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TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 30 - MEDICAID FOR CHILDREN, FAMILIES, AND AFFORDABLE CARE ACT (ACA) ADULTS

SUBCHAPTER 15 - EARLY INTERVENTION

Part 1 - Early Intervention Program

1.1 Purpose

- A. The purpose of the Rhode Island Early Intervention (EI) Program is to provide a comprehensive, and coordinated, system of home and community based services and supports for families of infants and toddlers with developmental disabilities or delays.
- B. The purpose of Early Intervention is to:
 - 1. Enhance the capacity of families to meet the special needs of their infant or toddler.
 - 2. Enhance the developmental functioning of infants and toddlers with special needs.
- C. The intent of Rhode Island's Early Intervention system is to establish and support a service delivery model that supports the development of infants and toddlers and utilizes evidence-based practices known to promote learning in young children. This service delivery model identifies the parent/adult caregiver as the primary consumer of Early Intervention services because he/she is the primary agent(s) of change for the child's well-being and development.

1.2 Statewide Equity

Children and families must have equal access to comprehensive Early Intervention services, as defined in these regulations, irrespective of geographic location. The provision of Early Intervention must be fully compliant with all provisions of the regulations. Early Intervention must be made available to all children referred irrespective of gender, race, ethnicity, religious beliefs, cultural orientation, citizenship, economic status, and educational or medical diagnosis.

1.3 Definitions

- A. For the purposes of this rule, the following definitions apply:
 - 1. "Act" means R.I. Gen. Laws Chapter 23-13, as amended.

2. "Children" means infants and toddlers from birth through age two (2), who need early intervention services.
3. "Council" means the state Interagency Coordinating Council.
4. "Days" means calendar days.
5. "Department" means the Rhode Island Executive Office of Health and Human Services.
6. "Developmental delay" means significant delay in the developmental areas of cognition, communication development, and physical development, including vision and hearing, social or emotional development, and/or adaptive behavior.
7. "Early Intervention System" means the total effort in the state that is directed at identifying and meeting the needs of eligible children and families.
8. "Early Intervention provider" means an entity (whether public, private or nonprofit) or an individual that provides early intervention services.
9. "Early Intervention services" (here and after referred to as "EIS") means services that are designed to meet the unique developmental needs of the eligible child and the needs of the family related to enhancing the child's development.
10. "Evaluation" means the procedures used by qualified personnel to determine the child's eligibility.
11. "Infants and toddlers with disabilities" means individuals from birth through age two (2) who:
 - a. Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay;
 - b. Are experiencing developmental delays as measured by a norm-referenced standardized tool that identifies a delay that is 2 standard deviations below the mean in at least one area of development, or 1.5 standard deviations below the mean in two or more areas of development. Areas of development include: cognitive development, physical development (including vision and hearing), communication development, social or emotional development, adaptive development; or

- c. Through the use of informed clinical opinion, the multidisciplinary team identifies a significant delay not captured by test scores, significant, atypical behaviors, or significant circumstance.
 - d. In order to be eligible under informed clinical opinion, there must be an impact on child/family functioning to the degree that without intervention developmental delay would result.
- 12. "Lead agency" means the Rhode Island Executive Office of Health and Human Services (EOHHS).
- 13. Multidisciplinary" means involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment and development of an IFSP (Individualized Family Service Plan).
- 14. "Parent" means:
 - a. General:
 - (1) A biological or adoptive parent of a child;
 - (2) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not if the child is ward of the state);
 - (3) A person acting in the place of a biological or adoptive parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
 - (4) A surrogate parent who has been assigned in accordance with existing state law and procedures outlined in the Rhode Island Early Intervention Certification Standards. The term does not include the state if the child is a ward of the state.
 - (5) Foster parent. If the biological parents' authority to make the decisions required of parent under the Act has been extinguished under state law.
 - b. The term does not include the state if the child is a ward of the state.
- 15. "Part C" means Part C of the Individuals with Disabilities Education Improvement ACT of 2004 that addresses infants and toddlers, birth through two (2) years of age with developmental delays or disabilities or

physical or mental conditions with a high probability of resulting in significant delay in development in accordance with 34 C.F.R. 303.

