

# DMS REPORT

## DIFFERENTIATED MONITORING AND SUPPORT OFFICE OF SPECIAL EDUCATION PROGRAMS U.S. DEPARTMENT OF EDUCATION

<b>STATE</b>	<b>TEXAS</b>
<b>DATE</b>	OCTOBER 5, 2020
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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

October 5, 2020

Honorable Cecile Young  
Executive Commissioner  
Texas Health and Human Services Commission  
4900 N. Lamar Boulevard  
Austin, Texas 78751  
[cecile.young@hhsc.state.tx.us](mailto:cecile.young@hhsc.state.tx.us)

Dear Executive Commissioner Young:

This letter summarizes the results of the U.S. Department of Education's (Department), Office of Special Education Program's (OSEP), Individuals with Disabilities Education Act (IDEA) Part C monitoring of the Texas Health and Human Services Commission (HHSC), Early Childhood Intervention (ECI) program, and identifies the findings of noncompliance made by OSEP. OSEP held pre-visit monitoring interviews with select local ECI programs in Texas on August 12–16, 2019, and conducted an on-site monitoring visit on August 26–28, 2019. We appreciate HHSC's cooperation in responding to pre-visit and on-site questions, as well as planning and participating in all the local ECI program interviews OSEP conducted.

As part of OSEP's continuing efforts to improve outcomes for infants and toddlers with disabilities, in 2016, OSEP began providing differentiated monitoring and support (DMS) to States as a part of its Results Driven Accountability (RDA) framework. OSEP differentiates its approach for each State based on the State's unique strengths, progress, challenges, and needs. For HHSC, OSEP's August 2019 monitoring activities were prompted by OSEP's concerns around HHSC's ability to comply with IDEA Part C requirements and the potential for systemic IDEA Part C noncompliance. These concerns were first identified by HHSC during an October 5, 2016, conference call between OSEP and HHSC in which HHSC notified OSEP that not all eligible infants and toddlers with disabilities had early intervention (EI) services made available to them as required by IDEA Part C. HHSC reported that on October 1, 2016 a local ECI program stopped providing EI services to over two hundred infants and toddlers with disabilities and that HHSC had not yet secured a replacement provider for the region. Although a new contractor was secured for the region on November 1, 2016, from 2017–2018, HHSC continued to inform OSEP of programs exiting its ECI program raising concerns about similar disruptions in EI service provision. During this time, OSEP also became aware of apparent reductions in funding for the Texas ECI program and received information from stakeholders regarding the impact of those reductions on HHSC's ability to implement a Statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide EI services for infants and toddlers with disabilities and their families as required by IDEA Part C.

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The results of OSEP’s monitoring visit were based on information collected from:

- Interviews with representatives from HHSC’s, ECI Office;
- Interviews with local ECI program representatives from Helen Farabee Centers, Region 19, Education Service Center, Camino Real Community Services, Easter Seals Houston, MHMR (My Health, My Resources) Tarrant County, West Texas Centers, Spindeltop Center, Easter Seal Rio Grande, AnyBabyCan, and Texana Center;
- Round table discussions with ECI advocates from Texan’s Care for Children, the Texas Pediatric Society, Disability Rights Texas, Autism Society of Texas, Easter Seals Central Texas, Children’s Mental Health, and Texas Council of Community Centers; and
- Review of publicly available information and documents submitted to OSEP from HHSC.

During the August 2019 monitoring activities, OSEP identified significant noncompliance with HHSC’s implementation of the IDEA Part C program. OSEP attributes the noncompliance, in part, to State reductions of funding for the ECI program, but the requirements of IDEA Part C identified in this correspondence are applicable regardless of State funding levels.

Specifically, OSEP has found that HHSC has failed to:

1. Provide appropriate EI services to all infants and toddlers with disabilities and their families that are eligible for those services consistent with IDEA Section 635(a)(2) and 34 C.F.R. § 303.112, including, failing to:
  - a. Ensure its local ECI programs are appropriately maintaining records as required by IDEA Section 637(b)(4), as well as 34 C.F.R. § 303.224(b), 2 C.F.R. § 200.333, and 2 C.F.R. § 200.303, in order to provide EI services to infants and toddlers with disabilities in a timely manner;
  - b. Ensure that it has a comprehensive child find system in place that is able to appropriately identify infants and toddlers with disabilities for IDEA Part C services consistent with IDEA Section 635(a)(5) and 34 C.F.R. § 303.302(b)(1); and
  - c. Ensure that IDEA Part C resources are available for all geographic areas in the State consistent with IDEA Section 637(a)(7) and 34 C.F.R. § 303.207.
2. Implement its single line of responsibility authority including, general supervision and coordination of all available resources for its ECI program consistent with IDEA Section 635(a)(10) and 34 C.F.R. § 303.120.

