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REVIEW COMMISSION

# Regulatory Analysis Form

(1) Agency  
  
Department of Public Welfare  
Office of Mental Retardation

This space for use by IRRC  
  
IRRC Number: 2122

(2) I.D. Number (Governor's Office Use)

(3) Short Title  
  
Early Intervention Services

(4) PA Code Cite  
  
55 Pa. Code, Chapter 4226  
55 Pa Code, Chapter 4225 Rescission

(5) Agency Contacts & Telephone Numbers  
  
Primary Contact: Mel Knowlton (717) 783-5764  
  
Secondary Contact: Maureen Cronin (717) 783-7213

(6) Type of Rule Making (Check One)  
  
 Proposed Rule Making  
 Final Order Adopting Regulation  
 Final Order, Proposed Rule Making Omitted

(7) Is a 120-Day Emergency Certification Attached?  
  
 No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.  
  
The purpose of this regulation is to establish general eligibility provisions and procedural safeguard requirements for early intervention services to children, from birth to under age three, receiving services from the Legal Entity administering Early Intervention Services. The regulation ensures consistent application of early intervention services to eligible children and their families.  
  
These regulations apply to the Legal Entities that administer early intervention services.

## Regulatory Analysis Form

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Act 212 the Early Intervention Services Act (11 P.S. §§ 875-101-875-503).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes, Act 212, the Early Intervention Services Act (11 P.S. §§ 875-101-875-503), Federal Part C of the Individuals with Disabilities Education Act (IDEA) and Family Educational Rights and Privacy Act (34CRF 300.576 – FERPA).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

A House Resolution requested that the Legislative Budget and Finance committee review the management of the early intervention program. In its final report, one of the findings noted that the Department had not developed regulations to clarify the county responsibilities and other important program responsibilities. Its recommendation states that the lack of regulations may explain, at least in part, the wide variation in practices and procedures from one county to another.

(12) State the public health, safety, and environmental or general welfare risks associated with non-regulation.

A general rule associated with non-regulation is eligible children may receive inconsistent services. One Legal Entity in a geographical location may administer early intervention services differently than a Legal Entity in another geographical location. Interpretation of departmental policy bulletins may vary throughout the Commonwealth. Program regulations will convey maximum compliance to Legal Entities.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Legal Entity will have a consistent form of policies and procedures that will assist them in the management and administration of the early intervention program. Approximately 13,600 eligible children and their families benefit by annually receiving Early Intervention services and 500 children who are at risk receive screening and tracking.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No group or individual is expected to be adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Up to 45 Legal Entities and approximately 253 Early Intervention Providers under contract to the Legal Entities will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Stakeholder groups comprised of County MH/MR representatives, family members, advocates, provider associations, providers and State Interagency Coordinating Council members met three times from September 1997 to March 1998. Written and oral comments were considered for input to the proposed regulations. Written comments from the stakeholder groups were also received during the same time period.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There will be no costs or savings to the regulated community associated with compliance to these regulations.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

There will be no costs or savings to local governments associated with compliance to these regulations. The cost factor for early intervention services is already in place under the authority of ACT 212(§ 875). The Department will invest significant time and effort to provide training to providers and others related to the new regulations.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures, which may be required.

There will be no costs or savings to State government associated with compliance to these regulations. The cost factor for the early intervention services is already in place under the authority of Act 212(§ 875). The Department will invest significant time and effort to provide training to providers and others related to the new regulations.

*Adam Roobey 12/13/98*

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
<b>COSTS:</b>	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
<b>REVENUE LOSSES:</b>	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(20a) Explain how the cost estimates listed above were derived.

## Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

\* Appropriated funds

Program	FY -3	FY -2	FY -1	Current FY
State Funds	\$35,088	\$35,420	\$44,320	\$44,483
Federal Funds				
Disabled Education	11,334	11,515	11,810	12,025
SSBG-Title XX	2,406	2,383	2,320	2,195
MA-EPDST	6,776	7,085	7,463	7,673
MA-Infants, Toddler & Families Waiver	0	0	0	9,328
Special Eval Studies	50	0	0	0
<b>Total Federal Funds</b>	<b>\$20,566</b>	<b>\$20,983</b>	<b>\$21,593</b>	<b>\$31,221</b>
<b>TOTAL FUNDS</b>	<b>\$55,654</b>	<b>\$56,403</b>	<b>\$65,823</b>	<b>\$75,704</b>

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

N/A

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No non-regulatory alternatives were considered because the Department is required to issue regulations under Act 212 of 1990.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No regulatory alternatives were considered. These regulations are needed to fulfill Act 212 of 1990 in order to be in compliance with Federal Part C of the Individuals with Disabilities Education Act.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Yes, although services to at risk children are optional under Part C of the Individual with Disabilities Education Act, the Screening and Tracking Protocol and the at risk definition are directly mandated under Act 212 of 1990 (P.S. §§ 875-101-875-503). In addition, the Legislative Budget and Finance Committee Report has recommended the independent evaluation process.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Several other States have adopted regulations to comply with Part C of the Individuals with Disabilities Education Act. The proposed regulations, along with adding screening and tracking requirements mandated by Act 212, are designed to keep Pennsylvania competitive with other states. All States use Part C funds and must comply with Part C, therefore, there is no competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, these regulations are unique to the Infants, Toddlers and Families Program.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Yes, public hearings will be held in three different locations throughout the state as set forth in the preamble.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

Yes, there will be some additional reporting and paperwork requirements relating to record keeping for staff development. The Legal Entities will be required to have available records that ensure 24 hours of training by all early intervention personnel on an annual basis.

(29) Please list any special provisions, which have been, developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Chapter 4226.40 relating to reporting, section (b). Special sections are included in the regulations for traditionally underserved groups (§4226.41), and surrogate parents (§4226.104).

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The new regulations will take effect upon publication as final rulemaking in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The review schedule will be provided once these regulations are submitted for final publication.



FACE SHEET  
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REVIEW COMMISSION

2122

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

*[Signature]*

(Deputy Attorney General)

MAY 04 2000

Date of Approval

Check if applicable  
If not approved. Objections  
attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Public Welfare

(Agency)

LEGAL COUNSEL: DAVIS M. LEE, CLU

DOCUMENT/FISCAL NOTE NO. #14-452

DATE OF ADOPTION: \_\_\_\_\_

BY: [Signature]

TITLE: Secretary of Public Welfare  
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY: [Signature]

February 7, 2000

Date of Approval

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE  
OFFICE OF MENTAL RETARDATION

55 PA Code Chapter 4226  
Early Intervention Services

Recission of 55 PA Code Chapter 4225  
Procedural Safeguards for Children  
In Early Intervention Services

**TITLE 55---PUBLIC WELFARE  
DEPARTMENT OF PUBLIC WELFARE  
55 PA. CODE CHAPTER 4226  
EARLY INTERVENTION SERVICES**

**Statutory Authority:**

The Department of Public Welfare (Department), under the authority of the Early Intervention Services Act (Act 212 of 1990) (11 P.S. §§ 875-102-875-503), proposes to adopt regulations to read set forth in Annex A.

**Background**

The Department is proposing regulations under the authority of Act 212 of 1990 (11 P.S. §§ 875-102-875-503), that directs the Department to develop regulations for early intervention services for infants and toddlers, under three years of age.

Community Early Intervention was initiated in 1971 with Federal P.L. 89-313 money going directly from the Department of Education to early intervention provider agencies.

Early Intervention categorical funding was initiated during fiscal year 1975-76. The Education Amendments Act of 1974, P.L. 93-380, defined the intent of Federal P.L. 89-313 monies. The Education Amendments Act of 1974 P.L. 93-380, contained a provision that the Federal P.L. 89-313 money earned must be given directly to that child who generated the funds, for the provision of supplemental educational services only.

As a result of this, the Department was directed to cease targeting of funds to specific agencies. A Program Revision Request was developed for \$1.5 million to replace, with State money, the amount of excess targeted Federal money so that programs could remain operational once the Federal funds were distributed equally. Legislative approval of this request allowed the Department to continue participation in the Federal P.L. 89-313 Program. By receipt of State dollars, all eligible agencies serving eligible children were able to apply for Federal and State money to supplement the Early Intervention Program. All eligible agencies (those who were serving children and submitting child counts) were offered the opportunity to receive Federal P.L. 89-313 funds.

The Federal Rights to Education Act 94-142 required all states having responsibility for the education of children with disabilities to have requirements for Procedural Safeguards. The Federal Department of Education Program Review of 1979 cited the Commonwealth, specifically the Department of Public Welfare, for not having a system of Procedural Safeguards and Surrogate Parent provisions as required.

The Department established 55 PA Code Chapter 4225. Procedural Safeguards For Children in Early Intervention to specify procedures for providing procedural safeguards for notice and consent; confidentiality; placement in least restrictive environment; development, implementation and review of individual program plans; and protection in evaluation for children in early intervention services, and established the rights the families were required to receive.

In 1986, the Individuals with Disabilities Education Act (IDEA) went into effect. Federal Part H of IDEA required the Department to provide Procedural Safeguards for children enrolled in the Early Intervention Program and include the child's family in the family assessment.

Federal Part H of IDEA required that states designate a lead agency to be responsible for the Early Intervention Program. The Early Intervention Services System Act (Act 212 of 1990) designates the Department to be responsible for the Early Intervention Program for infants and toddlers under three years of age. Act 212 also requires early intervention funding to be distributed through the county Mental Health/Mental Retardation Program Offices. The Legal Entity may meet this requirement to assure appropriate early intervention services by contracting with public or private agencies that meet all the requirements and program standards of Act 212. Act 212 further directed the Department to define and address all the issues concerning early intervention services by promulgating program regulations.

Since Act 212 of 1990 directed the Department to promulgate program regulations, policy bulletins were issued to clarify early intervention services requirements. Office of Mental Retardation Bulletins 4225-91-01; 4225-91-02; 4225-91-03; 4225-91-04; and 4225-91-05 were issued and the Department monitored the effect of the policy bulletins. Along with policy bulletins, intense involvement began for Stakeholders to work in conjunction with the Department to draft early intervention program regulations.

Effective 1997, IDEA was amended by Congress to update the law and the 1997 Amendment replaced Part H with Part C.

The purpose of this chapter is to assure that quality early intervention supports and services are consistently managed. These regulations address the needs of the child and the family's concerns, priorities and resources related to enhancing the development of the child with an Individualized Family Service Plan. The chapter also establishes criteria for eligibility, contracting guidelines, standards for service delivery, staff qualifications, and parental rights established in Part C of IDEA.

These proposed draft regulations are rescinding and reserving 55 PA Code Chapter 4225. Procedural Safeguards for Children in Early Intervention Services in accordance with Notice of Rule Change – Early Intervention Services 21 Pa Bulletin 2953 (June 29, 1991). The Procedural Safeguards are incorporated into the draft Program Regulations that will be set forth 55 PA Code Chapter 4226. Early Intervention Services.

### Regulatory Development Process

A work plan describing the process and time frames that would be followed leading to final promulgation of chapter 4226 was completed in July 1997. The plan provided for regular consultation with the State Interagency Coordinating Council, parents, early intervention consultants, early intervention provider organizations, legislative staff members, and representatives from the county mental health and mental retardation program offices.

On September 22 and 23, December 11, 1997 and March 3, 1998, group meetings were held with statewide representatives from the State Interagency Coordinating Council, parents, early intervention consultant organizations, provider organizations, legislative staff, and the county mental health and mental retardation program offices. The meetings were convened to give briefings on the scope of the new chapter and to obtain input on major issues of particular concern to the different individuals and organizations represented. These meetings were referred to as Stakeholder meetings.

