UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR 2 8 2004

Janet D. Gully, Chief
Bureau of Early Intervention
Illinois Department of Human Services
222 South College, 2nd Floor
Springfield, Illinois 62704

Dear Ms. Gully:

This letter is in response to your request for clarification regarding the provision of physical therapy services under Part C of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask for guidance on differentiating therapy that is primarily for medical purposes from therapy that is primarily for developmental purposes. In your letter, you describe a situation in which a parent opts to have elective surgery for a child, such as a dorsal rhizotomy for cerebral palsy-related spasticity. Your opinion, as stated in your letter, is that "the acute post-operative physical therapy which is prescribed due to the surgery, is rehabilitative and medically indicated rather than being developmentally indicated" and, therefore, is a medical, not a developmental service "even though there may be overlapping objectives in medically-related and developmentally-related physical therapy." You further state your opinion that "the child's multidisciplinary team may not be equipped to determine when therapy is for medical purposes versus developmental purposes if there is no medical person on the team, since a medical opinion is required."

"Early intervention services" under Part C are those services that "are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development" (34 CFR §303.12(a)(1)). As you note in your letter, the definition of "early intervention services" includes "physical therapy services" (20 U.S.C. §1432(4)(E)(v)). The Part C regulations at 34 CFR §303.12(a)(9) state that physical therapy "includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include (i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems."

The definition of "early intervention services" under Part C also includes "health services necessary to enable the infant or toddler to benefit from the other early intervention

services" (20 U.S.C. 1432(4)(E)(x)). The Note to 34 CFR §303.13 distinguishes health services that are required to be provided under Part C as early intervention services from medical services that are not required to be provided as early intervention services under Part C.

"Health services" under Part C can include "(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and (2) consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services" (34 CFR §303.13(b)). "Health services" under Part C do not include (1) Services that are "(i) surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or (ii) purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose). (2) Devices necessary to control or treat a medical condition. (3) Medical-health services (such as immunizations and regular 'well-baby' care) that are routinely recommended for all children" (34 CFR §303.13(c)).

Because a major surgery operation may result in different levels of motor and physical functioning in a child, a new or re-evaluation of the child may be warranted and an IFSP meeting may need to be convened to determine if the child's functioning after the surgery warrants a change in existing or new services. Part C requires that a periodic review of the IFSP for a child and the child's family be conducted "every six months, or more frequently, if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine (i) the degree to which progress toward achieving the outcomes is being made; and (ii) whether modification or revision of the outcomes or services is necessary" (34 CFR §303.342(b)).

Under Part C, the participants in the individualized family service plan (IFSP) meeting develop the child's IFSP, and determine the early intervention services and other services needed to meet the unique needs of the child and family (*See* 34 CFR §§303.342 – 303.346). The information provided to the team in making these determinations may include relevant reports and opinions from medical or other personnel, but it is up to the participants at the IFSP meeting to determine whether the increased post-surgical physical therapy services are early intervention services that should be provided under Part C.

The IFSP participants could request that service providers and evaluators consult with physicians or other medical personnel prior to or following the IFSP meeting regarding any questions about the medical/surgical procedure and use this information, along with the results of any current evaluations and other information available from the ongoing assessment of the child and family to determine what early intervention services are needed and will be provided. (*See* 34 CFR §303.342(c)) If the IFSP meeting participants determine that an increase or change in physical therapy is needed to meet the child's ongoing developmental needs and ability to function, the services would likely be early intervention services under Part C. If the IFSP meeting participants determine that

increased physical therapy is warranted for a very limited time to recover from the surgery as rehabilitative therapy only, the services would likely be considered medical in nature and not early intervention services. If the parents disagree with the IFSP team's decision, then the parents may use the procedural safeguards available under Part C at 34 CFR §§303.419-303.425 to challenge that determination by an impartial hearing officer.

The participants in the IFSP meeting include (a) the parent or parents of the child; (b) other family members, as requested by the parent, if feasible to do so; (c) an advocate or person outside of the family, if the parent requests that the person participate; (d) the service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP; (e) a person or persons directly involved in conducting the evaluations and assessments; and (f) as appropriate, persons who will be providing services to the child or family (34 CFR §303.343(a)(1)).

The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family (34 CFR §303.344(d)), and, to the extent appropriate, "other services" including "medical and other services that the child needs, but are not required under this part" along with the funding sources to be used in paying for the services (whether health or medical) or the steps that will be taken to secure the services through public or private sources (34 CFR §303.344 (e)). Listing the non-required "other services" such as medical services on the IFSP does not mean that those services must be provided through the Part C program. However, as indicated in Note 3 to 34 CFR §303.344, their identification on an IFSP is very helpful to the child, the child's family, and the service coordinator for principally two reasons. First, inclusion of this information can result in the IFSP effectively serving as a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). This is useful not only to the child, the child's family, and the service coordinator, but to all professionals providing assistance to the child, from service coordinators to service providers.

Secondly, the role of the service coordinator is to assist the family in securing all services, including early intervention services, as well as the non-required services (34 CFR §303.22). This role can be met, for example, by (1) determining if there is a public agency that can provide financial assistance for other services, if needed; (2) assisting in the preparation of eligibility claims or insurance claims, if needed; and (3) assisting the family in seeking out, and arranging for the child to receive, the needed medical-health services.

Thus, it is important for a State's procedures to ensure that other service needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are identified in the IFSP, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or other funding arrangement).

Finally, given the circumstances outlined in your letter, it is important to note that if a parent requests a service be provided for an eligible child and the lead agency (without convening an IFSP meeting) determines that it is a medical service that is not required under Part C, the public agency must provide the prior written notice required under 34 CFR 303.403(b) to the parents. In addition, if after a child undergoes surgery, the agency determines either an additional evaluation is needed or that a new IFSP meeting must be held to determine if the services listed on the IFSP are appropriate, the agency must provide prior written notice. As stated in 34 CFR §303.403 "written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family." The required contents of this notice are outlined in 34 CFR §303.403(b).

I hope this information is helpful. If you have any further questions, please feel free to contact Mary Louise Dirrigl at 202-260-9490 or Dr. Wendy Tada at 202-205-9094 of my staff.

Sincerely,

Patricia J. Guard for

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Dr. Anthony E. Sims, Director of Special Education
Illinois State Board of Education