in Rule 5.104(A)(4), shall collect and report data on the progress made by children and families receiving early intervention services.

- A. A Certified Early Intervention Service Broker shall participate in the state program to measure child outcomes and ensure that each eligible child who receives early intervention services for six (6) months or longer receives a child outcomes rating that is determined utilizing information gathered through:
  - 1. Family interview;
  - 2. Professional observation; and
  - 3. Utilization of an appropriate assessment instrument to measure child outcomes as defined by the Department.
- B. Required Timelines
  - 1. An entry rating shall be determined as soon as a baseline can be accurately established, but no later than sixteen (16) weeks from the date of referral for early intervention services for an eligible child, unless a child is younger than six (6) months of age. If the child is less than six (6) months of age at the time of referral, the first measurement shall occur once a child has reached the age of six (6) months; and

2. An exit rating shall be finalized no more than ninety (90) calendar days prior to the child's exit from early intervention services or the child's third (3rd) birthday, whichever occurs first. An exit rating is not required for a child who has been in early intervention services for less than six (6) months.
- C. A Certified Early Intervention Service Broker shall ensure that all staff and contractors who are responsible for documenting and reporting child outcomes progress data are trained in the methods required by the Department and participate in required technical assistance activities.
- D. Child outcomes shall measure the percent of infants and toddlers with an Individualized Family Service Plan, who:
  1. Have positive social emotional skills (including social relationships);
  2. Acquire and use knowledge and skills (including early language/communication); and
  3. Use appropriate behaviors to meet their needs.

#### **5.117 FAMILY OUTCOMES MEASUREMENTS**

This rule is promulgated pursuant to sections 26.5-3-403 and 26.5-3-410, C.R.S.

- A. A Certified Early Intervention Service Broker shall participate in statewide distribution and collection of family outcomes measurements.
- B. A family outcomes survey shall be distributed to each parent or guardian who has a child participating in early intervention services for at least six (6) months.
- C. Family outcomes shall measure the percent of families who have a child participating in early intervention services for at least six (6) months who report that early intervention services have helped the family:
  1. Know their rights;
  2. Effectively communicate their child's needs; and
  3. Help their child develop and learn.

#### **5.118 TRANSITION STEPS AND SERVICES**

This rule is promulgated pursuant to section 26.5-3-404, C.R.S.

- A. The service coordinator shall, prior to notifying the Special Education Administrative Unit in which a child who is potentially eligible for preschool special education services resides and the Department of Education, inform the parent or guardian of the opt-out policy, as defined in Rule 5.118(B).
  1. If a parent or guardian chooses to opt out of having their child's information sent to the Administrative Unit and the Department of Education for notification, the following shall occur:
    - a. The state form shall be completed to indicate that the parent or guardian has signed a written request to withhold notification and is submitted by the parent or guardian to the Certified Early Intervention Service Broker within ten (10) calendar days of the date delineated on the form; and



