

TITLE 7 HEALTH
CHAPTER 30 FAMILY & CHILDREN HEALTH CARE SERVICES
PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION
SERVICES

7.30.8.1 Issuing Agency: Department of Health, Long Term Services Division
[7.30.8.1 NMAC – Rp 7 NMAC 30.8.1, 10/01/2001]

7.30.8.2 Scope: These regulations apply to all entities in New Mexico providing early intervention services to eligible children birth to three years of age and their families.
[7.30.8.2 NMAC – Rp 7 NMAC 30.8.2, 10/01/2001]

7.30.8.3 Statutory Authority: Section 28-18-1 NMSA, Chapter 178
[7.30.8.3 NMAC – Rp 7 NMAC 30.8.3, 10/01/2001]

7.30.8.4 Duration: Permanent
[7.30.8.4 NMAC – Rp 7 NMAC 30.8.4, 10/01/2001]

7.30.8.5 Effective Date: October 01, 2001, unless a later date is cited in a Section.
[7.30.8.5 NMAC – Rp 7 NMAC 30.8.5, 10/01/2001]

7.30.8.6 Objective: These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act.
[7.30.8.6 NMAC – Rp 7 NMAC 30.8.6, 10/01/2001]

7.30.8.7 DEFINITIONS:

A. “Adaptive Development” means the development of self-help skills, such as eating, dressing, and toileting.

B. “Assessment” means the ongoing procedures used by appropriate qualified personnel throughout the period of a child’s eligibility to identify: the child’s unique strengths and needs; the resources, priorities, and concerns of the family; and services to address family priorities and concerns and the child developmental needs identified.

C. “At Risk for Developmental Delay” means a child birth to three years of age who is at risk of experiencing a substantial delay (defined as a 25% or more discrepancy between chronological age after correction for prematurity and developmental age) if early intervention services are not provided. Risk can be biological /medical or environmental. **“Biological / medical risk”** means the presence of early medical conditions that are known to produce developmental delays in some children. **“Environmental risk”** means the presence of two or more physical, social, and/or economic factors in the child’s environment which pose a substantial threat to development.

D. “Child Identification (Child Find)” means New Mexico’s activities and procedures to locate, identify, and refer children from birth to twenty-one years of age with or at risk of having a developmental delay or developmental disabilities. Children birth to three years who may be in need of early intervention services, may be referred, with parental permission, to the Family Infant Toddler Program. Children three through twenty-one years of age who may be in need of special education shall be referred to the local education agency. The responsibility for Child Find is shared by the Family Infant Toddler Program of the Department of Health, the Department of Education, and through other agencies through interagency agreement.

E. “Clinical Opinion” means the statement from a team of qualified professionals based on experience, training, and structured interaction with an infant or toddler, concerning the child’s developmental and health status. The team organizes and weighs information including impressions regarding the child’s skills, abilities, weaknesses, developmental processes, emotional and temperamental patterns, as well as more traditional testing information.

F. “Cognitive Development” means the progressive and orderly changes in a child’s thinking processes affecting perception, memory, judgment, and reasoning.

G. “Communication Development” means the progressive and orderly acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive language,

including spoken, non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

H. “Confidentiality” means protection of the family’s right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

I. “Consent” means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent’s native language and mode(s) of communication and agrees to the activity for which consent is sought.

J. “Criterion Referenced Assessment Instrument” means a test that is interpreted with reference to the framework of a specified content area skill rather than by comparison with the performance of a specified population of persons. The criterion-referenced test would supply information on whether a child has accomplished a skill or task and what skills or tasks need to be acquired.

K. “Days” means calendar days, unless otherwise indicated in these regulations.

L. “Developmental Delay” means an evaluated discrepancy between chronological age and developmental age, after correction for prematurity, in one or more of the following areas of development: cognitive, communication, physical/motor (including vision and hearing), social or emotional, and adaptive. To be eligible for services under the definition of developmental delay, a child must demonstrate 25% or more discrepancy between chronological age, after correction for prematurity, and developmental age.

M. “Developmental Specialist” means an individual who meets the criteria established in these regulations (see Section 9) and is certified to provide early intervention services such as ‘developmental consultation’ and ‘family training, counseling and home visits’. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual’s level of certification as defined in Long Term Services Division (LTSD) policy and Service Standards.

N. “Direct Supervision” means in-view observation and guidance while a direct service activity is performed. Additional consultation and guidance reflective of the observation is also provided.

O. “Dispute Resolution Process” means the array of formal and informal options available to parents and providers for resolving disputes related to early intervention services and the system responsible for the delivery of those services. This process is described in Section 15 of these Regulations.

P. “Due Process” means the regular administration of procedures that must conform to fundamental and generally accepted legal principles and be applied to all without favor or prejudice.

Q. “Due Process Hearing” means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

R. “Duration” means the length of calendar time that services included in the IFSP will be delivered.

S. “Early Intervention Provider” means an organization or individual that provides any service(s) covered under these regulations (including the requirements of the New Mexico Department of Health, the Department of Human Services, and the Children, Youth and Families Department), meets the requirements established for early intervention services, and has either been certified as a provider of early intervention services by the Department of Health or provides services through an intra-agency or inter-agency agreement with that Department.

T. “Early Intervention Services” means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child’s development. Early intervention services are described in detail in Section 12 A of these regulations.

U. “Eligible Children” means children birth up to three years of age who reside in the state and meet the criteria within these regulations for “Developmental Delay”, “Established Condition”, or “At Risk for Developmental Delay”. Children who turn three 3 years of age during the school year can continue to be eligible for the Family Infant Toddler Program until the beginning of the next school year if this is documented as part of the IFSP transition plan (see section 13 D)

V. “EPSDT” means the Early Periodic Screening, Diagnosis and Treatment Program of Medicaid (Title XIX of the Social Security Act). It is administered by the New Mexico Department of Human Services and offered to all eligible children by health care providers in the state. Referral to the EPSDT program is a prerequisite for children participating in the Family Infant Toddler Program who may be Medicaid eligible. A family may receive service coordination in accordance with these regulations to assist them in accessing the EPSDT program for

a potentially eligible child.

W. “Established Condition” means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. A delay in development may or may not be exhibited at the time of diagnosis.