The Texas Part C Monitoring Enclosure provides a detailed description of OSEP's analysis and findings of noncompliance related to OSEP's monitoring of HHSC's implementation of its IDEA Part C Statewide system. HHSC will be required to implement corrective actions as a result of the systemic noncompliance identified.

If you have any questions or wish to request technical assistance, please do not hesitate to call Susan Kauffman, OSEP's Fiscal Audit Facilitator, at 202-245-6432 and [Susan.Kauffman@ed.gov](mailto:Susan.Kauffman@ed.gov).

Sincerely,

/s/

Laurie VanderPloeg  
Director  
Office of Special Education Programs

cc: Lindsay Rodgers, Deputy Associate Commissioner, Health and Developmental Services  
Dana McGrath, Director, Early Childhood Intervention, Health, Developmental and Independence Services

Enclosure

# ENCLOSURE

This enclosure provides a detailed description of the areas of noncompliance with the Individuals with Disabilities Education Act (IDEA) Part C requirements as identified by the Office of Special Education Programs (OSEP) during its pre-visit monitoring interviews with select local Early Childhood Intervention (ECI) programs in Texas during August 12–16, 2019 and its August 26–28, 2019 on-site monitoring of the Texas Health and Human Services Commission (HHSC), ECI program. This enclosure also describes the corrective actions that HHSC must take to address the noncompliance identified by OSEP.

## Background

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Concerns around HHSC's ability to comply with IDEA Part C requirements arose from an October 5, 2016, conference call between OSEP and HHSC, in which HHSC notified OSEP that not all eligible infants and toddlers with disabilities and their families had early intervention (EI) services made available to them as required by IDEA. During this call, HHSC informed OSEP that on October 1, 2016, a local ECI program, the Andrews Center, stopped providing EI services for 225 infants and toddlers.<sup>1</sup> The Andrews Center stated that they discontinued providing EI services due to a reduction in the amount of State funding they received.<sup>2</sup> Although a contractor was secured for the area that the Andrews Center previously served, from 2017–2018, HHSC continued to inform OSEP of programs exiting its ECI program, raising concerns about similar disruptions in service provision and the potential for systemic IDEA Part C noncompliance.<sup>3</sup>

In 2018, the Texas ECI program served more than 57,000 infants and toddlers with disabilities that were eligible for EI services.<sup>4</sup> The State currently provides approximately \$43 million of its IDEA Part C funds through contractual agreements to 42 local ECI programs that provide direct EI services throughout the State.<sup>5</sup> These programs consist of community health centers, private non-profit agencies, independent school districts, and education service centers. Through its

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<sup>1</sup> On October 14, 2016, OSEP received a formal letter from HHSC regarding its temporary inability to provide EI services to the region previously served by the Andrews Center.

<sup>2</sup> [https://tylerpaper.com/news/local/andrews-center-to-end-early-childhood-intervention-program/article\\_f9750d8a-f2a2-55f8-84ae-0a0ce8a2e8ba.html](https://tylerpaper.com/news/local/andrews-center-to-end-early-childhood-intervention-program/article_f9750d8a-f2a2-55f8-84ae-0a0ce8a2e8ba.html)

<sup>3</sup> OSEP acknowledges that the State attempted to assist infants and toddlers and their families during that time, including providing referrals to other programs that could provide comparable services, offering information on available services, providing a family liaison, issuing a Frequently Asked Questions document with the notice letter, and working with the Texas Education Agency to assist with transition planning.

<sup>4</sup> Early Childhood Intervention - Consumer Profile, State fiscal year 2018: <https://hhs.texas.gov/doing-business-hhs/provider-portals/assistive-services-providers/early-childhood-intervention-eci-programs/eci-data-reports>

<sup>5</sup> HHSC has 43 contracts with 42 ECI programs and in Federal fiscal year (FFY) 2019 Texas received \$45,467,398 in Federal IDEA Part C funds.

