

Title of Proposed Rule: Early Intervention Eligibility

CDEC Tracking #: 2022-12-004

Office, Division, & Program:
Office of Program Delivery,
Division of Community and
Family Support, Early
Intervention

Rule Author: Christy Scott

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E-Mail:
christy.scott@state.co.us

RULEMAKING PACKET

Type of Rule:

Regular

Emergency

Regular following Emergency

SoS# 2022-00807

This package is submitted for: *(check all that apply)*

County
Subcommittee
Review (if
needed)

Rules Advisory
Council Review

Review by
Attorney
General's Office

Final Public
Rulemaking Hearing by
the Executive Director

Estimated Dates – What dates are you hoping to have this reviewed by the following groups?

County Subcommittee (if required)	February 2, 2023
Rules Advisory Council	February 9, 2023
Public Rulemaking Hearing	February 24, 2023
Effective Date	April 30, 2023
If emergency rule – effective date of permanent rule?	
Is this date legislatively required?	No

What other state departments, offices, and/or divisions have been consulted in the creation or revision of this rule package? (examples could include: Colorado Department of Human Services; Colorado Department of Education; Office of Information Technology; CDEC Legislative and Policy Division; etc):
Health Care Policy and Financing, Colorado Department of Education

Comments / Notes from Review by Rules Advisory Council Manager:

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STATEMENT OF BASIS AND PURPOSE

Summary of the basis and purpose for new rule or rule change.

*Explain why the rule or rule change is necessary and what the program hopes to accomplish through this rule. **1500 Character max***

The rule changes the definition of developmental delay from 33% or greater delay in one or more of the five domains of development to 25% or greater delay in two or more areas or 33% or greater delay in one or more of the five domains of development.

This change broadens the criteria to be eligible for the Early Intervention (EI) program. This means that more children will be eligible for the program, increasing the number of children and families served.

An emergency rule-making (which waives the initial Administrative Procedure Act noticing requirements) is necessary:

- to comply with state/federal law and/or
- to preserve public health, safety and welfare

Justification for emergency:

Executive Director Authority for Rule:

Code	Description
26.5-1-105(1) C.R.S. (2022)	The executive director is authorized to promulgate all rules for the administration of the department and for the execution and administration of the functions specified in section 26.5-1-109 and for the programs and services specified in this title 26.5.

Program Authority for Rule: *Give federal and/or state citations and a summary of the language authorizing the rule-making function AND authority.*

Code	Description
34 C.F.R. Section 303.102	Each state that receives funds for EI under 34 C.F.R. Part 303 must ensure that State rules, regulations, and policies conform to Part 303.

Does the rule incorporate material by reference? Yes No

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Does this rule repeat language found in statute?

Yes

No

If yes, please explain.

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REGULATORY ANALYSIS

1. List of groups impacted by this rule.

Which groups of persons will benefit, bear the burdens or be adversely impacted by this rule? How will the rule impact particular populations, such as populations experiencing poverty, immigrant/refugee communities, non-English speakers, and rural communities?

Infants and toddlers who currently have mild developmental delays are not eligible for the EI program. Expanding the eligibility criteria to twenty five percent in two or more developmental domains will allow more children to receive early intervention services.

2. Describe the qualitative and quantitative impact.

How will this rule-making impact those groups listed above? How many people will be impacted? What are the short-term and long-term consequences of this rule?

Broadening the eligibility criteria will mean that an additional 1,100 children will be eligible to receive early intervention services. The long-term consequences of this rule will be more children and families served.

3. Alignment and Coordination.

Do the proposed rules or rule revisions (indicate all that apply):

	Reduce the administrative burden on families and providers of accessing programs and services, implementing programs, and providing services
	Decrease duplication and conflicts in implementing programs and providing services
X	Increase equity in access to programs and services and in child and family outcomes
	Increase administrative efficiencies among the programs and services provided by the department
	Ensure that the rules are coordinated across programs and services so that programs are implemented and services are provided with improved ease of access, quality of family and provider experience, and ease of implementation by state, local, and tribal agencies

4. Fiscal Impact

*For each of the categories listed below explain the distribution of dollars; please identify the costs, revenues, matches or any changes in the distribution of funds even if such change has a total zero effect for any entity that falls within the category. If this rule-making requires one of the categories listed below to devote resources without receiving additional funding, please explain why the rule-making is required and what consultation has occurred with those who will need to devote resources. **Answer should NEVER be just “no impact” answer should include “no impact because....”***

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State Fiscal Impact (*Identify all state agencies with a fiscal impact, including any Colorado Benefits Management System (CBMS) change request costs required to implement this rule change*)

None, the department received additional funding to make this change.