16. "Person" means any individual, trust or estate, partnership, corporation (including associations, joint stock companies), limited liability companies, state or political subdivision or instrumentality of a state.
17. "Qualified personnel" means personnel who provide Early Intervention services and who have met state approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing EIS as outlined in the Rhode Island Early Intervention Certification Standards.
18. "Rhode Island EI Certification Standards" means the policies and procedures defined by the EOHHS to ensure compliance with Part C of IDEA (Individuals with Disabilities Education Act), state regulations and to ensure the provision of quality services and supports to eligible families of infants and toddlers with developmental disabilities and delays in Rhode Island.
19. "Secretary" means the Secretary of the Rhode Island Executive Office of Health and Human Services.

1.4 Lead Agency

The EOHHS is the lead agency responsible for Early Intervention services for infants, toddlers, and their families consistent with final Part C of IDEA regulations effective September 6, 2011 and R.I. Gen. Laws § 23-13-22, as amended.

1.5 Interagency Coordinating Council (ICC)

1.5.1 COMPOSITION OF ICC

- A. The lead agency shall establish a State Interagency Council and shall provide assistance and resources to the council. The composition of the Council is specifically determined by criteria set forth in Part C of IDEA and in accordance with bylaws. Members of the Council are appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the state.
- B. The Governor shall designate a member of the Council to serve as the chairperson of the Council. Any member of the Council who is a representative of the Department may not serve as the chairperson.
- C. Appointments to the Council are for a two-year term. Composition of the Council shall include, but not be limited to:

1. At least twenty percent (20%) of parents of infants or toddlers including minority parents who have been enrolled in the Early Intervention Program within the past three (3) years [minimum 20%];
2. At least twenty percent (20%) of providers of early intervention services [minimum 20%];
3. One (1) representative from the legislature;
4. One (1) college or university member involved in personnel preparation;
5. One (1) pediatrician;
6. One (1) representative from each of the state human service agencies involved in the provision of or payment for EIS to infants and toddlers with disabilities and their families (Children, Youth and Families; Education; Health; Human Services; Behavioral Healthcare, Developmental Disabilities, and Hospitals) having sufficient authority to do policy planning or implementation on behalf of the agency;
7. One (1) representative from the advocacy community for children with special needs and their families;
8. At least one (1) representative from the Department of Business Regulation, the agency responsible for state governance of health insurance;
9. At least one (1) representative from the Rhode Island Department of Education, Director of Special Education, responsible for preschool services to children with disabilities. This may or may not be the same representative of the Department of Education as required in subsection (f);
10. At least one (1) member from Head Start / Early Head Start;
11. At least one (1) member from a state agency responsible for child care. This may or may not be the same representative of the Department of Children, Youth, and Families as required in subsection (f);
12. At least one (1) member from the State Medicaid Agency;
13. At least (1) member from the Office of the Coordinator of Education for Homeless Children and Youth;
14. At least one (1) member from the state child welfare agency responsible for foster care. This may or may not be the same representative of the Department of Children, Youth, and Families as required in subsection (f);

