

**CHAPTER 4226. EARLY INTERVENTION SERVICES****GENERAL PROVISIONS**

- Sec.  
4226.1. Policy.  
4226.2. Purpose.  
4226.3. Applicability.  
4226.4. Penalties for noncompliance.  
4226.5. Definitions.  
4226.6. Waiver of regulations.

**FINANCIAL MANAGEMENT**

- 4226.11. Financial administration.  
4226.12. Medicaid waiver funds.  
4226.13. Payor of last resort.  
4226.14. Documentation of other funding sources.  
4226.15. Interim payments.

**GENERAL REQUIREMENTS**

- 4226.21. Nondelegation of responsibilities.  
4226.22. Eligibility for early intervention services.  
4226.23. Eligibility for Medicaid waiver services.  
4226.24. Comprehensive child find system.  
4226.25. At-risk children.  
4226.26. Tracking system.  
4226.27. Monitoring responsibilities.  
4226.28. Self-assessment reviews.  
4226.29. Preservice training.  
4226.30. Annual training.  
4226.31. Child Protective Services Law.  
4226.32. Reporting and record retention.  
4226.33. Traditionally underserved groups.  
4226.34. Local interagency coordinating council.  
4226.35. Confidentiality of information.  
4226.36. Child records.

**PERSONNEL**

- 4226.51. Provision of service coordination.  
4226.52. Service coordination activities.  
4226.53. Service coordinator requirements and qualifications.  
4226.54. Early interventionist responsibilities.  
4226.55. Early interventionist qualifications.  
4226.56. Effective date of personnel qualifications.

**EVALUATION AND ASSESSMENT**

- 4226.61. MDE.  
4226.62. Nondiscriminatory procedures.

4226-1

**IFSPs**

- 4226.71. General.
- 4226.72. Procedures for IFSP development, review and evaluation.
- 4226.73. Participants in IFSP meetings and periodic reviews.
- 4226.74. Content of the IFSP.
- 4226.75. Implementation of the IFSP.
- 4226.76. Provision of services before MDE is completed.
- 4226.77. Transition from early intervention services.

**PROCEDURAL SAFEGUARDS**

- 4226.91. General responsibility for procedural safeguards.
- 4226.92. Parental consent.
- 4226.93. Parental right to decline service.
- 4226.94. Opportunity to examine records.
- 4226.95. Prior notice.
- 4226.96. Surrogate parents.
- 4226.97. Conflict resolution.
- 4226.98. Mediation.
- 4226.99. Due process procedures.
- 4226.100. Parental rights in due process hearings.
- 4226.101. Impartial hearing officer.
- 4226.102. Convenience of proceedings; timelines.
- 4226.103. Status of a child during proceedings.

**Authority**

The provisions of this Chapter 4226 issued under the Early Intervention Services System Act (11 P. S. §§ 875-102—875-503); and section 201(2) of the Public Welfare Code (62 P. S. § 201(2)), unless otherwise noted.

**Source**

The provisions of this Chapter 4226 adopted February 28, 2003, effective July 1, 2003, 33 Pa.B. 1051, unless otherwise noted.

**Cross References**

This chapter cited in 55 Pa. Code § 4305.11 (relating to exempt services).

**GENERAL PROVISIONS****§ 4226.1. Policy.**

Early intervention services and supports are provided to families and infants and toddlers with disabilities and at-risk children to maximize the child's developmental potential. Service planning and delivery are founded on a partnership between families and early intervention personnel which is focused on meeting the unique needs of the child, addressing the concerns and priorities of each family and building on family and community resources.

**§ 4226.2. Purpose.**

This chapter establishes administrative, financial and eligibility requirements, standards for personnel and service delivery, and procedural protections for the Department's early intervention program.

**§ 4226.3. Applicability.**

This chapter applies to county MH/MR programs that provide early intervention services and to public and private service providers and agencies that contract with a county MH/MR program to provide early intervention services.

**§ 4226.4. Penalties for noncompliance.**

(a) The failure to comply with this chapter so that needs of at-risk children and infants and toddlers with disabilities are not being adequately met, shall subject the county MH/MR program to penalties consistent with section 512 of the Mental Health and Mental Retardation Act of 1966 (50 P. S. § 4512), including loss or delay of early intervention funding to the county MH/MR program.

(b) Appeals from Department action taken in accordance with subsection (a) shall be made by the county MH/MR program in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

**§ 4226.5. Definitions.**

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

*Assessment*—The ongoing procedures used throughout the period of a child's eligibility under this chapter to identify the following:

- (i) The child's unique strengths and needs and the services appropriate to meet those needs.
- (ii) The resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of its child.

*Assistive technology device*—An 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 infants and toddlers with disabilities.

*Assistive technology service*—A service that directly assists an infant or toddler with a disability or the infant or toddler's family in the selection, acquisition or use of an assistive technology device. The term includes:

- (i) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation in the infant or toddler's customary environment.
- (ii) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by infants and toddlers with disabilities.
- (iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices.
- (iv) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.

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

(vi) 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 infants and toddlers with disabilities.

*At-risk child*—An individual under 3 years of age:

(i) Whose birth weight is under 1,500 grams.

(ii) Who was cared for in a neonatal intensive care unit.

(iii) Who was born to a chemically dependent mother and referred by a physician, health care provider or parent.

(iv) Who is seriously abused or neglected, as substantiated and referred by the county children and youth agency under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law).

(v) Who has confirmed dangerous levels of lead poisoning as set by the Department of Health.

*Audiology services*—Includes the following:

(i) Identification of hearing loss, using audiological screening techniques.

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

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of hearing loss.

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services to address hearing loss.

(v) Provision of services for prevention of hearing loss.

(vi) Determination of the 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 3 years of age.

*County MH/MR program*—An MH/MR program established by a county or two or more counties acting in concert which includes a complex array of services providing a continuum of care in the community for infants and toddlers with disabilities and at-risk children.

*Culturally competent*—Conducted or provided in a manner that shows awareness of and is responsive to the beliefs, interpersonal styles, attitudes, language and behavior of children and families who are referred for or receiving services.

*Department*—The Department of Public Welfare of the Commonwealth.

*Early intervention services*—Developmental services that meet the requirements of this chapter and:

(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 and the needs of the family related to enhancing the infant or toddler's development in one or more of the following areas:
  - (A) Physical development, including vision and hearing.
  - (B) Cognitive development.
  - (C) Communication development.
  - (D) Social or emotional development.
  - (E) Adaptive development.
- (iv) Are provided in conformity with an IFSP.
- (v) Include, but are not limited to, the following:
  - (A) Family training, counseling and home visits.
  - (B) Special instruction.
  - (C) Speech-language pathology services.
  - (D) Occupational therapy.
  - (E) Physical therapy.
  - (F) Psychological services.
  - (G) Service coordination.
  - (H) Medical services only for diagnostic or evaluation purposes.
  - (I) Early identification and assessment services.
  - (J) Health services necessary to enable an infant or toddler with a disability to benefit from other early intervention services.
  - (K) Social work services.
  - (L) Vision services.
  - (M) Assistive technology devices and assistive technology services.
  - (N) Transportation and related costs.
  - (O) Audiology services.
  - (P) Nursing services.
  - (Q) Nutrition services.
- (vi) Are provided by qualified personnel, including, but not limited to, the following:
  - (A) Special educators.
  - (B) Speech-language pathologists.
  - (C) Occupational therapists.
  - (D) Physical therapists.
  - (E) Psychologists.
  - (F) Social workers.
  - (G) Nurses.
  - (H) Nutritionists.
  - (I) Family therapists.
  - (J) Orientation and mobility specialists.
  - (K) Pediatricians and other physicians.
  - (L) Early interventionists.