System of Payments (SoP),<sup>6</sup> HHSC utilizes various funding sources to support ECI programs, including; public insurance, private insurance, IDEA Part C and B funds, State general revenue (GR), Foundation School Funds, Temporary Assistance for Needy Families, family cost-share, and local level contributions from private and public funding sources. Between fiscal years (FY) 2011–2019, the State reduced the total amount of available funding for EI services from \$166,069,128 to \$148,330,552.<sup>7</sup> Coinciding with the FY 2011 State budget cuts, when the State reduced the amount of funds available for the ECI program by approximately five million dollars,<sup>8</sup> Texas ECI also narrowed its eligibility criteria resulting in a short term decrease in the number of infants and toddlers served.<sup>9</sup> In addition to cuts to ECI’s annual appropriations, the Texas Legislature directed HHSC to, “achieve cost savings in Medicaid acute care therapy through payment rate reductions and medical policy initiatives” in FY 2015. These rate reductions impacted Medicaid reimbursement rates for children’s therapies, including services provided to children in the ECI program such as physical, occupational, and speech therapies. These cuts decreased the general revenue appropriation for ECI from \$3.8 million in 2016 to \$2.5 million in 2017 and cut State (Medicaid) matching funds from \$43.4 million in 2016 to \$25.7 million in 2017.<sup>10</sup>

In a February 14, 2019 presentation to the Texas House Appropriations Committee, HHSC reported that “to continue offering ECI services, 90 percent of contractors report engaging in significant cost-saving measures,” including:

1. Delays in hiring staff (66%);
2. Delayed system upgrades or equipment purchases (55%);
3. Reduced child find efforts (46%);
4. Downsizing staff (45%); and
5. Reduced staff benefits (23%).<sup>11</sup>

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<sup>6</sup> Under IDEA Part C, a State may adopt SoP policies to fund EI services consistent with 34 C.F.R. §§ 303.13(a)(3) and 303.203(b) and meet the requirements under 34 C.F.R. §§ 303.520. and 303.521.

<sup>7</sup> Based on information from Texas’ Legislative Budget Board (LBB) and OSEP’s analysis of State appropriations, OSEP concludes that these funds are comprised of IDEA Part C, State and Federal Medicaid dollars. Additional funding sources are accounted for under separate line items and transfers of funds in the State’s General Appropriations Act.

<sup>8</sup> This is based on a comparison of General Appropriation Acts of 2009–2010 and 2011–2012 from the 81<sup>st</sup> and 82<sup>nd</sup> Texas Legislature.

<sup>9</sup> The Texas ECI child count went from 61,215 in 2010 to 49,198 in 2012 and the child count has been increasing since. HHSC, ECI presentation to the Texas House Appropriations Committee, February 14, 2019, pg.9 <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2019/leg-presentations/house-appropriations-eci-feb-19-2019.pdf>.

<sup>10</sup> [http://www.lbb.state.tx.us/Documents/Publications/Info\\_Graphic/3038\\_Funding\\_Sources\\_for\\_ECI\\_Program.pdf](http://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/3038_Funding_Sources_for_ECI_Program.pdf)  
[http://www.lbb.state.tx.us/Documents/Publications/Info\\_Graphic/5053\\_Funding\\_Sources\\_ECI\\_Program.pdf](http://www.lbb.state.tx.us/Documents/Publications/Info_Graphic/5053_Funding_Sources_ECI_Program.pdf).

<sup>11</sup> Texas’ 86<sup>th</sup> Legislative session convened on January 8, 2019: <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2019/leg-presentations/house-appropriations-eci-feb-19-2019.pdf> pgs. 8, 12, and 13.

In that presentation, HHSC also reported that, “due to growth in the number of children served and increased family needs, contractors have notified HHSC their ECI programs are unsustainable without additional funding or program restructuring,” and “Federal funding will not cover the population growth Texas is experiencing.” During Texas’ 86<sup>th</sup> Legislative session, HHSC made an exceptional item request of approximately \$71 million in GR for the biennium in order for the ECI program to “continue serving the number of children currently eligible for services” and to “provide funding levels necessary to cover both the costs of services and the amount needed to retain contractors.”

According to May 24, 2019 State budget documents, the HHSC ECI program was appropriated approximately \$31 million in GR for the biennium (2020–2021),<sup>12</sup> approximately \$41 million less than the Texas HHSC ECI program requested to maintain EI services.