X. “Evaluation” means the process through which a child’s eligibility for early intervention services is determined. It involves a review of pertinent records related to the child’s current health status and medical history; a determination of strengths, needs, quality of performance, and level of functioning of the child in each developmental area (cognitive, communication, physical/motor (including vision and hearing), social or emotional, and adaptive); and an explanation of how the status in each of the developmental areas affects the child’s overall functioning.

Y. “Family” means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

Z. “Family Assessment” means a family-directed information gathering process that may use formal instruments (e.g., interviews, questionnaires) or informal methods (e.g., conversations, observations) to determine and record a family’s concerns, priorities and resources.

AA. “Family Infant Toddler Program (FIT)” means the program within state government that administers New Mexico’s early intervention system for children (from birth to age three) who have or are at risk for developmental delay and their families. The FIT Program is established in accordance with 28-18-1 NMSA, Chapter 178, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), as amended, and other applicable state and federal statutes and regulations. The New Mexico Department of Health is the lead agency for the administration of this system as defined by IDEA.

BB. “Fiscal Year” means July 1 of any given year through June 30 of the subsequent year.

CC. “Free Appropriate Public Education (FAPE)” means special education and related services which are: provided at public expense under public supervision and direction and without charge to parents; meet the rules of the New Mexico State Board of Education and the New Mexico State Department of Education, including the requirements under the Individuals with Disabilities Education Act (IDEA); and are provided in conformity with an individualized education program (IEP).

DD. “Frequency” means the number of times that a service is provided or an event occurs within a specified period.

EE. “Head Start/Early Head Start” means a comprehensive child development program for children of low income families established under the Head Start Act, as amended (42 U.S.C. 9801 et seq.).

FF. “IFSP Team” means the persons responsible for determining eligibility and developing, reviewing the IFSP. The team shall include the parent(s), the service coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, and other persons, including family members, as requested by the family.

GG. “Individuals with Disabilities Education Act (IDEA)” means the federal law that contains requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled The Early Intervention Program for Infants and Toddlers with Disabilities and Part B of IDEA refers to the section of the law called Assistance to States for the Education of Children with Disabilities (20 U.S.C. 1400 et seq.)

HH. “Individualized Family Service Plan (IFSP)” means the written plan for providing early intervention services to an eligible child and the child’s family. The plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around family identified outcomes and includes strategies to enhance the family’s capacity to meet the developmental needs of the eligible child. An IEP-IFSP that meets the requirements of both Parts B and C of IDEA may be used in place of an IFSP to serve eligible children and families. All requirements in these regulations that refer to the IFSP shall also apply to an IEP-IFSP.

II. “Individualized Family Service Plan Process (IFSP Process)” means a process that recognizes the family as the expert in identifying concerns and priorities for the child’s development and which occurs from the time of referral through transition. The service coordinator facilitates the IFSP Process.

JJ. “Intensity” means the length of time the service is provided during each session.

KK. “Interagency Agreement” means a document signed by authorized representatives of at least two agencies outlining mutually agreed upon responsibilities to perform certain duties under specified conditions. Governmental interagency agreements include Joint Powers’ Agreements, Memoranda of Understanding, and Memoranda of Agreement and are defined in statute.

LL. “Interdisciplinary Process” means the collaborative effort of professionals from various

disciplines, including at least one professional with knowledge of the child's disability or major area of developmental concern, who work in collaboration with the family to evaluate, plan and deliver services. This includes interpretation of data obtained from the evaluation process and development of recommendations for intervention.

MM. "Interim IFSP" means an IFSP that is developed only under extraordinary circumstances for a child and family within forty-five days of referral (before the completion of the evaluation and assessment), used to facilitate the provision of services to a child and family with obvious immediate needs according to clinical opinion. Use of an Interim IFSP does not extend the forty five day timeline for completion of the evaluation process.

NN. "Intra-agency Agreement" means a document signed by authorized representation of at least two units within an agency outlining mutually agreed upon responsibilities to perform certain duties under specified conditions.

OO. "Lead Agency" means the New Mexico Department of Health (DOH) that has been designated as the lead agency for early intervention services under IDEA and state statute. DOH, as the lead agency, has the responsibility and authority to assure the state meets the requirements of IDEA.

PP. "Local Education Agency (LEA)" means the local public school district, (the New Mexico School for the Deaf and the New Mexico School for the Visually Handicapped shall be considered as LEA's for purposes of transition).

QQ. "Location" means the places in which early intervention services are delivered. Services will be delivered in locations that meet the criteria for natural environments as described in these regulations.

RR. "Mediation" means an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute. A parent(s) may choose to use mediation to resolve a formal complaint concerning the provision of any aspect of early intervention services. Mediation may also be used to resolve disputes and differences between parties prior to the parent(s)'s filing of a formal complaint. Mediation is not applicable in cases of a criminal nature including abuse, neglect or exploitation.

SS. "Medicaid" means the federal medical assistance program under Title XIX of the Social Security Act. The EPSDT program is part of Medicaid. This program provides reimbursement for some services delivered by early intervention providers to Medicaid-eligible children.

TT. "Method" means the way in which a specific early intervention service is delivered. Examples include group and individual services.

UU. "Multidisciplinary Process" means more than one individual working independently in their own domains to evaluate and work with the same child/family. Each professional independently seeks information from the family and elicits responses from the child. Each applies the expertise and techniques of his/her discipline or knowledge base in isolation of what others are doing.

VV. "Native Language" means the language or mode of communication normally used by the parent(s) and/or family of an eligible child.

WW. "Natural Environments" means places that are natural or normal for children of the same age who have no apparent developmental delay. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family's typical daily routine and lifestyle.

XX. "Norm-Referenced Test" means a test in which the level of achievement is determined by the norms of the sample or population of persons on which the test was standardized. Norm-referenced tests assess competencies in a global fashion reflecting a child's overall development in a specified area with respect to other children the same age. Norm-referenced tests are often used in the diagnostic process.

YY. "Other Early Intervention Services" means early intervention services, as described in IDEA Part C that are not otherwise explicitly listed or defined under early intervention services, but which the child and or family need in order to achieve outcomes as listed on the IFSP

ZZ. "Other Services" means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Some examples include, but are not limited to, child care, play groups, community facilities.

AAA. "Outcome" means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services. Outcomes are documented on the IFSP.

BBB. "Parent(s)" means a natural or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents' authority to make the

decisions required of parents has been removed under State law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Act; and has no interest that would conflict with the interests of the child.

