

PROPOSED REGULATION ORDER

California Code of Regulations Title 17. Public Health Division 2. Health and Welfare Agency Chapter 2. Early Intervention Services

Amend sections 52000, 52082, 52109, and 52162, title 17, California Code of Regulations to read as follows:

[NOTE: Amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. Portions of the regulation that are non-substantively changed with renumbering are indicated by ***Non-substantive changes to indicate renumbering***]

Subchapter 1. General Provisions Article 1. Definitions

§ 52000. Meaning of Words.

(a) Words shall have their usual meaning unless the context of a definition clearly indicates a different meaning. Words used in their present tense include the future tense; words in the singular form include the plural form. Use of the word “shall” denotes mandatory conduct; “may” denotes permissive conduct.

(b) The following definitions shall apply to the words used in this subchapter:

(1) Acidemia means an excessive acidity of the blood wherein the acid-base balance of the body is disturbed.

(2) Adaptive development means the acquisition of skills that are required to meet environmental demands. Adaptive development includes, but is not limited to, activities of self-care, such as dressing, eating, toileting, self-direction, environmental problem-solving and attention/arousal.

(3) Asphyxia neonatorum means a condition caused by insufficient oxygen at or near the time of birth.

(4) Assessment means the ongoing procedures used by qualified personnel throughout the period of an infant's or toddler's eligibility for early intervention services to identify the infant's or toddler's unique strengths and needs and the services appropriate to meet those needs. Assessment also includes the identification of the family's resources, priorities, and concerns regarding the development of the infant or toddler and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the eligible infant

or toddler. Initial assessment refers to the assessment of the child and the family assessment conducted prior to the child's first individualized family service plan (IFSP) meeting.

(5) Assistive technology device means any item, piece, of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

(6) Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(A) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the infant's or toddler's customary environment;

(B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that infant's or toddler's family; and

(F) Training or technical assistance for professionals, including individuals providing education or rehabilitation services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

~~(6)~~(7) Authorized representative means the parent or guardian of a minor, or person who is legally entitled to act on behalf of the infant, toddler or family.

~~(7)~~(8) Biomedical insult is a general term referring to those biological or medical conditions such as infection or brain injury which may result in developmental delay or disability.

~~(8)~~(9) Cognitive development means the acquisition of learning through ongoing interactions with the environment. Cognitive development involves perceiving, thinking, problem solving and remembering information.

~~(9)~~(10) Communication development means the acquisition of expressive and/or receptive language skills which include understanding and/or using any of the following: gestures, facial expressions, speech reading, sign language, body postures and vocal and visual contacts with another person.

~~(10)~~(11) Complainant means any individual or organization filing a written complaint pursuant to the provisions of Subchapter 5, Article 3.

~~(11)~~(12) Concerns means areas that family members identify as needs, issues or problems they want to address as part of the individualized family service plan (IFSP) or the evaluation and assessment process which are related to meeting the developmental needs of the infant or toddler.

(13) Consent means:

(A) The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent's native language;

(B) The parent understands and agrees in writing to carry out the activity for which the parent's consent is sought, and the consent describes that activity and lists the early intervention records, if any, that will be released and to whom they will be released; and

(C) The parent understands that the granting of consent is voluntary and may revoke it at any time. If a parent revokes consent, that revocation is not retroactive.

~~(12)~~(14) Day means calendar day unless otherwise stated.

(15) Early intervention records means information that is directly related to an infant or toddler. These may include, but are not limited to, records relating to identification, evaluation and services.

~~(13)~~(16) Early intervention services means those services provided under public supervision, designed to meet the developmental needs of each eligible infant or toddler and the needs of the family related to the infant's or toddler's development. The services include but are not limited to assistive technology device and service; audiology; family training; counseling and home visits; health services; medical services only for diagnostic or evaluation purposes; nursing services; nutrition services, occupational therapy; physical therapy; psychological services; service coordination; sign language and cued language services; social work services; special instruction; speech-language pathology services; transportation and related

costs; and vision services. Early intervention services may include such services as respite and other family support services. The services are designed to meet the development needs of an infant or a toddler with a disability as defined in Government Code, Chapter 4, Eligibility §95014(a)(1) and in §52082(b)(3) for these regulations.