15. At least one (1) member from the state agency responsible for children's mental health.
- D. The Council may include other members selected by the Governor.
- E. Council shall assume the following responsibilities consistent with the provisions of Part C of IDEA:
- F. The Council will meet at least quarterly as stated in the by-laws;
- G. The Council shall announce meetings in sufficient time as to ensure attendance;
- H. Council meetings shall be open and accessible to the general public;
- I. Interpreters for the deaf and other services needed to support participation of all interested parties will be provided as necessary;
- J. No member of ICC may vote on any matter providing direct financial benefit to self or give appearance of conflict, and must conform to the provisions of R.I. Gen. Laws Chapter 36-14, as amended, entitled "Code of Ethics";
- K. Advise and assist the EOHHS in the development and implementation of the policies that constitute the statewide system;
- L. Assist the EOHHS in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state;
- M. Assist EOHHS in implementation of the statewide system by establishing a process that includes seeking information from service providers, service coordinators, parents, and others about any federal or state or local policies that impede timely service delivery, and taking steps to ensure that policy problems are identified and resolved;
- N. Assist EOHHS in resolution of disputes to the extent deemed appropriate;
- O. Advise and assist EOHHS and state education agency (SEA) in obtaining appropriate services for children ages birth-5 inclusive;
- P. Advise and assist SEA regarding transition of toddlers with disabilities to services under Part B to preschool and other appropriate services;
- Q. Advise or assist EOHHS in the preparation of applications and amendments for applications;
- R. Assist EOHHS in the identification of fiscal sources of support for early intervention programs;
- S. Assist in the assignment of financial responsibility to the appropriate agency;

- T. Assist in the promotion of interagency agreements;
- U. Submit an annual report to the Governor and to the Secretary of Education on the status of early intervention programs within the state.

1.6 Rhode Island Early Intervention Certification Standards

- A. The EOHHS shall establish and implement Rhode Island Early Intervention Certification Standards.
- B. The certification process provides the basis for EOHHS to determine that providers are eligible to participate in and receive payment for the provision of Early Intervention services. Providers must be in conformity with EOHHS' Rhode Island Certification Standards.
- C. The Rhode Island Early Intervention Certification Standards establish the policies and procedures required of an Early Intervention program in Rhode Island.
- D. Full compliance with the Rhode Island Early Intervention Certification Standards is required of all certified Early Intervention programs.
- E. The EOHHS is responsible for the oversight and monitoring of compliance with these standards.
- F. Changes to the standards may be made by the EOHHS in order to comply with federal or State regulations and/or to ensure funding, with reasonable notice to providers. Substantial changes to the standards will require certified providers to submit revised or new program policies and an agreement to comply with any changes.
- G. The EOHHS will hold public hearings on any new or revised policy or procedure outlined in the Rhode Island Early Intervention Certification Standards and provide notice of the hearing held in accordance with 34 C.F.R. § 303.208(b)(1) at least 30 days before the hearing is conducted in order to enable public participation. The EOHHS will also provide opportunities for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, Early Intervention providers, and members of the Interagency Coordinating Council, to comment for at least 30 days on the new or revised policy or procedure needed to comply with Part C of IDEA.
- H. No person shall provide EI services as an EI service provider without first becoming certified by the EOHHS.
- I. In order to become certified as an EI service provider, an agency or organization shall submit notice of intent to apply for certification status to the EOHHS. Required documentation includes the submission of an Implementation Plan demonstrating compliance with the regulations herein, and the Rhode Island Early Intervention Certification Standards.

1. The Implementation Plan must include at a minimum:
 - a. Initial Staffing and Supervision Plan;
 - b. Initial Budget;
 - c. Initial Organizational Plan including how Early Intervention fits into the agency structure;
 - d. Evidence of an understanding of RI Early Intervention Principles and Practices;
 - e. Evidence of understanding and the ability to comply with all state and federal requirements and RI Certification Standards.
- J. Organizations must submit any change to program policies and procedures or organizational changes (impacting Early Intervention) to the EOHHS.
- K. Certification shall be granted for a one-year period. Early Intervention Certification is valid and renewed annually, contingent upon continuing compliance with federal and state regulations and with the Rhode Island Early Intervention Certification Standards.
- L. The EOHHS shall certify applicants as it deems appropriate and necessary in order to assure a viable statewide early intervention system that provides quality services to infants and toddlers with disabilities and developmental delay. Factors reviewed to ensure that Rhode Island has the capacity to meet the need for Early Intervention include changes in population, performance indicators, or in the number of certified providers.
- M. The EOHHS determines the structure of the Rhode Island Early Intervention system and shall make changes as needed.
- N. The EOHHS will continually monitor compliance with Rhode Island Early Intervention Certification Standards. Technical assistance is available. The EOHHS may apply sanctions for non-compliance which may include but not be limited to:
 1. Corrective action plans/Performance Improvement Plans;
 2. Mandatory technical assistance;
 3. Additional reporting requirements;
 4. Suspension of new referrals;
 5. Recoupment of funds;
 6. Provisional certification status, suspension or termination of certification.

