Smith, Ashleigh, ECECD

From: [redacted]
Sent: Wednesday, May 12, 2021 10:10 AM
To: ECECD-ECS-PublicComment
Subject: [EXT] Comments on • 8.9.8 NMAC – Social Services - REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES
Attachments: [redacted] Recommended Changes to FIT Regulations-May2021.docx

Follow Up Flag: Follow up
Flag Status: Completed

To Whom It May Concern,

I have reviewed the revisions to the NM FIT Program regulations and am submitting the attached comments and recommendations.
Thank you for your consideration.

[redacted]

[redacted]
[redacted] Family Support Services
Office phone: [redacted]
[redacted]

[redacted] **Recommendations for Changes to the FIT Regulations - Submitted May 12, 2021**

P. Definitions beginning with the letter "P"

Comment: Physical/motor development also includes "sensory motor" development.

Recommend: Add the words "sensory motor".

(6) **"Physical/motor development"** means the progressive changes to a child's vision, hearing, gross and fine motor development, **sensory mot**or, quality of movement, and health status.

H. Supervision of early intervention personnel providing direct services.

Comment: This part in the regulations that refers to reflective supervision in specific is not consistent with what is written in the FIT Definitions and Standards. It is also not consistent with references to "supervision" in other parts of the regulations. Subcontractors are "independent contractors" not staff and therefore should be responsible for obtaining supervision consistent with the requirements of their licensing and regulatory boards for their disciplines.

Recommend: Change the wording to be consistent with the wording in the FIT Service Definitions and standards as seen below.

Current wording: H. Supervision of early intervention personnel.

(1) Early intervention provider agencies shall ensure that developmental specialists and therapists (employees and subcontractors) and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory agencies for each discipline.

Recommend change in wording to read: *Developmental Specialists, including sub-contractors, must receive reflective supervision at least once a month. Sub-contractors must find their own supervision, if the agency does not provide this for them. Supervision of therapists and other early intervention personnel is provided according to their licensing board's requirements*

F. Evaluation

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

Comment: The "evaluation team" is not responsible for giving Prior Written Notice to families in any other part of the regulations.

Recommend: Replacing the words "evaluation team" with the words "Family Service Coordinator"

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the **Family Service Coordinator** ~~evaluation team~~ must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

F: Evaluation

[**(13)**] **(12)** Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS team, with prior consultation with the evaluation team.

Comment: IFSP is spelled IFPS and needs to be corrected

Recommend: Correction [**(13)**] **(12)** Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] **~~IFPS~~ IFSP** team, with prior consultation with the evaluation team.

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Wednesday, May 12, 2021 4:12 PM
To: ECECD-ECS-PublicComment
Cc: [redacted]
Subject: [EXT] 8.9.8 NMAC Public Comment
Attachments: PDF Final Version of Letter to ECECD Regarding FIT Proghram Rulemaking May 21, 2021.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Sec. Groginsky:

Per the instructions given me by the leadership of the House Republican Caucus, I am attaching a document that contains the official comments of six members of the Caucus in regards to the upcoming rulemaking involving the Families Infant Toddler (FIT) program.

Please add these official comments to your formal consideration of the proposed rule changes.

If there are any questions, please do not hesitate to contact these state legislators or myself.

Thank you for your attention in this important matter.

[redacted]

[redacted]
House Republican Caucus Staff
[redacted]

State of New Mexico
House of Representatives
State Capitol
Santa Fé

May 12, 2021

The Honorable Elizabeth Groginsky
Cabinet Secretary
New Mexico Early Childhood Education and Care Department
Post Office Drawer 5619
Santa Fe, New Mexico 87502-5619

Dear Secretary Groginsky:

It is our pleasure to offer the following comments regarding the department's proposed rulemaking impacting the Family Infant Toddler (FIT) program.

As we review these proposed regulations, the one glaring shortcoming we see is the lack of provisions aligning the FIT program's eligibility with the federal guidelines of birth to four years of age. Considering recent changes have been made to increase age eligibility for child care assistance and "coming soon" changes to age eligibility for home visiting, we believe now is the perfect time to increase the FIT program's eligibility from three years of age to four. Such an increase in age would be a perfect complement to the statewide effort of ensuring every New Mexican child has flexibility and access to high quality early childhood experiences that are family focused and based on their individual needs.

By extending the FIT program to four year olds, it would provide health and developmentally appropriate early intervention options for these vulnerable children whose health and developmental needs make remaining on an Individualized Family Service Plan ideal. That extra year with least restrictive, most inclusive services can set the path for success at PreK and through their time in K-12. To the contrary, keeping the age eligibility lower than what the federal guidance recommends takes away choice from families and clinicians when determining treatment plans for young children with special health and developmental needs.

