



TO: Health and Human Services Commission
Executive Council

DATE: December 6, 2018

FROM: Lindsay Rodgers, Associate Commissioner,
Health and Developmental Services

AGENDA ITEM: 2.n

SUBJECT: Early Childhood Intervention (ECI) Program Efficiencies

BACKGROUND: Federal Legislative Other: Program Initiative

The Health and Human Services Commission (HHSC) proposes to amend the Texas Administrative Code (TAC), Title 40, Part 2, Chapter 108, Subchapters A-H and J-N, related to the Early Childhood Intervention (ECI) Services to increase administrative efficiencies, improve processes for contractors, and streamline the rules with the Code of Federal Regulations.

The proposed changes also contain non-substantive changes that will (1) improve readability and understanding, (2) make the wording of the rule consistent with the new changes in this chapter, and (3) update state organizational changes as a result of Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015.

HHSC proposes to add §§108.218, 108.314, 108.405, 108.415, 108.706, 108.707, and 108.708 to combine rules for efficiency and move rules to improve flow and readability.

HHSC proposes to repeal §§108.102, 108.205, 108.206, 108.218, 108.302, 108.317, 108.319, 108.405, 108.415, 108.603, 108.702, 108.706, 108.707, 108.803, 108.1002, 108.1011, 108.1102, 108.1106, 108.1202, 108.1303, 108.1403, and 108.1432, to combine with other rules for efficiency and remove redundant rules.

The proposed amendments, repeals, and new rules are a result of HHSC ECI Program conducting a review of current rules and visiting with current ECI contractors and stakeholders to identify ways to improve the long-term sustainability of the program. These proposed rules will address a number of areas including eligibility determination, programmatic requirements, and additional needs identified by current contractors. Additionally, this rule project has allowed the ECI program to identify any opportunities to clarify

targeted case management which will assist in the requirements of the 2018-19 General Appropriations Act, S.B. 1, 85th Texas Legislature, 2017 (Article II, HHSC, Rider 114).

ISSUES AND ALTERNATIVES:

HHSC anticipates high stakeholder interest in these rules. Some stakeholder feedback obtained during the informal comment process has been addressed or responded to with clarifications.

STAKEHOLDER INVOLVEMENT:

The proposed rule amendments, repeals, and new sections were posted on the HHSC Rules Coordination Office website for external stakeholders to review. Informal comments were received from ECI Program Directors and other external stakeholders, including the Texas Council of Community Centers. These comments were reviewed by health and human services staff and taken into consideration.

FISCAL IMPACT:

None

SERVICES IMPACT STATEMENT:

The anticipated public benefit will be increased efficiencies for contractors and improved guidance for contractors to provide seamless service delivery to families.

RULE DEVELOPMENT SCHEDULE:

November 8, 2018	Present to Medical Care Advisory Committee
December 6, 2018	Present to HHSC Executive Council
December 2018	Publish proposed rules in <i>Texas Register</i>
March 2019	Publish adopted rules in <i>Texas Register</i>
March 2019	Effective date

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes amendments to 40 Texas Administrative Code (TAC) Part 2, Chapter 108, §§108.101, 108.103, 108.201, 108.203, 108.204, 108.207, 108.211, 108.213, 108.215, 108.217, 108.219, 108.233, 108.237, 108.303, 108.309 - 108.313, 108.315, 108.403, 108.409, 108.411, 108.417, 108.501, 108.503, 108.505, 108.507, 108.607, 108.609, 108.611, 108.613, 108.615, 108.617, 108.704, 108.709, 108.809, 108.811, 108.813, 108.815, 108.817, 108.821, 108.823, 108.825, 108.829, 108.835, 108.837, 108.1003, 108.1004, 108.1007, 108.1009, 108.1015 - 108.1017, 108.1019, 108.1104, 108.1105, 108.1107, 108.1108, 108.1111, 108.1207, 108.1209, 108.1213, 108.1217, 108.1221, 108.1301, 108.1307, 108.1309, 108.1405, 108.1407, 108.1409, 108.1413, 108.1421, 108.1423, 108.1425, 108.1431, and 108.1439; new §§108.218, 108.314, 108.405, 108.415, 108.706, 108.707, and 108.708; and the repeal of §§108.102, 108.205, 108.206, 108.218, 108.302, 108.317, 108.319, 108.405, 108.415, 108.603, 108.702, 108.706, 108.707, 108.803, 108.1002, 108.1011, 108.1102, 108.1106, 108.1202, 108.1303, 108.1403, and 108.1432, concerning Subchapter A, General Rules; Subchapter B, Procedural Safeguards and Due Process Procedures; Subchapter C, Staff Qualifications; Subchapter D, Case Management for Infants and Toddlers with Developmental Disabilities; Subchapter E, Specialized Skills Training; Subchapter F, Public Outreach; Subchapter G, Referral, Pre-Enrollment, and Developmental Screening; Subchapter H, Eligibility, Evaluation, and Assessment; Subchapter J, Individualized Family Service Plan (IFSP); Subchapter K, Service Delivery; Subchapter L, Transition; Subchapter M, Child and Family Outcomes; and Subchapter N, Family Cost Share System.

BACKGROUND AND PURPOSE

The purpose of the amendments, repeals, and new rules is to increase administrative efficiencies, improve processes for contractors, and align the rules with the Code of Federal Regulations.

The proposed changes also contain non-substantive changes that will: (1) improve readability and understanding; (2) make the wording of the rule consistent with the new changes in this chapter; and (3) update state organizational changes as a result of Senate Bill (S.B.) 200, 84th Legislature, Regular Session, 2015.

The proposed amendments, repeals, and new rules are a result of HHSC Early Childhood Intervention (ECI) Program conducting a review of current rules and visiting with current ECI contractors and stakeholders to identify

ways to improve the long-term sustainability of the program. These proposed rules will address a number of areas including the eligibility determination, programmatic requirements, and additional needs identified by current contractors. Additionally, this rule project has allowed the ECI program to identify any opportunities to clarify targeted case management which will assist in meeting the requirements of the 2018-19 General Appropriations Act, S.B. 1, 85th Legislature, Regular Session, 2017 (Article II, HHSC, Rider 114).

There is no anticipated fiscal impact to state government from implementation of the proposed rules. All changes are to provide clarity and align rules with contract and federal requirements, or to allow administrative efficiencies for ECI contractors.

SECTION-BY-SECTION SUMMARY

Generally, the title of Chapter 108 is amended from "Division for Early Childhood Intervention Services" to "Early Childhood Intervention Services." The references to "DARS" "Department of Assistive and Rehabilitative Services" and "Texas Health and Human Services Commission" are replaced with "HHSC" and "DARS ECI Assistant Commissioner" is replaced with "HHSC Director of ECI" throughout the sections.

Regarding Subchapter A, General Rules:

The proposed amendment of §108.101 clarifies legal authority for the ECI program.

The proposed repeal of §108.102 deletes redundant legal authority language.

The proposed amendment of §108.103: (1) updates the definition of "Comprehensive Needs Assessment," "ECI Professional," "Group Services" "Licensed Practitioner of the Healing Arts (LPHA)," "Medicaid," "Qualifying Medical Diagnosis; (2) deletes the definitions "DARS," "DARS ECI," and "Sign Language and Cued Language," which is to be incorporated in the proposed amendment of §108.1105 to include sign language and cued language as one of services that ECI contractors must have the capacity to provide; and (3) adds definitions for "HHSC" and "HHSC ECI."

Regarding Subchapter B, Procedural Safeguards and Due Process Procedures:

The proposed amendment of §108.201 updates references.

The proposed amendment of §108.203 updates a publication reference.

The proposed amendment of §108.204: (1) adds content from the proposed repeal of §108.205 and (2) clarifies requirements for written notice.

The proposed repeal of §108.205 deletes the rule because the content has been updated and incorporated into proposed amended §108.204.

The proposed repeal of §108.206 deletes the rule because the content has been updated and incorporated into proposed amended §108.207.

The proposed amendment of §108.207 adds a subsection to include the content from the proposed repeal of §108.206 and relabels remaining subsections to account for the additional subsection.

The proposed amendment of §108.213 clarifies that a surrogate parent must be assigned within 30 days of the date the need is identified, as required in the federal regulations.

The proposed amendment of §108.215 aligns records retention in rule with the HHSC records retention period, which has already been updated in the ECI contract.

The proposed repeal of and new §108.218 restructures the current rule so it provides the correct procedure order for the mediation process.

The proposed amendment of §108.233: (1) adds a reference to "Uninterrupted Scholars Act" in (a); (2) updates information about the record retention period in subsection (b)(5); and (3) adds new subsection (c) pertaining to release of Personally Identifiable Information (PII). This change establishes criteria for when consent is not required for release of PII in accordance with current program expectations and the Uninterrupted Scholars Act.

The proposed amendment of §108.237 aligns records retention in rule with the HHSC records retention period, which has already been updated in the ECI contract.

Regarding Subchapter C, Staff Qualifications:

The proposed repeal of §108.302 deletes redundant legal authority language.

The proposed amendment of §108.309 removes reference to “care of seizures” from the first aid training requirement. Seizure care is included in curriculum for Cardio Pulmonary Resuscitation (CPR) and standard First Aid training so this does not need to be specified. Section 108.309(e) clarifies expectations and reduces documentation requirements related to supervision of staff. Current requirements are administratively burdensome and do not necessarily result in better supervision. Programs want more flexibility to establish supervision systems that meet state expectations and local program needs.

The proposed amendment of §108.310 replaces “Texas Department Family and Protective Services (DFPS) Division,” “Texas Health and Human Services Commission,” “DFPS Division,” and “DFPS” with “HHSC” and deletes a reference to a DFPS website.

The proposed amendment of §108.311: (1) deletes subsections (b), (c) and (e) and relabels the remaining subsection to account for the deletions; and (2) clarifies that a licensed professional must comply with licensing board requirements for the continuing education, supervision and conduct requirements for the licensed professionals on their staff.

The proposed amendment of §108.312 amends subsection (d) to clarify information about the period review.

The proposed amendment of §108.313 clarifies minimum qualifications for an Early Intervention Specialist (EIS) to align with current program practice and provide greater flexibility in completing continuing education.

The proposed new §108.314 moves content from proposed repealed §108.319 to keep all EIS content in the same location.

The proposed amendment of §108.315: (1) allows service coordinator (SC) staff up to one year to complete their Individualized Professional Development Plan (IPDP) credentialing; (2) clarifies that the additional contact hours of approved continuing education for SC staff must be obtained annually; and (3) reduces documentation requirements for supervision of SC staff. These changes facilitate more on-the-job training for SCs, remove administratively burdensome documentation requirements, and provide more flexibility for contractors to establish supervision systems that meet state expectations and local program needs. Additionally, paragraphs are relabeled to account for the addition and deletion of paragraphs.

The proposed repeal of §108.317 deletes the rule because the content of the rule is redundant. The rule was originally created as grandfather clause for a

small number of staff. There are no longer any unlicensed staff still in the program.

The proposed repeal of §108.319 deletes the rule because the content has been updated and incorporated into proposed amended §108.314.

Regarding Subchapter D, Case Management for Infants and Toddlers with Developmental Disabilities:

The proposed amendment of §108.403: (1) amends the definition of “case management” to clarify that telehealth services may be provided with prior written consent of the parent; (2) adds the definition of “Targeted Case Management (TCM);” (3) amends the definitions of “Monitoring and assessment,” and “Service coordinator;” and (4) renumbers the paragraphs to account for the addition of a paragraph.

The proposed repeal of and new §108.405 replaces the current rule language to clarify the service components of case management and provide more guidance to users.

The proposed amendment of §108.411 incorporates the words “training” and “work” where necessary.

The proposed repeal of and new §108.415 replaces the current rule to clarify the documentation requirements for case management and provide more guidance to users.

The proposed amendment of §108.417 updates a reference regarding appeals and hearing procedures.

Regarding Subchapter E, Specialized Skills Training:

The proposed amendment of Subchapter E, Specialized Skills Training, changes the title to “Specialized Rehabilitative Services (SRS)” to clarify this subchapter encompasses all SRS services and not only specialized skills training.

The proposed amendment of §108.501 adds requirements for therapy services to allow ECI to set a standard expectation to be applied to all of its services and removes redundant rule language.

The proposed amendment of §108.503 replaces “skills training” with “rehabilitative services” and makes edits for clarity and consistency.

The proposed amendment of §108.505 updates for clarity and consistency and: (1) deletes paragraph (1); (2) updates references; and (3) replaces “Early Intervention Specialist” with “ECI professional.”

The proposed amendment of §108.507 updates for clarity and consistency and: (1) updates references; and (2) replaces “skills training” with “rehabilitative services.”

Regarding Subchapter F, Public Outreach:

The proposed repeal of §108.603 deletes redundant legal authority language.

Regarding Subchapter G, Referral, Pre-Enrollment, and Developmental Screening:

The proposed repeal of §108.702 deletes redundant legal authority language.

The proposed repeal of §108.706 deletes this rule because the content has been moved to §108.707. The proposed re-order will increase readability and flow of rules.

The proposed new §108.706 allows hospital staff to serve as a member of the evaluation and Individualized Family Service Plan (IFSP) teams for a child in the hospital with a qualifying medical diagnosis or adjusted age of zero. This change will allow eligible families to enroll in ECI before leaving the hospital and will allow ECI to bill for evaluations completed with participation of hospital staff.

The proposed repeal of §108.707 deletes this rule because the content has been moved to §108.708. The proposed re-order will increase readability and flow of rules.

The proposed new §108.707 adds the content from the proposed repeal of §108.706 to increase readability and flow of rules.

The proposed new §108.708 adds the content from the proposed repeal of §108.707 to increase readability and flow of rules.

The proposed amendment of §108.709 clarifies requirements for a child referred by Department of Family and Protective Services (DFPS) to align with requirements outlined in Memorandum of Understanding between ECI and DFPS.

Regarding Subchapter H, Eligibility, Evaluation, and Assessment:

The proposed repeal of §108.803 deletes redundant legal authority language.

The proposed amendment of §108.811 makes edits for clarity and consistency.

The proposed amendment of §108.813 and §108.815 clarifies requirements for the determination of a child with visual or auditory impairment and the role of the local educational agency within the IFSP team.

The proposed amendment of §108.823: (1) removes the requirement for an ECI contractor to conduct an annual assessment of eligibility if the child has been determined eligible for ECI at 21 months of age or older; (2) clarifies continuing eligibility criteria to align with current practice for ECI services; and (3) relabels divisions to account for the reorganization of divisions.

The proposed amendment of §108.825 extends the eligibility statement until 36 months for a child whose eligibility was determined at 21 months of age or older. This would prevent a child from being tested twice in a matter of months: once for Part C and once for transitioning to Part B.

The proposed amendment of §108.837 replaces “interdisciplinary” with “IFSP” in subsection (a).

Regarding Subchapter J, Individualized Family Service Plan (IFSP):

The proposed repeal of §108.1002 deletes redundant legal authority language.

The proposed amendment of §108.1003 replaces “IFSP Outcomes” with “IFSP Goals” to reduce confusion between IFSP outcomes and child outcomes.

The proposed amendment of §108.1004 clarifies and restructures guidance on current requirements for developing an IFSP and relabels divisions to account for deletion and addition of divisions.

The proposed amendment of §108.1007 clarifies requirements for an interim IFSP and relabels to account for the reorganization of the divisions.

The proposed amendment of §108.1009: (1) changes the section title to “Participants in Initial and Annual IFSP Meetings;” (2) moves content from proposed repeal of §108.1011; (3) clarifies requirements for participants in the initial and annual IFSP meetings; and (4) removes redundancies and conflicts with proposed new §108.706, concerning Referrals Received While the Child is in the Hospital.

The proposed repeal of §108.1011 deletes the rule because the content has been updated and incorporated into proposed amendment of §108.1009.

The proposed amendment of §108.1015 clarifies requirements for IFSP content to align with monitoring requirements and removes redundancies regarding reassessment.

The proposed amendment of §108.1016: (1) removes a requirement for ECI contractors to document justifications on the IFSP when a service is provided with a routine caregiver instead of a parent; (2) moves content from proposed repeal of §108.1106; and (3) relabels divisions to account for the reorganization of the divisions.

The proposed amendment of §108.1017 extends the timeframe for an LPHA to see a child before the Periodic Review meeting from 30 days to 45 days.

The proposed amendment of §108.1019 updates a reference and replaces “outcomes” with “goals.”

Regarding Subchapter K, Service Delivery:

The proposed repeal of §108.1102 deletes redundant legal authority language.

The proposed amendment of §108.1104 clarifies that telehealth services may be provided in natural environments with family consent and replaces “outcomes” with “goals.”

The proposed amendment of §108.1105: (1) clarifies that family education and training can be provided to parents in group settings without their children present; (2) deletes the definition of “reassessment” to align with changes in §108.1015; (3) adds definition of “Sign Language and Cued Language”; (4) and makes edits for clarity and consistency.

The proposed repeal of §108.1106 deletes the rule because the content has been updated and incorporated into proposed amended §108.1016.

The proposed amendment of §108.1107 updates the title to “Group Services for Children” and replaces “outcomes” with “goals.”

The proposed amendments of §108.1108 and §108.1111 makes edits for clarity and consistency.

Regarding Subchapter L, Transition:

The proposed repeal of §108.1202 deletes redundant legal authority language.

The proposed amendments to §§108.1207, 108.1209, and 108.1213 update and clarify requirements to align with recent policy clarifications issued for transition planning.

The proposed amendment to §108.1217 adds a sentence about encouraging the LEA representative to participate in the LEA Transition Conference by phone in subsection (e).

The proposed amendment to §108.1221 makes edits in subsection (b)(2) for clarity and consistency.

Regarding Subchapter M, Child and Family Outcomes:

The proposed repeal of §108.1303 deletes redundant legal authority language.

Regarding Subchapter N, Family Cost Share System:

The proposed repeal of §108.1403 deletes redundant legal authority language.

The proposed amendment of §108.1407 deletes a sentence referencing a section relating to recordkeeping requirements in subsection (b).

The proposed amendment of §108.1409 adds a reference to 34 CFR §303.521(b) in subsection (a)(1) and updates the information for inquiries.

The proposed amendment of §108.1413 adds family education and training to the list of IFSP services.

The proposed amendment of §108.1425 requires a contractor to waive the family’s maximum charge while public insurance eligibility is being determined to avoid charging the family for costs that Medicaid will pay if

the family is determined eligible for Medicaid and clarifies that a contractor is not required to continue to bill a private insurance plan for a service that has been denied.

The proposed amendment of §108.1431 clarifies that if a family refuses to sign the attestation on the family cost share agreement, they will be charged the full cost of services.

The proposed repeal of §108.1432 deletes this rule because ECI no longer has any families of enrolled children to whom this fee scale applies.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there will be no anticipated impact to costs and revenues of state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will expand an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities to comply with the proposal, as they will not be required to alter their current business practices. In addition the proposal does not impose any additional costs on those required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to this proposal because the rules do not impose a cost on regulated persons; are amended to reduce the burden or responsibilities imposed on regulated persons by the rules; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT

Lesley French, Deputy Executive Commissioner for Health, Developmental, and Independence Services, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be increased efficiencies for contractors and improved guidance for contractors to provide seamless service delivery to families.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted by e-mail to ECI.Policy@hhsc.state.tx.us or may be submitted to P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247 or 4900 North Lamar Boulevard, Austin, Texas 78751-2316 within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked

or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 18R018" in the subject line.

STATUTORY AUTHORITY

These amendments, repeals, and new rules are adopted under Texas Government Code §531.033, which provides the Health and Human Services Executive Commissioner with broad rulemaking authority; and Chapter 73 of the Texas Human Resources Code, which provides HHSC with the authority to administer the Early Childhood Intervention Program in Texas.

The amendments, repeals, and new rules affect Texas Human Resources Code, Chapter 73, and Government Code, Chapter 531.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 ~~[DIVISION FOR]~~ EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER A GENERAL RULES

§108.101. Purpose.

(a) This chapter implements ~~[is intended to implement]~~ the provisions of the ~~[Interagency Council on Early Childhood Intervention Act,]~~ Texas Human Resources Code, Chapter 73; ~~[;]~~ the Individuals with Disabilities Education Act (IDEA), Part C, ~~[-(] 20 USC §§1431 - 1444; [);]~~ and ~~[federal regulations]~~ 34 CFR Part 303 to: ~~[; or their successors. This chapter shall be interpreted to be consistent with these statutes and rules to the extent possible. If such an interpretation is not possible for a portion of this chapter, the federal statutes and regulations shall prevail. The Texas statutes and this chapter shall then be given effect to the extent possible.]~~

~~[(b) The purpose of the statutes, regulations and rules cited in subsection (a) of this section, and the purpose of this chapter are to:]~~

(1) develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early childhood intervention services for infants and toddlers with disabilities and their families;

(2) facilitate the coordination of payment for early childhood intervention services from federal, state, local, and private sources (including public and private insurance coverage);

(3) enhance state and local capacity to provide quality early childhood intervention services and expand and improve existing early childhood intervention services being provided to infants and toddlers with disabilities and their families; and

(4) enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care.

(b) ~~[(c)]~~ In general, the provisions of this chapter apply to HHSC ~~[DARS]~~, any HHSC ~~[DARS]~~ contractor which operates an early childhood intervention program, any provider of services for the system whether or not funding

comes from HHSC [~~DARS~~], and all children referred to the Part C program and their families. Specific sections and portions thereof may limit the applicability of portions of this chapter, however any reasonable ambiguity shall be decided in favor of application to all parties listed in this section.