1.7 Monitoring

- A. The EOHHS is responsible for the general administration, supervision and monitoring of certified Early Intervention programs and activities to carry out Part C of the Act.
- B. The EOHHS shall establish and implement a system of general supervision that includes multiple methods to ensure implementation of Part C of the ACT, and compliance with Rhode Island Early Intervention Certification Standards, identify and correct noncompliance, facilitate improvement, and support practices that improve results and functional outcomes for children and their families.
- C. Monitoring activities shall include annual determination about the performance of each certified Early Intervention provider.

1.8 Eligible Population

1.8.1 DEFINITION OF THE ELIGIBLE POPULATION

- A. Children eligible for early intervention include:
 - 1. Children with a single established condition. Criteria: The child has a diagnosed physical or mental condition that has a high probability of resulting in developmental delays including, but not limited to, chromosomal abnormalities; genetic or congenital disorders; neurological, metabolic disorders; hearing impairments and visual impairments not corrected by medical intervention or prosthesis; congenital infections; severe attachment disorders and disorders secondary to exposure to toxic substances including fetal alcohol syndrome. Evidence of diagnosis must be in the child's record.
 - a. Children with established developmental delays. Criteria: The child exhibits a delay in one or more areas of development as measured by a norm referenced standardized tool that identifies a delay that is 2 standard deviations below the mean in one area of development, or 1.5 standard deviations below mean in two or more areas of development).
 - Or
 - b. Through the use of informed clinical opinion, the multidisciplinary team identifies a significant delay not captured by test scores, significant atypical behaviors or significant circumstances. In order to be eligible under informed clinical opinion, there must be an impact on child/family functioning to the degree that, without intervention, developmental delay would result.

1.9 State Interagency Coordination

It is the responsibility of the EOHHS to identify and coordinate all available resources for Early Intervention in the state including developing formal interagency agreements, assigning financial responsibility to the appropriate agencies and developing procedures for securing timely reimbursement of funds. Additional responsibilities include resolving intra- and interagency disputes and developing procedures to ensure that services are provided in a timely manner pending resolution of any disputes.

1.10 Central Directory of Services

- A. The EOHHS shall oversee a central directory that is accessible to the general public (i.e., through the EOHHS's web site and other appropriate means) that is accurate and up to date and includes:
 - 1. Information on research and demonstration projects in the state;
 - 2. Professionals and other groups providing assistance to infants and toddlers with disabilities eligible for early intervention and their families;
 - 3. Public and private early intervention services.

1.11 Comprehensive Child Find System

- A. Child Find efforts shall be coordinated by the EOHHS with all state agencies and relevant community programs (e.g., Department of Education, Department of Human Services, Maternal and Child Health, Newborn Hearing Screening, Medicaid EPSDT, Department of Children, Youth and Families, Head Start, Early Head Start and First Connections Program). Screening (by Primary Care Providers, DOH Family Visiting Programs, and other community programs), direct referrals and public awareness, shall be implemented concurrently on a statewide basis to ensure that all infants and toddlers in the state who are eligible for services are identified, located, and evaluated.
- B. Newborn screening shall occur for every child born in Rhode Island and includes screening at birth for risk factors related to developmental delay, or adverse developmental consequences. Follow-up screening shall occur at periodic intervals between birth and through age two (2). This initial screening may occur in the hospital and will continue via other health care providers in the community.
- C. In-home screening, for all those identified as having risk factors, is a comprehensive process that is intended to identify children in need of additional services. After in-home screening is completed, and on-going risk factors have been identified, the child and family's needs will be addressed through a community based review process. Alternatively, children who are determined to have probable eligibility for EIS shall be referred to an EI service provider.