Further, this ability to extend the option of these vital services to eligible children prior to them starting Kindergarten would seem to be especially important in rural New Mexico where early intervention programs may be limited. Children who are medically fragile or have sensory integration issues are negatively impacted from long hours on multiple daily bus routes, yet FIT programs can be provided in the home. Providing flexibility for FIT's services for one additional year simply allows the child's heath and developmental needs to remain the focus of Individual Family Service Plans.

Thank you for considering our comments and we look forward to working with you in the future to ensure all New Mexico children have the best opportunities possible to reach their fullest potential.

Respectfully yours,

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Friday, May 21, 2021 4:04 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment
Attachments: FIT regs.docx

Follow Up Flag: Follow up
Flag Status: Flagged

To Whom It May Concern,
I have reviewed the proposed revisions to the NM FIT Program rules and am submitting the attached comments and recommendations.
Thank you for your consideration.

Sincerely,
[redacted]

- Page 8

8.9.8.9 PERSONNEL

A.(2) As it is currently written, this implies that folks from other disciplines CAN be certified as a DS even if they rarely function in that capacity. Suggest that language be revised to state: "*Individuals who hold of professional license or certificate from an approved field as identified in this rule, and provide services in that disciplines SHALL NOT be certified as a Developmental Specialist UNLESS they directly supervise Developmental Specialists or they spend sixty percent or more of their time employed in the role of developmental specialist….*"

- Page 11

8.9.8.10 CHILD IDENTIFICATION

G.(3) As it is currently written, this eliminates the possibility of teams using a domain-specific tool to support the eligibility process which is in direct conflict with F.(7) earlier in the rule. In addition, the domain-specific tools are the only tools that would potentially yield a Standard Deviation score which is included as a method for eligibility determination. Suggest that the language be revised to state: "*Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) and/or domain-specific tools are not able to establish developmental delay*."

- Pages 17-19

8.9.8.12 SERVICE DELIVERY

A.(c) As it is currently written, this description does not fully encompass the full role of the Developmental Specialist, especially in comparison to other direct service providers such as therapists. I feel that the descriptions of direct service providers need to more aligned in these rules as the approach to supporting the family and certain tasks are the same across all disciplines. See suggested language changes for various disciplines below:

A.(c) Developmental instruction: those services that address the functional needs of the child across all developmental domains (cognitive, communication, physical/motor, vision, hearing, social or emotional and adaptive). Developmental instruction includes identification, assessment, and intervention; adaptation of the environment and selection of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Developmental

instruction is provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(j) Occupational therapy services: those services that address the functional needs of ta child related to adaptive development, adaptive behaviors and play, and sensory, motor and postural development. These services are designed to improve the child's functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of the initial or future impairment, delay in development, or loss of functional ability. Occupational therapy is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Occupational therapy services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(k) Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems. Physical therapy is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Physical therapy services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

A.(o) Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills. Speech and language

pathology is primarily provided by working in a coaching role with the family or other caregiver to provide them with the information, skills, and support to enhance the child's development. Speech and language pathology services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

- pages 19-21

8.9.8.13 TRANSITION

The majority of the transition section is written as if all of the steps that are ONLY required for children being referred to Part B services are required for EVERY child in FIT. I would like to see significant changes in the language in this section to more accurately reflect the differences in the process of transition for children who are referred to Part B (with its own unique set of requirements under IDEA) versus those children who are not referred to Part B. Please see suggested language changes below:

C.(i) ***For a child referred to the LEA,*** a confirmation that the referral information has been transmitted…

D. Referral to the LEA ~~**and other preschool programs**~~ (this language was removed because this process is ONLY followed for a referral to the LEA; it has no bearing on a referral to other preschool programs)

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to ***all potential preschool programs, including the LEA if a referral has been made***, at least 30 days prior to the transition conference

F. Transition assessment summary:

(1) ***For a child referred to the LEA,*** the family service coordinator shall….

G.(7)(c) a review of the current IFSP ***and any other relevant information; and for a child referred to the LEA, a review of the assessment summary***

G.(7)(e) ***For a child referred to the LEA,*** an explanation by an LEA representative …

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 12:14 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

I am responding to a request for comment on the proposed revisions to the FIT Program Regulations, NMAC 8.9.8.

As a provider of early intervention services, our company is regularly determining eligibility for the program with trained evaluators. The regulations allow for several ways to determine developmental delay: a 25% delay on the Infant Toddler Developmental Assessment, 1.5 standard deviation below the mean on a domain specific tool, and informed clinical opinion.

I would like to propose that one other measure be added to this list to allow us to use a wider variety of domain specific tools, a percentile measure. This would allow us to use well-established, norm-referenced tools to demonstrate significant developmental delay. The reason for this is that many evaluation protocols do not report scores in standard deviations. Most do have a conversion to percentile rank, however. Below the 10th percentile is roughly equivalent to -1.5 standard deviations. Each domain-specific tool requires the professional to be trained in its use.