~~(14)~~(17) Evaluation means procedures used by qualified personnel to determine an infant's or toddler's initial and continuing eligibility. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for early intervention services. The evaluation applies to infants and toddlers with a disability as specified in § 52020 and § 52022 of these regulations.

~~(15)~~(18) Exceptional family circumstances means events beyond the control of the regional center or local educational agency (LEA). These include but are not limited to the infant's or toddler's or parent's illness, the infant's or toddler's and parent's absence from the geographical area, inability to locate the parent, or a natural disaster. Delays caused by the failure to obtain copies of existing records or other administrative events do not constitute exceptional circumstances.

~~(16)~~(19) Family means the primary caregivers and others who assume major long-term roles in an infant's or toddler's daily life.

~~(17)~~(20) Fine motor means the use of muscles that control small and detailed movements of the body, as an example, in the hand related to manual dexterity and coordination.

~~(18)~~(21) Funded Capacity means the number of eligible infants, between 12 and 16 students per instructional unit, that the California Department of Education requires LEAs to serve to maintain funding for their classes/programs/services in a given year pursuant to Education Code section 56728.8 as it read on November 1, 1993.

~~(19)~~(22) Gross motor means the use of large muscle groups of the body, arms, or legs, as in sitting up, walking, or balancing.

~~(20)~~(23) Health services mean services necessary to enable an otherwise eligible child to benefit from the other early intervention services in Section 52000(b)~~(4216)~~ during the time that the child is eligible to receive early intervention services. Such services include clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services. Such services also include consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing early intervention services. This term does not include:

(A) Services that are surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus), purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose), or related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

1. Nothing in this section limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

2. Nothing in this section prevents the early intervention service provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;

(B) Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

(C) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

§ 52000(b)(24) - § 52000(b)(62) *Non-substantive changes to indicate renumbering*

Note: Authority cited: Sections 95009 and 95028, Government Code. Reference: Sections 95014 and 95028, Government Code; Sections 3001~~(y)~~ and 3030, Title 5 California Code of Regulations; Sections 1432, 1436 and 1440, Title 20 United States Code; and Sections 303.9, 303.13, 303.16, 303.20, ~~303.23~~, 303.24, 303.25, 303.26, 303.27, 303.29, 303.31, 303.302, 303.321, 303.340, 303.342, 303.343, 303.344, 303.345, 303.401, 303.420, 303.422, 303.430, 303.432 and 303.510, Title 34 Code of Federal Regulations.

Subchapter 2. Program and Service Components
Article 2. Evaluation and Assessment

§ 52082. Procedures for Evaluation to Determine Eligibility.

(a) The determination of eligibility for an infant or toddler shall be made by qualified personnel of the regional center or LEA. The determination shall be made with the participation of the multidisciplinary team including the parent.

(b) Evaluation to determine eligibility shall be based on informed clinical opinion, which may be used as an independent basis to establish an infant's or toddler's eligibility, and include the following procedures:

(1) A review of pertinent records related to the infant's or toddler's health status and medical history provided by qualified health professionals who have evaluated or assessed the infant or toddler;

(2) A review of educational or other early intervention records;

(3) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators as necessary to understand the full scope of the infant's or toddler's unique strengths and needs;

~~(2)~~(4) Information obtained from parental observation and report; and,

~~(3)~~(5) Evaluation by qualified personnel of the infant's or toddler's level of functioning in each of the following areas:

(A) Cognitive development;

(B) Physical and motor development, including vision and hearing;

(C) Communication development;

(D) Social or emotional development; and,

(E) Adaptive development.