(c) [~~(d)~~] New policies or revisions to existing policies will be adopted in compliance with 34 CFR §303.208 and Texas Government Code, Chapter 2001.

[~~§108.102. Legal Authority.~~]

[~~The following statutes and regulations authorize or require the rules in this subchapter.~~]

[~~(1) Texas Human Resources Code, Chapter 73.~~]

[~~(2) Texas Human Resources Code, Chapter 117.~~]

[~~(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 -- 1444); and~~]

[~~(4) implementing federal regulations 34 CFR Part 303.~~]

§108.103. Definitions.

The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Assessment--As defined in 34 CFR §303.321(a)(2)(ii), the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility for early childhood intervention services to assess the child's individual strengths and needs and determine the appropriate services to meet those needs.

(2) Child--An infant or toddler, from birth through 35 months, as defined in 34 CFR §303.21.

(3) Child Find--As described in 34 CFR §§303.115, 303.302 and 303.303, activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(4) Complaint--A formal written allegation submitted to HHSC [~~DARS~~] stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(5) Comprehensive Needs Assessment--Conducted by an interdisciplinary team as a part of the IFSP development process, the process for identifying a child's unique strengths and needs, and the family's resources, concerns, and priorities in order to develop an IFSP. The comprehensive assessment process gathers information across developmental domains regarding the child's abilities to participate in the everyday routines and activities of the family.

(6) Condition With a High Probability of Resulting in Developmental Delay--A medical diagnosis known and widely accepted within the medical community to result in a developmental delay over the natural course of the diagnosis.

(7) Consent--As defined in 34 CFR §303.7 and meeting all requirements in 34 CFR §303.420.

(8) Contractor--A local private or public agency with proper legal status and governed by a board of directors or governing authority that accepts funds from HHSC [~~DARS~~] to administer an early childhood intervention program.

(9) Co-visits--When two or more service providers deliver different services to the child during the same period of time. Co-visits are provided when a child will receive greater benefit from services being provided at the same time, rather than individually.

(10) Days--Calendar days, except for LEA services which are defined as "school days."

~~[(11) DARS--The Texas Department of Assistive and Rehabilitative Services. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. DARS has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. DARS has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.]~~

~~[(12) DARS ECI--The Texas Department of Assistive and Rehabilitative Services Division for Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.]~~

(11) [~~(13)~~] Developmental Delay--As defined in Texas Human Resources

Code §73.001(3) and determined to be significant in compliance with the criteria and procedures in Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(12) [~~(14)~~] Developmental Screenings--General screenings provided by the early childhood intervention program to assess the child's need for further evaluation.

(13) [~~(15)~~] Early Childhood Intervention Program--In addition to the definition of early intervention service program as defined in 34 CFR §303.11, a program operated by the contractor with the express purpose of implementing a system to provide early childhood intervention services to children with developmental delays and their families.

(14) [~~(16)~~] Early Childhood Intervention Services--Individualized early childhood intervention services determined by the IFSP team to be necessary to support the family's ability to enhance their child's development. Early childhood intervention services are further defined in 34 CFR §303.13 and §303.16 and §108.1105 of this title (relating to Capacity to Provide Early Childhood Intervention Services).

(15) [~~(17)~~] ECI Professional--An individual employed by or under the direction of an HHSC Early Childhood Intervention Program contractor who meets the requirements of qualified personnel as defined in 34 CFR §303.13(c) and §303.31, and who is knowledgeable in child development and developmentally appropriate behavior, possesses the requisite education and experience, and demonstrates competence to provide ECI services.

(16) [~~(18)~~] EIS--Early Intervention Specialist. A credentialed professional who meets specific educational requirements established by HHSC [~~DARS~~] ECI and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

(17) [~~(19)~~] Evaluation--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321.

(18) [~~(20)~~] FERPA--Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(19) [(21)] Group Services--Early childhood intervention services provided at the same time to no more than ~~[up to]~~ four ~~[non-related]~~ children and their parent or parents or routine caregivers per service provider to meet the developmental needs of the individual infant or toddler.

(20) HHSC-- Texas Health and Human Services Commission. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. HHSC has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. HHSC has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(21) HHSC ECI--The Texas Health and Human Services Commission Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.

(22) IFSP--Individualized Family Service Plan as defined in 34 CFR §303.20. A written plan of care for providing early childhood intervention services and other medical, health and social services to an eligible child and the child's family when necessary to enhance the child's development.

(23) IFSP Services--The individualized early childhood intervention services listed in the IFSP that have been determined by the IFSP team to be necessary to enhance an eligible child's development.

(24) IFSP Team--An interdisciplinary team that meets the requirements in 34 CFR §303.24(b) (relating to Multidisciplinary) that works collaboratively to develop, review, modify, and approve the IFSP and includes the parent; the service coordinator, all ECI professionals providing services to the child, as planned on the IFSP, certified Teachers of the Deaf and Hard of Hearing, as appropriate, and certified Teachers of Students with Visual Impairments, as appropriate.

(25) Interdisciplinary Team--In addition to the definition of multidisciplinary team as defined in 34 CFR §303.24 (relating to Multidisciplinary), a team that consists of at least two ECI professionals from different disciplines and the child's parent. One of the ECI professionals must be an LPHA. The team may include representatives of the LEA. Professionals on the team share a common perspective regarding infant and toddler development and developmental delay and work collaboratively to conduct evaluation, assessment, IFSP development and to provide intervention.

(26) LEA--Local educational agency as defined in 34 CFR §303.23.

(27) LPHA--Licensed Practitioner of the Healing Arts. A licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, licensed clinical social worker, licensed psychologist, licensed dietitian, licensed audiologist, licensed physician assistant, licensed marriage and family therapist, licensed intern in speech language pathology, licensed behavior analyst, or advanced practice registered nurse who is an employee or a subcontractor of an ECI contractor. LPHA responsibilities are further described in §108.312 of this title (relating to Licensed Practitioner of the Healing Arts (LPHA)).

(28) Medicaid--The medical assistance entitlement program administered by HHSC [~~the Texas Health and Human Services Commission~~].

(29) Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, includes the daily activities of the child and family or caregiver, and must be consistent with the provisions of 34 CFR §303.126.

(30) Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Act), native language means:

(i) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) 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, native language means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(31) Parent--As defined in 20 USC §1401 and 34 CFR §303.27.

(32) Personally Identifiable Information--As defined in 34 CFR §99.3 and 34 CFR §303.29.

(33) Pre-Enrollment--All family related activities from the time the referral is received up until the time the parent signs the initial IFSP.

(34) Primary Referral Sources--As defined in 34 CFR §303.303(c).

(35) Public Agency--HHSC [~~DARS~~] and any other state agency or political subdivision of the state that is responsible for providing early childhood intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(36) Qualifying Medical Diagnosis--A diagnosed medical condition that has a high probability of developmental delay as determined by HHSC. [~~The list of conditions that automatically qualify a child for ECI services is available at <http://www.dars.state.tx.us/ecis/resources/diagnoses.asp>.~~]

(37) Referral Date--The date the child's name and sufficient information to contact the family was obtained by the contractor.

(38) Routine Caregiver--An adult who:

(A) has written authorization from the parent to participate in early childhood intervention services with the child, even in the absence of the parent;

(B) participates in the child's daily routines;

(C) knows the child's likes, dislikes, strengths, and needs; and

(D) may be the child's relative, childcare provider, or other person who regularly cares for the child.

(39) Service Coordinator--The contractor's employee or subcontractor who:

(A) meets all applicable requirements in Subchapter C of this chapter (relating to Staff Qualifications);

(B) is assigned to be the single contact point for the family;

(C) is responsible for providing case management services as described in §108.405 of this title (relating to Case Management Services);

and

(D) is from the profession most relevant to the child's or family's needs or is otherwise qualified to carry out all applicable responsibilities.

~~[(40) Sign Language and Cued Language--As defined in 34 CFR §303.13(b)(12).]~~

(40) ~~[(41)]~~ Surrogate Parent--A person assigned to act as a surrogate for the parent in compliance with the Individuals with Disabilities Education Act, Part C and this chapter.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION SERVICES
SUBCHAPTER B PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

§108.201. Purpose.

The purpose of this subchapter is to describe general requirements for procedural safeguards pertaining to early childhood intervention services. In addition to the requirements described in this subchapter, the contractor must comply with all federal and state requirements related to procedural safeguards and due process pertaining to early childhood intervention services including: 20 USC §§1431 - 1444; 20 USC §1232g; 42 USC §§2000d - 2000d-7; implementing regulations 34 CFR Part 99 and 34 CFR §§303.123, 303.400 - 303.417, 303.421, 303.422, 303.430 - 303.436; and §[§]101.1107 [~~, 101.1109,~~] and §101.1111 of this title (relating to Administrative Hearings Concerning Individual Child Rights [~~, Motion for Reconsideration,~~] and Appeal of Final Decision). In cases of conflict between this subchapter and the federal authorities, the interpretation must be in favor of the higher safeguards for children and families.

§108.203. Responsibilities.

(a) The contractor shall be responsible for:

(1) establishing or adopting procedural safeguards that meet the requirements of the federal and state regulations listed in §108.101 of this title (relating to Purpose) and that also meet additional requirements of this subchapter;

(2) implementing the procedural safeguards; and

(3) providing oral and written explanation to the parent regarding procedural safeguards during the pre-enrollment process and at other times when parental consent is required.

(b) The contractor must make reasonable effort to provide appropriate interpreter or translation services in the child's native language as defined in 34 CFR §303.25 or other communication assistance necessary for a parent or child with limited English proficiency or communication impairments to participate in early childhood intervention services. Interpreter, translation,

and communication assistance services are provided at no cost to the family.

(c) The contractor must provide the family the ~~[DARS]~~ ECI Parent Handbook ~~[family rights publication]~~. The contractor must document the following were explained:

- (1) the family's rights;
- (2) the early childhood intervention process; and
- (3) early childhood intervention services.

§108.204. Prior Written Notice.

In accordance with 34 CFR §303.421, [The purpose of] prior written notice is required to inform the parent of any actions [when] the contractor proposes [is scheduling an event or proposing] to take or not take and [certain actions as well as] to remind the parent about the parent's [his or her] rights regarding these actions. These actions include identification of the child, evaluation, IFSP meetings, and the provision of early childhood intervention services. Through prior written notice, the contractor:

- (1) provides the parent with sufficient notice of meetings to allow the parent time to prepare for the meeting and to invite other individuals if they choose;
- (2) keeps the parent informed about any action the contractor is proposing ~~[or refusing]~~ to take or not take; and
- (3) provides the parent with sufficient notice of actions the contractor will take unless the parent exercises his or her due process rights.

~~§108.205. Prior Written Notice and Procedural Safeguards Notice.~~

~~[(a) IFSP meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend. See 34 CFR §303.342(d).]~~

~~[(b) If, at any time, the contractor proposes, or refuses to initiate or change the identification, evaluation, or the provisions of appropriate early childhood intervention services to the child and the child's family, the contractor must provide prior written notice as described in 34 CFR §303.421.]~~

~~[(c) In addition to the requirements in 34 CFR §303.421, the notice must be in sufficient detail to inform the parent about each record or report considered when the contractor proposes or refuses to initiate or change the items in subsection (b) of this section.]~~

~~**§108.206. Written Parental Consent.**~~

~~[Written parental consent provides documentation that the parent has been informed of and agrees, in writing, to the proposed action. Consent is voluntary and can be withdrawn by the parent at any time. Any action for which the parent has withdrawn consent must be stopped immediately.]~~

§108.207. Parental Consent.

(a) Written parental consent provides documentation that the parent has been informed of and agrees, in writing, to the proposed action. Consent is voluntary and can be withdrawn by the parent at any time. Any action for which the parent has withdrawn consent must be stopped immediately.

(b) [(a)] In addition to the requirements in 34 CFR §303.420, written parental consent must be obtained before:

(1) beginning any screening, except when performing a developmental screening on a child in the conservatorship of the Texas Department of Family and Protective Services;

(2) conducting any evaluation or assessment procedures;

(3) providing early childhood intervention services listed in the IFSP;

(4) changing the type, intensity, or frequency of early childhood intervention services;

(5) contacting medical professionals and other outside sources to coordinate and gather information about the child and family;

(6) reporting personally identifiable information, including disposition of referral, electronically to statewide databases unless release is authorized without consent in FERPA; or

(7) releasing personally identifiable information except as allowed by §108.241 of this title (relating to Release of Records).

(c) [(b)] As required by 34 CFR §303.420(b), the contractor must adopt

procedures designed to inform the parent of the nature of the recommended assessment or evaluation procedures and recommended early childhood intervention services that the parent has refused. The procedures may include:

(1) providing the parent relevant literature or other materials; and

(2) offering the parent peer counseling to enhance their understanding of the value of early childhood intervention and the inability to participate in Part C programs without consent.

(d) [~~(e)~~] If a specific assessment or service is determined necessary by the IFSP team, the contractor may not limit or deny that assessment or service because the parent has refused consent for another service or assessment.

§108.211. Parent.

When situations arise in which more than one person meets the definition of parent, as defined in 20 USC §1401 and in 34 CFR §303.27, the contractor must have a method of resolving conflicts in a manner that gives proper deference to the opinions and decisions of the individual or individuals who has the best legal right to act as the child's parent. Written rules or policies developed by the contractor must not violate other state or federal laws.

(1) The biological or adoptive parent, unless such parent does not have legal authority to make health, educational or early childhood intervention services decisions for the child, has priority to act as the parent for the purposes of this chapter.

(2) If a judicial decree or order identifies a specific person or persons to act as the child's parent to make health, educational, or early childhood intervention service decisions on behalf of a child, then the contractor acknowledges that person or persons to be the "parent."

(A) The exception to this rule is that no state agency, no HHSC [~~DARS~~] ECI contractor or provider, and no public agency that provides any paid services to a child or any family member of that child may act as the parent for the purposes of ECI.

(B) Notwithstanding the preceding exception, an individual who is a biological or adoptive parent or family member of the child who has also been identified by a judicial decree to act as the "parent" of the child is not disqualified to act as parent.

§108.213. Surrogate Parents.

(a) The contractor shall ensure that the rights of children eligible under this chapter are protected if:

(1) no parent can be identified; or

(2) the contractor, after reasonable efforts, cannot discover the whereabouts of a parent.

(b) The contractor must determine the need for and assign a surrogate parent for the child consistent with 34 CFR §303.422 and existing state laws and regulations. This must include a method for:

(1) determining whether a child needs a surrogate parent;

(2) assigning a surrogate parent within [tø] the required 30-day timeframe [child]; and

(3) providing training to ensure that the surrogate parent fully understands their role and responsibilities to represent the best interest of the child.

(c) Criteria for selecting surrogates are as follows.

(1) A person selected as surrogate must have no interest that conflicts with the interests of the child represented.

(2) A person assigned as a surrogate parent must not be an employee of any state agency or a person or an employee of a person providing early childhood intervention services to the child or any family member of the child.

(3) A person who qualifies to be a surrogate parent is not an employee solely because he or she is paid to serve as a surrogate parent.

(4) A person selected as a surrogate parent must have knowledge and skills that ensure adequate representation of the interests of the child.

(5) The requirements of paragraphs (1) - (4) of this subsection ensure that the surrogate parent does not hold a job or a position that would either bias the decisions made for the child or make the surrogate parent vulnerable to the possibility of administrative retaliation for the execution of their responsibilities.

(6) If a person qualifies as a "parent" there is no need to appoint a "surrogate parent" and no need to meet the criteria in this subsection.

(d) A surrogate parent may represent a child in all matters related to:

(1) the evaluation and assessment of the child;

(2) development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) the ongoing provision of early childhood intervention services to the child; and

(4) any other rights established under this chapter.

§108.215. Early Childhood Intervention Procedures for Filing Complaints.

(a) An individual or organization may file a complaint with HHSC [~~DARS~~] alleging that a requirement of the Individuals with Disabilities Education Act, Part C or applicable federal and state regulations has been violated. The complaint must be in writing, be signed, and include the nature of the violation and a statement of the facts on which the complaint is based.

(b) A complaint may be filed directly with HHSC [~~DARS~~] without having been filed with the contractor or local program.

(c) The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because the alleged violation continues for that child or other children.

(d) Procedures for receipt of a complaint are as follows.

(1) All complaints received by HHSC [~~DARS~~] concerning early childhood intervention services shall be forwarded to the HHSC Director of ECI [~~DARS ECI Assistant Commissioner~~] who will log and assign all complaints, monitor the resolution of those complaints, and maintain a copy of all complaints for a seven-year [~~five-year~~] period.

(2) A complaint should be clearly distinguished from a request for an administrative hearing under Chapter 101, Subchapter E, Division 3 of this title (relating to Division for Early Childhood Intervention Services) and from a request for a hearing under §108.227 of this title (relating to Opportunity

for a Hearing) concerning the requirements of FERPA.

§108.217. Procedures for Investigation and Resolution of Complaints.

(a) After receipt of the complaint, the HHSC Director of ECI [~~DARS ECI Assistant Commissioner~~] will assign a staff person to conduct an individual investigation, on-site if necessary, to make a recommendation to the HHSC Director of ECI [~~DARS ECI Assistant Commissioner~~] for resolution of the complaint. The child's and family's confidentiality is protected during the complaint resolution process.

(1) The complainant will have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(2) All relevant information will be reviewed and an independent determination made as to whether a violation to the requirements of Individuals with Disabilities Education Act occurred.

(b) The HHSC Director of ECI [~~DARS ECI Assistant Commissioner~~] resolves the complaint within 60 days of the receipt date.

(c) An extension of the time limit under subsection (b) of this section shall be granted only if exceptional circumstances exist with respect to a particular complaint.

(d) Complainants shall be informed in writing of the final decision of the HHSC Director of ECI [~~DARS ECI Assistant Commissioner~~]. The HHSC Director of ECI's [~~DARS ECI Assistant Commissioner's~~] written decision to the complainant will address each allegation in the complaint and contain:

(1) findings of fact and conclusions; and

(2) reasons for the final decision.

(e) To ensure effective implementation of the HHSC Director of ECI's [~~DARS ECI Assistant Commissioner's~~] final decision and to achieve compliance with any corrective actions, the HHSC Director of ECI [~~DARS ECI Assistant Commissioner~~] will assign a staff person to provide technical assistance and appropriate follow-up to the parties involved in the complaint as necessary.

(f) In resolving a complaint in which there is a finding of failure to provide appropriate services, the HHSC Director of ECI [~~DARS ECI Assistant~~

~~Commissioner]~~ will remediate the denial of those services, 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 appropriate future provision of services for all infants and toddlers with disabilities and their families.

(g) When a complaint is filed, the HHSC Director of ECI [~~DARS ECI Assistant Commissioner]~~ will offer mediation services as an alternative to proceeding with the complaint investigation. Mediation may be used when both parties agree. A parent's right to a due process hearing or complaint investigation will not be denied or delayed because they chose to participate in mediation. The complaint investigation will continue and be resolved within 60 days even if mediation is used as the resolution process.

(h) If a written complaint is received that is also the subject of a request for an administrative hearing under Chapter 101, Subchapter E, Division 3 of this title (relating to Division for Early Childhood Intervention Services) or a request for a hearing under §108.227 of this title (relating to Opportunity for a Hearing) concerning the requirements of FERPA, or contains multiple issues, of which one or more are part of those hearings, the part of the complaint that is being addressed in those hearings is set aside until the conclusion of the hearings. However, any issue in the complaint that is not a part of such action must be resolved within the 60 day timeline using the complaint procedures.

§108.218. Mediation.

(a) At any time, a party or all parties to a dispute involving a matter with respect to the provision of appropriate early childhood intervention services or a potential or actual violation of Part C or other applicable federal or Texas statutes or regulations or rules may request mediation of that dispute by sending the request in writing to the HHSC Director of ECI. A request for mediation must:

(1) be in writing and signed by the requesting party;

(2) state the dispute to be mediated with some detail showing it is a matter with respect to the provision of appropriate early childhood intervention services to a particular child or children, or that it is a matter with respect to a potential or actual violation of Part C or other applicable federal or Texas statutes or regulations or rules;

(3) name the opposing party or parties and, if they have agreed to mediation, contain their signatures;

(4) give contact information for all parties to the extent known by the requestor; and

(5) show that the request for mediation has also been sent to all other parties or that attempts have been made to do so, if possible.

(b) If the request for mediation is also a complaint pursuant to §108.215 of this subchapter (relating to Early Childhood Intervention Procedures for Filing Complaints), it will be handled both as a complaint and as a request for mediation under subsection (c) of this section. If the request for mediation is also a request for due process hearing, it will be handled both as a request for due process hearing and a request for mediation under subsection (c) of this section. If the request for mediation does not clearly designate itself as a complaint or request for due process hearing, or if it does not comply with the filing requirements for those procedures, it will be handled only as a request for mediation under this section.

(c) If the parties to a request for a due process hearing as described in §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights) agree to mediate the dispute in accordance with §101.947 of this title (relating to Mediation Procedures), those procedures shall apply, but the mediation shall also comply with the requirements of federal regulation 34 CFR §303.431.

(d) If the parties to a complaint filed with HHSC under §108.215 of this subchapter agree to mediate the dispute in accordance with §108.217 of this subchapter (relating to Procedures for Investigation and Resolution of Complaints), the procedures in this section apply except for those in subsections (b) and (c) of this section.