I recommend altering section 8.10 Section G. 4. a) ii as follows:

8.10 G. 4. a) Developmental delay
(ii) [if] If the FIT program approved tool does not indicate a [25%] twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is [1.5] one and one-half standard deviations below the mean or greater or below the tenth percentile.

Thank you for your consideration of this recommendation. Please contact me with any questions or concerns.

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 2:08 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

I am suggesting that the proposed regulations be amended to read as follows:

Personnel 8.9

H. (1) Early intervention provider agencies shall ensure that developmental specialists and all others providing direct early intervention services (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

This addition would ensure that all providers of direct early intervention services had access to appropriate reflective supervision as members of transdisciplinary teams. The wording "and therapists" would not include social workers, dietitians, nurses, speech language pathologists, and possibly counselors.

Thank you for your consideration. I appreciate the opportunity for comment.

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 2:21 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

I found a typo in the Child Identification Section, under Evaluation F.:

8.10 Child Identification

F. Evaluation
(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the [family service coordinator] IFPS team IFSP team, with prior consultation with the evaluation team.

This should replace IFPS as written.

Thank you!

[redacted]

Smith, Ashleigh, ECECD

From: [redacted]
Sent: Tuesday, May 25, 2021 2:35 PM
To: ECECD-ECS-PublicComment
Subject: [EXT] 8.9.8 NMAC Public Comment

Also under Child Identifications, G. Eligibility:

There is a gap between the ages of prematurity designations for established condition and at risk biological/medical. Children who are born between 28 weeks and 29 weeks are not included, so would not qualify in either category.

I would suggest that G.(4) c. ii read:

(ii) perinatal factors, including prematurity (less than [32] 35 weeks and more than 28 weeks gestation) [or] small for gestational age (less than [1500] 1750 grams); prenatal toxic exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;

Thank you!

[redacted]

Oral Comments Received during the 8.9.8 NMAC FIT Public Hearing Tuesday, May 25, 2021

[redacted]

"I am the director of an early intervention program in Albuquerque, and I participate regularly in comprehensive multi-developmental evaluations, as well as annual evaluations to determine eligibility. And our concern is that sometimes the FIT approved tool, and some of the supplementary tools, don't show a definite delay for one reason or another. And we are able to do some standardized tools in specific domains, such as the preschool language scale or the Peabody Developmental Motor Skills, the Alberta Infant Motor Scale, the Receptive-Expressive Emergent Language scale, and there are many others that the individual professions use. They don't always report their scores in standard deviations. And there is some, sometimes some difficulty converting the scores if the test protocol doesn't give an actual conversion table. But most tests do have, do convert their scores to percentile rank. And my proposal is to add this measure as a measure that could be used in determining eligibility. Below the 10th percentile, would be roughly equivalent to 1.5 standard deviations below the mean. So that is my proposal to amend the proposed regulations, and I did put that in writing in email to you. Do you have any questions? Okay, thank you very much for giving me the time. And I will stay on to hear what others have to say."

[redacted]

"Okay, I would propose that under Personnel. This is page 12 of the proposed documents under H number (1), under Supervision. That it should instead of, I got off my page somehow here sorry. Okay, under Personnel number H. It reads, 'Supervision of early intervention personnel providing direct services'. That's fine. Then, number (1), it says, 'early intervention provider agencies shall ensure that developmental specialists and therapists, employees and subcontractors, and family service coordinators receive monthly planned and ongoing reflective supervision'. I would propose that that reads, instead of 'and therapists' to put in 'an all other direct providers of early intervention'. This is because therapists doesn't include all of the types of personnel that are listed that can provide early intervention services. So I think that statement should be broader, and I will send this by email also so that you have it in writing. I think 'and therapists' isn't it clear enough, because there are a number of different therapists, and pathologists, dietitians, nurses, social workers, that wouldn't fall under the 'and therapists' addition. Okay, so I will submit that in writing also. Thank you."

[redacted]

"Okay, and I just submitted this in writing also. I was looking at the eligibility categories under established condition and bio-medical risk. And they designate a gestational age as a risk factor and also as an eligibility condition. It looks like we left out or left a gap between 28 and 29 weeks. So, I would suggest that under the section C, biological or medical risk for developmental delay. This is under G number (4) C and number (2). It says perinatal factors including prematurity less than 35 weeks and more than 29 weeks gestation. I think we should change that to be more than 28 weeks. The way it reads now under established condition, you have to be 28 weeks or less to be established condition. So, if you're more than 28 weeks that could fall under biological, medical risk. So if it read between 35, or 35 weeks and more than 28 weeks or small for gestational age, and then leave it as it is, but otherwise we have children left on between 28 and 29 weeks but don't qualify at all. So thank you."