County Fiscal Impact

None, EI services are funded by the CDEC.

Federal Fiscal Impact

None, the federal Part C grant amount remains the same.

Other Fiscal Impact (*such as providers, local governments, etc.*)

None, EI services are funded by the CDEC

5. Data Description

List and explain any data, such as studies, federal announcements, or questionnaires, which were relied upon when developing this rule?

Research on other states' eligibility criteria
Budget forecasting to determine sustainability by the program

6. Describe the monitoring and evaluation.

How will implementation of this proposed rule or rule revision be monitored and evaluated? Please include information about measures and indicators that CDEC will utilize, including information on specific populations (identified above).

The Early Intervention Program collects data on numbers of children referred, evaluated and found eligible, including percentage of delay. Caseload numbers will be tracked to determine the increase in caseload as a result of this eligibility change.

7. Alternatives to this Rule-making

Describe any alternatives that were seriously considered. Are there any less costly or less intrusive ways to accomplish the purpose(s) of this rule? Explain why the program chose this rule-making rather than taking no action or using another alternative. Answer should NEVER be just "no alternative" answer should include "no alternative because..."

There is no alternative to this rule-making because the definition of developmental delay exists in rule and must be revised in order to implement any change in eligibility criteria.

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OVERVIEW OF PROPOSED RULE

Compare and/or contrast the content of the current regulation and the proposed change.

Rule section Number	Issue	Old Language	New Language or Response	Reason / Example / Best Practice	Public Comment No / Detail
7.000	<i>Incorrect Statutory Reference</i>	<i>Section 26.5.103 C.R.S.</i>	<i>Section 26.5-101(3) C.R.S.</i>		
Entire Rule	New CCR and C.R.S. references	A technical change to update references and citations	This change was made to allow CDEC the ability to promulgate rules under the new CDEC since CDEC can no longer promulgate rules under CDHS.	CDEC was created as of 7/1/2022	
5.103	Changes definition of developmental delay	“Developmental delay”, when referenced in these regulations, means a significant delay, defined as the: equivalence of thirty-three percent (33%) or greater delay in one (1) or more of the five (5) domains of development as defined in Rule 5.111(H)(6)(c), when compared with chronological age; or, presence of atypical development or behavior, as defined in Rule 5.103.	“Developmental delay”, when referenced in these regulations, means a significant delay, defined as the: equivalence of A TWENTY-FIVE PERCENT (25%) DELAY IN TWO (2) OR MORE DOMAINS OR thirty-three percent (33%) or greater delay in one (1) or more of the five (5) domains of development as defined in Rule 7.920, 1, 7, c, 5.111(H)(6)(c) when compared with chronological age; or, presence of atypical development or behavior, as defined in Rule 7.904 5.103.	Revising definition of developmental delay to be broader and provide services for additional children and families	
5.103	Clarifies that referrals are made the centralized EI Colorado Referral line or Certified Early Intervention Service Broker to align with the newly	“Referral” for early intervention services means a verbal or written notification from a referral source to the Community Centered Board or administrative unit for the provision of information regarding an infant or toddler, birth through two (2) years	“Referral” for early intervention services means a verbal or written notification from a referral source to the Community Centered Board or administrative unit EARLY INTERVENTION COLORADO REFERRAL LINE OR A CERTIFIED EARLY INTERVENTION SERVICE BROKER for the	Align with activities resulting from SB 21-275	