(e) If not all parties have agreed to mediation, HHSC will make reasonable efforts to contact the other parties and to give them the opportunity to agree or to decline mediation. If neither HHSC nor the requesting party is able to obtain agreement to mediate by all parties within a reasonable time, HHSC may notify the requesting party and treat the original request for mediation as having been declined by the other party or parties.

(f) The parties may agree to mediate some or all of the disputes described in the request for mediation, and they may amend the disputes to be mediated by agreeing in writing.

(g) If HHSC is not a party to the dispute being mediated, HHSC will not be a party to any mediation resolution agreement and will not sign it, but HHSC may assist in the enforcement of it if requested.

~~§108.218. Mediation.~~

~~[(a) If the parties to a request for a due process hearing as described in §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights) agree to mediate the dispute in accordance with §101.947 of this title (relating to Mediation Procedures), those procedures shall apply, but the mediation shall also comply with the requirements of federal regulation 34 CFR §303.431.]~~

~~[(b) If the parties to a complaint filed with DARS under §108.215 of this title (relating to Early Childhood Intervention Procedures for Filing Complaints) agree to mediate the dispute in accordance with §108.217 of this title (relating to Procedures for Investigations and Resolution of Complaints), the procedures in this section apply except for those in subsections (a) and (c) of this section.]~~

~~[(c) At any time, a party or all parties to a dispute involving a matter with respect to the provision of appropriate early childhood intervention services or a potential or actual violation of Part C or other applicable federal or Texas statutes or regulations or rules may request mediation of that dispute by sending the request in writing to the DARS ECI Assistant Commissioner. If the request for mediation is also a complaint pursuant to §108.215 of this title, it will be handled both as a complaint and as a request for mediation under subsection (b) of this section. If the request for mediation is also a request for due process hearing, it will be handled both as a request for due process hearing and a request for mediation under subsection (a) of this section. If the request for mediation does not clearly designate itself as a complaint or request for due process hearing, or if it does not comply with the filing requirements for those procedures, it will be handled only as a request for mediation under this section. A request for mediation must:]~~

~~[(1) be in writing and be signed by the requesting party;]~~

~~[(2) state the dispute to be mediated with some detail showing that it is a matter with respect to the provision of appropriate early childhood intervention services to a particular child or children or that it is a matter with respect to a potential or actual violation of Part C or other applicable federal or Texas statutes or regulations or rules;]~~

~~[(3) name the opposing party or parties and, if they have agreed to mediation, contain their signatures;]~~

~~[(4) give contact information for all parties to the extent known by the requestor; and]~~

~~[(5) show that the request for mediation has also been sent to all other parties or that attempts have been made to do so, if possible.]~~

~~[(d) If not all parties have agreed to mediation, DARS will make reasonable efforts to contact the other parties and to give them the opportunity to agree or to decline mediation. If neither DARS nor the requesting party is able to obtain agreement to mediate by all parties within a reasonable time, DARS may notify the requesting party and treat the original request for mediation as having been declined by the other party or parties.]~~

~~[(e) The parties may agree to mediate some or all of the disputes described in the request for mediation, and they may amend the disputes to be mediated by agreeing in writing.]~~

~~[(f) The requirements of 34 CFR §303.341 will apply to the mediation.]~~

~~[(g) If DARS is not a party to the dispute being mediated, DARS will not be a party to any mediation resolution agreement and will not sign it, but DARS may assist in the enforcement of it if requested.]~~

§108.219. Confidentiality Notice to Parents.

During pre-enrollment, the contractor must give the family a copy of the HHSC [~~DARS~~] ECI Parent Handbook publication, which contains notice that fully informs the parent about their confidentiality rights as specified in 34 CFR §303.402. The contractor must explain the contents of the HHSC [~~DARS~~] ECI Parent Handbook when initially providing the publication to the family and annually thereafter.

§108.233. Release of Personally Identifiable Information.

(a) Unless authorized to do so under 34 CFR §99.31 or the Uninterrupted Scholars Act, parental consent must be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials or employees of ECI participating agencies collecting or using the information; or

(2) used for any purpose other than meeting a requirement under this chapter.

(b) A contractor may request that the parent provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(1) the parent must be informed of their right to refuse to sign the release;

(2) the release form must list the agencies and providers to whom information may be given and specify the type of information that might be given to each;

(3) the parent must be given the opportunity to limit the information provided under the release and to limit the agencies, providers, and persons with whom information may be shared. The release form must provide ample space for the parent to express in writing such limitations;

(4) the release must be revocable at any time;

(5) the consent to release information form must have a time limit:

(A) not to exceed seven [~~five~~] years after the child exits services or other applicable record retention period, as described in §108.237 [~~§108.221~~] of this subchapter [~~title~~] (relating to Record Retention Period [~~Records Management~~]) for billing records; or

(B) not to exceed one year for all other consents to release information;

(6) if the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

(c) The contractor may disclose personally identifiable information without prior written parental consent if the disclosure meets one or more of the following conditions:

(1) the disclosure is to another HHSC ECI contractor during a transfer of services;

(2) the disclosure is restricted to limited personal identification, as defined in §108.1203 of this chapter (relating to Definitions), being sent to the LEA for child find purposes, unless the parent opted-out of the notification in accordance with §108.1213 of this chapter (relating to LEA Notification Opt Out);

(3) the disclosure is to the Texas Department of Family and Protective Services for the purpose of reporting or cooperating in the investigation of suspected child abuse or neglect;

(4) the disclosure is in response to a court order or subpoena;

(5) the disclosure is to a federal or state oversight entity, including:

(A) United States Department of Health and Human Services or its designee;

(B) Comptroller General of the United States or its designee;

(C) Office of the State Auditor of Texas or its designee;

(D) Office of the Texas Comptroller of Public Accounts;

(E) Medicaid Fraud Control Unit of the Texas Attorney General's Office or its designee;

(F) HHSC, including:

(i) Office of Inspector General;

(ii) MCO Program personnel from HHSC or designee;

(iii) any other state or federal entity identified by HHSC, or any other entity engaged by HHSC; and

(iv) any independent verification and validation contractor, audit firm or quality assurance contractor acting on behalf of HHSC;

(G) state or federal law enforcement agency; or

(H) State of Texas Legislature general or special investigating committee or its designee; or

(6) the disclosure meets the requirements of the Uninterrupted Scholars Act, which provides that:

(A) the disclosure is to a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access the child's case plan;

(B) the child is in foster care and the child welfare agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student; and

(C) the disclosure must pertain to addressing the education needs of

the child.

§108.237. Record Retention Period.

(a) The contractor must retain records for seven [~~five~~] years after the child has been dismissed from services unless a longer period is required by state or federal law.

(b) A contractor must allow HHSC [~~DARS~~] and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client records, books, and supporting documents pertaining to services provided. The contractor and the subcontractors must make these documents available at reasonable times and for reasonable periods. Upon request, the contractor must submit copies of their records, at no cost, to HHSC ECI [~~the DARS designee, DARS ECI, the Texas Health and Human Services Commission~~], the Texas Attorney General's Office, and representatives of the United States Department of Health and Human Services.

(c) The contractor must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim was submitted to HHSC [~~DARS~~] ECI or its agent. The records and documents must be kept for a minimum of seven [~~five~~] years after the end of the contract period or for seven [~~five~~] years after the end of the federal fiscal year in which services were provided if a contractor agreement/contract has no specific termination date in effect. If any litigation, claim, negotiations, open records request, administrative review, or audit involving these records begins before the seven [~~five~~] year period expires, the contractor must keep the records and documents for not less than seven [~~five~~] years or until all litigation, claims, negotiations, open records request, administrative review, or audit finds are resolved. The case is considered resolved when a final order is issued in litigation, or HHSC [~~DARS~~] ECI and contractor enter into a written agreement. In this section, contract period means the beginning date through the ending date specified in the original agreement/contract; extensions are considered separate contract periods.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER C STAFF QUALIFICATIONS

~~§108.302. Legal Authority.~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) Texas Human Resources Code, Chapter 117;]~~

~~[(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 – 1444); and]~~

~~[(4) implementing federal regulations 34 CFR Part 303.]~~

§108.303. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Criminal Background Check--Review of fingerprint-based criminal history record information.

(2) Dual Relationships--When the person providing early childhood intervention services engages in activities with the family that go beyond his or her professional boundaries.

(3) Early Intervention Specialist (EIS) Active Status--When an EIS is employed or subcontracting with a contractor and holds a current active credential.

(4) Early Intervention Specialist (EIS) Inactive Status--When an EIS is not employed or subcontracting with a contractor or does not hold a current active credential.

(5) EIS Registry--A system used by HHSC [~~DARS~~] ECI to maintain current required EIS information submitted by contractors. HHSC [~~DARS~~] ECI designates Early Intervention Specialists. The EIS credential is only valid

within the Texas IDEA Part C system.

(6) Individualized Professional Development Plan (IPDP)--The training and technical assistance plan developed when a staff person begins employment at an ECI contractor. The IPDP can include but is not limited to orientation training, EIS credentialing activities, service coordination training, and other training or professional development required by the program or HHSC [~~DARS~~] ECI.

(7) Professional Boundaries--Financial, physical and emotional limits to the relationship between the professional providing early childhood intervention services and the family.

(8) Service Coordinator Active Status--When a service coordinator is employed or subcontracting with a contractor and is current with continuing education requirements specified by HHSC [~~DARS~~] ECI.

(9) Service Coordinator Inactive Status--When a service coordinator is not employed or subcontracting with a contractor or is not current with continuing education requirements specified by HHSC [~~DARS~~] ECI.

§108.309. Minimum Requirements for All Direct Service Staff.

(a) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to health regulations for all direct service staff. The contractor must comply with 34 CFR Part 85 and Texas Health and Safety Code, Chapter 81.

(b) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to initial training requirements for direct service staff. Before providing services [~~working directly with children and families~~], all staff must:

(1) complete orientation training as required by HHSC [~~DARS~~] ECI. This requirement does not apply to staff employed by the LEA;

(2) hold current certification in first-aid [~~including emergency care of seizures~~] and cardiopulmonary resuscitation for children and infants; and

(3) complete universal precautions training.

(c) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to continuing education requirements for direct service staff. All staff providing early childhood intervention services to children and families must maintain current certification in first aid [~~including emergency care of seizures~~] and cardiopulmonary resuscitation for children and infants.

(d) The contractor must verify that all newly employed staff, except staff employed by the LEA:

(1) are qualified in terms of education and experience for their assigned scopes of responsibilities;

(2) are competent to perform the job-related activities before providing early childhood intervention services; and

(3) complete orientation training as required by HHSC [~~DARS~~] ECI before providing early childhood intervention services.

(e) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to supervision of direct service staff. A contractor [~~(1) All staff members who work directly with children and families~~] must implement a system of [~~receive~~] supervision and oversight that consists of [~~documented~~] consultation, record review, and observation from a qualified supervisor. The intent of supervision is to provide oversight and direction to staff. Supervisor qualifications are further described in this subchapter in §108.313(c) and §108.315(d) [~~§§108.313(e), 108.315(e), and 108.317(e)~~] of this subchapter [~~title~~] (relating to Early Intervention Specialist (EIS) [~~;~~] and Service Coordinator). [~~and Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families).~~]

(1) [~~(A)~~] Consultation [~~Documented consultation~~] means evaluation and development of staff knowledge, skills, and abilities in the context of case-specific problem solving.

(2) [~~(B)~~] Record review means a review of documentation in child records to evaluate compliance with the requirements of this chapter, and quality, accuracy, and timeliness of documentation. It also includes feedback to staff to identify areas of strength and areas that need improvement.

(3) [~~(C)~~] Observation means watching staff interactions with children and families to provide guidance and feedback and providing guidance and feedback about the observation.

~~[(2) The contractor must verify that newly employed staff members receive documented supervision as required by DARS ECI.]~~

(f) The contractor must follow all training requirements defined by HHSC [~~DARS~~] ECI.

§108.310. Criminal Background Checks.

(a) The contractor must complete a fingerprint-based criminal background check on any employee, volunteer, or other person who will be working under the auspices of the contractor before the person has direct contact with children or families. The purpose of completing the criminal background check is to protect children and families and to comply with Medicaid and HHSC [~~Texas Department Family and Protective Services (DFPS) Division for~~] Child Care Licensing requirements.

(b) The contractor must ensure that all therapists providing Medicaid services for ECI children are correctly enrolled with the Texas Medicaid Program. This requirement includes disclosing all criminal convictions and arrests as required by 1 TAC §371.1005 (relating to Disclosure Requirements). The HHSC [~~Texas Health and Human Services Commission (HHSC)~~] Office of Inspector General may recommend denial of an enrollment or re-enrollment based on criminal history, in accordance with 1 TAC §371.1011 (relating to Recommendation Criteria).

(c) HHSC [~~DFPS Division for~~] Child Care Licensing maintains three charts of criminal history requirements for people who regularly enter licensed child care facilities.

(1) The three charts are published on the HHSC [~~DFPS~~] website: [~~at www.dfps.state.tx.us/Child_Care/.~~]

(A) Licensed or Certified Child Care Operations: Criminal History Requirements;

(B) Foster or Adoptive Placements: Criminal History Requirements;
and

(C) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

(2) The contractor must review each employee's criminal background check to ensure that staff members who regularly enter regulated child care facilities or foster homes to provide early childhood intervention services do not have criminal convictions that would result in an absolute bar to entering them in compliance with the 40 TAC §745.651 (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).

(d) If a criminal background check reveals criminal convictions that are not

on the HHSC [~~DFPS~~] Child Care Licensing charts of criminal history requirements or would result in the individual being eligible for a HHSC [~~DFPS~~] Child Care Licensing risk assessment, the program director may conduct a risk assessment. The risk assessment process must include, at a minimum, consideration of:

- (1) the number of convictions;
- (2) the nature and seriousness of the crime;
- (3) the age of the individual at the time the crime was committed;
- (4) the relationship of the crime to the individual's fitness or capacity to serve in the role of an early childhood intervention professional;
- (5) the amount of time that has elapsed since the person's last conviction; and
- (6) any relevant information the individual provides or otherwise demonstrates.

§108.311. Licensed Professionals.

(a) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to minimum qualifications for licensed professionals. The contractor must verify and document that licensed professionals hold a current license in good standing in his or her discipline and practice within the scope of his or her specific state licensure laws and regulations.

~~[(b) The contractor must comply with DARS ECI requirements related to continuing education for licensed professionals. A licensed professional must complete continuing education as required by the applicable licensing board.]~~

~~[(c) The contractor must provide documented administrative supervision to licensed professionals as required by DARS ECI.]~~

(b) [(d)] A licensed professional must comply with the [aH] established licensing board requirements for the licensed professional's [receiving or] discipline for continuing education providing [clinical] and receiving supervision and conduct.

~~[(e) The contractor must comply with DARS ECI requirements related to ethics for licensed professionals. A licensed professional must meet all~~

~~established rules of conduct as required by the applicable board.]~~

§108.312. Licensed Practitioner of the Healing Arts (LPHA).

(a) The LPHA provides necessary clinical knowledge for the IFSP team to plan and implement individualized, goal oriented services within an interdisciplinary approach.

(b) The LPHA's responsibility is to document the child's progress towards the IFSP outcomes, recommend to the team modifications to the plan as needed, and provide re-assessments or ongoing therapy services as planned on the IFSP.

(c) A LPHA is required to sign the IFSP and in doing so acknowledges the planned services are reasonable and necessary.

(d) The LPHA provides ongoing monitoring and assessment of the IFSP, at least once every six months as part of the periodic review, to provide professional opinion as to the effectiveness of services.

§108.313. Early Intervention Specialist (EIS).

(a) The contractor must comply with HHSC ~~[DARS]~~ ECI requirements related to minimum qualifications for an EIS. An EIS must either:

(1) be registered as an EIS before September 1, 2011; or

(2) hold a bachelor's degree which includes a minimum of 18 hours of semester course credit relevant to early childhood intervention, with at least [including] three of the 18 hours of semester course credit in early childhood development or early childhood special education.

(A) Forty clock hours of continuing education in early childhood development or early childhood special education completed within three [five] years prior to employment as an EIS [with ECI] may substitute for the three hour semester course credit requirement in early childhood development or early childhood special education. The EIS must complete these hours before the EIS is entered in the EIS Registry.

(B) Coursework or previous training in early childhood development is required to ensure that an EIS understands the development of infants and toddlers because the provision of SST for which an EIS is solely responsible depends on significant knowledge of typical child development. Therefore, the content of the coursework or training must relate to the growth,

development, and education of the young child and may include courses or training in:

- (i) child growth and development;
- (ii) child psychology [~~or child and adolescent psychology~~];
- (iii) children with special needs; or
- (iv) typical language development.

(b) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to continuing education for an EIS. An EIS must complete:

(1) a minimum of 20 [~~40~~] contact hours of approved continuing education every two years [~~each year~~]; and

(2) an additional three contact hours of continuing education in ethics every two years.

(c) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to supervision of an EIS.

(1) The contractor must provide an EIS [~~documented~~] supervision as defined in §108.309(e) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by HHSC [~~DARS~~] ECI.

(2) An EIS supervisor must:

(A) have two years of experience providing ECI services, or two years of experience supervising staff who provide other early childhood intervention services to children and families; and

(B) be an active EIS or hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development, or related field; or

(ii) an unrelated field and have at least 18 hours of semester course credit in child development.

(d) Requirements for EIS active status and EIS inactive status are as follows:

(1) Only an EIS with active status is allowed to provide early childhood intervention services to children and families. An EIS on inactive status may not perform activities requiring the EIS active status.

(2) An EIS goes on inactive status when:

(A) the EIS fails to submit the required documentation by the designated deadline.

(i) Orientation to ECI training must be completed within 30 days, from the EIS's start date.

(ii) If an EIS is transferring from another program, the Orientation to ECI training must be completed within 30 days from the EIS's start date unless the EIS has documentation he or she has completed the current Orientation module.

(iii) All credentialing activities (Final IPDP) must be completed within one [a] year from the EIS's start date.

~~[(iv) Any EIS who is in the Final IPDP stage as of March 1, 2015, must complete all credentialing activities by March 1, 2016.]~~

(B) the EIS is no longer employed by a contractor; an EIS may return to active status from inactive status by:

(i) submitting 10 contact hours of continuing education for every continuing education [~~CPE~~] due date that was missed while the EIS was on inactive status; and

(ii) submitting documentation of three contact hours of ethics training within the last two years.

(3) An EIS who has been on inactive status for longer than 24 months from his or her first missed continuing education [CPE] submission date must complete all credentialing activities.

(4) EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by HHSC [~~DARS~~] ECI.

(e) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to ethics for an EIS. An EIS who violates any of the standards of conduct in §108.314 [~~§108.319~~] of this subchapter [title] (relating to EIS Code of Ethics) is subject to the contractor's disciplinary procedures. Additionally, the

contractor must complete an EIS Code of Ethics Incident Report and send a copy to HHSC [DARS] ECI.

§108.314. EIS Code of Ethics.

An EIS must observe and comply with the following standards of conduct.

(1) An EIS must comply with the policies and procedures of both the contractor and HHSC ECI.

(2) An EIS must operate only within the boundaries provided by their education, training, and credentials.

(3) An EIS must take measures to avoid imposing or inflicting harm.

(4) An EIS must truthfully represent their services, professional credentials, and qualifications. The EIS must inform families of the scope and limitations of their credentials.

(5) An EIS must strive to maintain and improve their professional knowledge, skills, and abilities.

(6) An EIS must maintain the confidentiality of families served by the contractor's ECI program in accordance with the policies and procedures of HHSC ECI.

(7) An EIS must establish professional boundaries and avoid establishing dual relationships or conflicts of interest with families. Any prior relationships with a family member must be reported to the EIS's supervisor immediately.

(8) Sexual or intimate relationships between an EIS and family members of a child enrolled in the contractor's ECI program that employs the EIS are prohibited during the child's enrollment and for three years after the child is no longer enrolled.

(9) Financial relationships between the EIS and family members of a child enrolled in the contractor's ECI program that employs the EIS are prohibited during the child's enrollment.

(10) An EIS must not exploit their position of trust and influence with a family by benefiting from relationships established as an EIS.

(11) An EIS must not provide direct service while impaired, including impairments that are due to the use of medication, illicit drugs, or alcohol.

(12) An EIS must not falsify documentation.

(13) An EIS must not refuse to provide services for which they are credentialed on the basis of a child's or family's gender, race, ethnicity, color, religion, national origin, sexual orientation, political affiliation, socioeconomic status, or disability.

(14) An EIS must make reasonable efforts to ensure that families receive appropriate services when the EIS is unavailable or anticipates discontinued employment with the contractor.

(15) An EIS has a professional obligation to report unethical behavior demonstrated by colleagues throughout the ECI system to their program director and to the appropriate board or state agency.

§108.315. Service Coordinator.

(a) ECI case management may only be provided by an employee or subcontractor of an ECI contractor. The contractor must comply with HHSC [~~DARS~~] ECI requirements related to minimum qualifications for service coordinators.

