



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

July 23, 2007

Alexa Posny
U.S. Department of Education
400 Maryland Avenue, SW., Room 4109
Potomac Center Plaza
Washington, DC 20202-2600

Re: Docket ID ED-2007-OSERS-131
Early Intervention Program for Infants and Toddlers with Disabilities

Dear Ms. Posny:

On behalf of the 148,000 members and affiliates of the American Psychological Association (APA), I would like to thank you for the opportunity to comment on the May 21st Notice of Proposed Rulemaking regarding Part C of the Individuals with Disabilities Education Act (PL 105-17, IDEA). We appreciate the time and consideration that the Department has taken to hold public meetings across the country and to draft these proposed regulations to ensure that our nation's children will have appropriate access to much-needed services.

APA, the world's largest organization representing the field of psychology, has a long-standing commitment to promoting the optimal development and education of children. APA's membership includes researchers, practitioners, and educators whose work has played a pivotal role in our society's understanding of the cognitive, social, and emotional development of children.

The Department proposes to amend the regulations governing the Early Intervention Program for Infants and Toddlers with Disabilities. Part C of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (Act or IDEA), provides Federal funds to States to make available early intervention services for infants and toddlers with disabilities (from birth to age three) and their families. The proposed regulations would implement changes made to the Individuals with Disabilities Education Act by the Individuals with Disabilities Education Improvement Act of 2004.

Prevention and intervention efforts to promote children's academic performance and emotional adjustment have also been a long-term priority of our members. Early intervention services have been shown to be cost effective and to achieve desired results when they are based on empirical research. The paragraphs that follow highlight some of the proposals which we believe have the greatest impact.

Section by Section Analysis - Part C NPRM

SUBPART A

303.1	PURPOSE OF THE EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES
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Recommendation: Modify heading and section (a) as follows:

303.1 Purpose of the early intervention ~~system program~~ for infants and toddlers with disabilities **and their families; and children involved in a substantiated case of child abuse or neglect.**

The purpose of this part is to provide financial assistance to States to—

- a) **maintain** ~~develop~~ and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system ~~that provides~~ **of** early intervention services **focused on enhancing the development of** for infants and toddlers with disabilities and ~~their~~ **enhancing the capacity of** families **to meet the developmental needs of their children; and for early intervention for children involved in a substantiated case of child abuse or neglect.**

Rationale: The term “*system*” and not “*program*” should be used as it is consistent with the statute and with other regulatory changes made in recent years. It is also consistent with the intent of an interagency coordinated effort.

The phrase “*and their families*” should be added to 303.1 following “*infants and toddlers with disabilities*” to clarify that the intent of Part C relates to infants and toddlers *and* their families.

In addition, the inclusion of “children involved in a substantiated case of child abuse or neglect” reflects the IDEA 2004 requirement that states participating in Part C refer for early intervention services any child under the age of three who is involved in a substantiated case of child abuse or neglect; or is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure.

303.4	LIMITATION ON ELIGIBLE CHILDREN
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Recommendation: Restore the language in current 303.4.

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

Rationale: This provision allows states to follow Part B and not Part C regulations with children who transition to preschool special education before their third birthday. This regulation is consistent with IDEA section 619(a) (2) and (h), long-standing provisions in the statute. This provision is necessary as an important component of many state transition systems as part of ensuring a seamless transition for children and families from Part C to preschool special education.

303.7	CONSENT
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Recommendation: Support proposed definition of consent.

Rationale: The formal definition of consent is very useful to parents and lead agency personnel to ensure that parents understand their rights and responsibilities under Part C.

303.13 (b)(3)	TYPES OF EARLY INTERVENTION SERVICES
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Recommendation: Modify 303.13(b)(3) as follows:

(3) *Family training, counseling, **respite care**, and home visits* means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

Rationale: Respite care, often the most frequently requested family support service, provides caregivers with occasional relief which has been shown to help sustain family caregiver health and wellbeing, avoid or delay out-of-home placements, and reduce the likelihood of abuse and neglect.

303.13 (b)	TYPES OF EARLY INTERVENTION SERVICES
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Recommendation: Modify 303.13 (b)(12)(iv) and move it to 303.13(b)(10) and change the language as follows. Renumber subsequent sections accordingly.