The first in the series of meetings with stakeholders was convened on September 22 and 23, 1997. Prior to this meeting, invited participants were sent a preliminary draft of the proposed regulations. They were asked to review the document, submit written comments and attend the meeting prepared to make suggestions to improve the proposed regulations. Approximately 55 people were invited to attend the meeting.

Based on group recommendations, the proposed regulations were revised and sent back to the Stakeholder group for written comments. Written comments were considered and further regulation revisions were drafted prior to the December 11, 1997 meeting. Based on group recommendations again, all parties at the Stakeholder meeting held on December 11, 1997 agreed to parallel Federal language from Federal Part C of IDEA where possible in drafting the proposed Early Intervention Regulations.

Written comments were again considered, and further regulation revisions were drafted prior to the stakeholder meeting held on March 3, 1998, and prior to submission of this document as proposed rulemaking.

### Scope

These proposed regulations are intended to apply to the Legal Entities administering early intervention services. The proposed regulations will direct Legal Entities to develop and implement a statewide family-centered, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families. The Legal Entities will administer approximately 260 early intervention service providers to provide consistent early intervention services.

## **Format**

Chapter 4226 regulations are written to be applied to the Legal Entities that administer early intervention services. In addition to the General Provisions and the Definition sections, the proposed regulation is divided into sections that fall under six additional headings.

The Financial Administration heading contains §§ 4226.11 through 4226.15 that explain how the money is allocated and how the financial obligations are mandated. The General Requirements heading contains §§ 4226.21 through 4226.43 that detail the eligibility process, screening process and the training process. The Personnel heading contains §§ 4226.51 through 4226.57 that explains staffing requirements and qualifications.

The Evaluation And Assessment heading contains §§ 4226.61 through 4226.63 that details how the initial evaluation should be coordinated with the child's family. The Individualized Family Service Plans (IFSPs) heading contains §§ 4226.71 through 4226.75 that details procedures for the IFSP development, review and evaluation. The last heading, Procedural Safeguards, contains §§ 4226.91 through 4226.104 that explain hearings, appeals, mediations, and parental rights. The Procedural Safeguards were in effect since 1983 and the Department is proposing to incorporate the Safeguards into the proposed regulations.

## **Need for Regulations**

The Pennsylvania General Assembly directed, in section 302 (a) of Act 212 of 1990, that the Department of Public Welfare shall develop regulations to comply with the provisions of that Act and the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Act Amendments of 1997, 20 U.S.C. §§ 1431-1445. Specifically, the Department was authorized to develop regulations to govern the methods for locating and identifying eligible children; criteria for eligible programs; contracting guidelines; personnel qualifications and a system of pre-service and in-service training; early intervention services; procedural safeguards; appropriate placement, including the least restrictive environment; a system of quality assurance, including evaluation of the developmental appropriateness; quality and effectiveness of programs; assurance of compliance with the program standards; and provisions of assistance to assure compliance; data collection and confidentiality; interagency cooperation at the State and local level through the State interagency agreement and local interagency agreements; content and development of Individualized Family Service Plans; and any other issues which are required under Act 212 and Part H/Part C.

In addition, the Legislative Budget and Finance Committee (LBFC) under the authority of House Resolution 354 recommended the Department should promulgate program regulations as required by Act 212. The LBFC determined the Early Intervention Program would benefit from the structure that program regulations provide and would also promote standardization of practices and procedures among counties.

Following, by sections, is a discussion of the proposed regulations.

## **Financial Management**

### *§§4226.11-4226.15 Financial Management*

The proposed financial management section on financial administration of early intervention services applies 55 Pa. Code CH. 4300, titled: "County MH/MR Fiscal Manual", to the Legal Entities to identify allowable costs, and set forth the responsibility to access all private and public funding sources.

The section explains why Legal Entities are responsible for administering all early intervention services, whether or not the services are eligible under medicaid waiver.

## **General Requirements**

### *§ 4226.21 Delegation of Responsibilities*

This section allows a Legal Entity to contract with another agency to execute necessary requirements of this chapter. Although a Legal Entity possibly will contract with another agency to deliver early intervention services, the Legal Entity retains responsibility for assuring compliance with the program.

### *§ 4226.22 Eligibility for early intervention services*

The criteria and standards by which Legal Entities shall measure early intervention services eligibility for all eligible children are defined in this section.

### *§ 4226.23 Waiver Eligibility*

This section of the regulations related to the Medicaid Waiver for the Infants, Toddlers and Families reflects responsibilities for administration of services funded under this waiver.

The Medicaid Waiver is established under 1915(c) of the Social Security Act. Waiver funded services have been available to provide services for individuals with mental retardation, beginning in 1983. The Medicaid Waiver for Infants, Toddlers and Families is approved for a three year period from July 1, 1998 to June 30, 2001 and may be renewed for additional five year periods based on the approval of the Secretary of the Department of Health and Human Services.

Proposed Waiver regulatory provisions mirror county responsibilities that have already been established by a Department of Public Welfare under Mental Retardation bulletin 00-98-05, titled: Supplemental Grant Agreement for the Infants, Toddlers and Families Waiver, issued: May 7, 1998. County MH/MR Program offices are required to sign this agreement as an agent of the Commonwealth to assure Federal requirements are being met.

Regulations for administration of the waiver include provisions dealing with fiscal administration, eligibility, provider enrollment, freedom of choice safeguards, service management, and maintenance of state assurances required by the Federal Health Care Financing Administration. The regulations will establish requirements for independent multidisciplinary team evaluations; implementation of family-centered principles, and monitoring of cost and utilization of services. The Legal Entities would be responsible to administer services funded under this waiver in accordance with the provisions of these proposed regulations

**§ 4226.24 *Comprehensive Child Find System***

All available services are directed to be coordinated by the Legal Entity to allow eligible children within a defined geographical location the opportunity to receive all eligible early intervention services and supports. This proposed section requires a Legal Entity to develop an effective method to locate all eligible infants and toddlers and deliver the needed early intervention services. Legal Entities must coordinate this child find system with the local Interagency Coordinating Council and all other appropriate programs.

**§§ 4226.25-4226.32 *Screening and Tracking***

These sections detail the processes of initial screening of children who may be eligible for early intervention services. They describe and provide information concerning how eligibility is determined and when the Multidisciplinary Evaluations (MDE) Team makes recommendations for further evaluations.

These sections define procedures to perform the screening as well as providing how information shall be shared in writing with the families. This information concerns the developmental status of their infants or toddlers and the supports and services that will be available to address the individualized needs of each child and family, based on the priorities and resources identified by the family.

The criteria for an at risk child is defined here as stated in Act 212, and the Legal Entity is directed to develop a tracking system for at risk children.

**§ 4226.33 *Legal Entity Monitoring Responsibilities***

This section requires a Legal Entity to monitor its early intervention service providers. The Legal Entity is required to monitor all early intervention services that occur within a defined geographical location, or any services that are contracted to an agency outside their defined geographical location. The Legal Entity is required to monitor each early intervention service provider at least once every 12 months.

**§ 4226.34 *Community Evaluations,***

The regulations will require at least once in every three years, the Legal Entity to conduct an early intervention self-assessment review to ensure that all early intervention services are accomplishing their desired program goals and to ensure family satisfaction is occurring.

The Department will continue to develop the assessment process and provide training to the Legal Entities. During the past five years, the Department was paying an outside entity to develop and pilot an assessment instrument, based on Federal and State Statute, and Department policy bulletins. The Department has been using a formalized monitoring instrument for three years. The assessment process and the instrument for self-assessment are based on family-centered principles and other best practices.

*§§ 4226.35-4226.37 Training*

All professional and para-professional personnel providing EI services will be required to have preservice training as outlined in the regulations prior to working with family and children.

The Department will determine how many hours of training Early Intervention staff will receive on an annual basis. At least 24 hours of training on an annual basis seems to be the most appropriate. This training is required to be in Early Childhood Developmental and Health areas.

*§ 4226.38 Criminal History Record Check*

This section is proposed to ensure that the Legal Entities comply with, and monitor the Child Protective Services Law, Title 23 Pa. C.S. §§ 6301-6384, known as Act 33 of 1985. Although all Legal Entities and all early intervention service agencies must already comply with Act 33, a section in the proposed Early Intervention Regulations will reinforce to all staff persons what is required in Act 33.

*§ 4226.41 Traditionally Underserved Groups*

To ensure that all proposed populations within a defined geographical location are equally involved in the planning and implementation of early intervention services, this section is intended to allow families access to culturally competent services.

*§§ 4226.42 Local Interagency Coordinating Council*

When the Early Intervention Services System Act (Act 212 of 1990) was enacted, the Department was directed to establish and maintain local interagency coordinating councils for defined geographic areas. This council is required by the Education of the Handicapped Act Amendments of 1986 (P.L. 99-457, 100 Stat. 1145).

This section directs the Legal Entity to ensure the local interagency coordinating councils are established, and to whom membership is to be limited. This section clarifies the powers and duties of the local council and establishes its authorization in the advisement and comments on the development of local interagency agreements. This section directs the local interagency coordinating council with whom they shall communicate regarding local interagency agreements.



## **Personnel**

### *§§ 4226.51-4226.57 Personnel*

The personnel sections define and outline specific qualifications and activities required of services coordinators and the early interventionists who perform early intervention services within each Legal Entity. A grandfather clause is included in the personnel qualifications for hiring and promoting before effective date of this regulation.

The Department reviewed the literature regarding personnel qualifications and considered other regulations that are being applied to similar services. The Department determined that early interventionists and service coordinators do not have state-required certification, licensure or registration. The qualifications and activities outlined in these regulations are comparable with similar services in other regulations.

## **Evaluation and Assessment**

### *§§ 4226.61-4226.63 Evaluation and Assessment*

These proposed sections require evaluation and assessment to determine initial and ongoing eligibility for EI services. Evaluation and assessment provides information for Individual Family Service Plan (IFSP). These sections propose to mandate parental consent and non-discriminatory practices.

## **Individualized Family Service Plan**

### *§§ 4226.71-4226.75 Individualized Family Service Plan (IFSP)*

The outcome of evaluation and assessment is a written plan using information obtained during the evaluation and assessment process. The IFSP is a detailed description of services and supports, which will be provided to an infant or toddler and his/her family, for a maximum period of 12 months with a review process every six months or less.

Federal Part C of IDEA specifies the family is required to be involved in the planning, development, review, and evaluation of the IFSP.

These sections detail the Individualized Family Service Plan (IFSP), which must be completed for each eligible child. Guidelines for the development, review, evaluation and content of the IFSP are detailed; when and where an IFSP meeting will be conducted is detailed; participants to be included in IFSP meetings and reviews are listed; and the steps for transition from early intervention are explained.

## **Procedural Safeguards**

### ***§§ 4226.91-4226.104 Conflict Resolution Procedures and Parental Rights***

In these sections of the proposed regulations, the Department outlines procedures, parental rights, and child status within a program during review and resolution of individual complaints.

These sections define the provisions of the procedural safeguards system for infants, toddlers and their families. The sections specify the Legal Entities' responsibilities relative to the actual processing of requests from families and the requirements that must be met to assist the families in understanding their rights regarding consent, native language, personally identifiable information and the parent's rights to examine records or to decline services.

Federal Part C of the 1997 amendments to IDEA specifies that mediation between the Legal Entity and families is required for all issues concerning the early intervention services each child is receiving. This section requires the Legal Entity to ensure that procedures are adopted to allow the mediation process to occur.