In a September 1, 2019 report on Early Childhood Intervention Funding Maximization, submitted to the Office of the Governor and Texas’ Legislative Budget Board (LBB), HHSC continued to state that “the number of children enrolled in ECI has increased for the last five years,” and “funding from the State appropriation has decreased during the same time.”<sup>13</sup> As a result of the funding cuts, 16 local ECI programs have discontinued providing IDEA Part C EI services since 2011. This caused numerous EI service disruptions and systemic IDEA noncompliance throughout the State.<sup>14</sup>

### **Results of OSEP’s Monitoring**

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In OSEP interviews with local ECI programs, providers repeatedly reported that: (1) the State cut ECI funding, which has placed local ECI programs under financial strain and adversely impacted the provision of EI services for infants and toddlers with disabilities;<sup>15</sup> and (2) Local ECI programs are serving caseloads that exceed the number of children funded under their ECI contracts and the available State funds, which is exacerbated by related service provider shortages throughout the State. Staff from many of the local ECI programs reported that their local programs continue to provide services out of an obligation to the communities that they serve, and they have also taken over service areas at the request of HHSC when programs exit

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<sup>12</sup> According to the 2020–2021 General Appropriations Bill from the Texas Legislature, Article II - Health and Human Services.

<sup>13</sup> <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2019/eci-implementation-plan-maximizing-funding-sept-2019.pdf>

<sup>14</sup> Although OSEP does not require a State to contract with a specific number of local programs a State must remain in compliance with all IDEA Part C requirements when it makes a change in the number of ECI programs providing EI services.

<sup>15</sup> HHSC also reported on the impact of budget cuts in its Early Childhood Intervention Services Implementation Plan for Maximizing Funding, Appendix A: <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2019/eci-implementation-plan-maximizing-funding-sept-2019.pdf>.

ECI. However, due to financial challenges and a sense of inadequate funding, they are reviewing whether it is economically viable to continue providing ECI services.

### **Reported Service Disruptions and Lost Records Resulting from ECI Program Turnover**

In its February 14, 2019 presentation to the Texas House Appropriations Committee, HHSC reported that, “83 counties and 7,622 children have been impacted by program closures” and “when contractors exit the program due to funding, gaps in coverage result in children not receiving services.”

This claim was reinforced by staff from local ECI programs during monitoring discussions with OSEP. Local ECI programs revealed that although a provider was secured for the region previously served by the Andrews Center, many children impacted by that program closure did not receive services for several months and service disruptions and delays regularly occur during such program transitions. Providers also reported to OSEP that when a program ceases to provide IDEA Part C services, children and families often leave the program before a new program or provider is put into place due to the time it takes to transition from one program to another. Local program staff also described situations in which the exiting program discontinued EI services prior to the actual program transition date. Other complications included delays in service delivery due to insufficient and inaccurate child records, referrals to the IDEA Part C program being “lost” during the transition process, cases inaccurately being closed in the Texas Kids Intervention Data System (TKIDS), and long wait times for services due to staff shortages and credentialing delays. All the interviewed staff from programs that took over service areas from closing programs reported that the actual number of children that transitioned was less than the original number of enrolled children due to families dropping out and getting “lost” during the transition between programs. When this has happened, programs indicated that they expended additional resources to find and locate some, but not all, of these “missing” children, further straining their limited resources. Staff from local ECI programs also explained that meeting the IDEA Part C 45-day timeline requirements for initial evaluations and assessments is a HHSC program priority, and staffing resources are often redirected to meet the 45-day post referral timeline while previously identified eligible children wait long periods of time to receive appropriate EI services as identified under their Individualized Family Service Plans (IFSP).<sup>16</sup>

Additionally, providers reported that funding, staffing shortages, and vacancies of related service providers (including physical therapy, occupational therapy, and speech therapists) impact

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<sup>16</sup> Under 34 C.F.R. § 303.310 “the initial evaluation and the initial assessments of the child and family under 34 C.F.R. § 303.321; and the initial IFSP meeting under 34 C.F.R. § 303.342 must be completed within 45-days from the date the LA or EIS provider receives the referral of the child.” However, the State must also have policies in place that ensure that EI services are available to all infants and toddlers with disabilities. 34 C.F.R. § 303.112. Furthermore, under 34 C.F.R. §§ 303.442 and 303.444, the IFSP must identify the EI services that *will* be provided and include a starting date as soon as possible after the parent consents to services.