(b)(10) Sign language and cued language services (including American Sign Language) includes, provision of sign-language, cued language, and auditory/oral language services, which, as used with respect to infants and toddlers **who are deaf or hard of hearing, and including other infants and toddlers with disabilities who are hearing impaired, includes services to the infant or toddler with a disability and the family to **facilitate their interactions with their children in** sign language, cued language, and auditory/oral language as well as to provide oral transliteration services, sign language, and cued language interpreting services **as appropriate. Such services are not limited to children who are deaf or hard of hearing and may also benefit children with other disabilities. Services for families of infants and toddlers who are****

deaf or hard of hearing should include information and counseling regarding hearing loss, amplification, communication opportunities, and the potential effects of hearing loss on social-emotional development, family and other social interactions, academic performance, and other behaviors.

Rationale: This modification clarifies what we believe the Department intended, that children and families should receive appropriate services to help the child acquire language and to help the family support the child's language acquisition.

In addition, the proposed regulation seems to limit certain services in this provision to infants and toddlers who are deaf or hard of hearing. However, many infants and toddlers with Down syndrome and other disabilities can benefit from these communication strategies. These children and their families should be able to receive any of the services listed in this provision if they are appropriate for the child.

When a family learns that their infant or toddler has significant hearing loss it is critical that they have access to a knowledgeable provider who can help them access, understand and cope with new information regarding the type, degree, and etiology of hearing loss and the variety of communication choices that are available to them. Early and timely information and support will help the family make informed choices.

303.13 (b)(11)

SPECIAL INSTRUCTION

Recommendation: Modify as follows:

(b)(11) *Special instruction* includes –

...

(iii) Providing families with information, skills, and support related to enhancing the **physical, cognitive, communication, social or emotional, and adaptive skill** development of the child; and

Rationale: This clarification would provide guidance as to all five developmental areas that must be addressed through early intervention services.

303.13 (b)(13)

TRANSPORTATION AND RELATED COSTS

Recommendation: Restore reference to taxi services from current 303.12(b)(15).

(b)(13)Transportation and related costs include the cost of travel (e.g., mileage, or travel **by taxi**, common carrier or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

Rationale: The regulations should be clear that taxi service is an appropriate mode of transportation.

DEFINITIONS USED IN THIS PART

Recommendation: Add new definitions for “interpreting” and “transliteration.”
Renummer the remainder of the section accordingly.

303.22 Interpreting

Interpreting services involve the translation of language from one modality (e.g. speech) into another (e.g. sign language).

303.35 Transliteration

Transliteration services convey spoken information into an accessible form (e.g. spoken language to cued language) or voices over difficult to understand speech into more clear speech (oral transliteration).

Rationale: Separate out the definitions for interpreting and transliteration services to clarify the differences between the two types of services and demonstrate when each type of service would be needed for infants and toddlers who are deaf or hard of hearing.

303.24	MULTIDISCIPLINARY
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Recommendation: Retain the current definition at 303.17.

Rationale: APA strongly disagrees with the proposed change in 303.24 regarding the definition of “multidisciplinary.” A minimum of two individuals from differing disciplines are absolutely critical to ensure that all five areas of development are reviewed for a particular child. The purpose of having a multidisciplinary team is to bring individuals with a variety of perspectives and areas of expertise together on behalf of the child. To allow one person to qualify as the entire disciplinary team would undermine this process. Permitting one individual to represent a multidisciplinary perspective is not consistent with recommended practice.

303.25	NATIVE LANGUAGE
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Recommendation: Support this section.

Rationale: APA strongly supports the provision of services in the child’s native language. Administrative agencies have increasingly recognized the need for linguistically-appropriate services and have adopted measures that require or encourage

health and social service providers to overcome language barriers. In addition to meaningful access and greater intervention effectiveness, this addition would be consistent with the definition of this term in 34 CFR 300.29 of the Part B regulations (71 FR 46759-46760).

303.26	NATURAL ENVIRONMENTS
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Recommendation: Modify the definition of “natural environments” by using the statute language from 632(4)(G).

Natural environments means settings **in which** ~~that are natural or normal for~~ an infant or toddler without a disability **typically spends time**, ~~may include~~ **including** the home **and community settings in which children without disabilities participate**; and must be consistent with the provisions of section 303.126.

