The American
Occupational Therapy
Association, Inc.

Occupational Therapy:
Skills for the Job of Living

Via online submission
Via first class mail

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

The American Occupational Therapy Association (AOTA) is the national professional association representing more than 35,000 occupational therapists, occupational therapy assistants, and students of occupational therapy. While occupational therapists work with people across the lifespan and with a wide array of health conditions, occupational therapy provided under the Individuals with Disabilities Education Act (IDEA) is the largest single area of practice for the profession and continues to grow. AOTA appreciates this opportunity to provide our comments on the proposed regulations related to Part C of the Individuals with Disabilities Education Act (IDEA) published in the federal Register on Wednesday May 9, 2007. AOTA submits these comments in order to support early intervention programs and to advocate for the full scope of occupational therapy practice to be available under Part C to meet the growing needs of children and families.

As a profession dedicated to the maximization of independence, function, performance and participation occupational therapy is uniquely suited to the provision of early intervention services. Our members take a holistic perspective and focus on the development of the whole child in the context of the family. Occupational therapy uses activity or occupation based therapies and interventions to enable infants and toddlers to achieve critical milestones of development, minimize the effects of disabilities, and maximize function and performance. Our strong foundation in psychosocial functioning and the emphasis on fulfillment of life roles is valuable in addressing parental needs and concerns and building on parental strengths in meeting their child's individual needs. AOTA and our members are committed to working with the Department and Part C lead agencies to maintain and improve systems of early intervention and to ensure that changes to the current regulations positively impact children and their families.

New Part C regulations are much needed to help guide states in how to implement enhanced and improved statewide early intervention systems that are responsive to the needs of the children and families served by the program. Several areas of the proposed rules require further clarification or guidance to ensure states, service providers, and families are clear about what is expected, when, and by whom. AOTA's comments have

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a theme consistent with improving early intervention systems and outcomes for infants and toddlers with disabilities:

- Ensuring access to qualified providers in both early intervention and school based settings through alignment of Part C regulations with Part B regulations.

Many of our suggestions relate to enhancing regulations to assure the use of qualified providers. AOTA believes that this is as important to the achievement of the goals of the program as any other component of Part C. As is put forward in NCLB, qualified and quality professionals are the linchpin of program success. AOTA has been concerned by recent trends in states to blur the lines between disciplines (requiring one discipline to provide the services of another discipline) or to enable the use of new types of service providers, such as developmental therapists (a term formerly informally used to refer to occupational therapists, physical therapists and speech language pathologists working in early intervention) as a substitute for the services listed as appropriate to be provided under Part C.

AOTA believes this is a consumer protection issue. If Part C includes the right to occupational therapy services if needed, no other service type should be substituted for authentic occupational therapy as defined in state licensure laws and other regulation. While AOTA supports use of different models of service provision, the use of additional types of service providers to assure the full range of family needs are met, and cost efficiency in meeting early intervention needs, quality outcomes will not be achieved for children and families if qualified personnel are not providing appropriate services. Just as NCLB emphasizes quality teachers, so too should Part C emphasize the need for qualified primary providers of early intervention.

While some may view this position as solely scope of practice protection, AOTA believes that long-term benefits will be achieved for children, families, and program budgets if qualified personnel are required and used.

The following are AOTA's official comments regarding the proposed regulations governing the early intervention program for infants and toddlers with disabilities. AOTA's comments are arranged in order according to the arrangement of the proposed regulations.

Section by Section Comments

Subpart A

303.1 Purpose of the early intervention program for infants and toddlers with disabilities.

Recommendation: Modify heading and section as follows:

Section 303.1 Purpose of the early intervention system ~~program~~ for infants and toddlers with disabilities **and their families**.

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 of early intervention ~~services~~ **focused on enhancing the development and function of** infants and toddlers with disabilities and ~~their~~ enhancing the capacity of families **to meet the developmental needs of their children.**

Rationale: AOTA believes that early intervention must be a comprehensive system of care. The system must support children and families for the duration of their eligibility from initial Neonatal intensive care to traditional Part C services up to and through transition into Part B. It is also essential to clearly state that the purpose of the system is to enhance the development and function of infants and toddlers while recognizing that it cannot be done without providing support to families for meeting the needs of their children.

303.11 Early intervention service program.

Recommendation: Modify as follows:

Section 303.11 Early intervention service program or **EI** ~~EIS~~ program means an entity designated by the lead agency for reporting under Sec. 303.700 through 303.702.

Rationale: Part B uses EIS to denote early intervening services for children. This is very confusing to use the same initials when discussing two different IDEA programs. This change should be used to replace EIS with EI at all other places in the proposed regulation.

303.13 Early intervention services. (b) (6) occupational therapy

Recommendation: Modify by adding the following statement at the beginning of the proposed definition:

Occupational therapy—
Means services provided by a qualified occupational therapist and …

Rationale: Making this change ensures that occupational therapy services provided to infants and toddlers under Part C are consistent with state licensure and practice acts, the IDEA statutory requirement that professionals meet the highest entry level standard in their state and that they are implemented to ensure quality and consistency of professional services. The language is also consistent with the definition of occupational therapy in Part B of IDEA which will increase the alignment of Part B and C while

clarifying and streamlining regulations guiding service provisions under regulations for both. The statute requires this section be consistent with state standards for service provision and the suggested change would more accurately reflect the majority of state laws governing qualification standards for licensure and regulation of the professions in general. AOTA would support the extension of this recommended change to the other professions listed in this section to be consistent with their definition in Part B of IDEA as appropriate.