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	developed referral and evaluation system as a result of SB 21-275	of age, in order to identify those who are in need of early intervention services.	provision of information regarding an infant or toddler, birth through two (2) years of age, in order to identify those who are in need of early intervention services.		
Entire Rule	Changes reference to Community Centered Board to read Certified Early Intervention Service Broker. This has already been done in several sections of the rule so making the entire rule consistent.	Community Centered Board	Community Centered Board CERTIFIED EARLY INTERVENTION SERVICE BROKER	Consistency throughout rules	
5.111	Strikes the requirement for Community Centered Boards and Administrative units to provide public awareness and clarifies responsibilities for referral and intake in alignment with the newly designed evaluation system as a result of SB 21-275	A. Pre-Referral Public Awareness 1. A Community Centered Board shall work with special education Administrative units, the Local Interagency Coordinating Council, and other community members, as necessary in order to develop a coordinated program of public awareness that identifies infants and toddlers with disabilities who may be eligible for early intervention services. 2. A Community Centered Board shall ensure that it has an Internet link on its website to the Early Intervention Colorado website at www.eicolorado.org and that	B. Pre-Referral Public Awareness 1. A Community Centered Board shall work with special education Administrative units, the Local Interagency Coordinating Council, and other community members, as necessary in order to develop a coordinated program of public awareness that identifies infants and toddlers with disabilities who may be eligible for early intervention services. 2. A Community Centered Board shall ensure that it has an Internet link on its website to the Early Intervention Colorado website at www.eicolorado.org and that families are informed of the website and the	Align with activities resulting from SB 21-275	