Rationale: The concept of natural environments is to help families with young children with disabilities facilitate the development of their child in the context of each child’s family’s unique needs. For some families, their non-disabled child would be at home until his/her third birthday when the child would typically participate in a pre-school program. For the majority of families with a child under the age of 6, the child would spend his/her day in a family or center-based child care program. Unfortunately, implementation of this requirement in some places is narrowly interpreted to mean only the child’s home, and does not include center-based child care programs. The landmark report *From Neurons to Neighborhoods* found that nearly 45 percent of mothers with an infant with a disability do not return to work because they cannot find a child care program that will accept their child. If Part C regulations clarify that child care or Head Start programs are appropriate settings in which children with and without disabilities can participate, this dynamic could be changed, thus transforming the economic circumstances of many families.

In addition, certain public funding sources, such as Medicaid, do not always reimburse services delivered at a child’s home. Instead, some states will only provide services in a Medicaid approved facility. Part C regulation should not be a barrier to a significant financial resource that is available to the Part C system.

303.33 (a)	SERVICE COORDINATION SERVICES
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Recommendation: Modify the definition of “service coordination services” as follows:

(a) *Service coordination services* means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under Part C of the Act, including –

- (1) Coordinating all services required under this part across agency lines;

- (2) Assisting parents of infants and toddlers with disabilities in gaining access to and coordinating **for parents** the provision of the early intervention services and coordinating other services identified in the IFSP under section 303.344(e) **(including medical, mental health, family/parent support, respite and child care services)** that are needed or are being provided to the infant or toddler with a disability and the child’s family; and
 - (3) Serving as the single point of contact for carrying out the activities described in paragraph (b) of this section.
- (b) The term includes –
- (1) Coordinating the performance of evaluations and assessments;
 - (2) Facilitating and participating in the development, review and evaluation of IFSPs;
 - (3) Assisting families in identifying available EIS providers;
 - (4) Coordinating and monitoring the delivery of services required under this part;
 - (5) Informing families of their rights and procedural safeguards, as set forth in subpart E of this part and related resources **including the availability of advocacy services;**
 - (6) Coordinating the funding sources for services required under this part; and
 - (7) Facilitating the development of a transition plan to preschool, school or other services, if appropriate.
- (c) The lead agency’s or an IES provider’s use of the term service coordination or service coordination services does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort, including Medicaid, for purposes of claims in compliance with the requirements of proposed section 303.501 (payor of last resort).

Rationale: Service coordination services must include those services that are not directly early intervention but that are essential to the well-being of the child and the family, in accordance with section 303.344(e). Case managers should coordinate these services for parents, instead of merely assisting the parents in accessing and coordinating the services, to ensure that the services provided to the child are not dependent on the parents’ ability to handle this task. In addition, parents of infants and toddlers may need advocacy services to help them understand their rights and procedural safeguards.

303.33	SERVICE COORDINATION SERVICES
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Recommendation: Amend proposed regulation 303.33(a) to add the following provisions from current regulation §303.23(a)(3)(iii) and (iv).

- (iii) Facilitating the timely delivery of available services; and**
- (iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child’s eligibility.**

Rationale: The proposed regulation talks about coordinating and monitoring the delivery of services but does not mention anything about these services being provided in a timely

manner. Also, it is important for the service coordinator (case manager) to be continuously seeking out services to benefit each child.

SUBPART B

303.105	POSITIVE EFFORTS TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES
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Recommendation: Encourage states to report their efforts to employ qualified individuals with disabilities.

Rationale: The regulations should encourage states to demonstrate the steps taken to employ qualified individuals with disabilities.

303.11	STATE DEFINITION OF DEVELOPMENTAL DELAY
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Recommendation: The regulations should establish criteria for states to meet in establishing a rigorous definition of developmental delay. Such criteria should take into consideration disability diagnosis, risk factors including family poverty, and other issues that can lead to disability or delay.

Rationale: Currently, eight states have set narrow definitions of development delay. As a result, every eligible child must have a delay of 50 percent. This standard should be unacceptable. Other states definitions include 25 percent delays, or some level of standard below the mean. The Department should thoroughly analyze current state definitions and establish criteria to ensure that all children who can benefit from early intervention services are eligible.

303.112	AVAILABILITY OF EARLY INTERVENTION SERVICES
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Recommendation: Modify as follows:

Each system must include a State policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available **and accessible** to all infants and toddlers with disabilities and their families.