(M) Service coordinators.

(N) Audiologists.

*Evaluation*—Procedures used by qualified personnel to determine a child's initial and continuing eligibility for tracking or early intervention services.

*Family training, counseling and home visits*—Services provided by social workers, psychologists or other qualified personnel, as appropriate, to assist the family of an infant or toddler with a disability in understanding the special needs of and enhancing the development of the infant or toddler.

*Health services*—Services necessary to enable an infant or toddler with a disability to benefit from other early intervention services, while an infant or toddler is receiving another early intervention service.

(i) The term includes the following:

(A) Clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags.

(B) Consultation by physicians with other service providers concerning the special health care needs of an infant or toddler with a disability that will need to be addressed in the course of providing other early intervention services.

(ii) The term does not include the following:

(A) Services that are surgical in nature (such as cleft palate surgery, surgery for club foot or the shunting of hydrocephalus).

(B) Services that are purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

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

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

*IFSP—Individualized family service plan*—A written plan for providing early intervention services to an infant or toddler with a disability and the infant or toddler's family.

*Infant or toddler with a disability*—An individual under 3 years of age who needs early intervention services because the individual meets one or more of the eligibility criteria specified in § 4226.22(a) (relating to eligibility for early intervention services).

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

*MH/MR*—Mental health/mental retardation.

*Medical services only for diagnostic or evaluation purposes*—Services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

*Method*—How a service is provided, including whether the service is given directly to the infant or toddler with a disability, with family or child care participation or without family or child care participation, or whether the service is provided as instruction to the family or caregiver.

*Multidisciplinary*—Involving 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 child. If the parent is deaf or blind, or has no written language, the mode of communication is that normally used by the parent (such as sign language, Braille or oral communication).

*Natural environments*—Settings that are natural or normal for a child's age peers who have no disabilities, including the home and community settings in which children without disabilities participate.

*Nursing services*—Includes the following:

- (i) Assessing health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems.
- (ii) Providing nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development.
- (iii) Administering medications, treatments and regimens prescribed by a licensed physician.

*Nutrition services*—Includes the following:

- (i) Conducting individual assessments in the following:
  - (A) Nutritional history and dietary intake.
  - (B) Anthropometrical, biochemical and clinical variables.
  - (C) Feeding skills and feeding problems.
  - (D) Food habits and food preferences.
- (ii) Developing and monitoring appropriate plans to address the nutritional needs of infants and toddlers with disabilities, based on the findings of the assessments in subparagraph (i).
- (iii) Making referrals to appropriate community resources to carry out nutrition goals.

*Occupational therapy*—Services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior and play, and sensory, motor and postural development, which are designed to improve the functional ability of the infant or toddler to perform tasks in home, school and community settings, and include the following:

- (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.
- (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 legal custodian, excluding a county children and youth agency; a person acting as a parent of a child

(such as a grandparent or stepparent with whom the child lives); or a surrogate parent, including a foster parent, appointed under § 4226.96 (relating to surrogate parents).

*Personally identifiable information*—Information that would make it possible to identify a particular child or family, including the following:

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

*Physical therapy*—Services to address the promotion of sensorimotor function of an infant or toddler with a disability through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaptation, which include the following:

- (i) Screening, evaluation and assessment 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.
- (iii) Providing individual and group services or treatment to prevent, alleviate or compensate for movement dysfunction and related functional problems.

*Psychological services*—Includes the following:

- (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.
- (iv) Planning and managing a program of psychological services, including psychological counseling for infants and toddlers with disabilities and their parents, family counseling, consultation on child development, parent training and education programs.

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

*Referral*—Oral or written action by an individual to direct information about a child or the child's family to another individual or entity, requesting that the receiving individual or entity take action on behalf of the child and family.

*Service coordination*—Activities carried out by a service coordinator in accordance with § 4226.52 (relating to service coordination activities) to assist

and enable a child and the child's family to benefit from the rights and procedural safeguards and to receive the services that are authorized under this chapter.

*Social work*—Includes the following:

- (i) Making home visits to evaluate the living conditions of an infant or toddler with a disability and patterns of parent-child interaction.
- (ii) Preparing a social or emotional developmental assessment of an infant or toddler with a disability within the family context.
- (iii) Providing individual and family or group counseling to the parent and other family members of an infant or toddler with a disability, and appropriate social skill-building activities to the infant or toddler and the infant or toddler's parent.
- (iv) Working to address those problems in the living situation of an infant or toddler with a disability and the infant or toddler's family (home, community, and any center where early intervention services are provided) that impede the maximum use of early intervention services.
- (v) Identifying, mobilizing and coordinating community resources and services to enable an infant or toddler with a disability and the infant or toddler's family to receive maximum benefit from early intervention services.

*Special instruction*—Includes the following:

- (i) Designing the learning environments and activities that promote the acquisition of skills by an infant or toddler with a disability 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 on the IFSP.
- (iii) Providing the family with information, skills and support related to enhancing the skill development of the infant or toddler with a disability.
- (iv) Working with the infant or toddler with a disability and family to enhance the infant or toddler's development.

*Speech-language pathology services*—Includes the following:

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

*Tracking*—A systematic process to monitor the development of at-risk children to determine whether they have become eligible for early intervention services under this chapter.

*Transportation and related costs*—Includes the expenses incurred in travel (such as mileage or travel by taxi, common carrier or other means or tolls and parking expenses) that are necessary to enable an infant or toddler with a disability and the infant or toddler's family to receive another early intervention service.

*Vision services*—Includes the following:

- (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.
- (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.

#### **Cross References**

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); and 55 Pa. Code § 3290.4 (relating to definitions).

### **§ 4226.6. Waiver of regulations.**

(a) The Department may, upon application by a county MH/MR program and a showing of good cause as specified in subsection (b), waive specific requirements contained in this chapter if the waiver will not result in violation of another provision of Federal or State law and will not jeopardize receipt of Federal funding. A waiver may be granted only when the health, safety and well-being of infants and toddlers with disabilities and other children and their families and the quality of services are not adversely affected.

(b) The Department may waive one or more requirements of this chapter upon written request for a waiver from a county MH/MR program on a form prescribed by the Department, which includes:

- (1) The specific regulatory sections for which a waiver is requested.
- (2) A detailed description of the unusual or special circumstances that justify the waiver for the county MH/MR program.
- (3) An explanation of how the county MH/MR program will ensure that the health, safety and well-being of infants and toddlers with disabilities and other children and their families will be protected if the waiver is granted.
- (4) A description of how the county MH/MR program will meet the objective of the requirement in another way if the waiver is granted.

(c) A waiver granted under this section will be effective for a specified time period and may be revoked if the Department determines that the county MH/MR program has failed to comply with the conditions of the waiver.

(d) The purpose, applicability and definitions sections of this chapter may not be waived.

**FINANCIAL MANAGEMENT****§ 4226.11. Financial administration.**

Chapter 4300 (relating to county mental health and mental retardation fiscal manual) applies to the county MH/MR program for purposes of identifying allowable costs and for the general financial administration of early intervention services.

**§ 4226.12. Medicaid waiver funds.**

The county MH/MR program shall expend supplemental grant funds for the provision of early intervention services to infants and toddlers with disabilities and their families under 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 (42 U.S.C.A. § 1396n(c)) to the extent that eligible services and eligible infants and toddlers can be identified and the infants' and toddlers' parents consent to participate in the waiver.