- b. The state form shall become part of the child's record.
- 2. A parent or guardian may revoke their choice to opt out at any time by providing written notice to the Certified Early Intervention Service Broker.
- B. For the purpose of transition planning, the opt-out policy refers to the procedural safeguard provided to a parent or guardian to prevent, through written request, the transmittal of personally identifiable information about their child and family, as defined in Rules 5.103 and 5.118(D), to the Administrative Unit and the Department of Education, at the time that a child is approaching three (3) years of age.
- C. For the purpose of transition planning, a child who is potentially eligible for preschool special education services is defined as a child who is enrolled in early intervention services, and who:
  - 1. Has not met all outcomes on their Individualized Family Service Plan; and/or
  - 2. Is demonstrating a delay in any developmental domain, based on the expertise of a member of the Individualized Family Service Plan team.
- D. A Certified Early Intervention Service Broker service coordinator shall notify, using the state form, the Administrative Unit of a child who is potentially eligible, unless a parent or guardian has signed the opt-out policy statement. The following information will be provided:
  - 1. The child's first, middle and last name, date of birth, parent or guardian contact information including name(s), address(es) and telephone number(s), will be provided:
    - a. Not fewer than ninety (90) days and not more than nine (9) months prior to the child's third (3rd) birthday for any child with an active Individualized Family Service Plan; or
    - b. As soon as possible for a child determined eligible fewer than ninety (90) days and more than forty-five (45) days prior to the child's third (3rd) birthday.
  - 2. If a child is referred to the Certified Early Intervention Service Broker fewer than forty-five (45) days prior to the child's third (3rd) birthday and the child may be eligible for preschool special education services, the Certified Early Intervention Service Broker, with written parental consent, shall refer the child to the Administrative Unit in which the child resides.
- E. A Certified Early Intervention Service Broker service coordinator shall provide the Administrative Unit, with written parental consent, current information for a child who is potentially eligible regarding the child's early intervention services, including assessment information, and a copy of the most current Individualized Family Service Plan.
- F. A Certified Early Intervention Service Broker service coordinator shall establish a transition plan within an Individualized Family Service Plan to support a smooth transition:
  - 1. Not fewer than ninety (90) days, and at the discretion of all parties, not more than nine (9) months prior to the child's third (3rd) birthday; or
  - 2. As soon as possible for a child referred at a later age whose eligibility was established and an Individualized Family Service Plan was developed fewer than ninety (90) days and more than forty-five (45) days prior to the child's third (3rd) birthday.

- G. The transition plan shall be developed with the family and shall include, at a minimum, the following:
1. A description of transition steps and services the Individualized Family Service team determines necessary to support a smooth transition from early intervention services to preschool special education services, under Part B of the Individuals with Disabilities Education Act, which is discussed in Rule 5.104(A)(4), or other appropriate services; and
  2. A description of transition steps includes:
    - a. As appropriate, how the child and their family will exit from early intervention services;
    - b. How a parent or guardian shall be informed of and included in the transition process, including a review of the future placements and program options for the child from the child's third (3rd) birthday through the remainder of the school year;
    - c. Confirmation by the Certified Early Intervention Service Broker that the basic personally identifiable information, discussed in Rule 5.118(D)(1), has been transmitted to the Administrative Unit;
    - d. With parental consent, confirmation of the transmission of additional information needed by the administrative unit to ensure continuity of services from early intervention services to Part B preschool special education services, including a copy of the most recent evaluation and assessments of the child and the family, and the most recent Individualized Family Service Plan;
    - e. Procedures to prepare a child for changes in service delivery and strategies to help a child adjust to and function in a new setting; and
    - f. Any transition services and other activities that the Individualized Family Service Plan team identifies as needed by the child, or their family, to support the transition of the child.
- H. With documented verbal or written parental approval, a transition conference shall be convened no later than ninety (90) days and, at the discretion of all participants, no earlier than nine (9) months prior to a child's third (3rd) birthday.
1. For a child who is potentially eligible, the participants at a transition conference shall include:
    - a. A parent or guardian of a child who is approaching three (3) years of age;
    - b. The service coordinator; and
    - c. Representative(s) from the administrative unit.
  2. If a representative of the Administrative Unit does not attend the transition conference for a child who is potentially eligible, the Certified Early Intervention Service Broker service coordinator shall conduct a transition conference as scheduled.

3. A Certified Early Intervention Service Broker service coordinator shall make reasonable efforts to convene a transition conference for a child who is not potentially eligible for preschool special education services to discuss appropriate services that the child may receive, with the documented verbal or written approval of the parent or guardian. The following participants shall attend the conference:
  - a. Parent or guardian of a child who is approaching three (3) years of age;
  - b. Service coordinator; and
  - c. Providers of other appropriate services.
- I. If the transition conference is held in combination with the Individualized Family Service Plan meeting to develop the transition plan, the requirements of Rules 5.118(F)-(H), shall be met.
- J. A Certified Early Intervention Service Broker shall terminate early intervention services for a child whose parent or guardian elects to begin IDEA Part B preschool special education services provided through an Individualized Education Program prior to the child's third (3rd) birthday in lieu of receiving IDEA Part C early intervention services.
- K. Extended Part C Option

Definitions: For purposes of this Extended Part C Option, Part C Entity references early intervention services (EIS) provider and Special Education Administrative Unit represents the local education agency (LEA).