Rationale: A policy that states that services are available to all eligible children is insufficient. States must demonstrate that eligible families can actually access such services. In many rural areas, many families do not have the necessary means of transportation to access these services.

303.118	COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT (CSPD)
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Recommendation: Modify 303.118(b)(2) as follows:

(2) Training personnel about the emotional and social development of young children, **including approaches specific to the needs of children who have experienced or have been exposed to abuse, neglect, (including abandonment);** and

Rationale: An early and appropriate response to trauma is critical in mitigating serious long-term effects and their corresponding societal costs. Because children in the child welfare system are very likely to need approaches that reflect their special and traumatic life experiences, we recommend a specific reference to approaches that are appropriate for children involved in a substantiated case of child abuse or neglect.

It is imperative to encourage awareness and adoption of these methodologies by early intervention providers. Specific training in and implementation of methodologies that are responsive to these experiences is critical to avoid incorrect diagnosis which could lead to inappropriate treatment and medication.

SUBPART C

303.209(b)	TRANSITION
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Recommendation: Support.

Rationale: APA supports the language in 303.209 (b) (2) (i) that would require that the LEA be notified at least nine months before the third birthday. This would provide for easier and more efficient transition for the child without any potential loss of necessary services.

303.211	STATE OPTION TO MAKE SERVICES UNDER THIS PART AVAILABLE TO CHILDREN AGES THREE AND OLDER
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Recommendation: Modify 303.211(b)(1)(ii)(B) as follows.

(B) ~~The procedural safeguards that apply;~~ and **The differences between the procedural safeguards provided pursuant to this section and the procedural safeguards under Part B of the Act; and**

Rationale: It is not sufficient for parents to understand the procedural safeguards that apply under Part C. To make an informed decision, they must understand the differences between the procedural safeguards that apply if they decide to keep their child under Part C instead of moving to Part B of IDEA.

Recommendation: Modify 303.211(b)(7) as follows:

(7) There will be a referral to for the Part C system for all children eligible for Part C services, including children ages three and older, in States that adopt the option to make services under this part available to children ages three and older, ~~there will be a referral to the Part C system,~~ **This will be** dependent upon parental consent **of the parent who has been the subject of abuse**, of a child under the age of three who directly experiences a substantiated case of trauma due to exposure to family violence (as defined in section 302 of the Family Violence Prevention and Services Act, 42 U.S.C. 10401 *et seq.*). **Where it is suspected that a child's parent or caretaker may also be at risk of violence, any referral and/or consent shall be accomplished in a manner to protect the safety and confidentiality of the parent or caretaker who may be at risk.**

Rationale: We recommend revising the regulation that currently requires that only children age three and older who experience trauma be referred to the early intervention system to include all Part C eligible children who met this criterion. This recommendation is consistent with the description of this regulation in the Department's comments which state that *all* children eligible for Part C, including but not limited to those over age three in states that opt to permit children to remain in Part C, be referred for screening if they experience trauma and violence. Additionally, we suggest clarifying the parental consent language of the provision regarding the referral of children who experience trauma as a result of exposure to family violence to ensure the safety and confidentiality of the parent or caretaker who was the victim of abuse while ensuring that children are appropriately referred for screening.

SUBPART D

303.301(c) COORDINATION

Recommendation: Add the State Children's Health Insurance Program (SCHIP) under Title XXI of the Social Security Act and the Early Hearing Detection and Intervention (EHDI) systems to the list of programs with which Part C should coordinate child find activities.

Rationale: Many children with disabilities participate in SCHIP programs and most states now have early hearing detection programs that can identify hearing loss in infants. One of the biggest challenges these programs are facing is ensuring that deaf and hard of hearing children are enrolled in early intervention programs. EHDI and early intervention systems should collaborate more effectively to better serve children and families.

303.302(a)(2)(i) REFERRAL PROCEDURES

Recommendation: Modify section 303.302(a)(2)(i) as follows:

- (a)(2) The procedures required in paragraph (a)(1) of this section must –
- (i) Provide for referring a child as soon as possible after the child has been identified; **but no longer than 5 working days from identification to referral.**

Rationale: It is understandable that the Part C system has no meaningful authority over the actions taken by primary referral sources. In addition, APA understands the difficulty of its enforcement. However, we are concerned that the elimination of any specific time frame dilutes the concept of urgency that should be a key component of referring an infant or toddler who might be in need of early intervention services.

