

April 8, 2020

Sarah Hicks
Director of Policy and Budget
Office of the Governor
P.O. Box 12428
Austin, TX 78711
Delivered via Email

Dear Ms. Hicks,

The undersigned Texas organizations work each day to ensure infants and toddlers with developmental delays or disabilities receive critical Early Childhood Intervention (ECI) services, including therapies and other rehabilitative services. We commend the state's response to the COVID-19 outbreak in Texas. We know the Governor's office is working around the clock, and we are grateful for the tireless efforts of agency staff at Health and Human Services Commission (HHSC), the Early Childhood Intervention (ECI) division, Texas Education Agency (TEA) and Texas Department of Licensing and Regulation (TDLR). In particular, we acknowledge and thank HHSC and ECI for the guidance they have provided.

We write to request immediate, significant attention to and investment in ECI programs as they work to provide much-needed services to young children with developmental delays or disabilities during the COVID-19 pandemic. **We find ourselves in unprecedented times but babies and toddlers with delays and disabilities cannot wait.** By serving children during the critical first three years of their lives, ECI has been highly effective in helping children learn to walk, communicate with their families, get ready to start school, or meet other goals. ECI reduces the academic, social, and behavioral challenges that a child faces when starting elementary school and reduces the need for special education.

Currently, the network of ECI providers is facing extraordinary challenges providing uninterrupted services to children and families during this crisis due to state and federal regulations and limited funding. While limited access to services will be a challenge for all Texans, it will be especially difficult for families with low to moderate incomes with limited access to technology needed to receive telehealth services, including audio-only services. It is critical that Texas take steps to ensure stability and flexibility among ECI providers during and after the COVID-19 pandemic.

Our organizations stand ready to help state leaders respond to this outbreak. To ensure our youngest Texans have access to ECI, we urge the Governor to take the following actions.

1) **Direct the Governor's Office of State-Federal Relations to expedite temporary adjustments to the following federal regulations:**

- a) **Work with the Office of Special Education Programs (OSEP) to allow for alternative methods of parental consent for ECI services.** The current rule at 34 CFR §303.7(b) requires written consent before ECI services, including telehealth and audio-only services, are provided to a child. Providers are struggling to access e-signature technology that is affordable and easy for families to access. Without written or consent via e-signature technology, ECI providers are required to delay services, meaning children are not receiving the speech or occupational therapy they need, and providers are losing money because they are not able to provide and bill for services. TEA has issued guidance to Local Education Agencies (LEA) that says, "LEAs may wish to create a template document that assists school staff in documenting decisions made, why timelines were exceeded, and documentation of participation and consent through temporary alternate methods, such as *email or notes*."ⁱⁱ **If this exception has been made by TEA for IDEA Part B, we ask that the Governor's office allow HHSC to make the same exception for IDEA Part C (ECI) to temporarily allow for alternative methods of consent.**

In the meantime, we urge the Governor to consider making disaster and emergency recovery grant funding available through the Office of the Governor to ECI providers so they can access the e-signature technology and virtual tools needed to provide telehealth, including services delivered via audio-only technology.

Providers have been forced to purchase software platforms, electronic signature systems, video equipment for providers, video equipment for families without technology, order new testing material for modified eligibility over telehealth, and more. All of these expenses were unexpected and were required during a time when they are not able to provide billable services. Swift action is needed so families do not have to wait any longer for ECI services.

- b) **Work with OSEP to temporarily allow more than one Service Coordinator for each family.** The current rule at 34 CFR §303.34 (and TAC - Rule §108.1104) states that each infant or toddler with a disability and the child's family must be provided with one Service Coordinator. Families have many pressing needs at this time and may need support and guidance quickly. Imagine a Speech Therapist is having a telehealth session with a family in which the family shares they are not getting their SNAP benefits. The Speech Therapist knows where to direct them to resolve this problem, but if they provide the case management -- a service typically performed by the Service Coordinator -- the ECI provider will not be able to bill for the case management service under current rule. The Speech Therapist would need to alert the Service Coordinator to contact the family at a later date in order to provide service coordination and/or case management in a manner that is billable. This is inefficient. Families cannot wait to get the information needed to meet their needs and providers should not have to provide service coordination as non-

billable services simply because the resources and information are not provided by a single Service Coordinator in times of crisis.