(c) No single procedure shall be used as the sole criterion for determining an infant's or toddler's eligibility.

(d) In no event may informed clinical opinion by itself be used to negate the results of the evaluation instruments used to establish eligibility set forth in paragraph (b) of this section.

~~(d)~~(e) Standardized tests or instruments may be used as part of the evaluation specified in 52082(b) above, and, if used, they shall:

(1) Be selected to ensure that, when administered to an infant or toddler with impaired sensory, motor or speaking skills, the tests produce results that accurately reflect the infant's or toddler's aptitude, developmental level, or any other factors the test purports to measure and not the infant's or toddler's impaired sensory, motor or speaking skills unless those skills are the factors the test purports to measure;

(2) Be validated for the specific purpose for which they are used.

~~(e)~~(f) If standardized, normed or criterion referenced instruments are used as part of the evaluation specified in 52082(b) above, a significant difference between an infant's or toddler's current level of functioning and the expected level of development for his or her age shall be established when an infant's or toddler's age equivalent score falls one third below age expectation.

~~(f)~~(g) Procedures and materials for evaluation and assessment of infants and toddlers shall be selected and administered so as not to be racially or culturally discriminatory.

~~(g)~~(h) Infants or toddlers with solely low incidence disabilities shall be evaluated and assessed by qualified personnel of the LEA whose professional preparation, license or credential authorization are specific to the suspected disability.

~~(h)~~(i) Regional centers, LEAs and multidisciplinary teams shall not presume or determine eligibility, including eligibility for medical services provided through the Department of Health Care Services, for any other state or local government program or service when conducting evaluations or assessments of an infant or toddler or their family.

~~(i)~~(j) Evaluations for eligibility shall be conducted in natural environments whenever possible.

Note: Authority cited: Sections 95009 and 95028, Government Code. Reference: Sections 303.300(b) and (c), 303.113, 303.321, 303.322, and 303.344 ~~and 303.323(b) and (c)~~, Title 34 Code of Federal Regulations; and Sections 95014(a)(1) and 95016, Government Code.

Subchapter 3. Individualized Family Service Plan
Article 2. Content and Procedures for the IFSP

§ 52109. Basis for the Provision of and Payment for Services Through Regional Centers.

(a) Regional centers shall provide, arrange, or purchase early intervention services, as required by the infant's or toddler's IFSP, and be payor of last resort for infants and toddlers determined eligible for early intervention services as:

- (1) Developmentally delayed pursuant to 52022(a);
- (2) Established risk pursuant to 52022(b)(1); or
- (3) High risk for developmental disability pursuant to 52022(c).

(b) Early Intervention services specified on the IFSP shall begin as soon as possible, but no later than 45 days of obtaining consent of the parent for those services. Although the payor of last resort, regional centers shall use funds for early intervention services when pursuing payment for services from a public or private source. During this period, rRegional centers shall continue to pursue payment from all available be the payor of last resort after all other public and private sources, including but not limited to available insurance. for payment have been reviewed to determine if a referral shall be made by the service coordinator and/or the parent. Referrals may include but not be limited to California Children Services, Medi-Cal, or other public agencies that may have responsibility for payment. This review shall not delay the provision of early intervention services specified on the IFSP. Early Intervention services specified on the IFSP shall begin as soon as possible.

~~(c) The use of the family's private insurance to pay for evaluation, assessment, and required early intervention services specified on the infant or toddler's IFSP, shall be voluntary.~~

~~For purposes of this subsection, voluntary means there is documentation in the child's record that parents have been informed of their right to receive evaluation, assessment and required early intervention services at no cost to the family and that the use of private insurance is voluntary.~~

Note: Authority cited: Sections 95009 and 95028, Government Code. Reference: Sections 1435(a)(10) and (c) and 1440, Title 20 United States Code; Sections 303.12, 303.510 and 303.520 and 303.527, Title 34 Code of Federal Regulations; and Sections 95004 and 95014(b), Government Code.