303.302(b)(1) REFERRAL PROCEDURES

Recommendation: Modify section 303.302(b)(1) - 303.302(b)(3) as follows:

- (1) Is involved in a substantiated case of **or is exposed to** abuse or neglect (**including abandonment**); or
- (2) Is identified as affected by illegal substance **or alcohol** abuse or withdrawal symptoms resulting from prenatal drug **or alcohol** exposure; **or**
- (3) Is identified as having a substantiated case of trauma due to exposure to family violence.**

Rationale: We propose that the provision setting out the circumstances under which a referral is mandatory under the child find system be amended to include certain conditions which are well known to cause significant developmental delays, including exposure to alcohol abuse, fetal alcohol exposure, abuse or neglect (including abandonment), and having a substantiated case of trauma due to exposure to family violence.

303.303 SCREENING PROCEDURES

Recommendation: Modify section 303.303(a)(5) as follows:

- (4) If, under paragraph (a)(3) of this section, the lead agency determines that the child is not suspected of having a disability, but the parent of the child requests an evaluation, the child must be evaluated under §303.320.
- (5) The lead agency shall ensure that all infants and toddlers who are referred for screening are subject to re-screening by a qualified professional every six months until age three.**

Rationale: We recommend inserting a provision in §303.303(a) mandating re-screening for all infants and toddlers who have not been referred for evaluation. These screenings should be conducted by a qualified professional every six months. Children grow and change dramatically in the first three years of their lives and developmental delays are

often difficult to recognize. Conducting re-screenings every six months is necessary because specific disorders often emerge during this time. High-risk infants, such as those involved in a substantiated case of abuse or neglect, require multiple points of assessment over the first three years of life because of the dynamic nature of development during these years.

303.320 (a)(3) EVALUATION AND ASSESSMENT

Recommendation: Support.

Rationale: It is essential to the success of early intervention services that each child be evaluated and assessed by qualified personnel, using the child's native language and using culturally appropriate and research validated tools.

303.320(e) TIMELINES

Recommendation: Modify the timeline to clarify that the initial IFSP must be completed 45 days after referral to the Part C agency.

(e) (1)(i) Except as provided in paragraph (e)(2) of this section, the evaluation of the child (including any assessments of the child and family) and assessment of service needs, as well as the initial IFSP meeting, must be completed within 45 days ~~from the date the lead agency obtains parental consent to conduct an evaluation of the child~~ **after the public agency receives a referral.**

Rationale: There continues to be a need for urgency in the development of the initial IFSP. Six weeks should be sufficient time to secure parental consent and to develop this initial plan. The public agency should be afforded additional time in the event that it can demonstrate the need for additional time.

A specific provision should be added to 303.320 (e) to allow the lead agency to document family requested delays (e.g. child or family illness, work or family vacation scheduling needs or other family requested considerations) that would interfere with the ability of the lead agency to meet the 45 day timeline.

303.343(b) IFSP TEAM MEETINGS AND PERIODIC REVIEWS

Recommendation: Modify as follows to permit parents to request the participation of others in the IFSP review.

(b)Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant **or at the parents'**

request, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

Rationale: Parents must always have the ability to select anyone they choose to attend any IFSP meeting.

303.344	CONTENT OF THE IFSP
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Recommendation: Modify this section to include the special factors provided below. This section will be numbered as 303.344(e). The subsequent sections will be renumbered accordingly.

- (i) In the case of a child whose behavior impedes his or her development, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- (ii) In the case of a child from a family with limited English proficiency, consider the language needs of the child and the family as those needs relate to the child's IFSP;
- (iii) In the case of a child who is blind or visually impaired, if appropriate, provide for exposing the child to pre-literacy or readiness activities related to the use of Braille (e.g., through tactile stimulation and the use of “raised” picture books);
- (iv) Consider the communication development needs of the child, and in the case of a child who is deaf or hard of hearing, consider –
 - (A) The appropriate use of communication and language development opportunities including spoken language, signed language, including American Sign Language, tactile signed language, and cued language.
 - (B) Opportunities for direct communication with peers, professional personnel, and deaf and hard of hearing adults in the child's language and communication mode consistent with the developmental level of the child, and full range of needs related to the child’s language and communication mode(s).
- (v) Consider whether the child requires assistive technology devices and services.