individualized service decision making and service providers' ability to deliver services as planned on the child's IFSP. Program staff also reported an increase in "group services" as a mechanism to provide services where there were staffing shortages and heavy caseloads.<sup>17</sup> Additionally, ECI program staff reported that because of the staffing issues, programs are not able to meet service hour delivery targets, as set by the LBB, particularly in programs that have taken over service areas for exiting programs.<sup>18</sup>

ECI program staff reported taking extraordinary steps to maintain service provision for infants and toddlers, including having administrative staff conduct evaluations and taking out lines of credit to cover the costs of delivering IFSP services that were not reimbursed under the ECI contracts.<sup>19</sup> HHSC's September 1, 2019 report to the Texas LBB highlighted that in 2017, 36 percent of ECI programs reported contributing additional funds to support their program, and the "amount of funds contributed ranged from a few hundred dollars to almost \$800,000." OSEP spoke to staff from several programs operating at a deficit that was attributed to ECI funding levels.

Further, local ECI program staff reported that rural regions struggle most significantly with the adverse impacts of the funding reductions. This was highlighted by numerous ECI providers in rural areas of Texas that stopped providing IDEA Part C services. It was noted that rural programs also reported more difficulty in recruiting and retaining service providers, delivering services at the frequency planned, achieving adequate levels of local level fundraising dollars, and implementing effective billing practices leading to low levels of reimbursement for services on top of non-reimbursable costs associated with long travel distances between families in rural areas in Texas.<sup>20</sup> Many rural programs explained that they are also unable to meet the LBB's performance target to provide an average monthly number of services delivered per child, which can result in funds being taken away for redistribution by HHSC, putting a further financial strain on the local ECI program. When a program exits ECI, HHSC typically asks the remaining ECI programs to expand their coverage area and provide EI services in the region where the ECI provider will no longer provide services. However, during monitoring discussions, local program staff reported that it is often "risky" to expand their services to impacted regions, particularly in

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<sup>17</sup> Local ECI programs did report that families have the option to choose group or individual services but choosing individual services can delay access to those services.

<sup>18</sup> The LBB has three performance targets: 1) average monthly cost per child; 2) average monthly number of children served; and 3) average monthly hours of service delivered. Local ECI programs must meet these targets in order to maintain funding or obtain additional funding during mid-year financial adjustments.

<sup>19</sup> Programs must cover the costs of additional children served above their contract amount, cover costs for services they are not able to get reimbursed for from public and private insurance. During monitoring interviews, some programs reported that if a family does not pay their portion of the Family Cost Share, the program often takes on the burden of the cost in order to maintain service provision hours and the number of children served in order to meet LBB targets.

<sup>20</sup> HHSC's contract with local ECI programs includes a local level responsibility for fundraising and collecting charitable contributions to sustain the program.

rural areas because funding for new contract areas does not consider, “geographic challenges and expenses,” which also makes it difficult for HHSC to get timely coverage for rural service regions.

### **Reported Impact on Child Find Activities**

Due to reports from local ECI program staff and other stakeholders about EI service provision throughout the State, OSEP asked HHSC and local ECI program staff about child find efforts.

HHSC reported that it conducts numerous State-level child find activities, including developing outreach publications and videos, sharing ECI program information at Statewide conferences, exhibits, and meetings, disseminating information to interagency partners, and through newsletter articles for external publications.

Additionally, HHSC reported that as part of its child find efforts, it will be directing Preschool Development Grant (PDG) funds to child find activities in childcare centers to nine local ECI programs serving under their contracted amounts.<sup>21</sup>