This section outlines policies and procedures available to families, on a voluntary basis, for resolution of disputes through an independent mediation process.

### ***§ 4226.105 Surrogate Parents***

This section will establish the procedures a Legal Entity must adopt to ensure the rights of eligible children when appointing surrogate parents.

Also in this section, the qualifications and rights of surrogate parents and foster parents will be established.

### **Summary of Fiscal Note**

In drafting these proposed Chapter 4226 regulations, consideration was given to the effect the regulations will have on the cost of providing early intervention services. These regulations incorporate requirements already imposed under Act 212 of 1990, Part C of the Individuals with Disabilities Education Act, and accompanying regulations, and the Infants, Toddlers and Families Medicaid Waiver approved by the Health Care Financing Administration, all of which are currently in place. Therefore, no additional cost or savings is anticipated.

### **Paper requirements**

There are no additional paperwork requirements for these regulations.

### **Effective Date**

The new regulations will take effect upon publication as final rulemaking in the Pennsylvania Bulletin.

**Sunset Date**

No sunset date has been established for these proposed amendments.

**Public Hearings**

The Department of Public Welfare will hold public hearings as follows:

Western Region  
July 17, 2000  
Western Instructional Support Center  
5347 William Flynn Highway, Route 8  
Gibsonia, PA 15044  
10:00 a.m. – 1:00 p.m.

Central Region  
July 24, 2000  
Central Instructional Support Center  
6340 Flank Drive, Suite 600  
Harrisburg, PA 17112  
10:00 a.m. – 1:00 p.m.

Southeast Region  
July 25, 2000  
Eastern Instructional Support Center  
200 Anderson Road  
King of Prussia, PA 19406  
10:00 a.m. – 1:00 p.m.

Requests to provide verbal comments are to be addressed to:

Mary Puskarich  
Western Region OMR  
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(717) 772-6507

Individuals wishing to comment at the public forums are requested to limited their comments to five minutes. Three copies of written comments are also requested to be provided.

**Public Comment Period**

Interested parties are invited to submit written comments, suggestions or objections regarding the proposed regulation to the Department of Public Welfare, Mr. Mel Knowlton, P.O. Box 2675, Harrisburg, PA 17105-2675, phone (717) 783-5764, fax (717) 787-6583 ~~within~~ **60 calendar days** after the date of publication in the *Pennsylvania Bulletin*. All comments received within 60 calendar days will be reviewed and considered in the preparation of the final regulation. Comments received after the 60-day comment period will be considered for any subsequent revisions of this proposed regulation.

**Regulatory Review Act**

Under § 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§ 745.1-745.15), the Department submitted a copy of this proposed regulation on MAY 23 2000 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation". A copy of Regulatory Analysis Form is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria, which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the final-form regulations of objections raised by the Department, the General Assembly and the Governor.

MAY 17 2000

#14-45

**ANNEX A**

**TITLE 55. PUBLIC WELFARE**

**PART VI. MENTAL HEALTH AND MENTAL RETARDATION MANUAL**

**SUBPART C. ADMINISTRATION AND FISCAL MANAGEMENT**

**CHAPTER 4226. EARLY INTERVENTION SERVICES**

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**ANNEX A  
TITLE 55. PUBLIC WELFARE**

**PART VI. MENTAL HEALTH AND MENTAL RETARDATION MANUAL  
SUBPART C. ADMINISTRATION AND FISCAL MANAGEMENT**

**[DELETE 55 PA CODE CHAPTER 4225. PROCEDURAL SAFEGUARDS FOR  
CHILDREN IN EARLY INTERVENTION SERVICES]**

**CHAPTER 4226. EARLY INTERVENTION SERVICES**

**Authority**

*The legal authority for this chapter is 11 P.S. §875-101 et seq.*

**GENERAL PROVISIONS**

**§4226.1. Introduction.**

- (a) Early intervention services and supports are provided to families and eligible children under age three to maximize the child's developmental potential. Early intervention services for an infant and toddler are provided in conformity with an individualized family service plan.
- (b) Early intervention services are founded on a partnership between families and early intervention personnel which is focused on the unique needs of the child and the concerns and priorities of each family and builds on family and community resources.

**§4226.2. Purpose.**

This chapter establishes required procedures and standards for the early intervention program.

**§4226.3. Applicability.**

This chapter applies to a Legal Entity providing early intervention services.

**§4226.4. Legal Authority.**

The legal authority for this chapter is section 201(2) of the Public Welfare Code (62 P.S. §201(2)), and The Early Intervention Services System Act (11 P.S. §§875-101) and subsequent revisions to this Act.

**§4226.5. Noncompliance.**

The failure of a public Legal Entity to comply with any provision of this chapter so that as a result, the needs of children eligible under this chapter are not being adequately met, shall subject the public Legal Entity to penalties consistent with §512 of the Mental Health and Mental Retardation Act of 1966, (50 P.S. §4512)

**§4226.6. Definitions.**

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

*Appropriate professional requirements* - entry level requirements that -

- (i) Are based on the highest requirements in the profession or discipline in which a person is providing early intervention services to enable the individual to obtain licensure, certification or registration in the profession; and
- (i) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by public and private agencies.



***Assessment*** - the ongoing procedures used throughout the period of a child's eligibility under this part to identify--

- (i) The child's unique strengths and needs and the services appropriate to meet those needs;  
and
- (ii) The resources, priorities, and concerns of the family and the identification of supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

***Assistive technology device*** - 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 children with disabilities.

***Assistive technology service*** - a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include--

- (A) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (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 a child with disabilities or, if appropriate, that child's family; and

(F) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

***At risk infant or toddler*** - An individual under 3 years of age eligible for screening and tracking as defined by Act 212, *The Early Intervention Systems Services Act*, and any subsequent amendments.

***Audiology Services*** include—

(A) Identification of children with auditory impairment, using audiologic screening techniques;

(B) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(C) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(D) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(E) Provision of services for prevention of hearing loss; and

(F) 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.

**Child** - An individual under three years of age who has been determined eligible for services under this Chapter.

**County MH/MR Program (Legal Entity)** - A MH/MR Program established by a county or two or more counties acting in concert and includes a complex of services providing a continuum of care in the community for the mentally disabled.

**Days** - Calendar days.

**Department** - The Department of Public Welfare of the Commonwealth of Pennsylvania.

**Developmental delay** - The extent or type of developmental delay that a child demonstrates in order to be eligible for early intervention services.

**Early intervention Program** - The development, management and administration of the delivery of services in a geographic location that is directed toward meeting the developmental needs of children eligible under this chapter and their families.

**Early intervention services** - Developmental services that—

- (i) are provided under public supervision;
- (ii) are provided at no cost to families;
- (iii) are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas --

- (A) physical development;
- (B) cognitive development;
- (C) communication development;
- (D) social or emotional development; or
- (E) adaptive development;

(iv) Meet the requirements of this chapter;

(v) include -

- (A) family training, counseling, and home visits
- (B) special instruction;
- (C) speech-language pathology and audiology services;
- (D) occupational therapy;
- (E) physical therapy;
- (F) psychological services;
- (G) service coordination services;
- (H) medical services only for diagnostic or evaluation purposes;
- (I) early identification, screening, and assessment services;
- (J) health services necessary to enable the infant or toddler to benefit from the other early intervention services;
- (K) social work services;
- (L) vision services;
- (M) assistive technology devices and assistive technology services; and
- (N) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

(vi) are provided by qualified personnel, including at a minimum, the following--

- (A) special educators;
- (B) speech-language pathologists and audiologists;
- (C) occupational therapists;
- (D) physical therapists;
- (E) psychologists;
- (F) social workers;
- (G) nurses;
- (H) nutritionists;
- (I) family therapists;
- (J) orientation and mobility specialists; and
- (K) pediatricians and other physicians;

- (L) early interventionists; and
- (M) service coordinators.

***Evaluation*** - Procedures used to determine a child's initial and continuing eligibility under this chapter, consistent with the definition of "infants and toddlers with disabilities" including determining the status of the child in each of the developmental areas.

***Family training, counseling, and home visits*** - services provided by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this chapter in understanding the special needs of the child and enhancing the child's development.

***Health services*** - Services necessary to enable a child to benefit from the other early intervention services during a time that the child is receiving medical intervention. The term includes--

- (i) Clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags; and
- (ii) Consultation by physicians with other service providers concerning the special health care needs of an eligible child that will need to be addressed in the course of providing other early intervention services.

The term does not include the following:

- (i) Services that are--
  - (A) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or
  - (B) Purely medical in nature (such as hospitalization for management of congenital

heart ailments, or the prescribing of medicine or drugs for any purpose).

(ii) Devices necessary to control or treat a medical condition.

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

***Individualized family service plan (IFSP)*** - A written plan for providing early intervention services to a child eligible under this chapter and the child's family.

***Infant and toddler with disabilities*** - An individual under 3 years of age who needs early intervention because the individual ----

(i) is experiencing developmental delays in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

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

***Legal Entity*** – Any public or private entity responsible for administering the early intervention program in a defined geographical location.

***Location*** - The actual place or places where a service will be provided.

***Method*** - How a service is provided including whether the service is given directly to the child with family/child care participation or without family/child care participation, or if the service is provided as instruction to the family or care giver.

***Multidisciplinary*** - The involvement of two or more disciplines or professions in the provision of

integrated and coordinated services, including evaluation and assessment activities and development of the IFSP.

***Native language*** - The language or mode of communication normally used by the parent of a eligible child. If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, braille, or oral communication). The written information is translated orally or by other means to the parent in the parent's native language or other mode of communication;

***Natural Environments*** – Settings that are natural or normal for the child's age peers who have no disabilities.

***Nursing services*** – include -

- (i) 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;
- (ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
- (iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

***Nutrition services*** include-

- (i) Conducting individual assessments in--
  - (a) Nutritional history and dietary intake;
  - (b) Anthropometric, biochemical, and clinical variables;
  - (c) Feeding skills and feeding problems; and
  - (d) Food habits and food preferences;

- (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in paragraph (i) of this section; and
- (iv) Making referrals to appropriate community resources to carry out nutrition goal.

***Occupational therapy*** is an array of services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development, are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and includes -

- (i) Identification, assessment, and intervention;
- (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
- (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

***Parent*** – A natural or adoptive parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with §4226.127. The term does not include the County agency.

***Personally identifiable information*** – Information that would make it possible to identify a particular child or family including;

- (i) The name of the child, the child's parent, or other family member;
- (ii) The address of the child or family;
- (iii) A personal identifier, such as the child's or parent's social security number; or



- (iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

***Physical therapy*** is an array of services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation, and includes-

- (i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;
- (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
- (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

***Psychological services*** includes--

- (i) Administering psychological and developmental tests and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and
- (iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

***Qualified*** – Meeting State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

***Service coordination (case management)*** - The activities carried out by a service coordinator to assist and enable an eligible child and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the early intervention program.

***Special instruction*** includes—

- (i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;
- (ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;
- (iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and
- (iv) Working with the child to enhance the child's development.

***Speech-language pathology*** includes-

- (i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
- (ii) Referral for medical or other professional services necessary for the habilitation or

rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

***Transportation and related costs*** - includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

***Vision services*** includes--

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

## **FINANCIAL MANAGEMENT**

### **§4226.11. Financial administration.**

55 Pa. Code CH. 4300 titled "County Mental Health and Mental Retardation Fiscal Manual" applies to the County Mental Health and Mental Retardation Program (*Legal Entity*) for purposes of identifying allowable costs and for the general financial administration of early intervention services.