303.13 Early intervention services. (b) (13) Transportation

Recommendation: Restore the reference to taxi services as follows:

Transportation and related costs includes the cost of travel (e.g., mileage, **or travel by taxi,** common carrier or other means) that are necessary to enable infants or toddlers with a disability and the child's family to receive early intervention services.

Rationale: The regulations should maintain the current clarity that taxi service can be an appropriate mode of transportation. Taxi service can be the most cost efficient method of transportation under some circumstances and in other circumstances may be the only mode available.

303.13 Early intervention services. (c) (4) Occupational therapists

Comment: AOTA acknowledges and supports the inclusion in regulation of occupational therapists as qualified personnel under Part C of IDEA. AOTA also notes that according to Sec. 303.119 Personnel standards. (c), occupational therapy assistants are eligible to assist in the provision early intervention services when appropriately trained and supervised in accordance with state law and regulation.

303.21 Infant or toddler with a disability. (b)

Comment: AOTA fully supports the inclusion at-risk infants and toddlers for eligibility for services under Part C. While AOTA understands that it is at the States' discretion, additional guidance should be provided by the Department to encourage states to provide service to infants and toddlers at-risk of developmental delay. Such guidance would support the overall purpose of early intervention and recognize that services provided to prevent substantial developmental delay may result in significant cost savings and better outcomes for the child in for both Part B and C systems over the full period of a child's eligibility.

303.24 Multidisciplinary

Recommendation: Modify the proposed definition of "multidisciplinary" as follows:

Multidisciplinary, with respect to evaluation and assessment of a child, an IFSP team or IFSP development under subpart D of this part, means the involvement of two or more individuals from separate disciplines or professions. ~~or one individual who is qualified in more than one discipline or profession.~~

Rationale: Allowing one individual to represent multiple perspectives is not consistent with best practices and does not adequately create a team approach to assessment, evaluation or planning. AOTA supports a minimum of two or more professional team members to ensure a truly multidisciplinary team approach to achieve a comprehensive perspective on the child and family.

303.26 Natural environments.

Recommendation: Modify the definition of natural environments as follows:

Natural environments mean settings **in which** ~~that are natural or normal for~~ an infant or toddler without a disability **typically spends time and** may include the home **and community settings such as early Head Start, and child care programs,** and must be consistent with 303.126.

Rationale: AOTA fully supports the provision of early intervention services in natural environments to the extent possible. As a profession occupational therapy engages children in their environment to maximize their performance and function with activities that are best accomplished in the environments within which the child spends the majority of his/her time, most typically their home. AOTA supports the inclusion of community settings in order to be consistent with the statute and to ensure the opportunity for service provision for an individual child in those important natural settings. Additional comments can be found at Sec. 303.126, but AOTA also believes that it is the responsibility of the IFSP team to identify the most appropriate settings for service provision and that the decision should be based upon the ability to achieve the outcomes identified in the IFSP as well as enhancing the capacity of the families to meet the special needs of their infants and toddlers with disabilities.

303.33 Service coordination services (case management).

Comment: This section should be clarified to confirm that early intervention service providers, as listed in section 303.12 are eligible to be service coordinators and provide case management services.

Subpart B

303.111 State definition of developmental delay.

Comment: The regulations should set a standard for states to use when establishing a "rigorous" definition of developmental delay.

Rationale: The Department should review current state definitions, identify critical factors (including disability, other health conditions and risk factors such as poverty and isolation), and establish criteria upon which to base a rigorous definition of developmental delay to ensure the needs of infants and toddlers across the nation are being met consistent with the purpose and intent of the statute.

303.117 Central directory.

Comment: Require that the directory be updated at least annually.

Rationale: In those states that establish a vendor system through which they provide early intervention services through many largely independent contractors, it is essential that the central directory of service providers be updated at least annually. This issue relates directly to accessibility of early intervention services for children and families.

303.118 Comprehensive system of personnel development (CSPD)

Comment: AOTA fully supports this provision and sees the quality of service providers enrolled in the system second only to accessibility of the system to children and families as the most significant indicators of early intervention system effectiveness. Opportunities for training and recruitment of occupational therapists and occupational therapy assistants are critical to the provision of quality early intervention services for children with disabilities and their families.

303.119 Personnel standards. (b) Qualification standards

Recommendation: Reinforce and strengthen the requirement that establishment and maintenance of qualification standards be consistent with state standards regarding licensure or other regulation of a profession to ensure that personnel providing services under Part C are not in violation of state practice and licensure acts. AOTA recommends adding the following language at the end of (b):

Qualification standards must also be consistent with professional scope of practice provisions in state practice acts.