**§ 4226.13. Payor of last resort.**

(a) Unless otherwise permitted or mandated by Federal law, State early intervention funds may not be used to satisfy a financial commitment for early intervention services if another public or private funding source is available to pay for the services.

(b) Unless otherwise permitted or mandated by Federal law, private insurance may be used with the consent of the parent to pay for early intervention services as long as such use will not result in a cost to the family, including but not limited to the following:

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

(c) Services on the IFSP may not be denied or delayed because another public or private funding source, including Medicaid, is unavailable.

**Cross References**

This section cited in 55 Pa. Code § 4226.14 (relating to documentation of other funding sources).

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

(a) The county MH/MR program shall develop and maintain a written policy that sets forth the procedures used to identify and exhaust all other public and private sources of funding for early intervention services, as required in § 4226.13 (relating to payor of last resort).

(b) The service coordinator shall maintain written documentation that attempts have been made to exhaust all other private and public funding sources available to an infant or toddler with a disability and the infant or toddler's family, as required by § 4226.13, in the infant or toddler's record, in accordance with § 4226.36(d) and (e) (relating to child records).

**§ 4226.15. Interim payments.**

(a) When necessary to prevent a delay in the receipt of early intervention services by an infant or toddler with a disability or the infant or toddler's family, State early intervention funds may be used to pay the provider of services pending reimbursement from the funding source that has ultimate responsibility for the payment.

(b) The county MH/MR program shall seek reimbursement from the responsible funding source to cover the interim payments made for early intervention services.

**GENERAL REQUIREMENTS**

**§ 4226.21. Nondelegation of responsibilities.**

(a) The county MH/MR program may contract with another agency for delivery of early intervention services under this chapter.

(b) If the county MH/MR program contracts with another agency as permitted in subsection (a), the county MH/MR program retains responsibility for compliance with the requirements of this chapter and shall ensure compliance by all agencies under contract to provide early intervention services.

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

(a) The county MH/MR program shall ensure that early intervention services are provided to all children who meet one or more of the following eligibility criteria:

(1) A developmental delay, as measured by appropriate diagnostic instruments and procedures, of 25% of the child's chronological age in one or more of the developmental areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development.

(2) A developmental delay in one or more of the developmental areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development, as documented by test performance of 1.5 standard deviations below the mean on accepted or recognized standard tests for infants and toddlers.

(3) A diagnosed physical or mental condition which has a high probability of resulting in a developmental delay as specified in paragraphs (1) and (2),

including a physical or mental condition identified through an MDE, conducted in accordance with § 4226.61 (relating to MDE), that is not accompanied by delays in a developmental area at the time of diagnosis.

(b) In addition to the diagnostic tools and standard tests specified in subsection (a)(1) and (2), informed clinical opinion shall be used to establish eligibility, especially when there are no standardized measures or the standardized measures 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.

#### Cross References

This section cited in 55 Pa. Code § 4226.5 (relating to definitions).

### § 4226.23. Eligibility for Medicaid waiver services.

(a) The county MH/MR program shall ensure that infants and toddlers with disabilities enrolled in the Infant, Toddlers and Families Medicaid Waiver meet the level of care criteria for an intermediate care facility/mental retardation (ICF/MR) or intermediate care facility/other related conditions (ICF/ORC) as set forth in subsection (b).

(b) Eligibility criteria for ICF/MR or ICF/ORC level of care.

(1) Minimum eligibility for ICF/MR or ICF/ORC level of care is established by one of the following:

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

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

(B) Performance that is slightly higher than two standard deviations below the mean as measured on a standardized general intelligence test during a period when the infant or toddler manifests serious impairments of adaptive behavior.

(ii) A qualified professional who meets the criteria in 42 CFR 483.430(a) (relating to condition of participation: facility staffing), shall certify that the infant or toddler has other related conditions, which may include cerebral palsy and epilepsy as well as other conditions except mental illness, such as autism, that result in impairments of general intellectual functioning or adaptive behavior and require early intervention services.

(2) In addition to the certification required in paragraph (1), a qualified professional who meets the criteria in 42 CFR 483.430(a) shall certify that the infant or toddler has impairments in adaptive behavior, which are likely to continue for at least 12 months, as documented by an assessment of adaptive functioning which shows one of the following:

- (i) Significant limitations in meeting the standards of maturation, learning, personal independence or social responsibility of the infant's or toddler's age and cultural group, as evidenced by a minimum of a 50% delay in one or a 33% delay in two 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.
- (ii) Substantial functional limitation in three or more of the following areas of major life activities:
  - (A) Self-care.
  - (B) Receptive and expressive language.
  - (C) Learning.
  - (D) Mobility.
  - (E) Self-direction.
  - (F) Capacity for independent living.
  - (G) Economic self-sufficiency.
- (c) The county MH/MR program shall cooperate with the county assistance office in determining the initial and continuing financial eligibility of an infant or toddler with a disability and the infant or toddler's family for waiver services.

#### Cross References

This section cited in 55 Pa. Code § 4226.91 (relating to parental consent).

### § 4226.24. Comprehensive child find system.

- (a) The county MH/MR program shall develop a child find system that will ensure that:
  - (1) All at-risk children and infants and toddlers with disabilities in the geographical area of the county MH/MR program are identified, located and evaluated.
  - (2) An effective method is developed and implemented to determine which at-risk children and infants and toddlers with disabilities are receiving needed tracking or early intervention services, and which are not receiving those services.
- (b) The county MH/MR program, with the assistance of the local interagency coordinating council, shall coordinate the child find system with all other major efforts to locate and identify at-risk children and infants and toddlers with disabilities, which include the following:
  - (1) The local preschool program authorized under Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1411—1419).
  - (2) Maternal and Child Health Programs authorized under Title V of the Social Security Act (42 U.S.C.A. §§ 701—709).

- (3) The Early Periodic Screening, Diagnosis and Treatment (EPSDT) Program under Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396—1396v).
- (4) Programs authorized under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C.A. §§ 15001—15083).
- (5) Head Start Programs authorized under the Head Start Act (42 U.S.C.A. §§ 9831—9852).
- (6) The Supplemental Security Income Program under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383f).
- (c) The county MH/MR program, with the assistance of the local interagency coordinating council, shall take steps to ensure that:
  - (1) There is not unnecessary duplication of effort by the various agencies involved in the local child find system.
  - (2) It coordinates and makes 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 county MH/MR program for the following:
  - (1) Evaluation and assessment, in accordance with §§ 4226.61 and 4226.62 (relating to MDE; and nondiscriminatory procedures).
  - (2) As appropriate, the provision of services, in accordance with § 4226.72(a) or § 4226.76 (relating to procedures for IFSP development, review and evaluation; and provision of services before MDE is completed).
- (e) The procedures required in subsection (a)(1) shall:
  - (1) Provide for an effective method of making referrals by primary referral sources.
  - (2) Ensure that referrals are made no more than 2 working days after a child has been identified, unless otherwise permitted or mandated by Federal law.
- (f) The term “primary referral sources” in subsection (d) includes the following:
  - (1) Hospitals, including prenatal and postnatal care facilities.
  - (2) Physicians.
  - (3) Parents.
  - (4) Day care programs.
  - (5) Local educational agencies.
  - (6) Public health facilities.
  - (7) Other social service agencies.
  - (8) Other health care providers.
- (g) Timelines to act on referrals are as follows:
  - (1) Once the county MH/MR program receives a referral, it shall appoint a service coordinator as soon as possible.
  - (2) Within 45 days after it receives a referral, the county MH/MR program shall do one of the following:

- (i) Complete the evaluation activities in § 4226.61 and hold an IFSP meeting, in accordance with § 4226.72.
- (ii) Complete the evaluation activities in § 4226.61 and develop a plan for further assessment and tracking.