- D. All early intervention service providers certified by the EOHHS shall implement a standard direct referral process as outlined in the Rhode Island Certification Standards which permits families and community-based agencies to refer infants and toddlers directly to programs for screening, evaluation and assessment to determine eligibility for EIS.
- E. Referrals will be made by primary referral sources (i.e., hospitals, physicians, parents, child care centers, LEAs, public health facilities, other social service agencies and other health care providers) within seven (7) working days after the child is identified.
- F. All children under the age of three who are involved in a substantiated case of child abuse or neglect or are identified as affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure shall be referred to EI.
- G. The EOHHS shall establish and implement a public awareness program that focuses on the early identification of infants and toddlers with disabilities and provides information to parents of infants and toddlers through primary referral sources. Information is made available to families and the general public as well as primary referral sources.

1.12 Comprehensive System of Personnel Development

- A. The EOHHS shall establish and implement a comprehensive system of personnel development including training paraprofessionals, and primary referral sources with respect to the basic components of early intervention and training personnel to coordinate transition services for infants and toddlers with disabilities. Functions of the Rhode Island Comprehensive System of Personnel Development shall include:
 - 1. Recruitment and retention of qualified personnel;
 - 2. Increased workforce capacity;
 - 3. Professional development and technical assistance for the current workforce;
 - 4. Implementation of evidence based practices;
 - 5. Leadership development across the Rhode Island Early Intervention systems.

1.13 System of Payments

- A. The Rhode Island Early Intervention system of payments includes a combination of state and federal funds and the use of public and private insurance. Early Intervention is a state-required benefit for all insurance plans issued in Rhode

Island. RI General Laws §§ 27-18-64, 27-20-50, and 27-41-68 require private and public insurers based in Rhode Island and providing coverage for dependent children to cover the cost of Early Intervention services. Plans may not include deductibles, co-pays, or co-insurance. Rhode Island residents may have employer-sponsored health benefit plans or “self- insured” plans that are exempt from Rhode Island State law but these plans must follow federal law. These plans and other out-of-state plans may provide “essential benefits”, including “rehabilitative and habilitative services and devices” depending on the plan design, which may cover early intervention services. Any Early Intervention service not covered by health insurance or health benefit plans exempt from Rhode Island State law including deductibles, co-pays or co-insurance is funded through the use of public and Part C funds.

- B. The Rhode Island Early Intervention system of payments does not include any family fees, co-payments or deductibles. Therefore, there is no family payment system; no sliding or cost participation fees; no basis for determining fees; and no definitions regarding ability and inability to pay.
- C. The Rhode Island Early Intervention system will ensure that parents are not charged any out-of-pocket costs for any Part C services. Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to the parents including:
 - 1. Implementation of the child find requirements;
 - 2. Evaluation and assessment;
 - 3. Service coordination;
 - 4. Administrative and coordinative activities related to:
 - a. The development, review, and evaluation of IFSPs;
 - b. The implementation of procedural safeguards;
 - c. All Early Intervention services authorized on the IFSP, including any co-payments or deductibles related to these services.
- D. The Rhode Island Early Intervention system does not charge any fees to parents, copayments or deductibles, therefore:
 - 1. The inability of the parents to pay for services will not result in the delay or denial of services to the child or the child’s family;
 - 2. Families will not be charged any more than the actual cost of an Early Intervention service;