CCC. "Permission" means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

DDD. "Personally Identifiable" means that information in any form which includes the names of the child or family members, the child's or family's address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it possible to identify the child or the family.

EEE. "Personnel" means those persons responsible for providing early intervention services.

FFF. "Personnel Development" means preservice and inservice training provided to a variety of personnel needed to meet the professional credentialing requirements of the Family Infant Toddler Program or to enhance the competence of individuals working at any level within the early intervention system.

GGG. "Physical/Motor Development" means the progressive and orderly changes to a child's vision, hearing, gross and fine motor development, quality of movement, and health status.

HHH. "Primary Referral Source" means parents, physicians, hospitals, (including prenatal and postnatal care facilities), child care programs, local education agencies, public health care providers, Children's Medical Services, social services agencies, Early Head Start, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

III. "Prior Notice" means written notice given to the parents of an eligible infant or toddler a reasonable time before the responsible public agency, or its designee including the early intervention provider, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

JJJ. "Procedural Safeguards" means the requirements set forth by IDEA, as amended, which specify families' rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

KKK. "Professional Judgment" means a process in which a qualified individual or a team uses professional knowledge, experience and skills to organize and weigh information about a child. This information includes observations and impressions regarding skills, abilities, weaknesses, developmental processes, emotional and temperamental patterns as well as more traditional testing information. Professional judgment is used to support and supplement other information gathered during the IFSP process for the purposes of eligibility determination and planning.

LLL. "Public Agency" means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention services to eligible children and their families.

MMM. "Record" means the early intervention records maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other material that contain information directly related to a child, and are maintained by the early intervention provider. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

NNN. "Referral" means the direction of a family into the early intervention system for assistance in obtaining information, evaluation, assessment, IFSP development, and needed support services.

OOO. "School Year" means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years.

PPP. "Service Coordinator" means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial service coordinator assists the family with intake activities such as eligibility determination and development of an initial Individualized Family Service Plan (IFSP). The ongoing service coordinator is selected at the initial IFSP meeting and designated on the IFSP form. The service coordinator may work for one of a number of agencies; however, a family will have only one service coordinator regardless of its eligibility for more than one program.

QQQ. "Service Delivery" means the provision of specific early intervention services by qualified personnel in accordance with the IFSP. It includes participation in the periodic review and modifications of the IFSP; the documentation of all services delivered; the monitoring of progress toward the intended outcomes; and access to the dispute resolution process.

RRR. “Social or Emotional Development” means the progressive and orderly changes to a child’s affective state and ability to interact with people.

SSS. “Standardized Tests” means tests with written uniform procedures for administration, scoring, and interpretation.

TTT. “Supervision of Personnel” means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning, organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

UUU. “Surrogate Parent” means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

VVV. “Transition” means the process for a family and eligible child of moving from one service provider or service system to another. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child’s transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

WWW. “Transition Plan” means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

[7.30.8.7 NMAC – Rp 7 NMAC 30.8.7, 10/01/2001]

7.30.8.8 ADMINISTRATION

A. Supervisory Authority

(1) Any agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico Department of Health.

(2) An agency that has entered into a contract or provider agreement or an inter- or intra-agency agreement with the New Mexico Department of Health to provide early intervention services shall be considered an “early intervention provider” under these regulations.

B. Provider Requirements

(1) All early intervention providers shall comply with these regulations and all other applicable state and federal regulations. All early intervention providers who provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico Department of Health through the Family Infant Toddler Program.

(2) All early intervention providers shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement, or an inter- or intra-agency agreement. This information shall be kept on file with the early intervention provider and shall be available to the New Mexico Department of Health or its designee upon request.

(3) All early intervention providers shall employ individuals who maintain current licenses and/or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider and shall be available to the New Mexico Department of Health or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico Department of Health.

(4) Early intervention providers shall ensure that personnel receive adequate planned and ongoing supervision. The nature of supervision shall depend on the complexity of the duties to be performed, and the individual’s prior education, knowledge and experience relative to the role performed. The early intervention provider shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention providers shall provide access to information necessary for the New Mexico Department of Health or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention providers will be

addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

(7) Early intervention providers shall ensure free and appropriate public education (FAPE) at the child's third birthday for those children who are eligible for Part B and continue within the Part C program.

C. Financial Matters –Reimbursement to Providers

(1) Reimbursement for early intervention services to eligible children and families by the Family Infant Toddler Program shall conform to the method established by the New Mexico Department of Health, as delineated in the early intervention provider's contract/provider agreement.

(2) The following services shall be available at no cost to families:

- (a) Child find activities,
- (b) Evaluation and assessment,
- (c) Service coordination,
- (d) Administrative and coordinative activities related to the development, review and evaluation of IFSPs, and
- (e) Implementation of procedural safeguards and the other components of the statewide system of early intervention.

No eligible child or family shall be denied any early intervention service because of the family's inability to pay.

(3) Early intervention providers shall not bill for early intervention services delivered by personnel who do not possess relevant, valid licenses and/or certification. When no relevant credential exists or is required for personnel providing specific early intervention services, the provider shall assure that persons employed are competent and trained to perform those duties.

[7.30.8.8 NMAC – N, 10/01/2001]

7.30.8.9 PERSONNEL

A. Personnel Requirements

(1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed "qualified" based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as listed in Section 9B of these regulations, and provide services in that discipline, do not require certification as a Developmental Specialist. However, individuals who hold a professional license or certificate in one of these fields and who spend 60% or more of their time employed in the role of Developmental Specialist must obtain certification as a Developmental Specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated and they remain the shared responsibility of the employing agency and the supervisor, according to discipline.

B. Qualified Personnel may include individuals from the following disciplines who meet the state's entry level requirements and possess a valid license and or certification:

- (1) Audiology
- (2) Developmental Specialist
- (3) Early Childhood Development and Education
- (4) Education of the Deaf/Hard of Hearing
- (5) Family Therapy and Counseling
- (6) Nutrition/Dietetics
- (7) Occupational Therapy (including Certified Occupational Therapy Assistants)
- (8) Pediatric Nursing
- (9) Pediatric Nutrition
- (10) Pediatric Orientation/Mobility Training
- (11) Physical Therapy (including Physical Therapy Assistants)
- (12) Physician (pediatrics or other medical specialty)
- (13) Psychology (Psychologist or Psychological Associate)
- (14) Social Work
- (15) Special Education
- (16) Speech and Language Pathology
- (17) Vision Training

Individuals with a valid license and certification in other related fields may be considered to be qualified in accordance with policy and procedures established by the Family Infant Toddler Program. Qualified personnel may also include individuals trained to perform specific functions, such as respite providers, family liaisons and parent-to parent support staff.