- 2) **Create an exception to TAC - Rule §108.823 (Continuing Eligibility Criteria) to allow for temporary continuation of existing Individual Family Service Plans (IFSP) when a state of emergency is in effect.** During normal circumstances, ECI providers complete annual IFSPs with families within the required timeframe, but the required timeframe is now difficult to meet. We appreciate the state's recent approval to provide assessments via telehealth, however telehealth is new to many ECI providers and fully converting all services to telehealth takes time and money.ⁱⁱ Allowing continuation of IFSPs for current families would enable providers to prioritize completing initial assessments via telehealth for new referrals and continuing services to children and families with existing IFSPs via telehealth, including services delivered via audio-only technology. The Governor and HHSC have temporarily waived annual renewals for Medicaid and SNAP during the COVID-19 crisis; similarly, we request flexibility to temporarily extend IFSPs to prevent children from losing ECI services during a time where their families may face additional financial and emotional challenges due to COVID-19.ⁱⁱⁱ

- 3) **Ensure Medicaid reimbursement is available for the full array of ECI services provided via telehealth, including audio-only services during the emergency.** Medicaid and CHIP health plans have flexibility to cover teleservices, including in a member's home, with no additional enrollment required to provide telehealth services. We appreciate that HHSC has encouraged health plans to take advantage of these options when responding to COVID-19.^{iv} HHSC has clarified Medicaid billing codes and guidance for telephone (audio-only) services for behavioral health providers, including psychiatric diagnostic evaluations, psychotherapy, peer specialist services, mental health rehabilitation service and more for services delivered on March 20, 2020 through April 30, 2020.^v We urge HHSC to similarly clarify Medicaid billing codes and provide guidance to ECI providers on how to receive reimbursement for teleservices, including telehealth and audio-only services during the emergency, so ECI providers can continue to provide services and maintain the financial stability of their programs.

- 4) **Direct Texas Department of Licensing and Regulation (TDLR) to allow Speech-Language Pathologists in their Clinical Fellowship Year to bill for telehealth services, including audio-only services.** The American Speech-Language-Hearing Association (ASHA) released guidance allowing these trained providers to offer services via telehealth. Texas should follow suit so that these individuals can continue to provide services to the children and families who need them. TDLR has already received approval of a waiver allowing for these providers to be supervised via telehealth, but in order to make the most use of the limited workforce, a waiver should also be granted to allow Speech-Language Pathologist in their Clinical Fellowship Year to bill for services provided via telehealth, including audio-only services.

- 5) **Require HHSC, ECI, and TEA to collaboratively issue guidance to ECI providers and school districts on transition services to children aging out of the ECI program who must be evaluated for early childhood special education services.** Providers have reported that numerous school districts have cancelled all transition conferences and subsequent evaluations for children who are turning three and will age out of ECI services. TEA has issued guidance stating that districts should “use distance technology to the extent possible to provide child find, hold initial and annual ARD committee meetings, and/or evaluation/eligibility meetings.”^{vi} Additional guidance was provided by TEA stating that, “All required members of the ARD committee must be present virtually (during times of social distancing) unless a parent has given written permission for an excusal in accordance with IDEA’s excusal requirements 34 CFR 300.321(e).”^{vii} Districts and ECI providers need clear guidance from the state on the requirement to continue transition services for children aging out of ECI services.
- 6) **Identify federal emergency financial assistance provided to the state of Texas that can be made available to ECI providers, and give clear written guidance on how ECI providers can potentially access the financial assistance.** We recognize that ECI is a complicated program and state leadership and staff are working extremely hard to meet the needs of Texans. ECI programs were already stretched thin before this crisis began. Without taking strong steps to support our ECI providers throughout the pandemic and beyond, children with disabilities and delays will go without services that are vital for healthy development. The state will incur the long-term financial cost through academic and behavioral challenges and increased need for special education services, but ultimately, babies and toddlers with delays or disabilities will be hurt the most. If ECI is not included now in these financial discussions it is likely to miss out on the federal financial support Texas needs to keep programs operating.