3. Parents with public insurance or benefits or private insurance will not be charged disproportionately more than those who do not; and
 4. No fees will be charged to parents for failure to provide income information.
- E. Parents are only responsible for the cost of their health insurance premiums.
- F. No service a child is entitled to receive will be delayed or denied due to disputes between agencies regarding financial or other responsibilities.
- G. All Part C services on the IFSP are available to the child and family whether or not consent to use insurance or Medicaid is required or provided.
- H. Payor of Last Resort
1. Part C funds may be used for activities or expenses that are reasonable and necessary for implementing the Rhode Island Early Intervention system including direct Part C services for children and families and the cost of co-pays and deductibles. Part C funds will be used as the payor of last resort and cannot be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source. However, if necessary to prevent a delay in the timely provision of appropriate Part C services to an infant/toddler or the family, funds may be used to pay the provider of services for services and functions authorized under Part C pending reimbursement from the insurance provider that has ultimate responsibility for the payment.
- I. The Use of Private Insurance to Pay for Part C Services
1. Consent for the use of private insurance is not required because the Part C required specific protections are provided by Rhode Island state statutes governing insurance in Rhode Island. Parents who have insurance plans exempt from RI law are also afforded the required specific protections under Federal law.
 - a. Required Protection C.F.R. § 303.520(b)2(i)
 - (1) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent or the child's family members who are covered under that health policy.
 - b. Required Protection C.F.R. § 303.520(b)2(ii)

- (1) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health policy and health insurance may not be discontinued for these individuals due to the use of the health insurance to pay for Part C services.

c. Required Protection C.F.R. § 303.520(b)2(iii)

- (1) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant and toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

J. Notification prior to the initial use of the parent's private insurance is required as well as consent to release personally identifiable information for billing purposes. Consent to release personally identifiable information can be revoked at any time without the risk of losing Early Intervention services.

K. The Use of Public Benefits or Public Insurance to Pay for Part C Services – Medicaid/RtE Care:

1. The use of public benefits or public insurance is allowed to pay for Part C services, however the following provisions must be followed:
 - a. Parents are not required to sign up or enroll in a public benefits or public insurance program as a condition for their child to receive Part C services.
 - b. Parental notification must be provided prior to using public benefits or public insurance of a child or parent if that child or parent is enrolled in a public benefits or public insurance program. Parental notification must include the following:
 - (1) A statement that in Rhode Island when using public insurance, parents have no out-of-pocket costs except for insurance premiums. Co-pays, co-insurance and deductibles are not charged to parents.
 - (2) Consent for disclosure of personally identifiable information to bill public insurance is not required because EOHHS administers both Part C and Medicaid.
 - (3) A statement that parents, who have both private insurance and public insurance, state Medicaid regulations require the use of private insurance as the primary insurance.

- (4) In Rhode Island, consent is not required to bill private insurance because of specific protections provided in state statute and federal law. However, notification prior to the initial use of the parent's private insurance is required as well as consent to release personally identifiable information for billing purposes. (For parents with public insurance, consent to release personally identifiable information was provided upon enrollment in Medicaid). Consent to release personally identifiable information can be revoked at any time without the risk of losing Early Intervention services.

L. If an infant or toddler or parent is enrolled in a public benefits or public insurance program, written parental consent is not required because the use of these benefits to pay for Part C services does not:

1. Decrease available lifetime coverage or any other insured benefit for the child or parent; or
2. Result in the child's parents paying for services that would otherwise be covered by public benefits or insurance; or
3. Result in any increase in premiums or cancellation of public benefits or insurance for the child or parent; or
4. Risk the loss of eligibility for the child or the child's parents for home and community-based waivers based on total health-related costs.
5. Prior to the initial use of private or public insurance, the EI provider must provide families with the following:
 - a. Procedural safeguards including the right to participate in mediation; request a due process hearing; or file a state complaint;
 - b. Written notice related to the use of private insurance and Medicaid.

1.14 Resolving Complaints

- A. The Rhode Island EOHHS, as lead agency, is responsible to review, investigate and act on any complaints or allegations of noncompliance with Part C of IDEA or with Rhode Island Early Intervention Certification standards, policies, or procedures by a certified Early Intervention Provider. The complaint procedure is publicly available on the EOHHS website.
- B. Any public agency, public employee, parent, private individual or organization may file a written complaint alleging that there has been an instance of noncompliance with IDEA Part C or with Rhode Island Certification Standards, policies, or procedures by any certified Early Intervention Provider.