(1) A service coordinator must meet one of the following criteria:

(A) be a licensed professional in a discipline relevant to early childhood intervention;

(B) be an EIS;

(C) be a Registered Nurse (with a diploma, an associate's, bachelor's or advanced degree) licensed by the Texas Board of Nursing; or

(D) hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, or human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(2) Before performing case management activities, a service coordinator must complete HHSC [~~DARS~~] ECI required case management training that

includes, at a minimum, content which results in:

(A) knowledge and understanding of the needs of infants and toddlers with disabilities and their families;

(B) knowledge of Part C of the Individuals with Disabilities Education Act;

(C) understanding of the scope of early childhood intervention services available under the early childhood intervention program and the medical assistance program; and

(D) understanding of other state and community resources and supports necessary to coordinate care.

(3) A service coordinator must complete all assigned activities on the service coordinator's IPDP within one year from the service coordinator's start date.

(4) [~~(3)~~] A service coordinator must effectively communicate in the family's native language or use an interpreter or translator.

(b) A service coordinator who was employed as service coordinator by a contractor before March 1, 2012, and does not meet the requirements of subsection (a)(1) of this section may continue to serve as a service coordinator at the contractor's discretion.

(c) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to continuing education for service coordinators. A service coordinator must complete:

(1) three contact hours of training in ethics every two years;

(2) an additional three contact hours of training specifically relevant to case management every year; and

(3) if the service coordinator does not hold a current license or credential that requires continuing professional education, an additional seven contact hours of approved continuing education every year.

(d) The contractor must comply with HHSC [~~DARS~~] ECI requirements related to supervision of service coordinators.

(1) A contractor's supervision of service coordinators must meet the

requirements outlined in §108.309(e) of this subchapter (relating to Minimum Requirements for All Direct Service Staff).

(2) [(1)] A contractor's ECI program staff member who meets the following criteria is qualified to supervise a service coordinator:

(A) has completed all service coordinator training as required in subsection (a)(2) and (a)(3) of this section;

(B) has two years of experience providing case management in an ECI program or another applicable community-based organization; and

(C) is an active EIS or holds a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, ~~[rehabilitation counseling,]~~ human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

~~[(2) The contractor must provide a service coordinator a minimum of three hours per quarter of documented supervision.]~~

(e) Requirements for service coordinator active status and inactive status are as follows.

(1) A service coordinator is on inactive status when the service coordinator fails to complete required training activities by the designated deadlines in subsections (a) and (c) of this section. Service coordinator active status is reinstated after the required training activities are completed and approved by the service coordinator's supervisor. [may return to active status from inactive status by submitting 10 contact hours of continuing education for every year of inactive status.]

(2) A service coordinator is on inactive status when the service coordinator is no longer employed by a contractor.

(A) A service coordinator returns to active status when the service coordinator:

(i) is employed by an ECI program within 24 months or less from the last day of employment;

(ii) submits 10 clock hours of continuing education for every year of inactive status; and

(iii) submits documentation of three clock hours of ethics training completed within the last two years and not used to meet previous training requirements.

(B) A service coordinator who has been on inactive status for longer than 24 months must complete the training requirements outlined in subsections (a)(2) and (a)(3) of this section.

~~[(2) A service coordinator returning to active status must submit documentation of three contact hours of ethics training within the last two years.]~~

~~[(3) In order to provide case management, a service coordinator who has been on inactive status for longer than 24 months must complete the orientation training, including the Family Centered Case Management module and other required initial training activities when returning to work for an ECI contractor.]~~

(f) The contractor must comply with HHSC [DARS] ECI requirements related to ethics of service coordinators. Service coordinators must meet the established rules of conduct and ethics training required by their license or credential. A service coordinator who does not hold a license or credential must meet the rules of conduct and ethics established in §108.314 ~~[\$108.319]~~ of this subchapter ~~[title]~~ (relating to EIS Code of Ethics).

~~**[\$108.317. Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families.]**~~

~~[(a) The contractor must comply with DARS ECI requirements related to minimum qualifications of direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must hold a high school diploma or certificate recognized by the state as an equivalent of a high school diploma and:]~~

~~[(1) have completed two years of documented paid experience providing services to children and families; or]~~

~~[(2) provide behavioral intervention services according to a structured plan supervised by one of the following:]~~

~~[(A) Board Certified Behavior Analyst; or]~~

~~[(B) one of the following who is trained in Positive Behavior Supports or Applied Behavior Analysis:]~~

~~[(i) Licensed Psychologist licensed by the Texas State Board of Examiners of Psychologists;]~~

~~[(ii) Licensed Psychological Associate (LPA) licensed by the Texas State Board of Examiners of Psychologists;]~~

~~[(iii) Licensed Professional Counselor (LPC) licensed by the Texas State Board of Examiners of Professional Counselors;]~~

~~[(iv) Licensed Clinical Social Worker (LCSW) licensed by the Texas State Board of Social Work Examiners; or]~~

~~[(v) Licensed Marriage and Family Therapist (LMFT) licensed by the Texas State Board of Examiners of Marriage and Family Therapists.]~~

~~[(b) The contractor must comply with DARS ECI requirements related to continuing education of direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must complete:]~~

~~[(1) a minimum of ten contact hours of approved continuing education each year; and]~~

~~[(2) an additional three contact hours of training in ethics every two years.]~~

~~[(c) The contractor must comply with DARS ECI requirements related to supervision of direct service staff members who do not hold a license or EIS credential.]~~

~~[(1) The contractor must provide a direct service staff member who does not hold a license or EIS credential documented supervision as defined in §108.309(e) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by DARS ECI.]~~

~~[(2) An ECI staff member who has two years of experience providing early childhood intervention services is qualified to supervise a direct service staff member who does not hold a license or EIS credential.]~~

~~[(d) The contractor must comply with DARS ECI requirements related to ethics for direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must meet the rules of conduct and ethics established in §108.319 of this title (relating to EIS Code of Ethics).]~~

~~**[§108.319 EIS. Code of Ethics.]**~~

~~[An EIS must observe and comply with the following standards of conduct:]~~

~~[(1) EISs must comply with the policies and procedures of both the contractor and DARS ECI.]~~

~~[(2) EISs must operate only within the boundaries provided by their education, training and credentials.]~~

~~[(3) EISs must take measures to avoid imposing or inflicting harm.]~~

~~[(4) EISs must truthfully represent their services, professional credentials, and qualifications. EISs must inform families of the scope and limitations of their credentials.]~~

~~[(5) EISs must strive to maintain and improve their professional knowledge, skills, and abilities.]~~

~~[(6) EISs must maintain the confidentiality of families served by the contractor's ECI program in accordance with the policies and procedures of DARS ECI.]~~

~~[(7) EISs must establish professional boundaries and avoid establishing dual relationships or conflicts of interest with families. Any prior relationships with a family member must be reported to the EIS's supervisor immediately.]~~

~~[(8) Sexual or intimate relationships between the EIS and family members of a child enrolled in the contractor's ECI program that employs the EIS are prohibited during the child's enrollment and for three years after the child is no longer enrolled.]~~

~~[(9) Financial relationships between the EIS and family members of a child enrolled in the contractor's ECI program that employs the EIS are prohibited during the child's enrollment.]~~

~~[(10) EISs must not exploit their position of trust and influence with a~~

~~family by benefiting from relationships established as an EIS.]~~

~~[(11) EISs must not provide direct service while impaired, including impairments that are due to the use of medication, illicit drugs, or alcohol.]~~

~~[(12) EISs must not falsify documentation.]~~

~~[(13) EISs must not refuse to provide services for which they are credentialed on the basis of a child's or family's gender, race, ethnicity, color, religion, national origin, sexual orientation, political affiliation, socioeconomic status, or disability.]~~

~~[(14) EISs must make reasonable efforts to ensure that families receive appropriate services when the EIS is unavailable or anticipates discontinued employment with the contractor.]~~

~~[(15) EISs have a professional obligation to report unethical behavior demonstrated by colleagues throughout the ECI system to their program director and to the appropriate board or state agency.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION SERVICES
SUBCHAPTER D CASE MANAGEMENT FOR INFANTS AND TODDLERS WITH DEVELOPMENTAL DISABILITIES

§108.403. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Case management--In compliance with §108.405 of this subchapter (relating to Case Management Services), case management means services provided to assist an eligible child and their family in gaining access to the rights and procedural safeguards under the Individuals with Disabilities Education Act (IDEA), Part C, and to needed medical, social, educational, developmental, and other appropriate services. Case management services may be provided via telehealth with the prior written consent of the parent.

(2) Targeted case management--Medicaid reimbursable case management services for children eligible for ECI and enrolled in Medicaid.

(3) [~~(2)~~] Developmental disability--Children from birth to age three who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

(4) [~~(3)~~] Monitoring and assessment [~~reassessment~~]--Activities and contacts as described in §108.405 of this subchapter (relating to Case Management Services) that are necessary to ensure that the individualized family service plan (IFSP), as described in Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)), is effectively implemented and that the planned services adequately address the needs of the child.

(5) [~~(4)~~] Service coordinator--An employee or person under the direction of an ECI contractor who meets the criteria described in Subchapter C of this chapter (relating to Staff Qualifications).

(6) [~~(5)~~] Texas Health Steps--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

§108.405. Case Management Services.

(a) Case management means services provided to assist an eligible child and their family in gaining access to the rights and procedural safeguards under IDEA Part C, and to needed medical, social, educational, developmental, and other appropriate services. Case management includes:

(1) coordinating the performance of evaluations and assessments;

(2) facilitating and participating in the development, review, and evaluation of the individualized family service plan in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)) which is based upon:

(A) the child's applicable history;

(B) the parent's input;

(C) input from others providing services and supports to the child and family; and

(D) the results of all evaluations and assessments;

(3) assisting families in:

(A) identifying unmet needs;

(B) identifying available providers of services and supports;

(C) making appropriate referrals and facilitating application; and

(D) assisting with initial and ongoing contact to obtain services from medical, social, and educational providers to address identified needs and achieve goals specified in the IFSP;

(4) following up with families and providers of services and supports to assist the child with timely access to services, and discuss the status of referrals to determine if the services have met the child's identified needs, and if ongoing assistance to ensure continued access will be necessary;

(5) monitoring and assessment of the delivery of and effectiveness of services that:

(A) occurs at least once every six months, or more frequently as needed;

(B) is individualized and clearly related to the needs of the child and family;

(C) collects information from family members, service providers, and other entities and individuals who provide service or supports to the child and family to assess if:

(i) services are being provided in accordance with the child's IFSP;

(ii) services are adequate to meet the child's and family's needs;

(iii) all service providers are effectively collaborating to address the child's and family's needs; and

(iv) parents and routine caregivers are able to use the interventions being presented;

(6) adjusting the IFSP and service arrangements if new needs, ineffectiveness, or barriers to services are identified;

(7) assisting the parent or routine caregiver in advocating for the child;

(8) coordinating with medical and other health providers to ensure services are effective in meeting the child's and family's needs; and

(9) facilitating the child's transition to preschool or other appropriate services and supports.

(b) Medicaid reimbursement is available for the provision of targeted case management if the following criteria are met:

(1) the contact occurs with the parent or routine caregiver;

(2) the contact occurs face to face or by telephone;

(3) the contact is of at least eight minutes in duration;

(4) the desired outcome of the contact is of direct benefit to a child who is eligible for ECI services; and

(5) during the contact the service coordinator performs a case management activity as described in subsection (a) of this section.

(d) Non-billable case management contacts must be documented in a child's record. These contacts occur when:

(1) the contact is with individuals other than a parent or routine caregiver;

(2) the desired outcome of the contact is of direct benefit to a child who is eligible for ECI services; and

(3) during the contact the service coordinator performs a case management activity as defined in subsection (a) of this section.

~~[\$108.405. Case Management Services.]~~

~~[(a) Case management means services provided to assist an eligible child and their family in gaining access to the rights and procedural safeguards under IDEA Part C, and to needed medical, social, educational, developmental, and other appropriate services. Case management includes:]~~

~~[(1) coordinating the performance of evaluations and assessments;]~~

~~[(2) facilitating and participating in the development, review, and evaluation of the individualized family service plan in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)) which is based upon the child's applicable history, the parent's input, and the results of all evaluations and assessments;]~~

~~[(3) assisting families in identifying available service providers and making appropriate referrals to obtain services from medical, social, and educational providers to address identified needs and achieve goals specified in the IFSP;]~~

~~[(4) following up with families to assist the child with timely access to services, discuss the disposition of the referral with the family, and determine if the services have met the child's needs;]~~

~~[(5) monitoring and reassessment of the delivery of and effectiveness of services through contacts with the child, family members, service providers, or other entities or individuals and conducted as frequently as necessary and at least once every six months to determine if:]~~

~~[(A) services are being provided in accordance with the child's IFSP;]~~

~~[(B) services are adequate; and]~~

~~[(C) when the child has new needs or there are changes in the needs of the child, the IFSP and service arrangements are adjusted to address the~~

identified needs.]

~~[(6) informing families of the availability of advocacy services;]~~

~~[(7) coordinating with medical and other health providers;]~~

~~[(8) facilitating the child's transition to preschool or other appropriate services; and]~~

~~[(9) documenting, in accordance with §108.415 of this subchapter (relating to Documentation), all case management activities, the child and family response to case management, whether the child and family have declined any services in the plan, and coordination with other case management providers.]~~

~~[(b) Case management may be delivered face to face or by telephone.]~~

~~[(1) Contacts are billable to Medicaid when the interaction is directly with the child, and/or the child's parent as defined in 20 USC §1401 or routine caregiver.]~~

~~[(2) Contacts may be made with other individuals when directly related to identifying the eligible child's needs, helping the eligible child access services, identifying needs and supports to assist the eligible child in obtaining services, providing the service coordinator with useful feedback, and alerting the service coordinator to changes in the eligible child's needs. These contacts must be documented in the child's record but are not separately billable to Medicaid.]~~

§108.409. Conditions for Case Management Provider Agency Participation.

In order to be reimbursed for services specified in §108.405 of this subchapter (relating to Case Management Services), a provider must:

(1) be an Early Childhood Intervention contractor of HHSC [~~the Department of Assistive and Rehabilitative Services~~];

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) ensure that services are provided by qualified staff as specified in Subchapter C of this chapter (relating to Staff Qualifications); and

(4) be responsible for the service coordinator's compliance with this subchapter.

§108.411. Assignment of Service Coordinator.

(a) Early Childhood Intervention (ECI) case management services must be provided by service coordinators who meet the educational, training, and work experience requirements, commensurate with their job responsibilities, as specified in Subchapter C of this chapter (relating to Staff Qualifications).

(b) The ECI contractor is responsible for:

(1) assigning one service coordinator for each eligible child and the child's family according to the following:

(A) an initial service coordinator must be assigned at the time of referral; and

(B) a new service coordinator may be assigned at the time the IFSP is developed or the original service coordinator may be retained, if appropriate;

(2) ensuring that the service coordinator assigned by the ECI contractor has a combination of education, training, and work experience relevant to the child's needs; and

(3) appointing a new service coordinator if requested by the parent.

§108.415. Documentation.

(a) The child's record must include:

(1) whether the parent has declined recommended services;

(2) the need for, and occurrences of, coordination with other service coordinators or case managers; and

(3) whether case management goals have been achieved.

(b) Documentation of each case management contact must include:

(1) name of the child;

(2) name of the ECI contractor;

(3) name of the assigned service coordinator;

(4) date, start time, and duration of the contact;

(5) physical location of the service coordinator at the time of contact (e.g., office, child's home, hospital, daycare);

(6) method of service (face to face or telephone);

(7) with whom the contact was made (e.g., parent, routine caregiver, physician);

(8) a description of the case management activity performed as described in §108.405 of this subchapter (relating to Case Management Services);

(9) course of action to respond to identified needs;

(10) any relevant information provided by the family, or other individual or entity; and

(11) service coordinator's signature.

~~§108.415. Documentation.~~

~~[Case Management Documentation. Documentation of each case management contact must include the name of the child, the names of the ECI contractor and assigned service coordinator, the date, start time, length of time and place of service, type of service (face to face or telephone), a description of the contact including all referrals made and the disposition of the referral, any relevant information provided by the family, or other individual or entity and the service coordinator's signature.]~~

§108.417. Due Process.

(a) Medicaid-eligible individuals. Any Medicaid-eligible individual whose request for eligibility for case management is denied or is not acted upon with reasonable promptness, or whose case management has been terminated, suspended, or reduced is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) All individuals. If an ECI contractor denies, involuntarily reduces, or terminates case management for an individual, the individual has all rights to file complaints, request mediation, or request a hearing in accordance

with Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) and in accordance with Chapter 101, Subchapter E [~~Subchapter J~~], Division 3 of this title (relating to Division for Early Childhood Intervention Services [~~Administrative Rules and Procedures~~]).

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION SERVICES
SUBCHAPTER E SPECIALIZED REHABILITATIVE SERVICES [~~SKILLS TRAINING~~]

§108.501. Specialized Rehabilitative Services. [~~Skills Training (Developmental Services)~~].

(a) Specialized rehabilitative services [~~skills training (developmental services)~~] are rehabilitative services that [~~to~~] promote age-appropriate development by correcting [~~providing skills training to correct~~] deficits and teaching [~~teach~~] compensatory skills for deficits that directly result from medical, developmental or other health-related conditions. Specialized rehabilitative services include physical therapy, speech language pathology services, occupational therapy, and specialized skills training.

(1) Physical therapy.

(A) Physical therapy services are defined in 34 CFR §303.13(b)(9).

(B) Physical therapy services must meet the requirements of subsection (b) of this section.

(C) Physical therapy services must be provided by a licensed physical therapist who meets the requirements of 42 CFR §440.110(a) and all other applicable state and federal laws or a licensed physical therapy assistant (LPTA) when the assistant is acting under the direction of a licensed physical therapist in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(2) Speech language pathology services.

(A) Speech language pathology services are defined in 34 CFR 303.13(b)(15).

(B) Speech therapy services must meet the requirements of subsection (b) of this section.

(C) Speech therapy services must be provided by:

(i) a licensed speech language pathologist (SLP) who meets the

requirements of 42 CFR §440.110(c) and all other applicable state and federal laws;

(ii) a licensed assistant in SLP when the assistant is acting under the direction of a licensed SLP in accordance with 42 CFR §440.110 and all other applicable state and federal laws; or

(iii) a licensed intern when the intern is acting under the direction of a qualified SLP in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(3) Occupational therapy.

(A) Occupational therapy services are defined in 34 CFR §303.13(b)(8).

(B) Occupational therapy services must meet the requirements of subsection (b) of this section.

(C) Occupational therapy services must be provided by a licensed occupational therapist who meets the requirements of 42 CFR §440.110(b) and all other applicable state and federal laws or a certified occupational therapy assistant (COTA) when the assistant is acting under the direction of a licensed occupational therapist in accordance with 42 CFR §440.110 and all other applicable state and federal laws.

(4) Specialized skills training.

(A) Specialized skills training seeks to reduce the child's functional limitations across developmental domains including, strengthening the child's cognitive skills, positive behaviors, and social interactions.

(B) Specialized skills training includes skills training and anticipatory guidance for family members or other routine caregivers to ensure effective treatment and to enhance the child's development.

(C) Specialized skills training services must meet the requirements of subsection (b) of this section.

(D) Specialized skills training must be provided by an Early Intervention Specialist.

(b) Specialized rehabilitative services [Services] must:

(1) be designed to create learning environments and activities that promote the child's acquisition of skills in one or more of the following developmental areas: physical/motor, communication, adaptive, cognitive, and social/emotional;

~~[(2) include skills training and anticipatory guidance for family members, or other significant caregivers to ensure effective treatment and to enhance the child's development;]~~

(2) [(3)] be provided in the child's natural environment, as defined in 34 CFR Part 303, unless the criteria listed at 34 CFR §303.126 [§303.167] are met and documented in the case record [÷] and may be provided via telehealth with the prior written consent of the parent;

(3) meet the requirements of §108.1104 of this chapter (relating to Early Childhood Intervention Services Delivery); and

(4) be provided on an individual or group basis.

(c) In addition to the criteria in subsection (b) of this section, group services must meet the requirements as described in §108.1107 of this chapter (relating to Group Services). ~~[be;]~~

~~[(1) recommended by the interdisciplinary team and documented on the IFSP, only when participation in the group will assist the child reach the outcomes in the IFSP;]~~

~~[(2) planned as part of an IFSP that also contains individual services; and]~~

~~[(3) be limited to no more than four children and their parent(s) or other significant caregiver(s) per Early Intervention Specialist.]~~

~~(d) Staff Qualifications. Specialized skills training must be provided by an Early Intervention Specialist as defined in §108.103 of this chapter (relating to Definitions).]~~

(d) [(e)] Service Authorization.

(1) Specialized rehabilitative services ~~[skills training]~~ must be recommended by an interdisciplinary team that includes a ~~[physician or]~~ licensed practitioner of the healing arts and be documented in an Individualized Family Service Plan (IFSP) in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)).

