Early Intervention Colorado

for Infants, Toddlers & Families

Implementation in Colorado of Part C of the Individuals with Disabilities Education Improvement Act (P.L. 108-446)

Memorandum of Understanding

Department of Human Services

Department of Education

Department of Public Health and Environment

Department of Health Care Policy and Financing

Department of Regulatory Agencies

Revised – February 2009

cdhs

Colorado Department of Human Services

people who help people

Memorandum of Understanding Among the Colorado Departments of Human Services, Education, Public Health and Environment, Health Care Policy and Financing, and Regulatory Agencies

THIS agreement is made by and between the Colorado Departments of Human Services, Education, Public Health and Environment, Health Care Policy and Financing, and Regulatory Agencies (Division of Insurance) for the benefit of infants and toddlers, birth through two years of age residing in Colorado, who have developmental delays or disabilities and their families;

WHEREAS, authority exists in law and federal and/or state funds are appropriated to each agency for the benefit of infants and toddlers with developmental delays or disabilities;

WHEREAS, required approval, clearance and coordination has been accomplished from and with the appropriate agencies;

WHEREAS, the Colorado Department of Human Services, Division for Developmental Disabilities, as the lead agency for the administration of the federal Part C grant from the Office of Special Education Programs, United States Department of Education, is responsible to develop and maintain an interagency agreement pursuant to 34 CFR 303.523 that assures Colorado's commitment to implementing Part C of the Individuals with Disabilities Education Improvement Act (IDEA);

WHEREAS, the preamble to the 2004 amendments to the Individuals with Disabilities Education Improvement Act states that: "Improving.... results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.";

NOW THEREFORE, the following purpose, objectives, outcomes and responsibilities are agreed:

I. Statement of Common Purpose

The purposes of this MOU, to coordinate among the Colorado Departments of Human Services, Education, Public Health and Environment, Health Care Policy and Financing, and Regulatory Agencies (Division of Insurance), are as follows:

- Develop and implement a statewide, comprehensive, interagency system of early intervention supports and services, herein after referred to as the Early Intervention Colorado program, for all infants and toddlers with developmental delays or disabilities and their families in accordance with:
    - Part C of the Individuals with Disabilities Education Act (IDEA), Public Law 108-446;

- The Colorado application for federal Part C funding from the federal Office of Special Education Programs (OSEP), United States Department of Education (USDE); and,
- The coordinated system of payment for early intervention services as authorized by state statute (C.R.S. 27-10.5-701, 25.5-8-105 and 25.5-1-124, 10-16-104 and 105).

- Identify the statutory and regulatory authority for implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for all infants and toddlers with developmental delays or disabilities and their families;
- Establish common definitions, where possible, regarding early intervention services;
- Clarify individual agency responsibilities through interagency operating agreements;
- Recognize the federal procedural safeguards available to children and families;
- Define confidentiality of information;
- Formalize dispute resolution procedures between state agencies;
- Define supervision and monitoring responsibilities; and,
- Establish the terms for review of the MOU.

II. Mutual Objectives

It is agreed by the parties to this MOU that each agency shall support the attainment of the following mutual objectives at the state and local levels through policies, procedures, contracts and other means to provide at no cost to families, except under the financial participation provisions of particular programs:

- A collaborative, community-based, interagency child identification process that coordinates local procedures to locate, evaluate and identify infants and toddlers with developmental delays or disabilities who may be eligible for early intervention services, including Native American/Indian infants and toddlers with developmental delays or disabilities and their families residing on a reservation geographically located in Colorado, infants and toddlers with disabilities who are experiencing homelessness; and infants and toddlers with disabilities who are wards of the State;
- Service coordination to assist families of infants and toddlers with developmental delays or disabilities to receive the federal procedural safeguards and the services for which they are eligible;
- An Individualized Family Service Plan (IFSP) for each eligible child; and,
- At no cost to families, except under the sliding fee scale provisions of particular programs, appropriate and necessary services in the context of the family's everyday

routines, activities and places as identified on the IFSP utilizing available public and private funding sources.