- C. The parent, organization, or individual filing the complaint must submit a signed written complaint to the Part C Coordinator and simultaneously forward a copy of the complaint to the EI provider serving the child.
- D. The complaint must be completed, signed, dated and submitted to the Part C Coordinator. The Early Intervention Complaint form is given to parents at Intake and is available on line at: <http://www.eohhs.ri.gov>
- E. The EI provider will assist the parent in filing a written complaint if requested.
- F. The Early Intervention Complaint Form (or facsimile) shall be used and must include:
 - 1. A statement that the EI provider has violated a requirement of Part C of the IDEA;
 - 2. The facts on which the statement is based;
 - 3. The signature and contact information for the individual filing the complaint; and
 - 4. The name and address of the child;
 - 5. The name of the EI provider serving the child;
 - 6. A description of the nature of the problem of the child, including facts relating to the problem; and
 - 7. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- G. The violation must have allegedly occurred not more than one (1) year prior to the date that the complaint is received.
- H. The lead agency will conduct an investigation of the complaint through interviews and a review of the early intervention record(s) or may determine that an independent on-site investigation is necessary. The complainant will be given the opportunity to submit additional information orally or in writing within the required timeline.
- I. The EI provider will be given an opportunity to respond to the complaint; including at the discretion of the lead agency, a proposal to resolve the complaint.
- J. A parent who has filed a complaint will be given an opportunity to voluntarily engage in mediation with the EI provider.

- K. EI programs shall cooperate with the lead agency by providing full access to all records and personnel involved.
- L. The lead agency will review all relevant information and determine whether there has been a violation of a requirement of the Rhode Island Early Intervention system and will issue a written decision within sixty (60) days. A time extension may be permitted only if exceptional circumstances exist with respect to the complaint or if the parent and the EI provider agree to extend the time to engage in mediation.
- M. The written decision will address each allegation in the complaint and will contain the following:
 - 1. Findings of facts and conclusions;
 - 2. The reasons for the final decision;
 - 3. The procedures to effectively implement the decision including corrective actions needed to achieve compliance, negotiations and technical assistance;
- N. If the lead agency has found that the EI provider failed to provide appropriate services, the lead agency must address corrective actions required to correct the cause of the complaint. This includes corrective actions required of the system or of the EI program which impact the future provision of service for children with disabilities and their families, and compensatory services or monetary reimbursement as appropriate to the needs of the child and the child's family.
- O. Final decisions are binding and enforceable. The lead agency may monitor the EI provider regarding implementation of corrective actions and if corrective actions are not implemented the lead agency may terminate the EI provider's certification agreement.
- P. If an issue is raised in the written complaint, or there are multiple issues in which one or more are also part of a due process hearing request, the issue(s) must be set aside until the conclusion of the due process hearing. The remaining issues must be resolved using the written complaint time limits.
- Q. If an issue is raised in the written complaint, which has already been decided in a due process hearing, the previous decision is binding and the complainant must be so informed.
- R. A written complaint alleging a failure of the EI provider to implement a decision made pursuant to a "Request for Due Process Hearing" must be resolved by the lead agency.
- S. If a parent is not satisfied with the final decision issued by the lead agency, a "Request for a Due Process Hearing" may be filed by the parent if the written

complaint was about a proposal to initiate or change the identification, evaluation or early intervention services of their child; or the refusal to initiate or change the child's identification, evaluation or early intervention services of their child.

1.15 Mediation

- A. When filing a written complaint or a request for a due process hearing, families must be offered mediation as a formal method for resolving any dispute. Parents will be notified of mediation procedures in writing, initially and annually from the EI provider. Parents also receive written notice of all rights available to them whenever prior written notice is given.
- B. The EOHHS will offer mediation to the parent as a first step in resolving a disagreement when the parent(s) file:
 - 1. A written complaint;
 - 2. A request for a due process hearing.
- C. Mediation is voluntary on the part of all parties. The EOHHS identifies individual mediators to provide EI mediation services. EOHHS maintains a list of qualified and impartial mediators who are required to undergo training in effective mediation techniques and are knowledgeable in laws, regulations, policies and procedures related to the provision of EI services.
- D. Mediation cannot be used to deny or delay the parent's right to a due process hearing or any other rights.
- E. The parent may refuse or withdraw from the mediation process at any time.
- F. The mediation process, including a written mediation agreement, must be completed to ensure enough time for completion of a due process hearing or complaint investigation by the lead agency, unless an extension of time has been granted by the EOHHS in the case of a written complaint or the hearing officer in the case of a due process hearing.
- G. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties (parent and EI service provider) to the dispute. The lead agency must bear the cost of the mediation process, including the costs of meetings or sessions described above.
- H. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth the resolution of the dispute and:
- I. States that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