C. Certification of Developmental Specialists

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) Developmental Specialists must have the appropriate certificate issued by the Office of Child Development at the Children, Youth and Families Department based on entry level requirements, except as noted below in Section 9 D.

(3) The term of certification as a Developmental Specialist is a five year period granted from the date the application is approved.

D. Reciprocity of Certification: An applicant for a Developmental Specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico Developmental Specialist Certificate, at the discretion of the Department of Health or its designee.

E. Certification Renewal: The individual seeking renewal of a Developmental Specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the Family Infant Toddler Program.

F. Agency Exemptions from Personnel Certification Requirements

(1) At its discretion, the Family Infant Toddler Program or its designee may issue to an early intervention provider an exemption from personnel qualifications for a particular Developmental Specialist position. The exemption shall be in effect only for the fiscal year in which it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention providers shall not bill for early intervention services delivered by a non-certified Developmental Specialist unless the Family Infant Toddler Program has issued an exemption for that position.

(4) Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. Service Coordinators

(1) Service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years experience serving individuals with disabilities and their families.

(2) If an early intervention provider is unable to hire suitable candidates meeting the above requirements, a person can be hired as a service coordinator with an Associate of Arts degree and at least three years experience in community, health or social services.

(3) Early intervention providers may hire, with approval from the Family Infant Toddler Program, service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served and or an individual who is the parent of a child with a developmental delay or disability. Such individuals must meet all training requirements for Service Coordinators in accordance with Family Infant Toddler Program standards.

H. Supervision of Early Intervention Personnel

(1) Early intervention providers shall ensure that all personnel (employees and subcontractors) providing early intervention services receive adequate planned and ongoing general supervision. The amount of supervision required shall depend on the complexity of the duties to be performed and the experience of the personnel. The early intervention provider shall maintain documentation of supervision activities conducted.

(2) Supervision shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

(3) Supervision shall comply with personnel policies and procedures established by the Family Infant Toddler Program.

(4) The early intervention provider shall ensure that supervision is available to support the re-certification of the Developmental Specialists they employ.

(5) The early intervention provider shall ensure that a supervisor is on call, readily available and responsive in a timely manner to requests for assistance.

[7.30.8.9 NMAC – Rp 7 NMAC 30.8.14, 10/01/2001]

7.30.8.10 CHILD IDENTIFICATION

A. Early intervention providers shall collaborate with the New Mexico Department of Health and other state, federal and tribal government agencies in a coordinated Child Find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and Native American communities.

B. Early intervention providers shall collaborate with the New Mexico Department of Health and shall inform primary referral sources, especially hospitals and physicians, public health facilities, child care programs, social service agencies, and other health care providers, of their responsibilities related to child identification and referral under federal and state statute and regulations.

C. Early intervention providers in collaboration with the New Mexico Department of Health shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and Intake

(1) All children from birth to three years of age in need of evaluation, assessment, and early intervention services whose parents give permission for referral shall be referred to the Family Infant Toddler Program.

(2) Primary referral sources shall inform parent(s) of their intent to refer and the purpose for the referral. Primary referral sources are required to refer within two working days of identification.

(3) Intake shall be conducted with families in a prompt, professional and family-centered manner. Specific early intervention providers are designated by the New Mexico Department of Health as points of entry into the early intervention system. Such points of entry shall be responsible for receiving referrals of children and their families for early intervention. The points of entry will provide a timely written response to all referrals. The designated provider will assign a service coordinator who will assist the family with intake, evaluation, eligibility determination, planning and facilitation of the initial IFSP.

(4) The service coordinator shall contact the family and arrange a meeting(s) at the earliest possible time that is convenient for the family in order to:

- (a) Inform the family about early intervention services and the IFSP process;
- (b) Explain the family's rights and procedural safeguards;
- (c) Provide information about evaluation options; and
- (d) With parental consent, arrange the evaluation.

(5) The service coordinator shall assist the IFSP team in determining eligibility; and schedule and facilitate the initial IFSP.

(6) The service coordinator shall ensure that within forty-five (45) days of referral to the FIT Program for early intervention services, that with parental consent a child shall receive a comprehensive evaluation and assessment and with parental consent, an IFSP shall be developed for those families of children found to be eligible.

(7) Service coordination shall begin at referral and shall be available to families of all eligible children, regardless of whether they consent to other early intervention services. The choice of ongoing service coordinator is made at the initial IFSP meeting.

E. Evaluation

(1) Any child, birth to three years, who resides in the state and who is referred for early intervention services and whose parent(s) has given prior informed consent, shall receive an evaluation to inform eligibility determination. The evaluation shall be timely, non-discriminatory, comprehensive, interdisciplinary, and shall include information provided by the parent(s).

(2) If parental consent is not given, the service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(3) A comprehensive evaluation, conducted by an interdisciplinary team consisting of at least two professionals from different disciplines and family member(s), is carried out to inform eligibility determination. The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history; An assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

- (a) physical/motor development (including vision and hearing);
- (b) cognitive development;
- (c) communication development;

(d) social or emotional development; and

(e) adaptive development;

(4) If the child has a recent and complete evaluation, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(5) Each evaluation shall include the use of multiple and appropriate procedures and activities to determine a child's developmental level and eligibility to receive early intervention services. Any instruments shall be reliable, valid, used only for their intended purposes, and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so. Instruments used in an evaluation shall be administered by qualified personnel trained and/or licensed to do so.

(6) An evaluation report shall be generated that summarizes the findings of the interdisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and give a picture of the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding the child's eligibility for the Family Infant Toddler Program. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes.

(7) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or the service coordinator with prior consultation with the evaluation team.

F. Eligibility Determination

(1) The parent(s), the service coordinator and at least two professionals representing at least two different disciplines shall comprise the IFSP team for the purposes of eligibility determination. With the exception of the Service Coordinator, professional representation may be in person or through a written report, however someone with technical knowledge regarding the content of the report shall be available to consult with the other team members. Eligibility determination shall be based upon meeting the criteria in any one of the categories of eligibility contained in these regulations.