### **§4226.12. Waiver funds.**

The Legal Entity shall allocate and expend supplemental grant funds for the provision of services for infants, toddlers and families pursuant to the home and community waiver known as the Infant, Toddlers and Families Medicaid Waiver approved by the Department of Health and Human Services under Section 1915(c) of the Social Security Act.

### **§4226.13. Nonsubstitution of funds.**

(a) Early intervention state funds shall not be used to satisfy a financial commitment for services that would have been paid for from another public or private funding sources. A Legal Entity is responsible for providing all of the early intervention services in the child's Individualized Family Service Plan (IFSP) whether or not those services are eligible under the medicaid program.

(b) Parents who have private insurance shall not be required to use their insurance. The parents may volunteer to use their insurance, however, parents shall not suffer financial losses, which include, but may not be limited to;

- (i) A decrease in available lifetime coverage or any other benefit under an insurance policy;
- (ii) An increase in premiums or the discontinuation of the policy; or
- (iii) An out-of-pocket expense such as the payment of a deductible amount in filing a claim.

**§4226.14. Documentation of other funding sources.**

- (a) Written documentation that all other private and public funding sources available to the child and family have been accessed and exhausted, shall be kept with the child and family's permanent Legal Entity's file.
- (b) Written procedures used by the Legal Entity, and approved by the Department, to identify and access all other private and public funding sources shall be kept.

**§4226.15. Interim payments.**

- (a) When necessary to prevent a delay in the receipt of early intervention services by an infant, toddler, or family in a timely fashion, early intervention state funds shall be used to pay the provider of services pending reimbursement from the agency or funding source that has ultimate responsibility for the payment.
- (b) The Legal Entity shall seek reimbursement from the appropriate funding source to cover the interim payments incurred for early intervention services.

## **GENERAL REQUIREMENTS**

### **§4226.21. Delegation of responsibilities.**

The Legal Entity shall comply with this chapter. The Legal Entity may contract with another agency for delivery of services that are required in this chapter. The Legal Entity shall ensure compliance by all agencies providing services of the requirements of this chapter.

### **§4226.22. Eligibility for early intervention services.**

The Legal Entity shall ensure that early intervention services are provided to all eligible children who meet one or more of the following eligibility criteria:

- (a) The child is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures indicating that the child is delayed by 25% of the child's chronological age in one or more developmental areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development; or
- (b) The child is delayed in one or more of the developmental areas: cognitive development; physical development, including vision and hearing; communication development; social or emotional development; or adaptive development. Delay in developmental areas shall be documented by the test performance of 1.5 standard deviations below the mean on accepted or recognized standard tests for infants and toddlers; or

(c) The child has a diagnosed physical or mental condition which has a high probability of resulting in a developmental delay as specified in (a). A child who is determined by a multidisciplinary team as having an identifiable physical or mental condition, but who is not exhibiting delays in any developmental area at the time of diagnosis, is included as a child with a high probability of resulting in developmental delay; or

(d) Informed clinical opinion may be used when there are no standardized measures or the standardized procedures are not appropriate for a child's chronological age or developmental area. Informed clinical opinion makes use of qualitative and quantitative information to assist in forming a determination regarding difficult-to-measure aspects of current developmental status and the potential need for early intervention.

**§4226. 23. Waiver Eligibility.**

The Legal Entity shall ensure that infants, toddlers until the age of three are eligible for level of care in accordance with the criteria for an ICF/MR or ICF/ORC as follows:

(a) A licensed psychologist, certified school psychologist or a licensed physician shall certify that the applicant or recipient has significantly subaverage intellectual functioning which is documented by one of the following:

(1) Performance that is more than two standard deviations below the mean as measurable on a standardized general intelligence test.

(2) Performance that is slightly higher than two standard deviations below the mean of a standardized general intelligence test during a period when the person manifests

serious impairments or adaptive behavior; or

(c) A professional shall certify that the applicant or recipient has other related conditions that include cerebral palsy and epilepsy, as well as other conditions - such as autism - other than mental illness - that result in impairments of general intellectual functioning or adaptive behavior, and require early intervention services and treatment; and

(d) A professional certifies that the applicant or recipient has impairments in adaptive behavior as provided by an assessment of adaptive functioning which shows that the applicant or recipient has one of the following:

(1) Significant limitations in meeting the standards of maturation, learning, personal independence, or social responsibility of his/her age and cultural group evidenced by a minimum of a 50 percent delay in one or 33 percent delay in two of the following developmental areas:

- (i) cognitive development
- (ii) physical development, including vision and hearing
- (iii) communication development
- (iv) social and emotional development
- (v) adaptive development; or

(2) Substantial functional limitation in three or more of the following areas of major life activities:

- (i) self-care



- (ii) receptive and expressive language
- (iii) learning
- (iv) mobility
- (v) self-direction
- (vi) capacity for independent living
- (vii) economic self-sufficiency; and

(3) The applicant's or recipient's conditions are likely to continue indefinitely for a period of at least 12 months.

(e) The Legal Entity shall cooperate with the County Assistance Office in determining an infant, toddler and family's initial and continuing financial eligibility for waiver services.

**§4226.24. Comprehensive child find system.**

(a) The Legal Entity shall develop a child find system that will ensure that:

(1) All infants and toddlers in the geographical area of the Legal Entity who are eligible for services under this chapter are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(b) The Legal Entity, with the assistance of the local Interagency Coordinating Council, shall ensure that the child find system is coordinated with all other major efforts to

locate and identify children.

- (1) The local preschool program authorized under Part B of the Individuals with Disabilities Education Act (IDEA);
- (2) Maternal and Child Health Programs under Title V of the Social Security Act;
- (3) Early Periodic Screening, Diagnosis and Treatment (EPSDT) Programs under Title XIX of the Social Security Act;
- (4) Developmental Disabilities Assistance and Bill of Rights Act;
- (5) Head Start Act; and
- (6) Supplemental Security Income Programs under Title XVI of the Social Security Act.

(c) The Legal Entity, with the assistance of the local Interagency Coordinating Council, shall take steps to ensure that the child find system –

- (1) There will not be unnecessary duplication of effort by the various agencies involved in the local child find system; and
- (2) The Legal Entity will coordinate and make use of resources available through the local public agencies to implement the child find system in an effective manner.

(d) The child find system shall include procedures for use by primary referral sources for referring a child to the Legal Entity.

- (1) Evaluation and assessment, in accordance with §4226.62 and §4226.63; or

(2) As appropriate, the provision of services, in accordance with §4226.72(a) or §4226.75.

(e) The procedures required in paragraph (b) of this section shall --

(1) Provide for an effective method of making referrals by primary referral sources;

(2) Ensure that referrals are made no more than two working days after a child has been identified; and

(3) As used in paragraph (d) of this section, primary referral sources includes--

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care Programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(f) Timelines to act on referrals.

(1) Once the Legal Entity receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the Legal Entity shall--

(i) Complete the evaluation activities in §4226.62;

- (ii) Hold an IFSP meeting, in accordance with §4226.72; or
- (iii) Develop plan for further assessment and tracking.

**§4226.25. Initial screening.**

- (a) An initial screening shall be completed with written parental consent on each child referred to the Legal Entity to assist the child and family to access early intervention, to determine the existence of previous evaluation(s) and to recommend the need for referral for a Multidisciplinary Evaluation (MDE) to determine eligibility for early intervention.
- (b) The initial screening, and the evaluation specified in §4226.62 (relating to multidisciplinary evaluation) may be conducted simultaneously.

**§4226.26. Purpose of initial screening.**

The purpose of the initial screening shall be to determine the need for referral for a Multidisciplinary Evaluation (MDE) to determine eligibility for early intervention services or tracking.

**§4226.27. Content of screening.**

The initial screening shall include a review of at least one of the following completed within six months prior to the child's referral to the Legal Entity and family reports of identified concerns.

- (a) Review of written professional reports that are based upon systematic observation or

informed clinical opinion, including reports from referring physicians, Neonatal Intensive Care Units, health care workers, a community-wide screening program or Well Baby Clinic, Early Periodic Screening Diagnosis and Treatment examination, social service Departments, child protection programs, early intervention programs or any other source.

(b) Information about a child's developmental status obtained through a formalized screening process developed and conducted by the Legal Entity or an agency under contract with the Legal Entity.

**§4226.28. Recommendations to parents.**

As a result of the initial screening, the Legal Entity shall make one of the following recommendations to the child's parent.

(1) The child is recommended for referral to the MDE to confirm eligibility determination for early intervention, based on information contained in medical records, clinical opinion or recorded documentation and for providing information for the development of the Individualized Family Service Plan (IFSP).

(2) The child is recommended for referral to the MDE for further evaluation to determine eligibility for early intervention.

(3) The child is recommended for referral to the tracking system.

(4) The child is not eligible for early intervention or tracking services at this time and the

parents have been informed of their options for continued contact with the

Legal Entity should the needs change.

**§4226.29. Notice to parent.**

The Legal Entity shall provide a written notice, in the native language of the parent or other mode of communication of the family, to the child's parent of the screening results as specified in §4226.27 (relating to recommendations to the parent). If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, braille, or oral communication). The written information is translated orally or by other means to the parent in the parent's native language or other mode of communication.

**§4226.30. At-risk children.**

A child identified through the initial multidisciplinary evaluation is eligible for tracking if the child is identified in one of the population groups shall include, but not be limited to:

- (1) Children whose birth weight is under 1,500 grams;
- (2) Children cared for in neo-natal intensive care units of hospitals;
- (3) Children born to chemically dependent mothers and referred by a physician, health care provider or parent;
- (4) Children who are seriously abused or neglected, as substantiated and referred by the county children and youth agency under the act of November 26, 1975 (P.L.438, No.124), pursuant to the Child Protective Services Law of 1975 as amended;
- (5) Children with confirmed dangerous levels of lead poisoning as set by the Department of

Health.

**§4226.31. Tracking system.**

The Legal Entity shall develop a tracking system to conduct or arrange for reevaluations for children identified in §4226.30 (relating to at-risk children).

**§4226.32. Contacting families.**

(a) The Legal Entity shall contact families by telephone, in writing, or through a face-to-face meeting at least every four months after a child is referred to the tracking system, or until a parent requests no further contact by the Legal Entity.

(b) The contact shall offer reevaluation to determine the need and eligibility for early intervention services.

**§4226.33. Monitoring responsibilities.**

(a) The Legal Entity shall be responsible for monitoring early intervention services, including service coordination, for which the Legal Entity contracts. This includes monitoring of services provided in another county or state.

(b) Legal Entity monitoring shall include the measurement and assurance of compliance with applicable sections of this chapter and of the quality of services provided.

(c) The Legal Entity shall complete monitoring of each early intervention service provider at least once every 12 months.

**§4226.34. Community evaluations.**

The Legal Entity, in consultation with the Local Interagency Coordinating Council (LICC) and the Legal Entity Advisory Board, shall conduct an early intervention self-assessment review at least once in every three years, including family satisfaction.

- (1) The Legal Entity advisory board and the local interagency coordinating council shall participate in the development and application of the community evaluation system:
- (2) At least half of the persons who participate in the development and application of the community evaluation system shall be family members of children who are receiving, or have received, early intervention services.

**§4226.35. Training.**

Professional and paraprofessional personnel who serve on the interdisciplinary team or who provide direct care or service to a child shall be certified, licensed or registered, as approved by the Pennsylvania department of state, for the discipline that they are providing.