However, HHSC also reported in its February 14, 2019 presentation to the Texas House Appropriations Committee that 45 percent of its local ECI programs have reported reduced child find efforts as a cost-saving measure. During monitoring interviews, OSEP received responses from ECI programs that supported HHSC’s claim. Several programs did, in fact, report on child find activities taking place while others reported that they have had to “scale back” on child find activities due to funding constraints and further, some reported that they would like to do more child find but cannot serve the children they would identify. Local ECI program staff stated that identifying and serving additional children without being able to receive additional funds from HHSC has led some programs to not find and serve infants and toddlers with disabilities that may be eligible for services. During interviews, various ECI program staff reported that their ECI program growth is carefully planned and often based on staffing and funding. According to HHSC’s January 31, 2019 Summary of Recommendations, to the Texas Senate, “the cost reimbursement amount identified in an ECI provider’s contract is the maximum amount they would be reimbursed, even if the provider serves more children than the contract assumed.”<sup>22</sup> HHSC can make mid-year adjustments to local ECI programs that are serving over contracted numbers if the program is meeting and/or exceeding performance targets set by the LBB and if there is money available to do so. If a program is not meeting performance targets, additional funds will not be provided, and the program is at risk for having funds taken away for redistribution by HHSC. In recent years, HHSC has had no additional funding available for mid-

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<sup>21</sup> HHSC reported amendments distributing the PDG funds to contractors were executed between July 31, 2019, and August 26, 2019.

<sup>22</sup> Health and Human Services Commission, Section 1 Summary of Recommendations – Senate.

year adjustments leaving programs responsible for the costs of serving any additional children. Some programs raised concerns around receiving the additional PDG funds for child find purposes without additional funding for EI services. At the time of OSEP’s visit, local ECI programs did not have FY 2020–2021 contracts in place.

### **Reported Impact of Delays in Medicaid Reimbursement**

In interviews with OSEP, local ECI program staff reported delays or denials in reimbursement of EI services from Medicaid Managed Care Organizations (MCO), further impacting their ability to adequately and timely provide EI services. In Texas, local ECI programs are required to develop third-party billing systems to bill and collect revenue from third-party payor sources, including family cost share. ECI Programs are also responsible for negotiating rates and contracting with Medicaid MCOs and depend on Medicaid reimbursement to sustain service provision as 66 percent of children who receive EI services are Medicaid eligible, and over 50 percent of the ECI program is funded by Medicaid.<sup>23</sup> OSEP heard reports from some local programs that are able to successfully obtain reimbursement from Medicaid, while others waited significant periods of time and used money from other sources to cover the cost of services, often going into debt, taking out loans, and using “agency reserves” to support ECI services.<sup>24</sup> Program staff discussed reaching out to HHSC, ECI for assistance, and following lead agency (LA) procedures, only to receive little or no assistance with the dispute or claim. One program representative reported to OSEP that it took 18 months to get reimbursement, and there were significant challenges in getting a “resolution” when the program reached out to HHSC and the MCO liaison. During on-site monitoring discussions, OSEP asked HHSC if there was a mechanism in place to resolve financial disputes between ECI and Medicaid to ensure that service provision is maintained during financial disputes. HHSC reported that it does not have a formal agreement in place with the Medicaid Office but provides guidance to local ECI programs, including providing programs with its ECI Reimbursement Guide, an ECI/Medicaid managed care webinar series, and information on appeals from the Texas Medicaid Provider Procedures Manual.

### **Conclusions and Findings of Noncompliance**

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While IDEA Part C provides States with significant flexibility on how to structure and implement their EI programs, as the LA, HHSC is responsible for ensuring that its EI program meets the requirements of the IDEA statute and regulations.

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<sup>23</sup> HHSC ECI Consumer Profile FY 2018.

<sup>24</sup> In this sentence “agency” refers to one of the 42 contracted local ECI programs which can consist of: community health centers, private non-profit agencies, independent school districts, and education service centers.

As a result of OSEP's monitoring of HHSC's implementation of its IDEA Part C program, OSEP has concluded that the State has implemented its funding structure for the Texas ECI program, in a manner which has reduced the number of local ECI programs across the State and resulted in the following findings of noncompliance. A significant cause of the findings identified by OSEP during its visit is the level of funding that the State has made available for its early intervention IDEA Part C ECI program, and the State will need to take into consideration this and other root causes as it implements corrective actions.

**HHSC has failed to provide appropriate EI services to all infants and toddlers with disabilities and their families that are eligible for those services including, failing to:**

1. Ensure its local ECI programs are appropriately maintaining records in order to provide EI services to infants and toddlers with disabilities in a timely manner;
2. Ensure that it has a comprehensive child find system in place that is able to appropriately identify infants and toddlers with disabilities for IDEA Part C services; and
3. Ensure that IDEA Part C resources are available for all geographic areas in the State.