#### **Cross References**

This section cited in 55 Pa. Code § 4226.61 (relating to MDE); and 55 Pa. Code § 4226.72 (relating to procedures for IFSP development, review and evaluation).

### **§ 4226.25. At-risk children.**

- (a) A child identified as an at-risk child through the initial MDE conducted in accordance with § 4226.61 (relating to MDE) is eligible for tracking as specified in § 4226.26 (relating to tracking system).
- (b) If a child is referred for an MDE to determine whether the child is an at-risk child and the family declines the MDE, with parental consent the child may be deemed eligible for tracking as specified in § 4226.26.

### **§ 4226.26. Tracking system.**

- (a) The county MH/MR program shall develop a system for tracking at-risk children.
- (b) The tracking system shall include the following:
  - (1) Procedures for contacting the at-risk child and family by telephone, in writing or through a face-to-face meeting at least once every 3 months after the child is referred to the tracking system, unless an MDE conducted in accordance with § 4226.61 (relating to MDE) recommends and the parent agrees to more frequent contact. The parent may also request less frequent contact and may request no further contact.
  - (2) The use of a standardized developmental checklist as approved by the Department to review the child's development to determine the need for one of the following:
    - (i) Further tracking.
    - (ii) Further evaluation or reevaluation for eligibility for early intervention services.
- (c) The county MH/MR program shall maintain written documentation of all contacts made through the tracking system in the child's record.

#### **Cross References**

This section cited in 55 Pa. Code § 4226.25 (relating to at-risk children); 55 Pa. Code § 4226.92 (relating to parental consent); and 55 Pa. Code § 4226.93 (relating to parental right to decline service).

**§ 4226.27. Monitoring responsibilities.**

(a) The county MH/MR program shall be responsible for monitoring early intervention services, including service coordination, which the county MH/MR program provides directly or through contract, including services provided in another county or state.

(b) Monitoring shall include the measurement and assurance of compliance with this chapter and of the quality of services provided.

(c) The county MH/MR program shall conduct the monitoring required by this section on an ongoing basis but at least once every 12 months and maintain written documentation of the results of the monitoring for 4 years or until any audit or litigation is resolved.

**§ 4226.28. Self-assessment reviews.**

The county MH/MR program, in consultation with the local interagency coordinating council and the county MH/MR program advisory board, shall conduct an early intervention self-assessment review at least once every 3 years, including assessment of family satisfaction, using the tool provided by and adhering to the procedures established by the Department.

**§ 4226.29. Preservice training.**

(a) Early intervention personnel who work directly with at-risk children or infants and toddlers with disabilities, including personnel hired through contract, shall receive training before working alone with at-risk children or infants and toddlers with disabilities or their families in the following areas:

- (1) Orientation to the early intervention service system of the Department, including the purpose and operation of the State and local interagency coordinating councils.
- (2) The requirements of this chapter.
- (3) The duties and responsibilities of their position.
- (4) Methods for working with families utilizing family-centered approaches to encourage family involvement and consider family preferences.
- (5) The interrelated social, emotional, health, developmental and educational needs of children.
- (6) The availability 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 the specific funding sources.
- (9) Within 120 days of the date of hire, fire safety, emergency evacuation, first aid techniques and child cardiopulmonary resuscitation.

(b) Records of preservice training for all personnel shall be kept in the county MH/MR program's or provider's personnel files for as long as the individual is employed or under contract or for 4 years, whichever is longer, or until any audit or litigation is resolved.

#### **Cross References**

This section cited in 55 Pa. Code § 4226.30 (relating to annual training).

#### **§ 4226.30. Annual training.**

(a) Early intervention personnel who work directly with at-risk children and infants and toddlers with disabilities, including personnel hired through contract, shall have at least 24 hours of training annually, in addition to any preservice training, 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 § 4226.29(a)(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 that is valid for more than 1 year, in which case the time period specified on the certification applies.

(c) Records of all annual training shall be kept in the county MH/MR program's or provider's personnel files for as long as the person is employed or under contract or for 4 years, whichever is longer, or until any audit or litigation is resolved.

#### **§ 4226.31. Child Protective Services Law.**

County MH/MR programs and service providers and agencies that contract with county MH/MR programs to deliver early intervention services shall comply with the provisions of 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) and regulations in Chapter 3490 (relating to protective services), regarding background clearances for all employees who will have direct contact with children.

#### **§ 4226.32. Reporting and record retention.**

(a) The county MH/MR program shall submit reports to the Department on a monthly, annual and periodic basis related to program operations, financial expenditures and disbursements, service delivery and demographic information, in the format and within the timelines as the Department may require.

(b) The Department will provide advance notice to the county MH/MR program of the specific reports to be submitted and the deadlines for submission.

(c) The county MH/MR program is responsible for keeping records and affording access to those records as the Department may find necessary to assure

compliance with this chapter, the accuracy of reports or the proper disbursement of funds allocated under this chapter. Unless otherwise specified in this chapter for specific records, records shall be kept for 4 years or until any audit or litigation is resolved.

**§ 4226.33. Traditionally underserved groups.**

The county MH/MR program shall ensure that:

(1) Traditionally underserved groups, including minority, low-income and rural families, are provided the opportunity to be active participants in the local interagency coordinating councils and parent advisory groups and to participate in the development and implementation of the IFSPs for their infants and toddlers with disabilities.

(2) Families have access to culturally competent services within their local geographical areas.

**§ 4226.34. Local interagency coordinating council.**

The county MH/MR program shall ensure that:

(1) A local interagency coordinating council is established and maintained, which shall include parents and service providers and agencies.

(2) The local interagency coordinating council is authorized to advise and comment on the development of local interagency agreements.

(3) The local interagency coordinating council is authorized to communicate directly with the Department 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 chapter.

**§ 4226.35. Confidentiality of information.**

(a) The county MH/MR program shall ensure the protection of all personally identifiable information collected, used or maintained under this chapter.

(b) The county MH/MR program shall ensure that parents are informed of their rights to written notice of and written consent to the exchange of personally identifiable information among agencies in accordance with 34 CFR 300.560—300.576 (relating to confidentiality of information); 34 CFR Part 99 (relating to family educational rights and privacy); and section 305(d) of the Early Intervention Services System Act (11 P. S. § 875-305(d)).

**§ 4226.36. Child records.**

(a) The county MH/MR program and every provider that contracts with a county MH/MR program to deliver early intervention services shall maintain a separate file for each child referred or accepted for tracking or early intervention services.

- (b) Entries in a child's record shall be legible, dated and signed by the person making the entry.
- (c) Each child's record shall contain, as applicable:
- (1) Personally identifiable information.
  - (2) Intake information.
  - (3) Child evaluation and assessment information.
  - (4) IFSPs.
  - (5) Service support plans specifying the therapy services to be provided.
  - (6) Letters of medical necessity.
  - (7) Service coordination and service delivery activity logs.
  - (8) Health records.
  - (9) Notices issued under § 4226.95 (relating to prior notice).
  - (10) Other information, as specified in this chapter.
- (d) Information in the child's record shall be kept for at least 4 four years or until any audit or litigation is resolved.
- (e) A child's record shall be kept for a least 4 years following the child's discharge from service or until any audit or litigation is resolved.

