



Maintenance of Effort and Part C ITCA Statement and Suggested Short-Term Solutions May 24, 2010

The IDEA Infant & Toddler Coordinators Association (ITCA) is a membership organization representing state and territory lead agencies responsible for implementing Part C, the Infants and Toddlers with Disabilities Program, of the Individuals with Disabilities Education Act (IDEA). ITCA shares the serious concerns currently being discussed related to the future of the IDEA, Part C Program. Of immediate concern is the maintenance of effort (MOE) crisis facing many states as well as the ongoing lack of federal financial support for Part C. ITCA is committed to working with our federal partners to create strategies to allow states and territories to continue in the federal Part C program as a part of ongoing efforts to provide early intervention services to young children birth to three with disabilities and their families.

Contributing to the immediate crisis is the lack of federal investment in Part C. The current federal Part C allocation is \$4.9 million lower in actual funding in FFY'10 than its highest funding level of \$444 million in FFY'04. Despite this continuing lack of federal investment in Part C, in December 2009 data from 31 states indicates that at least \$2.5 billion is spent on early intervention in those 31 states. In fact, for 11 states, the federal Part C funds provide less than 20 percent of the state's entire early intervention budget. The number of children receiving services under Part C continues to increase annually going from 284,170 children in FYY'04 to 342,544 in FFY'08.

ITCA has carefully reviewed the existing statutory language to develop potential short-term strategies to address the current MOE crisis. These are only presented as short-term strategies. We believe that the original financial statutory language enacted 25 years ago no longer addresses the current needs of the program. In fact, these provisions contribute to the fragile nature of the underlying financial structure of states' early intervention systems. Long-term solutions are necessary and ITCA is working to develop recommendation for reauthorization including a change in the federal funding formula.

Relevant Statutory Language

The payor of last resort language at Section 640 states that "Funds ... may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source..." In addition, section 637(b)(5)(B) requires that funds "will be used so as to supplement the level of State and local funds expended..." The requirements at section 634(10)(B) that require states to carry out "the identification and coordination of all available resources within the State from Federal, State, local, and private sources" also provide clear congressional intent for states to maximize all available resources - public and private.

In many states the expenditures for early intervention continue to increase annually despite reductions in the state's federal Part C allocation and/or reductions in state funds. These

increases are the result of revenues obtained from other Federal funds, private insurance and/or family fees. These increased budgets and investments in early intervention are consistent with statutory intent. They allow children and families to continue to receive services *without* danger of the ever decreasing federal Part C funds being used to supplant a state's total effort.

Short-Term Strategies for Consideration

The following four strategies are offered to provide temporary solutions to addressing the current MOE Part C crisis. ITCA requests that these be considered until reauthorization can address long-term solutions. ITCA believes that some of the strategies may be possible within current statutory language while others may require a change in the law. We recognize the difficulties in enacting any statutory change in this Congressional session. However, we did not want to preclude any opportunity to address this crisis.

- 1. Allow states to include revenue from private insurance and/or parent fees in the calculation of total effort.**

In many states, the total state investment in early intervention continues to increase as a result of revenues from private insurance and/or family fees. Permitting states to include these contributions to early intervention in the calculation of total effort is consistent with statutory intent.

- 2. Allow a state to reduce the state's total effort by the reduction in state Medicaid match made as a result of temporary ARRA increases in the federal Medicaid match.**

States have benefited greatly from the increased federal share of Medicaid made available through the American Recovery and Reinvestment Act (ARRA). As a result, some states were able to respond to the increasing state fiscal crisis by reducing state Medicaid match funds while maintaining the total Medicaid investment in early intervention.

- 3. Allow a state to reduce the state's total effort by the reduction in state early intervention funding made as a result of a state's fiscal crisis and the availability of temporary ARRA Part C funds.**

Most states are clear that the availability of increased Part C funds made available through ARRA greatly assisted them in addressing the continuing fiscal crisis and continuing services to children and families. Allowing states to calculate the state's total effort by not including temporary reductions in state funding as a result of the temporary availability of ARRA funds would permit states to continue to participate in Part C.

- 4. Enact a temporary waiver process for Part C that would be available until the reauthorization of Part C of IDEA.**

Until recently, the lack of a waiver authority has been helpful to many states as they have worked to ensure continuing growth in state early intervention funding even in the midst

of cuts to other state program funding. However, clearly, we have reached a point in the national and state fiscal crisis in which this leverage can no longer protect state early intervention budgets from state cuts as states enact across the board reductions. Permitting part C lead agencies to request a waiver consistent with the Part B option under Section 612(a)(12) would make it possible for states to have additional opportunities to continue participation in Part C.

ITCA is committed to working to develop short-term strategies to allow states to continue participating in the federal Part C program until more permanent solutions can be enacted through reauthorization. Ensuring all states continue to participate in Part C is critical to the national priority to have appropriate services availability to young children with disabilities and their families. We are available and willing to provide any additional information or clarification that may be needed and to discuss next steps.

For additional information and to discuss these strategies, contact:

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