**§4226.36. Preservice training.**

The service coordinator, early interventionist and other early intervention personnel who work directly with the child, including personnel hired through contract, shall be trained before working with children or families in the following areas:

- (1) Orientation to Pennsylvania's early intervention service system and family centered approaches, including the purpose and operation of the state and local interagency coordinating councils.
- (2) The requirements of this chapter.



- (3) Duties and responsibilities of their position.
- (4) Methods for working with families (family centered approaches) to encourage and support family preference and involvement.
- (5) The interrelated social, emotional, health, developmental and educational needs of children.
- (6) Knowledge and use of available local and state community resources.
- (7) The principles and methods applied in the provision of services in the natural environment.
- (8) The fiscal operations of the early intervention service system, and its relationship to each individual involved and the specific funding system(s).
- (9) Training in fire safety, emergency evacuation, first aid techniques, and child cardiopulmonary resuscitation (for all staff), as well as for the early interventionist and other personnel who work directly with the child. The date of the completion of training shall be documented by the signature of a representative of the training entity. Documentation shall be retained in the agency's personnel file. Recertification will be required on or before expiration of specific certification.

**§4226.37. Annual training.**

- (a) The service coordinator, early interventionist and other personnel who work directly with the child, including personnel hired through contract, shall have at least 24 hours of training annually, relevant to early intervention services, child development, community resources or services for children with disabilities. Specific areas shall include cultural competence, mediation,

procedural safeguards and universal health procedures.

(b) The training specified in §4226.36(9) (relating to preservice training) shall be renewed annually, unless there is a formal certification for first aid or cardiopulmonary resuscitation by a recognized health source valid for more than one year. If there is a formal certification by a recognized health source valid for more than one year, the time period specified on the certification shall apply.

(c) Records of all training shall be kept in the agency's personnel files.

**§4226.38. Criminal history records check.**

Under the Child Protective Services Law, Title 23 Pa. C.S. §§6301-6384, (Act 33 of 1985), each Legal Entity shall ensure that all staff persons who will have direct contact with children shall comply with Act 33 of 1985, and to comply this shall include, but not be limited to:

(a) All staff persons who will have direct contact with children, including part-time and temporary staff persons who will have direct contact with children, shall submit, along with their employment application, a Pennsylvania criminal history record check.

(b) All staff persons who reside outside of Pennsylvania and who will have direct contact with children, including part-time and temporary staff persons who will have direct contact with children, shall submit, along with their employment application, a Pennsylvania criminal history check and a Federal Bureau of Investigation (FBI) criminal history record check.

(c) The Pennsylvania and FBI criminal history record checks shall have been completed no

more than 1 year prior to the staff person's date of hire

**§4226.39. Penalties for noncompliance.**

(a) Noncompliance with this chapter, either as a result of Legal Entity action or inaction, or an early intervention service provider action or inaction, shall result in loss or delay of early intervention funding to the Legal Entity.

(b) Appeals related to loss of early intervention funding shall be made by the Legal Entity in accordance with 2 Pa. C.S. §§501-508 and 701-704 (relating to the Administrative Agency Law).

**§4226.40. Reporting.**

(a) The Legal Entity shall submit reports in a form and containing information as the Department may require; and

(b) The Legal Entity shall be responsible for keeping records and affording access to those records as the Department may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this chapter.

**§4226.41. Traditionally underserved groups.**

The Legal Entity shall ensure—

(a) That traditionally underserved groups, including minority, low-income, and rural families, are provided the opportunity to be active participants involved in Local Interagency Coordinating Councils (LICC's) and Parent Advisory Groups. Traditionally underserved groups will also be

provided the opportunity to participate in the planning, development of a plan of services for their eligible child and implementation of the services; and

(b) That these families have access to culturally competent services within their local geographical areas.

**§4226.42. Local Interagency Coordinating Council.**

The Legal Entity shall ensure--

(a) The establishment and maintenance of local interagency coordinating councils, which shall include, but not be limited to, parents and private providers; and

(b) Which shall be authorized to advise and comment on the development of local interagency agreements; and

(c) To communicate directly with the Departments of Education, the Department of Health, the Department of Public Welfare and the State Interagency Coordinating Council regarding the local interagency agreement and any other matters pertaining to this part.

**§4226.43. Confidentiality of information.**

Each Legal Entity shall ensure the protection of any personally identifiable information collected, used, or maintained under this chapter, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

**PERSONNEL**

**§4226.51. Service Coordination.**

Service coordination shall include activities carried out by a service coordinator to meet the developmental needs of the child and the family's concerns, priorities and resources relating to enhancing the child's development.

**§4226.52. Provision of service coordination.**

At the point of referral of the child and family to early intervention, the Legal Entity, either directly or through subcontract, shall immediately provide the services of a service coordinator to the family.

Each eligible child and the child's family shall be provided with one service coordinator who is responsible for coordinating all services across agency lines, and serving as the single point of contact in helping parents to obtain the services and assistance they need.

**§4226.53. Activities.**

Service coordination is an active, ongoing process that involves:

- (1) Coordinating the completion of initial screenings, evaluations, tracking, IFSP development and IFSP implementation.
- (2) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;
- (3) Coordinating, facilitating and monitoring the timely delivery of early intervention services.
- (4) Facilitating communication with and between the family and the early intervention service provider.

- (5) Informing the family of the availability of advocacy services.
- (6) Assisting the family in arranging for the child to receive medical and health services, if the services are necessary. Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;
- (7) Offering the family opportunities and support for the child to participate in community activities with other children.
- (8) Informing the family of appropriate community resources.
- (9) Facilitating the development of a transition plan as part of the IFSP.

**§4226.54. Requirements and Qualifications.**

- (a) A minimum of one service coordinator intervention services shall be employed directly or through subcontract by the Legal Entity.
- (b) A service coordinator shall be responsible for the activities specified in §4226.53 (relating to activities).
- (c) A service coordinator shall have one of the following groups of qualifications:
  - (1) A bachelor's degree or above from an accredited college or university and one year work or volunteer experience working directly with children, families or people with disabilities, or in counseling, management or supervision.
  - (2) An associate's degree, or 60 credit hours, from an accredited college or university and three years work or volunteer experience working directly with children, families or people

with disabilities, or in counseling, management or supervision.

(3) Certified by the State Civil Service Commission as meeting the qualifications of a Caseworker 2 or 3 classification.

**§4226.55. Early interventionist.**

An early interventionist shall be responsible for the following:

- (1) Participating in the development of the child's IFSP.
- (2) Implementing the child's IFSP directly or by supervising the implementation of services provided by other early intervention personnel.
- (3) Working with the family to assure that the needs of the child and family are met.
- (4) Completing written communication reviews and six month IFSP reviews in accordance with this chapter.

**§4226.56. Requirements and qualifications.**

(a) An early interventionist shall have one of the following groups of qualifications:

- (1) A bachelor's degree or above from an accredited college or university and one year work or volunteer experience working directly with children, families or people with disabilities or in counseling.
- (2) An associate's degree, or 60 credit hours, from an accredited college or university and three years work or volunteer experience working directly with children, families or people with disabilities or in counseling.

(b) An early interventionist shall obtain a minimum of 6 credit hours annually in the field of

infant and toddler developmental services, early childhood services, or any specific areas that relate to infant and child disabilities.

**§4226.57. Effective date of personnel qualifications.**

Sections 4226.54(c) and 4226.56(a) (relating to service coordinator and early interventionist) apply to service coordinators and early interventionist hired or promoted after (the effective date of these regulations).

**EVALUATION AND ASSESSMENT**

**§4226.61. Parental consent.**

- (a) Written consent from the child's parent shall be obtained prior to--
  - (1) Conducting the initial evaluation and assessment of a child under §4226.62; and
  - (2) Initiating the provision of early intervention services (see §4226.72(e)).
- (b) If consent is not given, the Legal Entity shall make reasonable efforts to ensure that the parent—
  - (1) Is fully aware of the nature of the evaluation and services that would be available;and
  - (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

**§4226.62 Multidisciplinary Evaluation.**

- (a) The Legal Entity shall ensure:



(1) The performance of a timely, comprehensive, multidisciplinary evaluation (MDE) of each child under the age of three, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The Legal Entity shall ensure that the initial multidisciplinary evaluation (MDE) is conducted by personnel independent of service provision.

(3) The Legal Entity shall be responsible for ensuring that the requirements of this section are implemented by all affected contracted agencies and service providers.

(b) Evaluation and assessment of the child. The evaluation and assessment of each child shall --

(1) Be conducted by personnel trained to utilize evaluation and assessment methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

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

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social and emotional development.

(E) Adaptive development.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (b)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(4) The annual MDE will be composed of the family, service coordinator, anyone whom the parent would like to invite and at least one other professional who meets state approved or recognized certification, licensing, registration or other comparable requirements, if applicable in which the person is providing services.

(c) Family assessment.

(1) Family assessments shall be a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant and toddler.

(2) Any assessment that is conducted shall be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment shall --

(i) Be conducted by personnel trained to utilize assessment methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

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

(d) Timelines.

(1) Except as provided in paragraph (d)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) shall be completed within the 45-day time period.

(2) The Legal Entity shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), the county will--

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP consistent with §4226.75.

**§4226.63. Nondiscriminatory procedures.**

Each Legal Entity shall adopt nondiscriminatory evaluation and assessment procedures. The procedures for the evaluation and assessment of children and families under this chapter shall ensure, at a minimum, that--

(1) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(2) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

- (3) No single procedure is used as the sole criterion for determining a child's eligibility under this chapter; and
- (4) Evaluations and assessments are conducted by qualified personnel.

### **INDIVIDUALIZED FAMILY SERVICE PLANS (IFSPs)**

#### **§4226.71. General.**

- (a) Each Legal Entity shall adopt policies and procedures regarding individualized family service plans (IFSPs).
- (b) As used in this chapter, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this chapter and the child's family. The plan shall --
  - (1) Be developed in accordance with §4226.72 and §4226.73.
  - (2) Be based on the evaluation and assessment described in §4226.62; and
  - (3) Include the matters specified in §4226.62.
  - (4) Be developed prior to funding option decisions.
- (c) The Legal Entity shall ensure that an IFSP is developed and implemented for each eligible child.

#### **§4226.72 Procedures for IFSP development, review, and evaluation.**

- (a) For a child who has been evaluated for the first time and determined to be eligible, a

meeting to develop the initial IFSP shall be conducted within the 45-day time period in §4226.23(f).

(b) The Individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at six month intervals, (or more often based on infant or toddler and family needs). The review shall include:

- (1) The degree to which progress toward achieving the outcomes is being made; and
- (2) Whether modification or revision of the outcomes or services is necessary.

The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under §4226.62(c), and other information available from the ongoing assessment of the child and family, shall be used in determining what services are needed and will be provided.

(d) IFSP meetings shall be conducted--

- (1) In settings and at times that are convenient to families; and
- (2) 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. If the parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (sign language, braille, or oral communication).

Meeting arrangements shall be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(e) **Parental consent**--The contents of the IFSP shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained shall be provided.

**§4226.73 Participants in IFSP meetings and periodic reviews.**

(a) Each initial meeting and each annual meeting to evaluate the IFSP shall include the following participants:

- (1) The parent or parents of the child.
- (2) Other family members, as requested by the parent, if feasible to do so;
- (3) An advocate or person outside of the family, if the parent requests that the person participate.
- (4) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the Legal Entity to be responsible for implementation of the IFSP.
- (5) A person or persons directly involved in conducting the evaluations and assessments in §4226.62.