  1. The Extended Part C Option under IDEA Section 635(c) and 34 C.F.R § 303.211 applies to children who:
    - a. Are eligible for Early Intervention Part C;
    - b. Are eligible for Part B preschool special education services under section 619 of the Individuals with Disabilities Education Act; and
    - c. Turn age three (3) between May 1 and the beginning of the school year for the first year of implementation. The eligible birth date range may be reconsidered on an annual basis to include earlier birthdates (with a range between January 1<sup>st</sup> and May 1<sup>st</sup>), based on available funding, and will be communicated to stakeholders on the early intervention website by August 1<sup>st</sup> for the following calendar year. (For example, if the eligible birth date range for 2023 would be April 1, 2023 until the school year begins in 2023, the Department will post on its website no later than August 1, 2022).
    - d. For parent or guardians who elect this option, the Extended Part C Option will be available from the eligible birth date until the beginning of the school year after the child's third (3<sup>rd</sup>) birthday.
  2. The Department is implementing the Extended Part C Option in collaboration with the Colorado Department of Education for those children and their families who meet the criteria for Extended Part C and ensures that:

- a. The requirements under IDEA sections 612(a)(7) (State eligibility), 616 and 642 (Monitoring, technical assistance, and enforcement), 618 (Program information), 632(5)(b) (Definitions) and 635(c) (Requirements for statewide system) as well as implementing regulations in 34 C.F.R. § 303.21(c) (Definition of infant or toddlers with a disability), § 303.209 (Transition to preschool and other programs), § 303.211 (State option to make services under this part available to children ages three (3) and older), § 303.340-344 (Individualized family service plan), will remain in effect for all children over age three (3) when a parent or guardian consents to the Extended Part C Option. The right of any child to receive a free appropriate public education under Part B is not affected by this policy.
- b. All early intervention services outlined in the child's Individualized Family Service Plan will continue while any eligibility determination is being made for Part B preschool special education services.
- c. Parents or guardians receive a written explanation of:
  - (1) The rights of parent or guardians to elect to receive early intervention services pursuant to section 635(c) and 34 C.F.R. § 303.211 under the Part C Extended Option or to receive free and appropriate public education under Part B;
  - (2) The differences between the supports provided pursuant to Section 635(c) and 34 C.F.R. § 303.211 and services provided under Section 619 (Preschool special education), including: (1) types of services and the locations at which the services are provided; (2) applicable procedural safeguards; and (3) possible costs, if any, to parents or guardians of children eligible under Part C (including any fees to be charged to families as described in Section 632(4)(b)), 34 C.F.R. § 303.209(f)(2);
  - (3) During transition planning and while enrolled in the Extended Part C Option, Part C procedural safeguards will apply. For disputes regarding Part B eligibility, Part B procedural safeguards will apply; and
  - (4) IDEA Part C services such as service coordination and the differences between IDEA Part B (free and appropriate public education in the least restrictive environment) and IDEA Part C early intervention services in natural environments which include the home and community settings with nondisabled peers.
- 3. The Extended Part C Option will be provided at no cost to families and will be funded using the following as available: IDEA Part C funds, public benefits and/or insurance, and private insurance.
- 4. For children determined to be eligible for Part B preschool special education services, an Individualized Education Program has been developed to ensure that an offer for a free and appropriate public education under Part B is available to begin at age three (3).
- 5. Before a child reaches three (3) years of age, the local Part C entity will obtain signed informed written consent from the parent or guardian indicating their choice to continue early intervention services pursuant to Section 635(c) and 34 C.F.R. § 303.211 and:

- a. The Special Education Administrative Unit will obtain written consent from the parent or guardian for the initial provision of special education services as written in the Individualized Education Program as beginning at the start of the school year following their child's third birthday; and
  - b. The local Part C entity will ensure that the Special Education Administrative Unit has a copy of the parent or guardian's consent to remain in Part C services as soon as possible and not later than ten (10) calendar days after receipt of the consent.
- 6. Individualized Family Service Plan services provided pursuant to Section 635(c) and 34 C.F.R. § 303.211 will include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.
- 7. When early intervention services are provided in accordance with Part C and 34 C.F.R. § 303.211 to a child who is eligible for services under section 619, the Special Education Administrative Unit is not required to provide such child with a free and appropriate public education during the time period of the extension of Part C services, pursuant to section 612(a)(1)(c).
- 8. Children served pursuant to this section have the right, at any time, to receive a free and appropriate public education (as that term is defined at 34 C.F.R. § 303.15) under Part B of the Act instead of early intervention services under Part C of the Act. A parent or guardian may elect to exit Part C at any time but if they elect to exit Part C, there will not be the option to re-enter services at a later date.
- 9. The Department shall submit to the U.S. Department of Education, data and reports as required, including under IDEA Section 618 a report on the number and percentage of children with disabilities who are eligible for extending Part C based on their birth date, and who are eligible for services under section 619 but whose parents or guardians choose for such children to continue to receive early intervention services under Part C until the subsequent school year following the child's third birthday.
- L. The Department and the Colorado Department of Education have developed an interagency operating agreement titled the "State Transition Memorandum of Understanding - Infants and Toddlers with Developmental Disabilities and their Families Transitioning from Early Intervention Services to Part B Special Education Services in accordance with the Individuals with Disabilities Education Act (IDEA) of 2004" pursuant to section 26.5-3-404(3), C.R.S. This Memorandum of Understanding (MOU) governs the process for a child's transition from Part C to Part B and is publicly available online at: <https://www.cde.state.co.us/early/moupartctob> and [https://dcfs.my.salesforce-sites.com/eicolorado/EI\\_Reports?p=reports&s=Reports-and-Policies&lang=en](https://dcfs.my.salesforce-sites.com/eicolorado/EI_Reports?p=reports&s=Reports-and-Policies&lang=en).

#### **5.119 PROCEDURAL SAFEGUARDS**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. A Certified Early Intervention Service Broker shall have policies and procedures that are consistent with 34 C.F.R. Sections 303.400, 303.401-417, 303.420-422, and 303.430-438 as incorporated by reference in Rule 5.104(A)(5).
- B. A parent or guardian shall be given written information and a verbal explanation of the procedural safeguards from the date of the referral through the determination of eligibility or ineligibility, delivery of early intervention services, and exit from early intervention services at or before their child's third (3rd) birthday.

- C. A Community Centered Board shall ensure that all service coordinators demonstrate competence in the following:
  - 1. Procedural safeguards;
  - 2. How and when those procedural safeguards are to be explained and provided to a parent or guardian; and
  - 3. What documentation shall be maintained to demonstrate this information has been appropriately provided to each parent or guardian.
- D. Parental rights include:
  - 1. Confidentiality
    - a. Personally identifiable data, information, or records pertaining to a referred child shall not be disclosed by a Certified Early Intervention Service Broker, any early intervention service provider, or any personnel involved in dispute resolution to any person other than their parent or guardian, except as provided in the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. Section 1320, as amended, and the federal Family Educational Rights and Privacy Act (FERPA) of 1974, 20 U.S.C. Section 1232g, as amended, as listed in Rule 5.104(A)(4).
    - b. A parent or guardian may voluntarily give written parental consent for the exchange of confidential information to other parties.
    - c. A Certified Early Intervention Service Broker shall ensure that all persons collecting, maintaining, and using personally identifiable information receive training to comply with state and federal confidentiality policies and procedures.
  - 2. Regarding access to records, a Certified Early Intervention Service Broker shall:
    - a. Provide a parent or guardian, at no cost, a copy of each evaluation, assessment of the child, family assessment and Individualized Family Service Plan. Copies must be provided to a parent or guardian without unnecessary delay after each Individualized Family Service Plan meeting, and in no case more than ten (10) days after parental request;
    - b. Allow parents or guardians to inspect and review any early intervention records related to the child that are collected, maintained, or used by the agency for the purposes of providing early intervention services;
    - c. Comply with the request from a parent or guardian for access to records without unnecessary delay, and in no case more than ten (10) days after the parent or guardian makes the request to inspect and review records;
    - d. Make available to a parent or guardian an initial copy of the child's early intervention record, at no cost to the parent or guardian without unnecessary delay, and in no case more than ten (10) days after the parent or guardian makes the request for a copy;
    - e. Provide to the parent or guardian the opportunity to inspect and review only the information relating to their child if any record includes information on more than one child;