#### **Cross References**

This section cited in 55 Pa. Code § 4226.14 (relating to documentation of other funding sources).

### **PERSONNEL**

#### **§ 4226.51. Provision of service coordination.**

(a) As soon as possible after the referral of a child and family to determine eligibility for early intervention services, the county MH/MR program, either directly or through contract, shall assign a service coordinator to the family.

(b) Each child and the child's family shall be provided with one service coordinator who is responsible for serving as the single point of contact in helping the parent to obtain the services and assistance needed and for the activities specified in § 4226.52 (relating to service coordination activities).

#### **§ 4226.52. Service coordination activities.**

Service coordination is an active, ongoing process that includes the following activities:

- (1) Coordinating the performance of initial and ongoing evaluations and assessments.
- (2) Referring at-risk children to the tracking system and tracking at-risk children.
- (3) Facilitating and participating in the development, implementation, review and evaluation of IFSPs.

- (4) Assisting the family of an infant or toddler with a disability in gaining access to the early intervention services and other services identified on the IFSP.
- (5) Facilitating the timely delivery of early intervention services.
- (6) Assisting the family in identifying available service providers and facilitating communication with and between the family and the service provider.
- (7) Coordinating and monitoring the delivery of early intervention services.
- (8) Informing the family of the availability of advocacy services.
- (9) Assisting the family in arranging for the infant or toddler with a disability to receive medical and health services, if the services are necessary, and coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the infant or toddler needs or is being provided.
- (10) Offering the family opportunities and support for the infant or toddler with a disability to participate in community activities with other children.
- (11) Informing the family of appropriate community resources.
- (12) Facilitating the development of a transition plan as part of the IFSP.

#### Cross References

This section cited in 55 Pa. Code § 4226.5 (relating to definitions); and 55 Pa. Code § 4226.51 (relating to provision of service coordination).

### § 4226.53. Service coordinator requirements and qualifications.

- (a) A county MH/MR program shall employ a minimum of one service coordinator directly or through contract.
- (b) Before performing service coordination activities, a service coordinator shall demonstrate knowledge and understanding about the following:
  - (1) At-risk children and infants and toddlers with disabilities.
  - (2) Part C of IDEA (20 U.S.C.A. §§ 1431—1445) and accompanying regulations (currently codified at 34 CFR Chapter 303 (relating to early intervention program for infants and toddlers with disabilities)), and the Early Intervention Services System Act (11 P. S. §§ 875-101—875-503).
  - (3) The nature and scope of services available under this chapter and the funding sources available.
- (c) A service coordinator shall have one of the following groups of minimum qualifications:
  - (1) A bachelor's degree from an accredited college or university which includes 12 college credits in early intervention, early childhood special education, early childhood education, child development, special education, family counseling, family studies, social welfare, psychology or other comparable

social sciences, and 1 year of full-time or full-time-equivalent experience working with or providing counseling to children, families or individuals with disabilities.

(2) An associate's degree, or 60 credit hours, from an accredited college or university in early intervention, early childhood special education, early childhood education, child development, special education, family counseling, family studies, social welfare, psychology, or other comparable social sciences, and 3 years of full-time or full-time-equivalent experience working with or providing counseling to children, families or individuals with disabilities.

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

#### Cross References

This section cited in 55 Pa. Code § 4226.56 (relating to effective date of personnel qualifications).

### § 4226.54. Early interventionist responsibilities.

An early interventionist is responsible for the following:

(1) Designing the learning environments and activities that promote the acquisition of skills by an infant or toddler with a disability in a variety of developmental areas, including cognitive processes and social interaction.

(2) Providing the family with information, skills and support related to enhancing the skill development of the infant or toddler with a disability.

(3) Working with the infant or toddler with a disability and family to enhance the infant or toddler's development.

#### Cross References

This section cited in 55 Pa. Code § 4226.55 (relating to early interventionist qualifications).

### § 4226.55. Early interventionist qualifications.

An early interventionist shall have one of the following groups of minimum qualifications:

(1) A bachelor's degree from an accredited college or university in early intervention, early childhood special education, early childhood education, child development, special education or family studies, and 1 year of full-time or full-time-equivalent experience working directly with preschool children with disabilities and their families or a university-supervised or college-supervised student practicum or teaching experience with preschool children with disabilities and their families.

(2) A bachelor's degree from an accredited college or university which includes 15 credit hours in early intervention, early childhood special education, early childhood education, child development, special education or family studies; and 1 year of full-time or full-time-equivalent experience working directly with preschool children with disabilities and their families; and dem-

onstrated knowledge, understanding and skills needed to perform the functions specified in § 4226.54 (relating to early interventionist responsibilities).

**Cross References**

This section cited in 55 Pa. Code § 4226.56 (relating to effective date of personnel qualifications).

**§ 4226.56. Effective date of personnel qualifications.**

Sections 4226.53 and 4226.55 (relating to service coordinator requirements and qualifications; and early interventionist qualifications) apply to service coordinators and early interventionists hired or promoted on and after July 1, 2003.

**EVALUATION AND ASSESSMENT**

**§ 4226.61. MDE.**

(a) *Requirements for MDE.* The county MH/MR program shall ensure that:

(1) Each child referred for evaluation receives a timely, comprehensive MDE and a family-directed assessment of the needs of the child's family to assist in the development of the child.

(2) The initial MDE is conducted by personnel independent of service provision.

(3) An MDE is conducted for each infant or toddler with a disability at least annually.

(4) A written MDE report is provided to the parent within 30 calendar days of the MDE.

(b) *Evaluation and assessment of the child.*

(1) The evaluation and assessment of each referred child shall:

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

(ii) Be based on informed clinical opinion.

(iii) Include the following:

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

(B) An evaluation of the child's level of functioning in each of the developmental areas of cognitive development; physical development, including vision and hearing; communication development; social and emotional development; and adaptive development.

(C) An assessment of the unique needs of the child in terms of each of the developmental areas in clause (B), including the identification of services appropriate to meet those needs.

(2) The annual MDE will include the participation of the family, the service coordinator, anyone whom the parent would like to invite and at least one other qualified professional.

(3) The MDE required by this subsection may be based on review and analysis of existing documentation of medical history, if the parent agrees and the qualified professionals in exercising their judgment conclude that the elements specified in paragraph (1) can be determined through such review and analysis.

(c) *Family assessment.*

(1) The family assessment shall be family directed and designed to determine the resources, priorities and concerns of the family and to identify the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

(2) A family assessment shall be voluntary on the part of the family.

(3) If a family assessment 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.

(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 (2), the initial MDE of each child (including the family assessment) shall be completed within sufficient time to enable an IFSP to be developed within the 45-day time period in § 4226.24(g) (relating to comprehensive child find system).

(2) The county MH/MR program shall develop procedures to ensure that if exceptional circumstances make it impossible to complete the initial MDE, including the family assessment, within the timeline specified in paragraph (1) (for example, if a child is ill), the county MH/MR program will do the following:

(i) Document those circumstances in the child's record.

(ii) Develop and implement an interim IFSP consistent with § 4226.76 (relating to provision of services before MDE is completed).