- (6) As appropriate, persons who will be providing services to the child or family.
- (b) If a person listed in paragraph (a)(5) of this section is unable to attend a meeting, arrangements shall be made for the person's involvement through other means, including--
  - (1) Participating in a telephone conference call;
  - (2) Having a knowledgeable authorized representative attend the meeting; or
  - (3) Making pertinent records available at the meeting.
- (c) Each periodic review shall provide for the participation of persons in paragraphs (a)(1) through (a)(5) of this section. If conditions warrant, provisions shall be made for the participation of other representatives identified in paragraph (a) of this section.

**§4226.74. Content of IFSP**

The individualized family service plan shall be in writing and the standardized formats will contain:

- (a) Information about the child's status.
  - (1) A statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
  - (2) The statement in paragraph (a)(1) of this section shall be based on professionally acceptable objective criteria.
- (b) Family information.

A statement of the family's resources, priorities, and concerns related to enhancing the

development of the family's infant or toddler with a disability.

(c) Outcomes.

A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timeliness used to determine--

- (1) The degree to which progress toward achieving the outcomes is being made; and
- (2) Whether modifications or revisions of the outcomes or services are necessary.

(d) Early intervention services.

A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering the services;

Early intervention services shall be provided by qualified personnel, including--

- (i) Audiologists;
- (ii) Early Interventionist;
- (iii) Family therapists;
- (iv) Nurses;
- (v) Nutritionists;
- (vi) Occupational therapists;
- (vii) Orientation and mobility specialists;
- (viii) Pediatricians and other physicians;
- (ix) Physical therapists;
- (x) Psychologists;
- (xi) Service Coordinator;
- (xii) Social workers;
- (xiii) Special educators; and
- (xiv) Speech and language pathologists.
  - (1) As used in paragraph (d) of this section--

- (i) Frequency and intensity are the number of days or sessions that a service



will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(ii) Method is how a service is provided.

(2) Location is the actual place or places where a service will be provided.

e) A statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

(f) Other services.

(1) The IFSP shall include--

(i) Medical and other services that the child needs, but that are not required under this chapter; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (f)(1) of this section does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(g) Dates; duration of services. The IFSP shall include--

(1) The projected dates for initiation of the services in paragraph (d) of this section as soon as possible after the IFSP meetings described in §4226.72; and

(2) The anticipated duration of those services.

(h) **Service coordinator.** -- The identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this chapter), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(i) **Transition from early intervention services.**

The steps to be taken to support the transition of the child to--

(1) **Ensure a smooth transition for toddlers receiving early intervention services under this chapter to preschool or other appropriate services, including a description of how—**

(i) **the families of such toddlers will be included in the transition plans required by subparagraph (3); and**

(ii) **the Legal Entity shall --**

(A) **notify the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services {under Part B, of IDEA as determined in accordance with State law};**

(B) **in the case of a child who may be eligible for preschool services, with the approval of the family of the child, convene a conference among the Legal Entity, the family, and the local educational agency at least 90 days (and at the discretion of all such parties, up to six months) before the child is eligible for the preschool services, to discuss any services that the child may receive; and**

(C) **in the case of a child who may not be eligible for preschool**

services, with the approval of the family, make reasonable efforts to convene a conference among the Legal Entity, the family, and providers of other appropriate services for children who are not eligible for preschool services to discuss the services the child may receive;

(2) To review the child's program options for the period from the child's third birthday through the remainder of the school year;

(3) To establish a transition plan; and

(4) The local educational agency, which is responsible for providing preschool programs under 11 PS§875-101, and the Legal Entity providing early intervention programs for infants and toddlers will develop interagency agreements between the two agencies to ensure coordination on transition matters.

**§4226.75. Provision of services before evaluation and assessment are completed.**

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in §4226.62, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes--

(1) The name of the service coordinator who will be responsible, consistent with §4226.74(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed

immediately by the child and the child's family.

(b) The evaluation and assessment are completed within the time period required in §4226.62(d).

### **PROCEDURAL SAFEGUARDS**

#### **§4226.91 General responsibility of Legal Entity for procedural safeguards.**

Each Legal Entity shall be responsible for—

- (i) Adopting procedural safeguards that shall include, at a minimum, conflict resolution, mediation, and administrative hearings as set forth in this chapter; and
- (ii) Ensuring effective implementation of the safeguards by providers of early intervention services.

#### **§4226.92. Notice of Rights.**

The Legal Entity shall inform a parent(s) of their right to request conflict resolution, mediation or an Administrative Hearing as described in this chapter.

#### **§4226.93. Conflict resolution.**

The Legal Entity shall establish an internal system of conflict resolution to facilitate the prompt amicable resolution of disagreements and conflicts among parents, Legal Entity, agencies or other parties. Conflict resolution shall be a process whereby parents(s), Legal Entity staff and providers, as appropriate,

or other representatives, may request a meeting to discuss and resolve issues relating to the provision of services to an infant or toddler eligible for services under this chapter.

The conflict resolution process shall ensure that:

- 1) Parents can request conflict resolution either orally or in writing;
- 2) When a parental request for mediation under §4226.94 or a request for an impartial administrative hearing under §4226.100 is received, a meeting with the parent(s) and the Legal Entity Administrator or designee shall be held, unless the parent(s) does not agree to participate, within seven calendar days following a parental request. This meeting must not delay the processing of parental requests for mediation or an impartial hearing.
- 3) When a resolution or agreement is reached at the meeting, the IFSP or other appropriate document(s) shall be revised.
- 4) If the conflict resolution meeting is unsuccessful, all other due process rights and procedures continue to be available.
- 5) The conflict resolution process will not impede or deny other child and family rights under this chapter.

**§4226.94. Mediation.**

- (a) The Legal Entity shall adopt procedures that afford a party who presents a complaint with respect to any matter relating to the identification, evaluation, or the placement of the child, or the provision of appropriate early intervention services, the opportunity to resolve disputes through a mediation process, which at a minimum, shall be available whenever a hearing

is requested under §4226.100.

**(b) The procedures shall ensure that the mediation process---**

**(1) is voluntary on the part of the parents;**

**(2) is not used to deny or delay a parent's right to a due process hearing under §§4226.100 – 104, or to deny any other rights afforded under this chapter; and**

**(3) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.**

**(b) The Legal Entity shall establish procedures whereby parents who choose not to use the mediation process may request a meeting, at a time and location convenient to the parents, unless the parent(s) does not agree to participate, with a disinterested party who is under contract with--**

**(1) a parent training and information center or community parent resource center; or**

**(2) an alternative dispute resolution entity to encourage the use, and explain the benefits, of the mediation process to the parents.**

**(d) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.**

**(e) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.**

(f) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

**§4226.95 Consent and native language information.**

(a) The following requirements apply for consent from parent(s):

(1) The parent shall be fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent shall be informed and agree in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

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

(b) Native language, where used with reference to persons of limited English proficiency, is the language or mode of communication normally used by the parent of a child eligible;

**§4226.96. Opportunity to examine records.**

In accordance with the confidentiality procedures in Federal regulations (34 CFR 300.560 through 300.576 - Family Educational Rights and Privacy Act - FERPA), the parents of a child eligible under this chapter shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development

and implementation of IFSPs, individual complaints dealing with the child, and any other records about the child and the child's family.

**§4226.97. Prior notice; native language.**

(a) Written prior notice shall be given to the parents of a child eligible under this chapter before a Legal Entity 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.

(b) The notice shall be in sufficient detail to inform the parents about--

- (1) The action that is being proposed or refused;
- (2) The reasons for taking the action; and
- (3) All procedural safeguards that are available under this chapter.

(c) The notice shall be--

- (1) Written in language understandable to the general public; and
- (2) Provided in the native language of the parents, unless it is not feasible to

do so.

(d) If the native language or other mode of communication of the parent is not a written language, the Legal Entity shall take steps to ensure that--

- (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (2) The parent understands the notice; and



(3) There is written evidence that the requirements of this paragraph have been met.

(e) If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the parent (such as sign language, braille, or oral communication).

**§4226.98. Parent consent.**

(a) Written parental consent shall be obtained on the standardized *parents right agreement before--*

(1) Conducting the initial evaluation and assessment of a child under §4226.62.; and

(2) Initiating the provision of early intervention services (§4226.72(e)).

(b) If consent is not given, the Legal Entity shall make reasonable efforts to ensure that the parent--

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

**§4226.99. Parent right to decline service.**

The parents of a child eligible under this chapter may determine whether they, their child, or other family members will accept or decline any early intervention service and may decline such a service after first accepting it, without jeopardizing other early intervention services provided under this chapter.

**§4226.100. Administrative resolution of individual child complaints by an impartial**

**decision-maker.**

Each Legal Entity shall implement procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in §4226.97(a).

**§4226.101. Parent rights in administrative proceedings.**

(a) Each Legal Entity shall ensure that the parents of children eligible under this chapter are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under §4226.100.

(b) Any parent involved in an administrative proceeding has the following rights:

(1) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this chapter,

(2) To present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) To prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) To obtain a written or electronic verbatim transcription of the proceeding; and

(5) To obtain written findings of fact and decisions.

**§4226.102. Impartial hearing officer.**

(a) The Legal Entity shall ensure that the person appointed to implement the

administrative resolution process--

(1) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(2) Does not have a personal or professional interest that would conflict with his or her objectivity in conducting the hearing and rendering a decision.

(b) A person who otherwise qualifies under this definition is not an employee of an agency solely because the person is paid by the agency to implement the administrative resolution process.

**§4226.103. Convenience of proceedings; timelines.**

Any proceeding for implementing the administrative resolution process shall be carried out at a time and place that is reasonably convenient to the parents.

**§4226.104. Status of a child during proceedings.**

(a) During the pendency of any proceeding involving a complaint under this chapter, unless the Legal Entity and parents of a child otherwise agree, the child shall continue to receive the early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this chapter, the child shall receive those services that are not in dispute.

(c) Parents have the right to accept or decline services. The rejection of one service does not jeopardize other early intervention services or activities. During a child/family resolution process the services or activities not in dispute will be initiated or continued.

**§4226.105. Surrogate parents.**

(a) Each Legal Entity shall ensure that the rights of children eligible under this chapter are protected if--

- (1) No parent (as defined in §4226.4.) can be identified;
- (2) The Legal Entity, after reasonable efforts, cannot discover the

whereabouts of a parent; or

(3) The child is in the legal custody of the County Children and Youth agency and the birth parents are “unknown or unavailable”, which includes situations where the birth parents are deceased or parental rights have been terminated.

(b) The duty of the Legal Entity under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parent. This shall include a method for--

- (1) Determining whether a child needs a surrogate parent; and
- (2) Assigning a surrogate parent to the child.

(c) The Legal Entity shall select a surrogate parent.

(d) The Legal Entity shall ensure that a person selected as a surrogate parent--

(1) Has no interest that conflicts with the interests of the child he or she represents;

(2) Has knowledge and skills that ensure adequate representation of the child; and

(3) Is not an employee of any agency involved in the provision of early intervention or other services to the child.

