



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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Dear Ms. Dickson:

This responds to your November 27, 2007 electronic mail (email) correspondence to Jill Harris, of my staff, regarding whether your agency may provide eight hours of overnight, at-home nursing services to administer nebulizer treatments to a child who is receiving other early intervention services under Part C of the Individuals with Disabilities Education Act (IDEA). The child receives occupational therapy, physical therapy, and speech-language pathology services through an individualized family services plan (IFSP) during daytime hours.

Your email indicated that the child had been hospitalized and, since returning home from the hospital, needs oxygen 100% of the time and regularly administered nebulizer treatments. Your email also indicated that the parents have paid for overnight, at-home nursing services for their child at their own expense since the child has been at home and that they have been unable to obtain insurance reimbursement for this nursing service. Your email noted that the child's parents are not required to pay for Part C services for their child because they qualify for 100% payment support under the District's sliding fee scale that is part of its system of payments.

Under Part C, early intervention services are defined as those services that -

- (1) Are designed to meet the developmental needs of each child eligible under Part C and the needs of the family related to enhancing the child's development;
  - (2) Are selected in collaboration with the parents;
  - (3) Are provided
    - (i) Under public supervision;
    - (ii) By qualified personnel, as defined in 34 CFR §303.21, including the types of personnel listed in 34 CFR §303.21(e);
    - (iii) In conformity with an individualized family services plan; and
    - (iv) At no cost, unless, subject to 34 CFR §300.520(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and
  - (4) Meet the standards of the State, including the requirements of Part C.
- See*, 20 U.S.C. 1432(4); 34 CFR §303.12(a).

Under Part C, early intervention services must meet the developmental needs of an infant or toddler with a disability and the needs of the family related to enhancing the child's development. 20 U.S.C. 1432(4); 34 CFR §303.12(a). The administration of nebulizer treatments is similar to clean intermittent catheterization, tracheotomy care, tube feedings, and changing of dressings, which are types of services that may be covered as early intervention services under Part C under the definition of health services in 34 CFR §303.13(b). Under Part C, a health service is one that is necessary to enable an eligible child to benefit from the other early intervention services during the time that the child is receiving the other early intervention services. *See*, 20 U.S.C. 1432(4)(E)(x) and 34 CFR §303.13(a). The definition of health service excludes medical services, such as surgery and prescriptions, which may not be covered as an early intervention service under Part C. *See*, 34 CFR §303.13(c).

Nebulizer treatment administration may be available as a health service if it is identified by the eligible child's IFSP team as needed in order for the child to benefit from other needed early intervention services, such as speech, physical or occupational therapies. The fact that a nurse administers nebulizer treatments does not affect our analysis under Part C. Although nursing services may be available as an early intervention service under 34 CFR §303.12(d)(6) and (e), the nature of nebulizer treatments requires them to meet the definition of health services under Part C.

Health services under Part C are not intended to provide infants and toddlers with disabilities and their families with round-the-clock nursing care or to provide services that are needed solely to meet life-sustaining needs for treatment of chronic medical conditions during the period of time when an infant or toddler is not receiving other early intervention services (such as overnight). In this instance, the child's IFSP team, which includes the child's parents, may wish to consider whether this child needs any health services during the time that the child is receiving those early intervention services that are already identified on the child's IFSP, in order for the child to benefit from those IFSP services.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

We hope this information is helpful. If you have further questions, please do not hesitate to contact Jill Harris, of my staff, at 202-245-7372.

Sincerely,

William W. Knudsen  
Acting Director  
Office of Special Education  
Programs