#### **Cross References**

This section cited in 55 Pa. Code § 4226.22 (relating to eligibility for early intervention services); 55 Pa. Code § 4226.24 (relating to comprehensive child find system); 55 Pa. Code § 4226.25 (relating to at-risk children); 55 Pa. Code § 4226.26 (relating to tracking system); 55 Pa. Code § 4226.71 (relating to general); 55 Pa. Code § 4226.72 (relating to procedures for IFSP development, review and evaluation); 55 Pa. Code § 4226.73 (relating to participants in IFSP meetings and periodic reviews); 55 Pa. Code § 4226.76 (relating to provisions of services before MDE is completed); 55 Pa. Code § 4226.92 (relating to parental consent); and 55 Pa. Code § 4226.100 (relating to parental rights in due process hearings).

**§ 4226.62. Nondiscriminatory procedures.**

Each county MH/MR program shall adopt nondiscriminatory procedures for the evaluation and assessment of children and families that ensure, at a minimum, that:

- (1) Tests and other evaluation materials and procedures are administered in the native language of the parent, unless it is clearly not feasible to do so.
- (2) Assessment and evaluation procedures and materials 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.
- (4) Evaluations and assessments are conducted by qualified personnel.

**Cross References**

This section cited in 55 Pa. Code § 4226.24 (relating to comprehensive child find system).

**IFSPs****§ 4226.71. General.**

(a) Each county MH/MR program shall adopt policies and procedures regarding IFSPs.

(b) The IFSP shall:

- (1) Be developed in accordance with §§ 4226.72 and 4226.73 (relating to procedures for IFSP development, review and evaluation; and participants in IFSP meetings and periodic reviews).
- (2) Be based on the evaluation and assessment described in § 4226.61 (relating to MDE).
- (3) Include the matters specified in § 4226.74 (relating to content of the IFSP).
- (4) Be developed prior to funding source decisions.

(c) The county MH/MR program shall ensure that an IFSP is developed and implemented for each infant or toddler with a disability.

**Cross References**

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); and 55 Pa. Code § 3290.4 (relating to definitions).

**§ 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 for early intervention services, a meeting to develop the initial IFSP shall be conducted within the 45-day time period in § 4226.24(g) (relating to comprehensive child find system).

(b) A review of the IFSP for an infant or toddler with a disability and the infant or toddler's family shall be conducted every 6 months, or more frequently

if conditions warrant or if the family requests such a review. The review may be conducted by a meeting or by another means, such as conference call or written reports, that is acceptable to the parent and other participants. The purpose of the review is to determine:

- (1) The degree to which progress toward achieving the outcomes is being made.
- (2) Whether modification or revision of the outcomes or services is necessary.
- (c) A meeting shall be conducted at least annually to evaluate the IFSP for an infant or toddler with a disability and the infant or toddler's family and, as appropriate, to revise its provisions. The results of current evaluations conducted under § 4226.61 (relating to MDE), and other information available from the ongoing assessment of the infant or toddler and family, shall be used in determining what services are needed and will be provided.
- (d) IFSP meetings shall be conducted as follows:
  - (1) In settings and at times that are convenient to the family.
  - (2) In the native language of the parent, unless it is clearly not feasible to do so.
  - (3) In a manner that ensures that the early intervention services to be provided to an infant or toddler with a disability are selected in collaboration with the parent.
- (e) IFSP 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, but no later than 5 days before the scheduled meeting date.

#### Cross References

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); 55 Pa. Code § 3290.4 (relating to definitions); 55 Pa. Code § 4226.24 (relating to comprehensive child find system); 55 Pa. Code § 4226.71 (relating to general); and 55 Pa. Code § 4226.75 (relating to implementation of the IFSP).

### § 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 of the infant or toddler with a disability.
  - (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 for evaluation, or who has been designated by the county MH/MR program to be responsible for implementation of the IFSP.

- (5) A person directly involved in conducting the evaluations and assessments in § 4226.61 (relating to MDE).
- (6) Persons who will be providing services to the infant or toddler with a disability or family, as appropriate.
- (b) If a person listed in subsection (a)(5) is unable to attend a meeting, arrangements shall be made for the person's involvement through another means, including one or more of the following:
- (1) Participating in a telephone conference call.
  - (2) Having a knowledgeable authorized representative attend the meeting.
  - (3) Making pertinent records available at the meeting.
- (c) Each periodic review shall include the participation of persons listed in subsection (a)(1)—(4). If conditions warrant, provisions shall be made for the participation of other representatives identified in subsection (a).

#### Cross References

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); 55 Pa. Code § 3290.4 (relating to definitions); and 55 Pa. Code § 4226.71 (relating to general).

### § 4226.74. Content of the IFSP.

The IFSP shall be in writing and the standardized format will contain:

- (1) *Information about the status of the infant or toddler with a disability.*
  - (i) A statement of the present levels of physical development (including vision, hearing and health status), cognitive development, communication development, social or emotional development, and adaptive development of the infant or toddler with a disability.
  - (ii) The statement in subparagraph (i) shall be based on professionally acceptable objective criteria.
- (2) *Family information.* With the concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the infant or toddler with a disability.
- (3) *Outcomes.* A statement of the major outcomes expected to be achieved for the infant or toddler with a disability and the family, and the criteria, procedures and timelines used to determine:
  - (i) The degree to which progress toward achieving the outcomes is being made.
  - (ii) Whether modification or revision of the outcomes or services is necessary.
- (4) *Early intervention services.*
  - (i) A statement of the specific early intervention services necessary to meet the unique needs of the infant or toddler with a disability and the family to achieve the outcomes required in paragraph (3), including:
    - (A) The frequency, intensity and method of delivering the services.

(B) The natural environments in which early intervention services will be provided and, if a service will be provided in a location other than a natural environment, a justification of the extent to which each service will not be provided in a natural environment and the location in which it will be provided.

(C) The payment arrangements, if any.

(D) The unit cost for each service.

(ii) As used in this section, “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 a group basis.

(5) *Other services.*

(i) A statement of medical and other services that the infant or toddler with a disability needs but that are not required under this chapter and of the funding sources to be used to pay for those services, or the steps that will be taken to secure those services through public or private sources.

(ii) The requirement in subparagraph (i) does not apply to routine medical services (for example, immunizations and “well-baby” care), unless the infant or toddler with a disability needs those services and the services are not otherwise available or being provided.

(6) *Dates; duration of services.*

(i) The projected dates for initiation of early intervention services in paragraph (4), which shall be as specified in § 4226.75(b) (relating to implementation of the IFSP).

(ii) If an early intervention service is projected to start later than 14 days after the IFSP is completed as permitted by § 4226.75(b), the date and the reasons for the later date.

(iii) The anticipated duration of early intervention services.

(7) *Service coordinator.* The identity of the service coordinator who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(8) *Transition from early intervention services.* A statement of the steps to be taken to support the transition of the toddler with a disability to preschool services under Part B of IDEA (20 U.S.C.A. §§ 1411—1419) or other appropriate services, which shall include at least the activities specified in § 4226.77 (relating to transition from early intervention services).

#### Cross References

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); 55 Pa. Code § 3290.4 (relating to definitions); and 55 Pa. Code § 4226.71 (relating to general).

**§ 4226.75. Implementation of the IFSP.**

(a) To the maximum extent appropriate to meet the needs of the infant or toddler with a disability, as determined by the IFSP team, early intervention services shall be provided in the infant or toddler's natural environments.

(b) Early intervention services shall be initiated as soon as possible after the IFSP is completed at the meeting described in § 4226.72 (relating to procedures for IFSP development, review and evaluation) but no later than 14 calendar days from the date the IFSP is completed, unless a later date is recommended by the team, including the family, based on the needs of the infant or toddler with a disability, or if requested by the family.