Rationale: This language mirrors the special factors language in Part B. It is essential that IFSP teams discuss whether a child and family can benefit from these activities and services.

303.344(e)	CONTENT OF THE IFSP, OTHER SERVICES
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Recommendation: Modify the proposed regulation as follows:

- (e) other services. To the extent appropriate, the IFSP also must –
- (1) Identify medical, **child care, respite** and other services that the child or family needs or is receiving through other sources but that are neither required nor funded under this part; and
 - (2) If those services are not currently being provided, include a description of **the public funding sources if available for those services and** the steps the service coordinator or family may take to assist the child and family in securing those services.

Rationale: The IFSP should be the central resource of information about existing resources for families, regardless of whether the services needed are early intervention. The IFSP process should assist families in learning about health insurance for their child through public programs such as Medicaid and the State Children’s Health Insurance Program (SCHIP) and for child care supports through the Child Care and Development Block Grant. How to access mental health services and supports should also be discussed.

SUBPART E

303.401(e)(1) OPTION TO INFORM A PARENT ABOUT INTENDED DISCLOSURE

Recommendation: Change (e)(1) to state that:

- (e) Option to inform a parent about intended disclosure (1) A state lead agency, through its policies and procedures, **must** ~~may~~ require public agencies and EIS providers, prior to making the limited disclosure.

Rationale: This section of the proposed regulations permits a state lead agency to develop policies and procedures that require public agencies to inform the parent about the disclosure and permits a timeframe for the parent to object to the disclosure. The requirement to inform parents about the disclosure and the subsequent time period to object should be mandatory and not state discretionary. It is a basic right that parents should have the right to know who has access to their child’s information. The option will still permit agencies to share information as long as a parent does not object and at the same time keeps parents informed about what agencies have information about his or her child.

SUBPART F

303.520(b)(2) NON-REDUCTION OF BENEFITS

Recommendation: Modify as follows:

The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding **public or** private health insurance coverage for

early intervention services under Part C of the Act ensuring that the use of private health insurance to pay for Part C services cannot

- (i) count towards the lifetime coverage caps for the infant or toddler with a disability and parents under their health insurance;
- (ii) negatively affect the availability of health insurance to the infant or toddler with a disability and family, and health insurance coverage may not be discontinued due to the use of the health insurance to pay for services under Part C of the Act; or
- (iii) be the basis for increasing the health insurance premiums of the infant or toddler with a disability or the child's family.

Rationale: A child or family should not be negatively affected if their Medicaid benefits or other public insurance program is used to pay for early intervention services. In some states, if a child receives an early intervention service, that child cannot access the same service in another context. For example, if the child regularly receives physical therapy as an early intervention system, and the same child breaks his/her leg and needs physical therapy, there can be difficulty in having the public insurance to pay for both types of therapy. Moreover, if the child's physician recommends additional services beyond the frequency that is provided in the IFSP, the family should be able to access their public or private benefits to cover this service.

The proposed regulation's exception prevents the use of private insurance for Part C services if they will be counted toward the lifetime cap for the parents and child or cause the health insurance policy to be discontinued or premiums to increase.

However, there are serious questions about how much protection these requirements offer. For instance, we are unclear how these provisions will be enforced and how they will help the parents appeal if their insurance company raises their premiums, drops their policy, or counts payments toward the lifetime cap.

303.520(c)(2)

If the State receives reimbursement from Federal funds (e.g. Medicaid reimbursements attributable directly to Federal funds) for services under Part C of the Act, those funds are considered neither State nor local funds under section 303.225(b).

Recommendation: Any Medicaid reimbursement should return to the Part C system.

Thank you for your consideration of these comments submitted by the APA concerning the proposed regulations to IDEA Part C (PL 105-17). We welcome the opportunity to work with the Department in helping to improve the identification of, and provision of early intervention services for, children with disabilities and their families; as well as children involved in a substantiated case of child abuse or neglect. For additional

information, please contact Day Al-Mohamed, J.D., in APA's Public Interest Government Relations Office at (202) 336-6061.

Sincerely,



Gwendolyn Puryear Keita, Ph.D.
Executive Director
Public Interest Directorate