(2) Eligible children are those children who reside in the state and who are from birth to three years of age and who possess a developmental delay, established condition, or who are at risk for developmental delay. Documentation shall be maintained in the child's file of the child's eligibility under one of the following categories:

(a) **Developmental delay** - is a discrepancy between chronological age and developmental age, after correction for prematurity, in one or more of the following areas of development: Cognitive; Communication Physical/Motor (including vision and hearing); Social or Emotional; Adaptive. To be eligible for services under the definition of developmental delay, a child must demonstrate 25% or more discrepancy between chronological age, after correction for prematurity and developmental age. The extent of the child's delay must be documented. A determination of developmental delay shall not be based upon behavior related to cultural or language differences. For infants twelve months of age or younger, the professional judgment/clinical opinion of an interdisciplinary team may be used in lieu of the above evaluation process, to interpret and document evidence of delay significant enough for eligibility. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations.

(b) **Established condition** - is a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. A delay in development may or may not be exhibited at the time of diagnosis. To be eligible for services under the definition of established condition, the determination of the presence of an established condition shall be diagnosed by a physician. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations.

(c) **Biological or medical risk for developmental delay** - means that without the provision of early intervention services, the child would be at risk of experiencing substantial delay because of the presence of early medical conditions as documented by a physician or other primary health care provider which are known to produce developmental delays in some children. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations.

(d) **Environmental risk for developmental delay** - means a child who would be at risk of experiencing substantial delay if early intervention services were not provided due to factors in the child's environment. To be eligible for services under the definition of environmental risk for developmental delay two or more physical, social and/or economic factors in the child's environment must pose a substantial threat to the child's development. For purposes of determining eligibility based on environmental risk, the IFSP team must include

representation from two or more agencies with relevant knowledge of the child and family and the environmental risk factors. One of these agencies may be the early intervention provider. Professional judgment/clinical opinion shall be used in informing eligibility based on risk factors in the child's environment. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations.

(3) The families of children who are not eligible for early intervention services shall receive information on, and if requested referral to, appropriate community resources. Families shall be informed about how to request re-evaluation at a later time should they suspect that delay or risk for delay increases.

G. Assessment

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and to recommend to the interdisciplinary team services and supports to address IFSP outcomes. The initial assessment is an integral part of the evaluation (see section 10 E (3) and 10 E (6)). Assessments may include a variety of methods and procedures including family report and clinical opinion. Any assessment instruments or tools used shall be valid, reliable and used only for their intended purpose. Assessment activities shall be conducted by qualified personnel trained and/or licensed to do so.

(2) Assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family, performed only with parental permission and be family-directed. The process for gathering this information may use formal instruments (e.g. questionnaires, checklists) or informal methods (e.g. conversations, observations). The IFSP should reflect those resources, priorities and concerns the family has identified.
[7.30.8.10 NMAC – Rp 7 NMAC 30.8.8, 10/01/2001]

7.30.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

A. IFSP Development

(1) A written Individualized Family Service Plan shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family.

(b) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so.

(3) The initial IFSP and annual IFSP review shall include:

(a) the parent(s).

(b) other family members, as requested by the parent(s).

(c) an advocate or person outside of the family, as requested by the parent(s)

(d) the service coordinator.

(e) a person or persons directly involved in conducting evaluations and assessments.

(f) personnel who will be providing services to the child and family.

(4) If a person is unable to attend a meeting, the service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend or submitting a report.

(5) The initial IFSP shall be developed within forty-five days of the referral.

(6) Families shall receive written notice of the meeting prior to the IFSP meeting.

(7) The service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP: The IFSP shall include:

(1) The child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age adjusted for prematurity;

(2) The date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) Date of six-month and annual reviews;

(4) The child's present levels of development in all domains (Cognitive, Communication, Physical/Motor (including vision and hearing), Social or Emotional and Adaptive)

(5) With the concurrence of the family, a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler;

(6) The desired child and family outcomes identified by the family as well as timelines, procedures and criteria necessary to measure progress toward those outcomes;

(7) A statement of specific early intervention services required and the frequency, intensity, location, and the method of delivering services in order to achieve the expected outcomes.

(8) A parental signature, which denotes prior consent to services identified by the team as specific to the child and family's need. If the parent(s) does not provide consent for a particular early intervention service, then the service(s) to which the parent(s) did consent shall be provided;

(9) Specific information concerning payment sources and arrangements;

(10) The name of the ongoing service coordinator and the parameters for the delivery of this service;

(11) A statement of all other relevant services being provided to the family, with parental permission;

(12) A statement about the natural environments in which early intervention services shall be provided. If services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included.

(13) The projected dates for initiation of early intervention services and the anticipated duration of those services; and

(14) At the appropriate time, identified steps to ensure a smooth and effective transition from early intervention services to other services.

C. Interim IFSP

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child and/or family has an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Service Coordination

(1) Service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing service coordination.

(3) The parent may change service coordinators, in accordance with Family Infant Toddler Program Policy, at any time.

(4) The service coordinator shall be responsible for:

- (a) explaining to families about the early intervention and their procedural safeguards,
- (b) gathering information from the family regarding their concerns, priorities and resources,
- (c) coordinating the evaluation and assessment activities,
- (d) facilitating the determination of the child's eligibility,
- (e) connecting the family to resources and supports,
- (f) helping families plan and prepare for their IFSP meeting,
- (g) organizing and facilitating IFSP meetings,
- (h) arranging for and coordinating all services listed on the IFSP,
- (i) monitoring the delivery of the services listed on the IFSP,
- (j) facilitating periodic reviews of the IFSP, and
- (k) ensuring that a transition plan is developed at the appropriate time.

(5) Service coordination shall be available to families upon their referral to the Family Infant Toddler Program. Service coordination shall be listed on the IFSP for all families of eligible children. Families may direct the level of support and assistance that they need from their service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic Review of the IFSP

(1) A review of the IFSP shall occur at a minimum every six months and shall include a determination of progress toward outcomes and the need for modification of outcomes or services.

(2) The parent(s) and the service coordinator and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider.

(4) At least annually, the service coordinator shall convene the IFSP team and conduct a meeting to review the IFSP and revise its provisions as appropriate. Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what services shall be provided in order to meet the outcomes decided upon for the child and family.

(5) At any time when monitoring of the IFSP by the service coordinator or any member of the IFSP

team, including the family, indicate that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP.