III. Mutual Agreements

In order to attain the above mutual objectives each agency agrees to:

- Designate at least one person to act as a representative on early intervention issues and to serve on the Colorado Interagency Coordinating Council (CICC);
- Participate in the ongoing development, implementation and evaluation of interagency operating agreements and strategies at the state and local levels;
- Support parents to be active participants at all levels in the development, implementation and evaluation of the statewide, comprehensive, interagency system of early intervention services;
- Share information about infants and toddlers with developmental delays or disabilities to the extent necessary and consistent with state and federal confidentiality requirements, including, but not limited to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA), in order to get accurate and unduplicated child counts to meet federal reporting requirements and to facilitate the effective and efficient delivery of early intervention services;
- Provide coordinated training and technical assistance for families, service providers across agencies and systems, and other entities as necessary and appropriate;
- Provide information to the Early Intervention Colorado program in order to maintain a statewide central directory to facilitate access to information for families, service providers and the general citizenship of Colorado; and,
- Provide technical assistance and support in the maintenance of local interagency coordinating councils (LICC) involved in the early intervention system.

IV. Mutual Outcomes

Within each agency's responsibility and authority, as well as within the requirements of state and federal early intervention regulations, the intended outcomes of this MOU are to:

- Enhance the development of infants and toddlers with developmental delays or disabilities and the capacity of their families to support their development;
- Assist in improving the well-being, safety and family permanency of infants and toddlers with developmental delays or disabilities;
- Increase access to early intervention services and to increase family satisfaction with those services;

- Empower families through information and support to participate fully in decision making at personal and policy levels;
- Assist families in understanding their right to accept or decline the early intervention services determined to be appropriate through the IFSP process;
- Support the participation of eligible children and their families in inclusive and culturally relevant community settings and activities; and,
- Assist families in their awareness of comprehensive, coordinated, culturally responsive approaches to assuring better child and health development.

V. Common Definitions

The signatory agencies to this MOU accept the IDEA 2004, Part C definitions specified in the Early Intervention Colorado State Plan.

VI. Statutory and Regulatory Authority

As a condition of receiving federal funds under Part C of the Individuals with Disabilities Education Act (IDEA), the State of Colorado must ensure cooperation among state agencies involved in the delivery of early intervention services to infants and toddlers with developmental delays or disabilities and their families. Additionally, federal law requires cooperation among state agencies responsible for the administration and/or supervision of both Title V (Maternal and Child Health) and Title XIX (The Medical Assistance Act or Medicaid) of the Social Security Act. Therefore, this MOU serves to document the signatory agency commitment to cooperate and coordinate as authorized by state and federal statutes and regulations.

The responsibilities and objectives delineated in this MOU are referenced and supported in the following state and federal legislative statutes:

- **The Individuals with Disabilities Improvement Education Act (IDEA) of 2004 (P.L. 108-446),** addresses special education and related services for children with disabilities. IDEA, Part C, charges states to develop and implement a comprehensive, coordinated, interagency system of services for infants and toddlers with disabilities and their families and to ensure cooperation among agencies. Part B of IDEA requires a state to have policies and procedures to ensure that all children, birth to age 21 in need of special education and related services, including children attending private schools and migrant or homeless children, are "identified, located and evaluated".
- **The Developmental Disabilities Assistance and Bill of Rights Act** amendments of 2000, assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports and other assistance and opportunities that promote independence, productivity and integration and inclusion into the community.