(2) Services must be monitored by the interdisciplinary team as-described in §108.1104 of this chapter (relating to Early Childhood Intervention Services Delivery). [~~at least once every six months to determine;~~]

~~[(A) what progress is being made toward achieving outcomes;]~~

~~[(B) if services are reducing the child's functional limitations, promoting age appropriate growth and development, and are responsive to the family's identified goals for the child; and]~~

~~[(C) whether modifications to the plan are needed.]~~

~~[(3) Monitoring occurs as part of the IFSP review process and must be documented in the case record.]~~

(e) ~~[(f)]~~ Documentation. Documentation of each specialized rehabilitative services ~~[skills training]~~ contact must meet the requirements in §108.1111 of this chapter (relating to Service Delivery Documentation Requirements). ~~[include:]~~

~~[(1) the name of the child;]~~

~~[(2) the name of the ECI contractor and Early Intervention Specialist;]~~

~~[(3) the date, start time, length of time, and place of service;]~~

~~[(4) method (individual or group);]~~

~~[(5) a description of the contact including a summary of activities and the family or caregiver's participation;]~~

~~[(6) the IFSP goal which was the focus of the intervention;]~~

~~[(7) the child's progress;]~~

~~[(8) relevant new information about the child provided by the family or other significant caregiver; and]~~

~~[(9) the Early Intervention Specialist's signature.]~~

§108.503. Recipient Eligibility.

To ~~[In order to]~~ receive ECI specialized rehabilitative services, ~~[skills training;]~~ a ~~[the]~~ child must meet the following criteria:

(1) eligibility criteria established in Subchapter H of this chapter (relating to Eligibility), and

(2) have a need for specialized rehabilitative services [~~skills training~~] as determined by the interdisciplinary team and identified on the IFSP which has been signed by an LPHA [~~a physician or licensed professional of the healing arts~~].

§108.505. Conditions for Provider Agency Participation.

To [~~In order to~~] be reimbursed for services specified in §108.501 of this subchapter (relating to Specialized Rehabilitative Services [~~Skills Training (Developmental Services)~~]), a contractor [~~provider~~] must:

~~[(1) be an Early Childhood Intervention contractor of the Department of Assistive and Rehabilitative Services;]~~

(1) [~~(2)~~] comply with applicable federal and state laws and regulations governing the services provided;

(2) [~~(3)~~] ensure that services are provided by an ECI professional [~~Early Intervention Specialist~~] defined in §108.103 of this chapter (relating to Definitions); and

(3) [~~(4)~~] be responsible for the ECI professional's [~~Early Intervention Specialist's~~] compliance with this subchapter.

§108.507. Due Process.

(a) Medicaid-eligible individuals. Any Medicaid-eligible individual whose request for eligibility for specialized rehabilitative services [~~skills training~~] is denied or is not acted upon with reasonable promptness, or whose specialized rehabilitative services [~~skills training~~] has been terminated, suspended, or reduced is entitled to a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules).

(b) All individuals. If an ECI contractor denies, involuntarily reduces, or terminates specialized rehabilitative services [~~skills training~~] for an individual, the individual has all rights to file complaints, request mediation, or request a hearing in accordance with Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) and in accordance with Chapter 101, Subchapter E [~~J~~], Division 3 of this title (relating to Appeals [~~Administrative Rules~~] and Hearing Procedures).

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER F PUBLIC OUTREACH

[~~§108.603. Legal Authority.~~]

The following statutes and regulations authorize or require the rules in this subchapter:

[~~(1) Texas Human Resources Code, Chapter 73;~~]

[~~(2) Texas Human Resources Code, Chapter 117;~~]

[~~(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444); and~~]

[~~(4) implementing federal regulations 34 CFR Part 303.~~]

§108.607. Public Outreach.

(a) The contractor must plan and implement child find, public awareness and interagency coordination goals and strategies that comply with the Individuals with IDEA Part C.

(b) When HHSC [~~DARS~~] provides language to use in communicating with primary referral sources, parents of infants and toddlers, or the general public, the contractor must use the provided language.

§108.609. Child Find.

(a) The purpose of child find efforts is to establish working relationships and communicate effectively with primary referral sources in order to support and promote their referring children potentially eligible for ECI services.

(b) The contractor must have written procedures that establish systems to:

(1) inform primary referral sources of the requirement to refer children suspected of having a developmental delay or a medical diagnosis with a high probability of resulting in a developmental delay in a timely manner as established in 34 CFR §303.303;

- (2) accept referrals effectively; and
- (3) monitor referral dates and sources.

(c) The contractor must document that primary referral sources listed in 34 CFR §303.303(c) have been provided current information on:

- (1) ECI eligibility criteria;
- (2) the ECI array of services;
- (3) how to explain ECI service delivery to families, including the family's role;
- (4) how to make a referral to ECI;
- (5) the importance of informing families when a referral is made; and
- (6) the family cost share system of payments for early childhood intervention services.

(d) The contractor must document that any major HHSC [~~DARS~~] ECI policy change concerning the types of information described in subsection (c) of this section is communicated to primary referral sources.

§108.611. Public Awareness.

(a) The purpose of public awareness efforts is to increase recognition of ECI programs in the community so that families with children potentially eligible for early childhood intervention services will access those services.

(b) The contractor must document that families and the general public are provided current HHSC [~~DARS~~] ECI materials on:

- (1) ECI service delivery, including the family's role;
- (2) eligibility criteria;
- (3) the ECI array of services;
- (4) how to make a referral to ECI; and
- (5) the family cost share system of payments for early childhood intervention services.

(c) The contractor's program staff must be able to explain to families and the public the information listed in subsection (b) of this section.

(d) The contractor must assist HHSC [~~DARS~~] ECI as requested in public awareness activities, including informing families and their community of the HHSC [~~DARS~~] ECI Central Directory.

(e) The contractor must establish and maintain ongoing relationships with public and private agencies that serve children and families in their community to:

(1) increase quality referrals for ECI services; and

(2) coordinate with community partners to increase access to resources and services for ECI children and families.

§108.613. Publications.

(a) The contractor must maintain a current inventory of ECI publications and public outreach materials provided by HHSC [~~DARS~~] ECI.

(b) Public outreach materials created by the contractor must comply with the ECI Graphics Manual.

§108.615. Interagency Coordination.

(a) The purpose of interagency coordination is to enhance the contractor's child find and public awareness efforts and to coordinate with community partners to increase access to resources and services for ECI children and families.

(b) The contractor must comply with all child find and public outreach requirements in all state-level HHSC [~~DARS~~] ECI memoranda of understanding (MOUs) with the Texas Education Agency (TEA), Head Start and Early Head Start, Texas Department of Family and Protective Services (DFPS), and any other state agency with which HHSC [~~DARS~~] ECI enters into a MOU.

(c) The contractor must coordinate with LEA representatives to facilitate an effective transition from ECI to public school special education services and the LEA provision of auditory and visual impairment services. Coordination activities focus on developing a joint understanding of:

(1) eligibility requirements for public school services, including for Part B

services;

(2) the state-level MOUs with TEA; and

(3) if applicable, MOUs with the LEAs.

(d) The contractor must coordinate with representatives from Head Start and Early Head Start to ensure that families eligible for Head Start and Early Head Start have access to those services, as available. Coordination activities focus on developing a joint understanding of:

(1) eligibility requirements for Head Start and Early Head Start placement;

(2) the state-level MOU with Head Start and Early Head Start;

(3) referral procedures; and

(4) if applicable, the local MOU with Head Start and Early Head Start.

(e) The contractor must document coordination of ECI services with local agencies, as required by 34 CFR §303.302 and other programs identified by HHSC [~~DARS~~] ECI.

(f) The contractor must maintain a current list of community resources for families that includes for each resource:

(1) services provided;

(2) contact information;

(3) referral procedures; and

(4) cost to families.

(g) The contractor must document the reasonable efforts to mitigate any systemic issues with achieving the requirements of this section.

§108.617. Public Outreach Contact, Planning, and Evaluation.

(a) The contractor must inform HHSC [~~DARS~~] ECI of the person to contact regarding public outreach efforts.

(b) The contractor must establish goals, strategies, and activities to meet the requirements of this subchapter. This strategic planning process must

include the review and incorporation of any major HHSC [~~DARS~~] ECI policy change concerning the types of information described in §108.609(b) of this subchapter (relating to Child Find).

(c) The strategic planning process must be coordinated with other contractors that share counties and primary referral sources.

(d) The public outreach strategic planning process must include an evaluation of the success of the contractor's public outreach efforts with a focus on the:

(1) number of children referred to the ECI program;

(2) percentage of children referred that are determined eligible for the program;

(3) percentage of children determined eligible that enroll in the program;

(4) data in paragraphs (1), (2) and (3) of this subsection broken down by age, race, and ethnicity at referral; referral source; and eligibility type; and

(5) plans to address issues found in the evaluation of public outreach efforts.

(e) The contractor must be prepared to describe this strategic planning process and its outcomes to HHSC [~~DARS~~] ECI upon request.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION SERVICES
SUBCHAPTER G REFERRAL, PRE-ENROLLMENT, AND DEVELOPMENTAL SCREENING

~~§108.702. Legal Authority.~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) Texas Human Resources Code, Chapter 117;]~~

~~[(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431—1444); and]~~

~~[(4) implementing federal regulations 34 CFR Part 303.]~~

§108.704. Referral Requirements.

(a) The contractor must:

(1) accept referrals for children less than 36 months of age;

(2) document in the child's record the referral date, source, and reason for referral; and

(3) contact the family in a timely manner after receiving the referral.

(b) The contractor must follow all requirements described in this chapter when a referral is received 45 days or more before the child's third birthday.

(c) In accordance with 34 CFR §303.209(b)(iii) and §108.1207(h) (relating to Transition Planning), when a referral is received less than 45 days before the child's third birthday, the contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting. In accordance with 34 CFR §303.209, with written parental consent, if the toddler is potentially eligible for special education services:

(1) the contractor must notify the LEA; and

(2) HHSC [DARS] coordinates the notification to the State Education Agency.

§108.706. Referrals Received While the Child is in the Hospital.

(a) In order to facilitate discharge planning and provide continuity of care, a contractor may accept referrals for children who are residing in a hospital at the time of referral.

(b) If a referral is received for a child who has an adjusted age of 0 months or less, or who has a qualifying medical diagnoses, the contractor may choose to determine eligibility and complete the initial IFSP prior to the child's discharge from the hospital.

(1) The interdisciplinary team who determines eligibility may include a licensed or registered hospital professional, who will serve as the LPHA while the child is in the hospital. The LPHA on the IFSP team may participate by means other than face to face, if acceptable to the team and if the initial IFSP is conducted while the child is in the hospital.

(2) The interdisciplinary team must include at least one ECI professional and a licensed or registered hospital professional who is familiar with the needs of the child and knowledgeable in the area or areas of concern. The participating licensed or registered hospital professional is not required to complete the orientation training required in §108.309(b) of this chapter (relating to Minimum Requirements for All Direct Service Staff). Allowable licensed or registered hospital professionals include:

- (A) licensed physician;
- (B) registered nurse;
- (C) licensed physical therapist;
- (D) licensed occupational therapist;
- (E) licensed speech language pathologist;
- (F) licensed dietitian;
- (G) licensed audiologist;
- (H) licensed physician assistant;

(I) licensed intern in speech language pathology; or

(J) advanced practice registered nurse.

§108.707 Child Referred with an Out-of-State IFSP

(a) When a child moves to Texas with a completed IFSP from another state, eligibility for Texas early childhood intervention services must be determined in accordance with Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(b) The interdisciplinary team considers existing evaluation data and medical diagnoses, as documented on the out-of-state IFSP, as appropriate.

(c) Early childhood intervention services in Texas must be planned in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)) and delivered in accordance with Subchapter K of this chapter (relating to Service Delivery).

~~[\$108.706. Child Referred with an Out-Of-State IFSP.]~~

~~[(a) When a child moves to Texas with a completed IFSP from another state, eligibility for Texas early childhood intervention services must be determined in accordance with Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).]~~

~~[(b) The interdisciplinary team considers existing evaluation data and medical diagnoses, as documented on the out-of-state IFSP, as appropriate.]~~

~~[(c) Early childhood intervention services in Texas must be planned in accordance with Subchapter J of this chapter (relating to Individualized Family Service Plan (IFSP)) and delivered in accordance with Subchapter K of this chapter (relating to Service Delivery).]~~

~~[\$108.707. Pre-Enrollment Activities.]~~

~~[(a) Pre-enrollment begins at the point of referral, includes the following activities, and ends when the parent signs the IFSP or a final disposition is reached.]~~

~~[(1) The contractor must assign an initial service coordinator for the family and document the name of the service coordinator in the child's record.]~~

~~[(2) The contractor must provide the family the HHSC ECI family rights publication and document in the child's record that the following were explained:]~~

~~[(A) the family's rights regarding eligibility determination and enrollment;]~~

~~[(B) the early childhood intervention process for determining eligibility and enrollment; and]~~

~~[(C) the types of early childhood intervention services that may be delivered to the child and the manner in which they may be provided.]~~

~~[(3) The contractor provides pre-IFSP service coordination as defined in 34 CFR §303.13(b)(11) and §303.34.]~~

~~[(4) The contractor must collect information on the child throughout the pre-enrollment process.]~~

~~[(5) The contractor must assist the child and family in gaining access to the evaluation and assessment process. The contractor:]~~

~~[(A) schedules the interdisciplinary initial evaluation and assessment; and]~~

~~[(B) prepares the family for the evaluation and assessment process.]~~

~~[(6) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).]~~

~~[(b) The contractor must explain the requirement to provide early childhood intervention services in the natural environment to the family before eligibility determination.]~~

~~[(c) The contractor must determine the need for and appoint a surrogate parent in accordance with 34 CFR §303.422 and §108.213 of this title (relating to Surrogate Parents).]~~

§108.708. Pre-Enrollment Activities.

(a) Pre-enrollment begins at the point of referral, includes the following activities, and ends when the parent signs the IFSP or a final disposition is reached.

(1) The contractor assigns an initial service coordinator for the family and documents the name of the service coordinator in the child's record.

(2) The contractor provides the family the HHS ECI Parent Handbook and documents in the child's record that the following were explained:

(A) the family's rights regarding eligibility determination and enrollment;

(B) the early childhood intervention process for determining eligibility and enrollment; and

(C) the types of early childhood intervention services that may be delivered to the child and the manner in which they may be provided.

(3) The contractor provides pre-IFSP service coordination as defined in 34 CFR §303.13(b)(11) and §303.34.

(4) The contractor collects information on the child throughout the pre-enrollment process.

(5) The contractor assists the child and family in gaining access to the evaluation and assessment process, including:

(A) scheduling the interdisciplinary initial evaluation and assessment; and

(B) preparing the family for the evaluation and assessment process.

(6) The contractor complies with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

(b) The contractor must explain to the family, before eligibility determination, the requirement to provide early childhood intervention services in the natural environment.

(c) The contractor must determine the need for and appoint a surrogate parent in accordance with 34 CFR §303.422 and §108.213 of this chapter (relating to Surrogate Parents).

§108.709. Optional Developmental Screenings.

(a) Developmental screening is done [~~screenings are only used~~] to determine the need for further evaluation. A [~~The~~] contractor must:

(1) use ~~[developmental screening]~~ tools that are approved by HHSC ~~[DARS]~~ ECI; and

(2) train providers administering the ~~[screening]~~ tool according to the parameters required by the selected tool.

(b) A ~~[The]~~ parent has the right to request ~~[decide whether to proceed to]~~ a comprehensive evaluation after a developmental screening or ~~[request]~~ a comprehensive evaluation instead of a developmental screening at any time.

(c) If the results of a child's developmental screening do not indicate a ~~[developmental]~~ concern, a ~~[the]~~ contractor must:

(1) provide written documentation to the parent that further evaluation is not recommended;

(2) offer the parent a comprehensive evaluation; and

(3) conduct a comprehensive evaluation if requested by the parent.

(d) A ~~[The]~~ contractor must coordinate with the Texas Department of Family and Protective Services (DFPS) to accept a referral ~~[referrals]~~ for a child ~~[children]~~ under 36 months of age who is ~~[are in the conservatorship of DFPS,]~~ involved in a substantiated case of child abuse or neglect, ~~[identified as being]~~ affected by illegal substance abuse ~~[,]~~ or withdrawal symptoms resulting from prenatal drug exposure, or suspected of having a disability or developmental delay.

~~[(1) If the contractor receives a completed developmental screening from a health care provider acting within their scope of practice indicating a child in the conservatorship of DFPS has a developmental delay, the contractor must offer a comprehensive evaluation to determine eligibility for early childhood intervention services.]~~

(1) A child in DFPS conservatorship. A contractor must offer a comprehensive evaluation to determine eligibility for early childhood intervention services when the contractor receives a completed developmental screening from a health care provider indicating the child has a developmental delay.

(2) A ~~[If the contractor receives a referral on a]~~ child ~~[who has]~~ not ~~[been placed]~~ in DFPS ~~[the]~~ conservatorship ~~[of DFPS, but]~~ who is involved in a substantiated case of ~~[child]~~ abuse or neglect. ~~[,]~~ A ~~[the]~~ contractor must offer either a developmental screening or proceed directly to ~~[determine the]~~

~~need for] a comprehensive evaluation [or proceed to a comprehensive evaluation without a developmental screening].~~

(3) A child ~~[If the contractor receives a referral on a child who is identified as being]~~ affected by illegal substance abuse ~~[,]~~ or withdrawal symptoms ~~[resulting]~~ from prenatal drug exposure. A ~~[, the]~~ contractor must offer either a developmental screening or ~~[to determine the need for a comprehensive evaluation. The contractor may use professional judgment to]~~ proceed directly to comprehensive evaluation ~~[without first conducting a developmental screening].~~

(4) A child ~~[If the contractor receives a referral from DFPS due to]~~ suspected of having a disability or developmental delay. ~~[, the]~~ A contractor follows their local procedures for accepting a referral, conducting a developmental ~~[referrals,]~~ screening, and completing an evaluation unless ~~[evaluating when]~~ the child ~~[is:]~~ meets one of the criteria in paragraphs (1) - (3) of this subsection.

~~[(A) not in the conservatorship of DFPS;]~~

~~[(B) not involved in a substantiated case of child abuse or neglect; and]~~

~~[(C) not identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.]~~

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 108 ~~[DIVISION FOR]~~ EARLY CHILDHOOD INTERVENTION SERVICES
SUBCHAPTER H ELIGIBILITY, EVALUATION, AND ASSESSMENT

~~§108.803. Legal Authority.~~

The following statutes and regulations authorize or require the rules in this subchapter:

~~[(1) Texas Human Resources Code, Chapter 117;]~~

~~[(2) 34 CFR Part 303; and]~~

~~[(3) 20 USC §§1431 through 1443.]~~

§108.809. Initial Eligibility Criteria.

A child must be under 36 months of age and meet initial eligibility criteria to receive early childhood intervention services. Initial eligibility is established by:

(1) documentation of a medically diagnosed condition that has a high probability of resulting in developmental delay;

(2) an auditory or visual impairment as defined by the Texas Education Agency rule at 19 TAC §89.1040 (relating to Eligibility Criteria); or

(3) a developmental delay. Each developmental area must be evaluated as defined in 34 CFR §303.321. Developmental delay is determined based on:

(A) an evaluation using a standardized tool designated by HHSC ~~[DARS]~~ that indicates a delay of at least 25 percent in one or more of the following developmental areas: communication; cognitive; gross motor; fine motor; social emotional; or adaptive; or

(B) an evaluation using a standardized tool designated by HHSC ~~[DARS]~~ that indicates a delay of at least 33 percent if the child's only delay is in expressive language; or

(C) a qualitative determination of delay, as indicated by responses or

patterns that are disordered or qualitatively different from what is expected for the child's age, and significantly interfere with the child's ability to function in the environment. When the interdisciplinary team determines there is evidence that the results of the standardized tool do not accurately reflect the child's development, eligibility must be established using a supplemental protocol designated by HHSC [~~DARS~~] ECI. A child must meet the same eligibility standards in subparagraph (A) or (B) of this paragraph on the designated tool to qualify for a qualitative determination of delay unless the child has an adjusted age or chronological age of under 3 months.

§108.811. Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay.

(a) To determine eligibility for a child who has a qualifying medical diagnosis the interdisciplinary team must review medical documentation to determine initial eligibility.

(b) The HHSC Director of ECI [~~DARS ECI assistant commissioner~~] approves the list of qualifying medical conditions based on prevailing medical opinion that the diagnoses have a high probability of resulting in developmental delay. Copies of the list of medically qualifying diagnoses can be obtained from HHSC [~~DARS~~].

(c) If a review of the child's records indicates that the child has a qualifying medical condition, the interdisciplinary [~~evaluation~~] team must determine and document a need for early childhood intervention services as required in §108.837 of this title (relating to Needs Assessment).

§108.813. Determination of Hearing and Auditory Status.

(a) As part of evaluation the interdisciplinary team must determine any need for further hearing assessment. This determination is completed by reviewing the current hearing and auditory status for every child through an analysis of evaluation protocol results. A screening tool may be used for a child who is eligible based on a medical diagnosis or vision impairment.

(b) The contractor must refer a child to a licensed audiologist if the child has been identified as having a need for further hearing assessment and the child has not had a hearing assessment within six months of the hearing needs identification. If necessary to access a licensed audiologist, the contractor may refer the child to their primary health care provider. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives an audiological assessment that indicates the child has an auditory impairment, the contractor must respond as follows. [~~with written parental consent, refer the child within five business days.~~]

(1) The contractor must, within five business days, make a referral to the LEA to participate in the eligibility determination process as part of the interdisciplinary team, and with written parental consent, complete the communication evaluation. The contractor must refer to the LEA any child who uses amplification.