- f. Be allowed to charge a reasonable fee for providing additional copies of records, provided the fee does not prevent a parent or guardian from exercising their right to inspect and review the child's early intervention record; however, the Certified Early Intervention Service Broker shall not charge a fee to search for or retrieve information for the parent or guardian;
  - g. Upon a parent or guardian's request, provide a response to the parent or guardian for explanations and interpretations of their child's records without unnecessary delay, and in no case more than ten (10) days after the request has been made;
  - h. Provide a parent or guardian the right to have a representative, with written consent by the parent or guardian, to inspect and review the records; and,
  - i. Maintain a log of anyone obtaining access to records, including the name of the individual, the date access was given, and the purpose for the access.
- 3. Prior Written Notice
  - a. Using the state form, prior written notice shall be provided to a parent or guardian within a reasonable time before proposing or refusing to initiate or change the identification, eligibility, evaluation, early intervention service setting, the provision of appropriate early intervention services to their child and family, or the sharing of personally identifiable information.
  - b. The prior written notice form shall contain sufficient detail to inform a parent or guardian about:
    - (1) The action that is being proposed or denied;
    - (2) The reasons for taking such action;
    - (3) All procedural safeguards available; and
    - (4) State complaint procedures including a description of how to file a due process complaint and the timelines for those procedures.
  - c. Prior written notice, in accordance with 34 C.F.R. Section 303.421, as incorporated by reference in Rule 5.104(A)(5), shall be documented using the state form:
    - (1) Written in language understandable to the general public;
    - (2) Provided in the native language of the parent or guardian; and
    - (3) In the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so; and, if not a written language, a Certified Early Intervention Service Broker shall take steps to ensure that:
      - (a) The prior written notice is translated orally by an interpreter or by other means to the parent or guardian in the parent or guardian's native language or other mode of communication;
      - (b) A parent or guardian understands the written prior notice;

- (c) There is prior written evidence that the requirements for written prior notice are met; and
    - (d) Information shall be provided in the mode of communication used by a parent or guardian, such as sign language, Braille, or oral communication.
  - d. A copy of the written prior notice shall be maintained in the child's record.
- 4. Written Parental Consent shall be obtained before:
  - a. Initiating a referral that contains more than the basic information of a child's name, date of birth, gender, parent or guardian contact information and the name of the assigned service coordinator;
  - b. Conducting an initial evaluation and assessment of a child;
  - c. Providing any early intervention services;
  - d. Changing early intervention services or eligibility;
  - e. Billing of Medicaid or a private health insurance plan, if consent is required under state coordinated system of payment procedures; and
  - f. Sharing any personally identifiable information about a child or parent or guardian with another agency or program, other than authorized representatives, officials, or employees of participating agencies, as defined in Rule 5.103, or the required transition information given to the Administrative Unit and the State Education Agency.
- 5. If written parental consent is not provided, the Certified Early Intervention Service Broker shall make reasonable efforts to ensure that a parent or guardian:
  - a. Is fully aware of the evaluation, and assessment or early intervention services that would be available; and
  - b. Understands that their child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.
- 6. The right to decline an early intervention service without jeopardizing the provision of other early intervention services shall be provided to a parent or guardian.
- 7. A surrogate parent, who meets state required procedures and requirements and has been appointed in accordance with 34 C.F.R. Section 303.422, which is incorporated by reference in Rule 5.104(A)(5), shall be designated to ensure that the rights of a child are protected, if:
  - a. No parent or guardian, as defined in 34 C.F.R. Section 303.27, and Rule 5.103, can be identified;
  - b. A Certified Early Intervention Service Broker, in partnership with other involved public agencies, after reasonable efforts cannot locate a parent or guardian; or
  - c. A child is placed in the legal custody of the county department of human/social services.



