

Dated December 19, 2000

Office of CHAMPUS Management Activity
16401 East Centretech Parkway
Aurora, Colorado 80011-9043

Dear Ms. Brown and Mr. Kottyan:

The Office of Special Education Programs is pleased to comment favorably on the Department of Defense NPRM, dated November 15, 2000 (65 Fed. Reg. 68957). The proposed rules would codify in the CHAMPUS regulations the statutory requirement that Department of Defense medical programs “pay first” before the early intervention program in Part C of the Individuals with Disabilities Education Act. 20 U.S.C. 640(1). While this provision is currently codified in Department of Education rules (34 CFR §303.527(a)), the proposed CHAMPUS rules would provide needed clarification of this issue for entities regulated by the Department of Defense, as well as resolve an apparent contradiction between our two agencies’ regulations.

The only change to the proposed language that we suggest is that, in proposed 32 CFR §§199.2 (“double coverage plan”), 199.5(a)(v), and 199.8(d)(5), the term “medical services and items that are provided under Part C of the IDEA” be changed to “services and devices provided under Part C of the IDEA that are medically or psychologically necessary.” The proposed phrase “medical services” is not defined in the CHAMPUS regulations, and is subject to being confused with the narrow term “medical services only for diagnostic or evaluation purposes” in the Part C regulations. The term “medical services” also could be interpreted as more limiting than the term medically or psychologically necessary,” which is defined in the CHAMPUS regulations at 32 CFR §199.2. The latter term was used in the recently-published “TRICARE and IDEA Part C: A Guide to Services” developed by the Federal Interagency Coordinating Council (FICC), with approval of both our Departments.

The joint DOD-ED brochure is a wonderful example of how the FICC can work to resolve conflict or confusion through successful interagency cooperation. We again commend your office for its involvement in the activities of the FICC, and for your effort in amending your regulations. Together our agencies have made real progress in coordinating federal policies regarding young children with disabilities.

Sincerely,

signed Curtis L. Richards per

Judith E. Heumann
Assistant Secretary