(2) With prior written parental consent, the contractor must refer the child [~~(1)~~] to an otologist, an otolaryngologist, or an otorhinolaryngologist for an otological examination. An otological examination may be completed by any licensed medical physician when an otologist is not available. The child's record must include documentation that an otologist, an otolaryngologist, or an otorhinolaryngologist was not available to complete the examination. [~~and~~]

~~[(2) to the LEA to complete the communication evaluation and participate in the eligibility determination process as part of the interdisciplinary team. The contractor must also refer to the LEA any child who uses amplification.]~~

§108.815. Determination of Vision Status.

(a) As part of evaluation, the interdisciplinary team must determine any need for further vision assessment. This determination is completed by reviewing the current vision status for every child through an analysis of evaluation protocol results. A screening tool may be used for a child who is eligible based on a medical diagnosis or hearing impairment.

(b) The contractor must refer a child to an ophthalmologist or optometrist if the child has been identified as having a need for further vision assessment and the child has not had a vision assessment within nine months of the vision needs identification. If necessary to access an ophthalmologist or optometrist, the contractor may refer the child to their primary health care provider. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives a medical eye examination report that indicates vision impairment, the contractor must ~~refer the child to the LEA and to the local office of the DARS Division for Blind Services, with parental consent and~~ within five business days of receiving the report. [-]

(1) refer the child to the LEA; and

(2) with prior written consent, refer the child to the local office of the HHS Blind Children's Vocational Discovery and Development Program (BCVDDP).

(d) The referral to the LEA must be accompanied by a form containing elements required by the Texas Education Agency completed by an ophthalmologist or an optometrist, or a medical physician when an ophthalmologist or optometrist is not available.

§108.817. Eligibility Determination Based on Developmental Delay.

(a) The contractor must:

(1) comply with all requirements in 34 CFR §303.321(b) (relating to Procedures for Evaluation of the Child);

(2) maintain all test protocols and other documentation used to determine eligibility and continuing eligibility in the child's record;

(3) provide prior written notice to the parent when the child is determined to be ineligible for early childhood intervention services; and

(4) ensure that evaluations are conducted by qualified personnel.

(b) The parent and at least two professionals from different disciplines must conduct the evaluation to determine initial and continuing eligibility based on developmental delay as defined by §108.809(3) of this title (relating to Initial Eligibility Criteria). An LPHA must be one of the two professionals. Service coordination is not considered a discipline for evaluation. The evaluation procedures must include:

(1) administration of the standardized tool designated by HHSC [~~DARS~~] ECI;

(2) taking the child's history, including interviewing the parent;

(3) identifying the child's level of functioning in each of the developmental areas in 34 CFR §303.21(a)(1);

(4) gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs;

(5) reviewing medical, educational, and other records; and

(6) in addition to 34 CFR §303.321(b), determining the most appropriate setting, circumstances, time of day, and participants for the evaluation in order to capture the most accurate picture of the child's ability to function in his or her natural environment; and

(7) interpreting scores and determining delay through the application of informed clinical opinion to test results.

(c) The contractor must consider other evaluations and assessments performed by outside entities when requested by the family.

(1) The contractor must determine whether outside evaluations and assessments:

(A) are consistent with HHSC [~~DARS~~] ECI policies;

(B) reflect the child's current status; and

(C) have implications for IFSP development.

(2) If the family does not allow full access to those records or to those entities or does not consent to or does not cooperate in evaluations or assessments to verify their findings, the contractor may discount or disregard the other evaluations and assessments performed by outside entities.

§108.821. Qualitative Determination of Developmental Delay.

Qualitative Determination of Developmental Delay is applied as described in this section:

(1) When a child's adjusted age is 0 months, administration of the standardized tool or another protocol is not required. The interdisciplinary team, which must include an LPHA knowledgeable in the area of concern, must describe clinical findings and how those findings significantly interfere with the child's functional abilities.

(2) When the evaluation results, which are measured using the standardized tool designated by HHSC [DARS] ECI, do not accurately reflect the child's development or ability to function in the natural environment, the interdisciplinary team, documents this information in the child's record and proceeds to a qualitative determination of developmental delay.

(A) For a child with an adjusted or chronological age of greater than 0 months but less than 3 months, the interdisciplinary team, which must include an LPHA knowledgeable in the area of concern, qualitatively determines developmental delay by describing clinical findings and how those findings significantly interfere with the child's functional abilities.

(B) For a child with an adjusted or chronological age of at least 3 months, the interdisciplinary team, which must include an LPHA knowledgeable in the area of concern, must use the supplemental protocol designated by HHSC [DARS] ECI to qualitatively determine developmental delay. The developmental domains and sub-domains that can be used for qualitative determination of delay are established by HHSC ECI [DARS].

§108.823. Continuing Eligibility Criteria.

(a) The contractor must determine [re-determine] the child's eligibility for continued early childhood intervention services at least annually if the child is younger than 21 months of age. A child who is determined eligible at 21 months of age or older remains eligible for ECI until the child's third birthday or until the child has reached developmental proficiency, whichever happens first.

(1) ~~[(b)]~~ Continuing eligibility is based on one of the following:

(A) a qualifying medical diagnosis ~~[must be determined one year after initial eligibility.]~~ confirmed by

~~[(1)-(f)]~~ a review of the child's ~~[records confirms that a qualifying]~~ medical records with: ~~[condition continues, the child remains eligible for comprehensive early childhood intervention services, and the interdisciplinary team must document the continued need for early childhood intervention services.]~~

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in medical diagnosis;

(B) an auditory or visual impairment as defined by the Texas Education Agency in 19 TAC §89.1040 (relating to Eligibility Criteria) with:

(i) interdisciplinary team documentation of the continued need for early childhood intervention services; and

(ii) documentation in the child's record of any change in hearing or vision status; or

(C) a developmental delay determined by the administration of the standardized tool designated by HHSC ECI, with the child demonstrating a documented delay of at least 15 percent in one or more areas of development, including the use adjusted age as specified in §108.819 of this subchapter (relating to Age Adjustment for Children Born Prematurely), as applicable.

~~[(2) The contractor must ensure that the child's record contains written documentation of any change in medical diagnosis.]~~

~~[(e) Continuing eligibility based on auditory or visual impairments as defined by the Texas Education Agency in 19 TAC §89.1040 (relating to Eligibility Criteria) is determined one year after initial eligibility.]~~

~~[(d) Continuing eligibility for developmental delay based on the standardized tool must be determined one year after initial eligibility.]~~

~~[(1) Eligibility is re-determined through an evaluation using the standardized tool designated by DARS ECI.]~~

~~[(2) The child must demonstrate a documented delay of at least 15% in one or more areas of development. If applicable use adjusted age as specified in §108.819 of this subchapter (relating to Adjustment for Children Born Prematurely).]~~

(2) [(e)] Continuing eligibility for a child whose initial eligibility was based on a qualitative determination of developmental delay must be determined after six months.

(A) [(1)] Eligibility is re-determined through an evaluation using the standardized tool designated by HHSC [~~DARS~~] ECI.

(B) [(2)] The child must demonstrate a documented delay of at least 15% in one or more areas of development. If applicable use adjusted age as specified in §108.819 of this subchapter.

(b) [~~(f)~~] If the parent fails to consent or fails to cooperate in re-determination of eligibility, the child becomes ineligible. The contractor must send prior written notice of ineligibility and consequent discontinuation of all ECI services to the family at least 14 days before the contractor discharges the child from the program, unless the parent:

(1) immediately consents to and cooperates in all necessary evaluations and assessments; and

(2) consents to all or part of a new IFSP.

(c) [~~(g)~~] The family has the right to oppose the actions described in subsection (b) [~~(f)~~] of this section using their procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing in accordance with §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

§108.825. Eligibility Statement.

(a) The interdisciplinary team must document eligibility decisions regarding a child on an eligibility statement containing the elements required by HHSC [~~DARS~~] ECI.

(b) The eligibility statement must document a medically qualifying diagnosis, a qualifying auditory or visual impairment, or the elements required by HHSC [~~DARS~~] ECI for a determination of developmental delay.

(c) The eligibility statement must be:

(1) completed for every child evaluated;

(2) in the child's record; and

(3) updated when eligibility is re-determined.

(d) Only one eligibility type may be listed on the eligibility statement:

(1) medical diagnosis;

(2) vision or hearing impairment as defined by the Texas Education Agency; or

(3) developmental delay. [+]

(e) The eligibility statement is valid. [for 1 year, except for children who are

~~eligible with a qualitative determination of developmental delay. The eligibility statement for children who are determined eligible with a qualitative determination of developmental delay is valid for six months. Information about additional qualifying criteria is documented in the child's record. The eligibility statement does not need to be changed or updated until eligibility is re-determined.]~~

(1) for twelve months if the child is younger than 21 months of age;

(2) until the child's third birthday for a child whose eligibility was determined at 21 months of age or older; or

(3) for six months from the initial eligibility determination based on a qualitative determination of developmental delay.

(f) If new information about additional qualifying criteria is discovered, the new information is documented in the child's record. The eligibility statement does not need to be changed or updated until eligibility is re-determined.

§108.829. Review of Nutrition Status.

(a) The interdisciplinary team must complete a review of the child's nutrition status no later than 28 days after IFSP development through any of the following:

- (1) a review of the child's medical records;
- (2) a review of the child's nutrition evaluation;
- (3) a review of a doctor's physical examination for the child;
- (4) a review of a nurses' evaluation for the child;
- (5) a thorough discussion of family routines; or
- (6) completion of HHSC [~~DARS~~] ECI nutrition screening.

(b) The service coordinator must refer the child to a registered dietician if nutritional needs are identified.

§108.835. Contractor Oversight.

Contractors must have internal written procedures that establish a system of clinical oversight for eligibility determination. Clinical oversight, which is conducted by a person with knowledge of evaluation and assessment of

young children, includes ensuring that:

(1) HHSC [~~DARS~~] ECI eligibility criteria is applied consistently to children evaluated;

(2) testing is administered and scored accurately according to the requirements of the tool;

(3) evaluations to determine eligibility are comprehensive;

(4) test scores are interpreted and determination of delay includes the application of informed clinical opinion; and

(5) eligibility decisions are fully documented in:

(A) the eligibility statement; and

(B) progress note or evaluation report.

§108.837. Needs Assessment.

(a) The IFSP [~~interdisciplinary~~] team, which includes the service coordinator, must conduct a comprehensive needs assessment initially and annually as part of the IFSP process. The comprehensive needs assessment must identify and document:

(1) the needs of the child in each developmental area as listed in 34 CFR 303.21(a)(1), including those identified through the evaluation and observation;

(2) the family's concerns regarding their child's development and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their child;

(3) the functional abilities and unique strengths of the child; and

(4) the family's description of their resources, concerns, and priorities related to enhancing the child's development.

(b) The assessment of the child must include:

(1) a review of the results of the child's evaluation;

(2) personal observations of the child; and

(3) the identification of the child's needs in each of the developmental areas listed in 34 CFR §303.21(a)(1).

(c) The contractor must offer to conduct a family-directed assessment and comply with requirements in 34 CFR §303.321(c) (relating to Procedures for assessment of the child and family) to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. The family-directed assessment must:

(1) be voluntary on the part of each family member participating in the assessment; and

(2) be based on information obtained through the assessment tool and also through an interview with those family members participating in the assessment.

(d) Providers must assess and document the child's progress and needs of the family on an ongoing basis.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION SERVICES
SUBCHAPTER J INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

~~§108.1002. Legal Authority.~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) Texas Human Resources Code, Chapter 117;]~~

~~[(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431–1444); and]~~

~~[(4) implementing federal regulations 34 CFR Part 303.]~~

§108.1003. Definitions.

The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Frequency--The number of days or sessions that a service will be provided within a specified period of time.

(2) Functional Ability--A child's ability to carry out meaningful behaviors in the context of everyday living, through skills that integrate development across domains.

(3) IFSP Goals [~~Outcomes~~]--Statements of the measurable results that the family wants to see for their child or themselves.

(4) Intensity--The length of time a service is provided during a session expressed as a specific amount of time instead of a range.

(5) Method--If the service is delivered in a group or on an individual basis.

(6) Periodic Review--As defined in 34 CFR §303.342(b), a review by the

IFSP team, based on the assessment of the child, that results in approval of or modifications to the IFSP.

§108.1004. IFSP Development.

(a) The IFSP team must develop a written initial IFSP within 45 days from the date HHSC ECI receives a referral on a child. The IFSP is completed during a face-to-face meeting with the family in accordance with 20 USC §1436 and 34 CFR §§303.340 - 303.346.

~~[(b) The annual meeting to evaluate the IFSP may be conducted by means other than a face-to-face meeting if:]~~

~~[(1) approved by the parent; and]~~

~~[(2) the contractor has a plan approved by DARS for conducting annual meetings to evaluate the IFSP by means other than a face-to-face meeting when appropriate for the child and family and approved by the parent, in which case the contractor must document how the most recent observations and conclusions of the LPHA conducting the re-evaluation were communicated and incorporated into the IFSP.]~~

~~[(c) The parent must be informed of his or her choices for conducting the annual meeting.]~~

(b) [(d)] The IFSP must be developed based on evaluation and assessment of a child as described in 34 CFR §303.321 and Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment). An [The] IFSP must address the developmental needs of the child and the case management needs of the family as identified in the comprehensive needs assessment, unless the family declines to address a specified need.

(c) A contractor must provide a parent with a copy of the IFSP, as required by 34 CFR §303.405 and §303.409, and maintain the original IFSP in the child's record.

(d) [(e)] A [The] contractor must deliver early childhood intervention services according to the IFSP.

(e) [(f)] An [The] IFSP team must conduct [complete] a periodic review of the IFSP at least every six [-month intervals as required in 20 USC §1436 and] months in accordance with 34 CFR §303.342.

(f) [(g)] An [The] IFSP meeting [team] must be conducted at least [conduct

~~an~~ annually [annual meeting] to evaluate and revise, ~~[the IFSP]~~ as appropriate, the IFSP for a child and the child's family in accordance with ~~[required in]~~ 34 CFR §303.342. The meeting may be conducted by a method other than face-to-face ~~[, or more frequently]~~ if: ~~[the parent requests.]~~

(1) approved by the parent;

(2) the contractor has a plan approved by HHSC for conducting annual IFSP meetings by a method other than face-to-face when appropriate for the child and family; and

(3) the contractor documents how the LPHA's observations and conclusions of the re-evaluation of the child were communicated and incorporated into the IFSP.

~~(g) [(h)]~~ Documentation in the child's record must reflect compliance with related state and federal requirements.

~~[(i) The contractor must provide the parent with a copy of the IFSP, as required in §108.223(d) of this chapter (relating to Fees for Records) and maintain the original IFSP in the child's record.]~~

~~(h) [(j)]~~ The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) during the IFSP process.

§108.1007. Interim IFSP.

~~[(a)]~~ An interim IFSP is [can be] developed for an eligible child and family who need supports and services to begin immediately. ECI services may begin before completing an [the] evaluation and assessment if the following conditions are met: [in accordance with 34 CFR §303.345.]

(1) parental consent is obtained;

(2) the interim IFSP includes the name of the assigned service coordinator;

(3) the interim IFSP includes the services that have been determined to be needed immediately; and

(4) [(b)] the [The] evaluation, [comprehensive needs] assessment, and initial [the] IFSP are [must be] completed within the 45-day timeframe [time

frames required] in accordance with 34 CFR §303.310.

§108.1009. Participants in Initial and Annual IFSP Meetings [~~to Evaluate the IFSP~~].

(a) The initial IFSP meeting and each annual meeting to evaluate the IFSP must be conducted by the IFSP team as defined in 34 CFR §303.343(a) (relating to IFSP Team meeting and periodic review).

(b) The initial IFSP meeting and the annual meeting to evaluate the IFSP must be conducted by an interdisciplinary team that includes, at a minimum, the parent and at least two professionals from different disciplines or professions.

(1) At least one professional [~~of the two ECI professionals~~] must be an ECI [a] service coordinator.

(2) At least one professional [~~of the two ECI professionals~~] must be an LPHA.

(3) At least one ECI professional [~~attending the meeting~~] must have been involved in conducting the evaluation. This may be the service coordinator, the LPHA, or a third professional.

(4) If the LPHA attending the IFSP meeting did [~~is~~] not conduct [~~an LPHA who conducted~~] the evaluation, the contractor must ensure that the most recent observations and conclusions of the LPHA who conducted the evaluation were communicated to the LPHA attending the initial IFSP meeting and incorporated into the IFSP.

(5) [~~(4)~~] Other team members may participate by other means acceptable to the team.

(c) With parental consent, the contractor must also invite to the initial IFSP meeting and annual meetings to evaluate the IFSP:

(1) Early Head Start and Migrant Head Start staff members, if the family is jointly served; and

(2) representatives from other agencies serving or providing case management to the child or family including [~~STAR, STAR+PLUS, or STAR Health~~] Medicaid managed care programs.

(d) If a child has a documented:

(1) auditory impairment as described in §108.813(a) of this chapter (relating to Determination of Hearing and Auditory Status), the IFSP team for an initial IFSP meeting and annual IFSP evaluation meetings must include a certified teacher of the deaf and hard of hearing; or

(2) visual impairment as described in §108.815(a) of this chapter (relating to Determination of Vision Status), the IFSP team for an initial IFSP meeting and annual IFSP evaluation meetings must include a certified teacher of the visually impaired.

(e) Unless there is documentation that the LEA has waived notice, the contractor must:

(1) provide the certified teacher required in subsection (d) of this section at least a 10-day written notice before the initial IFSP meeting, any annual meetings to evaluate the IFSP or any review and evaluation that affects the child's auditory or vision services; and

(2) keep documentation of the notice in the child's ECI record.

(f) The IFSP team cannot plan auditory or vision services or make any changes that affect those services if the certified teacher required in subsection (d) of this section is not in attendance.

(g) The IFSP team must route the IFSP to the certified teacher required in subsection (d) of this section for review and signature when changes to the IFSP do not affect the child's auditory or vision services.

(h) The certified teacher of the deaf and hard of hearing and the certified teacher of the visually impaired required in subsection (d) of this section may submit a request within five days of the IFSP meeting to have another IFSP meeting if the teacher disagrees with any portion of the IFSP.

(i) The certified teacher required in subsection (d) of this section is not required to attend an IFSP review when changes do not affect the child's auditory or vision services, but the contractor must obtain the teacher's input.

~~§108.1011. Participants in Meetings for a Child with Auditory or Visual Impairments.~~

~~[(a) In addition to the requirements in §108.1009 of this title (relating to Participants in Initial and Annual Meetings to Evaluate the IFSP), the IFSP team for an initial IFSP meeting or annual meetings to evaluate the IFSP~~

~~must include a certified teacher of the deaf and hard of hearing or a certified teacher of the visually impaired if the child has a documented auditory or visual impairment as described in 19 TAC §89.1040 (relating to Eligibility Criteria).]~~

~~[(b) Unless there is documentation that the LEA has waived notice, the contractor must:]~~

~~[(1) provide the teacher at least a 10-day written notice before the initial IFSP meeting, any annual meetings to evaluate the IFSP or any review and evaluation that affects the child's auditory or vision services; and]~~

~~[(2) keep documentation of the notice in the child's record.]~~

~~[(c) The IFSP team cannot plan auditory or vision services or make any changes that affect those services if the certified teacher of the deaf and hard of hearing or certified teacher of the visually impaired is not in attendance.]~~

~~[(d) The IFSP team must route the IFSP to the certified teacher of the deaf and hard of hearing or certified teacher of the visually impaired for review and signature when changes to the IFSP do not affect the child's auditory or vision services.]~~

~~[(e) The certified teacher of the deaf and hard of hearing and the certified teacher of the visually impaired may submit a request within five days of the IFSP meeting to have another IFSP meeting if the teacher disagrees with any portion of the IFSP.]~~

~~[(f) The certified teacher of the deaf and hard of hearing or certified teacher of the visually impaired are not required to attend the review when changes do not affect the child's auditory or vision services, but the contractor must obtain their input.]~~

§108.1015. Content of the IFSP.

(a) The IFSP team must develop a written IFSP containing all requirements in 20 USC §1436(d) and 34 CFR §303.344 (relating to Content of an IFSP). The IFSP must include the standardized IFSP Services Pages and the required elements designated by HHSC [~~DARS~~] ECI, including:

(1) a description of the child's present levels of development, including:

(A) information about the child's participation in the family's typical

routines and activities;

(B) the child's strengths;

(C) the child's developmental needs;

(D) the family's concerns and priorities; and

(E) the child's functional abilities identified with codes for establishing the child outcome ratings, described in §108.1307 of this chapter (regarding Child Outcomes).

(2) a description of the case management needs of the family;

(3) measurable goals [~~outcomes~~] that address:

(A) [~~address~~] the child's and family's needs which were identified during pre-enrollment, evaluation, and assessment; [~~and~~]

(B) [~~address~~] the child's functional developmental skills by describing targeted participation in everyday family and community routines and activities; and

(C) when the IFSP target is achieved and the action or skill is generalized;

(4) services to:

(A) address the goals [~~outcomes~~] in the IFSP;

(B) enhance the child's functional abilities, behaviors and routines; and

(C) strengthen the capacity of the family to meet the child's unique needs;

(5) the discipline of each provider for every service planned; and

(6) the name of the service coordinator.

