



ANNOUNCEMENT: EI-08 #10
OFFICE OF CHILD DEVELOPMENT AND EARLY LEARNING
BUREAU OF EARLY INTERVENTION SERVICES

ISSUE DATE: September 22, 2008
EFFECTIVE DATE: September 22, 2008
SUNSET DATE: On-Going

SUBJECT:	Eligibility for the Infants, Toddlers and Families Medicaid Waiver
TO:	Infant/Toddler Early Intervention Program Leadership
FROM:	Harriet Dichter Deputy Secretary, Office of Child Development and Early Learning

A handwritten signature in black ink that reads "Harriet Dichter".

PURPOSE:

To revise and re-issue OMR Bulletin, # 00-98-07, titled: Eligibility and Freedom of Choice in Medicaid Waiver for Infants, Toddlers & Families (ITF) as an Office of Child Development & Early Learning (OCDEL) Announcement.

BACKGROUND:

The Pennsylvania Department of Public Welfare received approval from the Centers for Medicare and Medicaid services (CMS), formally known as the Federal Health Care Financing Administration (HCFA), to provide Early Intervention services funded under a Medicaid Waiver for Infants, Toddlers and Families, effective July 1, 1998. As a condition of federal financial participation (FFP), infants and toddlers who receive services funded under the waiver must satisfy certain levels of care and financial eligibility requirements.

The Department established policy and procedures for Infant/Toddler Early Intervention (EI) Programs to follow in determining an infant or toddler's eligibility for the ITF Waiver and in offering families information and choice in the receipt of waiver-funded services at the time the ITF Waiver was initially approved. Participation in the waiver is completely optional to the extent that a family's choice not to receive waiver-funded services should have no impact on what services the infant or toddler receives. Even if an infant or toddler meets the requirement to participate in the waiver, his or her family is free to decide not to participate. The infant or toddler is still able to receive all of the services authorized on the Individualized Family Service Plan (IFSP) funded through alternative funding streams, such as Medical Assistance/Early Intervention (MA/EI) or state and county Early Intervention (EI) revenues.

DISCUSSION:

I. General Information

Following the Multi-Disciplinary Evaluation (MDE) the infant or toddler's IFSP is developed by an appropriately constituted team. If any of the services on the IFSP meet the requirements for the waiver and the family agrees to have a formal level of care assessment completed for the waiver, the Infant/Toddler EI Program determines whether the infant or toddler meets the waiver's level of care requirements. The Infant/Toddler EI Program authorizes waiver funding for IFSP services based on its availability of waiver funds allocated by the Department. Like all other funding streams for Early Intervention, waiver funding supports only those services that are authorized in the infant or toddler's IFSP.

The waiver eligibility process must not delay development of the infant or toddler's IFSP or jeopardize compliance with other requirements of Part C of the Individuals with Disabilities Education Act (IDEA). The Infant/Toddler EI Program is responsible to assure that any delays in service resulting from procedures contained in this announcement are immediately corrected and reported to the Office of Child Development and Early Learning.

Eligibility for waiver-funded IFSP services can be determined at any time before the infant or toddler's third birthday. An infant or toddler may be determined eligible for waiver funding after the initial IFSP is developed or as a result of some additional evaluations or assessments. Regardless of the time that eligibility is determined, waiver services and funding must be indicated on the infant or toddler's IFSP before waiver funding can be authorized. The service coordinator shall assure that all waiver eligibility determinations are completed with the family's approval and in a manner which does not jeopardize the timely provision of IFSP services.

II. Initial Eligibility for Waiver Services

Before waiver-funded IFSP services can be authorized, the Department must establish that the infant or toddler satisfies financial and level of care eligibility requirements established by the Department in its approved waiver application. Level of care eligibility is based on the Infant/Toddler EI Program's eligibility determination that is completed in accordance with procedures outlined in this announcement. Financial eligibility is based on the infant or toddler's eligibility for Medical Assistance that is determined by the County Assistance Office (CAO).

A. Medical Assistance Eligibility

All Infants or Toddlers enrolled in the waiver must be eligible for Medical Assistance. Families can apply for the Infant or Toddler's Medical Assistance eligibility and obtain further information or support in the Medical Assistance determination process by contacting the infant or toddler's service coordinator.

Infants or toddlers enrolled in Supplemental Security Income (SSI) are automatically eligible for Medical Assistance and meet all financial eligibility requirements for waiver-funded services. Infants or Toddlers eligible for Medical Assistance through Temporary Assistance for Needy Families (TANF) also meet the financial eligibility requirements for the waiver.

Since application for Medical Assistance is voluntary, a family may choose not to enroll the infant or toddler in Medical Assistance. Infants or toddlers that are not enrolled in Medical Assistance cannot receive waiver funding for IFSP services. However, other non-Medical Assistance funding sources for IFSP services can still be utilized. Termination of the infant or toddler's Medical Assistance benefits cannot affect the infant or toddler's receipt of services authorized on the IFSP; however, another source of funding needs to be applied.

Determination of the infant or toddler's eligibility for Medical Assistance needs to precede eligibility for waiver-funded IFSP services, although applications for both waiver and Medical Assistance can be submitted to the CAO simultaneously.