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	<p>families are informed of the website and the statewide toll free number 1-888-777-4041.</p> <p>3. A Community Centered Board shall ensure that information on the Early Intervention Colorado Program is available via an Internet website, and in a written format, upon request of a family.</p> <p>4. A Community Centered Board shall ensure that printed materials from the Department and other products are made available to families and the general public, as well as through state and local interagency efforts for outreach to primary referral sources, including hospitals, physicians, other health providers, child care providers and other public and non-profit agencies.</p> <p>Referral</p> <p>1. A Community Centered Board shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services.</p>	<p>statewide toll free number 1-888-777-4041.</p> <p>3. A Community Centered Board shall ensure that information on the Early Intervention Colorado Program is available via an Internet website, and in a written format, upon request of a family.</p> <p>4. A Community Centered Board shall ensure that printed materials from the Department and other products are made available to families and the general public, as well as through state and local interagency efforts for outreach to primary referral sources, including hospitals, physicians, other health providers, child care providers and other public and non-profit agencies.</p> <p>A. Referral</p> <p>3. THE EARLY INTERVENTION COLORADO PROGRAM OR A Community Centered BoardCERTIFIED EARLY INTERVENTION SERVICE BROKER shall work collaboratively with community partners and primary referral sources to develop effective procedures for referral of children, birth through two (2) years of age, to the Early Intervention Program, in order to identify infants and toddlers who are in need of early intervention services.</p>		
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	<p>2. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the Community Centered Board or Administrative Unit about a child who:</p> <ul style="list-style-type: none">a. Is known to have or suspected of having a developmental delay; or,b. Has an established condition, as defined in Rule 5.111(E); or,c. Lives with a parent with a developmental disability; or,d. Has been identified as the subject of a substantiated case of child abuse or neglect; or,e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. <p>Post-Referral Process</p> <p>1. A Community Centered shall accept a referral from community sources, including, but not limited to, a family, health provider,</p>	<p>4. Referral of a child, birth through two (2) years of age, means a verbal or written notification from a referral source to the EARLY INTERVENTION PROGRAM OR Community-Centered Board CERTIFIED EARLY INTERVENTION SERVICE BROKER or Administrative Unit about a child who:</p> <ul style="list-style-type: none">a. Is known to have or suspected of having a developmental delay; or,b. Has an established condition, as defined in Rule 7.920, H5.111(E); or,c. Lives with a parent with a developmental disability; or,d. Has been identified as the subject of a substantiated case of child abuse or neglect; or,e. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. <p>B. Post-Referral Process</p> <p>1. THE EARLY INTERVENTION COLORADO PROGRAM OR A Community</p>		
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		<p>child care provider, Administrative Unit, county department of social/human services, county department of health, and others.</p> <p>A Community Centered Board shall use the state referral form found at http://coloradoofficeofearlychildhood.force.com/eicolorado/ei_quicklinks?p=home&s=make-a-referral&lang=en, procedures as defined by the Department, and shall facilitate, to the extent possible, the use of the early intervention referral form by other referral sources in its designated service area.</p> <p>2. A Community Centered Board shall assign a service coordinator within three (3) working days from the date of a referral.</p> <p>3. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator's contact information and inform the family of their procedural safeguards.</p> <p>4. A Community Centered Board shall notify the appropriate Administrative Unit within three (3) working days of a child being referred for early intervention</p>	<p>Centered CERTIFIED EARLY INTERVENTION SERVICE BROKER shall accept a referral from community sources, including, but not limited to, a family, health provider, child care provider, Administrative Unit, county department of social/human services, county department of health, and others.</p> <p>A Community Centered Board CERTIFIED EARLY INTERVENTION SERVICE BROKER shall use the state referral form found at http://coloradoofficeofearlychildhood.force.com/eicolorado/ei_quicklinks?p=home&s=make-a-referral&lang=en, HTTPS://COLORADOOFFICEOFEARLYCHILDHOOD.SECURE.FORCE.COM/EICOLORADO/EI_QUICKLINKS?P=HOME&S=MAKE-A-REFERRAL&LANG=EN and FOLLOW procedures as defined by the Department, and shall facilitate, to the extent possible, the use of the early intervention referral form by other referral sources in its designated service area.</p> <p>2. THE EARLY INTERVENTION COLORADO PROGRAM OR A Community Centered Board shall assign a service coordinator WILL BE ASSIGNED within three (3) working days from the date of a referral.</p>	
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		<p>services for whom a Child Find evaluation needs to be conducted.</p> <p>5. A Community Centered Board shall:</p> <p>a. Notify the referral source of the receipt of the referral using the state referral form; and,</p> <p>b. Provide the contact information for the assigned service coordinator; and,</p> <p>c. With written parent consent, notify the referral source and the child’s primary health provider of the results of the evaluation and/or assessment using the state referral form.</p> <p>6. Referral information sent to an Administrative Unit by a Community Centered Board shall contain at least the following:</p> <p>d. The first, middle, and last name of the child; and,</p> <p>e. Date of birth of the child; and,</p> <p>f. Gender of the child; and,</p>	<p>3. The family shall be contacted as soon as possible after being assigned a service coordinator, but no longer than seven (7) calendar days from the date of the referral, to provide the service coordinator’s contact information and inform the family of their procedural safeguards.</p> <p>4. A Community Centered Board shall notify the appropriate Administrative Unit within three (3) working days of a child being referred for early intervention services for whom a Child Find evaluation needs to be conducted.</p> <p>5. A Community Centered BoardTHE EARLY INTERVENTION COLORADO PROGRAM OR CERTIFIED EARLY INTERVENTION SERVICE BROKER shall:</p> <p>.Notify the referral source of the receipt of the referral using the state referral form; and,</p> <p>.Provide the contact information for the assigned service coordinator; and,</p> <p>.With written parent consent, notify the referral source and the child’s primary health provider of the results of the evaluation and/or assessment using the state referral form.</p>		
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		<p>g. Primary language spoken; and,</p> <p>h. Name and telephone number of an assigned service coordinator; and,</p> <p>i. Date of the referral.</p> <p>C. Post-Referral Screening</p> <p>1. A Community Centered Board shall work with the Administrative Unit(s) to identify in the interagency agreement if the Child Find process will include post-referral screening.</p> <p>2. If post-referral screening is used, the Community Centered Board shall assure the following requirements are met:</p> <p>a. A parent shall receive prior written notice of, and provide written consent to, the post-referral screening, and be informed of the right to request evaluation in place of or in addition to post-referral screening; and,</p> <p>b. Appropriate instruments shall be used by personnel trained to administer those instruments; and,</p>	<p>6. Referral information sent to an Administrative Unit by a Community Centered Board shall contain at least the following:</p> <p>.The first, middle, and last name of the child; and,</p> <p>.Date of birth of the child; and,</p> <p>.Gender of the child; and,</p> <p>.Primary language spoken; and,</p> <p>.Name and telephone number of an assigned service coordinator; and,</p> <p>.Date of the referral.</p> <p>C. Post-Referral Screening</p> <p>1. A Community Centered Board shall work with the Administrative Unit(s) to identify in the interagency agreement if the Child Find process will include post-referral screening.</p> <p>2. If post-referral screening is used, the Community Centered Board shall assure the following requirements are met:</p>		
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		<p>c. Written screening results are provided to a parent; and,</p> <p>d. A parent shall receive prior written notice of the action that is being proposed or refused as a result of the post-referral screening, and the reasons for taking the action.</p> <p>e. If the results of a post-referral screening reveal that the child is developing at age expected levels in the five (5) domains referenced in 7.920, I, 7, c, the parent may request and is entitled to a timely, comprehensive, multidisciplinary evaluation under Part C of the Individuals with Disabilities Education Act.</p> <p>Evaluation to Determine Extent of Child's Delay</p> <p>1. A Community Centered Board shall work with the Administrative Unit(s), the Local Interagency Coordinating Council, and other community members, as necessary, to develop a local child identification process to ensure that:</p> <p>a. Evaluation procedures, as identified in Section 7.920, are adhered to; and,</p>	<p>.A parent shall receive prior written notice of, and provide written consent to, the post-referral screening, and be informed of the right to request evaluation in place of or in addition to post-referral screening; and,</p> <p>.Appropriate instruments shall be used by personnel trained to administer those instruments; and,</p> <p>.Written screening results are provided to a parent; and,</p> <p>.A parent shall receive prior written notice of the action that is being proposed or refused as a result of the post-referral screening, and the reasons for taking the action.</p> <p>.If the results of a post-referral screening</p> <p>.If the results of a post-referral screening reveal that the child is developing at age expected levels in the five (5) domains referenced in 7.920, I, 7, c, the parent may request and is entitled to a timely, comprehensive, multidisciplinary evaluation under Part C of the Individuals with Disabilities Education Act.</p> <p>Name and signature of the Community Centered Board-EVALUATION ENTITY</p>		
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		For each child, where parental consent for evaluation has been given, an evaluation	representative who verifies that the evaluation and assessment team gathered and provided diagnostic information to establish eligibility or ineligibility; and, G. Evaluation to Determine Extent of Child's Delay a. A Community Centered Board shall work with the Administrative Unit(s), the Local Interagency Coordinating Council, and other community members, as necessary, to develop a local child identification process to ensure that: Evaluation procedures, as identified in Section 7.920, are adhered to; and, For each child, where parental consent for evaluation has been given, an evaluation		
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STAKEHOLDER COMMENT SUMMARY