(6) The annual IFSP review shall include a determination of the child's continuing eligibility. This determination may be based on information available from ongoing assessment of the child.
[7.30.8.11 NMAC – Rp 7 NMAC 30.8.11, 10/01/2001]

7.30.8.12 SERVICE DELIVERY

A. Early Intervention Services

(1) Early intervention services shall:

- (a) Be directed toward achieving the outcomes that a family chooses for their child and family,
- (b) Identified in collaboration with the parents and other team members through the IFSP

process,

(c) Delivered in the most appropriate natural environment for the child and family in the context of the family's day to day life activities,

(d) Designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development, and

(e) Delivered in accordance with the specifics contained in the IFSP.

(2) When an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(3) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the Department of Health. Early intervention services include:

(a) **Assistive Technology services**— means services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals or other individuals who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children.

(b) **Audiological services**—services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training; provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) **Developmental consultation services** (including special instruction) – services that include consultation with the family, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental services provide families with the information, skills, and support to enhance the child's development. Such services address all developmental areas: cognitive, communication, physical/motor (including vision and hearing), social or emotional and adaptive development. Developmental services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d) **Family training, counseling and home visits** – services provided, as appropriate, by qualified social workers, psychologists, and other qualified personnel to assist the family of a child eligible under these regulations in understanding the special needs of the child and enhancing the child's development.

(e) **Health services** – those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy

care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; or medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.

(f) **Medical services** – for diagnostic or evaluation purposes – those services provided by a licensed physician to determine a child’s developmental status and other information related to the need for early intervention services.

(g) **Nursing services** – those services that enable an eligible child to benefit from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(h) **Nutrition services** – include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(i) **Occupational therapy services** – those services that address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child’s functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(j) **Physical therapy services** – those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(k) **Psychological services** – those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(l) **Respite services** - a flexible family support service delivered as specified in the IFSP that provides short term, temporary care to eligible children in order that their families can take a break from the daily routine of care giving. Respite care personnel assist the child in activities of daily living to promote the child’s health and safety, as well as maintain a clean and safe environment. The family schedules respite care, in collaboration with the respite care agency.

(m) **Service coordination** – services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from birth through age three years of age to access and receive early intervention services. The responsibilities of services coordination include: explaining to families about the early intervention and their procedural safeguards, gathering information from the family regarding their concerns, priorities and resources, coordinating the evaluation and assessment activities, facilitating the determination of the child’s eligibility, connecting the family to resources and supports, helping families plan and prepare for their IFSP meeting, organizing and facilitating IFSP meetings, arranging for and coordinating all services listed on the IFSP, monitoring the delivery of the services listed on the IFSP, facilitating periodic reviews of the IFSP, and ensuring that a transition plan is developed at the appropriate time.

(n) **Social work services** – those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum

benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child's living conditions; providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child's and family's living situation that affect the child's maximum utilization of early intervention services

(o) **Speech and language pathology services** – those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p) **Transportation services** – supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early intervention services or providing other means of transporting the child and family.

(q) **Vision services** – services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training, orientation and mobility training, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the Family Infant Toddler Program in accordance with policy and procedure established by the FIT Program. The service coordinator shall review and monitor delivery of services on a periodic basis to ensure delivery in accordance with the IFSP

C. Parents who have concerns regarding the provision of early intervention services to their child and family shall have the option of filing a complaint in accordance with these regulations as described in Section 8.15. [7.30.8.12 NMAC – N, 10/01/2001]

7.30.8.13 TRANSITION

A. Transition planning shall begin early enough to allow the parents to exercise all their rights under state and federal statutes and regulations. Transition planning must be undertaken for each child and family at least 6 months before the child is eligible to transition from early intervention services. Transition planning shall be a process involving meeting(s) and progressive steps toward the smooth and effective transitioning of each child and family.

B. In a timely manner, the early intervention provider shall notify the local education agency of children that reside in the geographic area served by the LEA that may be eligible for preschool special education services.

C. Steps/actions shall be identified and included in the IFSP that support the child and family and ensure a smooth and effective transition. With involvement of the parents, such steps/actions shall include, at a minimum:

(1) Discussions with the parents regarding future program/service options to include preschool special education services and other community services that may be available and appropriate; representatives from these programs and services shall be included in these discussions to ensure an informed decision;

(2) Preparing the child and family for the changes and adjustments to a new setting;

(3) With parental consent and in accordance with regulation, the transmission of information, including evaluation and assessment information and copies of IFSPs to ensure continuity of services.

(4) Assisting parents/families to develop the skills and acquire the information needed for continued advocacy of their child's needs.

D. The parents of an eligible child participating in early intervention services who turns three (3) years of age during the public school year shall have the option of:

(1) Having the child complete the remainder of the school year in early intervention services or the public school's preschool special education services covered under the Individuals with Disabilities Act (IDEA); or

(2) They may elect to enroll the eligible child in the public school's preschool special education services from the beginning of that public school year in accordance with state law.

E. Early intervention services shall be provided in accordance with the IFSP to eligible children and families until the first day of school of the LEA where the child is enrolled.

F. With approval of the parents, a transition conference shall be convened at least 90 days prior to the anticipated date of transition from early intervention services but no later than 90 days prior to the child's third birthday. If the child may be eligible for preschool services including special education and related services offered through the local education agency, this conference shall include, at a minimum, the parents, the relevant early intervention service providers and the local education agency representative(s). Other relevant service providers should be invited to attend this meeting. The transition process must take into account availability of Head Start and other child care services in the community. The service coordinator shall convene and facilitate this conference to ensure the following actions:

- (1) Review the child's service/program options;
- (2) Renew, revise or establish a transition plan;
- (3) Ensure coordination of transition matters including the provision of uninterrupted services to the child and family; and
- (4) With parental consent, the transmission of information, including evaluation and assessment information and copies of IFSPs to ensure continuity of services.

G. Representative(s) from the early intervention provider shall participate in meeting(s) to develop the IFSP, IEP, or IFSP-IEP, as appropriate.

H. At the request of the parents, and in accordance with New Mexico Department of Health policy, service coordination shall be provided after exiting from early intervention services for the purpose of facilitating a smooth and effective transition.