### **5.120 DISPUTE RESOLUTION PROCESS**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. A Certified Early Intervention Service Broker shall have dispute policies and procedures, in accordance with 34 C.F.R. Sections 303.430-434 and 303.435-438, as incorporated by reference in Rule 5.104(A)(5), to ensure that parents or guardians and service providers are informed of the process for resolution of disputes. These policies and procedures shall include:
  - 1. A process for local level informal resolution of complaints; and
  - 2. Formal dispute resolution processes as defined within Rules 5.108(C) and 5.120.
- B. A parent or guardian of a child who is referred for services shall have the right to access mediation, state complaint procedures, and/or a due process hearing at no cost for the resolution of an individual dispute regarding identification, eligibility determination, early intervention service setting, or the provision of appropriate early intervention services for the child and the child's family.
- C. Families shall have access to mediation and due process procedures for the resolution of a dispute. The Department shall ensure:
  - 1. The availability of a mediator and hearing officer;
  - 2. A mediator and hearing officer are impartial and knowledgeable of the federal and state laws pertinent to early intervention services; and
  - 3. There is no cost to the parties involved in the mediation or due process hearing.
- D. If the dispute involves an application for initial early intervention services, the child shall receive those services that are not in dispute.
- E. During the pendency of any proceeding involving a dispute under this section of these rules, unless the public agency and parent or guardian of a child otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided.

### **5.121 MEDIATION**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. A statewide mediation system shall be available to ensure that:
  - 1. Any individual may voluntarily access a non-adversarial process for the resolution of disputes;
  - 2. There is no cost to the parties involved in the mediation;
  - 3. It shall not be used to deny or delay a parent or guardian the right to a due process hearing, or to deny any other rights, in accordance with 20 U.S.C. 1439, as listed in Rule 5.104(A)(4); and
  - 4. It shall be scheduled and held in a location that is convenient to the parties involved in the mediation.

- B. A request for mediation by a parent or guardian or an early intervention services provider shall be submitted to the Department using either the state form or another signed written request.
- C. A mediation agreement reached by the parties to the dispute in the mediation process shall be set forth in a legally binding written mediation agreement that sets forth that resolution and that:
  - 1. States that all discussions that occurred during the mediation process shall remain confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding; and
  - 2. Is signed by a parent or guardian and a representative of the agency who has the authority to bind such agency.
- D. A written, signed mediation agreement shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.

#### **5.122 STATE COMPLAINT PROCEDURES**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. A Certified Early Intervention Service Broker shall ensure that state procedures for filing a complaint are widely disseminated to parents or guardians and other interested individuals within its designated service area, including parent training centers, protection and advocacy agencies, and other appropriate entities.
- B. In resolving a complaint in which there is a finding of failure to provide appropriate early intervention services to an eligible child, the following shall be addressed:
  - 1. The remediation of the denial of an Early Intervention Service, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and
  - 2. The provision of appropriate future early intervention services for all eligible infants and toddlers and their families.
- C. An organization or individual may file a written signed complaint using the state form or in another written format that includes the following information:
  - 1. A statement of the alleged violation of rules or statutes;
  - 2. The facts on which the complaint is based;
  - 3. The signature and contact information for the complainant and, if alleging violations with respect to a specific child, the name and address of the residence of the child;
  - 4. The name of the provider serving the child;
  - 5. A description of the nature of the problem regarding the child, including facts relating to the problem; and
  - 6. A proposed resolution of the problem to the extent known.
- D. An alleged violation shall have occurred not more than one (1) year before the date that the complaint is received by the Department.