The infant or toddler's family is responsible for notifying the CAO of any changes that would affect the infant or toddler's Medical Assistance eligibility, such as a new source of income for the infant or toddler.

As long as an infant or toddler's Medical Assistance coverage is in force, there should be no need for any additional application or financial information to maintain Medical Assistance eligibility for waiver-funded IFSP services.

B. Initial Level of Care Determination, Waiver Information and Choice

Infants or toddlers that are eligible for Medical Assistance must meet specific ICF/MR/ORC levels of care criteria to receive waiver funding for IFSP services. The ICF/MR/ORC level of care criteria for this waiver is included on pages six and seven of this announcement.

The Infant/Toddler EI Program, through the service coordinator, is responsible to explain the waiver, including level of care eligibility criteria to the families only after services on the IFSP are identified and the service coordinator determines that the infant or toddler is likely to meet the level of care criteria for the waiver.

After the family is informed of the ICF/MR/ORC level of care criteria and waiver-funded services, the service coordinator is responsible to request the family's permission to complete a formal level of care assessment for the infant or toddler. If the family gives this permission, the service coordinator is responsible to assure that the appropriate assessment and evaluation information is forwarded to the independent Qualified Professional (QP) and to the Infant/Toddler EI Program for completion of this process.

If the family does not give its permission to complete the formal level of care assessment, the service coordinator is responsible to advise the family that waiver funding will not be available for services on the IFSP, but that the infant or toddler is still eligible to receive all of the services authorized on the IFSP through other funding streams. The service coordinator is also responsible to note the family's choice in the infant or toddler's service coordination record.

The level of care assessment shall be based on current social, psychological, and medical information presented to the QP. Generally, no additional assessments or evaluations apart from those records provided through the IFSP development process should be required by the QP. The QP certifies whether the infant/toddler meets the eligibility requirements for the ITF Waiver by signing the level of care form, PW 123, titled: Certification of Need for Infants, Toddlers and Families Waiver (Enclosure). The QP then forwards the level of care form to the Infant/Toddler EI Program for completion of the eligibility determination. The Infant/Toddler EI Program Administrator or designee completes and signs the level of care form (PW 123) and notifies the family whether the infant or toddler meets the level of care criteria.

The Infant/Toddler EI Program is responsible for obtaining the infant or toddler's family or legal representative's choice on PW 457 titled: Certification of Choice, Infants, Toddlers and Families Medicaid Waiver (Enclosure). When the family chooses waiver funding, the Infant/Toddler EI Program provides the family with a copy of the signed choice form and files a copy in the infant or toddler's record.

The effective date on the 162 notice from the CAO is the first date waiver-funded IFSP services can be provided. FFP is not available for services that are furnished prior to the level of care determination, and the date the family chooses waiver services on PW 457. The CAO notice of eligibility remains in effect for 365 days from the effective date of service, unless repealed by a subsequent notice from the CAO or by the infant or toddler reaching his/her third birthday.

III. Recertification of Level of Care Eligibility

Each infant or toddler's level of care eligibility must be recertified within 365 days of the initial level of care determination and at least once annually thereafter for the infant or toddler to continue to be eligible for waiver-funded IFSP services. The Infant/Toddler EI Program is responsible to assure that this recertification process occurs in conjunction with the infant or toddler's annual IFSP review. The QP bases the recertification on whether the infant or toddler continues to meet the level of care criteria as evidenced by the infant or toddler's most current MDE and IFSP and an evaluation of the infant or toddler's current condition.

A review to determine that an infant or toddler continues to qualify for waiver-funded services can be authorized by the Infant/Toddler EI Program at any time, based on information warranting such a review, including a recommendation from the family, the service coordinator or the IFSP team. The QP completes the applicable portions of PW 123-A, titled: Recertification of Need for Infants, Toddlers and Families Waiver (Enclosure), and forwards the form to the Infant/Toddler EI Program. The QP and the Infant/Toddler EI Program Administrator, or designee, completes PW 123-A to signify that the infant/toddler continues to meet the waiver eligibility requirements. A copy of the recertification form shall be maintained on record for a minimum of four years.

If the Infant/Toddler EI Program determines that the infant or toddler no longer meets the level of care criteria the family may file an appeal. Appeals for the ITF Waiver are submitted to the Bureau of Hearing and Appeals according to instructions on fair hearing and appeal procedures contained as part of PW 457-A, titled: Certification of Choice Infants, Toddler and Families Medicaid Waiver (Enclosure). When an appeal is filed within 10 days of the family's notification of the infant/toddler's eligibility status the Infant/Toddler EI Program is authorized to continue waiver funding for IFSP services until the Department's decision is made through the Office of Hearings and Appeals.

The Infant/Toddler EI Program is responsible to notify the family 90 days prior to the infant or toddler's third birthday that their child will no longer be eligible to receive waiver funding when the child turns three. The CAO will issue a notice of discontinuance for waiver eligibility to the family within 30 days of the infant or toddler's third birthday and send a copy of the notice to the Infant/Toddler EI Program.