**(e) A person who otherwise qualifies to be a surrogate parent under paragraph (d) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.**

**(f) A foster parent qualifies under this part if--**

**(1) The natural parents' authority to make early intervention or educational decisions on the child's behalf has been relinquished under State law;**

**(2) The County Children and Youth Agency (CCYA) has been given the custody of the child and approves the recommendation that the foster parent would be the most appropriate surrogate parent;**

**(3) The foster parent has an ongoing, long-term parental relationship with the child;**

**(4) The foster parent is willing to participate in making early intervention or educational decisions on the child's behalf; and**

**(5) The foster parent has no interest that would conflict with the interests of the child.**

**(g) A surrogate parent may represent a child in all matters related to--**

**(1) The evaluation and assessment of the child;**

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

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

**(4) Any other rights established under this chapter.**

**COMMONWEALTH OF PENNSYLVANIA**

**PROCEDURAL SAFEGUARDS  
FOR CHILDREN  
IN EARLY INTERVENTION SERVICES**



**OFFICE OF MENTAL RETARDATION**

**DEPARTMENT OF PUBLIC WELFARE**

**PROCEDURAL SAFEGUARDS FOR  
CHILDREN IN EARLY INTERVENTION SERVICES**

*55 PA CODE CHAPTER 4225*

**CHAPTER 4225. PROCEDURAL SAFEGUARDS FOR CHILDREN IN  
EARLY INTERVENTION SERVICES**

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**Authority**

The provisions of this Chapter 4225 issued under section 201(2) of the act of June 13, 1967 (P.L. 31, No. 21) (62 P.S. § 201(2)).

**Source**

The provisions of this Chapter 4225 adopted July 10, 1981, effective July 11, 1983, 11 Pa. B. 2481.

**GENERAL PROVISIONS**

**§4225.1. Purpose.**

The purpose of this chapter is to specify procedures for providing procedural safeguards for notice and consent; confidentiality; placement in least restrictive environment; development, implementation and review of individual program plans; and protection in evaluation for children in early intervention services.

**§4225.2. Applicability.**

This chapter applies to all agencies providing early intervention services to preschool handicapped children funded through the County MH/MR Program.

**§4225.3. Legal base.**

The legal authority for this chapter is section 201(2) of the Public Welfare Code (62 P.S. § 201(2)) and Article II of the Mental Health and Mental Retardation Act of 1966 (50 P.S. §§ 4201—4203).

**§4225.4. Definitions.**

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

*Agency* — The provider responsible for the direct delivery of services to the child.

*Agency representative* — A staff member, other than the child's teacher or primary program implementor, of the agency, who is authorized to make decisions on behalf of the agency.

*Appropriate authority* — Any trained personnel having the recognized ability, and possessing a current license or certificate, if appropriate, to evaluate or

*Communication* — Curricular designator for those receptive, expressive, or gestural capabilities, which allow the child to understand others, to state his own needs, and to interact with others in a meaningful manner.

*County MH/MR Program* — a mental health and mental retardation program established by a county or two or more counties acting in concert which includes a complex of services providing a continuum of care in the community for the mentally disabled.

*Current individual program plan/date* — The month/day/year on which the individual program plan conference was held and approval of the individual program plan (IPP) received from the parents or the date 30 days after the admission or 30 days after the first day of attendance of the child in the early intervention program.

*Curricular areas* — Designator of groups of related developmental skills essential to the child's attainment of appropriate functioning. The designators of cognition, communication, motor, self-help, and socialization are used.

*Days* — Refers to working days during the week, Monday through Friday.

*Destruction* — The permanent removal of personally identifying data from a child's record so that the information no longer identifies a particular child.

*Disclosure* — The release of personally identifiable information from a child's record orally, in writing, by electronic means, through visual inspection, or by any other means.

*Early intervention* — The delivery of mental health/mental retardation authorized education/developmental/therapeutic services either in the child's home, at a center or in a group day care home. These services are designed to maximize the preschool handicapped child's attainment of age appropriate skills in the areas of cognition, communication, socialization, self-help, or motor development. The number of hours of direct service per week is determined by the individual program plan (IPP) for the child. Infant stimulation is a form of early intervention services.

*Educational or developmental records* — Those records developed by the provider agency such as written goals, objectives, curricula classroom observations, teacher's anecdotal records, and the prescription modifications made by the support staff, necessary in the developmental process.

*Evaluation* — The process whereby determination is made as to whether a child is handicapped and needs early intervention services. Various procedure/observations are used by licensed, certified or other appropriate authorities to determine the extent of a child's disability and to provide direction/assistance in the development/modification of the child's individual program plan.

*Generic* — A term used to describe a facility in which less than 20% of the children enrolled are identified as handicapped.

*Personally identifiable* — Information such as the name of the child or the name of any of the child's family members; address of the child; the child's telephone number; social security number; base service unit (BSU) number; list of personal characteristics which would make the child's identity easily traceable by a person who was not already familiar with the child's identity; or other such information.

*Placement* — The educational program offered to the child as the most appropriate based on the individual evaluation.

*Preschool child* — An individual who has not yet reached the chronological age determined by the local school district as the requirement for entry to the public school system.

*Program implementor* — The agency staff person primarily responsible for the direct delivery of early intervention services to the handicapped child.

*Program or service* — Specific designation of the developmental services and related therapies, such as, physical therapy, speech therapy, offered to the child in order to maximize the child's developmental potential.

*Record* — Information which is directly related to the identification, evaluation, and placement of a child maintained by an agency or a party acting for an agency in the provision of education services. The term does not include written materials prepared by program implementors, supervisory, or administrative personnel if they are maintained in the sole possession of the maker and not accessible or revealed to any other individual.

*Regional early intervention coordinator* — The person at the regional office of the Department who is responsible for the programmatic and fiscal monitoring of all early intervention programs receiving mental health/mental retardation funds.

*Self-help* — The curricular designator which includes those fine motor skills necessary for the child to be able to care for his own needs in eating, drinking, toileting, dressing, and the like.

*Service number* — The individual seven digit number assigned to each client receiving services through the County MH/MR Program.

*Socialization* — The curricular designator which includes those personal and interpersonal behaviors necessary for the child to function appropriately within the norms of society.

*Special needs* — A term used to describe a facility in which more than 50% of the children enrolled are identified as handicapped.

#### Cross References

This section cited in 55 Pa. Code § 4225.26 (relating to parent access rights).

**§4225.14. Use of consent.**

To insure a parent has been fully informed of all information relevant to the activity for which consent is sought, and that a parent fully understands that the granting of consent is voluntary and may be revoked at any time, parent consent shall be obtained in writing before any of the following:

- (1) Conducting an initial evaluation.
- (2) Placement of a child in a County MH/MR Program of early intervention.
- (3) Releasing personally identifiable information except as required in § 4225.33 (relating to authorized access).

**§4225.15. How to obtain parental consent.**

Efforts at obtaining consent shall include at least three attempts. The first attempt should be by telephone or personal contact, the second by personal contact, and third by note or letter if the first two attempts fail. The agency shall document in the child's record the outcome of each contact with the parent identified in this section.

**Cross References**

These sections cited in 55 Pa. Code § 4225.23 (relating to content of plan).

**CONFIDENTIALITY****§4225.21. Agency responsibility.**

- (a) Each agency shall protect the confidentiality of personally identifiable information during collection, storage, disclosure, and destruction.
- (b) In order to maintain confidentiality, officials at each agency must have the responsibility for safe-guarding the agency's professional involvement with children, their parents, and other agencies or professionals that may be providing services to a child, either directly or indirectly.
- (c) All agency personnel shall receive instructions regarding the importance of maintaining confidentiality and the agency's plan for records.
- (d) A current listing of the names and positions of agency employes who have access to children's records shall be maintained for inspection as covered by § 4225.33 (relating to authorized access).

**Cross References**

This section cited in 55 Pa. Code § 4225.33 (relating to authorized access).

**§4225.27. Parental authority.**

An agency may presume that the parent has authority to inspect and review records relating to the child unless the agency has been advised in writing that the parent does not have the authority under applicable State law governing such matters as guardianship, separation and divorce.

**§4225.28. Fees.**

If a parent requests a copy of the records, the agency may charge the parent a reasonable fee which is not to exceed the actual expense of the duplication, reproduction, photocopying, or mailing. However, no fee may be charged to a parent which would effectively prevent the parent from inspecting and reviewing the records. No fee may be charged to a parent for the search for or retrieval of records.

**§4225.29. Location of records.**

A parent has the right to request a list of the types of records and the location of the child's records developed, maintained, or used by the agency.

**§4225.30. Request procedure.**

At the agency's discretion and only for verification and records keeping purposes, the agency may require all parents to put in writing their oral requests to inspect, review, copy, or receive copies of records; their oral designations of a representative; and their oral requests for a list of persons who have access to their child's records.

**§4225.31. Record of more than one child.**

If a record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information relating to their child contained therein.

**Cross References**

This section cited in § 4225.32 (relating to copy of record of more than one child).

access), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**Cross References**

This section cited in 55 Pa. Code § 4225.50 (relating to permanent record).

**§4225.36. Disclosure procedure.**

All copies of personally identifiable information released to a source not employed by the agency shall be marked confidential. A receipt is required from the receiver of the personally identifiable information as proof of the record access. A copy of the receipt shall be maintained in a log at the agency.

**§4225.37. Limitation of redisclosure.**

An agency may disclose personally identifiable information from the child's records only on the condition that the receiving party will not disclose the information to any other party without prior written consent of the child's parents.

**§4225.38. Request for amendments of educational or developmental record.**

(a) A parent who believes that information in the records developed, maintained, or used by the agency is inaccurate or misleading or violates the privacy or other rights of the child, may request the agency which maintains the information to amend the information.

(b) The parent shall inform the agency verbally or in writing that he requests a change, either an addition or deletion of information to or from a child's educational or developmental records.

**§4225.39. Decision.**

(a) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receiving the parental request.

(b) If the agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal and advise the parent of the right to an impartial review by the County MH/MR Program.

**§4225.40. Procedure for impartial review of record.**

The agency shall on request by the parent, inform the County MH/MR Program of the need for a review of that portion of the child's educational

**§4225.47. Maintenance and disclosure of parents' statements.**

Any statement placed in the child's record by the parents shall be maintained by the agency as part of the records of the child as long as the record or the contested portion is maintained by the agency. If the records of the child or the contested portion is disclosed by the agency to any party, the explanation shall also be disclosed.

**§4225.48. Destruction of records.**

(a) At the termination of early intervention services, the agency shall review the child's records with the parent to provide for exchange of information, determination of ongoing needs and the information to be forwarded to subsequent service providers with written parental consent. A copy of the child's early intervention records shall be retained for at least 3 years after termination of service, unless the entire record is transferred by the provider to the parent or to any person or agency at the written request of the parent when a child is no longer enrolled, or if a request to destroy their child's early intervention records is not received from a parent.

(b) The parent may request a copy of the child's record prior to its destruction by the agency.

**§4225.49. Parent request for destruction.**

The parent may request that the records be destroyed. If an agency receives such a request, they should remind the parent that the records may be needed by the child or parents for social security benefits or other purposes at a later time. If the parent still desires that their child's personally identifiable information be destroyed, the agency shall comply with the parent wish.

**§4225.50. Permanent record.**

(a) The agency may keep a permanent record of the child's name, address, phone number, attendance record and program or services without time limitation. This information may be kept even if the parents request the record destroyed.

(b) The agency shall not destroy any record if there is an outstanding request to inspect and review it under § 4225.26 (relating to access to records).

(c) The record of access required under § 4225.35 (relating to record of access) shall be maintained for as long as the record.

**INDIVIDUAL PROGRAM PLAN****§4225.71. Writing the individual program plan (IPP).**

An individual program plan (IPP) must be written for all children receiving a County MH/MR Program of early intervention services. The IPP must be written based on all available evaluation data and with input from parents and professionally trained staff. IPP development will be under the auspices of the County MH/MR Program and the agency which will be providing the early intervention to the child.

**§4225.72. Purpose of the individual program plan (IPP).**

The individual program plan (IPP) determines the program and services to be received, and the goals and objectives to be accomplished.