(b) IFSP services must be monitored to assess child progress by the interdisciplinary team as described in §108.1017 of this chapter (relating to Periodic Reviews). [~~If the team determines that Specialized Skills Training (SST) is necessary, the team must ensure interdisciplinary monitoring of the SST and of child progress in accordance with §108.501 of this chapter (relating to Specialized Skills Training (Developmental Services)) by planning~~]

in the IFSP:]

~~[(1) regularly occurring service by the LPHA; or]~~

~~[(2) re-assessment by the LPHA at least every six months.]~~

(c) If the IFSP team determines co-visits are necessary, the IFSP team must:

(1) list each service on the IFSP; and

(2) document in the IFSP a justification of how the child and family, will receive greater benefit from the services being provided at the same time.

(d) If providing services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must follow the requirements in §108.1016 of this chapter (relating to Planning for Services to be Delivered with the Routine Caregiver).

(e) If the IFSP team determines group services are necessary to meet the developmental needs of the individual infant or toddler:

(1) the group services must be planned in an IFSP that also contains individual IFSP services; and

(2) the planned group services must be documented in the child's IFSP.

(f) If the IFSP team determines that an IFSP goal ~~[outcome]~~ cannot be achieved satisfactorily in a natural environment, the IFSP must contain a justification as to why an early childhood intervention service will be provided in a setting other than a natural environment, as determined appropriate by the parent and the rest of the IFSP team.

(g) The contents of the IFSP must be fully explained to the parent.

(h) The contractor must obtain the parent's signature on the IFSP services page. The parent's signature on the IFSP services page serves as written parental consent to provide the IFSP services. The written parental consent is valid for up to one year or until the IFSP team changes the type, intensity, or frequency of services. The contractor must not provide IFSP services without current written parental consent.

(i) The contractor must obtain, on the IFSP services page, the dated signatures of every member of the IFSP team ~~[as defined in §108.103(24)]~~ of

~~this chapter (relating to Definitions)].~~ The IFSP must be signed by the LPHA on the team to acknowledge the planned services are reasonable and necessary.

(j) The contractor must provide the parent a copy of the signed IFSP.

(k) Any time the contractor assigns a new service coordinator, the following must be documented and attached to the IFSP:

(1) the name of the new service coordinator;

(2) the date of the change; and

(3) the date the family was notified of the change and the method of notification.

§108.1016. Planning for Services to be Delivered with the Routine Caregiver.

(a) If delivering services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must:

~~[(1) document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver as required in §108.1015(d) of this title (relating to Content of the IFSP);]~~

(1) ~~[(2)]~~ document the names of the routine caregivers in the child's record;

(2) ~~[(3)]~~ obtain written parental consent before releasing personally identifiable information to the routine caregiver; and

(3) ~~[(4)]~~ obtain written authorization from the parent to provide early childhood intervention services with the routine caregiver.

(b) A member of the IFSP team must contact the parent face-to-face or by telephone at least once every month to provide an update on services provided with a routine caregiver.

§108.1017. Periodic Reviews.

(a) Each periodic review must be conducted by individuals who meet the requirements in 34 CFR §303.343(b) (relating to IFSP Team meetings and periodic reviews) and be completed in compliance with 34 CFR §303.342(b)

(relating to Procedures for IFSP development, review, and evaluation). The periodic review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(b) Additionally, the child's record must contain documentation of all IFSP team members' participation in the periodic review. Participation in the periodic review may be accomplished by a team member attending the meeting face-to-face or by telephone or by providing input and information in advance of the meeting. If a team member participates by means other than a face-to-face meeting, the team member must give the service coordinator his or her most recent observations and conclusions about the child. The team member must document in the child's record how this information was communicated to the service coordinator. If the team member is an LPHA who is not providing ongoing services to the child, he or she must have assessed the child face-to-face within the previous 45 [30] days.

(c) A periodic review is required at least every six months.

(d) Additional periodic reviews of the IFSP are conducted more frequently than six-month intervals if requested by the parent or other IFSP team members.

(e) The periodic review of the IFSP consists of the following actions, which must be documented in the child's record and be provided to the parent:

(1) a review of the child's progress toward meeting each goal [outcome] on the IFSP and the child's functional abilities related to the goal [outcome];

(2) a review of the current developmental needs of the child and the needs of the family related to their ability to meet the developmental concerns and priorities;

(3) a review of the case management needs of the child and the family;

(4) the development of new goals [outcomes] or the modification of existing goals [outcomes], as appropriate, that must be dated and attached to the IFSP; and

(5) the reasons for any modification to the plan or the rationale for not changing the plan.

(f) If the IFSP team adds transition steps and services as part of the periodic review, the team must follow the requirements in §108.1207(d) of this

chapter (relating to Transition Planning).

(g) If the team determines that changes to the type, intensity, or frequency of services are required:

(1) the team completes a HHSC [~~DARS~~] required IFSP Services Page and provides a copy to the parent;

(2) the team must document the rationale for:

(A) a change in intensity or frequency of a service;

(B) the addition of a new service; or

(C) the discontinuation of a service; and

(3) the contractor must continue to provide planned early childhood intervention services not affected by the change while the IFSP team develops the IFSP revision and gathers required signatures.

(h) If services remain the same, the documentation must describe the rationale for making no changes and for recommending continued services.

(i) If new goals [~~outcomes~~] are developed, the documentation must be provided to the parent.

(j) A change of service coordinator does not require a periodic review.

§108.1019. Annual Meeting to Evaluate the IFSP.

(a) The annual meeting to evaluate the IFSP is conducted following determination of continuing eligibility. In addition to all requirements in 34 CFR §303.342 (relating to Procedures for IFSP development, review, and evaluation), the documentation of an Annual Meeting to Evaluate the IFSP must meet the requirements for Complete Review and include a documented team discussion of:

(1) a current description of the child including:

(A) reviews of the current evaluations and other information available from ongoing assessment of the child and family needs;

(B) health, vision, hearing, and nutritional status; and

(C) present level of development related to the three annual child

outcome ratings found in §108.1307 [~~§108.1304~~] of this chapter (relating to Child Outcomes) including:

- (i) the functional abilities and strengths of the child;
- (ii) the developmental needs of the child; and
- (iii) the family priorities regarding the child's development.

(2) progress toward achieving the IFSP goals [~~outcomes~~]; and

(3) any needed modification of the goals [~~outcomes~~] and early childhood intervention services.

(b) Services provided under an IFSP that has not been evaluated and is not based on a current evaluation and current assessment of needs are not fully approved ECI services.

(1) If the contractor is at fault, HHSC [~~DARS~~] may disallow and recoup expenditures.

(2) If the parent has not consented to or has not cooperated with the re-determination of eligibility, the contractor must follow the procedures in §108.807 of this title (relating to Eligibility).

(3) If the parent fails to consent or fails to cooperate in necessary re-evaluations or re-assessments, no developmental delay or needs may be legitimately determined. The contractor must send prior written notice that the child has no documented current delay or no documented current needs at least 14 days before the contractor discontinues services on the IFSP, unless the parent:

(A) immediately consents to and cooperates with all necessary evaluations and assessments; and

(B) consents to all or part of a new IFSP.

(c) The parent retains procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing pursuant to §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 ~~[DIVISION FOR]~~ EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER K SERVICE DELIVERY

~~§108.1102. Legal Authority.~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) Texas Human Resources Code, Chapter 117;]~~

~~[(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 – 1444); and]~~

~~[(4) implementing federal regulations 34 CFR Part 303.]~~

§108.1104. Early Childhood Intervention Services Delivery.

(a) Early childhood intervention services needed by the child must be initiated in a timely manner and delivered as planned in the IFSP. Only qualified staff members, as described in Subchapter C of this chapter (relating to Staff Qualifications) are authorized to provide early childhood intervention services.

(b) The contractor must ensure that early childhood intervention services are appropriate, as determined by the IFSP team, and based on scientifically based research, to the extent practicable. In addition to the requirements in 34 CFR §303.13, early childhood intervention services must be provided:

(1) according to a plan and with a frequency that is individualized to the parent and child to effectively address the goals ~~[outcomes]~~ established in the IFSP; ~~[and]~~

(2) in the presence of the parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child; and [-]

(3) in the child's natural environment, as defined in 34 CFR Part 303.26, unless the criteria listed in 34 CFR §303.126 are met and documented in the

case record, and may be provided via telehealth with the written consent of the parent.

(c) Early Intervention services must:

(1) address the development of the whole child within the framework of the family;

(2) enhance the parent's competence to maximize the child's participation and functional abilities within daily routines and activities; and

(3) be provided in the context of natural learning activities in order to assist caregivers to implement strategies that will increase child learning opportunities and participation in daily life.

(d) The contractor must provide a service coordinator and an interdisciplinary team for the child and family throughout the child's enrollment.

(e) The contractor must make reasonable efforts to provide flexible hours in programming in order to allow the parent or routine caregiver to participate.

(f) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when planning and delivering early childhood intervention services.

(g) Services must be monitored by the interdisciplinary team at least once every six months to determine:

(1) what progress is being made toward achieving goals [~~outcomes~~];

(2) if services are reducing the child's functional limitations, promoting age appropriate growth and development, and are responsive to the family's identified goals for the child; and

(3) whether modifications to the plan are needed.

(h) Monitoring occurs as part of the IFSP review process and must be documented in the case record.

§108.1105. Capacity to Provide Early Childhood Intervention Services.

The contractor must have the capacity to provide all early childhood

intervention services in 34 CFR §303.13 (relating to Early intervention services.) and additional early childhood intervention services described in this chapter. These services are:

(1) Assistive Technology Device and Service--As defined in 34 CFR §303.13(b)(1).

(2) Audiology Services--As defined in 34 CFR §303.13(b)(2), plus services provided by local educational agency personnel, including sign language and cued language services as defined in 34 CFR §303.13(b)(12).

(3) Behavioral Intervention--Services delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the IFSP team. The behavior plan is developed by the IFSP team (that includes the plan supervisor) to:

(A) identify goals;

(B) conduct a functional assessment to determine the motivation for the behavior;

(C) develop a hypothesis;

(D) design support plans; and

(E) implement, monitor, and evaluate outcomes.

(4) Counseling--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Counseling is provided when the nature and quality of the parent-child relationship interferes significantly with the ECI child's development. Counseling focuses on the parent-child relationship or other critical care-giving relationships and help the child meet developmental outcomes.

(5) Family Education and Training--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Family education and training is provided when the family needs information about general parenting techniques and/or environmental concerns. Information provided follows a specific scope and sequence. Information may be based on general child care, developmental education, or other specific curriculum. Family Education and Training can be provided to parents in group settings without the children present.

(6) Health Services--As defined in 34 CFR §303.16.

- (7) Medical Services--As defined in 34 CFR §303.13(b)(5).
- (8) Nursing Services--As defined in 34 CFR §303.13(b)(6).
- (9) Nutrition Services--As defined in 34 CFR §303.13(b)(7).
- (10) Occupational Therapy--As defined in 34 CFR §303.13(b)(8).
- (11) Physical Therapy--As defined in 34 CFR §303.13(b)(9).
- (12) Psychological Services--As defined in 34 CFR §303.13(b)(10).

~~[(13) Re-assessment--A specific type of assessment (§108.103(1) of this title (relating to Definitions)) service, planned on the IFSP, in which a team member gathers and documents information regarding the child's functional progress on IFSP outcomes, and considers whether any modifications to the IFSP should be recommended.]~~

(13) ~~[(14)]~~ Service Coordination--As defined in 34 CFR §303.13(b)(11) and includes all requirements in 34 CFR §303.34 (relating to service coordination services (case management)).

(14) ~~[(15)]~~ Social Work Services--As defined in 34 CFR §303.13(b)(13).

(15) Sign Language and Cued Language--As defined in 34 CFR §303.13(b)(12).

(16) Specialized Skills Training--As defined in Subchapter E of this chapter (relating to Specialized Rehabilitative Services ~~[Skills Training]~~) plus the provision of special instruction as defined in 34 CFR §303.13(b)(14).

(17) Speech-Language Pathology Services--As defined in 34 CFR §303.13(b)(15) and can include sign language and cued language services as defined in 34 CFR §303.13(b)(12) ~~[§303.34(12)]~~.

(18) Targeted Case Management--As defined in Subchapter D of this chapter (relating to Case Management for Infants and Toddlers with ~~[With]~~ Developmental Disabilities).

(19) Transportation and Related Costs--As defined in 34 CFR §303.13(b)(16).

(20) Vision Services--As defined in 34 CFR §303.13(b)(17) plus services provided by local educational agency personnel.

~~§108.1106. Routine Caregiver.~~

~~(a) When necessary to benefit the child, the IFSP team may provide early childhood intervention services with a routine caregiver in the absence of the parent. The team must:~~

~~(1) document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver as required in §108.1015(d) of this chapter (relating to Content of the IFSP); and~~

~~(2) plan for services to be delivered with the routine caregiver as required in §108.1016 of this chapter (relating to Planning for Services to be Delivered with the Routine Caregiver).~~

~~(b) A member of the IFSP team must contact the parent face-to-face or by telephone at least once every month.]~~

§108.1107. Group Services for Children.

(a) Group services must be:

(1) recommended by the interdisciplinary team and documented on the IFSP only when participating in the group will assist the child to reach the goals [outcomes] in the IFSP;

(2) planned as part of an IFSP that also contains individual services; and

(3) limited to no more than four children and their parent(s) or other routine caregiver(s) per service provider.

(b) When early childhood intervention services are provided in a group setting, the parent or other routine caregiver must participate in group services.

§108.1108. State Funded Respite Services.

(a) The Texas General Appropriations Act authorizes reimbursement to the enrolled child's family for respite services that are not directly related to IFSP goals [outcomes].

(b) Respite services are defined as the care of an enrolled child by a relative or substitute caregiver on a short-term or intermittent basis to provide the child's parent with a break from caring for his or her child. Respite services do not include the routine care of a child for the purposes of allowing a

parent to attend work or school.

(c) The contractor must develop and implement a process for administering the state funded reimbursement of respite services.

(1) The contractor may collaborate with other ECI contractors within their respective consortium to administer the funds.

(2) The contractor must identify existing respite resources in the community, including potential respite service providers and additional funding sources before authorizing state funded respite reimbursement.

(3) The contractor may provide reimbursement for up to 20 hours of respite per child per month, based on the individual needs of the family. The contractor may exceed the 20 hours respite limit only if:

(A) the family has more than one child enrolled in the ECI program;
and

(B) the IFSP team determines that the children cannot be cared for by a single respite provider.

(4) If the parent and the service coordinator do not agree on the complexity of care, based on the needs of the child, and the ECI reimbursement rate, the program director decides the complexity of care and reimbursement rate.

(5) The contractor must have a process for prioritizing requests for state funded respite reimbursement. The process must include consideration of:

(A) how respite will benefit the family relationship; and

(B) past use of respite services.

(6) If state respite funds are not available at the time of a request, the contractor places the eligible family on a waiting list for respite funds.

(7) State respite funds cannot be used to pay:

(A) insurance co-payments, insurance deductibles, or insurance premiums;

(B) a parent to provide respite services to his or her own child;

(C) individuals who live in the same household as the child;

(D) individuals under 18 years of age; or

(E) costs for the care of siblings of the eligible child.

(d) The contractor must maintain auditable records of state funded respite reimbursement.

(e) The contractor must report the number of children whose families received state funded reimbursement of respite services for each month of the contract period as directed by HHSC [~~DARS~~].

(f) The service coordinator must:

(1) assist the parent in identifying available family and community resources;

(2) assist the parent in determining the type (for example, individual setting, group setting, care in the child's home, or care out of the child's home) and frequency of respite needed;

(3) assist the parent in applying for available state funds for reimbursement of respite services, if needed;

(4) determine the complexity of care, based on the needs of the child;

(5) inform the parent of the following:

(A) state funds under this provision are limited;

(B) the state's annual hourly limits per child;

(C) the hourly co-pay based on family size and income;

(D) the state's level of reimbursement based upon the complexity of care, frequency, and hourly co-pay;

(E) the contractor's criteria for prioritizing requests for state funds for reimbursement of respite services and placement on the waiting list; and

(F) the process for requesting a review and decision by the program director if the parent and the service coordinator do not agree on the frequency and complexity of care, based on the needs of the child, and the ECI reimbursement rate.

(g) The service coordinator must explain to the parent their responsibility

regarding state funded reimbursement for respite services. The parent is responsible for:

- (1) selecting and supervising a respite provider;
 - (2) scheduling the respite care with the provider;
 - (3) paying the provider after the respite care is provided;
 - (4) submitting the completed respite voucher to the contractor within one month of the voucher's expiration date;
 - (5) assuming any liability for the selection and use of specific respite providers; and
 - (6) complying with any potential tax or IRS requirements related to the use of state funded respite reimbursement.
- (h) The following events must occur in order:
- (1) the contractor determines the number of hours and the level of care for each month, the number of months approved, the beginning and ending dates of the agreement, and the hourly co-pay required;
 - (2) the contractor completes all required information on the respite funding agreement;
 - (3) the parent, the service coordinator or other assigned staff member, and the program director (or designee), sign the completed respite funding agreement;
 - (4) the contractor gives the parent a respite voucher for each calendar month in which respite services are approved;
 - (5) the parent schedules respite with the respite provider;
 - (6) the respite provider signs the respite voucher after providing the respite care;
 - (7) the parent completes, signs, and returns the voucher to the contractor within one month of the voucher's expiration date; and
 - (8) the contractor reimburses the parent within 30 days of receipt of an accurately completed voucher.

§108.1111. Service Delivery Documentation Requirements.

Documentation of each service contact must include:

- (1) the name of the child;
- (2) the name of the ECI contractor and the name and the discipline of the service provider;
- (3) the date, start time, length of time, and place of service;
- (4) method (individual or group);
- (5) a description of the techniques by which the provider engaged the family or routine caregiver in activities to meet the developmental needs of the child. This includes:
 - (A) coaching and instructions to the family or caregiver;
 - (B) discussing how activities apply to child and family routines; and
 - (C) modeling intervention techniques within everyday learning opportunities, including a description of the opportunity for the caregiver's return demonstration;
- (6) the IFSP goal [~~outcome~~] that was the focus of the intervention;
- (7) the child's progress related to the goals [~~outcomes~~] in the IFSP;
- (8) relevant new information about the child provided by the family or other routine caregiver; and
- (9) the service provider's signature.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER L TRANSITION

~~§108.1202. Legal Authority.~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444);]~~

~~[(3) implementing federal regulations 34 CFR Part 303; and]~~

~~[(4) Code of Federal Regulations, Title 34, Part 99, Family Educational Rights and Privacy.]~~

§108.1207. Transition Planning.

(a) Transition planning is a process that involves developing and updating appropriate steps and transition services:

(1) jointly with families; and

(2) based on recommendations from the IFSP team.

(b) All transition activities must be documented in the child's record.

(c) The IFSP must contain an appropriate general transition statement.

(d) The contractor must conduct a meeting, which includes the parent, in accordance with 34 CFR §303.342(d) and (e) and §303.343(a), to plan appropriate steps and transition services in the IFSP.

(1) Except as provided in subsections (f) - (g) [~~(f) - (h)~~] of this section, the meeting to plan and document appropriate steps and transition services in the IFSP must be conducted not fewer than 90 days, and at the discretion of all parties, not more than nine months before the child's third birthday. If the child is referred and determined to be eligible more than 45 but less

than 90 days before the child's third birthday, appropriate steps and transitions services must be included in the child's initial IFSP.

(2) If transition planning occurs at a periodic review instead of an initial or annual IFSP meetings, the meeting must meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a).

(3) The appropriate steps and transition services that the IFSP team plans at the meeting must be documented in the IFSP and must include:

(A) timelines and responsible party for each transition activity;

(B) discussions with and training of parents, as appropriate, regarding future placements and other matters related to the child's transition;

(C) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting;

(D) the family's choice for the child to transition into a community or educational program or for the child to remain in the home;

(E) identification of appropriate steps and transition services, deemed necessary by the IFSP team, to support the family's exit from early childhood intervention services to LEA special education services or other appropriate activities, places, or programs the family would like the child to participate in after exiting early childhood intervention services;

(F) confirmation that the transition notification, which requires child find information to be transmitted to the LEA or other relevant agency, has occurred; and

(G) program options, if the child is potentially eligible for special education services, for the period from the child's third birthday through the remainder of the school year.

(e) The child's planned steps and transition services must be updated and documented in the IFSP anytime the:

(1) IFSP team identifies new appropriate steps and transitional services; and

(2) parent's goals for the child evolve and change.

(f) At any time during the child's enrollment in early childhood intervention

services, the IFSP team must, upon parental request, meet to plan steps to support the child and family to transition:

- (1) from one contractor to another contractor;
- (2) from one family setting to another family setting; or
- (3) when the family is moving out of state.

~~[(g) If the child is referred 45 days to six months before the child's third birthday, the IFSP team must plan and document appropriate steps and transition services as a part of the initial IFSP development.]~~

(g) ~~[(h)]~~ If the child is referred fewer than 45 days before the child's third birthday, the IFSP team is not required to plan steps and transition services. If the child is potentially eligible for preschool special education services, the contractor must, with written parental consent, refer the child directly to the LEA as soon as possible.

(h) ~~[(i)]~~ The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

§108.1209. SEA Notification.

HHSC ~~[DARS]~~ coordinates the State Education Agency's (SEA) notification of children potentially eligible for special education services, in compliance with 34 CFR §303.209(b). HHSC ~~[DARS]~~ will send notification of children potentially eligible for special education services to the SEA at least 90 days before each child's third birthday, or as soon as possible for children who are determined eligible for ECI services more than 45 but less than ~~[referred between]~~ 90 ~~[and 45]~~ days before the child's third birthday. If a referral is received for a child fewer than 45 days before the child's third birthday and the child may be potentially eligible for preschool special education services, HHSC ~~[DARS]~~ will, with written parental consent, refer the child directly to the SEA.