[7.30.8.13 NMAC – N, 10/01/2001]

7.30.8.14 PROCEDURAL SAFEGUARDS

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico Department of Health that specify family's rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The service coordinator at the first visit with the family, shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The service coordinator shall provide ongoing information and assistance to families regarding their rights throughout the period of the child's eligibility for services. The service coordinator shall explain dispute resolution options available to families and early intervention providers. A service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. **Surrogate Parent(s)** shall be assigned when no person can be identified who is presently acting in the role of parent(s) if after reasonable effort, the early intervention provider can not determine the whereabouts of the eligible child's parent(s) or the child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process. The service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) in accordance with procedures established by the New Mexico Department of Health. The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process. A surrogate parent may represent a child in all matters related to the evaluation and assessment of the child; the development and implementation of the IFSP; the ongoing provision of early intervention services; and any other rights established under Part C of IDEA.

D. **Written prior notice** shall be given to the parents of a child at least five working days before an early intervention provider proposes or refuses to initiate or change identification, evaluation, or provision of appropriate services. Written prior notice shall include information about the action undertaken by the early intervention provider, the reasons, and the procedural safeguards available to the parent(s).

E. The notice must be written in language understandable to the general public and provided in the native language or usual mode of communication of the parent(s), unless it is clearly not feasible to do so. If a parent(s)'s language is not a written language, documentation of the procedures used to provide prior notice shall be included in the child's record.

F. **Consent** shall be obtained by the early intervention provider, which is informed written authorization, from the parent(s) before conducting the initial evaluation and assessment of a child and before initiating the provision of early intervention services. The parent(s) shall be fully informed in their native language or other mode of communication, of all information relevant to the activity for which consent is sought.

(1) The parent(s) shall be informed that the granting of consent is voluntary on the part of the parent(s) and may be revoked at any time.

- (2) The parent(s) indicates they understand and agree in writing to the activity for which consent is sought.
- (3) The consent document shall describe that activity and list any records that shall be released and to whom.
- (4) The parent(s) shall have the right to accept or decline specific early intervention services (with the exception of evaluation and service coordination) without jeopardizing their right to obtain other early intervention services.
- (5) Covered services for which the parent(s) gives consent shall be provided.

G. If consent is not given, the early intervention provider shall document reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation and assessment or the services that would be available and understands the child will not be able to receive the evaluation and assessment or services unless consent is given.

H. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

I. Procedural Safeguards Related to Records

(1) Early intervention providers shall maintain for each eligible child an early intervention record of the information, both written and electronic, that the provider possesses regarding the eligible child or family.

(2) Early Intervention records are defined as Educational Records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other material that contain information directly related to a child, and are maintained by the early intervention provider. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

(3) Access to Records

(a) Early intervention providers shall not disclose to any one other than the parent(s) records that did not originate with the provider. However, they may give the parent(s) a complete copy of everything contained in their child's records, regardless of their source.

(b) Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than an official of the lead agency or other participating agency collecting or using information under the Individuals with Disabilities Education Act (IDEA), or as authorized to do so under the Family Educational Rights and Privacy Act (FERPA).

(c) The parent(s) shall be informed of their right to sign or refuse to sign a release of records allowing an early intervention provider to disclose personally identifiable information to others for legitimate purposes. The release of records form shall list the specific agencies, providers or the individuals (by name or position) to whom information may be given and the type of information that might be given. The parent(s) shall be given an opportunity to limit the information and the recipients of the information released; the release of records form shall provide space for such limitations. The release shall be revocable by the parents and parents shall be informed of this fact.

(d) If the parent(s) does not give consent for release of personally identifiable information, the early intervention provider shall document this fact.

(e) Early intervention providers shall, upon request, provide the parent(s) with a list of the types and location of records collected, maintained, or used by the agency as follows, including screening, evaluation, assessment, eligibility determinations, or the development and implementation of IFSPs; individual complaints dealing with children or families; and any other area involving records about children or families.

(f) Each early intervention provider shall permit parents to inspect and review the child's early intervention record. Parents of eligible children shall be provided the opportunity to examine and obtain one copy of such records at no expense without unnecessary delay, in no case more than twenty-one (21) calendar days after the request has been made.

(g) The right to examine such records includes the right to a response from the early intervention provider to reasonable requests for explanations and interpretations of the records; and the right of the parent(s) to have a representative of their choice examine the records.

(h) Early intervention providers shall keep documentation of parties obtaining access to records collected, maintained, or used unless such access is by the parent(s) or authorized employees of the agency. This documentation must include the name of the party accessing the record, the date the record was accessed, and the purpose for which the party is authorized to use the record.

(i) If any record includes information on more than one child, parents of those children have

the right to examine only the information relating to their child and to be informed of that specific information.

(j) A parent(s) who believes that information in the records is inaccurate or misleading or violates the privacy or other rights of the child or family, may request that the early intervention provider amend (including delete) the information.

(k) When a parent(s) requests that information in a record be amended, the early intervention provider shall inform the parent(s) of the right to immediately place a statement in the record commenting on the parent(s)'s reason for requesting that the record be amended, and to remove that statement if the record is amended as requested.

(l) When a parent(s) requests that information in a record be amended, the early intervention provider shall decide whether to amend the information in accordance with the request within a reasonable period of time, not to exceed twenty-one (21) days after the request is made.

(m) If the early intervention provider refuses to amend the information as requested, it must inform the parent(s) of the refusal, the reason for the refusal and advise the parent(s) of the right to a hearing.

(n) The early intervention provider shall, on request, provide an opportunity for a hearing to challenge information in the records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the eligible child and family.

(o) The hearing shall be held within thirty (30) days after the written request is received by the early intervention provider from the parent(s) of the eligible child.

(p) The parent(s) of the eligible child shall be given written notice of the date, place, and time fifteen days in advance of the hearing.

(q) The hearing may be conducted by any individual, including an official of the early intervention provider, who does not have a direct interest in the outcome of the hearing.

(r) The early intervention provider shall give the parent(s) of the eligible child a full and fair opportunity to present evidence relevant to the issues raised. The parent(s) may, at their own expense be assisted or be represented by individuals of their own choice, including an attorney.

(s) The early intervention provider shall issue its decision in writing to the parent(s) within five (5) working days after the conclusion of the hearing.

(t) The decision of the early intervention provider shall be based solely on evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(u) If the hearing determines that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or family, the early intervention provider shall amend the information in question accordingly and inform the parents in writing.

(v) If the hearing determines that the information in question is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the early intervention provider shall inform the parent(s) of the right to place in the records a corrective statement commenting on the information or setting forth the parent(s)'s disagreement with the decision of the provider.