As a condition of receiving assistance under Part C of IDEA, each State must ensure that appropriate EI services are available to all infants and toddlers with disabilities and their families as required by IDEA Section 635(a)(2) and its corresponding regulation 34 C.F.R. § 303.112. HHSC has admitted that it was unable to provide EI services to all infants and toddlers that were eligible for those services during past ECI program transitions. Information provided by HHSC and other stakeholders indicates that HHSC policies and procedures are insufficient to ensure that appropriate services are provided during program transitions. Therefore, OSEP has determined that HHSC is unable to ensure compliance with the IDEA Part C service provision requirements, as stated under Section 635(a)(2) and 34 C.F.R. § 303.112.

Under 34 C.F.R. § 303.224(b), HHSC must, "keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part." Also, under 2 C.F.R. § 200.333 of the Office of Management and Budget's Uniform Guidance, "financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report." Additionally, the LA must also establish internal controls in order to, "comply with Federal statutes, regulations, and the terms and conditions of Federal awards," consistent with 2 C.F.R. § 200.303.

HHSC must have a system in place to ensure that accurate information is being entered into TKIDS and that its local ECI programs are maintaining records consistent with the Federal regulations, as stated above. HHSC is also required to monitor its local ECI programs to ensure compliance with record-keeping requirements.

Although the IDEA does not prescribe specific documents that must be maintained by a State, documents must be maintained that are sufficient to meet fiscal and programmatic requirements. The reports of inaccurate child records, lost referrals, and inappropriately closed entries in TKIDS, demonstrate that HHSC lacks appropriate internal controls to ensure that sufficient records are maintained during periods of ECI program transitions to maintain compliance with IDEA Part C service provision requirements under Section 635(a)(2) and 34 C.F.R. § 303.112. Therefore, OSEP finds that the State is not meeting applicable Federal record retention and internal controls requirements, which has contributed to EI services being delayed or never provided to eligible infants and toddlers.

As part of its IDEA Part C Statewide system, as required under Section 635(a)(5) and 34 C.F.R. § 303.302(b)(1) of the IDEA, each State must have in effect a comprehensive child find system to ensure that all infants and toddlers with disabilities in the State, who are eligible for EI services under IDEA Part C, are identified, located, and evaluated, including infants and toddlers with disabilities who are homeless, in foster care, and wards of the State. Additionally, each system must include a component for, “making referrals to EI service providers that include timelines and provides for participation by primary referral sources, and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services that will reduce the need for future services.” OSEP acknowledges that child find efforts are being made by HHSC and various local ECI programs. However, under the State’s current funding and contracting structure, the State’s child find system has been compromised. During monitoring, some local ECI programs indicated that they are not conducting child find activities because they lack the resources to provide services to any eligible infants and toddlers that they might identify. Referral sources indicated that at times they do not know where to make referrals and are not confident that any referrals that they make will get through a subsequent transition between ECI programs. HHSC indicated in its own report that nearly half of all ECI programs have reduced child find activities as a cost-saving measure. Therefore, OSEP finds that HHSC does not have an appropriate child find system in place to ensure that it is able to identify, locate, and evaluate all children with disabilities as a required component of its Statewide system under IDEA Section 635(a)(5) and 34 C.F.R. § 303.302(b)(1).

OSEP also finds that the State did not, in all instances, ensure that resources were available for all geographic areas of the State as required under IDEA Section 637(a)(7) and 34 C.F.R. § 303.207. Under Section II.A.8 of the State’s Federal fiscal year (FFY) 2019 IDEA Part C Grant Application, HHSC assured the Department that IDEA Part C resources are made available for all geographic regions in the State. ECI providers in both urban and rural areas reported difficulties in conducting child find activities and providing services to all eligible infants and toddlers, but rural ECI providers are suffering the greatest impacts on service provision. Numerous ECI providers in rural areas in Texas have stopped providing IDEA Part C services resulting in service disruptions. Staff from rural ECI programs indicated that their programs are being underfunded, and HHSC has acknowledged that local ECI providers are continuously

exiting the program, with rural regions experiencing a disproportionate hardship. During the resulting program transitions, eligible infants and toddlers in rural areas have gone extended periods without receiving the IDEA Part C services for which they are eligible. Referral sources have been without appropriate information on how to make referrals, and remaining ECI programs have indicated that they do not have the capacity to further stretch their geographic coverage. Therefore, OSEP finds that the State's implementation of its funding structure has resulted in service disruptions that have disproportionately affected rural communities, and HHSC has failed to ensure that IDEA Part C resources are made available for all geographic areas in the State, as required by 34 C.F.R. § 303.207.