Subchapter 5. Procedural Safeguards
Article 1. Notice and Consent

§ 52162. Consent.

(a) The service coordinator shall obtain written parental consent before:

- (1) The initial evaluation and assessment of an infant or toddler is conducted; and
- (2) Early intervention services are initiated.

(b) The infant's or toddler's record shall contain written evidence that the parent has been informed:

- (1) Of information relevant to the evaluation, assessment, early intervention service, or exchange of records for which consent is sought, in the language of the parent's choice, and agrees to the completion of the evaluation or assessment and the provision of early intervention services;
- (2) That consent is voluntary and may be revoked at any time;
- (3) That he/she may accept or decline any early intervention service and may decline such service after first accepting it, and continue to receive other early intervention services; and,
- (4) About who will receive the records and a listing of the records to be exchanged.

(c) If consent is not given or is withdrawn, the regional center or LEA service coordinator shall ensure:

- (1) That the parent has been informed of the nature of the evaluation and assessment or the early intervention services that would have been provided;
- (2) That the parent has been informed that the infant or toddler will not receive the evaluation and assessment or early intervention services unless consent is given; and,
- (3) That the infant's or toddler's record contains documentation of the attempts to obtain consent.

(d) Regarding the use of an infant's or toddler's or parent's public benefits or insurance to pay for early intervention services, regional centers:

(1) May not require a parent to enroll in public benefits or insurance program as a condition of receiving early intervention services and must obtain consent prior to using the public benefits or insurance of an infant or toddler or parent if that infant or toddler or parent is not already enrolled in such a program;

(2) Must obtain consent to use an infant's or toddler's or parent's public benefits or insurance to pay for early intervention services if that use would:

(A) Decrease available lifetime insurance coverage or any other public benefit for the infant or toddler or parent under that program;

(B) Result in the infant or toddler or parent paying for services that would otherwise be covered by the public benefits or insurance program;

(C) Result in any increase in premiums or discontinuation of public benefits or insurance for the infant or toddler or parent; or

(D) Risk loss of eligibility for the infant or toddler or parent for home and community-based waivers based on aggregate health-related expenditures.

(3) Must still make available those early intervention services on the IFSP to which the parent has provided consent, when the parent has not provided consent to the use of the infant's or toddler's or parent's public benefits or insurance.

(e) Prior to using an infant's or toddler's or parent's public benefits or insurance to pay for early intervention services, regional centers must provide written notification to the infant's or toddler's parents. The notification must include:

(1) A statement that parental consent must be obtained before the Department of Developmental Services or an early intervention provider discloses, for billing purposes, an infant's or toddler's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program;

(2) A statement of the no-cost protection provisions in paragraph (d) of this section and that if the parent does not provide the consent under paragraph (d) of this section, the Department of Developmental Services must still make available those early intervention services on the IFSP for which the parent has provided consent;

(3) A statement that the parents have the right to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program at any time.

(f) Regarding the use of private insurance or benefits of an infant or toddler or parent to pay for early intervention services, regional centers:

(1) May use the infant's or toddler's or parent's private insurance to pay for evaluation, assessment, and required early intervention services to meet the infant's or toddler's needs, as specified on the infant's or toddler's IFSP.

(2) Are not required to obtain parental consent prior to using the infant's or toddler's or parent's private insurance. The use of the infant's or toddler's or parent's private insurance shall comply with Government Code section 95004(c).

(3) Must not delay the provision of early intervention services specified in the IFSP, on account of utilizing the infant's or toddler's or parent's private insurance. Early intervention services specified on the IFSP must begin as soon as possible.

Note: Authority cited: Sections 95009 and 95028, Government Code. Reference: Section 148039, Title 20 United States Code; Sections 303.401(a)(1)-(3), ~~303.403(c)(2)(iii)~~, 303.404(a), 303.404(b), ~~and 303.405~~ and 303.520, Title 34 Code of Federal Regulations.