- **Title IV-B of the Social Security Act** provides federal funding for general child welfare services to children and families who meet eligibility criteria. Title IV-B, Subpart 2, Promoting Safe and Stable Families, provides a capped entitlement to states for community-based family support services, time-limited family re-unification services, adoption promotion and support services.
- **Title IV-A of the Social Security Act** provides emergency assistance for families with children who are at risk of placement out of the home.
- **Title IV-E of the Social Security Act and Supplemental Security Income (SSI)** enables states to provide foster care and adoption assistance for children who otherwise would be eligible for aid to families with dependent children.
- **Title V of the Social Security Act, Section 505 (2) (E)** allows for participation with other state programs involved with the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services authorized under Title XIX to ensure that there is no duplication of effort; in the arrangement and carrying out of coordination agreements described in Section 1902 (a) (11), relating to coordination of care and services available under this Title and Title XIX; in coordinating activities within the state with programs carried out under this Title and related federal grant programs, such as Special Supplemental Nutrition Program for Women, Infants and Children (WIC), related educational programs, and other health and developmental disability programs.
- **Title V of the Social Security Act, Section 505(a)(1)(A-D), Maternal and Child Health Block Grant to States, OBRA '89** requirement: to provide and promote family-centered, community-based, coordinated care including care coordination services for children with special health care needs and to facilitate the development of community based systems of services for such children and their families.
- **Title XIX of the Social Security Act (grants to states for Medical Assistance Programs), Section 1902 (a) (11) (A)**, provides for the entering into cooperative arrangements with the state departments responsible for administering and/or supervising the administration of services to ensure maximum utilization of such services and provides federal funding for EPSDT for children who meet eligibility criteria.
- **Title XX of the Social Security Act** provides a block grant to states for the provision of social services. In Colorado, these funds are used to help pay for a variety of services at the County Departments of Social/Human Services.
- **The Welfare Reform Consolidation Act of 1995 (H.R. 104-999)** requires the Special Supplemental Nutrition Program for Women, Infants and Children to coordinate with other state programs, such as well-child care, maternal and child health care, EPSDT and Medicaid.
- **Section 5082 of the Omnibus Budget Reconciliation Act of 1990, the Child Care and Development Fund (effective 1998)** provides child care subsidies for low-income families and funds for activities to improve the quality of child care and to increase the availability of early childhood development programs and before and after school care services.

- **Community Mental Health and Substance Abuse Services Improvement Act of 1992 (P.L. 102-321)** provides requirements concerning the targeting of mental health services, including children with serious emotional disturbances, as well as coordination of mental health services across relevant agencies.
- **The Americans with Disabilities Act (ADA) of 1990 (P.L. 101-336)** provides a basis for ensuring the civil rights of all people with disabilities, including infants and toddlers with disabilities, to access to both public and private accommodations.
- **Child Abuse Prevention and Treatment Act (CAPTA) as amended by Keeping Children and Families Safe Act of 2003 (P.L. 108-36)** requires that children who are under the age of three and are involved in a substantiated case of abuse or neglect be referred for evaluation and assessment.
- **Colorado Revised Statute Article 16 of Title 10** is enabling legislation for supports and services for eligible infants and toddlers with significant developmental delays or disabilities and their families enrolled in qualifying private health insurance plans (Sections 104 and 105).
- **Colorado Revised Statute Article 20 of Title 22,** is enabling legislation that specifies the responsibilities of the Colorado Department of Education and local administrative units regarding Child Find activities for screening and evaluation of infants and toddlers, birth through two years of age (Section 118).
- **Colorado Revised Statute Article 80 of Title 22** is enabling legislation that specifies the responsibilities of the Colorado School for the Deaf and the Blind (Sections 111 - 117).
- **Colorado Revised Statute Article 1 of Title 25.5, Colorado Medical Assistance Act,** enabling legislation that includes services for Medicaid eligible infants and toddlers with significant developmental delays or disabilities and their families as a Medicaid State Plan benefit or under Child Health Plan Plus (CHP+) (Section 124 and 25.5-8-105).
- **Colorado Revised Statute Article 5 of Title 26** is enabling legislation to provide child welfare services for all eligible populations including services for the protection of children whose physical, mental or emotional well-being is threatened by the actions or omissions of parents, legal guardians, custodians or other individuals responsible for the care of children.
- **Colorado Revised Statute Article 1 of Title 27** pertains to the purchase of mental health services and adoption of rules and regulations concerning mental health services (Sections 202-205).
- **Colorado Revised Statute Article 10.5 of Title 27, Colorado Developmental Disabilities Act**, is the enabling legislation for supports and services for infants and toddlers with significant developmental delays or disabilities and their families that are developed in a manner consistent with Part C of IDEA. (Section 701).
- **McKinney Vento Homeless Assistance Act Subtitle B of Title VII** pertains to access to and provision of coordinated early intervention and educational services for children and youth experiencing homelessness.