**Cross References**

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); 55 Pa. Code § 3290.4 (relating to definitions); and 55 Pa. Code § 4226.74 (relating to content of the IFSP).

**§ 4226.76. Provision of services before MDE is completed.**

Early intervention services for an infant or toddler with a disability and the infant or toddler's family may commence before the completion of the evaluation and assessment in § 4226.61 (relating to MDE), if the following conditions are met:

- (1) Parental consent is obtained.
- (2) An interim IFSP is developed that includes the following:
  - (i) The name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons.
  - (ii) The early intervention services that have been determined to be needed immediately by the infant or toddler with a disability and the infant or toddler's family.
- (3) The evaluation and assessment are completed within the time period specified in § 4226.61(d)(1), unless exceptional circumstances exist as set forth in § 4226.61(d)(2).

**Cross References**

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); 55 Pa. Code § 3290.4 (relating to definitions); and 55 Pa. Code § 4226.24 (relating to comprehensive child find system); and 55 Pa. Code § 4226.61 (relating to MDE).

**§ 4226.77. Transition from early intervention services.**

(a) The county MH/MR program shall adopt policies and procedures to ensure a smooth transition for toddlers receiving early intervention services to preschool or other appropriate services, which meet the requirements of this section.

(b) For every toddler with a disability, the county MH/MR program shall:

- (1) Notify the local educational agency for the area in which the toddler resides that the toddler will shortly reach 3 years of age.
  - (2) In the case of a toddler who may be eligible for preschool services under Part B of IDEA (20 U.S.C.A. §§ 1411—1419), with the approval of the toddler's family, convene a conference among the county MH/MR program, the family and the local educational agency at least 90 days (and if all parties agree, up to 6 months) before the toddler's third birthday, to discuss services that the toddler may receive.
  - (3) In the case of a toddler who may not be eligible for preschool services under Part B of IDEA, with the approval of the toddler's family, make reasonable efforts to convene a conference among the county MH/MR program, the family and providers of other appropriate services for toddlers who are not eligible for preschool services under Part B of IDEA, to discuss appropriate services the toddler may receive.
  - (4) If a toddler's third birthday occurs during the school year, review the program options available to the toddler for the period from the third birthday through the remainder of the school year.
  - (5) Establish a transition plan in consultation with the toddler's family.
- (c) The IFSP team of every toddler with a disability shall take steps to ensure the toddler's smooth transition from early intervention services, which shall include at least the following:
- (1) Discussions with, and training of, the toddler's parent regarding future placements and other matters related to the toddler's transition.
  - (2) Preparation of the toddler for changes in service delivery, including activities to help the toddler adjust to, and function in, a new setting.
  - (3) With parental consent, transmission of information about the toddler, including evaluation and assessment information and copies of the toddler's IFSPs, to the local educational agency, to ensure continuity of services.
  - (d) The county MH/MR program shall develop interagency agreements with the local educational agency responsible for providing preschool programs under Part B of IDEA, to ensure coordination on transition matters.

#### **Cross References**

This section cited in 55 Pa. Code § 3270.4 (relating to definitions); 55 Pa. Code § 3280.4 (relating to definitions); 55 Pa. Code § 3290.4 (relating to definitions); and 55 Pa. Code § 4226.74 (relating to content of the IFSP).

### **PROCEDURAL SAFEGUARDS**

#### **§ 4226.91. General responsibility for procedural safeguards.**

A county MH/MR program is responsible for adopting procedural safeguards that meet the requirements of this chapter, except §§ 4226.101 and 4226.102 (relating to impartial hearing officer; and convenience of proceedings; timelines).

**§ 4226.92. Parental consent.**

(a) The following requirements apply for parental consent:

(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.

(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 form shall describe that activity and list the records (if any) that will be released and to whom.

(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) Written parental consent shall be obtained before:



- (1) Conducting the initial evaluation and assessment under § 4226.61 (relating to MDE).
  - (2) Referring an at-risk child to the tracking system under § 4226.26 (relating to tracking system).
  - (3) Determining eligibility for Medicaid waiver services in accordance with § 4226.23 (relating to eligibility for Medicaid waiver services).
  - (4) Initiating or changing early intervention services.
- (c) Before an early intervention service is provided or changed, the contents of the IFSP shall be fully explained to the parent. If the parent does not consent to the delivery of a particular early intervention service or withdraws consent after first providing it, that service may not be provided. Those early intervention services to which the parent consented shall be provided. If the parent does not consent to a proposed change that reduces or terminates early intervention services, the requirements of § 4226.103 (relating to status of a child during proceedings) apply.
- (d) If the parent does not consent, the county MH/MR program 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.
  - (2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

**§ 4226.93. Parental right to decline service.**

- (a) The parent of an infant or toddler with a disability may determine whether to accept or decline any early intervention service offered to the infant or toddler or the family and may decline a service after first accepting it, without jeopardizing the provision of other early intervention services.
- (b) The parent of an at-risk child may accept or decline referral of the child to the tracking system under § 4226.26 (relating to tracking system) without jeopardizing the referral at a later time.

**§ 4226.94. Opportunity to examine records.**

In accordance with the confidentiality procedures in Federal regulations in 34 CFR 300.560—300.576 (relating to confidentiality of information), the parent of a child referred or eligible for tracking or early intervention services 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 family.

**§ 4226.95. Prior notice.**

- (a) Written prior notice shall be given to the parent of a child referred or eligible for tracking or early intervention services before a county MH/MR program

proposes, or refuses, to initiate or change the identification, evaluation or placement of the child, or the provision of early intervention services to the child and the family.

(b) The notice shall be in sufficient detail to inform the parent about the following:

- (1) The action that is being proposed or refused.
- (2) The reasons for taking the action.
- (3) The right to request one or all of the following, including a description of the procedures and rights that apply to each:

(i) Conflict resolution, as described in § 4226.97 (relating to conflict resolution).

(ii) Mediation, as described in § 4226.98 (relating to mediation).

(iii) A due process hearing, as described in § 4226.99 (relating to due process procedures).

(4) The right to file a complaint with the Department, including a description of how to file a complaint and timelines for filing the complaint.

(c) The notice shall be:

(1) Written in language understandable to the general public.

(2) Provided in the native language of the parent, unless it is clearly not feasible to do so.

(d) If the native language of the parent is not a written language, the county MH/MR program 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.

(2) The parent understands the notice.

(3) Written evidence that the requirements of this subsection have been met is maintained in the child's record.

#### **Cross References**

This section cited in 55 Pa. Code § 4226.36 (relating to child records); 55 Pa. Code § 4226.99 (relating to due process procedures); and 55 Pa. Code § 4226.100 (relating to parental rights in due process hearings).

#### **§ 4226.96. Surrogate parents.**

(a) Each county MH/MR program shall ensure that the rights of a child referred or eligible for tracking or early intervention services are protected by the appointment of a surrogate parent if one of the following applies:

(1) A parent cannot be identified.

(2) The whereabouts of an identified parent, after reasonable efforts, cannot be discovered.

(3) The child is in the legal custody of a county children and youth agency and one of the following applies:

(i) The birth parents cannot be identified.