- E. The party filing the complaint shall forward a copy of the complaint to the public agency or provider serving the child at the same time the party files the complaint with the Department.
- F. A complaint shall be reviewed within sixty (60) calendar days after it is filed under this process to:
  - 1. Carry out an independent on-site investigation, if the Department determines that such an investigation is necessary;
  - 2. Provide the complainant with the opportunity to submit additional information, either orally or in writing, about the allegation(s) included in the complaint;
  - 3. Provide the public agency or provider with an opportunity to respond to the complaint, including a proposal to resolve the complaint;
  - 4. Provide an opportunity for the parent or guardian who has filed a complaint and for the agency or provider to voluntarily engage in mediation;
  - 5. Review all relevant information and make an independent determination as to whether the agency is violating a requirement under Rules 5.100-5.124; and
  - 6. Issue a written decision to the complainant within sixty (60) calendar days that addresses each allegation within the complaint and contains the following:
    - a. Findings of fact and conclusions; and
    - b. Reasons for the final decision made by the Department.
- G. An extension of the sixty (60) calendar day time limit may be granted if determined necessary by the Department.
- H. The following activities may be imposed by the Department on a Certified Early Intervention Service Broker:
  - 1. Technical assistance activities;
  - 2. Negotiations; and
  - 3. Corrective actions to achieve compliance.
- I. If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues, of which one or more are part of that hearing, the following shall apply:
  - 1. Any part of the complaint that is being addressed in the due process hearing procedures as defined in Rule 5.120 may be set aside until the conclusion of the hearing;
  - 2. Any issue of the complaint that is not a part of the due process hearing procedures may be resolved within sixty (60) calendar days using the complaint procedures described in Rule 5.120; or
  - 3. The complaint alleging that a public agency or private service provider failed to implement a due process decision may be resolved by the Lead Agency.

### **5.123 DUE PROCESS PROCEDURES**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

- A. A due process hearing officer shall be appointed to implement the due process procedures described in this Section of the rules, and shall:
  - 1. Have knowledge about the provision of early intervention services in accordance with Rules 5.100-5.124;
  - 2. Listen to the presentation of relevant viewpoints about a complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the due process complaint; and
  - 3. Provide a record of the proceedings, including a written decision.
- B. In the context of Rule 5.120, "impartial," under this section of the rules, means that a person appointed to implement a complaint resolution process:
  - 1. Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child;
  - 2. Does not have a personal or professional interest that would conflict with their objectivity in implementing the process; and
  - 3. Is not an employee of an agency solely because the person is paid by the agency to implement the due process proceeding.
- C. Any parent or guardian of a child referred for services under Rules 5.100-5.124 may submit a written request for a due process proceeding to the Department using the state form or another signed written request, and has the right to:
  - 1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services, at the parent or guardian's expense;
  - 2. Present evidence and confront, cross-examine, and compel the attendance of witnesses that are either employed by or under contract with the Certified Early Intervention Service Broker;
  - 3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to a parent or guardian at least five (5) calendar days before the proceeding;
  - 4. Obtain a written or electronic verbatim transcription of the proceeding; and
  - 5. Receive written findings of fact and decisions at no cost to the parent or guardian.
- D. Any proceeding for implementing the due process hearing shall be carried out at a time and place that is reasonably convenient to the parent or guardian.
- E. No later than thirty (30) calendar days after receipt of a parent or guardian's written complaint, the proceeding shall be completed and a written decision mailed to each of the parties.

#### **5.124 CIVIL ACTION**

This rule is promulgated pursuant to section 26.5-3-403, C.R.S.

Any party aggrieved by a finding and decision regarding a due process complaint has the right to bring a civil action in state or federal court.

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**Editor's Notes**

**History**

New rule emer. rule eff. 01/01/2023.

Entire rule eff. 04/14/2023.