IV. Freedom of Choice

In arranging for waiver-funded services, the Infant/Toddler EI Program cannot limit access to qualified providers chosen by the family in any way that would violate the Department's assurance of freedom of choice under the ITF Waiver. A provider can refuse to offer services for due cause. Due cause may include conflict of interest, conflict with the provider's service admission policy, and a determination by the provider that the service needs of the infant/toddler and family is beyond the provider's ability to address in accordance with state and federal requirements.

Infant/Toddler EI Programs must consult with the Department before restricting access through suspension or other method to providers who have abused the Medicaid or waiver program.

V. County-to-County Relocation

The ITF Waiver is accessible statewide, therefore when infants/toddlers are enrolled in the waiver and they and their families move from one county to another county the receiving Infant/Toddler program must accept the infant/toddler's transfer and serve the infant/toddler in the waiver.

The receiving Infant/Toddler EI program must accept the eligibility assessment of the sending county. If the infant/toddler is subsequently determined not to be eligible the Infant/Toddler program must provide the family with the fair hearing and appeal rights described in the following section and in the fair hearing forms and instruction included in this announcement.

VI. Fair Hearing and Appeal

Families are assured of a procedural safeguard right under the waiver. This right is in addition to rights afforded under other federal and state funding streams. The Infant/Toddler EI Program is responsible for notifying the family regarding their rights under the various programs and funding stream, including their procedural safeguard right to fair hearing and appeal before the Department of Public Welfare's Bureau of Hearings and Appeals.

A family's procedural safeguard right includes the right to appeal any action or failure to act if the family is dissatisfied with any decision to refuse, suspend, reduce or terminate waiver-funded IFSP services. This procedural safeguard right only applies to waiver-funded IFSP services.

The Infant/Toddler EI Program is responsible to participate in any fair hearing regarding any determination of level of care or services. The service coordinator or other Infant/Toddler EI Program designee, on request of the family, shall assist the family in filing for a fair hearing. If preservation of waiver service eligibility and funding is at issue, Departmental appeal and fair hearing procedures contained in this announcement should be pursued first. Any Medicaid waiver-funded service appeal must be made through the Department's hearing and appeal process.

NEXT STEPS:

1. Infant/Toddler EI Programs shall distribute this announcement to all EI staff and providers.
2. OMR Bulletin, # 00-98-07, titled: Eligibility and Freedom of Choice in Medicaid Waiver for Infants, Toddlers & Families (ITF) is obsolete with issuance of this announcement.

LEVEL OF CARE CRITERIA UNDER THE MEDICAID WAIVER FOR INFANTS, TODDLERS AND FAMILIES

The criteria for an ICF/MR or ICF/ORC level of care for infants and toddlers until the age of three are as follows:

- I. a. A licensed psychologist, certified school psychologist or a licensed physician shall certify that the applicant or recipient has significantly sub-average intellectual functioning which is documented by one of the following:
 - i. Performance that is more than two standard deviations below the mean as measurable on a standardized general intelligence test.
 - ii. Performance that is slightly higher than two standard deviations below the mean of a standardized general intelligence test during a period when the person manifests serious impairments of adaptive behavior.

OR

- I. b. A qualified professional shall certify that the applicant or recipient has other related conditions as defined by 42 CFR 435.1009 that include cerebral palsy and epilepsy, as well as other conditions, such as autism, other than mental illness, that result in impairments of general intellectual functioning or adaptive behavior, and require Early Intervention services and treatment.

AND

- II. A qualified professional as defined in 42 CFR 483.430 certifies that the applicant or recipient has impairments in adaptive behavior as provided by an assessment of adaptive functioning which shows that the applicant or recipient has one of the following:
 - i. Significant limitations in meeting the standards of maturation, learning, personal independence, or social responsibility of his/her age and cultural group evidenced by a minimum of a 50 percent delay in one or 33 percent delay in two of the following developmental areas:
 - a) cognitive development
 - b) physical development, including vision and hearing
 - c) communication development
 - d) social and emotional development
 - e) adaptive development

OR

- 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

AND

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

Based on the above stated eligibility criteria a QP must consider an infant/toddler's percentage of delay in each of the five areas of development: physical (including vision and hearing), cognitive, adaptive, communication, and social/emotion development. Fine and gross motor development may be considered individually with gross motor being assessed under the area of physical development and fine motor being assessed under the area of adaptive development. However when considering speech development, the QP may not use the receptive and expressive language subcomponents individually. An infant/toddler evidencing qualifying percentage(s) of delay, is eligible for the ITF Waiver provided the Infant//Toddler's condition is expected to continue for at least 12 months.

For an Infant/Toddler with no qualifying percentage(s) of delay, the QP must consider the infant/toddler's diagnoses and/or other related condition (ORC) and determine their potential impact in three or more areas of major life activities: receptive and expressive language, learning, mobility, and self direction. If the Infant/Toddler's ORC impacts on three or more of the cited major life activities, then the Infant/Toddler is eligible for the ITF Waiver. **Please note that the developmental delay(s) that meets the eligibility criteria for the waiver is considered satisfactory criteria for an ORC.**