- (ii) The whereabouts of the birth parents, after reasonable efforts, cannot be discovered.
  - (iii) The birth parents are deceased and the child has no other parent.
  - (iv) The parental rights of the birth parents have been terminated and the child has no other parent.
- (b) The duty of the county MH/MR program under subsection (a) includes establishing procedures for determining whether the child needs a surrogate parent and assigning a surrogate parent to the child.
- (c) In complying with subsection (b), the county MH/MR program shall select a surrogate parent who:
- (1) Has no interest that conflicts with the interests of the child the surrogate represents.
  - (2) Has knowledge and skills that ensure adequate representation of the child.
  - (3) Is willing to assume the responsibilities of being a surrogate parent.
  - (4) Is not an employee of an agency or persons providing early intervention services or other services to the child or to any family members of the child.
  - (5) Is not an employee of any State agency.
- (d) A person who otherwise qualifies to be a surrogate parent under subsection (c) is not an employee solely because the surrogate is paid by a public agency to serve as a surrogate parent.
- (e) The foster parent of a child in substitute care, who meets the criteria in subsection (c), may serve as a surrogate parent for the child with the approval of the county children and youth agency that has legal custody of the child.
- (f) A surrogate parent may represent a child in all matters related to the following:
- (1) The evaluation and assessment of the child.
  - (2) The development and implementation of the child's IFSPs, including annual evaluation and periodic review meetings.
  - (3) The ongoing provision of early intervention services to the child.
  - (4) Other rights established under this chapter.

#### Cross References

This section cited in 55 Pa. Code § 4226.5 (relating to definitions).

#### § 4226.97. Conflict resolution.

- (a) The county MH/MR program shall establish a system of conflict resolution whereby parents, providers, as appropriate, or other parties may request a meeting with the county administrative staff to discuss and resolve issues relating to the provision of early intervention services to an infant or toddler with a disability and the infant or toddler's family.

(b) The county MH/MR program shall establish conflict resolution procedures to ensure that:

(1) Requests for conflict resolution may be made either orally or in writing.

(2) A conflict resolution meeting shall be held within 7 calendar days of the request.

(3) When a parent requests mediation under § 4226.98 (relating to mediation) or a due process hearing under § 4226.99 (relating to due process procedures), the county MH/MR program shall offer the parent a conflict resolution meeting with the county MH/MR administrator or a designee, and the meeting shall be held within 7 calendar days of receipt of the request, unless the parent declines the offer of conflict resolution. If the parent agrees to participate, the meeting may not delay the processing of the request for mediation or for a due process hearing.

(4) When a resolution or agreement is reached at the meeting, the IFSP or other documents shall be revised accordingly.

(5) If no resolution or agreement is reached at the meeting, all other procedural safeguards continue to be available.

(6) The conflict resolution process does not impede or deny other rights under this chapter.

(7) The conflict resolution process is voluntary on the part of the parents, and parents do not have to participate in the process before exercising other procedural rights.

#### Cross References

This section cited in 55 Pa. Code § 4226.95 (relating to prior notice).

### § 4226.98. Mediation.

(a) The county MH/MR program shall adopt procedures that afford a party who presents a complaint about any matter relating to the identification, evaluation or placement of the child, or the provision of appropriate early intervention services, the opportunity to resolve the dispute through a mediation process.

(b) The procedures shall ensure that the mediation process is:

(1) Voluntary on the part of the parents.

(2) Offered to a parent who requests a due process hearing under § 4226.99 (relating to due process procedures).

(3) Not used to deny or delay a parent's right to a due process hearing under § 4226.99, or to deny or impede other rights afforded under this chapter.

(4) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(c) The mediation session shall be scheduled within 10 calendar days of the request for mediation or a due process hearing and shall be held in a location that is convenient to the parties to the dispute.

(d) An agreement reached by the parties to the dispute in the mediation session shall be set forth in a written mediation agreement.

(e) Discussions that occur during the mediation session 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 may be required to sign a confidentiality pledge before the session begins.

(f) The county MH/MR program shall establish procedures to encourage the use and explain the benefits of the mediation process, whereby a parent who chooses not to use the mediation process may request a meeting, at a time and location convenient to the parent, with a disinterested party or one of the following:

- (1) A parent training and information center or community parent resource center.
- (2) An alternative dispute resolution entity.

#### Cross References

This section cited in 55 Pa. Code § 4226.95 (relating to prior notice); and 55 Pa. Code § 4226.97 (relating to conflict resolution).

### § 4226.99. Due process procedures.

Each county MH/MR program shall implement procedures to ensure that the resolution of requests for due process hearings by parents concerning any of the matters in § 4226.95(a) (relating to prior notice) on behalf of an individual child is not delayed.

#### Cross References

This section cited in 55 Pa. Code § 4226.95 (relating to prior notice); 55 Pa. Code § 4226.97 (relating to conflict resolution); and 55 Pa. Code § 4226.98 (relating to mediation).

### § 4226.100. Parental rights in due process hearings.

(a) Each county MH/MR program shall ensure that the parents of children referred or eligible for tracking or early intervention services are informed of the rights in subsection (b) in each due process hearing requested to resolve any of the matters in § 4226.95(a) (relating to prior notice) on behalf of an individual child.

(b) A parent who is a party to a due process hearing has the following rights:

- (1) To obtain an independent MDE conducted in accordance with § 4226.61 (relating to MDE) at no cost if the parent disagrees with the results of the MDE obtained through the county MH/MR program and the hearing officer determines that the MDE is needed to assist in the resolution of the dispute.
- (2) To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services.

- (3) To present evidence and confront, cross-examine and compel the attendance of witnesses.
- (4) To prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least 5 days before the proceeding.
- (5) To obtain a written or electronic verbatim transcription of the proceeding.
- (6) To obtain written findings of fact and decisions.

**§ 4226.101. Impartial hearing officer.**

(a) The impartial hearing officer appointed to conduct the due process hearing shall have knowledge of the requirements of this chapter, the Early Intervention Services System Act (11 P. S. §§ 875-101—875-503) and Part C of IDEA (42 U.S.C.A. §§ 1431—1445) and accompanying regulations (currently codified at 34 CFR Part 303 (relating to early intervention program for infants and toddlers with disabilities)), as well as the needs of, and services available for, at-risk children and infants and toddlers with disabilities and their families.

(b) The duties of the impartial hearing officer include:

- (1) To preside over the presentation of evidence and each party's position, examine all presented evidence and render a timely decision.
- (2) To make available a record of the proceedings.
- (3) To forward a written decision to all parties to the proceedings.

(c) As used in this section, "impartial" means that the appointed hearing officer:

- (1) Is not an employee of an agency or other entity involved in the provision of early intervention services to or care of the child who is the subject of the hearing.
- (2) Does not have a personal or professional interest that would conflict with the hearing officer's objectivity in conducting the hearing and rendering a decision.
- (d) A person who otherwise qualifies under this section is not an employee of an agency solely because the person is paid to conduct the due process hearing.

**Cross References**

This section cited in 55 Pa. Code § 4226.91 (relating to general responsibility for procedural safeguards).

**§ 4226.102. Convenience of proceedings; timelines.**

- (a) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parent.
- (b) The due process hearing shall be conducted and a written decision mailed to each party no later than 30 days after the parent's request for a hearing is received by the county MH/MR program.

**Cross References**

This section cited in 55 Pa. Code § 4226.91 (relating to general responsibility for procedural safeguards).

**§ 4226.103. Status of a child during proceedings.**

(a) During the pendency of a conflict resolution, mediation or due process proceeding, unless the county MH/MR program and parent of the infant or toddler with a disability otherwise agree, the infant or toddler 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 infant or toddler with a disability shall receive those services that are not in dispute.

**Cross References**

This section cited in 55 Pa. Code § 4226.92 (relating to parental consent).

[Next page is 4230-1.]

4226-38

(296226) No. 342 May 03

*Copyright © 2003 Commonwealth of Pennsylvania*