VII. Funding Responsibilities

The parties to this MOU commit to effective use of available resources through activities, such as coordinated planning, training and marketing and integrated service delivery. Accordingly, the Departments assure continued provision of available resources to deliver early intervention services to infants and toddlers with developmental delays or disabilities and their families, insofar as they have control over these resources, subject to available appropriations, statutory authority and/or legislative mandates.

Pursuant to 34 CFR 303.124, federal Part C funds are to be used to supplement and increase the level of state and local funds expended, and in no case to supplant state and local funds. Nothing under IDEA, Part C, may be construed to permit a state to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (related to Maternal and Child Health) or Title XIX of the Social Security Act (related to Medicaid for Part C eligible children) within the State.

Colorado follows a funding hierarchy for the system of payments for early intervention services that does not require personal expense by families. Families may choose to use their personal resources, including private insurance, to fund early intervention services on the IFSP. Families must give consent to a local program to disclose personally identifiable information to the public or private insurance. If consent is not given, a local program may not pursue funding through public or private insurance.

Part C funds are to be used as Payor of Last Resort pursuant to 34 CFR 303.527, and therefore, may not be used to satisfy a financial commitment for early intervention services that would otherwise have been paid for from other public or private sources including any medical program administered by the Secretary of Defense.

Part C funds may be used in the interim, if necessary, to prevent a delay in the timely provision of early intervention services for an infant or toddler with developmental delays or disability and their family.

VIII. Administrative Responsibilities

The Colorado Department of Human Services through its administration of Early Intervention Services, Children's Mental Health Services, Child Welfare Services and Child Care Services will assure:

- Administration of funds received under Part C of IDEA and state early intervention funds for the implementation of the Early Intervention Colorado program in Colorado;
- Statewide coordination of the Early Intervention Colorado program which includes the development and implementation of state and local early intervention policies and procedures;

- Development of state and local interagency coordinating councils in order to assure the implementation of a coordinated, comprehensive, interagency early intervention system;
- Coordination of a public awareness program, including publication and dissemination of materials, that increases the general public's awareness of the effectiveness, need and availability of early intervention supports and services;
- A comprehensive child find system as defined in the Early Intervention Colorado State Plan;
- Service coordination to children and their families;
- Development of an Individualized Family Service Plan (IFSP) in accordance with Part C requirements, including the determination of eligibility for early intervention services, the provision of identified services in a child's natural environment, to the extent possible, and transition planning as the child approaches their third birthday;
- Coordination of available funds, public and private, as appropriate to develop and achieve the provision of services identified on IFSPs;
- Technical assistance and training to state and local community agencies, organizations and families to ensure the implementation of the early intervention system;
- Procedures to collect, compile and analyze data for the purpose of meeting federal reporting requirements and as a basis for measuring continuous improvement; and
- Coordination and dissemination of a Central Directory of information and referral resources to ensure access to information by families and service providers;
- Coordination of the Early Intervention Colorado program with other early childhood initiatives or related services; and
- Collaboration with other divisions within the Colorado Department of Human Services, such as Child Care, Child Welfare and Mental Health.