Rationale:
In order to ensure qualified personnel are providing the necessary services to infants and toddlers at-risk for or with disabilities, it is essential that the Part C regulations reinforce

state licensure laws and practice acts implemented to ensure quality of personnel providing services within specific professional disciplines such as occupational and physical therapy and speech language pathology services. Most states have built a requirement into practice acts that professionals within a discipline must be trained specifically in that discipline and that no one other than those who have graduated from an accredited education program and are licensed can provide that service. Such laws and regulations ensure that consumers receive authentic services from trained professionals.

AOTA also notes in this section under (c) that occupational therapy assistants are eligible to assist in the provision of early intervention services when appropriately trained and supervised in accordance with state law or regulation and the standards of the profession.

303.126 Early intervention service in natural environments.

Recommendation: Modify section (b) and add (c) as follows:

(b) In settings other than the natural environment that are most appropriate, as determined by ~~the parent and~~ the IFSP team **that includes the parent**, only when **the desired outcome or result of** early intervention services cannot be **achieved if the service is** provided ~~satisfactorily~~ in a natural environment.

Rationale: AOTA fully supports the provision of early intervention services in natural settings to the maximum extent appropriate. The profession of occupational therapy is dedicated to working with the child and family in their environment to maximize performance and function. Only when the IFSP team, including the parent, determines that IFSP outcomes cannot be successfully achieved in natural environments should services be provided in alternative settings. Under those circumstances, it is important to note that the goal of early intervention service is to help a child attain specific outcomes listed in their IFSP and to enhance the family's capacity to meet the needs of their child. The IFSP team has the authority and responsibility to recommend the most appropriate setting for service delivery consistent with an emphasis on service provision in natural settings. It is AOTA's position that the service setting is not necessarily limited to exclusively natural settings but to be provided in natural settings to the maximum extent appropriate at all times.

Subpart C

303.208 Public participation and procedures. (a) (2)

Recommendation: Restore (c) to provide guidance to states regarding adequate notice as follows:

(c) Provide adequate notice of hearings required in paragraph (a) (1) of this section at least 30 days before the dates the hearings are conducted.

Rationale: This provision is found at current Sec.303.110 (a) (3). Parents and providers need 30 days to ensure that they can meaningfully participate in public hearings.

303.211 State option to make services under this part available to children ages three and older.

Comment: AOTA fully supports this provision and believes that the option, if used more regularly, has the potential to create a more seamless transition and ensure continuity of services between Part C to Part B for children, families, and service providers.

Subpart D

303.301 Comprehensive child find system

Comment: AOTA recommends that the State Children's Health Insurance Program (S-CHIP) under Title XXI of the Social Security Act be added to the list of programs with which Part C should coordinate child find activities.

Rationale: With the growing importance of S-CHIP for providing health care coverage for children, it is critical that lead agencies coordinate child find activities with the program in their state or territory.

303.302 Referral procedures.

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

(i) Provide for referring a child **within 2 working days to the extent practicable or** as soon as possible after the child has been identified: and

Rationale: AOTA supports this compromise language because we understand that Part C lead agencies have no meaningful jurisdiction over the majority of independent referral sources. However, we do believe maintaining the 2 day time frame "to the extent practicable" adds weight to the regulation and maintains a sense of urgency regarding referral to the Part C agency.

303.320 Evaluation and assessment of the child and family and assessment of service needs (a) (3)

Comment: AOTA fully supports this provision and recommends that qualified personnel be linked in this section to the definition found in Sec. 303.12 (c).

303.320 (e) Timelines.

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

… ~~must~~ **should** 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. If the initial IFSP meeting is not held within the 45 days after receiving the referral, the public agency must document good faith efforts to obtain parental consent or provide evidence of a request from the parent to delay participation.**

Rationale: Changing the required date for completion of the initial IFSP from date of referral to date of obtaining parental consent would reduce the urgency for lead agencies to actively pursue parental consent and could result in delays that would be harmful to eligible children and families. In recognition that the 45 day period can be onerous on both lead agencies and families, AOTA supports allowing the lead agency and the parent to delay the initial IFSP if the lead agency has not been able to obtain parental consent after making a good faith effort or if the family voluntarily chooses to delay their participation. While maintaining a base timeline is important to create a sense of urgency, the varying needs of families must be taken into consideration and specific timelines should be based on the individual needs of the child and family.

303.344 Content of an IFSP

Comment: AOTA suggests that a statement regarding functional performance be added into the IFSP regarding each level of development listed in (a). Modify the section as follows:

(a) Information about the child's status. The IFSP must include a statement of the child's present levels **of function and progress in the areas** of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from the child's evaluation and assessment conducted under Sec. 303.320.

Rationale: While knowledge of the child's present levels of development are critical, a statement of the child's functional ability in each area would facilitate improved goal development and help the IFSP team develop more specific functional outcomes for the child.

Subpart F

303.510 (c) Non-reduction of benefits

Recommendation: Add a reference to the State Children's Health Insurance Program (S-CHIP) under Title XXI of the Social Security Act.

Rationale: S-CHIP is another Federal program similar to the currently listed programs that provide medical assistance to children who may receive early intervention services.