(w) This corrective statement shall be maintained along with the contested record for as long as the contested portion is maintained in the record by the early intervention provider. If the record or information about which the parent(s) has a complaint is ever disclosed to any party, the parent(s)'s statement must also be disclosed to that party.

J. Administration of Records

(1) Information and documents in active individual child and family records shall be organized in a systematic fashion and controlled from a central location. A designated staff member shall be responsible for the control of confidential records and for the implementation of policies and procedures pertaining to confidential information. Access to personally identifiable information is limited to professional staff providing direct service to the child and family, plus such other staff who are administratively authorized. Records must be secured and reasonably protected against fire, water damage, and other hazards, including a procedure for regular and routine backup of data files for electronic systems. A working case file may be maintained to assist with the routine provision of services, and such files should be viewed only by authorized individuals, including the family. Working files should be secured against access by unauthorized persons and should contain only that personally identifiable information needed to provide services.

(2) Early intervention providers shall train all persons collecting or using personally identifiable information regarding state and federal requirements (34 CFR 300.560 through 300.576, with the modifications specified in Section 303.5(b) and 34 CFR Part 99, the Family Educational Rights and Privacy Act) for safeguarding records. All qualified early intervention programs shall take steps to protect the confidentiality of all information at collection, storage, disclosure, and destruction stages.

(3) Early intervention providers shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

(4) The early intervention provider shall inform the parent(s) when personally identifiable information collected, maintained, or used in the early intervention program is no longer needed to provide early intervention services to the child and family. The parent(s) shall be offered the options of having the information destroyed or having the information transferred to them.

(5) The early intervention providers shall be allowed to maintain a permanent record of a child's name, address, phone number, attendance record, program(s) attended, services received, and the year the child and family exited the program.

(6) Records shall be maintained a minimum of five years following the child's exit from the early intervention services system.

K. Confidentiality of Records and All Other Personally Identifiable Information

(1) All early intervention agencies shall ensure that steps are taken to protect the confidentiality of all forms of personally identifiable information at collection, storage, disclosure and destruction stages.

(2) All early intervention records and information (in whatever form) shall be treated in accordance with the confidentiality requirements of Part B of IDEA (34 CFR Section 300.560 - 300.576) and with the confidentiality requirements of the Family Educational Rights and Privacy Act (34 CFR Part 99, FERPA), as modified by IDEA.

[7.30.8.14 NMAC – Rp 7 NMAC 30.8.13, 10/01/2001]

7.30.8.15 DISPUTE RESOLUTION PROCESS

A. Dispute Resolution Options

(1) Parents and providers shall have access to an array of options for resolving disputes. The parent may choose to utilize an informal option, such as early mediation, to resolve a dispute. However, the use of any informal option shall not delay or interfere with parental rights to file a request for a formal due process hearing, nor shall it interfere with the timelines established under IDEA regarding procedural safeguards.

(2) The service coordinator shall inform the family about all options for resolving disputes. The family shall be made aware of how to contact the Department of Health to either file a formal complaint or to raise a concern regarding the provision of early intervention services to their child and family. The family shall also be informed of the policies and procedures of the early intervention provider for resolving disputes at the local level.

B. Due Process Hearing

(1) Parents may request an impartial due process hearing if they find they have a dispute regarding the early intervention services received by their child and family.

(2) An impartial hearing officer shall be assigned. The hearing officer shall not be an employee of any agency or entity involved in the provision of early intervention or have a personal or professional interest that would conflict with their objectivity in implementing the process.

(3) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents.

(4) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than thirty days after the receipt of a parent(s)'s formal complaint.

(5) The parent(s) shall have the following rights in the due process hearing proceedings:

(a) The right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children or others at the parent(s)'s discretion.

(b) The right to present evidence and confront, cross examine, and compel the attendance of witnesses.

(c) The right to prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent(s) at least five days before the proceeding.

(d) The right to obtain a written or electronic verbatim transcription of the proceeding.

(e) The right to obtain written findings of fact and decisions.

(f) During the dispute resolution process the child shall continue to receive the early intervention services currently being provided, unless the parent(s) revokes consent or the early intervention provider and the parent(s) agree otherwise. If the complaint involves an application for initial services, the child must receive those services that are not in dispute.

(g) Any party aggrieved by the findings and decision of the hearing officer has the right to bring a civil action in court.

C. Mediation

(1) Within five working days of receiving a written formal complaint from the parent(s), the parent(s) shall be offered mediation as a method to resolve the dispute. Mediation shall proceed with agreement of all parties involved.

(2) The parent(s) shall be informed that participation in the mediation process is voluntary and shall not be used to deny or delay a parental right to a timely due process hearing.

(3) Mediation shall also be offered to the parties early in a dispute before the parent(s) has filed a formal complaint.

D. Complaints

(1) An individual (including a parent(s)) or an organization (including other states) may submit a complaint to the Department of Health alleging that an early intervention provider or other public agency has violated a federal or state law, regulation or rule that applies to the early intervention system.

(2) The complaint shall be submitted in writing to the coordinator of the Family Infant Toddler Program and shall include a statement regarding the law or regulation that is alleged to have been violated; the facts on which the complaint is based; and it shall be signed and dated. The alleged violation must have occurred not more than one year before the date that the complaint is received by the Family Infant Toddler Program unless a longer period is reasonable because the alleged violation continues for that child or another child or the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the Family Infant Toddler Program.

(3) Within sixty (60) calendar days after a complaint is received, the Department of Health shall:

(a) Carry out an independent investigation;

(b) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) Review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(d) Issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The complaint investigator's decision may include recommendations that include technical assistance activities, negotiations and corrective actions to achieve compliance as well as timelines for completion.

(4) An extension of the sixty day timeline will be only granted if exceptional circumstances exist with respect to a particular complaint.

(5) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty calendar day timeline.

E. Abuse, Neglect, and Exploitation

(1) Instances of abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico Department of Health and the Children, Youth and Families Department.

(2) A parent's decision to decline early intervention services does not constitute abuse, neglect or exploitation.

[7.30.8.15 NMAC – N, 10/01/2001]

HISTORY of 7.30.8 NMAC

Pre-NMAC History:

None

History of the Repealed Material:

7 NMAC 30.8 Requirements For Family Infant Toddler Early Intervention Services, filed 09-16-97 – Repealed, effective 10/01/2001