The Colorado Department of Education will assure:

- Communication between early childhood initiatives in the Department of Education (such as Child Find under Part B of IDEA, Preschool Special Education, Colorado Preschool and Kindergarten Program, Even Start, Office of Homeless Education, the Colorado Home Intervention Program and infant vision program at the Colorado School for the Deaf and the Blind, and the Early Childhood Councils) and the Early Intervention Colorado program of CDHS;
- Participation of administrative units pursuant to Section 118, Article 20 of Title 22, C.R.S., in the development of an interagency child identification process to identify, locate, evaluate and assess infants and toddlers who may have disabilities and may be eligible for early intervention services, including participation in initial IFSP development;

- Participation by each Local Education Agency (LEA) in the transition planning conference(s) for toddlers who are transitioning from early intervention services to preschool services; and,
- Participation in training and technical assistance activities with other state and local community agencies.

The Colorado Department of Health Care Policy and Financing will assure:

- The availability of medical screening examination and evaluations for children, ages birth through two years, who are enrolled in Medicaid. These children will receive an Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) screen (a.k.a. well child exam). The well child exam consists of an unclothed physical examination; a health and comprehensive developmental history; vision, hearing and dental screenings; and a mental/behavioral health assessment. Diagnostic and treatment services for which federal financial participation is available under Title XIX, whether or not such services are included in the Colorado State Medical Assistance Plan, that are identified as services which meet the EPSDT definition of medical necessity as found in Section 8.280, CCR 2505-10;
- Collaboration in outreach and case management through EPSDT Outreach, Medicaid Managed Care Organizations (MCO), Medicaid Behavioral Health Organizations (BHO) and Medicaid enrolled physicians and clinics;
- Collaboration of the Colorado Home Intervention Program with the Early Intervention Colorado program;
- Collaboration in outreach to Child Health Plan Plus (CHP+) providers, staff and members on the availability of early intervention services; and,
- Implementation of C.R.S. 25.5-1-124 (5) (a), early intervention payment system.

The Colorado Department of Public Health and Environment will assure:

- Referral to Early Intervention Colorado, within the requirements of the Health Insurance Portability and Accountability Act (HIPAA), all children ages birth through two years who may be eligible for early intervention services;
- Provision of health information and resource and referral information to members of the child's IFSP team about the child's health concerns. Health consultation (review of medical and health records for developmental implications) and IFSP meeting attendance will be based on local capacity;
- Collaboration with the Early Intervention Colorado program for infants and toddlers attending HCP Specialty Clinics to facilitate communication with the family, the child's primary care provider, and specialty care providers in order to provide a Medical Home approach;

- Ongoing communication with the Early Intervention Colorado program about Colorado Responds to Children with Special Needs (CRCSN) notifications to determine whether a child is already enrolled and receiving early intervention services and to determine the need for public health involvement for health information, resource and referral; and,

- Access to other public health services, such as Diagnostic and Evaluation Clinics and Special Supplemental Nutrition Program for Women, Infants and Children.

The Division of Insurance in the Colorado Department of Regulatory Agencies will assure:

- Compliance of private health insurance plans that are obligated pursuant to state statute to provide coverage for early intervention services; and,
- Assistance to the Department of Human Services, as necessary to resolve individual claim disputes.

IX. Interagency Operating Agreements

The Departments involved in this MOU agree to provide leadership to their constituencies at the local level to implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services, to develop agreements that will provide guidance to local interagency collaborative efforts, to assist local agencies in fulfilling their obligations to children and families, and to assist in the resolution of interagency disputes.