- J. Is signed by both the parent and a representative of the lead agency to bind the agency to what has been agreed upon;
- K. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

1.16 Due Process Hearing

- A. A due process hearing is a formal review of a complaint identified by the parent, all data related to the problem, and testimony from the parties concerned.
- B. Parents may request a hearing with regard to:
 - 1. A proposal to initiate or change the identification, evaluation or early intervention services of their child;
 - 2. Refusal to initiate or change the child's identification, evaluation, or early intervention services of their child.
 - 3. A request that information in their child's record be amended and the Early Intervention provider refuses to amend the record in accordance with the request (see Access to Records procedure).
- C. A "Request for a Due Process Hearing" form must be completed, signed and dated by the parent or the parent's representative and submitted to the Part C Coordinator. This form is given to parents at intake and is also available online at:
<http://www.eohhs.ri.gov/ProvidersPartners/ProviderManualsGuidelines/MedicaidProviderManual/EarlyInterventionProviders/EarlyInterventionProgram.aspx>
- D. The EI provider will assist the parent in filing a "Request for a Due Process" Hearing upon parent request.
- E. When a hearing is requested by the parent, the lead agency will inform the parent of the right to mediation and of any free or low cost legal services available to the parent.
- F. The hearing will be scheduled at a time and in a location that is convenient for the parents.
- G. The due process hearing must be completed, and a written decision mailed to each of the parties within thirty (30) calendar days of the receipt of the request. Mediation, if attempted, must occur within the same thirty (30) days. A hearing officer may grant specific extensions of time beyond the period set, at the request of either party.
- H. The hearing officer:

1. Shall not be an employee of the lead agency or program involved in the provision of early intervention services or care of the child, nor have a personal or professional interest that would conflict with his or her objectivity in implementing the process. A hearing officer cannot be an employee of an agency solely because the person is paid by the agency to implement hearing or mediation procedures under this part.
 2. Shall have knowledge about the provision of early intervention and services available for infants and toddlers with disabilities and their families.
 3. Shall listen to the presentation of viewpoints concerning the matter under review, examine all information relevant to the issues, and seek to reach a timely resolution of the matter.
- I. Parents have the right to:
1. Be accompanied and advised by counsel and or individuals with special knowledge or training with respect to early intervention services for eligible children.
 2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
 3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to them at least five (5) days before the proceeding.
 4. Obtain a written or electronic verbatim transcription of the proceedings.
 5. Obtain written findings of fact, conclusions of law, and decisions at no cost.
- J. The hearing officer shall inform the parents or guardians and lead agency of their decision in writing within thirty (30) days of the request.
- K. Any party disagreeing with the results of the hearing has the right to bring civil action in State or Federal court.
- L. The lead agency shall ensure that the results of the hearing are implemented.
- M. A child must continue to receive IFSP services consented to by the parent pending a hearing unless the parent and the EOHHS agree otherwise. If the hearing involves agreement on the initial IFSP, the child shall receive those services that are not in dispute.

1.17 Severability

If any provisions of these rules and regulations or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.

210-RICR-30-15-1

**TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES
CHAPTER 30 - MEDICAID FOR CHILDREN, FAMILIES, AND AFFORDABLE CARE
ACT (ACA) ADULTS**

SUBCHAPTER 15 - EARLY INTERVENTION

PART 1 - EARLY INTERVENTION PROGRAM (210-RICR-30-15-1)

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