**§4225.73. Content of the individual program plan (IPP).**

(a) The individual program plan (IPP) must include:

- (1) Child's legal name.
- (2) Child's date of birth.
- (3) Seven digit case number.
- (4) Parent's name, address, and phone, including work number.
- (5) County of parents' residence.
- (6) Name of the intermediate unit or school district serving the parents' residence.
- (7) Agency responsible for providing early intervention services to the children for the County MH/MR Program.
- (8) Child's admission date to the agency providing early intervention services for the County MH/MR Program.
- (9) Date of the child's latest health appraisal.

(b) Also required in the IPP are the following:

- (1) The statement "My signature shows that I approved this plan and wish to have it begin."
- (2) Signature lines with date for two parents, teacher or program implementor, agency representative, and other persons attending the IPP conference.

(c) The IPP must list all IPP planners and include:

- (1) A list by name and relationship to the child of contributors to the development of the IPP.
- (2) Names of signers may be repeated here.

(d) Each program and service to be provided by the agency either directly or through contract must be listed in the IPP to include:



- (iii) Criteria for mastery.
- (iv) The materials, methods, and techniques to be used.
- (v) The anticipated date by which accomplishment is expected.
- (vi) The actual date by which the child accomplished the objective.

**§4225.74. Individual program plan (IPP) conference.**

- (a) The individual program plan (IPP) conference shall be used to:
  - (1) Develop the child's initial or subsequent IPP and obtain approval.
  - (2) Change the child's placement within the agency or recommend referral to another agency. If a child is moved from one area of the program to another to allow more involvement with nonhandicapped children in a mainstreaming endeavor for part of a day or for a particular curriculum, this movement does not constitute a placement change nor does it require prior parental approval or the need for an IPP conference. Prior written parental approval is needed when there is a major change that requires a different teaching or service delivery staff.
  - (3) Add, delete, or change the program or services offered by the agency. Note: The changing of a child's objective in a particular curriculum area does not constitute a change in program or services and does not require prior parental approval or the need for an IPP conference. Parents shall verbally be told of the objective change within a reasonable time of the action.
  - (4) Review the expiring IPP and develop and approve a subsequent IPP.
  - (5) Review the child's progress when parent or agency feels more than a parent and teacher meeting necessary.
- (b) Either the agency or the parent may request an IPP conference.
- (c) The conference shall be scheduled:
  - (1) At a mutually agreed upon time.
  - (2) At a convenient place for the parent.
  - (3) With either written or verbal notice to the parent of the time, place, purpose of the meeting and who will be in attendance.
  - (4) With either a carbon copy or a verbal notice of the meeting to the County MH/MR Program.
- (d) Each IPP conference must have participation by the child's parent, the child's teacher or program implementor and a representative of the agency. Additional people may participate at the request of the agency or parent.
- (e) The agency shall make at least three attempts, through two different means, such as, letter, telephone, personal contact, home visit, to obtain parental participation within the time-frames specified. The agency shall document each attempt and the outcome. This documentation shall be attached to the back of any unsigned IPP. The agency may conduct an IPP Conference without a parent in attendance if the agency is unable to convince the parent that they

**§4225.78. Revisions of the individual program plan (IPP) objectives.**

(a) Each teacher or program implementor may make changes to the individual program plan (IPP) objectives as needed without prior approval from a parent. Verbal notification of such objective changes should be given to the parent in a reasonable time after the action.

(b) Changes may be made in any part of the objective or by deleting or adding entire objectives as needed to reflect the needs of the child.

(c) Documentation of all objective revisions must include the change, the reason for the change, and the date the change was made.

**§4225.79. Individual program plan (IPP) review.**

The review, scheduled by the planners during the development of the child's initial individual program plan (IPP), must be held within 6 months of the date the initial IPP was approved. In some instances the parent or agency may request a delay of the review meeting. When such a delay is agreed upon by both the parent and the agency, the meeting may be delayed for up to 60-calendar days only. The frequency of IPP review should be established on an individual basis to meet the needs of the child's growth and development.

**§4225.80. Results of individual program plan (IPP) review.**

The outcome of an individual program plan (IPP) review conference must be either:

- (1) The development of a new IPP.
- (2) The modifications to existing goals and objectives, or program services with new pages included as appropriate.
- (3) The statement that the existing IPP is current and appropriate with signatures of those attending.

**§4225.81. Documentation of individual program plan (IPP) review.**

In all cases where a new individual program plan (IPP) is not developed, results of the meeting must be documented in writing and include:

- (1) The date of the meeting.
- (2) The child data — such as, name, date of birth.
- (3) The reason for review.
- (4) The participants at the meeting, including the signatures.
- (5) The reason for revisions to the IPP, if applicable.

**EVALUATION****§4225.91. Evaluation procedures.**

The County MH/MR Program has the following options regarding the evaluation of a child prior to the initial placement of the child. Any option chosen shall have written authorization from the parent.

- (1) The County MH/MR Program does the evaluation.
- (2) The County MH/MR Program contracts with appropriate professionals to do the evaluation.
- (3) The County MH/MR Program makes a determination of the child's disability and need for service and the nature of that service based upon a review of evaluations done on the child, conducted within the previous 6 months, by other professionals.
- (4) The County MH/MR Program decides any combination of paragraphs (1), (2) or (3).

**Cross References**

This section cited in 55 Pa. Code § 4225.97 (relating to reevaluation).

**§4225.92. Consent.**

A written or verbal approval shall be received from the parent by the County MH/MR Program or the agency or appropriate professional, prior to either:

- (1) Conducting of an individual evaluation or reviewing previously performed evaluations on the child.
- (2) Obtaining of relevant education, psychological, and medical records from other agencies.

**§4225.93. Evaluation procedure selection.**

All evaluation procedures used as part of the initial or on-going evaluations shall:

- (1) Be free of racial or cultural discrimination.
- (2) Be recognized as valid for the specific purpose for which the procedure is used. If a screening procedure is used, it shall not be the sole criterion used to determine the identification of a child as handicapped.
- (3) Not penalize the child with impaired sensory, manual, or speaking skills.

**§4225.94. Evaluation procedure administration.**

Each evaluation procedure performed shall have been or be conducted in such a manner that:

**§4225.98. Independent evaluation.**

(a) The parents of a handicapped child have the right to obtain an independent evaluation of their child. The County MH/MR Program or the agency to provide or providing the early intervention services for the County MH/MR Program, shall provide to the parent, on request, information about where an independent evaluation may be obtained.

(b) If a parent obtains an independent evaluation at private expense, the results of the evaluation:

(1) Must be considered by the County MH/MR Program in any decision made with respect to the provision of early intervention services to the child.

(2) May be presented as evidence at a due process hearing regarding the child.

(c) If the parent disagrees with the evaluation results or the evaluation procedure used by the County MH/MR Program or the evaluation procedure used by the agency providing the early intervention service to their child for the County MH/MR Program, the parent may request an independent evaluation at public expense from the County MH/MR Program or the agency serving their child. The County MH/MR Program or the agency will in turn notify the Regional Early Intervention Coordinator of the parent's request. The County MH/MR Program in concert with the agency serving the child and the Regional Early Intervention Coordinator shall decide whether the evaluation was appropriate or inappropriate. If they decide that the evaluation was inappropriate, arrangements shall be made for an independent evaluation at public expense. The cost of this evaluation will be paid by the Department. If the County MH/MR Program, the provider agency and the Regional Early Intervention Coordinator decide that the evaluation was appropriate, and the parent still disagrees, the parent may request that the case be heard by a hearing officer. The Regional Early Intervention Coordinator shall request that a hearing officer be assigned as outlined in § 4225.105 (relating to due process hearing).

**Cross References**

This section cited in 55 Pa. Code § 4225.96 (relating to interpreting results to parents).

**§4225.99. Hearing results.**

(a) If the hearing officer decides that the evaluation was inappropriate, arrangements shall be made by the Regional Early Intervention Coordinator for an independent evaluation at public expense. If the evaluation was appropriate, the parent still has the right to an independent evaluation but not at public expense.

receipt of the request to the Office of Hearing and Appeals of the Department of Public Welfare.

- (3) Inform the involved agency and persons.
- (4) Request copies of relevant records.
- (5) Schedule a prehearing conference.

**§4225.104. Prehearing conference.**

(a) The prehearing conference is offered as another opportunity for mediation to occur at the local level as an intervening step in hope of resolving differences between the County MH/MR Program or the agency providing early intervention to a child, prior to conducting a formal due process hearing.

(b) The County MH/MR Program shall schedule a prehearing conference with the parent, agency personnel, and any other persons requested by the parent or agency, at a mutually convenient time and place within a reasonable time after receipt of the request for a hearing, unless either the parent or agency objects to such a prehearing conference.

(c) When the request for a prehearing conference is received from a parent or agency, the County MH/MR Program shall mediate the discussion and attempt to help all parties reach a mutually agreeable resolution. A written summary of the meeting shall be prepared by the County MH/MR Program. If the County MH/MR Program requests a prehearing conference, the request shall be sent to the Regional Early Intervention Coordinator who shall schedule the conference with parent, agency personnel, and any other person requested by the parent or agency at a mutually convenient time and place within a reasonable time after receipt of the request for a prehearing. The Regional Early Intervention Coordinator shall mediate the discussion and attempt to help all parties reach a mutually agreeable resolution. A written summary of the meeting shall be prepared by the Regional Early Intervention Coordinator and be provided to all participating members of the prehearing conference.

(d) If the prehearing conference resolves the issue, the County MH/MR Program shall notify the Regional Early Intervention Coordinator. If it does not resolve the issue, the County MH/MR Program shall notify the Regional Early Intervention Coordinator who, in turn, shall request in writing within 3 days of receiving the notice from the County MH/MR Program, that the Office of Hearing and Appeals assign a hearing officer to the case. The County MH/MR Program shall inform the parent of any free or low cost legal or other relevant services available in the area at the time a hearing officer is requested.

(e) Although prehearing conferences may occur for the purpose of mediating or resolving problems, they must in no way interfere with the timely initiation of a due process hearing if or when mediation fails at the local level.

unless a party to the hearing appeals the decision under subsection (b). The designated hearing officer for the initial due process hearing shall not be the same person to hear the appeal. An appeal hearing must be conducted within 45 days after receiving the request for an appeal from a parent.

(b) Any party aggrieved by the findings and decision of a hearing officer under subsection (a) has the right to appeal to the Commonwealth Court and the Federal Court.

(c) During any aspect of the hearing, appeal, or judicial review regarding a complaint, unless the county administrator and the parent of the child agree otherwise, the child involved in the complaint remains in the child's current placement.

PLEASE RETURN TO:  
**INDEPENDENT REGULATORY REVIEW COMMISSION**  
 14TH FLOOR, HARRISTOWN II  
**REGULATORY REVIEW ACT**

**RECEIVED**

I.D. NUMBER: 14-452

SUBJECT: Recission of 55 Pa. Code, Chapter 4225 Procedural Safeguards for Children in Early Intervention Services

2000 MAY 23 PM 2:05

INDEPENDENT REGULATORY  
 REVIEW COMMISSION

AGENCY: DEPARTMENT OF PUBLIC WELFARE

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON AGING & YOUTH
5/23/00	<i>R. Shaffer</i>	House HHU
	<i>Valerie E. ...</i>	House HHS
5/23/00	<i>Debbie Eaton</i>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
5/23/00	<i>[Signature]</i>	
5/23/00	<i>J. Vaillancourt</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		<del>ATTORNEY GENERAL</del>
5/23/00	<i>C. Lee</i>	LEGISLATIVE REFERENCE BUREAU