We appreciate your attention to these critical issues and the Administration’s leadership during the COVID-19 crisis. If you have any questions, please contact Stephanie Rubin, CEO, Texans Care for Children at srubin@txchildren.org and Katie Mitten, Texans Care for Children at kmitten@txchildren.org. We look forward to hearing from you.

CC: HHSC HDIS Executive Commissioner Dee Adams Budgewater
HHSC Medicaid Director Stephanie Muth
TEA Commissioner Mike Morath
TDLR Executive Director Brian Francis
Lt. Gov. Dan Patrick
House Speaker Dennis Bonnen

Sincerely,

Any Baby Can
Ascension DePaul Services

Autism Society of Texas
AVANCE-Austin
AVANCE-Houston, Inc.
Brighton Center
CASA of Collin County-McKinney
Center for Public Policy Priorities
Children Healing in Love and Development
Children's Defense Fund - Texas
Church Women United Child Care Center
Coalition of Texans with Disabilities
Community Health Choice
Dallas County Community College District
Disability Rights Texas
Early Learning Alliance
Easter Seals of Greater Houston, Inc.
Easterseals Central Texas
Easterseals Rio Grande Valley
EOAC Head Start/Early Head Start
First3Years
Kiddie Academy of Lakes of Savannah
Lena Pope
McLennan Community College Child Studies Lab School
Mental Health America of Greater Houston
National Association of Social Workers - Texas Chapter
Neuhaus Education Center
Pre-K 4 SA
Santa Maria Hostel
Talitha Koum Institute
Texans Care for Children
Texas Association for the Education of Young Children
Texas Council of Child Welfare Boards
Texas Council of Community Centers
Texas Parent to Parent
Texas Pediatric Society, the Texas Chapter of the AAP
TexProtects
The Giocosa Foundation
United Way of Metropolitan Dallas
United Way of Southern Cameron County
United Way of the Coastal Bend
United Way of Waco-McLennan County
United Ways of Texas
Upbring
Voices for Children of San Antonio

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- ⁱ COVID-19 FAQ: Special Education in Texas Updated April 2, 2020.
https://tea.texas.gov/sites/default/files/COVID19%20Special%20Ed%20Q%26A_Updated%20April%202020.pdf
- ⁱⁱ Report on the Use of Telehealth in Early Intervention in Colorado: Strengths and Challenges with Telehealth as a Service Delivery Method, Spring 2019.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6597149/pdf/ijt-11-33.pdf>
- ⁱⁱⁱ HHSC Temporarily Waives Renewal Requirements for Medicaid, SNAP Clients During COVID-19 Crisis
<https://content.govdelivery.com/accounts/TXGOV/bulletins/283f410>
- ^{iv} Provider Identifier Usage for Telecommunication Services. March 16, 2020.
http://www.tmhp.com/News_Items/2020/03-March/03-16-20%20Provider%20Identifier%20Usage%20for%20Telecommunication%20Services.pdf
- ^v Claims for Telephone (Audio Only) Behavioral Health Services Information posted March 20, 2020.
http://www.tmhp.com/News_Items/2020/03-March/03-20-20%20Claims%20for%20Telephone%20Audio%20Only%20Behavioral%20Health%20Services.pdf
- ^{vi} COVID-19 FAQ: Special Education in Texas Updated April 2, 2020.
https://tea.texas.gov/sites/default/files/COVID19%20Special%20Ed%20Q%26A_Updated%20April%202020.pdf
- ^{vii} TEA Special Education Guidance: ARD Committee Considerations During COVID-19. April 2, 2020.
https://tea.texas.gov/sites/default/files/covid-19_ard_committee_meeting_guidance_april_2.pdf