§108.1213. LEA Notification Opt Out.

(a) The parent may choose not to allow the contractor to send the child's limited personally identifiable information to the LEA. The contractor must:

- (1) inform the parent of the LEA Notification of Potentially Eligible for Special Education Services requirements before the parent signs the initial

IFSP; and

(2) explain LEA Notification Opt Out to the parent and the consequences of this choice.

(b) The parent may choose to opt out of the LEA Notification of Potentially Eligible for Special Education Services. The parent must inform the contractor of their LEA Notification Opt Out choice in writing before the scheduled notification date.

(c) The contractor must provide the parent written communication regarding LEA Notification that includes the following information:

(1) what information will be disclosed to the LEA;

(2) the scheduled LEA Notification date;

(3) a clear statement that the parent must inform the contractor of their LEA Notification Opt Out choice in writing before the scheduled notification date; and

(4) the child's limited personally identifiable information will be sent for LEA Notification, unless the parent informs the contractor in writing of their LEA Notification Opt Out choice before the scheduled notification date.

(d) The contractor must provide the parent the written communication regarding LEA Notification as required in subsection (c) of this section at least 10 days before limited personally identifiable information is scheduled to be released for LEA Notification of Potentially Eligible for Special Education Services.

(e) If the parent opts out of LEA Notification of Potentially Eligible for Special Education Services at any time before the scheduled notification date, the contractor must:

(1) not send the child's limited personally identifiable information to the LEA;

(2) inform the parent that even if he or she opts out of LEA Notification, he or she can later request that the child's limited personally identifiable information be sent to the LEA; and

(3) document in the child's record:

(A) the date the written communication regarding LEA Notification was provided to the parent; and

(B) the parent's written request to opt out of LEA Notification of Potentially Eligible for Special Education Services.

(f) If the contractor determines a child is eligible more than 45 days but less than 90 [~~receives the child's referral between 90 and 45~~] days before the child's third birthday and the IFSP team determines the child is potentially eligible for special education services, the contractor must:

(1) immediately inform the parent of the LEA Notification requirements;

(2) explain LEA Notification Opt Out to the parent and the consequences of this choice; and

(3) comply with all other requirements in this section related to LEA Notification Opt Out.

§108.1217. LEA Transition Conference.

(a) The IFSP team determines whether a child is potentially eligible for special education services. The IFSP team's decision regarding a child's potential eligibility for special education services is documented in the child's record.

(b) If the parent gives approval to convene the LEA Transition Conference, the contractor must:

(1) meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a), which requires:

(A) the face-to-face attendance of the parent and the service coordinator; and

(B) at least one other ECI professional who is a member of the IFSP team who may participate through other means as permitted in 34 CFR §303.343(a)(2);

(2) send an invitation at least 14 days in advance to the appropriate representatives for the LEA which serves the area where the child resides;

(3) conduct the LEA Transition Conference at least 90 days before the child's third birthday. At the discretion of all parties, the conference may

occur up to nine months before the child's third birthday; and

(4) document the date of the conference in the child's record.

(c) The contractor must conduct the LEA Transition Conference, even if the representatives for the LEA which serves the area where the child resides do not attend, and provide the parent information about preschool special education and related services, including a description of the:

(1) eligibility definitions;

(2) timelines;

(3) process for consenting to an evaluation and eligibility determination; and

(4) extended year services.

(d) The contractor is not required to conduct the LEA Transition Conference for children referred to the contractor's ECI program less than 90 days before the child's third birthday.

(e) The 14-day timeline for inviting the LEA representative may be changed by written local agreement between the LEA and the contractor. If the contractor becomes aware of a consistent pattern of the LEA representative not attending transition conferences, the contractor must make efforts to meet with the LEA to reach a cooperative agreement to maximize LEA participation. One option is to encourage the LEA representative to participate in the meeting by phone if unable to attend the meeting in person.

(f) If the parent gives approval to have an LEA Transition Conference, but does not give written consent to release records to the LEA, then the contractor may only release limited personally identifiable information to the LEA. With written parental consent, other personally identifiable information may be released to the LEA.

§108.1221. Transition Into the Community.

(a) The contractor must assist the family with transition activities to appropriate community settings before the child's third birthday if the:

(1) parent chooses for the child to transition to community services;

(2) parent opts out of LEA Notification of Potentially Eligible for Special Education Services;

(3) parent refuses LEA services; or

(4) child is determined to be ineligible for special education services.

(b) In compliance with 34 CFR §303.209(c)(2), the contractor must make a reasonable effort to convene a Community Transition Meeting that meets the requirements in 34 CFR §303.342(d) and (e) and §303.343(a), which requires the attendance of the service coordinator and at least one other ECI professional who is a member of the IFSP team who may participate through other means as permitted in 34 CFR §303.343(a)(2), and also invite:

(1) representatives of the identified community settings;

(2) the [~~DARS Division for~~] Blind Children's Vocational Discovery and Development Program [~~Services~~] specialist if the child has a vision impairment or the HHSC [~~DARS~~] Office for Deaf and Hard of Hearing Services regional specialist if the child has a hearing impairment; and

(3) other program or agency representatives as appropriate.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER M CHILD AND FAMILY OUTCOMES

§108.1301. Purpose.

The purpose of this subchapter is to establish how child and family outcomes are collected and reported to HHSC [~~DARS~~] ECI.

~~**§108.1303. Legal Authority.**~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) Texas Human Resources Code, Chapter 117;]~~

~~[(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444); and]~~

~~[(4) implementing federal regulations 34 CFR Part 303.]~~

§108.1307. Child Outcomes.

(a) The contractor must collect and report information on child outcomes as directed by HHSC [~~DARS~~] ECI and use that information to improve results for children and families.

(b) Child outcomes address three areas of child functioning necessary for each child to be an active and successful participant at home and in the community. These three outcomes are that children will:

- (1) have positive social relationships;
- (2) acquire and use knowledge and skills; and
- (3) take appropriate action to meet their own needs.

(c) An interdisciplinary team of at least two members must agree on the child outcome ratings for each enrolled child at entry, annual evaluation, and

exit.

(1) Entry ratings must be completed:

(A) for every newly enrolled child who is 30 months of age or younger on the date of enrollment;

(B) within two weeks of the initial IFSP or the first Texas IFSP; and

(C) on each of the three child outcomes for each child.

(2) Annual ratings must include the progress item for each outcome and be completed:

(A) within two weeks of each annual evaluation and IFSP;

(B) independently of the entry ratings; and

(C) on each of the three child outcomes for each child.

(3) Exit ratings must include the progress item for each outcome and be completed:

(A) for each child exiting the Texas ECI system who had an entry rating and was enrolled in services for at least six months; and

(B) within two weeks of the dismissal date.

(d) Documentation must:

(1) provide information that reflects the rating decisions of the interdisciplinary team;

(2) record ratings on either the child outcomes summary form or in another section of the child's record as identified by the contractor;

(3) include information related to the child's functional abilities across settings, situations, and people; and

(4) identify sources of information such as evaluation, observation, or parent report.

§108.1309. Family Outcomes.

Family outcomes and indicators of family capacity are measured using a

family survey. The contractor is required to deliver the family survey as directed by HHSC [~~DARS~~] ECI to measure family outcomes and indicators.

TITLE 40 SOCIAL SERVICES AND ASSISTANCE
PART 2 DEPARTMENT OF ASSISTIVE AND REHABILITATIVE
SERVICES
CHAPTER 108 [~~DIVISION FOR~~] EARLY CHILDHOOD INTERVENTION
SERVICES
SUBCHAPTER N FAMILY COST SHARE SYSTEM

~~§108.1403. Legal Authority.~~

~~[The following statutes and regulations authorize or require the rules in this subchapter:]~~

~~[(1) Texas Human Resources Code, Chapter 73;]~~

~~[(2) the Individuals with Disabilities Education Act, Part C (20 USC §§1431-1444);]~~

~~[(3) Code of Federal Regulations, Title 34, Part 303, Early Intervention Program for Infants and Toddlers with Disabilities; and]~~

~~[(4) Code of Federal Regulations, Title 34, Part 99, Family Educational Rights and Privacy.]~~

§108.1405. Definitions.

The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Ability to Pay--The determination that the family is financially able to pay out-of-pocket, for their child's early childhood intervention services.

(2) Adjusted Income--The dollar amount equal to the family's annual gross income minus their allowable deductions. The contractor uses adjusted income to determine the family's ability to pay and to calculate the family's maximum charge.

(3) Allowable Deductions--Certain unreimbursed family expenses that are subtracted from the family's gross income to calculate their adjusted income.

(4) CHIP--The Children's Health Insurance Program (CHIP) administered by HHSC [~~the Texas Health and Human Services Commission~~].

(5) Dependent--Any person who meets the definition of 26 USC §152 Dependent Defined.

(6) Family Cost Share System--The system of collecting reimbursement for early childhood intervention services from public insurance, private insurance, and out-of-pocket payments from families.

(7) Family size--The total number of people in the family, including the child's parents who live in the home, the child, and other dependents of the parent. Other dependents do not have to live in the home, but they must be financially dependent upon the parent.

(8) Federal Poverty Guidelines--The poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC §9902(2).

(9) Gross Income--All income received by the family considered income by the Internal Revenue Service before federal allowable deductions are applied.

(10) Inability to Pay--The determination that the family is financially unable to make out-of-pocket payments because the family has an adjusted income at or below 100% of the federal poverty level.

(11) Maximum Charge--The maximum out-of-pocket amount the contractor can charge the family for services delivered in one calendar month.

(12) Out-of-Pocket--Payment received from the family to pay for their child's early childhood intervention services. This includes insurance co-pays, co-insurance, and deductibles as well as payment for services not covered by the family's insurance.

(13) Sliding Fee Scale--The HHSC [~~DARS~~]-developed scale of maximum charges that is based on the federal poverty guidelines.

(14) Third-Party Payor--A company, organization, insurer, or government agency that makes payments for the early childhood intervention services received by a child and family. Third-party payors include commercial insurance companies, HMOs, PPOs, and public insurance such as Medicaid, CHIP, and TRICARE.

(15) TRICARE--The U.S. Department of Defense health care entitlement for active duty, Guard and Reserve, retired members of the military, and

their eligible family members and survivors.

§108.1407. Family Cost Share System Administration.

(a) The contractor must administer the family cost share system in compliance with the requirements in this title, HHSC [DARS] policy concerning ECI, and the contract.

(b) In compliance with 34 CFR §303.510(a) and (b) and §303.203(b)(1), IDEA Part C funding is the payor of last resort for early childhood intervention services. ~~[The contractor must comply with the requirements in §108.1621 of this title (relating to Financial Management and Recordkeeping Requirements).]~~ The contractor must:

(1) establish third-party billing systems, determine client eligibility for all third-party reimbursement sources, and complete and submit reimbursement requests to corresponding third-party sources, including private insurance, Medicaid programs, CHIP, and TRICARE;

(2) coordinate funding sources for services required under IDEA Part C; and

(3) use other funding for which the clients are eligible before billing services to the HHSC [DARS] contract, which includes distribution of IDEA Part C funds.

§108.1409. Parent Rights Related to the Family Cost Share System.

(a) The parent has the right to:

(1) receive certain early childhood intervention services at no cost in accordance with 34 CFR §303.521(b);

(2) refuse any early childhood intervention services they do not wish to receive;

(3) receive information about any method the contractor may use to verify the family's allowable deductions;

(4) receive information about the contractor's process for determining their maximum charge before signing the family cost share agreement;

(5) not have their personally identifiable information released for billing purposes without prior written consent; and

(6) not have their private insurance billed without prior written consent.

(b) If the family has an inability to pay, all IDEA Part C services are provided with no out-of-pocket charge to the parent. The family's inability to pay for early childhood intervention services will not result in the delay or denial of early childhood intervention services to the child or the family.

(c) If the parent disagrees with the contractor's determination of the family's ability to pay, the calculated adjusted income, or the assigned maximum charge, the parent can:

(1) request a review by the contractor manager or program director;

(2) file an informal or formal complaint with the contractor;

(3) contact the HHSC Office of the Ombudsman [~~DARS Inquiries Line at 1-800-628-5115~~] for help resolving a problem or concern with the contractor;

(4) file a formal complaint with HHSC [~~DARS~~], in compliance with 34 CFR §303.434;

(5) participate in mediation, in compliance with 34 CFR §303.431; and

(6) participate in a due process hearing, in compliance with 34 CFR §303.436 or §303.441, whichever is applicable.

(d) The contractor must provide the parent a copy of the ECI Family Cost Share publication before the contractor initially bills the child's third-party payor to pay for early childhood intervention services.

(e) The ECI Family Cost Share publication:

(1) explains the family cost share process;

(2) describes the parent's procedural safeguards and related due process rights;

(3) notifies the parent that:

(A) parental consent must be obtained before the contractor releases personally identifiable information to third-party payors;

(B) if the parent does not consent under 34 CFR §303.520(a)(2), the contractor must still make available those Part C services on the IFSP to

which the parent has consented;

(C) the parent has the right to withdraw their consent at any time;

(D) the parent may incur potential costs for co-pays as a result of using their public insurance and potential costs such as co-pays, co-insurance, or deductibles as a result of using their private insurance to pay for early childhood intervention services; and

(E) if the child has private insurance in addition to Medicaid, the private insurance is the primary payor and must be billed before filing a claim with Medicaid.

§108.1413. IFSP Services Subject to Out-of-Pocket Payment from the Family.

(a) IFSP services subject to out-of-pocket payment from the family are:

- (1) assistive technology;
- (2) behavioral intervention;
- (3) occupational therapy services;
- (4) physical therapy services;
- (5) speech-language pathology services;
- (6) nutrition services;
- (7) counseling services;
- (8) nursing services;
- (9) psychological services;
- (10) health services;
- (11) social work services;
- (12) transportation;
- (13) specialized skills training [~~(previously known as developmental services)~~];

(14) family education and training; and

(15) [(14)] any IFSP services to children with auditory or visual impairments that are not required by an individualized education program (IEP) pursuant to Texas Education Code, §29.003(b)(1).

(b) The family pays out-of-pocket up to their maximum charge. The family's maximum charge is determined based on their placement on the HHSC [~~DARS~~] ECI Sliding Fee Scale, as described in §108.1431 of this title (relating to HHSC [~~DARS~~] ECI Sliding Fee Scale).

§108.1421. Insurance Premiums.

The policyholder is responsible for paying health care premiums based on their individual policy. The contractor includes insurance premiums when calculating the family's allowable deductions, but insurance premiums do not count toward meeting the maximum charge. Neither HHSC [~~DARS~~] nor the contractor pays the family's private insurance premium.

§108.1423. Co-pays, Co-Insurance, and Deductibles.

(a) The contractor collects co-pays, co-insurance, and deductibles as set by the family's insurance plan, up to the family's maximum charge. The maximum charge includes and is not in addition to co-pays, co-insurance, and deductibles.

(b) HHSC [~~DARS~~] absorbs any additional costs that exceed the family's maximum charge, including costs for services not covered by insurance, co-pays, co-insurance, and deductibles.

§108.1425. Public Benefits and Insurance.

(a) Medicaid, CHIP, and TRICARE are public insurance programs.

(b) The contractor must assist the parent to:

(1) identify and access other available funding sources to pay for a child's early childhood intervention services; and

(2) enroll a potentially eligible child in Medicaid or CHIP.

(c) The contractor must not require a parent to enroll in public benefits or insurance programs as a condition of receiving early childhood intervention services.

(d) If the child is not already receiving public insurance, the contractor must obtain written parental consent before billing. The contractor must [~~may~~] waive the maximum charge while eligibility is being determined, not to exceed 90 days.

(e) The contractor must obtain written parental consent to release personally identifiable information to Medicaid, CHIP, and TRICARE. If the parent does not give consent to release personally identifiable information, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(f) The contractor must not bill the parent if the child is enrolled in Medicaid and the parent gives consent to release personally identifiable information to Medicaid.

(g) If the child is in foster care or kinship care, the contractor must obtain consent to release personally identifiable information to bill Medicaid.

(h) If the child has private insurance in addition to Medicaid, the private insurance is the primary payor. The contractor must bill the private insurance before filing a claim with Medicaid for all services other than targeted case management. Once the contractor has verified that the private insurance plan will not pay for certain ECI services for a child, the contractor is not required to continue to bill the private insurance plan for those services for that child. The contractor must verify coverage for ECI services with the private insurance plan at least annually.

(i) If the child has CHIP or TRICARE and the parent gives consent to release personally identifiable information, the contractor must bill the family for services not paid for by CHIP or TRICARE and for any co-pays, up to the family's maximum charge, based on their placement on the sliding fee scale.

(j) If the child becomes ineligible for Medicaid, CHIP, or TRICARE, the contractor bills the parent up to their maximum charge, based on their placement on the sliding fee scale.

(k) The contractor must not deny or delay a child's services if:

(1) the family does not have public insurance; or

(2) the parent does not give consent to release personally identifiable information to their public insurance. If the parent does not give consent, the contractor bills the family up to their maximum charge, based on their placement on the sliding fee scale.

(l) A family with public insurance will not be charged disproportionately more than a family without public or private insurance.

§108.1431. HHSC [~~DARS~~] ECI Sliding Fee Scale.

(a) The contractor must provide the family with a copy of the HHSC [~~DARS~~] ECI sliding fee scale. Based on family size and income, placement on the HHSC [~~DARS~~] ECI sliding fee scale determines the family's maximum charge for services received in one calendar month.

(b) The HHSC [~~DARS~~] ECI sliding fee scale assigns a set dollar amount as the maximum charge for adjusted income ranges less than or equal to 1000 percent of the federal poverty level. HHSC [~~DARS~~] calculates the maximum charge for each income range by applying a fixed percentage (ranging from 0.25 to 5 percent) to the mid-point income within each range based on the U.S. Department of [US] Health and Human Services most recently published Federal Poverty Levels [for 2014, as published in the January 24, 2014 edition of the Federal Register.]

(c) For children and families who enroll in ECI services on or after September 1, 2015, the family's maximum charge shall be pursuant to Figure: 40 TAC §108.1431(c) identified in this subsection. [÷] If the parent refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate, then the family monthly maximum payment equals the full cost of services.

Figure: 40 TAC §108.1431(c)

HHSC [DARS] ECI Sliding Fee Scale for Families Enrolled On or After September 1, 2015	
If the adjusted income is within the following % of the federal poverty guideline:	the maximum charge is equal to the following amounts or the full cost of services, whichever is less:
≤ 100%	\$0
>100% to ≤150%	\$5
>150% to ≤200%	\$14
> 200% to ≤250%	\$28
> 250% to ≤300%	\$45
> 300% to ≤350%	\$67
> 350% to ≤400%	\$124
> 400% to ≤450%	\$210
> 450% to ≤500%	\$313
> 500% to ≤550%	\$433
> 550% to ≤600%	\$474
> 600% to ≤650%	\$515
> 650% to ≤700%	\$557
> 700% to ≤750%	\$598
> 750% to ≤800%	\$639
> 800% to ≤850%	\$680
> 850% to ≤900%	\$722
> 900% to ≤950%	\$763
> 950% to ≤1000%	\$804
> 1000% of the federal poverty guidelines	the full cost of services.
If the parent:	then the family monthly maximum payment equals the:

refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate	
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~~§108.1432. DARS ECI Sliding Fee Scale for Families Enrolled Before September 1, 2015.~~

~~[For children and families enrolled in ECI services before September 1, 2015, the family's maximum charge shall be pursuant to the figure located in this section until the family's annual IFSP review. Thereafter, the family's maximum charge shall be pursuant to the figure located in §108.1431 of this chapter (relating to DARS ECI Sliding Fee Scale). This section shall expire on August 31, 2016.]~~

~~[Figure: 40 TAC §108.1432]~~

DARS ECI Sliding Fee Scale for Families Enrolled Before September 1, 2015	
If the adjusted income is within the following % of the federal poverty guideline:	then the maximum charge is:
≤ 100%	\$0
>100% to ≤150%	\$3
>150% to ≤200%	\$5
> 200% to ≤250%	\$10
> 250% to ≤350%	\$20
> 350% to ≤400%	\$55
>400%	The full cost of service not to exceed 5% of family's adjusted income.
If the parent:	then the family monthly maximum payment equals the:

refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate.	full cost of services.
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§108.1439. Program Fiscal and Recordkeeping Policies.

(a) The contractor must:

- (1) use revenue received from the family cost share system only for early childhood intervention services within the HHSC [~~DARS~~] ECI system;
- (2) not supplant any other local fund sources; and
- (3) report fees collected to HHSC [~~DARS~~] ECI as program income.

(b) The family cost share agreement and any financial records related to income, deductions, and payment history shall be kept separate from the child's other educational records, and these records must not be forwarded to a school district or other non-ECI service provider(s) at any time unless requested by the family. All financial records must be maintained in a manner consistent with the Family Educational Rights and Privacy Act.

(c) If a family transfers between HHSC [~~DARS~~] ECI contractors, the family cost share agreement, other financial records, and the IFSP are transferred to the receiving HHSC [~~DARS~~] ECI contractor.

(d) The family cost share agreement and financial records are subject to subpoena.