**HHSC's failure to implement its single line of responsibility authority including, general supervision and coordination of all available resources for its ECI program**

Under IDEA Section 635(a)(10) and 34 C.F.R. § 303.120, each State's IDEA Part C system must include a single line of responsibility that is responsible for, "the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and early intervention service (EIS) providers." Under these provisions, the LA is also responsible for "monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out part C..." and "providing technical assistance, if necessary, to those agencies." As reported in the State's FFY 2019 IDEA Part C Grant Application, HHSC is the designated LA responsible for carrying out:

1. The identification and coordination of all available resources for EI services within the State;
2. The assignment of financial responsibility for the IDEA Part C program;
3. The development of procedures to ensure EI services are provided in a timely manner, pending the resolution of any disputes among public agencies or EIS providers; and
4. The resolution of intra- and interagency disputes, as required by 34 C.F.R. § 303.120(b)–(e).

Some EIS providers reported that their organizations are successful in meeting the State imposed requirement to develop billing systems to bill and collect revenue from third-party payor sources, including family cost-share and in negotiating rates with Medicaid MCOs. However, other EIS providers reported significant challenges in implementing functional billing systems and reported significant barriers to receiving Medicaid reimbursement. As noted above, Medicaid accounts for over 50 percent of ECI program funding. ECI program staff also reported that HHSC provided limited support in seeking reimbursements and that complying with the policies that HHSC provided was not sufficient to ensure timely reimbursements. Perhaps most significantly, EIS providers reported these challenges in receiving reimbursement impacted ECI program operations.

While HHSC indicated that some webinar training and support documents are available to EIS providers, staff also acknowledged that there are no formal agreements between HHSC and Medicaid to facilitate reimbursements. A component of general supervision is providing sufficient support and technical assistance to ensure that EIS programs and providers are able to comply with relevant requirements while providing EI services to eligible infants and toddlers with disabilities and their families. OSEP finds that HHSC does not have in place appropriate policies and procedures to reasonably ensure general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers. More specifically, HHSC does not provide sufficient supervision and technical support to ensure that EIS providers can properly comply with requirements imposed by the State in implementing IDEA Part C, including the billing requirements under the State's SoP.

### **Required Corrective Actions**

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The State will be required to implement corrective actions to address the noncompliance identified.

Within 90 days from the issuance of this letter, the State must provide OSEP with a corrective action plan (CAP) that:

1. Addresses service provision and identifies the steps that the State will take to ensure that:
  - a. Appropriate EI services are available to all infants and toddlers with disabilities and their families as required by IDEA Section 635(a)(2) and 34 C.F.R. § 303.112. This CAP must include a description of how the State will ensure continuity of EI services when a provider exits ECI prior to a new provider being secured for a region. The CAP must also include a description of how it will monitor EIS providers to ensure that IFSP teams review, on an individualized basis, whether and what compensatory services may be needed for eligible children for whom there has been a disruption in service provision;
  - b. HHSC and EIS providers implement a system of internal controls for data entry into TKIDS to ensure its local ECI programs are maintaining records consistent with 34 C.F.R. § 303.224(b) and 2 C.F.R. § 200.303. This CAP must identify how the LA will demonstrate to OSEP that any revised policies and/or procedures are reasonably designed to ensure compliance with IDEA requirements including, evidence of implementation by its EIS providers;
  - c. It is meeting the requirements under IDEA Section 635(a)(5) and 34 C.F.R. § 303.302(b)(1) to meet its child find responsibilities including identifying, evaluating, and locating all infants and toddlers with disabilities; and
  - d. Resources are made available to all geographic areas within the State as required under 34 C.F.R. § 303.207.
2. Addresses the State's single line of responsibility and identifies the steps that the State will take to ensure the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers, as required

under 34 C.F.R. § 303.120, and to ensure the continuity of IDEA Part C service provision during financial disputes or untimely reimbursement for services. The CAP must include a process and any necessary implementing policies or intra-agency agreement(s) necessary to ensure that the LA is providing sufficient guidance and supervision to EIS providers for them to implement the State's SoP.

Provides specific target dates, not to exceed one year from the date of this letter, for each of HHSC's corrective actions identified above.