Development

The following individuals and/or entities were included in the development of these proposed rules (such as other Program Areas, Legislative Liaison, and RAC Subcommittee):

A broad group of stakeholders convened as an EI Eligibility Definition Workgroup and met three times representing families. The following stakeholder groups have been informed of the proposed rule changes and provided the opportunity for questions and clarification: Families, Community Centered Boards, Evaluation Entities, EI direct service providers, the Colorado Interagency Coordinating Council, the Colorado Department of Education, the Department of Health Care Policy and Financing, the Special Education Consortium, philanthropic organizations and any other interested parties. Additionally, two broadly advertised town halls were held to share results of Workgroup recommendations and provide additional input.

This Rule-Making Package

The following individuals and/or entities were contacted and informed that this rule-making was proposed for consideration by the Rule Advisory Council / CDEC:

Families, Community Centered Boards, Evaluation Entities, EI direct service providers, the Colorado Interagency Coordinating Council, the Colorado Department of Education, the Department of Health Care Policy and Financing, the Special Education Consortium, philanthropic organizations, the Alliance of Colorado.

Other State Agencies

Are other State Agencies (such as CDHS, CDE, HCPF or CDPHE) impacted by these rules? If so, have they been contacted and provided input on the proposed rules?

Yes No

If yes, who was contacted and what was their input?

RAC County Subcommittee Review (if applicable)

Do the proposed rules have an impact on the functions, programs or services delivered by counties?

Yes No

If yes, have these rules been reviewed by the County Subcommittee?

Yes No

Date presented	February 2, 2023		
What issues were raised?			
Vote Count	<i>For</i>	<i>Against</i>	<i>Abstain</i>
If not presented, explain why.			

Rules Advisory Council Review

Date presented	December 8, 2022 and February 9, 2023
What issues were raised?	

Recommendation from RAC
to Approve, Approve with
Changes, or Not Approve
Vote Count

<i>For</i>	<i>Against</i>	<i>Abstain</i>
Any additional notes.		

Other Comments

Comments were received from stakeholders on the proposed rules:

Yes No

If “yes,” summarize and/or attach the feedback received, by specifying the section and including the Department/Office/Division response. Provide proof of agreement or ongoing issues with a letter or public testimony by the stakeholder.

Comments were received through three, facilitated Eligibility Definition Workgroup meetings which were open to the public. Approximately 60 stakeholders participated in each Workgroup meeting. The meetings were also recorded and the link provided publicly. The Workgroup developed a recommendation for the eligibility change.

Two public Town Halls were held to discuss the recommendation of the Workgroup and garner additional input. The final Workgroup meeting was held to review the input of the Town Halls.

The final recommendation of this broad stakeholder engagement resulted in the proposed rule change to the definition of Developmental Delay.