In order to attain the above mutual objectives and outcomes each agency agrees:

- To develop and implement an interagency operating agreement with the Department of Human Services regarding specific initiatives to be accomplished between the two Departments as needed; and,
- To negotiate through the interagency operating agreement any purchase of services agreements or interagency funding transfers for services or materials;

X. Procedural Safeguards

The Departments involved in this MOU acknowledge the procedural safeguards required under Part C of IDEA. Procedural safeguards protect the legal rights and privacy of children and their parents from the point of referral and continuing through receipt of early intervention supports and services and transition at three years of age. These legal rights include the right to:

- Review, amend and supplement records;
- Receive prior notice of meetings;
- Receive information in the family's native language;

- Give consent prior to evaluation, IFSP development and provision of services;
- Decline or accept any services in whole or in part;
- Utilize impartial procedures to resolve individual child and family complaints; and,
- Be assured of confidentiality of information.

XI. Confidentiality of Information

The use or disclosure of any information concerning infants and toddlers with developmental delays or disabilities and their families shall be limited to purposes directly connected with the administration of the agency's programs or provision of services in accordance with the procedures outlined in the procedural safeguards section of the Colorado Early Intervention State Plan, as well as any specific regulatory compliance that applies to each agency (e.g., Health Insurance Portability and Accountability Act, Family Educational Rights and Protection Act). Parents or legal guardians must be informed of and give consent for the sharing or personally identifiable information between or among agencies.

XII. State Agency Dispute Resolution Process

The parties involved in the MOU agree to strive to keep communication open and frequent at both informal and formal levels. The Colorado Interagency Coordinating Council and the Colorado Department of Human Services, Division for Developmental Disabilities, as lead agency for the administration of Part C, function as conveners to maintain vehicles for open, on-going communication among all participating agencies.

Procedures for timely resolution of disputes include the following:

- When disputes involve various divisions within a single agency, their internal administrative dispute resolution procedures will be utilized;
- When disputes arise involving two or more agencies, the respective representatives will meet and attempt to resolve the matter;
- If this meeting does not resolve the dispute, the lead agency will assemble a meeting with the representatives of all of the agencies involved in the MOU and the co-chairs of the CICC to resolve the dispute. The lead agency may hire an independent and objective mediator to help facilitate the process;
- When the matter in dispute is in regard to financial responsibility and reimbursement procedures in respect to 34 CFR 303.527 and 303.528, the agencies involved in the MOU assure collaborative, systematic and reasonable efforts to secure reimbursement to the appropriate agency or entity; and,
- Disputes shall be resolved within 60 days of identification.

XIII. Supervision and Monitoring

The Colorado Department of Human Services, Division for Developmental Disabilities, as the lead agency for the administration of Part C of IDEA and state early intervention services, is responsible for the supervision of all early intervention services used by the State to assure compliance with state and federal regulations. Supervision is carried out by general supervision and monitoring procedures to review programs and services as a continuous improvement process.

Monitoring procedures include:

- Development and implementation of monitoring protocols to ensure regulatory compliance, ongoing review of data, local contracts for federal Part C and state funds, local performance and fiscal reports, reviewing IFSPs, interviews with families, program implementers and other pertinent community constituents;
- Summary survey reports that cite areas of strength, noncompliance and need for improvement;
- Annual reports to the public that rank local programs' performance on the State Performance Plan indicators 1-8 and their overall status determination.
- Technical assistance provided to agencies and programs that provide early intervention services to address areas of noncompliance and need for improvement; and,
- Enforcement through this MOU of any obligations imposed on agencies or programs related to deficiencies under state and federal statutory or regulatory requirements.

The other participating agencies in the MOU will participate in monitoring activities in coordination with the lead agency, if appropriate, related to those local agencies or programs implementing early intervention system of supports and services for which they have authority.

XIV. Review of the MOU

This Memorandum of Understanding shall be reviewed and updated at any time by mutual agreement of the participating agencies. Reviews shall also be for the purpose of developing new interagency operating agreements, modifying existing interagency operating agreements, clarifying interagency operating agreements or terminating interagency operating agreements as necessary. This MOU shall be effective as of the date of the signatures of the Executive Directors of the participating agencies. It shall remain in effect for all successors of the signatories to the MOU and the agencies they represent.

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Effective Date: July 1, 2009