

Dated April 16, 2001

Honorable Robert C. Byrd
United States Senate
Washington, D.C. 20510

Dear Senator Byrd:

Your letter dated October 5, 2000 addressed to former Assistant Secretary Scott Fleming, Office of Legislation and Congressional Affairs on behalf of your constituent, P. Kay Nottingham Chaplin, Program Director, West Virginia Birth to Three Early Intervention, was referred to the Office of Special Education and Rehabilitative Services, Office of Special Education Programs. I apologize for the delay in responding. Ms. Chaplin's letter questioned whether an outside entity, such as Medicaid managed care, can override the Individualized Family Services Plan (IFSP) process in determining intensity and frequency of services under Part C of the Individuals with Disabilities Education Act (IDEA).

Under Part C, appropriate early intervention services must be available to all eligible children and their families. Early intervention services are services that (1) are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child's development; (2) are selected in collaboration with the parents; (3) are provided under public supervision, by qualified personnel and in conformity with an individualized family service plan (IFSP); (4) are at no cost, subject to the permissible system of payments under Part C; and (5) meet the standards of the State. To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. 20 U.S.C. §14326(4), 1436.

Early intervention services needed by a particular child are determined through the IFSP process. The IFSP team, which includes the parent(s), has the decision-making responsibility to identify early intervention services that meet the unique developmental needs of the child and the needs of the child's family related to enhancing the child's development. The need for such services must be based on the results of the evaluation and assessment of the child and the child's family. The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and family to achieve certain identified results, including frequency, intensity and method of delivering the services, the natural environments in which the early intervention services will be provided, the location of the services and payment arrangements, if any. 20 U.S.C. §1436, 34 CFR §303.344.

Early intervention services under Part C must be at no cost to the parent unless the service is one that is subject to fees under the Part C program. 20 U.S.C. §1432(4)(B). Although Part C funds are to be used only as payor of last resort (20 U.S.C. §1440), there

may be circumstances in which all or a portion of services for a particular child must be paid by the Part C lead agency. For example, for a child who has been identified as having significant delay in speech-language development, the IFSP team might decide that intervention is needed five times per week to enhance the child's overall communication needs. An outside funding source, such as Medicaid, may decide that it will only provide Medicaid payments to cover speech-language services three times per week. In that circumstance, the Part C lead agency must assume the financial responsibility, subject to a system of payments (if any), for that portion of services not covered by Medicaid. I reiterate that the frequency and intensity of early intervention services specified on a child's IFSP are determined by the IFSP team and are based on the results of that child's evaluations and assessments. 20 U.S.C. §1436, 34 CFR §§303.340(b) and 303.344.

I hope this information provides some additional clarity. If you have any questions, please contact Jill Harris, Part C State Contact at 202-205-9583.

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education Programs